HARMONY IDEOLOGY AND DISPUTE RESOLUTION:
A LEGAL ETHNOGRAPHY OF THE TIBETAN DIASPORA IN INDIA

by

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ABSTRACT

Communitarianism and harmony ideology have their proponents and critics, particularly as viewed through the lens of conciliation-based dispute resolution. Both features being prominent in the Tibetan Diaspora in India, I hypothesized that the strengths and weaknesses of these orientations could be assessed through the rationale behind the norms of social control operative in the community, and the efficiency and effectiveness of those norms in terms of voluntary compliance. I found that the informal Tibetan mechanisms for dispute resolution were effective and efficient in supporting Indian systems of law enforcement, while allowing a ritualistic affirmation of community. Contrary to proponents of legal centralism and court justice, I found that liberalist values underpinning litigative process were disruptive of social expectations, and had the potential to exacerbate rather than relieve social tensions. The harmony norms that predispose pro-social behavior within Tibetan settlements failed to protect the interests of community members, however, when the challenge came from local Indian groups operating on the basis of their own standards of particularistic allegiance.

Legal ethnography best describes the methodology used for this research. Fieldwork drew on:
1) Interviews with twelve settlement officers whose mandate specifically includes mediation of disputes;
2) In-depth interviews with two disputants fighting cases before the Tibetan Supreme Justice Commission; and
3) Interviews with over 70 informants (including senior and mid-level exile government officials and settlement residents), together with archival material, to situate findings and verify interpretations.

This research contributes a unique non-Western body of data in support of Law and Society scholars, such as Amitai Etzioni and Phillip Selznick, who have argued for devolution of law-like responsibilities to local levels where internalized norms are an everyday means of social control. It also argues against the pejorative interpretation of harmony ideology as depicted by legal centralists such as Laura Nader. By reframing harmony as a function of norm rationale, efficiency and effectiveness, the research offers new variables for assessing the costs and benefits of community. Finally, the Tibetan case studies provide an important comparative for cosmopolitan states that are debating how to accommodate diversity and legal pluralism.

TABLE OF CONTENTS

LIST OF ILLUSTRATIVE CASES

LIST OF CHARTS

LIST OF ABBREVIATIONS

ATPD	Assembly of Tibetan People's Deputies
CTA	Central Tibetan Administration
DOE	Department of Education
TF	Tibet Fund
HLSC	High Level Scholarship Committee
LJC	Local Justice Commission
SJC	Supreme Justice Commission (Apex Court)
SO	Settlement Officer
TSJC	Tibetan Supreme Justice Commission (Judiciary)
TWA	Tibetan Women's Association
TYC	Tibetan Youth Congress

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DEDICATION

To my amazing family: Frans, Aranka and Yosha.

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INTRODUCTION

This thesis investigates the interrelationship between communitarian norms, harmony orientations and emergent liberal values, as seen in dispute resolution practices in Tibetan Diaspora settlements in India.

Communitarianism and norms

The research is bracketed by recent discourses on communitarianism and on norms used for social control. The conjunction is hardly revolutionary as the two discourses complement each other. Pervasive but informal norms tend to correlate with communitarianism, because core values of that orientation are social cohesion and responsibility, premised on interdependence. The sources of these norms often will be religious, cultural or communal, as opposed to state sanctioned or promoted. As elaborated in the pioneering socio-legal work of Emile Durkheim, informal norms are the glue of social cohesion which, in turn, is a primary factor in norm effectiveness. In more modern context, for example, norms of trustworthiness can be a stronger foundation for agreements than explicit contracts in communities where members are known to each other and expect an ongoing relationship.

On the other side of the rink is rights-based liberalism, which tends to correlate with secularism and a predominance of impersonal, formal rules because a paramount value of that orientation is freedom, premised on the autonomy or independence of the individual. Implicit in the formality of rules are the principles of impartiality and neutrality as a basis of fairness. In situations characterized by social mobility and ease of exit from relationships, for example, agreements need more legally binding forms of guarantee than trust. In between these theoretical extremes are a range of arguments that attempt to reconcile the tension between human needs for belonging and order on the one hand, and autonomy on the other.

While much of the communitarian literature is concerned with a remedial critique of the excesses of liberalism in Western democracies (Selznick, 1992; Etzioni 2000a, 2000b, 2004; Taylor, 2004), much of the literature on norms is preoccupied with trying to understand what motivates people to comply with norms in the absence of coercion (Axelrod, 1984; Stout, 2006; Ellickson, 1991; Leiser, 1969). Theoretical literature on the conjunction of the two discourses is much more limited, particularly in its cultural inflections. Political liberalism, secularism and legal positivism have been closely associated in modern Western thought with external compliance, determinate procedural norms and legal outcomes as opposed to just or moral ones (Selznick 2006, p. 23). According to Selznick, a communitarian jurisprudence would bring the focus back to substantive justice based in a shared moral order. It would acknowledge the connection between law and history as a basis of legal pluralism wherein rules coexist with norms that may be "incipient, implicit, emergent or otherwise imperfectly formed" (p. 25). Critical Legal Studies and the Law and Society movement have deconstructed liberal assumptions about the efficacy of rules versus standards or norms, but they offer limited instantiation in non-Western contexts that privilege a communitarian perspective (Kelman, 1987; Kennedy, 1976; Hunt, 1993). A communitarian jurisprudence would implicitly recognize legal pluralism, understood as a multiplicity of informal and formal norms and processes regulating society.

Given the extent of migration today, the conjunction of the two discourses is relevant to how democracies can accommodate legal pluralism – particularly if culturally or religiously defined legal norms conflict with secular, civic values of liberty and equality. To the extent that a minority group operates as a communitarian entity with thick norms for social cohesion, purveyors of democratic policy and law need to understand the dynamics of the group's normative infrastructure. What is the rationale behind norm maintenance? Who drives it and with what degree of consensus? To what extent are norms a function of traditional beliefs, power relations or ethno-political aspirations? Under what circumstances are norms efficient for social order within the community and how do they influence interaction with the larger society? How do communal norms contribute to group identity, the drawing of boundaries and enclave behavior? What factors enable or constrain norm effectiveness? How do the informal norms of a minority community interact with the norms of surrounding communities and with the values embedded in the larger society's constitution and formal laws? These are the kinds of questions

that can illuminate the extent to which a community's particularistic values are congenial to the universalistic ethic that underpins democratic citizenship.

The issues are broad but I propose to narrow my focus to their instantiation in dispute resolution as a sub-category of law. Whatever a community's orientation, disagreements and conflict are an ever present challenge. How frictions are handled are a test of the resilience of both communitarian and liberal principles within democratic context. Comparative law (Berman, 1983; Varga, 1992) and legal anthropology (Nader, 1991, 2002; Starr, 1992; Abel, 1973; Starr & Goodale, 2002) have offered rich empirical detail and useful methodologies for analyzing how norms and laws influence dispute resolution in different cultures. It follows from the goals of social cohesion and harmony that strong normative frameworks are needed to socialize individuals into what are communally defined values in relation to disputing. A harmony approach is often an imperative of close-knit societies where face-to-face relations have to be maintained for the long term. Consistent with the harmony orientation, communitarian groups often will prefer consensus or conflict avoidance over disagreement, and favor conciliation or compromise over more overtly adversarial processes of dispute resolution. Inasmuch as religious or moral education plays a prominent role in defining what is right and good for a community, disputants are more likely to bend to dominant norms, rather than to shape them.

Critics of harmony as a model of society argue that it is naïve about power relations and masks the fact that there are competing claims about what constitutes the good for society. Proponents of this view cast harmony pejoratively as an ideology of pacification or suppression, detrimental to the larger cause of justice based in the rights of individuals who have their own legitimate ideas of what is good for them. The connotation of harmony as ideology is that it works against the spirit of liberal, democratic governance and associated secular values because it dissuades the weaker or more compliant segments of society from protecting their interests or claiming their rights. From this general perspective, scholars such as Abel (1982), Nader (1991, 2002) and Fiss (1984, 2003) have emphasized the need for a means to counteract the hegemonic influence of powerful forces in society. They have depicted conflict as potentially creative, liberative. They have taken litigation to be vital for the pursuit of egalitarian justice and have placed court users at the center of norm challenge.

The conflict versus harmony theme runs through debates between proponents of adjudicative processes and proponents of alternative dispute resolution methods, as well as within them. Scholars and practitioners have debated the kinds and sources of authority vested in the intervener role – whether of judge or mediator – and the implications for disputant empowerment or lack thereof. Professionalization is an important aspect of that debate, as it encapsulates the normative framework underpinning specific processes and interactions.

As with most theoretical discourses, the more animated the debate, the more populated is the continuum between dichotomized views. The polar extremes are useful referents for debate, but empirical evidence is either mixed or inadequately explained without resort to a myriad of attenuating variables. In effect, minority groups in democratic countries often straddle both value systems (communitarian and liberal/secular) and engage both options for handling disputes (non-adversarial and litigative), to different degrees and under different circumstances.

Thesis statement

My interest is in understanding circumstances under which a harmony orientation can be compatible with democratic norms. In particular, I want to examine how norms and rules interact with dispute resolution to promote social cohesion, and to consider the kind of rights trade-off involved for disputants in formal and informal processes. I argue that:

1)   In a communitarian context, agency has to be understood as socially-embedded and subject not only to internalized norms but also to extrinsic influences;

2)   Whether harmony can be said to be operating as ideology in a given community will depend on the rationale behind norms or rules relevant to disputing, and on their efficiency and effectiveness in terms of voluntary compliance.

To generate a nuanced, culture-specific reading of why individuals might voluntarily trade off their rights for communal harmony, I wanted to examine disputing patterns in a small community held together by strong religious and communal norms in a broader secular context. Because the focus would be on dynamics rather than data, I wanted to use a qualitative approach. Inasmuch as no micro-society is an island unto itself, I anticipated that some inter-community conflict might be part of the general pattern. For a consideration of disputant agency, I reasoned

that the community should evidence a measure of legal pluralism - that is, some scope for choice between informal and more formal structures and processes for resolving disputes. I expected that the parameters of choice would be influenced by the community's normative imperatives, as well as its exposure to outside influences - both from neighboring communities and from the larger civic entity or democratic state of which it is a part. I anticipated that circumscribing the context of study in this way would capture dynamics likely shared by many Diaspora, refugee or minority groups in cosmopolitan societies today.

Given the above requisites, the Tibetan Diaspora in India is an ideal candidate for the study:

1) It is a communitarian society whose leadership openly promotes retention of traditional norms and practices that reinforce social cohesion and pan-Tibetan identity;

2) The community is situated in a secular democracy characterized by legal pluralism; it has an exile government which itself is secularizing and democratizing; it has a range of provisions for dispute resolution, from informal interventions to a Tibetan judiciary;

3) Given the community's tradition-preserving goals and emergent democratic values, normative interactions in dispute resolution are revealing of the complexities of rights trade-off in communitarian context.

Significantly, this community also exhibits certain exemplary features: effective leadership, self-sufficiency for group survival, values compatible with democratic norms, and an emphasis on harmonious internal and external relations. These are the kind of features that promise the best outcomes in terms of contributing to the richness of diversity while imposing few burdens on or threats to the greater social order. An understanding of both positive and negative dynamics in such a context will contribute new variables for the consideration of policy makers in religiously and culturally diverse secular states.

Methodology

Legal anthropology best describes the general approach for this research - that is, a qualitative investigation into the relationship between society, culture and law. I collected case study and contextual material through 90 semi-structured interviews with a variety of Tibetan exile

government officials, NGO workers, Settlement Officers, Camp Leaders, monastic heads, settlement residents and Indian legal informants.

To develop interview protocols and organize analysis of the material collected, I drew loosely on Abel's inventory of the process and structural variables that characterize dispute institutions at different levels of professionalization of the third party intervener role. Core information for this research came from two main sources: 1) twelve Representatives of the Central Tibetan Administration (CTA) who play third party intervener roles at the informal end of the dispute institutions spectrum; and 2) officials of the Tibetan Supreme Justice Commission, and two court users in well publicized cases, representing the formal end of the spectrum. Government publications, media reports and documents from the Library of Tibetan Works and Archives provided important background information, as well as a means of triangulating the more subjective inputs from interviewees.

Findings

Tibetans are as disputatious as any society but there is no question that a traditional preference for conciliation and compromise has survived as cultural residual in exile. Vigorous norm entrepreneurship, communal structures and the nested opportunities for resolution of disputes close to the point of their occurrence reinforce an orientation to harmony. In cases of marital discord and misdemeanor, for example, norms are effective as seen in the relatively low rate of divorce, and relatively low rate of crime. This effectiveness translates into efficiency from the perspective of Indian justice systems that are not burdened by Tibetan conflict or law and order issues. In other cases such as land disputes with Indian neighbors, norms are effective in terms of restraining aggression on the Tibetan side, but ultimately dysfunctional for Tibetans who have a legitimate claim that could theoretically be pressed in court. Despite the remarkable adaptation of Tibetans in India, several case studies illustrate the very precarious nature of their status as refugees, underscoring the importance of inclusive citizenship.

