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The Legal Foundations of Tibetan Religious Thought[1]

Charles Ramble, PSL, EPHE

Introduction

Almost all Tibetan legal codes from the post-imperial period explicitly derive their legitimacy from the Buddhist values they purport to enshrine. The source to which the later Tibetan accounts refer is the *Mi chos gtsang ma bcu drug*, attributed to Srong btsan sgam po and said to be based on the *Sūtra of the Ten Virtues*, and lawmakers ever thereafter have presented their tracts as measures for the realisation of these basic principles. The conviction among Tibetans that the legal system of the Ganden Phodrang government was founded in Buddhist tenets remains deeply entrenched. An idea of the tenacity of this belief may be obtained from the work of Rebecca French, whose study of the Central Tibetan legal system conveys the conviction of her principal informant, a diaspora Tibetan who had practised law in the pre-1959 era, concerning the religious underpinnings of his profession.

In the absence of evidence to the contrary, most researchers have considered the *Sūtra of the Ten Virtues* as a late fabrication aimed at giving a Buddhist legitimacy to an essentially secular institution.[2] In his important contribution to the present volume, however, Sam van Schaik demonstrates that the *Sūtra of the Ten Virtues* and similar texts were in fact widely circulated during the imperial period. According to van Schaik, even if the work is unlikely to have been the basis of law-making in the time of Srong btsan sgam po, it was "clearly part of the project to instill the *karma-samsāra* cosmology in the Tibetan empire," and was "an important factor in the way Tibetans came to understand their legal system" at a period earlier than is generally supposed.

The antiquity of the *Sūtra of the Ten Virtues* notwithstanding, the visibility of the debate over the degree to which Buddhism may or may not have influenced legal thinking in Tibet may have eclipsed certain fundamental aspects of the relationship between Tibetan law and religion, to the extent of blinding us to the existence of important structural properties that they share. In this article, I will go so far as to suggest that a significant area of Tibetan religious belief is actually *based on* legal principles. In order to explore this possibility further, however, we need to adopt a more comprehensive understanding of both religion and law.

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[1] Owing to limitations of space, the Tibetan text of passages cited here has not been included. For an extended version of this article, see www.kalpa-bon.com/articles/legal-foundations-tibetan-religious-thought.

[2] See, for example, Schuh 1984, 300.

Aleatoric Devices

Ritual may not be an intrinsic part of religion—indeed, several studies have been devoted to establishing the validity of the idea of secular ritual[3]—but it nevertheless forms a significant part of it. It also forms an important part of Tibetan law. Among the different types of rituals that feature in both domains, perhaps the most salient is the use of procedures that manifest the will of a divine agency. These aleatoric techniques may be used in the selection of officials, in determining the outcome of a dispute, or for assessing the efficacy of a ritual. Here I shall compare the use of two such devices as they are used in judicial and religious contexts.

In their study of Sakya principality, Cassinelli and Ekvall state that there were "three standard methods used...to resolve stalemates" in legal cases.[4] It is the second and third of these methods that are of particular interest here. One, "involving least tension and apprehension for the contestants," entailed taking a stone out of a jar of opaque oil:

> The jar contained one white and one black pebble. The accused drew a single pebble and then replaced it; then his accuser drew a single pebble. The drawing continued until one draw one man drew white and the other black. The issue was then incontrovertibly resolved in the favor of the man who had drawn white.[5]

The other procedure involved rolling dice, and the authors illustrate its application with reference to a particular case from the 1940s. A man was found murdered in a village, and his brother accused a neighbour of being the perpetrator. Since the case involved a homicide it was taken to the capital for trial.

> The Law Officials ordered that a yak be killed and its hide spread, bloody side up, on the courtroom floor. The accused, without clothes and with his hair let down knelt on one edge and his accuser, normally attired, knelt facing him on the other edge. ...The total of the accused's roll was higher than that of his accuser, and so he won the first round. He lost the second round, but won the third, and was thereupon declared innocent of the killing.[6]

In both these cases gods are invoked not as judges, much less as agents of retribution, but rather to vindicate the position of the respective parties; they are summoned as witnesses.

The use of black and white stones and also the rolling of dice are an integral part of certain Tibetan religious ceremonies, notably the ritual for the retrieval of lost souls (*bla 'gugs*). In the course of the ceremony, a representative of the patient performs certain procedures to

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[3] See, for example Moore and Meyerhoff 1977.
[4] Cassinelli and Ekvall 1969, 175.
[5] *ibid*., 176, fn. 15.
[6] *ibid*., 176.

determine whether his or her soul has been restored.[7] A copper cauldron is set on a stand and filled with water to which milk and calendula petals are added. The officiant places at the bottom of the cauldron six white and six black stones that are referred to respectively as "soul stones" (*bla rdo*) and "demon stones" (*bdud rdo*). At a certain point an assistant plunges his hand into the murky water and extracts a stone. A white stone signifies that that soul has been retrieved, whereas a black one means that this part of the ritual must be performed again.

