

1996

Book review of 'The Golden Yoke: The Legal Cosmology of Buddhist Tibet' by Rebecca Redwood French

Anne Frechette
Harvard University

Follow this and additional works at: <http://digitalcommons.macalester.edu/himalaya>

Recommended Citation

Frechette, Anne (1996) "Book review of 'The Golden Yoke: The Legal Cosmology of Buddhist Tibet' by Rebecca Redwood French," *Himalaya, the Journal of the Association for Nepal and Himalayan Studies*: Vol. 16: No. 1, Article 13.
Available at: <http://digitalcommons.macalester.edu/himalaya/vol16/iss1/13>

This Book Review is brought to you for free and open access by the DigitalCommons@Macalester College at DigitalCommons@Macalester College. It has been accepted for inclusion in Himalaya, the Journal of the Association for Nepal and Himalayan Studies by an authorized administrator of DigitalCommons@Macalester College. For more information, please contact scholarpub@macalester.edu.

For traveling up to the highlands of Tibet today, there is no better resource available than Victor Chan's **Tibet Handbook: A Pilgrimage Guide**. One doesn't read guidebooks for their historical chapters or the language lessons, of course, and though Chan's efforts here are slightly uneven, they do provide generally reliable overviews that show awareness of fairly recent historical scholarship. This guidebook defines its main task as providing a sourcebook for western pilgrims and trekkers. As such, it is a treasure in a class of its own for its mind-boggling assembly of regional facts, maps, architectural drawings, site research, and travel suggestions on every region of the Tibet Autonomous Region. The information provided on the extant monuments and settlements has involved a vast amount of on-site observation and research and

such a synthesis exists nowhere else in European languages. Who can vouch for its wide-ranging accuracy overall? On the book jacket, the peerless peripatetic fieldworker Melvyn Goldstein calls the book "wonderful" and "invaluable," while Michael Aris lauds Chan as "a worthy successor of the great explorers of the nineteenth century." If so, it's hard to fault the cost or bulk (2" wide) for home reference or as travel companion.

Like all of these other works, **Tibet Handbook** provides a very useful synthesis and many new starting points from which to venture further into one's understanding of Tibet and its civilization.

Todd T. Lewis
College of the Holy Cross

***The Golden Yoke: The Legal Cosmology of Buddhist Tibet.* Rebecca Redwood French.** Ithaca, NY: Cornell University Press, 1995. Pp. xviii + 404, 64 Plates, 17 Figures.

The Golden Yoke is the long-awaited result of Rebecca French's four years of field research among Tibetans in Tibet, Nepal, India, England, and the United States on the subject of Tibetan law. Based on over two hundred interviews with former government officials, lamas, chieftains, judges, mediators, prisoners, and other Tibetans knowledgeable about law, as well as on legal texts brought out of Tibet and stored in the Library of Tibetan Works and Archives in Dharamsala, India, French's work is the most intensive treatment of the topic of Tibetan law to date. French's research is thus valuable to anyone studying legal thought and process not only in Tibet but also in the ethnically-Tibetan regions of Ladakh, Sikkim, Bhutan, and northern Nepal.

French's main argument is that Tibetan law is best understood in terms of Tibetans' own legal cosmology, a system of thought about law, causation, intention, and morality, which is ultimately derived from Tibetan Buddhism. Tibet's legal cosmology is "so thoroughly Buddhist," she argues, that "none of the typical maxims [that] would apply to a bureaucratic legal system apply to Tibet" (1995: 343). Tibet's legal system is "unique" and is "incomprehensible" in terms of any context other than the Buddhist religion from which it derives (1995: 345).

Within the context of Tibetan Buddhism, then, French identifies "twelve major elements of the Tibetan cosmology of law" (1995: 17) which she presents throughout Part Two of her book. Central to the Tibetan cosmology of law is the concept of *sems*, or mind, the perfection of which, French argues, is the goal of the Tibetan legal system (1995: 76). The life of the Buddha serves as the model for the perfection of mind, a model which is contrasted with the "bargaining model" of Islamic law and the "reasonable man" model

of Anglo-American law (1995: 59, 77, 343). Other concepts which French examines include the "ten non-virtuous acts" (*mi-dge-wa bchu*), the law of karma (*chhos*), inner morality (*rang-khrims*), authority (*mnga'-'og*), and appropriateness (*'os-pa*). Nine jurisdictions (1995: 115) and four legal rituals (1995: 121-7) are also identified and examined.