From the perspective of social control, the effect on individual agency can be seen in terms of three types of choice: 1) moral choice, which correlates with a high quality of normative compliance in contexts that affect the integrity of the shared homeland commitment; 2)

situational choice, which correlates with more utilitarian compliance in response to positive or negative sanctions; and 3) default choice, which correlates with coercive compliance in a context of disempowerment. This way of considering the question of agency allowed for a more nuanced assessment of the inflection that harmony ideology takes in this community.

As observed through the lens of disputing, Tibetan communitarianism has exemplary normative and structural features. Yet, the Tibetan experience also tells a cautionary tale with respect to the two most prominent shortcomings associated with a communitarian orientation – namely, the enormous challenge of reforming traditional authority relations within a compressed time frame, and the dangers of boundary marking through residential segregation. These observations are highly relevant for North American and European policies of diversity and integration, considering the accelerating pace of migrant inflows from very different cultures, and the resulting proliferation of residential enclaves in the major cities receiving them. The Tibetan community took over forty years to adapt to the democratic norms of its host country, and the process is ongoing. Despite the unique window of opportunity provided by the exodus of a virtual mini-society, despite the powerful allegiance to a unifying leader, and despite the support of international well-wishers, absorbing the values of a liberal democracy was not the linear process multicultural optimists might anticipate. At the same time, despite Tibetan attempts to remain self-reliant and inoffensive as guest refugees, their very existence in enclaves awakened resentment in some local populations, often for reasons that had more to do with the latter's own grievances or identity politics.

Thesis organization

Part One prepares the intellectual groundwork for the thesis, and its field research. Chapter I is a review of current arguments in favor of responsive communitarianism, including strengths and weaknesses of that perspective and a discussion of parallel debates in India under the rubric of secularism. It lays the basis for understanding the Tibetan Diaspora as a particular type of community. Chapters II and III provide analytical frameworks for thinking first about how norms of social control operate, and then about the dimensions of power and authority that play into the concept of harmony as ideology. Chapter IV explains the rationale behind the methodology used

for gathering and analyzing field material. It identifies research phases, sites, constraints and validation strategies.

Part Two maps out the broader socio-political and cultural context of the Tibetan community, as an essential backdrop to the values and norms that regulate it. Without an understanding of this macro context, interpretation of the case studies would be seriously flattened, if not distorted. Chapter V discusses the legal status of Tibetans in India and the ramifications of Indian policy for different arrival cohorts. Chapter VI develops an important theme in the thesis, namely the conflation of religion, nationalism and principles of strategic non-violence in the socialization of Tibetans toward harmony norms. Chapter VII traces the milestones and the reasons behind the exile community's difficult but very necessary transition to democracy.

Part Three turns to the fieldwork on disputing phenomena and the institutions that deal with them. Chapter VIII first situates the role of the CTA Representative, whose mandate includes dispute resolution in the settlements. It examines attributes of the role in relation to process and outcome variables, drawing comparisons with practices in pre-1959 Tibet and current Western mediation. Chapter IX then illustrates how those processes look in family disputes – both the norm bound cases of marital discord and the more rule bound cases of land succession in agricultural settlements. Chapter X examines the dynamics of interpersonal dispute resolution as a feature of communitarian law and order in town and village settings. Chapter XI considers the special case of land disputes, a common phenomenon throughout India, but one with special implications for refugees whose rights to property are either ambiguous or infringed. Chapter XII analyses the origins of communal conflict with Indian neighbors in three locations, each having long term reverberations for the affected Tibetan settlements, as well as an impact on harmony orientations throughout the settlements. Chapter XIII shifts the focus from informal means of dispute resolution to the formal model that is part of the democratization project. It situates the Tibetan judiciary within the community's institutional constraints and normative patterns. Chapters XIV and XV are in-depth case studies of the challenges for court users drawn into the intricacies of emergent formal law, demonstrating the uneasy encounter of old and new norms.

Part Four is a brief reflective and comparative summary of the findings from the research. Chapter XVI revisits the thesis statement concerning degrees of individual agency within a harmony orientation, as observed in the context of disputing and dispute resolution. Finally,

Chapter XVII juxtaposes the Tibetan experience against diversity and integration debates in India and the West, including Canada.

PART ONE: RESEARCH BACKGROUND

I   LITERATURE REVIEW:

FROM COMMUNITARIAN APPEAL TO COMMUNITARIAN REALITY

This literature review focuses on the nature of the communitarian debate – its definitional issues, main lines of argument, critics and pitfalls. It provisionally identifies two gaps in Western literature which the present thesis addresses:

1) Consideration of non-western contexts in which communitarian norms of harmony and social cohesion are engaging with liberal democratic values;

2) Conflict resolution as a site for assessing the dynamics between communitarian and state systems of social control.

1.1   Nature of the debate

Communitarianism refers to a loose set of theories that emphasize the importance of community in formulating conceptions of the good as a basis for personal morality, public policy and social order. As expressed by socio-legal scholar Philip Selznick (2002):

> The label communitarian can be applied to any doctrine that prizes collective goods or ideals and limits claims to individual independence and self-realization. (p. 4)

The broad definition takes the social sources of selfhood and obligation as its basic premise. From this philosophical starting point, communitarian thinkers have reconsidered a wide range of political and socio-legal issues previously defined in the liberalist terms of the pre-formed, rational individual endowed with abstract rights.

Early sociologists - Ferdinand Tonnies (1855-1936), Emile Durkheim (1858-1917) and George Herbert Mead (1863-1931) – are sometimes described as communitarian thinkers because of their interest in the constituted self and the values, processes and institutions that bond societal units. Since the 1980's communitarianism has emerged as a remedial critique of classical

liberalism in moral, political, and legal philosophy, with numerous conferences, papers, journals, and books devoted to the subject (Mulhall and Swift, 1996; Frazer, 1999). Communitarian thinkers have challenged the excesses to which liberal doctrine has taken individual rights and freedoms, and the unfettered leeway given to market forces in determining societal needs. They have blamed liberalist zeal for social atomization and attendant problems in Western societies, and for what they see as a deficit in public ethics. As an antidote, they have emphasized particularism - the special moral obligation people have to their families, kin, and communities where interdependence is most closely felt (Selznick, 2002, p. 45; Etzioni, 2004, p. 3). Because traditions and social responsibility are fundamental to maintaining viable communities, communitarians have been concerned with the ways in which shared conceptions of the good are formed, transmitted, justified and enforced (Christensen & Levinson, 2003, p. 224). For their part, apologists for liberalist doctrine have pointed to key vulnerabilities in communitarian thinking – namely the potential for inward coercion and outward exclusion. They have argued that maintenance of community requires authoritarian institutions inconsistent with the values of liberalism or that the boundedness of community promotes enclave behavior at the expense of social cohesion at broader group or state levels (Frazer, 1999, p. 49).

1.2 Unsettled concepts

Many scholars have noted that the definition of "communitarian" and of its central element "community" has lacked systematic analysis (Bell & Newby, 1974; Fowler, 1995; Frazer, 1999; Selznick, 2002; Van Seters, 2006). The words can refer to collectivities of varying scale and type, or to a kind of relationship or affinity, or even to a value or aspiration – each usage taking deliberations in quite different normative directions. Some scholars have distinguished various kinds of community, others have focused on the qualities that constitute community and yet others have considered the nature of interaction that characterizes community.

Useful as a starting point is Elizabeth Frazer's enumeration of some very general features, any or all of which may characterize community:
- A bounded geographical area;
- A dense network of non-contractual relationships including those of kinship, friendship and cultural membership;

- A particular quality of identification on the part of members with place, or culture, or way of life, or tradition – usually involving emotional attachment, loyalty, solidarity or unity, and/or a sense that the community makes the person what they are;
- Shared symbols, meanings, values, language, norms;
- Shared interests such as occupational, political or cultural interests. (1999, p. 45)

A bounded geographical area can refer to a street, neighborhood, village, city, district or state, depending on the issue in discussion. Without some emotionally shared element, however, the territorial descriptor does not capture what animates community. It takes no account of dispersed groups, including Diaspora communities that cohere today in unique ways though advances in transportation and communications technology.

Without denying the importance of locality, Michael Walzer has taken the relational dimension as paramount. He has described community as "the home of coherence, connection and narrative capacity" (1995, p. 56). What weakens communitarian bonds, according to Walzer, are the four mobilities – geographic, social, marital and political - which he has attributed to social developments endorsed and justified by liberalism (pp. 58-59). At the center of a liberal theory of relations is voluntary association, with voluntary being understood as the right of "rupture and withdrawal," and the four mobilities representing "the enactment of liberty and the pursuit of (private or personal) happiness." Walzer has not suggested that these forms of mobility be curtailed but that the relational loss be recognized in periodic communitarian corrections of the unstable and dissociative effects of liberalism (p. 69).

While acknowledging the relational aspect, other scholars have emphasized that it is the multiplicity and density of connections that generate vital communities. Philip Selznick (2002) has referred to communities as frameworks within which people pursue different overlapping interests and experience different ways of belonging which enhance overall solidarity. This conception of community is quite distinct from special-purpose groups such as firms, government agencies or military units which operate in rational, instrumental ways toward corporate goals (2002, p. 16). The cooperation and commitment needed to sustain communities are rooted in "interdependence, reciprocity, and self-interest" (p. 19). Multiplex relations also imply that the human interactions of everyday life in family, workplace, politics, and healthcare

are not compartmentalized but rather reinforce each other within a moral ethos and culture of caring. The above points are reflected in Selznick's formal definition:

> A group is a community insofar as it embraces a wide range of interests and activities; insofar as it takes account of whole persons, not just specialized contributions or roles; and insofar as bonds of commitment and culture are shared. (p. 20)

Selznick conceded that dense networks and multiplex relations don't just exist; they have to be built and nurtured around some cohering principle before they can constitute a strong community. Amitai Etzioni (2000a) has offered a much quoted definition which includes principles already mentioned, but incorporates the important dimension of emotional orientation.

> Community is a combination of two elements: a) A web of affect-laden relationships among a group of individuals, relationships that often crisscross and reinforce one another (rather than merely one-on-one or chainlike individual relationships); and b) A measure of commitment to a set of shared values, norms and meanings, and a shared history and identity – in short, to a particular culture. (p. 223)

Affect-laden relationships are the antithesis of rationalist, instrumentalist choices and they underscore the basic human need for social bonding that explains the communitarian appeal. As noted by Frazer, for a "sense of community" to exist, there has to be a level of acceptance by members that they are related in a particular way, which creates a boundary-like sentiment vis à vis non-members. For Michael Sandel a strong sense of community is a constitutive one in which members not only share fellow feeling but derive their mode of self-understanding from the community of which they are a part (1982, p. 150). For symbolic interactionists like George Herbert Mead, the existence of self derives from social interaction involving the exchange of symbolic gestures. By extension, according to A.P. Cohen, community itself exists as a symbolic construction. Participation in rituals and other integrative practices heightens consciousness of boundaries by rehearsing and institutionalizing the attachment of insiders to qualities such as trustworthiness, purity, or religiosity (Frazer, 1999, p. 81). Groups that understand themselves religiously are a key type of community from a communitarian perspective. Religious tenets and leaders define core values and behavioral norms for their members and congregational activities delineate the boundary from non-members (Coughlin, 2004, p. 123).

For ethnic groups, memory – selective or otherwise – plays a critical role in reinforcing shared elements. Robert Booth Fowler (1995) has made a distinction between communities of memory, communities of need (rallying around some public crisis), and communities of ideas (participatory or republican). By communities of memory, he meant "current ideas of community

that derive from long-established belief systems that link the present and the past, communities fashioned, above all, from tradition and religion" (1995, p. 91). How memory is transmitted from generation to generation, however, is a critical element of ethno-entrepreneurship - that is, the promotion of a selective set of ideas about the past, by intellectual elites, for political purposes (Hobsbawm & Ranger, 1992; Smith, 1999). That addition is more properly part of discourses of the nation, but it is essential to include because of the forward thrust implied in the exertion of an ethnic will, denoting a particular kind of communitarian aspiration.

Frazer has opened up the concept of community with a needed political edge in emphasizing temporal qualities that go beyond memory of a shared past to embrace a shared destiny for self and future generations. Talcott Parsons has referred more accurately to collectivities with a "fiduciary association," emphasizing the transgenerational element which embodies a voluntary choice to safeguard past tradition and cast one's lot with a projected common destiny (1975, p. 61). Such collectivities may require certain acquiescence to shared practices such as handling of the commons and governance by particular rules and principles (Frazer 1999, p. 67). These additional insights are pivotal to understanding the stakes for ethnic, religious or indigenous groups that might be negotiating terms of co-existence with dominant or other minority groups in a diverse society.