The patient must then play a game of dice with the soul's demonic captor. A representative of the patient rolls a pair of white dice on a white mat, using his right hand. The demon is represented by a dough figure, and a pair of black dice are rolled on a black mat on his behalf by a woman, using her left hand. Each side has three throws, but the patient has only to win one round in order for the ritual to be considered successful. Before the dice are thrown, various supernatural powers are invoked:

> Hey! May the lama and the tutelary divinity be impartial witnesses; may the divine protectors of Bon be impartial witnesses; may the dakinis and the treasure guardians be impartial witnesses; and may the territorial gods, the earth lords and the eight classes of demigods act as impartial witnesses today![8]

Far from being entreated to take the side of the patient and to coerce the demon into giving up the soul, the divinities are being asked to remain neutral and simply to bear witness to the outcome of the game.

Oaths and truth

The procedures described above for establishing the guilt or innocence of a suspected criminal are similar to the protocols for certain oaths. The subject of oath-swearing in Tibet is a large and complex one, and in spite of a certain amount of important research on the subject it is clear that the topic merits closer and more extensive examination. For present purposes, I shall concentrate on one aspect of the practice: the role of divinities that are invoked during the process. In certain cases, divinities are invited to act as guarantors - more bluntly, enforcers - of the actions to which a formal commitment is made. This operation corresponds to the first of the diagnostic measures from Sakya cited above, in which supernatural powers are enjoined to harm the malefactor - that is, the one who is guilty of falsehood.

Are we therefore to conclude that the efficacy of the oath lies in its reliance on fear of divine retribution? Or, to express the question in more general terms, is this legal procedure predicated on religious belief? The argument that oaths have a religious foundation is an old one, and so too is its refutation. Cicero insisted that the force (*vis*) of the oath does not not derive from fear of divine retribution; gods are invoked as witnesses, not enforcers, and in any case they do

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[7] For two descriptions of this ritual, see Karmay 1998 and Ramble 2010.
[8] Ramble 2010, 215.

not exist; *vis* is derived from *fides*, the faithfulness between language and action. Cicero's argument notwithstanding, Joseph Plescia has argued that the oath originated as a religious rite before it was incorporated into religious law. However, Plescia's claim is contradicted by the evidence: the earliest written example of an oath, dating from the 6th century BC, is connected to a marriage contract; *fides* originally denoted a verbal act accompanied by an oath, and was only later divinised as the goddess Fides and as the Deus Fidius; like the Persian Mitra, these divinities are personifiations of the contract. Here, as elsewhere, religion does not precede law but follows it.[9]

John Claude White describes the measures for swearing an oath that entail the use of hot—rather than simply opaque—oil. A black stone and a white stone of similar size were put into a pot containing boiling oil, and the pot arranged so that the stones could not be seen. The person on trial would extract one stone. If he removed the white stone without any burning, he was declared innocent, and guilty if he picked the black stone. There is no suggestion that any divinities are to be invoked here as enforcers.[10]

The procedure is a trial by ordeal, but as Schuh has pointed out, Tibetan does not distinguish between oath-swearing and undergoing an ordeal. The treatment of the murder suspected described by Cassinelli and Ekvall also finds its parallels in an oath. A document from south Mustang, undated but probably from the 19th century, records the procedure whereby an agreement was reached over the pasture boundaries of four contiguous territories.

> Having invited [*lacuna*] as witness(es), in order to establish their pasture boundaries.... [representatives of] the four commmunities spread out a fresh hide as a seat; they wore red copper vessels on their heads, and came out naked, with black yak-hair ropes tied around their necks, and after swearing an oath, they established the boundaries as follows...[11]

There is no mention either here, or anywhere later in the document, of any divine enforcers, only the opening reference to calling someone or something as witness.

As Benveniste pointed out, there is no single Indo-European term for oath. Each language has its own expressions, and the fact that the phenomenon is so widespread is due to the fact that the oath "is not an autonomous institution. It is not an act that has a meaning in itself and is sufficient unto itself; it is a rite that guarantees and sacralises an affirmation".[12] The diversity of expressions both for the oath and also for the taking of oaths in Tibetan has been remarked by several authors. As in Indo-European languages, the etymology of the terms in most cases is elusive. The most widespread term for oath, and one of the most intriguing, is *mna'*. The term appears in numerous compounds, such as *mna' chu*, "oath water," the water that is drunk as part

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[9] Agamben 2011, 28–29.
[10] cited in Schuh 1984, 294.
[11] Ramble 2008a, HMA/Te/Tib/56.
[12] Benveniste 1969, 163; translated from French.

of the rite of solemnisation, and *mna' ma*, "bride" – that is, a woman who has been committed in marriage, and so forth, but the etymology of the word itself is obscure. I would like to suggest that the term is connected to a little-known Tibetan verb meaning "to say." In the Tibetan dialects of Mustang, the equivalent of the Central Tibetan term *zer*, to say, is *na*. The vowel carries a high tone, suggesting a prefix, and undergoes ablaut (vowel change) according to aspect and mood: the perfective form is *nä*, and the imperative *nö*.[13]

