

be bold enough to try to draw the limits of that common law offence. I would have thought the difficulty of a businessman pushing the limits of the law are just as great as those of a clergyman trying to understand what behaviour is going to get him into trouble.

But this quibble aside, this is an excellent book dealing with a real problem. Bishops have immense power over their clergy and it may be that such power is needed. But it should be subject to the principles of natural justice and fairness. The reluctance of courts to interfere with that power means that any such control must come from new legislation. This book carefully discusses the question, exploring what possible rights a clergyman may have in law. The section on judicial review is very clear and I would recommend it to anyone who would wish a straightforward guide to this difficult subject.

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*INFANT BAPTISM: The 1983 Code of Canon Law and Church of England Law* by ROBERT OMBRES OP, Pontificia Studiorum Universitas A.S. Thoma Aq. In Urbe Rome: 1999, 261 pp (paperback).

As the author himself stresses, Robert Ombres' doctoral thesis on infant baptism was motivated by the belief that 'Comparative canon law is an ecumenical necessity'. Although it does not ignore the law of the Eastern Catholic Churches, it is primarily concerned with the legal systems of the Latin Church and the Church of England. 'Each system is approached on its own terms and respecting its own inner juridical dynamic to avoid distortions by premature comparison' (p 1) and it is this that gives the work its particular strength, even though the author is naturally most at home when considering the law of the Latin Church. The study is written with the clarity of thought and expression that any of those lucky enough to have heard Robert Ombres at the Society's annual conference at York would naturally expect.

Proceeding from the bedrock of theology and tradition it compares the law relating to baptism in each Church with sympathy and understanding. The result is not only an impressive demonstration of the use of comparative law but also a useful reminder of the limitations of both legal systems due to their divergent approaches to jurisprudence. In sum, this study is an important stepping stone in ecumenical jurisprudence and should be warmly welcomed not only for its elucidation of infant baptism but also for its demonstration of the importance of both systems one to the other.

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*THE GOLDEN YOKE: The Legal Cosmology of Buddhist Tibet* by REBECCA REDWOOD FRENCH, Cornell University Press, 1995, xx + 404 pp (£27.95) ISBN 0-8014-3084-4.

Few places have exercised such a hold on the imagination as Tibet, the land of magic and mystery beyond the Himalayas. Tibetan Buddhism, initially received in the West as 'Lamaism', a corrupt and decadent form of the religion, is today recognised as a formidable philosophical and psychological system which has a powerful appeal for a great many in the secularised West. Recent Hollywood films have told the story of the present Dalai Lama from his 'discovery' to his flight into exile in India. Today he is probably the most respected religious leader in the world, attracting massive paying audiences for his teaching sessions in the capitals of the West.

Although the literature on Tibet and its religion is immense it is only in recent years that academics have begun to discover and explore the real Tibet that lies or lay behind the myth of Shangri-La. Sadly one of the driving forces of this scholarship has been the knowledge that Tibetan culture is seriously imperilled in its native land as a result of the Chinese occupation.

*The Golden Yoke* is a study of the last medieval legal system still in existence in the middle of the twentieth century. As a legal system based on religious philosophy and reflecting religious thought in practice and decision making it is of considerable interest to canon lawyers.

The Tibetans' religion is the foundation of all their culture, the source of their jurisprudence, the wellspring of their political history, the principle in every Tibetan's life. Tibetan Buddhism divides the human world into two strictly defined groups: spiritual seekers and spiritual supporters. The former consists of those who have dedicated their lives to the pursuit of enlightenment by embracing monasticism and who live according to the rules outlined in the *Vinaya* or disciplinary section of the Buddhist scriptures; the latter of those whose rôle it is to meet the material needs of the former in exchange for spiritual teaching and the performance of the rituals needed for the safe continuation of everyday life.

'Seekers' and 'supporters' do not simply correspond to 'clergy' and 'laity', because all supporters believe and hope that in future lives they in turn will be seekers and will be maintained as they pursue their own spiritual quest. Monasticism is then an essential feature of the Tibetan form of Buddhism, and it is estimated that in the first half of the twentieth century twenty per cent of the population were living under vows (which, as a reminder that translations can only be approximate, did not for all 'monks' and 'nuns' require celibacy).