Scholars in the communitarian mold have paid very little attention to Diaspora as a kind of community, yet the issues they grapple with are that much more salient within this context of overlapping allegiance. While potentially sharing many of the attributes just discussed (collective memory, emotional attachment, group consciousness, sense of common culture, history and destiny), Diaspora communities also generally share an interest in or even concern for homeland developments, as well as empathy and solidarity with co-ethnic members in other countries of settlement (R. Cohen, 1997; Vertovec, 2005). As indicated by Robin Cohen, there may be an idealization of the ancestral home, nostalgia to repatriate, and collective commitment to homeland maintenance, restoration, safety, and prosperity. There may also be myths associated with the shared memories, as well as what Anthony Smith has called myths of ethnic election which imbue a community with a sense of being "chosen people" (1999, p. 136). Where such a myth is operative, it places members under a heavy obligation to preserve ritual, moral and legal codes – all of which have to find accommodation in the host society.

In short, there are many kinds of community, each held together to different degrees and by different factors. As identified by Selznick, monastic communities are united by a chosen destiny of religious observance, guided by strict canonical and institutional rules. Occupational or professional groups are bonded by credentials, qualifications and standards. Extended family groups are bonded by inheritance, traditions and special claims and obligations arising from affective relations and proximity. While close knit relations are a communitarian ideal, scholars are well aware that community can have shortcomings. Selznick stated:

> In studying kinds of community, we have to know what each kind requires, what each has to offer, and what sacrifices it demands. Yet essential features of community remain. If we keep those features in mind, we can consider the benefits and costs of community in the context at hand. (2002, p. 23)

Indeed, the debate on the merits of communitarianism relative to liberalism has intensified and diversified over the years with increasingly nuanced, contextual readings.

1.3   Lines of argument

Beginning with Michael Sandel's critical reading of John Rawls' A theory of justice (1971), communitarian philosophers including Alasdair MacIntyre, Charles Taylor and Michael Walzer have challenged the liberalist assumption that communities could be thought of as an aggregation of autonomous, voluntarily associated, free-floating individuals.[1] Sandel (1982) had argued that such an "antecedently individuated" or "unencumbered self" was untenable because people are constituted by values and choices made in the context of a community (p. 172). Paul van Seters (2006) has summarized the general thinking while pointing to an implicit involuntary dimension: "As biological and social constructs, human beings are decisively shaped by circumstances not of their own choosing, among which at least are their own family and community" (p. 4). The perspective demands a re-evaluation of individual agency as being contingent on both ascriptive and voluntaristic features of belonging.

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[1] By general consensus,the seminal works were: Michael Sandel's Liberalism and the limits of justice (1982), Alasdair MacIntyre's After virtue (1981), Michael Walzer's Spheres of justice (1983) and Charles Taylor's Sources of the self (1989). From their various perspectives, these authors emphasized a social constructionist, particularistic conception of the human being, from Taylor's "self-interpreting animals in linguistic communities" to Walzer's "culture producing and culture inhabiting creatures." Useful to consult for an overview of the finer points of argument are Stephen Mulhall and Adam Swift's Liberals and communitarians (1996) and Shlomo Avineri and Avner de-Shalit's Communitarianism and individualism (1992).

From this core line of argument, scholars have theorized about the kind of personal morality and sense of duty associated with particularism – a communitarian antidote to the anomie lurking in excessive welfare or market liberalism.[2] It is worth remembering that liberalism itself was once the antidote to constraining features of old world, particularistic societies in which local hierarchies, hereditary rule, and the fusion of church and state colluded to fix status and privilege. Clearly, therefore, communitarians were not proposing to nullify important gains made in liberty, equality, human rights, private property or rule of law. The opposition between communitarianism and liberalism eventually begged some form of reconciliation for practical application in specific context. Socio-political communitarians concerned themselves with that task. As expressed by Philip Selznick (2002):

> Contextual thinking improves judgment by ensuring that all relevant values are considered and by avoiding excessive reliance on abstract, unsituated conceptions, such as "rationality," "equality," "autonomy," and "moral agency. (p. 77)

American sociologist Amitai Etzioni is perhaps the best known socio-political communitarian. In 1990-91 he spearheaded the "Responsive Communitarian" movement – "responsive" to distinguish this new communitarianism from any implied regression into authoritarian, theocratic or social conservatism. He launched a quarterly journal, "The Responsive Community," which became the vehicle for wide ranging discussions on how a better balance could be achieved on several levels between rights and responsibilities, between autonomy and social order, and between institutions of state, market and civil society. Importantly, these discussions attempted to ground the abstract in concrete situations, and ended up contributing to many specific policies - for example, relating to family support, character education, crime prevention, and public safety.[3] Although the movement had limited political influence, it numbered many well known

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[2] The communitarian critique aims at both leftist and rightist variants of liberalism. John Rawls' 1971 <u>Theory of justice</u> –often taken as the classical elaboration of the normative position of liberalism "tout court" – actually characterizes a "leftist" or "social" liberalism. Typically associated with this position are: the primacy of rights, a commitment to individual liberty, private property, rule of law and a state bureaucracy that carries significant responsibility for social welfare while remaining neutral as to questions of morality. Market liberalism, on the other hand - also referred to as "right" or "laissez-faire" liberalism – places more emphasis on minimal government. It assumes that individual needs, aggregated to societal level, can be adequately met through the dynamics of the market and civil society.

[3] For proposals relating to peer and covenant marriages, and support measures for parents at home, see Jean Bethke Elshtain et al., <u>A Communitarian position paper on the family</u> (Washington, D.C.: The Communitarian Network, 1993); for measures such as community policing, crime watch, community patrols, and reintegrative justice, see R. Karp, ed. <u>Community justice: An emerging field</u> (Lanham, Md.: Rowman & Littlefield, 1998). These and other examples are cited in Etzioni (2000a, p.222).

academics including Philip Selznick, Charles Taylor, Benjamin Barber, Robert Bellah, Robert Putnam, Jean Bethke Elshtain, William Galston, Nathan Glazer and Mary Ann Glendon.

Between the general balancing goals and specific policy inputs, are a number of principles that have gained wide currency among political communitarians:[4]

- Communities need to have a clear moral voice and a social space in which to articulate it;
- Moral infrastructure has to be in place – that is, social institutions like family, school, religious, occupational and civic groups which progressively nurture feelings of mutual obligation and a moral sense for regulating relations;
- Once moral commitments are internalized and reinforced through society, they help shape a person's preferences toward pro-social behavior, thus reducing the need for coercion by the state and reducing the tension between order and autonomy;
- Formulations of the good, or conceptions of shared values cannot be forced; they must be the product of inclusive process – preferably a consensus derived from genuine dialogue, rather than majoritarian outcomes from voting;
- Devolution of responsibility to community level, closest to where people live, strengthens ties and promotes self-reliance (e.g. for the sick, homeless, new arrivals, delinquents, and for environmental and public safety);
- The relation of community to society should be conceptualized in federalist terms – a community of communities or unity of sub-cultures in which individuals owe both particularistic and civic allegiance; and
- Finding the balance between communitarian and liberalist emphases is an ongoing project and differently situated societies will vary in the need for adjustment in one direction or the other.

1.4 Communitarian jurisprudence

Not surprisingly, considering the emphasis on shared norms as a basis for social order, the philosophical and political streams of communitarian thinking also came to influence socio-legal

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[4] For the most part, these points are taken from Selznick (2002) and Etzioni (2004 and 2000a) because their thinking distills years of deliberation among communitarians, and the well honed arguments that have been formulated in response to critics.

scholars, such as Philip Selznick and Roger Cotterrell.[5] Several points stand out in the socio-legal perspective on communitarianism:

- It emphasizes the moral underpinnings of law and the interdependence of law, solidarity and community;

- It asserts the primacy of community without undermining values of freedom, rationality and equality; and

- It recognizes the fundamentally plural character of modern law (Van Seters, 2006, pp. 11-12).

Selznick has consistently stressed that a communitarian morality looks to the enhancement of personal and social responsibility – that is, integrity and other-regarding behavior as exhibited in a preference for cooperation and reconciliation in all spheres of life. For that to happen, law has to be conceived of in a more flexible, less determinate form than in the rule-bound legal paradigm associated with liberalism (Selznick, 2006). In other words, a communitarian concept of law has to include non-state law, embracing the various sources of law that give normative orientation to the community's members (Witteveen, 2006, p. 237). Legal positivism as the dominant paradigm emphasizes procedural values of clarity, certainty and legitimacy over substance; it relies more on rules rather than standards or principles. Yet, in a communitarian society everyday norms of social control operate in much more diffuse fashion, supporting more formal means of social control to the extent that these are congenial to its own (Etzioni, 2000b).

Selznick saw one of the main virtues of community as being an "ethos of open-ended obligation," not something circumscribed by a contract in which terms are specific and the cost of breach is known (2002, pp. 24-25). Legal positivism's aloofness from substantive justice, its claimed autonomy from other institutions of society and its moral minimalism are antithetical to a community's needs for law, he argued. Criminal law, for example, is not the only means of dealing with juvenile delinquency or with harms to the moral environment through gambling, drug abuse, drunkenness, pornography, public nudity or prostitution (Selznick, 2002, p. 57). A community often needs cooperation across different sectors, a blurring of boundaries to arrive at jointly reinforcing solutions. Once an issue is in the formal legal realm, equitable outcomes may

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[5] Seminal works in socio-legal communitarianism include: Law and the search for community by Joel Handler (1990), The moral commonwealth: Social theory and the promise of community by Philip Selznick (1992) and Law's community: Legal theory in sociological perspective by Roger Cotterrell (1995). Recently Selznick summarized his thinking in the Communitarian persuasion (2002) and a volume honoring his contributions to the field appeared in the same year, edited by Kagan, Krygier, and Winston, entitled Legality and community: On the intellectual legacy of Philip Selznick (2002).

require a degree of judicial discretion repugnant to legal positivists. A communitarian theory of law therefore would emphasize the responsible exercise of rights and a collective decision as to what interests should be protected, in what ways and for what ends (Selznick 2006, p. 27).

Cotterrell's vision of a communitarian jurisprudence proceeded from his view of community as patterns of interaction that involve a high degree of mutual interpersonal trust. Therefore he argued for devolution of substantial regulatory powers from the state to the community where it could foster trust and solidarity, making law morally meaningful as an aspect of everyday existence. Cotterrell drew on Emile Durkheim's conception of the continuities between morality, law and solidarity, as well as on Eugen Ehrlich's idea of living law, which:

> …locates law's doctrinal sources, regulatory authority, and normative essence in communal life, understood in some way as a realm of shared moral understandings or social interaction, and not primarily (if at all) in the purely political authority and coercive power of the state. (2006, p. 33)

Thus, legal pluralism is implicit in the diversity of normative systems that would be interacting with the state, in Cotterrell's conception of communitarian jurisprudence. Cotterrell has distinguished allegiance to the state as a function of the reach of political authority, from allegiance to nation or other sub-grouping as a function of the social unit's moral authority – the latter being grounded in mutual recognition of congruent interests, emotional attachments, shared traditions and values. He therefore has emphasized that community structures should exercise a degree of regulatory authority, but in partnership with the state. Ultimately moral authority is legitimated by the member's need or wish to remain a part of the societal unit and to stay within its jurisdiction (p. 39). His implication is that community structures should be open and voluntary, so that the individual in fact can seek out the jurisdiction that best deals with the concerns or disputes at hand.

Legal anthropologists and comparative law scholars long have argued that a multiplicity of rules and law-ways co-exist in most societies - whether formally, or under the official radar screen – and they can be independent, interdependent, interpenetrating or all three. (Nader, 1965; Varga, 1992; Berman, 1983). Thus a consideration of the plural character of modern law would have to go beyond the dilemmas of normative pluralism in legal adjudication (a problematic in its own

right[6]), to embrace the possibility that communities may want to retain familiar ways of resolving conflicts within their own precincts, independent of the state. As suggested by Mansfield (2005), ethnic or religious groups often feel that their identity is validated by the recognition of their right to resolve their own disputes. On a theoretical level, this prospect unsettles foundational ideas about legal centralism - that is, the predominant role played in social control by state-made and state-enforced law. On a practical level, by legitimating legal pluralism the state would have to assume that the well-being of the individual in a given group is protected by group norms and systems of disputing that favor conciliation. Yet, it is equally plausible that the individual is not enhanced but diminished or constrained by membership in an ethnic and religious group. Inasmuch as harmony is implicit in communitarian goals of social cohesion, shared morality and cooperation, the means by which those goals are achieved require illumination. Purveyors of immigration law and multicultural policies would do well to ask how normative consensus is constructed within communities of interest or concern. How is that consensus manifest in dispute resolution as the site where collective norms and the right to differences of opinion are most tested?