An oath is a declaration of truth; that is to say, an actual state of affairs. The etymological and conceptual connection between the Sanskrit terms for truth and being have been discussed by the recipient of the present volume, Matthew Kapstein, with whom it has been my privilege to work in close association at the Ecole Pratique des Hautes Etudes for almost a decade. It is the importance of this correspondence, as he points out, that has led some authors to render the term *satya*, truth, as "reality."[14] For Giorgio Agamben, it is precisely in this adequation between the signifier (the word) and the signified (the reality) that the force of the oath lies. Suggesting that language originated *pari passu* with ethos, he argues that "the oath expresses the demand...for the speaking animal to put its nature at stake in language and to bind together in an ethical and political connection words, things and actions."[15] The involvement of divinities is a later elaboration.

A component of many Tibetan rituals is the procedure knowns as *bden pa bdar*, the "invocation of the truth", or "truth telling". This is an illocutionary act in which the priest ensures the efficacy of the rite he is performing by formally declaring the truth of certain divinities whom he names, or indeed of the doctrine itself. Here is an example of such an invocation from a nineteenth-century Bonpo work:

> The Invocation of the Truth: ...by relying on the power and might of the truth of the Buddha's word, the truth of the word of Bon, the truth of Gshen rab and of the Eternity-beings (i.e. Bodhisattvas)...may all [harmful beings] instantly be summoned into this effigy as helplessly as if they were sparrows pursued by a hawk.[16]

Here, the force of the ritual derives from the truth of Bon and its divinities, and it is this that renders demons compliant with the intention of the ritual. The Tibetan procedure of *bden pa bdar* has antecedents not only in Indian Buddhism but in Indian religion more generally, where it

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[13] Peter Schwieger has kindly pointed out to me in a personal communication that the existence of such a verb in the Kinnauri dialect is attested in Jaeschke's *Dictionary*, where it features under the entry for *na re*. While the form of *na re* – a formula for the introduction of direct speech – of course never changes, the Kinnauri verb has an imperative form *nö*, although the perfective form is *na*. The tone of the vowel is not recorded.

[14] Kapstein 1998, 421.

[15] Agamben 2011, 69.

[16] Gsang sngags gling pa 1998, 478.

appears under a variety of names such as *satyavacana, satyavādya, satyavākya* and so forth.[17] In a classic study of the subject, E.W. Burlingame makes the important point that, although the power of truth is often closely associated with the power of righteousness (goodness, merit and so forth) and also—as in the extract from *Yang snying* cited above—with "the superhuman might of spirits, deities and Buddhas,"

> such mention does not mean, however, that the Act of Truth in any way depends for its efficacy upon the co-operation of these other forces, powerful though they are. Truth, in and by itself all-powerful and irresistible, is essentially distinct from them, and operates independently of them.[18]

By way of illustration he cites several examples of rather unvirtuous people who nevertheless command the power of truth. These include the Jataka tale (no. 444) of a long-suffering wife who cures her son of snakebite by declaring the truth of her asserveration that she hates her husband even more than the creature that has bitten her son; and another story, from the *Questions of King Milinda*, in which a prostitute causes the Ganges to reverse its flow by means of an Act of Truth to the effect that she treats all her clients alike, irrespective of caste: "Free alike from fawning and contempt, I serve the owner of the money" (*ibid*.: 440). The great antiquity of the Act of Truth has been established by W. Norman Brown, who cites several instances from the Ṛg Veda. One of these is the account of a gambler who recovers his lost chattels by declaring the veracity of his addiction. Brown suggests that the metaphysical basis for the Act of Truth lies in an individual's complete fulfilment of his or her special duty (*vratá*) within the scheme of universal order (*ṛta*).

> When a person fulfils his duty perfectly, he gains this power; for he has observed Ṛta, has met his obligations under it. He is one with the Sat [universe]; he is *satya*, that is, true in a complete sense and can "control" the Sat, for he and the Sat are one. His wish is therefore irresistible.[19]

The gods, then, are not integral to the efficacy of the Act of Truth, however much they may appear to be in certain, especially later, works. There are two possible mechanisms whereby both ritual and the Act of Truth operate: one—purportedly later—is through the agency of gods who are induced or coerced into action by the ritual; and the other spontaneously, through the intrinsic force of the performance itself, which is "powerful in its own right." Now, what is of particular interest here is the intriguing suggestion, to be found in several works, that the impeccable execution of a ritual is itself no guarantee of its efficacy, either through the power of the performance or through the secondary agency of the gods. Two examples will serve here by

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[17] Brown 1972, 252.
[18] Burlingame 1917, 432
[19] Brown 1972, 262

way of illustration of a strikingly different understanding of the ritual dynamic. The first is from the mythic narrative (*smrang*) section of a ritual for the subjugaton of "vampires of loss" (*god sri*), a category of demon that preys on livestock.