Four arguments emerge from the analysis: The Tibetan legal system was highly particularistic and case-specific; precedent did not play a role in the decision-making process (1995: 143). Tibetan legal cases were never considered "closed"; "even after a signed document had been issued by a conciliator or court, the case could be reconsidered by the parties at any later date" (1995: 139). "Truth" in the Tibetan legal system was based on "factual consonance" rather than "objective determination" (1995: 137-8). And the Tibetan legal system was characterized by "great flexibility in choice and level of forum" as well as "type of legal procedure"; "Tibetans could start a case at any of a wide variety of levels [using] any of the four different types of procedure... and then move back and forth between levels, forums, and procedures" (1995: 139). "The amount of leeway and play in the system," she writes, "was one of the key reasons that Asian scholars presumed for many years that no Tibetan legal system existed" (1995: 139).

Throughout the remainder of the book, French presents personal narratives that describe legal procedures and legal cases, as they were remembered by her informants, as a means through which to demonstrate how the Tibetan legal system operated in Tibet from 1940-1959. Part One of the book is a general introduction to Tibetan history, as told by Tibetan exile government officials. Part Three presents narratives about law "from the countryside." Part Four

examines the Tibetan central government bureaucracy at Lhasa. Part Five analyzes Tibetan beliefs about crime and punishment. The conclusion presents a number of unanswered questions, most of which relate to issues of comparability.

Comparability is the main problem with French's book. Throughout the book, French compares the Tibetan legal system with the U.S. legal system, a comparison which serves only to highlight the "uniqueness" of Tibetan legal practices. Many of the characteristics which French identifies as "unique" to the Tibetan legal system are, in actuality, not so unique, however. Lack of the use of precedent is characteristic of Islamic legal systems as well as many African legal systems (Rosen 1984, 1989; Fallers 1969). Lack of closure is characteristic of the legal systems of village Turkey (Starr 1978) and other communities characterized by "feud-like violence" (Leach 1964; Bourdieu 1966; Gluckman 1965; Ruffini 1978). A consensual definition of truth is an essential part of many legal systems and, as some analyses demonstrate, is not always as "consensual" as it is made to seem (Kuper 1970; El-Hakim 1978; Woodburn 1979; Nader 1990). Choice of forum also is characteristic of the legal system of India (Galanter 1981; Meschievitz and Galanter 1982) and even the U.S. legal system (Greenhouse 1982) among others. The structure of the Tibetan legal system, as French herself notes, is similar to that of other bureaucratic systems in Asia (1995: 15). Even the cosmology through which the Tibetan legal system is understood may have some similarities with other Buddhist legal systems, such as Thailand's or Sri Lanka's, yet French makes no effort to compare them.

The second problem with her book is its lack of social and political context. French's very sparse use of Goldstein (1992, 1989a, 1989b, 1988, 1986, 1973, 1971a, 1971b, 1968), confined to a single paragraph about his "view of law" (1995: 14-15), is part of the reason for the problem. The separation of crucial issues, such as land incorporation (1995: 53), inheritance (1995: 172-4), and taxation (1995: 215), from the analysis of the "cases" is another reason for the problem. The lack of attention to nomad-farmer trade relations; patron-client relations (patron/priest, landholder/tenant; chieftain/commoner); and village leadership-central government relations, all crucial to the politics of Tibet, also contributes to the problem. "Who has power and how is it used?" is central to the study of law (Comaroff and Roberts 1981; Benda-Beckmann and Taale 1992) yet is a question which French largely ignores.

French's conflation of legal ideology with legal process and legal structure is another reason for the problem. Analyses of process require different forms of evidence than analyses of ideology (Moore 1978), yet French presents statements about legal ideology as if they also demonstrate legal process, such as with her analysis of "nomadic legal processes" (1995: 204).