Pushing the issue to a more controversial plane, if community provisions for social control contravene the constitutional framing of the state, then the basis of shared citizenship as a social contract would be called into question by other communities, or state authorities. In that case, what would be the source and nature of obligation that a socially embedded individual responds to, and with what consequences? As observed by Cotterrell, the ultimate sanction backing enforcement of living law would be the threat of expulsion or exclusion from the group. Yet, the severity of such sanctions can only be assessed with reference to the ease of access that the expulsed individual would have to alternative groupings, whether for social or economic sustenance. What would be the consequences of being cut off from needed cultural moorings, for example, for new immigrants, refugees or illegal migrants, who might be marginalized by mainstream society? What would be the consequences for mainstream society of such doubly dislodged individuals? These questions cannot be answered reliably in the abstract. Echoing Selznick's argument for contextual thinking, it is not easy to discern how a socially embedded individual would rationalize the trade-offs between rights and obligations without fulsome reference to specific contexts.

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[6] See, for example, D.L. Coleman (2001). Individualizing justice through multiculturalism: The liberals' dilemma. In P.K.Chew (Ed.), The conflict and culture reader. (pp.182-199). New York: New York University Press.

For its part, the liberal cosmopolitan state has to consider how to reconcile its constitutional promise to protect individual rights with its commitment to inclusivity - that is, allowing religious, ethnic or other minority groups a measure of autonomy for defining what is right and good for their collective needs. Can diverse communities align themselves with constitutional principles without abdicating the core values that constitute them? Should the state support such re-alignment with liberal principles, or should it interrogate its own hegemonic tendency to an illiberal imposition of liberal or majoritarian values on communities that have a different vision of the place of the individual in their community? These considerations are critical to contemporary policy discussion around integration and multiculturalism in the context of rapidly expanding diversity within nations that have traditionally been more homogeneous.

Questions such as those above are being debated with increasing urgency as Western countries assess their rising needs for immigration and their options for handling migration, whether voluntary or involuntary, legal or illegal.[7] Yet, the literature offers few examples of the internal normative dynamics of cohesive ethnic and/or religious communities that are exposed to multiple influences from outside and have to adjust within a fairly compressed timeframe to become functional as new arrivals within avowed multicultural states. The salience of a compressed timeframe is underscored by a dramatic shift in the demographics of immigration in North America. The 2000 US Census counted 31.1 million foreign born; currently, one in five Americans are first or second generation immigrants, mostly from non-European countries of origin (Waters & Vang, 2007, p. 414). In Canada, cities such as Toronto and Vancouver have seen almost a threefold increase in visible minorities between 1981 and 2001, together with increased segregation of ethnoracial populations (Graham & Phillips, 2007, p. 160). Moreover, a demographic group such as South Asians in Greater Vancouver can be viewed in terms of own-group neighborhoods, or countries of origin (India, Pakistan, Sri Lanka), or religion (Hindu, Sikh, Muslim, Christian). Thus, the formulation of appropriate policies to deal with the diversity implied in the demographics depends critically on how community is defined.

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[7] See D. Tichenor (1995). Immigration and political community in the United States. In A. Etzioni (Ed.) New communitarian thinking. Charlottseville: University Press of Virginia; also see W. Kymlicka. (2007). Multicultural odysseys. Oxford: Oxford University Press; and K. Banting, T.J. Courchene & F.L. Seidle (Eds.). (2007). The art of the state: Belonging? Montreal: Institute for Research on Public Policy.

1.5   Critics and pitfalls

The shift in perspective from communitarian appeal as a self-conscious movement away from the excesses of liberalism to communitarianism as a lived reality for growing segments of the North American population draws attention to concerns that have been expressed about this orientation. Cotterrell acknowledged that invocations of community can obscure relations of power and that there is potential for a drift toward conservatism in promoting allegiance to traditional ways. His recognition of power relations within communities and of the diverse values that may co-exist within one community anticipated some of the important critiques brought against communitarianism. Most scholars have acknowledged that there is a need for constant vigilance of its applied meanings.

From a feminist perspective, for example, communitarian analyses focused on particularistic cohesion can overlook mechanisms of disadvantage and dominance as much as liberal analyses focused on universalizing principles built out of a male experience of theorizing (Frazer & Lacey, 1993; Frazer, 1999). Even moral development, so central a concern for communitarian thinkers, needs deconstruction. Lawrence Kohlberg's (1982) widely accepted universalistic, rationalist model of the stages of moral development contrasted sharply with Carol Gilligan's (1993) radically particularistic one.[8] Gilligan has argued that care and responsibility within personal relationships constitute an important element of morality, particularly in the psychological development of women. Inasmuch as individuals are embedded in a web of ongoing relationships, she has argued that moral theory has to make room for emotional responsiveness as a basis of right action.

While in theory feminists and communitarians share this emphasis on emotional attachment and relatedness, the reality is that a traditional group's conception of morality may be steeped in religiosity or patriarchal expectations of women's behavior. Morality may mean adherence to

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[8] Gilligan mounted a groundbreaking critique of Kohlberg's influential research on the moral development of children. His results suggested that girls on average reached a lower level of moral development than boys, but Gilligan countered that his methodology was faulty and totally overlooked gender socialization factors. Though Gilligan is not without her critics, she established important new principles in her elaboration of an ethics of care as distinct from an ethics of justice. See also her article "Do the social sciences have an adequate theory of moral development?" Social Science as Moral Inquiry, Ed. N. Haan, R. Bellah, P. Rabinow, and W.Sullivan. New York: Columbia University Press, 1982. For a detailed analysis of her work in juxtaposition to that of Kohlberg, see Lawrence Blum's (1988) "Gilligan and Kohlberg: Implications for a moral theory" Ethics, 98, (3) 472-491.

dress and comportment codes, and dutiful acceptance of a subordinated role in private and public life. Communitarian concerns with child-rearing and divorce may be translated into asymmetrical burdens that marginalize women's rights and equality of opportunity. The feminist issue is not so much with value disposition as with how it is achieved. Frazer and Gilligan both have emphasized the need for a dialogic, interactive practice that ensures an equitable balancing of the claims of self and other – a position shared by relational thinkers like Cotterrell, Etzioni and Sandel.

The feminist critique represents only one dimension of difference contradicting the "shared values" rhetoric of community, and one aspect of hierarchy that can be embedded in the rhetoric of cohesion. These concerns are reflected in some of the more frequently acknowledged shortcomings to which a communitarian orientation is susceptible:

- Communities can use their moral voice to oppress members, pressuring them to conform to group norms and imposing authoritarian structures that may prescribe roles of subordination (Christensen & Levinson, 2003, pp. 5-9, citing McClain (1994, p. 1029), Kymlicka (1993, pp. 208-221), Gutman (1985, p. 319), D. Phillips (1993, p. 195) and Taves (1988, pp. 7-8);

- Particularism can limit horizons, stifle initiative and foster uncritical attitudes to tradition and authority; it can condone nepotism, class privilege, political patronage (Selznick, 2004; Etzioni, 2000a, p. 225);

- Communitarians often suppress conflict in the name of cultural conformity and consensus (Etzioni, 2000a, p. 221; Fowler, 1995, p. 95);

- Communities are not monolithic and rarely speak with one voice; over-emphasis on shared features denies this diversity and begs the question of who is speaking for whom (Joas, 2000, p. 37);

- Communitarian analysis is inattentive to socioeconomic difference, disregarding wider societal responsibilities – that is, communities can be poor ghettos with few public services, or exclusive gated communities, or religious congregations that internally reproduce patterns of social inequality (Coughlin, 2004);

- Community membership is often ascribed, determined at birth, initially involuntary;

- The conflation of communitarian law with morality is problematic. Because of the coercive nature of law itself, religious influence on law-making can exacerbate the intrusion on the right of personal convictions (Peach, 2002, p.16);

- Cultural relativism can be antithetical to the need for shared civic values of liberty, equality, fraternity;
- The inward focus of communities can create boundaries characterized by insular attitudes and negligence, disregard or intolerance with respect to outsiders.

Scholars of community have been careful to qualify that communities are not necessarily "good" in the normative sense. The two most critical weaknesses of communitarianism, which also subsume most of the points raised above, are the potential for enclave behavior and for a disjuncture from broader civic norms. As expressed by Etzioni (2000a) "communities have, by their very nature, an inherent serious normative defect: exclusion" (p. 223). Robert Putnam's widely referenced Bowling Alone (2000), for example, theorized social capital as the affective bonding element needed for community. At the same time, he recognized that bonding automatically makes a distinction between members and non-members, and naturally leads to preferential treatment for the former. Importantly, therefore, he emphasized the need for bridging forms of social capital that could forge positive connections across diverse groups. The moral suasion underpinning shared values also has a double edge. Citing Pearson (1995), Christensen and Levinson (2003) have drawn attention to the latent coercive quality inherent in community:

> To earn the appellation 'community' it seems to me groups must be able to exert moral suasion and extract a measure of compliance from their members. That is, communities are necessarily, indeed, by definition, coercive as well as moral, threatening their members with the stick of sanctions if they stray, offering them the carrot of certainty and stability if they don't. (p. 227)

Moreover, if each community sets its own values and does not have to answer to others about the legitimacy of its choices then there is little basis for a community of communities. Building of community in the aspirational sense needs nurturance and in the moral sense it demands what Fowler has referred to as "existential watchfulness" to guard against any negative propensities (1995, pp. 94-95).

1.6   Non-western perspectives on communitarianism

The communitarian literature examined thus far draws largely on the North American experience but contains the seeds of what is at issue elsewhere – particularly in the tensions between

authority, sovereignty, individual autonomy and group rights. In Europe a lively counterpart exists in the inter-state context of the European Union, but also increasingly in the intra-state context of policies for integration versus diversity.[9] More broadly within international discourses on human rights, the so-called Asian values debate has pitted Western liberalist hegemony against the authoritarian disposition of non-Western, self-avowed communitarian societies that place a high value on harmony.[10] Moreover, the ideology of secularism in international relations has failed to recognize that the individualist approach to rights of religious freedom is not always compatible with non-Christian, South Asian or Middle Eastern understandings of the collective basis of religious practice (Bhargava, 1998). Thus, within strongly religious communitarian societies, the debate is more readily recognized as one between proponents and opponents of secularism insofar as secularism proceeds from liberal categories of thought. Nowhere have the meanings of communitarianism in a secular state been subjected to more academic and judicial scrutiny than in India. Yet, as Amartya Sen (1998) and Rajeev Bhargava (1998) have argued, Western debates on pluralism and secularism have shown astonishingly little curiosity about the inflection of such issues in the Indian sub-continent.

Inasmuch as the literature review already is revealing the contours of a knowledge gap with respect to non-Western contexts, and inasmuch as India is a deeply diverse, communitarian society, as well as an important receiving and source country of migration, a brief look at Indian debates on the subject can be instructive. The Western literature analyses the various theoretical

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[9] See for example de Beus (2006) who has theorized the European Union as a community of communities which needs interactionist lawmaking based on a mobilization of transboundary party politics and public space. In a similar vein, see Hemerijk (2006) who has proposed the shaping of what he called "soft law" through deliberation, consultation, negotiation and coordination between EU countries, co-existent with established authority relations in a form of legal pluralism. Recent comparative research by Joppke (2007), Hansen (2007) and Hooghe, Reeskens & Stolle (2007) has grappled with the unexpected outcomes of different multicultural laws and policies in European countries, as they absorb increasing numbers of migrants from very different cultural traditions that have tended to remain in communitarian groups.

[10] The Asian values debate encompasses a number of variations on communitarian arguments, such as: 1) that the universality of human rights is a Western liberal construct that takes no account of the different developmental and governance needs of non-Western countries; 2) that a degree of authoritarian social cohesion is culturally and economically appropriate as evidenced by the remarkable successes of countries such as South Korea, Singapore and Taiwan; and 3) that the West's conception of rights is based on its cultural valuation of personal or individual freedom, whereas Asians value the order and harmony that community entails; collective rights should therefore precede individual rights. For their part, liberalist skeptics accuse authoritarian regimes of co-opting the debate as a smokescreen for their repressive practices. There as an ample literature on this debate. In the context of new institutionalism in Southeast Asia see Acharya (2000, pp. 138-143) - and, more generally, see Van Ness (1999), Kelly & Reid (1998), and Ghai (1994).

and empirical workings of the concept of secularism, but with no serious intent to jettison it.[11] In India, scholars and commentators have fallen more readily into opposing camps, partly because the urge toward a Hindu-based religious nationalism always has lingered in the wings as a preferred or dreaded alternative to the secularism espoused in the Indian Constitution. The division is marked by the fact that after partition in 1947, Muslims formed an exclusively Islamic nation next door, while India's leaders committed the country to a secularism that would accommodate the remaining Muslim minority in significant ways. What some viewed as a "Muslim Lollipop", or a "time bomb," was for others a minimum human decency extended to India's largest minority in the wake of 1 million Hindu and Muslim lives lost to communal violence during partition (Tambiah, 1998; Sahu, 2002).