> First, secure the support of the gods; invoke them as witnesses, then summon the vampire of loss and diffuse it [into the effigies]. If there is an assistant, perform the invocation of the truth and then say as follows: one day all the gods and demons of the phenomenal world ... failed to appreciate this as the truth. The eight haughty ones of the phenomenal world did not support it. At the beginning of the world ages, in the sky, the demons caused hail to fall, and on earth many creatures died. ...From the bones of horses that were left in the houses, the following year there came vampires of loss of horses.[20]

The disturbing implication of the passage seems to be the following: neither does the utterance of the truth have any intrinsic power, nor does it have the ability to coerce the gods who are present into implementing it. The role of the gods is to act not as enforcers, but as witnesses to the truth that has been enunciated, and it is their derelection of this duty that has resulted in the rise of vampires.

The second example, from the collection of Bonpo funerary texts known as the *Mu cho'i khrom dur*, reinforces the notion that the ritual has no intrinsic power:

> Protect the near and dear of our benefactor, and witness that we have performed the repulsion of external adversities. If we perform the "driving away" of our enemies and they do not leave; if we perform the "repulsion" and they are not repelled; if we perform the "subjugation" and they are not tamed but continue to harm us, fulfil your role as mediators and witnesses![21]

Just as in the previous example the gods were at liberty to endorse or to ignore the declaration of truth, in the present case the proper execution of the rite does not automatically elicit the compliance of the demons that are to be expelled. They may decide not to comply, but in this case, the text seems to say, they are in transgression of the law, and it is the duty of the gods—who are, again, present as witnesses—to testify that the ritual was performed as it should be, and that the priest is in the right.

The two examples given here are not anomalies, but manifestations of a cultural understanding of ritual as a legal process. The following section will pursue this line of enquiry by exploring a principle that has been underestimated in discussions of Tibetan law, and is also crucial to our understanding of ritual. This is the notion of precedent.

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[20] *God sri*, fols 1v–2r.
[21] *Sngags kyi mdo 'dur*, pp. 81–82.

Res judicata* and *stare decisis

To make a claim for the importance of precedent in Tibetan law may seem surprising in the light of Rebecca French's insistence that the legal system made no provision for it, and that each case was considered on its own merits. This claim invites closer scrutiny. French suggests that Tibetan law did not observe the principles—present in British and American legal systems, for example—of *stare decisis* and *res judicata* (1995: 139). The first of these, a reference to the formulation *stare decisis et non quieta movere*, "to stand by decisions and not disturb the undisturbed", supports the principle that cases should assessed in the light of comparable examples from the past. The second, *res judicata*, implies that the judgment of a case marks an end to the matter, and that it should not be opened to further scrutiny.

If the examples of actual cases that will be cited below categorically contradict Rebecca French's argument, I do not think that that is because her claim is wrong. The legal universe from which French derives her conclusions is the official judiciary that was intimately connected with the administrative structures of the Ganden Phodrang government, and the premises underlying this institution were not ubiquitous. In her fine study of legal anthropology, Fernanda Pirie reminds us that a single nation or even a small-scale society may be host to a multiplicity of legal systems, even without the spurious extension of the label "law" to systems of social regulation such as kinship (Pirie 2013: 14). The cases cited below are from Mustang, in Nepal, but they are not significantly different from similar documents from Central Tibet. In both cases, we know that local communities tried as far as possible—sometimes on pain of punishment of transgressors—to settle disputes internally, without recourse to national structures, since such engagements were invariably costly and intrusive, and often brutal.

The matter of *res judicata* is not especially relevant to this exploration of the common ground occupied by law and religion, but it is nevertheless worth our attention as an illustration that we are dealing with a legally plural environment in which categorical statements about one stratum may not appy to another. Perhaps the most economical demonstration of the principle of *res judicata* in Tibetan law is the wide range of "perpetuity clauses" that feature individually or, more often, in clusters at the conclusion of legal documents such as contracts and resolutions. Three examples may be given here. The first is the final part of a document from 1888. It concerns an agreement between an elderly couple and a lama over a field owned by the former and leased to the latter. The previous owner of the field has been clandestinely harvesting the field, and the elderly couple and the lama are considering ways to prevent him from doing so.

