

Insisting on agreement: Tibetan law and its development in Ladakh

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Most studies of the legal realm in Tibet have focussed on the law codes which were developed in the various Tibetan polities from the 14th century onwards (Meiserzahl; Schuh; French). The practice of law is everywhere highly influenced by its political context and these codes were primarily instruments of governmental control, albeit ideologically founded on the Buddhist moral laws which were used to legitimise these regimes= power. For the anthropologist, however, an analysis of the legal realm can be of much wider interest. Local forms of dispute resolution shed considerable light on social structures, political organisation and the contested relationships between religion and politics, between cosmological practices and secular morality.

The Ladakhi kingdom of the 10th to the 19th centuries established a system of government that was less elaborate than that of the Dalai Lamas in central Tibet, with very light administrative control in the villages. There is little evidence of elaborate judicial procedures or the use of law codes. The region=s subsequent incorporation into the state of Kashmir, now part of India, has seen the introduction of courts and laws based on western models. These are, however, largely avoided by the Ladakhi people who continue to solve most conflict within their villages and local communities, even in the towns relying on mediation rather than adjudication, and placing a strong emphasis on the symbolic restoration of order. Ladakh, therefore, offers the anthropologist an opportunity to study contemporary and local legal practices, forms of conflict resolution rather than centrally imposed control.

I describe how the village=s legal practices are characterised by a deep disapproval of all forms of anger and conflict. Disputes are regarded as problems for the community, requiring the intervention of families, neighbours, the headman and, ultimately, the whole village meeting. Resolving a dispute requires agreement between the protagonists, although the collectivity of villagers can impose punishments and sometimes exert considerable pressure on individuals to accept a compromise. Above all, order must be ceremonially restored. The legal culture of the Ladakhi village is, thus, characterised by an emphasis on the need to restore order over and above the protection of individual rights. Disputes are regarded as disturbances to the social order rather than clashes of individual interests.

Similar practices of and attitudes to dispute resolution have, in fact, been found in vastly different situations elsewhere in the Tibetan region: in 20th century Lhasa where law officers would refer cases back for local mediation and refuse to adjudicate on unclear issues of fact; in 20th century Sakya where local mediation was again the preferred

form of dispute resolution; even in the provisions of the legal codes themselves. In all these cases the Tibetan authorities demonstrated an unwillingness authoritatively to determine the solution to a dispute or to adjudicate on questions of right and wrong. As in the Ladakhi villages, they were effectively refusing to impose order on the parties, something which could only be found in local agreement.

While central and eastern Tibet have been subsumed into the TAR, Ladakh has been introduced to democratic political structures as part of the Indian nation state. Administrative control remains light, however, and this has allowed the development of a centralised mediation service by the regional political party. Consciously applying “traditional” methods of conflict resolution, as found in the villages, with a similar emphasis on mediation and agreement above adjudication, and appealing to the pervasive concern with order, this offers a real alternative to the State’s courts. I will describe how the practices and procedures mirror those of the villages and the way in which authority is founded on an appeal to a sense of community boundaries, albeit that this notion has been strategically extended to incorporate a sense of regional unity. While the Tibetan government in exile has established political and judicial structures expressly based on western democratic models, Ladakh has seen the development of legal structures based on local practices which are no less characteristically Tibetan.