Many scholars have noted that the framers of the Indian Constitution were intensely aware that the newly independent country could not survive without a nurturance of tolerance and respect for the immense diversity of traditional cultures and religions. The Constitution was crafted by educated elites, under the guidance of Jawaharlal Nehru, B.R. Ambedkar and Mohandas Gandhi. It was broadly debated and included traditional voices but, in the end, "it was the voice of the Enlightenment that emerged victorious" (Baird, 2005, p.7). In the Indian context, this new ethic had a rather distinctive meaning, however. Far from separating itself from religion, the state would support it in even-handed fashion.[12] In the often quoted words of philosopher statesman S. Radhakrishnan: "Secularism for India is not irreligious or neutral but spiritual" (Coward, 2005, p.65; Bhagwati 2005, p. 36; Tambiah, 1998, p. 423). In the first place, the state reserved the right to intervene in traditional religious practices, to the extent that they were antithetical to liberal

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[11] Charles Taylor (1998) is frequently cited for his delineation of two kinds of secularism or, more accurately, two logics behind the historical separation of church and state in Western Christendom. The first variant of secularism is one based on a religious common ground for peaceful co-existence; the second is one based in an independent political ethic emphasizing civic values of liberty and equality. Contemporary extensions of the former emphasize the legitimacy of diversity and the need for the state to remain equidistant or symmetrical in its relation to the components of a religiously plural and multicultural society (pp. 32-34). Taylor's second variant of secularism - the independent political ethic - tried to identify certain spheres of interaction which could be sectioned off from the religious for purposes of political morality and allegiance. This way of understanding secularism emphasizes a retrenchment of the religious into the private domain and a corollary exclusion of the religious from the public domain. It also embodies more deliberately the Enlightenment triad of rationality, liberty and equality that underpins liberal categories of thought. Many scholars have emphasized that, in reality, complete separation of church and state is either ideology or myth, and that lack of clarity around what constitutes secularism has occasioned constant revision of its applied meanings in judicial rulings by Supreme Courts (Failinger, 2000; McConnell, 2000; Sandel, 1998; Hurd, 2004).

[12] For example, India provides state support for religious institutions such as Hindu temples and Muslim mosques, as well as for certain educational institutions that provide religious instruction. Taxation is permitted for the benefit of all religions. The state can even provide subsidy for pilgrimage to Mecca (Sahu, 2002, p. 250).

principles of rationality and equality. This implied the elimination of a range of practices based in superstition and social backwardness.[13] It also implied affirmative action for historically disadvantaged scheduled castes and scheduled tribes (Bhagwati 2005). In the second place, for Nehru at least, the separation of church and state, and the principle of neutrality needed to prevent communalism – a form of political exploitation of religion (or ethnic group status) in conflicts over economic resources or political power (Chhachhi, 2005, p. 218; Tambiah, 1998, p. 426). Indeed, despite its positive features, communitarianism in India often is viewed as a dangerous reality because of the potential for its transformation into communalism.

Contemporary scholars who have defended secularism as enshrined in the Indian Constitution – for example, Stanley Tambiah, Rajeev Bhargava, Amartya Sen, P.N. Bhagwati, Tahir Mahmood and Partha Chatterjee – have emphasized the progressive elements and claimed tolerance to be its ultimate value. Sen (1998) has advocated symmetrical political treatment of different religious communities, arguing that a rejection of secularism would usher in a new and dangerous asymmetry. Bhargava (1998) has asserted that secularism is a multi-value doctrine whose constitutive values may come into conflict with each other, thus requiring the state to apply context-sensitive moral judgment in order to reconcile the differences. Chatterjee (1998) has supported a politics of representative democracy among minorities to run their own religious affairs, and institute reform from within to create favorable conditions for inter-group toleration. For these authors contradictions are to be expected because secularism is viewed as a dynamic mechanism, not a frozen formula.

Among those who critiqued secularism are the anti-modernists who have maintained that this Western import is ill-suited to India's ancient tradition of inter-religious co-existence – for example, Ashis Nandy, T.N. Madan and Ananta Kumar Giri. Nandy's (1998) thesis has been that norms of tolerance develop in multi-community societies, unless they are disrupted by contrary moves. A Gandhian, he has identified just such a contrary move in the policies of a secular government that operates on the basis of purely instrumental norms that serve ideologies of modernism and progress. He claimed that as India modernizes, religious violence increases - contrary to the promise of secular norms. Madan (1998) has argued that, for a Hindu, Sikh or Muslim, the duality implied by church-state separation is culturally alien because these religions

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[13] For example, the burning alive of widows on the husband's funeral pyre, child marriages, dedication of women to the fate of devadasis, and untouchability (Baird, 2005, p. 43).

permeate a believer's existence and realistically cannot be pried apart. Moreover, if secularism cannot empathize with religion, then it cannot cope with the perversion of religion that it provokes in counter-reaction, that is, religious fundamentalism. Both critiques have seen secularism as a failed project. Giri (2005) has proposed that conceptions of civil society and the public sphere should leave room for spirituality, rather than be brow-beaten by the rationalism of Rawls or Habermas. He argued that if secularism is to be redefined as multiculturalism, then there need to be institutional conditions for learning at the level of state and civil society to support the epistemic engagement. Even in this stream of debate, however, it is apparent that communitarianism is not just a nostalgic corrective to liberalist excess, but a lived experience - the conditions of which are under continual negotiation. Thus, for better or worse, popular views also play a significant role.

Sen (1998) has summarized lines of argument in a number of popular anti-secularist critiques, often loudly voiced by Hindu activists of the "Sangh Parivar" – the family of like-minded organizations oriented toward a Hinduism-based Indian politics (p. 455). The "Muslim Sectarianism" critique, for example, charges that Muslims do not integrate well and fail to see themselves as Indians first. However unsubstantiated by empirical evidence, the critique creates suspicions about the political loyalty of Muslims – suspicions which are abetted by selective readings of the history of Muslim rule in India. "Cultural and Prior Identity" critiques turn on the assertion that India is basically a Hindu land and that secularism is wrong to treat Hinduism as simply one among other religions. As clarified by Sahu (2002) the massiveness of the Hindu majority can intimidate many Indian minority communities, despite the fact that they have ancient roots in India and have contributed substantially to its civilization.[14]

According to Sen, the most widespread popular critique, is the plaint of "Favoritism," which charges that the Indian Constitution, combined with political and legal collusion, has promoted a form of secularism that gives the minority Muslim community a privileged status. The grievance centers on Muslim Personal Law.[15] For reasons of political expedience, the government did not

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[14] Hindus constitute more than 82% of the population, Muslims nearly 12%, Christians 2%, Sikhs 2%, Buddhist less than 1% and Jains less than 1%. There are also Parsis and Jews of ancient origin. (Sahu, 2002, p. 244).

[15] The Constitution allowed the continuation of personal laws that were in force prior to Independence. These laws were specific to each community – eg. Parsis, Christians, Hindus, Muslims – and covered family issues such as marriage, divorce, maintenance, adoption, guardianship, succession and so on. They could be enforced by the courts to the extent that they did not conflict with other constitutional provisions. The intention was to gradually develop a Uniform Civil Code when communities were ready to move in that direction.

demand reforms of Muslim Personal Law, but it legislated substantial reforms of Hindu law, particularly with respect to the caste system and gender equality (Chatterjee, 1998; Baird, 2005; Galanter, 1998). After partition, Indian Muslims supported the secular Congress party on the understanding that its government would leave Muslim Personal Law untouched (Sahu, 2002; Mansfield, 2005; Khory, 2005). Reportedly, Nehru had hoped that the Muslim leadership would eventually institute reforms from within, but the law remains unchanged, still based on the Shariat as it was enacted in 1937. In his legal analysis of the status of Muslim Personal Law, Chief Justice Bhattacharjee laid stern emphasis on the need for judges to refrain from bending to political forces or threats of communal strife. Prior to this statement, two cases had become a watershed in the history of secularism and a turning point in the rise of Hindu militancy: the landmark case of Shah Bano and the Babri Masjid-Ram Janmabhoomi dispute in Ayodhya. The former case burst unexpectedly onto the public stage in 1985, while the latter had been incubating as far back as 1949. Both cases are ubiquitous in the literature; both have been thoroughly analyzed in terms of the interaction between communitarian frustrations, politics, religious aspirations, and secular notions of the Indian polity.[16]

Briefly, seventy-five year old Shah Bano was divorced by her husband and received a meager compensation equivalent to what she had brought with her at the time of marriage forty-four years ago, that being the settlement prescribed in Islamic law. She appealed to the High Court of Madhya Pradesh, which awarded her a monthly maintenance. Her husband challenged the ruling in the Supreme Court, on the grounds that the Shariat which bound him as a Muslim did not require ongoing support beyond three months. The Supreme Court decided in Shah Bano's favor, and furthermore, exhorted the government to make headway with implementation of a Uniform Civil Code to overcome the inequality evidenced in cases of this sort.

That the judgment of an "Ulema" could be overruled by a secular judge and that he would presume to interpret Islamic law outraged the Muslim clergy, and much of the community. The next year saw protests spreading across the country. Insecurities and sensitivities had already been heightened by the killing in Assam of more than a thousand Muslims during the 1983 state

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[16] For the Shah Bano case, see Khory (2005); for the Babri Masjid conflict, see Paul Brass (1994). The politics of India since independence. New York: Cambridge University Press; for both, see Lloyd I. Rudolph and Susanne Hoeber Rudolph. (1987). In pursuit of Lakshmi: The political economy of the Indian State. Chicago: University of Chicago Press.

elections and related denouements (Khory, 2005, p. 154). Now Muslim legal autonomy was being assailed and flaunted as inferior, or so it seemed to the Muslim community. The effect was immediate at the polls in states where the Muslim vote is decisive. An alarmed Congress Party passed a bill in 1986 that essentially nullified the precedent set by the Supreme Court decision. It was a major setback for secularism, a blow to women's rights and grist for Hindu nationalists, while still leaving the Muslim community tense and wary. Confessional politics and ethno-entrepreneurship upped the ante on both Muslim and Hindu sides (Hellman, 1996; Sahu, 2002).

The heating up of events around the Babri Masjid mosque coincided with this period and were related in the Indian psyche. The two issues strengthened the political viability, for the first time, of Bharatiya Janata Party (BJP) and its Hinduization platform (Hellman, 1996; Khory, 2005). The Babri Masjid mosque was built by the Mughals in the16th century, supposedly on the site of the (unverifiable) birthplace of the popular God-King Rama. Rumblings of controversy over the site prompted the court to lock the building in 1949. By 1986 a strengthened Hindutva voice pressured the District Judge to open the building to Hindu worship and from there successive gestures toward reclaiming the site were made by Vishva Hindu Parishad – a massive Hindu umbrella organization supporting and supported by the BJP. The escalation in this contentious plan reached a disastrous peak. As noted by Sahu: "In 1992 Hindu nationalists destroyed the Babri Masjid, leading to the worst communal violence in India since partition" (2002, p. 258).

What has to be taken away from this overview of secularism in India is not just that communitarianism is an everyday reality, but that it is critically linked to identity politics. Moreover, norm variance, conflict regulation and legal pluralism are knotted at the heart of the secularist dilemma and its communitarian implications in this country, as elsewhere. The Indian context is singular not because the communitarian issues outlined at the outset do not apply, but because of the intensity of meaning associated with them on the ground. I have devoted considerable space in this literature review to the inflection of these issues in India, in anticipation of the knowledge gap that my doctoral research will address.

1.7   Research niche

The literature review has suggested that the benefits and costs of community require contextualized thinking within a framework of religious and ethnic diversity. Socio-legal scholars have called for what Selznick referred to as "responsive law," yet the contours of that communitarian jurisprudence and its implied legal pluralism are as yet vague. Inasmuch as dispute institutions provide an important window onto the place of law in society, a closer understanding of how a given communitarian entity handles its disputes can shed light on how to think about what constitutes the benefits and costs of community – for the group, the socially embedded individual and the society at large.

What kind of community would deliver insights pertinent to the issues discussed above? I have already alluded to the fact that Western literature on communitarianism and plurality has given little attention to non-Western contexts, including India with its storehouse of experience. Thus a compelling choice would be a community in India that has had to adapt within a short timeframe to the country's liberal principles, while maintaining strong norms of social cohesion for its own reasons. Legal anthropologists such as Moore (1978), Starr (2002), and Nader (1991, 2002) have argued that contemporary research has to go beyond the traditional, bounded units of analysis like the isolated village, to a broader picture that reflects interaction with external forces. Sally Falk Moore (1978) recommended that:

> … a small field observable to an anthropologist be chosen and studied in terms of its semi-autonomy – the fact that it can generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. (p. 55)

The Tibetan Diaspora, concentrated in India, has acquired an international image beyond its numbers because of its commitment to non-violence, and because it has engaged with the liberal philosophies of its host country and Western sympathizers. The community is a highly religious one, moving away from its theocratic, pre-exilic past and adapting to modern structures of self-governance at a vigorous pace. It is nested within a secular yet religiously intense host country that has legal pluralism embedded in its constitution. How this community handles disputes therefore instantiates the concept of living law as it affects the lives of disputants, and as it changes at the frontiers in response to new challenges.