> Regarding the preparations for returning the field, the lama first explained to the two lenders his own position and that of the court, and said, "you should discuss what you will do". Following a discussion on the part of the two money-lenders, the field's owners, they asked him to try to retrieve as much of the debt as possible [through the courts], and, applying the best possible strategy if it were possible to keep the field without losing it, whatever expenses the lama may have had in terms of costs and minor expenses (lit. beer price), they would

> repay it. If it should happen that they did not repay it, they said that they would not ask for whatever the cost of the field might be, but that since it is the case that the dispute over the field was taken to Subba Man [the warden of the area] and to the court, if they do not pay according to the decision that was made, they will give it to the lama, without refusal, to be his as long as the world age endures, till the white snow mountain Kailash melts, until lake Manasarovar dries out, until the crow turns white, until the blue river flows uphill, till red fades, and without sediment brought up from the deep or recollected issues being raised anew, in confirmation that they will not diverge from this agreement Grandfather Sonam Norbu willingly sets his mark; Grandmother Sangye Mindzom willingly sets her mark. The witnesses to this are Grandfather Pema Rigdzin and Karma Chökyab of Tshognam, the Nobleman Ramjor of Kyukar. The scribe was the Anchorite Sangye Tshecu of Purang, who sets his mark.[22]

To cite another example from 1919, a blacksmith name Kunga Hirthar bought a turquoise vase from a certain Lama Dorje Gyaltsen of Tiri *dgon pa* for 100 rupees. He then sold it to Lama Tenpai Gyaltsen of Upper Tshognam for 19 rupees because he badly needed the money. He apparently came under suspicion of having stolen it, because he then drew up a document declaring his honest acquisition of the vase. The document ends with the statement that "nothing so much as the buzzing of a fly shall be said about this matter as long as the world age lasts." This is followed by the deleted syllables [*ph*]*o rog*, suggesting that the scribe was about to add another stock perpetuity clause, viz. "until the black crow (*pho rog*) turns white", but changed his mind.[23]

A final example (from 1851) may be cited in order to emphasise the point that the notion of *res judicata* is not confined to relatively minor matters such as contracts and declarations, but also to more important judgments—in this case, the pardon of a murderer:

> Declaration by the ruler, the Trithob Dorje Thobgyal. This document is issued to the people of Te. A document was issued to Rabjung Palzang in accordance with past custom. No one may continue to act according to new rules, but must adhere to the old traditions. There has been a slight dispute. In the course of a legal investigation [the following conclusion was reached]: concerning Chö Phurba, because he has been outside the community for twenty-eight years [after killing someone], and because Ogyen Ngawang made a request to the legal authority and the community of Te, and [on behalf of Chö Phurba] paid the blood debt [the killer] has been pardoned. But if these wicked impulses should recur [the Tepas] should act in accordance with tradition, not new procedures; it has been decided that the matter should be forgotten. If it should happen that someone stubbornly recalls [the past events], [the

[22] Ramble 2008a, HMA/Te/Tib/41
[23] Ramble 2008a, HMA/Te/Tib/43

offender] shall pay a fine of 50 rupees to the legal authority.[24]

The case was closed, and any attempt to reopen it would incur a crippling fine.

Turning now to the matter of *stare decisis*, we may begin by noting that legal decisions and undertakings are not *always* made on the basis of precedent. However, when there is a departure from established models, we invariably find an introductory clause stating explicitly that this is the case. Thus in 1890 a certain convent drew up a new set of rules concerning the conduct of the nuns and the relationship between them and the lay community. The revival did not entail a reinforcement of the old rules but their complete abandonment, with the announcement of a fresh start:

> Since the rules contained in the document of agreement between the convent of Gönpa Gang and the community of Tshug had become obsolete (*yal*), there was a plenary meeting of the convent's members leading to an agreement that has discontinued past practice and adopted new procedures.[25]

In another example, in 1922, an enclave of five villages known as the Shöyul drew up a covenant of cooperation against a number of other settlements that they perceived as persecuting them. This entailed a revision of the terms on which they had interacted with one another heretofore.

> Because one or two bad sorts of people have been causing many kinds of distress to us lowly, simple subjects, what has been done up to now shall be put behind and a new procedure will henceforth be adopted (lit. "having taken to our faces"). It is certain that we shall not act as if we had two tongues in one mouth. Now, in whatsoever matter may arise, whether it be as great as a double six [in a dice-throw] or as small as a deuce, we five Shod yul shall act only as one, not as two. Whichever of us Five Shöyul diverges from this policy (lit. "performs a sideways head-turning") shall pay a fine of 500 rupees, with no excuses.[26]

Explicit breaks with the past such as these are relatively uncommon, and are situation-specific rather than the 'default' procedure. We may now consider some cases where past decisions and policies are invoked to legitimise a course of action that has been decided on—in other words, where precedent is respected. In 1910, a family of priestly rank was ordered by the council of the commoner village on whose territory it lived to provide one member for public labour:

> Concerning the matter of disrespect for the traditional relationship between the community of Tshug and the priestly estate of Tshognam, there has been a slight disagreement. The details

[24] Ramble 2008a, HMA/Te/Tib/26
[25] Ramble forthcoming a, KC/29
[26] Ramble forthcoming b, HMA/Baragaon/Tib/05