French seems to recognize the difference between ideology and process when she writes: "All Tibetans agreed that the Ten Nonvirtuous Acts had negative karmic consequences," yet "When asked if the same ten acts could be penalized in a legal forum... most responded that only [some] could be punished by the secular courts" (1995: 80); and "Tibetan officials also carved a clean line between religious views and secular legal views with respect to the practical outcome of a case. Disputes and crimes had to be handled and sanctioned in this world, without reliance on or presumption of karmic causes or effects in other worlds, which were unknowable" (1995: 81). Her recognition of the difference does not influence her analysis which mistakes ideology for process throughout the book.

French also conflates legal ideology with legal structure, particularly when she combines central government law (the formal legal system) with customary legal practices (the many informal legal systems) as if they were part of the same system (1995: 121-158). Even if they were derived from the same legal ideology, an argument which French makes but does not substantiate, from the point of view of social and political organization, they were not the same system (1995: 164-171). Whether analyzed as different "legal levels" of the same system, or as different systems altogether, differences in legal content, legal process, access to the system, and relative evaluation of the system need to be considered (Pospisil 1974: 107) and need to be accounted for in the "cases" presented as evidence to support the book's arguments.

Choice of "legal level," in particular, needs to be considered: When did people use the formal legal system and when did they not? French presents the issue as if it were an issue of unbounded choice. In the story about the wandering monk thief, for example, monks from a monastery in Sakya complained that another monk was stealing their food at night and so they asked the headman of the village to intervene. The headman took the man into his own household and gave him the responsibility of caring for the animals; in the end he turned into a virtuous man again. Why did the headman handle the case and not the monastic officials? Most monasteries in Tibet had their own rules about discipline and assigned their own officials to handle disciplinary cases. Why did the monks in this particular case approach the headman for help instead? Was the headman related to the wandering monk? The answer may have provided French with some of the social and political context which her analysis lacks.

Lack of comparison and lack of social and political context contribute to two other tendencies in her book. The first is a tendency toward an "orientalist" view of the Tibetans. French herself cites Lopez's (1994) article on "orientalist" approaches to Tibetans, and French seems to concur with what he says, yet her own writing makes the Tibetans seem entirely incomprehensible. French writes: "Our discussion traveled in and out of

various worlds... and I thought again, 'Cosmic events are creating dissension, and yet, at the same time, dissension can create cosmic anger?' I had a feeling at once of surreal reality, of the sensical incomprehensible, of the mundane and fantastic coexisting in the everyday. His was a blended world of thought with interpenetrating cosmic realms existing and interacting, all in the present" (1995: 8).

The second is a tendency to present narrative as reality. What French presents as evidence for her arguments are *stories* told by legal practitioners many years after the events occurred. French does not present the stories as stories, however; she presents them as "detailed pictures of the actual practice of law by particular individuals" (1995: 195). Whenever anyone tells a story, various layers of self-presentation and re-interpretation in the present context shape the story-telling process (Reissman 1993), yet French does not acknowledge that process. Tibetans are wonderful story tellers, as anyone who works with Tibetans knows, yet their stories do not always represent what actually happened. Stories are sometimes told in jest. Other people's stories are sometimes told as one's own. Stories are sometimes told for the purpose of making a point; the events depicted may not even have occurred at all. What, in a story, is reliable information and what is not, is useful to know and is essential when used as evidence in an argument. Yet French gives the reader no means through which to evaluate the stories she presents: What in the story is accurate, or at least plausible? And what is clearly narrative elaboration?

In the land dispute story that opens the book, for example, French describes how the monk administrator, Sonam, proceeded in his investigation of a case. Sonam is shown examining plot boundaries as they were marked on Tibetan monastic estates: White stones were placed in the earth one foot beneath the above-ground boundary markers in case the above-ground markers were moved during a dispute (1995: 2). Sonam is also shown reading through a fine (*babs*) clause included in the decision of a previous case involving a land dispute (1995: 7). Whether or not these details are accurate would be important for other people studying in ethnic Tibetan communities to know, yet French makes no attempt to evaluate their veracity. When they are placed in the same story next to details which are very likely narrative elaboration, such as Sonam's efforts to teach his students about land law (1995: 5), the reader is left wondering how much weight to give not only the story as a whole, but also to all of the other parts of it.