Finally, while harmonious co-existence is a goal for any society, harmony norms associated with communitarianism have come under liberalist suspicion on grounds that they silence dissent. Legal centralists who favor litigation as the highway to social justice would view the informal, conciliatory methods of dispute resolution often preferred by such groups as suppression of legitimate contest of interests. Yet, as stated by Laura Nader, a champion of that perspective: "[the] silencing of disputes that accompanies the harmony model has not received adequate attention except by those promoting rights by means of adversarial behavior" (1991, p. 51). In his review of Nader's A life in the law (2002), Marc Goodale (2005), re-emphasized that point:

> [t]he discursive struggle that Nader describes, between legal approaches to social justice that are dependent on the strategic use of conflict and resistance on the one hand, and those that seek to mediate conflict through compromise, lumping and the search for "common ground" on the other, has been largely ignored as a topic for research and analysis. (p. 951)

On this count as well then, the Tibetan Diaspora in India provides fertile ground for examining the intersection of communitarian strengths and weaknesses with norms used for social control and resolution of disputes. Drawing on fieldwork in the Tibetan Diaspora in India, I propose to address the identified research niches with the following hypothesis:

1. In a communitarian context, agency has to be understood as socially-embedded and subject not only to internalized norms but also to extrinsic influences;
2. Whether harmony can be said to be operating as ideology in a given community will depend on the rationale behind norms or rules relevant to disputing, and on their efficiency and effectiveness in terms of voluntary compliance.

1.8 Beginnings of an analytical framework

In addition to revealing a research niche calling for scholarly attention, this literature review helps to support an understanding of the Tibetan Diaspora as a particular type of community. It sets the stage for analyzing the uneasy alliance of liberal aspirations and communitarian orientations. The following checklist, distilled from the review, summarizes what is desirable about community, what is potentially problematic and what indicators exist for a mitigation of negative proclivities:

Chart # 1:   Communitarian checklist

Positive aspects of communitarian particularism
Enhances personal morality (integrity and other-regarding behavior)
Enhances sense of duty and social responsibility
Satisfies need for bonding
Fosters self-reliance at community level
Fosters trust, sharing and reciprocity needed for cooperation
Humanizes, creates a culture of caring
Reinforces commitment to shared values
Bonds and shared values help to contain conflict
Informal norms promote pro-social behavior, reducing need for coercion

Potentially negative aspects of communitarian particularism
Hierarchy, conservatism, authoritarianism
Enclave behavior (disinterest in and exclusion of outsiders)
Conflict suppression (or, in Nader's language "harmony ideology")
Conformism
Nepotism
Ascribed or involuntary membership
Problem of representation, inclusive voice

Mitigating factors
Extent of boundary permeability?
How many other kinds of community do individuals have accessible to them?
Existence of bridging associations rather than just bonding associations?
How democratic are internal structures of the community? How inclusive is the moral dialogue to arrive at consensus on shared values?
What are people's lived experiences of community?

II   ANALYTICAL FRAMEWORK: NORMS OF SOCIAL CONTROL

The literature review alluded in several ways to the importance of norms in relation to the nurturance of social cohesion through particularistic obligations and moral commitments. It also touched on norms of cooperation, integrity, and other-regarding behavior as requisites of social order in communitarian context. While most communitarian writers give a nod in the direction of norms, Amitai Etzioni is foremost among the few who have subjected it to a level of scrutiny comparable to colleagues in Law and Economics.

Since the Tibetan exile government has no formal legal authority over its constituents, the community's normative framework takes on a special significance. This section takes a closer look at what is meant by norms in relation to social control, as distinct from the institutions, doctrines and practices of formal law. How do norms operate? How do they relate to formal law? What factors contribute to their efficacy?

2.1   Defining norms: Between a rule and "the way things are done here"

The content of formal law can be described as a well articulated body of substantive and procedural rules, legitimated by secondary rules about law-making (for example, Constitutions, Charters of Rights and Freedoms) and backed by a state apparatus of adjudication and enforcement. Following in the wake of trailblazers such as, Jeremy Bentham, John Austin, Hans Kelsen and H.L.A. Hart, legal positivists basically contended that legal norms derive their validity from being properly posited by recognized authorities within a governance structure.[17] As such, they are not inherently connected with ethics, morality or even justice. They are the antidote to natural law which derives its ultimate authority from a source outside the edifice of

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[17] Works by these authors are generally taken to be seminal in the evolution of legal positivism which remains the dominant legal paradigm today. Beginning with Bentham's famous rejection of natural law as "nonsense on stilts" (The principles of morals and legislation, 1780), positivists defined the sources of authority for law in the human realm. Austin emphasized the "command of the sovereign" as paramount - that is, the power and ability to enforce compliance through threat of punishment (Jurisprudence, 1885). Hart elaborated a model of rules which focused not on the coercive aspect of law, but rather on the content, mode of origin and range of application of law (The concept of law, 1961). Kelsen's General theory of norms, published after his death in 1973, sought a unifying principle for the edifice of law in an original juristic value judgment which he called the "Basic Norm."

rules - for example, from a supreme being, the nature of things, or natural rights by virtue of being human. Legal norms are not only formal and man made, they are assumed to be rational. In theory, the law to be applied in any given instance can be discovered through a process of legal reasoning that requires a coterie of professionals trained for the task. Following Max Weber's principle of rationality as the basis for routinization and fairness, similar cases are to be dealt with similarly and clearly stated rules are to be administered without preferential treatment (Burtch, 1992). There is a substantial literature that challenges narrowly positivist descriptions of how law actually works but for present purposes a summary distinction can be made between legal norms and social norms. Legal norms 1) are centralized and supported by state powers of coercion; 2) are concerned with internal coherence as opposed to morality; and 3) rely on rules, "rules about rules," and on the rationality inherent in rule construction, discovery and application.

Social norms, on the other hand, are a mixed bag of conscious and unconscious, rational and non-rational, largely unwritten, "rules of behavior that people follow for some reason other than the fear of legal sanction" (Stout, 2006, p. 15). The informality of social norms lies in the fact that the state is not the arbiter of their content. The authority for them derives from diffuse social forces influenced by cultural or religious tradition. As expressed by Stanley Diamond: "Customary behavior comprises precisely those aspects of social behavior which are traditional, moral, and religious, which are, in short, conventional and non-legal" (1992, p. 44).

Though not as determinate as legal norms and lacking the apparatus of statutes, courts, legal professions and police, social norms play a greater role in social control than is generally conceded by legal positivists (Sen, 2006; Etzioni, 2000a, 2000b; Cotterrell, 2006; Drobak, 2006; Stout, 2006). Writing in the late nineteenth century, Emile Durkheim had described law as both index and reflex of society, meaning that society's values and norms have an influence on the direction law takes and that law, in turn, can affect normative behavior. Taking the relay in a different direction, contemporary scholars have made much of the fact that legislators and judges who create law are themselves a product of their normative milieu and ultimately answerable to it (Friedman, 2006; Dworkin, 1977; Drobak, 2006). Others have ascertained that law itself is more effective in terms of compliance or deterrence if it is consistent with dominant social norms (Etzioni, 2000a; Cooter, 2000). In situations where norms prove effective and fair in regulating people, law can even be superfluous, adding unnecessary cost and complexity (McAdams &

Rasmusen, 2005; Ellickson, 1991). Therefore, the question of comparative advantage between decentralized norm and centralized law relates directly to whether the latter's coverage should be enlarged or reduced (Ellickson, 1991; McAdams & Rasmusen, 2005).

Several scholars writing about norms of social control have taken pains to make a distinction between behavioral regularities such as convention, habit or routine and behaviors that are also judged to be normatively appropriate (Leiser, 1969; McAdams & Rasmussen, 2005; Ellickson 1991; McAdams 1997; Cooter, 2000). In other words, norms are backed by moral authority – that is, feelings of right and wrong that motivate both compliance and third party enforcement. As defined by sociologist George Homans:

> A norm is an idea in the minds of the members of a group, an idea that can be put in the form of a statement specifying what the members or other men should do, ought to do, are expected to do, under given circumstances. (Cited in Ellickson 1991, p. 128n15)

At the same time, it is not always possible to specify why individuals act in a certain way. Motivations for the same behavior can be multiple or varied, influenced by material and non-material rewards and punishments within a system of social control, as well as by factors extraneous to it. Compliance with norms can be a function of rational choice, as well as of non-rational processes of norm internalization, including leadership, socialization, religious or political indoctrination, acculturation, peer pressure, persuasion or moral dialogues. Etzioni, in particular, has emphasized the deep roots of social norms, asserting that they shape worldviews, identity, ideals and aspirations in such a way as to predispose certain preferences, while pre-empting others (2000a, p. 162). Conflict resolution scholar Mary Clark similarly has asserted that a normative map of behavior has to include not only conscious traditions and institutions, but even the pilings of unconscious beliefs and assumptions about the nature of reality (2002, p.5).

Opening the definition out so widely captures important dimensions but begs a more practical question: How then are we to recognize the existence of a norm? What Robert Ellickson has proposed is that: "Norms are identifiable when they are evidenced by patterns of sanctions, patterns of primary behavior, and aspirational statements" (1991, p. 183). The three indicators are not equally reliable, however:

- **Aspirational statements** are particularly relevant in communitarian contexts. They may appear in leaders' rhetoric, religious texts, and adages of everyday speech used in family, school and community life, or in an individual's articulation of what he or she would do

under given circumstances. Ellickson, however, has cautioned that aspirational statements about appropriate conduct are just one indicator of norms - and a relatively weak one, because people do not always do as they say;

- **Observable behavior** provides much stronger evidence of the existence of a norm, especially when it correlates with aspirational statements;

- **Patterns of sanctions** provide the strongest evidence that a norm is operative, in much the same way as consistent punishment of breach is taken by legal scholars to be evidence of the existence of a rule (Hart, 1961). Norm stability is further demonstrated by the presence of metanorms, such as generally abiding by the rule of law, or being willing to punish those who take no action on a breach of norm.

2.2   Carrots and sticks

If moral authority and sense of fairness provide the legitimacy for norms, what kinds of sanction are powerful enough to elicit cooperation? Scholars have distinguished between sanctions that are positive or negative, and between those that are internal or external to the actor. Unlike the impersonal character of legal enforcement, social sanctioning can involve personal cost for a third party enforcer whose behavior is equally sensitive to incentive and deterrent.[18] McAdams and Rasmusen (2005, pp. 6-8) have outlined three basic sets of sanctions that engage normative attitudes in behavioral choices:

- **Guilt and pride** are both internalized, self-applied, sanctions – the one a punishment for a felt transgression of normative beliefs, the other a reward for felt virtuous conduct. In these cases, there is no concern with third party judgment or detection. If the benefit of norm violation increases, the deterrent effect of guilt or incentive effect of pride may be diminished, resulting in higher incidence of violation;

- **Esteem and disapproval** depend on external observers and on the primary actor's subjective perception of and concern for their opinion. Praise and censure, on the other hand, are the overt expression of what people think of another's action. These sanctions are effective to the

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[18] Galston (2004, p. 92) and Stout (2006, p. 32) have reflected on some of the costs a third party enforcer faces in an informal system: while there may be no issue with disparaging remarks or dirty looks, having to directly and personally confront the wrong-doer may invite resentment or spiteful, possibly even violent retaliation. There also may be no procedural safe-guards – third party enforcers could be unduly nosy or motivated by vengeance, with no recourse for the accused whether the accusations were fair or not.

extent that transgression is detectable, or salutary behavior is genuine as opposed to pretended;

- **Shame** resembles both guilt and disapproval, but is more intense and widespread in its effect. A person can feel shame for not having lived up to standards set by the normative beliefs of others, even if no-one else knows or has expressed disapproval. Shaming can also be a powerful punishment which publicly signals that the person has seriously transgressed group norms. The public nature of shaming can have a particularly strong deterrent effect on bystanders in face-to-face societies.

Reward-triggering norms that play on the desire for reputational enhancement, prestige, acceptance or inclusion (McAdams, 1997; Stout, 2006) are also of special interest in communitarian context. Similarly, negative sanctions are more effective in cohesive groups through which information tallies and gossip circulate easily (Ellickson, 1991; Merry, 1988). While negative sanctions do not have the power of legal enforcement, it would be a mistake to underestimate their coercive capacity in both a psychological and a material sense. As summarized by McAdams and Rasmusen (2005, p. 6), those who fail to conform to group norms can expect punitive reaction in a range of forms from benign to aggressive:

- Guilt, shame and gossip;
- Admonishment and insult;
- Social ostracism and shunning;
- Economic boycott and exclusion;
- Property destruction; and
- Violence.