> are as follows. In a previous year, when Khamsum, the *sku zhabs* of Kag, was building his palace, he informed that people of Tshug that, in keeping with the pledge (*dad dam*) between the lord and the community, they would have to haul beams and suchlike and give them to him. They readily acquiesced to whatever he said. When people were being appointed to fetch the beams on the basis of one person per estate, Kunga, the daughter of the priestly estate in Tshognam, was also selected. however, on the strength of the resolution that, from past times until now, it was not required that [the priests] should perform any public labour for the community, Kunga did not join the rest of the village. As a result, the lord and the community then apprehended her, but when *sku zhabs* Khamsum was told truthfully, with no falsehood, what the past custom was, he considered the explanation convincing. And now you lamas and patrons have [again] had a slight disagreement. Henceforth, [we should act] in accordance with his declaration that past custom should be preserved without there being any attempt to disturb the pledge (*dad dam*) between priest and patron that is founded in tradition.[27]

The following example, from 1890, marks the settlement of a dispute over the use of a salina. The site stands on the territory of Tshug, but traditionally both Tshug and its neighbour, Te, were entitled to equal use of the salt water.

> A dispute (*slang mo* < *gleng mo*) has arisen over the salt water in Tshaurong, in the Upper Narshing River. All the signatories in the list (*stab shil* < Nep. *tapsil*) are intermediaries who have negotiated this agreement. The purpose of this document, a copy of which is to be given to both Te and Tshug: since ancient times the two communities have had equal rights to the water, and this state of affairs shall endure until the end of the world age. They have equal rights to draw the water, to drink it, and to eat it (*za* in this context may mean simply 'use', but it may also imply the solid salt that crystallises out of this water). This continued to be the case even later on, in the time of the nobleman (i.e. the representative in Kag?) of the King of Jumla. Then a dispute arose, and the King of Jumla decreed that Te and Tshug should use the salt water equally according to tradition, and each side has a document to this effect.
>
> A dispute over the same issue flared up in a Hare year (1879?), and the intermediaries listed (below?) have settled the matter with a decision that honours both precedents: on the one hand, the tradition that has pertained since the origin of the communities, and on the other the written confirmation issued by the King of Jumla. They have decided that usage should be equal with respect to drawing, drinking and eating [the crystal solute of?] this water. The two

[27] Ramble 2016, LTshognam/Tib/07

> parties have understood this, and agree to abide by the mediators' decision. No opposition as much as the buzzing of a fly shall be raised.[28]

We are not told what provoked the dispute, but the document reasserts the right of the two communities to use the salt water. The basis for this decision is particularly interesting, because it entails not just one but two established precedents. First, there is an appeal to deep antiquity—the resource has been shared "since ancient times, and this shall endure till the end of the world age". The second precedent is more recent, and refers to the confirmation of this traditional arrangement by the King of Jumla. Since Jumla's hold over Mustang was broken by the Gorkhas in 1789, the point of reference must clearly be prior to this date. The fact that there are more than one precedents is significant, and by no means unusual. Mustang is the location of a lengthy stretch of the Kali Gandaki Valley, historically one of the most important trade routes between the Tibetan Plateau and the lowlands of Nepal and India. Disputes between various stakeholders—most frequently, the different enclaves situated along the route—would periodically arise, sometimes resulting in tit-for-tat closures of sections of the way. Since all partners stood to lose from such interruptions it was interest of all the parties to solve conflicts as soon as possible. In the document cited below, northern and southern Lo (the "Seven Counties" and Baragaon respectively) have had an unspecified disagreement, and the other stakeholders have induced them to settle their differences by adhering to the terms of an existing document that was drawn up more than thirty years earlier.

> This year (1947) an issue of minor discord arose between the Seven Counties of Lo and Baragaon over the salt-grain [trade]. This year the *dharmarāja* of Lo, A mgon 'jam dpal and Sankarman, the son of the Warden of Baragaon, and the eminent (lit. noble) sons of Tukche, Jitarman and Khadambar [are] acting as intermediaries. Previously, in the Wood Dog year (1934)...a written agreement was drawn up between Thaksatsae, Panchgaon, Baragaon, Gelung and the Seven Counties of Lo concerning trade. And now, through the mediators mentioned above, the Seven Counties of Lo and Baragaon should abide by the existing terms, each should understand the other, and in confirmation of their adherence to the old written agreement mentioned above, the following people of the Seven Counties of Lo set their individual marks.
>
> [One signatory per county follows]
>
> The mediators, acting as witness: the seal of the Ruler of Lo himself; the mark of Sankarman, the eminent one of Thak; the mark of the eminent Jitarman; the mark of Khatar

[28] Ramble 2008, HMA/Te/Tib/43

(=Khadambar?); the mark of the noble Karma Phuntshog.[29]

The right column, the intermediaries and witnesses, includes the principal lords of Dzar and Kag, and one signatory from each of Kag and Purang. The last two signatories are two lamas of Te, Tshe dbang 'bum pa of Tshognam, and "Amchi Tshewang, who lives at the head of the Te Valley" (i.e. in the temple of Baza called Ga'u dgon pa).

Many more such examples could be cited, but these cases will serve to underscore the point that Tibetan law, as represented by these documents from a culturally Tibetan enclave, set a high value on the need to "stand by decisions and not disturb the undisturbed"; courses of action were legitimised by reference to similar procedures that had been followed in the past.

