

Status and Contract--an Empirical Analysis of Old Uyghur Documents

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Keywords: Status, Uyghur documents, Social norm, Contract, Tamğa, Nişan

Abstract: The unearthed old Uyghur documents tell us that people at that time used contracts to settle their civil relationships. However, these ancient contracts also tell us that Uyghur documents have strong status characteristics. A valid contract requires a tamğa or nişan, which depicts a symbolic mark representing a group rather than an individual. It is recorded in sale and loan contracts that the seller or borrower fixes contract obligations for his family members. The members are bound to the contract merely because of their status as a member of the group.

1. Introduction

We have very limited knowledge about the social norms of Uyghur area in ancient China. However, the unearthed civil documents written in old Uyghur script derived from ancient Sogdian script indispensable first-hand materials for studying the history, literature, art, social norms of western regions (Xiyu 西域) in ancient China. Scholars have been studying the old Uyghur documents and translated them into modern languages, which facilitates our study of ancient systems.

Although many linguists and historians have studied the old Uyghur documents, yet it is of great value for further investigation on the social norms of ancient Uyghur region. Annemarie von Gabain examined the Uyghur documents and concluded that “the possession of land and slaves is not a matter of individual affairs, but a matter of the whole family”[1]. A. Melek Özyetgin keenly observed that in sale contracts, although the seller verbally reassures the buyer of his sale rights, seller is not directly responsible for the compensation of the buyer’s loss. It is the protesting third person that is liable to the payment of quiet enjoyment debt, not the seller, and that again the third person is held responsible for any damages [2].

People use civil contracts to settle rights and obligations, but still some obligations are fixed without free will. This implies that old Uyghur documents reflect a status characteristic, and we can observe it from the form and content of these ancient contracts.

2. One Signature Valid for All Members of a Family

2.1 Tamğa or Nişan as a Signature

Old Uyghur contracts take tamğa or nişan (i.e., seal or hand-drawing mark) as a way of signing valid contracts, instead of signature (签字,花押) with individual characteristics. Apart from a few incomplete documents, almost every contract has a tamğa or nişan sealed or drawn on it. It is noted on the documents usually that “bu tamğa mining” (this seal is mine) or “bu nişan bizning” (this mark is ours). A seal or a hand-drawn figure is placed near these words as a signature. In the Turkish Dictionary, tamğa means “seal, Khan and others’ seal” [3]. Tao Zongyi, a scholar in Yuan Dynasty, records: “Nowadays, Mongolian semuren as officials, mostly can’t sign their names with a pen, instead, they use an ivory or wood carving their names on it. Khan allowed prime minister and his adjacent officials to use a tamğa carved on a jade to sign official documents. Others do not dare use a tamğa” [4]. Tamğa is a symbol of status, only the elites could use it.

Scholars believe that the nişan in the Uyghur civil documents is a property mark. Documents with legal effect requires a tamğa or property mark (nişan). Simple lines of the property mark are

drawn with reed brushes[1]. In modern Uyghur language, nişan means “token, mark or symbol”. Tamğa is a seal that has been carved, while nişan means drawing a symbolic mark with a pen. Compared with the tamğa, nişan symbolizes lower inferior social condition. In most cases, nişan could be regarded as a substitute for tamğa[5]. Tamğa is usually carved on ivory, jadeite and special metals at relatively high cost. However, nişan does not need any economic cost. It only needs to draw specific marks by hand. From the graphics carried by tamğa and nişan, it is usually a geometric figure or ancient text rather than a personal name.

2.2 Tamğa Or Nişan as a Symbolic Mark of a Group

The contract takes a tamğa and nişan to become valid. What is carved on the tamğa is a mark rather than the name of a contract party. And what is drawn as a nişan, is a mark rather than a signature. In most cases, the contracts are written by a special writer who writes religious and secular documents for a living. But there are also some contracts written by the contract party himself. Even those who write the contract use a tamğa or nişan rather than signing their names. For example, a lease contract records:

bu nişan mäning ol män töläk tämur ösün bitidim (RH14)

This nişan is mine, I Tolak Tamur wrote this document myself

The nişan on this document is a hand drawn five-pointed star. [6]

Members of a group (a family) or several co-signers of a contract always use a common tamğa or nişan. Most contracts are initiated by an individual, but there is a considerable number of contracts that are initiated by several contractors. They use the same tamğa or nişan together to represent their common will. For example, it is recorded in a sales contract document:

manga tädmilig qara buqa ikagükä qarcliq käräk bolup qudluc adlic qadun kişimi sadip qudluh tämürtin yüz alig boz aldimiz...bu nişan biz tadmilig qara buqaikaguning.(Sa28)[6]

We, Tadmilig and Qara Buqa, sold a woman named Qudlugh for 150 cotton cloth. This nişan is ours.

Tamğa or nişan depicts a mark which is the symbol of a certain group rather than a name of a contract party. Tamğa depict various types of patterns, including gears, circles, ellipses, polygons and so on. Nişan also draws various geometric figures by hand. These figures are the symbolic mark of a certain group. This may be related to the customs and habits of the clan period of ancient Uyghur. As early as nomadic life, people used special markers to distinguish property from each other's. Ownership of livestock is represented by a special branding mark (Tamaga), which is apparently used by all members of the clan[7]. Mahmud Kashgari also wrote that: because people want to know the clans of this tribe, I list them one by one. These marks are the marks of their livestock. If they are mixed with each other's livestock, they are identified by the marks[3].