In trying to understand how norms and associated sanctions operate, scholars of Law and Society have taken a very different tack from their colleagues in Law and Economics. The former often have focused on internal mechanisms, relying on local knowledge, institutional ethnographies and thick description of norm transmission processes. Etzioni's analysis of how norms are internalized and its meaning for public policy is a prime example of this tradition. Law and Economics scholars, on the other hand, have concentrated on behavioral analysis using game theory to predict under what circumstances norms might evolve or be honored - for example, norms of cooperation, reciprocity and other-regarding behavior. The approach is primarily concerned with the effect of external sanctions and it relies heavily on ad hoc assumptions to

buttress theoretical claims. The two schools vary as much in methodology as in their basic assumptions about human nature. Taken together, they provide an important reality check for why individuals would choose to comply with a given norm.[19]

2.3   The mechanics according to Law and Economics

Game theory is predicated on the assumption that players will act out of self interest, rationally assessing the costs and benefits of their moves. Scholars in this mode do not necessarily deny that the rational actor may be influenced by cultural traditions, role models, personal experience, knowledge gaps or distorting factors like cognitive dissonance, but they tend to purge their models of such messy considerations. In one-shot games like the famous Prisoner's Dilemma, rational choice theory predicts that there is virtually no possibility of cooperation. In the absence of communication or replay options, the rational actor perceives no choice but to maximize his own payoff regardless of what the opponent does. Applied to norms, a rather Hobbesian extrapolation from such theorizing could be that strangers lack the trust needed for cooperation, and hence require the formality of centralized law for social order (Epstein, 2004). This outcome would correlate with the previously discussed communitarian critique that liberalism fosters mobility on several fronts, the result of which is a fraying of normative relationships vital to social cohesion and order at the local level.

Significantly, in other social dilemma games, involving more players or involving more rounds, cooperation rates have been found to rise dramatically, with obvious implications for informal systems of control (Stout 2006, p. 18). Robert Axelrod's (1984) landmark report on an Iterated Prisoner's Dilemma tournament that he organized in the early 1980s demonstrated that altruistic strategies actually could fare better than greedy ones, all within a general logic of pursuing self-interest. He deduced that, in a setting of ongoing encounters, individuals will often adopt a strategy of acting cooperatively until crossed and then retaliating with eye-for-an-eye remedies. The most successful strategies in terms of maximizing payoffs even left room for forgiveness - that is, a return to cooperation in response to the same from the opponent. This more hopeful

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[19] Scholars like Etzioni, Cooter and Ellickson, have ventured a syncretic orientation to arrive at more holistic understandings of internal and external factors regulating human behavior. Though not having the intellectual cachet of "Law and Economics" or "Law and Society", a sub-discipline that goes by the name of "Law and Socioeconomics" has been in existence since 1989 (Etzioni 2000b, p. 158).

outcome was a major corrective to the classical Law and Economics paradigm because it showed that self-interest was not hard-wired to preclude consideration for the benefit of others.

Lynn Stout's work on other-regarding preferences and Robert Ellickson's work on utilitarian norms probe beyond the simple notion of self-interest while retaining the primacy of rational actor. Both have claimed that rational choice analysis does have a normative dimension in the impulse to maximize aggregate utility.

Drawing on evidence from decades of game theoretic research, Stout (2006) has concluded that people will often exhibit kindness, thoughtfulness, generosity, or sympathy for others and that such altruistic behavior can be both endemic and predictable (p. 34). She has deduced that a shift between self-regarding and other-regarding behavior will depend on perceptions of social context and considerations of relative personal cost. Stout has identified several social variables that affect cooperation rates in social dilemma games, including players' perceptions of:

- How their behavior will affect others;
- What others expect or desire of them;
- Whether fellow players will behave in other-regarding fashion; and
- The kind of relationship they share with others (p. 22).

Significantly, Stout has found that the perceptions themselves are a function of four additional variables – namely:

- Whether the players had been given an opportunity to speak with each other or to deliberate together before acting;
- The extent to which a sense of group identity among players had been promoted or discouraged by experimenters;
- An increase or decrease in the personal or collective stakes of cooperative behavior; and
- The kinds of directions given by experimenters, suggesting that players are highly sensitive to the support of a respected authority.

Translating game results into real life behavior is the major challenge for this method of inquiry, yet the evidence strongly suggests a role for norm entrepreneurs. That is, accepted leaders who foster a sense of identity and mutual obligation can raise the level of intra-group cooperation and compliance with the norms that sustain that cooperation. Equally significant is Stout's deduction

that, if leaders want people to conform to altruistic norms, then it is important for them to promote the feeling that others in society are also complying with those norms. Following Cooter (1998), Kahan (1996), Lessig (1995) and Sunstein (1996), Stout has further extrapolated that law itself can change behavior as much through its expressive function as through its regulatory power (p. 33). By expressing a "should," even if there is no sanction involved, law can educate people to its norms – an important consideration for the socializing of upcoming generations or newcomers to a community.

The utilitarian quality in norm compliance is differently elaborated in Ellickson's widely referenced Order without law: How neighbors settle disputes (1991). Though a self-confessed positivist and Law and Economics scholar, Ellickson has essayed a more socio-anthropological approach in this study of how norms operate among rural residents in Shasta County, California. He found that ranchers avoided and resolved common disputes around obligation or liability according to norms, even though they had a legal right to go to court. Adjoining ranchers, for example, shared fencing costs and took responsibility for where their cattle roamed, going by common sense norms of neighborliness as opposed to any substantive law applicable to the situation. Moreover, the sting of gossip, threat of retaliation and even violent self-help adequately dealt with any repeated breach of the norms in question. His findings led him to the hypothesis that:

> Members of a close-knit group develop and maintain norms whose content serves to maximize the aggregate welfare that members obtain in their workaday affairs with one another. (p. 167)

Consistent with the perspective of communitarian jurisprudence noted earlier, Ellickson's research supports the view that decentralized social forces can be efficient mechanisms for social order and that continuing relationships help to civilize behavior. His conclusion was that, for workaday disputes where utilitarian considerations matter most, formal law is unlikely to improve on a group's customary rules. Ellickson was careful to qualify that his hypothesis did not apply in a wider, transient social environment because the quality of gossip, reciprocal power and enforcement would not obtain in the same way as in a close-knit group, which he defined as:

> [A] social network whose members have credible and reciprocal prospects for the application of power against each other and a good supply of information on past and present internal events. (p. 181)

2.4   Enlarging the picture with Law and Society

Without denying the contribution of Law and Economics to the study of norms, Law and Society scholars have seen the issues in less cut and dried terms. They have contended that theorizing from the preferences of supposedly free, rational agents[20] - whose aggregated will is then taken to constitute social order - paints an incomplete picture of the social dynamic. Foremost among these scholars is Etzioni who argued that non-rational processes are pivotal to any analysis of social norms because they address more fundamental questions about how observed preferences are shaped in the first place and, more importantly, how they can be changed (2000b). Preferences are a sub-category of intrinsic predispositions, which he has defined as:

> ...the directions in which an actor would channel his or her efforts if left to his or her own devices. These predispositions reflect a combination of people's biological urges and their cultural imprinting. (p. 161)

Social norms, Etzioni has argued, can change predispositions through a process of internalization and can convert into desires obligations that formerly had to be imposed by negative sanction. The point is conceded by a handful of economics-inspired writers, despite the encroachment of a non-rational aspect:

> Internalization is an element of socialization whereby the actor learns to follow rules of behavior in situations that arouse impulses to transgress and there is no external surveillance or sanctions. This is accomplished through such nonrational processes as identification with authority figures and affective attachments. (2000b, p.167)

In short, if social norms can influence intrinsic predispositions, then they can also change what an actor comes to prefer, as well as the intensity of that preference. Social norms can even create a meta-preference for conformity to behavioral standards such that a mere convention can take on a normative meaning. In children, norm internalization is fostered through education but this can be changed in the adult person through acculturation processes such as persuasion, religious conversion, leadership or propaganda.

Although Law and Economics has not concentrated on the origin or development of norms, some authors have advanced theories that norms evolve rationally under certain circumstances – for example, out of experience or repeated interaction (Axelrod, 1984), out of a need for utilitarian

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[20] The concept of free, rational actor logically requires that preferences be predetermined and fixed, thus leaving no room for the influence of social norms, other than as external costs to be factored into a decision.

efficiency (Ellickson, 1991), out of a desire for esteem (McAdams, 1997) or instrumentally through rational elites (Becker, 1996). Again, however, Etzioni has emphasized the non-rational factors that play decisive roles in norm formation – foremost among them being history and the narratives handed down through historical transmission. What Etzioni has suggested is that an understanding of psychological and cultural factors has to set the stage for more studied consideration of specifics in a given situation. Thus, while utilitarian calculations may be the surface of what is observed, there is a substratum – including tradition, superstition, ritualism, imitation, nationalism or abstract values - without which observed behavior cannot be adequately interpreted. Abstract values, like ideas of progress or fairness or spirituality often are "transmitted from generation to generation through communal processes such as rituals, holidays, and identification with older authority figures" (2000b, p.174). Once routinized these values become the source of many norms, which are then legitimated by appeal to tradition or group identity or nationalism. From there norms can supplant laws, become laws, reinforce laws or become strengthened by laws.

2.5   Summary: Efficiency and effectiveness of norms

On what basis would a state enlarge or reduce the scope of law where communitarian norms regulate the behavior of its members? The foregoing discussion points to a conclusion that criteria of fairness and efficiency would be paramount.

All scholars have acknowledged that there are norms that are dysfunctional - for example, norms of racial or gender discrimination. McAdams and Rasmusen (2005, p. 34) have cited works by McAdams (1995), E. Posner (2001) and Kuran (1998) that demonstrate ways in which discriminatory norms related to economic transaction, housing, or employment can violate broader standards of equity or fairness and hence require anti-discrimination law or affirmative action. There is general acknowledgement that law could never be as effective as norms in regulating the affairs of family, yet there are circumstances in which Family Law is vital to safeguarding the interests of vulnerable members. As noted by Galston (2004), legal enforcement may be necessary "when social norms improperly shield certain forms of conduct from scrutiny and redress," as in cases of spousal abuse (p. 92). As a baseline criterion, therefore, communitarian norms would have to be consistent with standards set by constitutions and

statutes applicable to all citizens. Where norms fail that test, fairness would require the intervention of law's expressive, regulatory and corrective force. Where norms pass that test, efficiency moves to the foreground as a consideration.

A norm's efficiency can be thought of as the cost or effort of achieving compliance, relative to social control through more formal legal, means. It can also be viewed in terms of the individual, for whom the cost of compliance would be a function of material or psychological benefits realized or foregone. Ellickson (1991), Cooter (2000), Epstein (2004) and Etzioni (2004, 2000a, b) have been optimistic about the efficiency of group norms that affect only members of the group. The most obvious efficiency comes from obviating the expense of police, lawyers, judges, and administrators in circumstances where norms achieve equivalent or superior results for social order. As noted already, Etzioni and others also have argued that when laws are congruent with norms, public authorities have a reduced monitoring burden because there is a sense of fairness and legitimacy supporting internalized commitment to compliance. The norm may even be that members should not make use of legal rights. Epstein (2004) has noted that there are many instances where parties entitled to see legal enforcement of promises choose to keep their dispute out of the legal system. Legal rules can even be counterproductive in communitarian settings.

Norms also can be inefficient, particularly when new conditions call for a normative change. Scholars generally agree that norms are hard to shift, having a tendency to freeze behavior in place. While the ability of law to change behaviors deeply rooted in norms can be overstated, it is possible that a new law could give the initial impetus to normative change by altering perceptions of what incurs disapproval and thereby creating a new basis for shame (McAdams, 1997). Norms also can be inefficient if they cause people to ignore the law, or if they disproportionately serve the interests of some over others. Scholars such as Ellickson (1991) and Cooter (2000) have expressed concerns about the external effects of norms on non-group members, a concern directly related to communitarian boundary issues. Kuran (1998) further has cautioned that violence can ensue when in-group norms engender sudden cascades in the level of ethnic identification (McAdams & Rasmussen 2005, p. 34).

How competing needs for social order and autonomy are balanced in democratic context is reflected in the quality of norm compliance. It can be an indicator of whether the normative framework of a communitarian society is unduly constraining. Etzioni proposed a schema for

assessing the quality of compliance as a function of kinds of power (exercised mainly by elites in pursuit of societal goals of social order) and kinds of individual disposition toward compliance – understood as a measure of willingness to trade away some autonomy (Lehman, 2000, pp. xviii-xix). Thus, for example, coercive compliance (the stick) implies power to enforce negative sanctions strong enough to deter even recalcitrant persons not inclined to comply. Utilitarian compliance implies remunerative power (carrots in the form of material rewards) that entices voluntary compliance. Normative power implies the ability to control symbolic rewards and deprivations, such as prestige, esteem and acceptance. For Etzioni, normative compliance represents the highest quality of compliance, because it is underpinned by the consonance of moral values between those creating and/or enforcing the norms and those expected to comply. The next best scenario would be utilitarian compliance, which can be effective in the short term but, if the complying actors are only calculating "what's in it for them," there ultimately may be a loss of social capital. The least desirable form is coercive compliance because it implies an alienation that directly challenges social cohesion in communitarian context, while raising questions about compatibility with democratic principles.