Tibetan ritual

There are, as Karmay says, broadly two types of Tibetan ritual, *sādhana* (*sgrub thabs*) and *gto*. The *gto* ritual, which is concerned with curing illnesses and healing more general natural afflictions by propitiating gods and demons,

> was often concerned with the everyday life of the people. It functions to create social cohesion and moral obligation among the members of the village community. It encourages communal organization centering upon the cult of the local spirits connected with water, soil, rocks, and mountains. The defining feature of these rituals is the mythical antecedent, *smrang* or *rabs*. Thus *gto* rituals generally begin with a reference to a preceding action or a sort of event that is supposed to have taken place in the distant past. It appears that without this precedent, the ritual itself does not seem to have much significance regarding the effect that it is intended to have.[30]

The evocation of precedents in mythic narratives is particularly striking in the ritual literature from Dunhuang. For now, let us consider the particular example of numerous precedents in one text, PT1285. The text, relating to a ritual for healing victims of poisoning, consists of an extensive narrative, the *smrang*, which contains examples of how the ritual has been successful in the past. There is not just one story but at least nine. It is, as Rolf Stein says, a sort of jurisprudence: it lists all the examples of resolution in the history of this type of case.[31] The point is that, in archaic rituals, successful outcomes are achieved if the procedure followed accords with the established precedents. *Gto* rituals are formulated according to the idiom of bringing

[29] Ramble forthcoming b, HMA/Baragaon/Tib/26
[30] Karmay 2010, 54.
[31] Stein 1971, 504.

harmony where there was discord, and the crucial figure in all this is a priestly figure who acts as mediator.

Priests and mediators

As in the case of the documents cited above, signatories to the resolution of disputes invariably include mediators, known as *bar mi*. Minor matters may feature just one person in this role, whereas more serious issues are likely to list several. The importance of the mediator in Tibetan law has been pointed out in several publications, including a recent study, by Fernanda Pirie, of a law code in which an entire section is devoted to the principles according to which mediators should act.[32]

As is well known, the character of Gshen rab mi bo, the legendary founder of the Bon religion, is most developed in three hagiographical works dating from about the 11th to the 14th century: the *Mdo 'dus,* the *Gzer mig* and the *Gzi brjid*. Gshen rab also appears in a few Bonpo works that are earlier than these biographies, as well as in ritual texts from more recent times. In these accounts, he is presented not as a Buddha figure, but as a hero who resolves disputes. One cache of such texts found in Dga' thang 'bum pa, a large stupa in Lho kha, has been studied by a number of researchers.[33] Of particular relevance to us here is the mythic narrative (*smrang*) of a *byol*, a type of ransom ritual. In this case, it concerns a story about the resolution of a murder case involving non-human protagonists. A young *klu*, Klu Rab bzang to re, falls in love with a woman of the Smra category, Smra lcam Si le ma. Her brother, Smra then pa, kills Klu Rab bzang to re, and the latter's father Klu rje zin brtsan vows to take revenge. Because of Smra then pa's magical powers Klu rje zin brtsan is unable to kill him, and he is forced to resort to adjudication to claim compensation for his son's death. The figure is set at 770,000 *srang* of gold, an impossibly high figure that Smra then pa is unable to pay. In desperation, Smra then pa turns to Gshen rab myi bo to save him from his enemies. Gshen rab agrees to do this, and invites two other figures to join him in performing the *byol* ritual whereby Klu rje zin brtsan accepts substitutes for the 770,000 *srang*. These substitutes include a monkey, a sheep and a bird. The text informs us that this event was the historical precedent for both the ransom ritual and the custom of blood money.[34]

In his study of this text, Bellezza points out that Gshen rab is not a Buddha-figure so much as a priest. He certainly is a priest, to the extent that he performs the ritual that restores harmony between parties who are engaged in an epic dispute. More specifically, however, his position is that of a *mediator*, who restores peace between warring groups of non-human beings—the Smra on one side and the *klu*, the *srin*, the *bdud*, the *yi dwags* and the *ltas ngan* on the other. He achieves this by negotiating a reasonable figure for the blood money demanded by

[32] Pirie forthcoming.
[33] Pa tshab Pa sangs dbang 'dus and Glang ru Nor bu tshe ring 2007.
[34] Bellezza 2010, 72–90.

the injured party; a figure that, in the performance of the ritual, is represented by certain animals and substitutes.

Although the primary role of Gshen rab as a mediator has been superseded in the later Bonpo literature, it is interesting to note that some Buddhist works document the role of the Bon hero as being primarily one of ritual and mediation. A passage in one text states that the corresponding figure "could mediate in disputes between humans on the one hand and gods and demons on the other."[35] The role of the priest as a legal figure is also alluded to in a work by 'Jig rten mgon po (1143–1217), which was the basis for the much better known treatise on Bon by the Gelukpa scholar Thu'u bkwan Blo bzang chos kyi nyi ma (1737–1802). According to this account, the figure who corresponds to Gshen rab was abducted by demons and instructed by them for up to to twelve years, before being reintroduced to the human realm. Following the death of King Gri gum, he was invited to perform the *gri gshid* (*recte*: *gshed*) ritual to counter the effects of a violent death, but replied, "Although I know a great many of these rituals, they can be reduced to three categories: pressing down demons and vampires; making offerings to the revered gods on high, and reciting the methods of the law in the middle" (*Dam chos* fols 20r–20v).