Nevertheless, **The Golden Yoke** does tell a good story. French's descriptions are vivid and lively; the photographs she includes give the reader a sense of "being there." The book is interesting to read and, with the qualifications presented above, is recommended for use in legal anthropology or Tibetan studies coursework.

References

- Benda-Beckmann, Franz von and Tanja Taale. 1992. *The Changing Laws of Hospitality: Guest Labourers in the Political Economy of Rural Legal Pluralism*. In Franz von Benda-Beckmann and M. van der Velde, eds., **Law as a Resource in Agrarian Struggles**. Wageningen, Netherlands: Agricultural University.
- Bourdieu, Pierre. 1966. *The Sentiment of Honour in Kabyle Society*. In J. G. Peristiany, ed., **Honour and Shame**. Chicago: The University of Chicago Press.
- Comaroff, John and Simon Roberts. 1981. **Rules and Processes**. Chicago: The University of Chicago Press.
- El-Hakim, Sherif. 1978. *The Structure and Dynamics of Consensus Decision-Making*. **Man**. 13 (1): 56-71.
- Fallers, Lloyd A.. 1969. **Law without Precedent**. Chicago: The University of Chicago Press.
- Galanter, Marc. 1981. *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*. **Journal of Legal Pluralism**. 19: 1-47.
- Gluckman, Max. 1965. **The Ideas in Barotse Jurisprudence**. New Haven, CT: Yale University Press.
- Goldstein, Melvyn. 1992. *Nomadic Pastoralists and the Traditional Political Economy - A rejoinder to Cox*. **Himalayan Research Bulletin**. 12 (1-2): 54-62.
- _____. 1989a. *Freedom, Servitude, and the Servant-serf Nyima: A Re-rejoinder to Miller*. **The Tibet Journal**. 14 (2): 56-61.
- _____. 1989b. **A History of Modern Tibet, 1913-1959**. Berkeley, CA: University of California Press.
- _____. 1988. *On the Nature of the Tibetan Peasantry: A Rejoinder*. **The Tibet Journal**. 13 (1): 61-5.
- _____. 1986. *Reexamining Choice, Dependency and Command in the Tibetan Social System: 'Tax Appendages' and Other Landless Serfs*. **The Tibet Journal**. 11 (4): 79-112.
- _____. 1973. *The Circulation of Estates in Tibet: Reincarnation, Land, and Politics*. **Journal of Asian Studies**. 3: 444-455.
- _____. 1971a. *Serfdom and Mobility: An Examination of the Institution of 'Human Lease' in Traditional Tibetan Society*. **Journal of Asian Studies**. 30: 521-534.
- _____. 1971b. *Taxation and the Structure of a Tibetan Village*. **Central Asiatic Journal**. 15 (1): 1-27.
- _____. 1968. *An Anthropological Study of the Tibetan Political System*. PhD dissertation in Anthropology at the University of Washington.
- Greenhouse, Carol J.. 1982. *Nature is to Culture as Praying is to Suing: Legal Pluralism in an American Suburb*. **Journal of Legal Pluralism and Unofficial Law**. 20: 17-39.
- Kuper, A. 1970. **Kalahari Village Politics: An African Democracy**. Cambridge: Cambridge University Press.
- Leach, E. R.. 1964. **Political Systems of Highland Burma: A Study of Kachin Social Structure**. London: The Athlone Press.

Lopez, Donald. 1994. *New Age Orientalism: The Case of Tibet*. *Tibetan Review*. 28 (5): 16-20.

Meschievitz, Catherine S. and Marc Galanter. 1982. In Search of Nyaya Panchayats: The Politics of a Moribund Institution. In Richard Abel, ed., *The Politics of Informal Justice*. New York: Academic Press.

Moore, Sally Falk. 1978. *Law as Process*. London: Routledge and Kegan Paul.

Nader, Laura. 1990. *Harmony, Ideology, Justice, and Control in a Zapotec Mountain Village*. Stanford: Stanford University Press.