Although historically the 'secular' legal system of Tibet—the 'Golden Yoke' of the title—derived from the codes of the kings who ruled Tibet from the seventh century AD until 1642) when the Mongol Gushri Khan placed his teacher the Fifth Dalai Lama at the head of the government, it was couched within a cosmology—a system of thought and practice about how the world operates—that made it absolutely different from other Asian, or even some medieval western, legal systems that it superficially resembled. All laws in Tibet were understood as religious, and religion permeated 'secular' law in the form of Buddhist standards, logic, jurisprudential concepts and 'reality shifts' that moved an argument into otherworldly reasoning.

The starting point for all Tibetan thought was the view of the world as a Unity in which each person, symbol, thought and action were interrelated. Rational thought with its linear, dualistic and agential foundation was therefore only one way of understanding the world; mysticism, magic and 'analysis of illusion' were others. Western ideas such as those of the 'reasonable person' and legal responsibility were unknown or had radically different meanings. The moral standards of the Buddha and the *Vinaya* permeated the legal system to the degree that the question was not 'Would a reasonable person have done this?', but 'What would a correctly acting moral person have done?'. It was as if the Sermon on the Mount or the Rule of Saint Benedict were to be used as the standard in determining liability for negligence.

At the same time, however, as 'illusion' was considered to be a characteristic of the world, there was a general recognition that the 'facts' of the case needed to be considered from another perspective that took into account the *karmic* nature of human identity. Although adult individuals were considered responsible for their acts and choices, there was also the recognition that *karma*, the effects of actions in previous lives, could dictate present circumstances. Punishment was not so much linked to the crime as to the criminal, and was meant to take a form that would promote a return to inner morality as well as the restoration of harmony in society and the universe. The eternal law of *karma* meant that there could never be any real escape from the consequences of one's actions even if one were never brought to justice in this life.

The Tibetan legal system was then 'particularistic' in that it was hardly given to rule formation nor the use of precedent. Tibetans followed not *rules* but *factors* in law in order to determine the unique situation of the individuals involved. Factoring meant study and debate and was related to the role of logic in Buddhism and enlightenment as the goal of all creatures. One consequence of this was that cases were never regarded as closed, and judicial decisions were never considered final in the western sense, until all were satisfied and consensus had been arrived at. All involved were free to disagree until they felt a correct decision had been reached and they had achieved a peace of mind which released them from the attachment to worldly concerns which the Buddha taught was the cause of all suffering and the principal obstacle to spiritual progress.

An extraordinary feature of the Tibetan system was the rôle played by the State Oracle who could be consulted on all matters from the identification of a new Dalai Lama down to ordinary legal cases. After dressing in an elaborate costume and performing preparatory rituals the body of the Oracle was entered by his protective deity and he began a wild dance. During his possession the Oracle would utter warnings, answer questions and predict the future which he could see in a steel mirror held up before him. The Judges of the High Court of Tibet every month made the ten mile journey from Lhasa to visit the Oracle in his monastery. The theory was that as criminals had probably also consulted lesser oracles to get advice on the best time to perform their deeds, and had as likely as not revealed their plans in the process, the State Oracle acting as a kind of conduit would be able to expose them to the authorities. The surviving judges who visited the Oracle in the 1940s reported to the author that they rarely received any information of value although it was known that the Oracle had saved the thirteenth Dalai Lama's life by revealing in a trance that his illness was caused by a black magic charm that had been sown into a pair of boots presented to him by a disgruntled monastery.

French's analysis and description of the Tibetan legal system introduces and employs the methods of legal anthropology, comparative law, religious studies and cultural history, and throughout makes comparisons with, and challenges some of the assumptions of, American and western legal practice and philosophy.

But *The Golden Yoke* is far from being a dry academic legal study. Its author is a Yale trained anthropologist as well as a graduate of the Law School, and her descriptions of life in pre-modern Tibet, for the most part derived from the first hand accounts of former officials, petitioners, prisoners and ordinary people of all social classes, resident now both in Tibet and in exile, are drawn with a detail and a human feeling found in few of the many accounts of travellers to the Land of Snows. Furthermore the book is beautifully illustrated with photographs of the old Tibet, mostly the legacy of the British diplomatic presence in Lhasa in the first half of the twentieth century, and of contemporary Tibet. The modern pictures, which in several instances show the former institutions of independent Tibet now being put to other use, witness both to the tragedy that has befallen the Tibetan people and their continued loyalty to their religion and their unique culture.

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