The examples given so far reveal two themes that are common to legal and ritual procedures: the importance of precedent in establishing the legitimacy or efficacy of the procedure, and the role of the mediator in restoring harmony. In legal texts, the harmony is social, and in the ritual texts it concerns relations between humans and non-humans or between different categories of non-humans.

To conclude, I would like to draw attention to one of the very few texts of which I am aware that deals with the actual application of the law. Only five folios—found in a cave in Mustang, Nepal—are available, and since they are numbered from 46–48, 50 and 52, they were clearly part of a larger work. The language is archaic and difficult to understand, with many words that are not found in dictionaries. The work relates to a society in which there is no supreme authority that can enforce laws. This, I believe, was characteristic of most of Tibet for most of its history, either because there was no such authority or else because people preferred to sort out their issues without approaching official judicial authorities.

How, then, were the two parties to come to an agreement about the extent of the compensation to be paid; or, if the sums in question are actually specified in the missing part of the text, how is the guilty party to be persuaded to pay it? The text in question is a remarkable one because it is a legal manual that has features of archaic ritual texts. First of all, it establishes a series of precedents for disputes and reconciliation that are said to have occurred among humans, gods and animals:

> Once upon a time, the gods and demigods fought because they did not reach an agreement over the wish-fulfilling tree; the serpent-spirits fought because they did not

[35] *Nyang*, 160–61.

> reach an agreement over a jewel; ... the emperors fought because they could not agree over their dominions; dogs (?) fight over food. Generally, then, there is conflict even in the realm of the gods, while resolution may be achieved [even] in the realm of the demons. If there is no possibility of reconciliation, that is because the enemies are karmic enemies: the snake and the weasel are karmic enemies, as are the crow and the owl, the sparrowhawk and the sparrow, the sheep and the wolf. The fault is due to the fact that they have inferior intelligence. But we humans have intelligence, and, even if there is conflict, we must reconcile.[36]

Here we see a striking case of the human world of legal reparation being compared to disputes in non-human realms, including both animals and gods. The dispute that is currently taking place is nothing new; it is a feature of life in the world. But just as disputes are natural, so too is their resolution, even among demons. In the absence of a supreme ruler, resolution is achieved by a mediator, called *bar spyi*. On the one hand the mediator must try to persuade the aggrieved party not to demand an impossibly high compensation. He is advised to say: "Something that has caused no more harm than the point of a needle doesn't demand recompense as great as a sword." And at the same time he must persuade the offender that peace can only be achieved if he actually pays the compensation: "there can be no reconciliation without discussion, or without the payment of the compensation."

The mediator is not more powerful that the disputing parties, and he even acknowledges this fact, warning them that they have nothing to gain from harming him:

> If you kill me, you are the one who will suffer tormented feelings; if you beat me, your laughter will be in tears; if you scratch me, it's your nails that will hurt.... Since you are proud and powerful, and I, the mediator, am weak, the two of you should not compete in strength.[37]

There is even a hint that the role of the mediator is a priestly one, since his healing role is compared to that of the Buddha: "We are feeling unwell as if we were in a sickbed; we are as if in a prison-pit. If you are arrogant and unwise, I, the mediator, would be like the Buddha whose medicine has little benefit when he comes."

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[36] *Mardzong K,* fol. 46v.
[37] *ibid*., fol. 47v.

Conclusion

There are several well-known sets of laws and systems of legislation in Tibetan literature, as well as established procedures for trying criminal cases. Both for the purpose of legitimising these law codes, and also to establish standards for making legal judgments, it was essential to have precedents. In order to achieve such resolution it was, and is, important to have mediation. The examples of case records we have seen show that disputes were resolved not by the judgment of a higher authority, but thanks to the mediation of a respected outsider who could persuade people to heal their own social problems.

Having established that this is a basic principle of Tibetan legal thinking, we can see that indigenous Tibetan rituals are understood in exactly the same way: social and physical ills are the result of disharmony between humans or non-humans, and the purpose of the ritual is to restore this harmony. The central figure in these myths is not the tantric practitioner, who subjugates demons and forces them to do his bidding. He is explicitly compared with a legal mediator, who persuades the warring parties that there is nothing to be gained from their conflict; that compensation for wrongs committed must be paid in the form of sacrificial offerings, but this compensation must be reasonable. The assurance that the mediation will be successful is provided by a history of cases, whether in this world or in a supernatural realm, in which a similar process of conciliation has led to the restoration of harmony.

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