Pospisil, Leopold. 1974. *Anthropology of Law: A Comparative Theory*. New Haven, CT: HRAF Press.

Reissman, Catherine Kohler. 1993. *Narrative Analysis*. London: Sage Publications.

Rosen, Lawrence. 1989. *The Anthropology of Justice: Law as Culture in Islamic Society*. Cambridge: Cambridge University Press.

_____. 1984. *Bargaining for Reality*. Chicago: The University of Chicago Press.

Ruffini, Julio L.. *Disputing over Livestock in Sardinia*. In Laura Nader and Harry Todd, eds., *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press.

Starr, June. 1978. *Dispute and Settlement in Rural Turkey: An Ethnography of Law*. Leiden: E. J. Brill.

Woodburn, James. 1979. *Minimal Politics: The Political Organization of the Hadza of North Tanzania*. In William A. Shack and Percy S. Cohen, eds., *Politics in Leadership*. Oxford: Clarendon Press.

Anne Frechette
Harvard University

Contested Hierarchies: a Collaborative Ethnography of Caste in the Kathmandu Valley, Nepal. Edited by David Gellner and Declan Quigley. Oxford: Clarendon Press, 1995. Pp. xiii+324, appendix, notes, bibliography, and index.

Even though many contemporary scholars attempt to downplay its importance, South Asian Anthropology still lingers under the shadow of caste. Edited by David Gellner and Declan Quigley, **Contested Hierarchies :a Collaborative Ethnography of Caste in the Kathmandu Valley, Nepal**, not only provides an innovative study into the role caste plays in the Kathmandu Valley, but also develops a systematic approach for the study of caste in general. The book is a well-rounded and balanced work which neither follows Louis Dumont's understanding of caste as the essence of South Asia (University of Chicago Press: 1980), nor that of Ron Inden who dismisses caste as the creation of Western cultural hegemony (Blackwell: 1990). Instead, David Gellner, Hiroshi Ishii, Todd Lewis, Rajendra Pradhan, Gérard Toffin and Declan Quigley—the six authors of this collection of essays—combine their vast ethnographic knowledge of the Kathmandu Valley to analyze how specific Newar caste (*Jat*) structures operate.

Besides mediating the caste debate, **Contested Hierarchies** also treads a middle path between the two extremes of Nepalese studies and the available academic methods. On one side is the static structural model, as preeminently represented in Nepalese studies by Robert Levy's **Mesocosm**, which describes the Newar city of Bhaktapur as a clockwork mechanism (University of California Press, 1990). And on the other side, are the post-modern transnational cultural flows exemplified by John Gray in his essay "Driving in a Soft City: Trafficking in Images of Identity and Power on the Roads of Kathmandu" (in **Anthropology of Nepal**, Mandala Book Point, 1994). Unlike the contextualized

studies in **Contested Hierarchies**, both Levy and Gray misconstrue the actual ethnographic evidence: Levy because he places agency in a timeless South Asian ballet, and thereby ignores the people who actually live in Bhaktapur; and Gray because he concentrates on what is 'modern' in Kathmandu, and thereby ignores how indigenous social structures have been used to negotiate the far-reaching social changes which have occurred in recent decades.

Between these two extremes, **Contested Hierarchies** takes a middle path which does not break with previous Western or South Asian scholarship on caste, but builds upon it by concentrating on specific ethnographic accounts. The essays in the book analyze such topics as the coexistence of competing caste hierarchies; the complexity of actual caste and 'sub-caste' organizations; the importance of kingship and symbols of the center; the influence of territorial location on caste; and the use of ritual specialists as markers of status and as makers of identity. The collection also demonstrates that grounding a debate on caste in Nepal is not arbitrary, but necessary. In the introduction Gellner argues that there are three main reasons for the necessity of studying caste in the Kathmandu Valley. First, Nepal is the last Hindu Kingdom and thereby preserves pre-British and pre-Muslim social patterns. Second, the Kathmandu valley's small size, makes possible a comprehensive study of all the caste groups within it. And third, because the Valley contains both cities and villages it is possible to conduct a study which avoids the rural emphasis which has biased most anthropological work on caste.