This characteristic of old Uyghur civil documents implies that tamğa or nişan represents a certain group rather than an individual. And only the head of a family has the right to use a tamğa or nişan. Other members of the family being absent or not, while the parties signed the contract, are bound to the contract signed by the father (or elder brother).

3. Obligations without Signing a Contract

3.1 Eviction

There are two main types of sales contracts: land sales and slave sales. Almost all sales documents contain a guarantee clause of rights defect.

(1) Who may protest or interfere

(a) Family members. In a sales contract, the seller must guarantee that his relatives should not oppose the selling, and he must guarantee that even after his death no member of the family will take the land or slave back from the purchaser. It is often stated by the seller of the land or slave that his brother or son or other relatives will not interfere the agreement in the future. A sales contract record that:

...män şabiniñ ogulum qizim içim inim qam qadşim yganim tagayim aytmazun istmäziin aytgli

istgli sqïnsr savları yorïmazun taqï birök ärklïg bæg işi küçin tutup alayïn yulayïn tisärlär bu oq ögän üzä suvaqlïg iki tançu yir yaratı birip yulup alzun yultaçı kişi qorlug bolzun basmïl qorsuz bolzun (Sa04)[6]

I, Shabi, let my son, my daughter, my elder brother, my younger brother, my relatives, my nephew, and my uncle not interfere, let them not protest. If they intend to take it back, don't let their words count. If they use powerful rulers' influent to take the land back, let their words not be influential, let them pay two pieces of watering land. Let the interferer lose. Let Bashmil not suffer any damage.

(b) Members of onluqlar (ten households) and yüzlüklär (hundred households). In 35 sales contract documents, onluqlar appeared seven times and yüzlüklär appeared six times. Within a hundred households there are dozens of ten households, which are the basic units of Taxation and labor. In civil relations, it also appears as a common contractual party.

(2) Liability for eviction

According to the ancient Uyghur texts, the members of a family or onluqlar are bound to the contract signed by the father or the head of ten householders. This means fathers create obligations for the entire family merely by their own will. In modern civil law, the subject of liability for defect guarantee is the seller. But in the old Uyghur contracts, the subject of liability for defect guarantee includes not only the dealer, but also the family members, onluqlar and yüzlüklär members. The contract usually stipulates “who pursues, who assumes responsibility”.

3.2 Guarantor of a Loan

There is a guaranty clause in the old Uyghur loan contracts. According to the collections of Geng Shimin, 21 of the loan contracts recorded a guarantee clause.

birgäicä bar yoq bolsar män inim barçaqi äwtäkilär bilä köni birsünlär.(Lo21)[6]

If anything happens to me before I pay back, let my family and younger brother Barchaqi and my family return it.

This is a promise made by the borrower to guarantee the debts. Among the guarantors, “family”, “brother”, and “son” appeared most frequently. The guarantee clause in old Uyghur loan documents is similar to the clause recorded in the unearthed Dunhuang and Turfan Chinese civil documents, which means the guarantor fulfills his obligations only when the borrower (the contractor) dies or escapes [8]. The borrower is usually the father of a family, and only he has the right to sign a contract on behalf of the family. Other members are subjected to the father. When the father dies it is usually the son or younger brother who inherits the father's status, including debts and rights.

In a loan, the contractor appoints a relative to guarantee the loan without seeking the relative's consent. The guarantor usually does not directly participate in the signing of the contract, and the guarantor's guaranty liability is directly stipulated by the father. As a representative of the family, the father establishes rights and obligations for the members of his family. The rest of the members can only act according to the will of the father, otherwise they will be severely punished by the Yasa. Guarantor's responsibility does not come from his independent will, it comes from his status as a family member.

4. Conclusion

There are two main sources of status reflected in the old Uyghur documents: status granted by patriarchal system and status granted by secular management system. One gains his status from the moment of his birth, and his status is decided first by the social position to the group he belongs and second by his position in the group. This kind of status is fixed by the society instead of his free will and its binding force comes from informal social norms such as customs, ethics and morality. In a society with the hierarchical system of status, people believe that debts never expire and sons inherit their fathers' debts, wives inherit their husbands' debts even if the debts exceed the estate. This kind of social order is protected by the Mongolian Yasa as a secondary social norm.

Another source of status granted by secular management system plays an important role too. Everyone belongs to a family under the control of a father, and every family belongs to an onluqlar

(ten households). There is a serious asymmetry of information in such a society, and there is no omnipotent public power like modern society that is able to supervise individuals and detect crimes and make impartial judgements for every civil case. The ruling class does not have the ability to control individuals one by one, it has to rely on the groups to control individuals. People are divided into groups, and onluqlar is the smallest administrative unit. Family (group) members must obey the father's order, and village (group) members must obey the habit, custom, ethics and morality of the village. The formal social norms such as Yasa, protect the social order created by informal social norms like habits, customs, ethics and morality.

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