III ANALYTICAL FRAMEWORK: HARMONY IDEOLOGY

What has been said about the nature of communitarianism and about norms of social control comes into sharper focus when considering how a community handles disputing. Norms around disputing have to be understood in terms of several factors outlined already: 1) the broader cultural, religious and historical legacy that creates predispositions to conflict or harmony; 2) norm entrepreneurship and the structures of control; 3) the distinction between social norms in informal dispute resolution processes and legal norms in formal adjudication processes; 4) the impact of norms on disputants; and 5) the resulting quality of compliance considered from perspectives of fairness and efficiency.

This section lays the groundwork for thinking about what might be involved in an ideology of harmony related to dispute resolution. It briefly defines key concepts – harmony, conflict, authority, legitimacy, ideology, hegemony and power – before summarizing opposed viewpoints on the contribution to social order of informal versus formal systems of dispute resolution.

3.1 Theoretical perspectives on harmony and conflict

In sociology, harmony is associated with functionalism, a perspective that treats society as a stable, orderly system in which most members share a common set of values, beliefs and behavioral expectations (Kendall, Murray & Linden, 2000, p. 18). Functional sociology is concerned primarily with macro theorizing on the sources of social cohesion and stability, and the ways in which order is maintained. The focus is on structures that endure over time – for example, family, government, religion, occupations and education – and on their relation to the whole. Communitarian thinking reflects this perspective, including the idea that society will tend toward equilibrium, with its interrelated parts (e.g. institutions and structures) serving a function toward that end. This perspective does not deny the existence of conflict but interprets it as a form of temporary dysfunction signaling strains in the system. The implicit assumption is that such strains can be addressed by the relevant functional units and that the presence of conflict will diminish as societal management of it evolves. Law, for example, to the extent that it is

based on a widely shared moral consensus, would act as a unifying force to settle disputes, thus restoring systemic or communal equilibrium (Burtch, 1992).

The classical sociologist in this tradition was Emile Durkheim (1858-1917). For Durkheim, law was a symbol of social solidarity and a measure of its evolution. He theorized society as a moral phenomenon with the individual bound by this moral milieu or collective conscience, particularly in simpler, small-scale societies. Though evolutionary and inattentive to realities of social stratification, Durkheim's thinking on law and the sociology of religion remains useful when considering the constitutive nature of religious norms for religious sub-state groups, such as the Tibetan Diaspora. He has suggested, for example, that communication through religious symbol conveys to individuals that they are in harmony, making them conscious of their moral unity. In this way, symbols represent an intellectual conception of society, and at the same time serve to create or reinforce it (1973). If symbols point to social order through the commonality of understandings, rituals can be thought of as an enactment of social order through patterned behavior. Durkheim claimed that the frequency of such patterned interaction was one of the most important indicators of a group's social cohesion. Religious ritual often points back to some founding experience, some archetypal moment when the basic symbols came into existence, thus re-inscribing a sense of shared tradition and even mythical or actual origin. Bounded by time and space in a way that heightens the moment of experience, ritual conveys the meaning of continuity and permanence (Mach, 1993, p. 72).

Functionalism spawned elaborate descriptions of the self-equilibrating properties of society, with basic social institutions evolving to meet basic social needs, as in the works of Talcott Parsons and Robert Merton. By the 1970s, however, functionalism lost its appeal for several reasons – foremost among them being its evolutionary caste, its emphasis on consensus, its tautological logic, insensitivity to power relations, inability to explain social change, and tendency to overlook authority structures that preserve a status quo favorable to those vested with authority. A similar pattern was evident in anthropology. Leading anthropologists such as Bronislaw Malinowski and Alfred Radcliffe-Brown were focusing on the functional interrelationships of existing customs and institutions, an approach which disregarded historical process and imputed social cohesion to the societies under study. In short, scholars anticipating harmony – perhaps idealistically, nostalgically - found it, and explained it with static functionalist frameworks (Nader, 1965, p. 33; 2002, p. 68).

A conflict perspective, on the other hand, views social life as a continuous power struggle among social groups competing to control scarce resources (Kendall, Murray & Linden, 2000, p. 92). The resources can be physical, economic, political or even psychological (as with esteem, influence and status). For conflict theorists confrontation is productive as a catalyst of social reform. Processes legitimating conflict can even support cohesion (Levine, 1991, p. 1769). From this perspective, harmony promoting norms may well foster social cohesion, but they equally can block social change and preserve the privileged position of those with authority. A conflict model of the social order takes law, for example, as the site of profoundly differing interests that may never be truly reconciled. This model recognizes the pervasive effects of power relations in society and does not hesitate to interrogate the interests served by law itself (Burtch, 1992). The classical proponent of the conflict perspective was Karl Marx (1818-1883) who argued that, historically, relations of production have determined all other social systems in ways to which those being dominated were oblivious. While his economic determinism is not relevant to this research, related concepts such as hegemony and legitimating ideologies are essential for thinking about social hierarchy, including patriarchy and the authority vested in political, bureaucratic and legal professions.

3.2 Authority and legitimacy

Previous sections have grazed past hierarchical issues without insisting on the need to deconstruct power relations implicit in social control. Under norms, there was mention of rational elites, leadership, norm entrepreneurs, moral authority and forms of power but no questioning of why these should be taken as givens. Under communitarianism, there were more suggestive references to the potential for prescribing roles of subordination, using moral voice to oppress members, enforced conformity and patriarchy. What is needed now is a clearer understanding of how domination works, in subtler terms than the application of brute force or coercive power. Bullock and Stallbrass usefully distinguished authority from both:

> Authority is an attribute of social organization – a family, a corporation, a university, a government – in which command inheres in the recognition of some greater competence lodged either in the person or in the office itself. ...In contemporary social theory, the important component in the exercise of authority is legitimacy, the rightful rule or exercise of power, based on some principle (e.g. consent) jointly accepted by the ruler and the ruled. (1977, p. 491)

Of note is the inclusion of relative competence, perceived or actual, of person or position, as an element of hierarchical ordering. This becomes an important lens through which to reflect on norm entrepreneurship in general, and more specifically on the implications for the professionalized roles of third party interveners in disputes. At a macro level, the definition clarifies the relationship between authority and the rightful exercise of power but is thin on why people would accept authority.

Focusing on what it is that legitimates domination in the eyes of the public, Max Weber (1864-1920) theorized that social values and norms interact with law to generate three ideal types of authority or stages of domination.[21] These stages imply an evolutionary development of law – namely, "a law of advancing rationalization" (Hunt 1993, p. 106). At the bottom of the evolutionary typology is traditional authority, which relies on a longstanding custom of obedience to particular rules, reminiscent of John Austin's law as command and Durkheim's mechanical solidarity. This typology is associated with substantive systems of legal thought, namely those relying less on the internal self-sufficiency of a mature formal code of rules, and more on external criteria such as religious, ethical or political values (Hunt 1993, p.105). There is little reflexivity involved - people obey because that is the way it has always been done. Within this typology, Weber distinguished between patriarchal and patrimonial authority. He associated patrimonial systems with pre-industrial societies that rely on traditional authority structures such as monarchies or theocracies, which today largely have been eroded by the forces of diversity through migration and complexity in the division of labor. Patriarchal systems, on the other hand, naturalize authority on the basis of gender. In patriarchal systems, men are seen as natural heads of households with a division of labor that relegates women to subordinate roles both domestically and in the public realm.[22]

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[21] The notion of ideal types in Weber refers not to a statement of what is preferred but to an abstract model that describes the features common to phenomena such as authority, professions, bureaucracy, or law. As a methodological device, ideal types provide a construct against which like phenomena can be analytically compared (Kendall, Murray and Linden 2000, p. 183).

[22] Patriarchy, and its expressions in all aspects of social life, is the subject of a vast feminist scholarship across many disciplines. Feminists have borrowed on some of the thinking in the classical trilogy of Weber, Marx and Durkheim, but have firmly rejected the universality these authors claimed for their social theories. Written by men, out of a male, Euro-centric experience, traditional sociology not only failed to understand half of humanity but set the terms of discourse in such a way that it contributed to the continuing subordination of women. Among the various approaches to contemporary sociology (e.g. functionalist, conflict, interactionist, structuralist, post-modern), the feminist perspective has gained a prominent position in its own right (Kendall, Murray & Linden, 2000, p.22). For a feminist critique of Weber's analysis of patriarchy see R.A. Sydie's Natural women cultural men: A feminist

The next level in Weber's typology - charismatic authority – is of special interest to this research given the importance of ethnic and religious leaders in norm entrepreneurship and, specifically, the stature of the Dalai Lama within the Tibetan community as well as internationally. Charismatic authority relies on formal types of legal thought but lacks the rationality principle of more advanced systems. The validity of the claims to legitimacy on charismatic grounds rests on:

> [d]evotion to the exceptional sanctity, heroism or exemplary character of an individual person, and of normative patterns of order revealed or ordained by him. (Weber, 1968, Vol. I, p. 215)

A charismatic leader is able to elicit the voluntary submission of society because he or she captures the central concerns of its members and projects a vision of the way forward with which members readily can identify. Though this form of authority is very powerful, it is inherently temporary or unstable. Because of its reliance on one mortal person and perhaps a small coterie of administrative supporters, there is always a crisis of succession. What is critical, however, is the notion that charismatic authority can be routinized through doctrines and structures whereby followers borrow the leader's charisma for themselves. The transfer is not automatic as it still will depend on the values, norms and expectations in which people's willingness to acquiesce is grounded.

> The routinization of charisma occurs when charismatic authority is succeeded by a bureaucracy controlled by a rationally established authority or by a combination of traditional and bureaucratic authority. (Kendall, Murray & Linden, 2000, p. 439)

In Weber's schema, rational-legal authority represents the third and optimal condition for legitimacy and efficacy because it is derived not from coercion or personalism but from a generalized belief that existing laws are reasonable and fair, administered impersonally by a bureaucracy trained for that purpose. For Weber, bureaucracy is the most powerful of all status groups but any arbitrariness of governance or abuse of power has to be held in check by rule of law. [23] The bureaucracy, with its explicit rules and procedures, technical competence, clear division of labor, career paths and internal hierarchy, exists to serve the public interest. Its domination by rule of law (as opposed to rule by persons), implies that no-one, not even

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perspective on sociological theory (1987). For a good general introduction to the range of concerns in feminist scholarship, see Rosemarie Tong's Feminist thought: A comprehensive introduction (1989).

[23] Rule of law can be defined as: "law plus standards – that is, law subject to criticism by (and inviting appeals to) rules and principles governing how laws are made, applied and obeyed" (Selznick, 2002, p. 110).

government can be above the law because authority is vested in positions (with defined limitations, duties and procedural rules for accession), not in the incumbents of those positions.

Weber's typologies of authority are useful as an entrée to the subject of power but limit thinking to consensual forms of its legitimation.

3.3   Power, ideology and hegemony

Most definitions of power conceptualize it as a social relationship that involves both leaders and followers, with the added element that the former is also capable of overcoming any resistance from the latter. Weber's definition is typical:

> Power is the ability of persons or groups to carry out their will even when opposed by others. (Kendall, Murray & Linden, 2000, p. 438)

Power is a central concept in political theory as much as in sociology, and analytical frameworks abound. Pluralist models are basically functionalist, emphasizing that power is widely dispersed in democratic society and that competition among heterogeneous interest groups protects against overwhelming domination by any one (Clegg 1989, p. 61). In this view, government and elected officials mediate a process in which relative strength is not fixed, but rather subject to shift and cross-cutting allegiances. Elite models, on the other hand, are born of a conflict perspective which emphasizes that power is concentrated in the hands of a few, leaving the masses with little influence on public policy. As noted previously, in this view, even the institutions of law and order serve the interests of an economically and politically intertwined elite. Early elite theorists Vilfredo Pareto (1848-1923) and Gaetano Mosca (1858-1941) emphasized that social order required planning and organization such that those few with a record of competence, dedication, accomplishment or training inevitably assumed superior roles across a spectrum of fields.

Both pluralist and elite theories have their merits, as well as their critics.[24] What is of greater relevance to this research are the various ways in which relational dynamics operate between differentially empowered groups. What kind of agency is implicated in power? In relatively

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[24] See for, example, Bachrach (1967) and Clegg (1989) for critiques that question the empirical basis for these theories, and their inability to account for varying outcomes in the social dynamics between those with power and those without.

stable, peaceable societies how do people with power win the voluntary compliance of those with less power? The elitist and pluralist theories assumed an intentional application of power in issue-based, overt conflict or political decision-making situations that would be observable as grievances or policy preferences. Peter Bachrach and Morton Baratz (1970) introduced the important concept that power also needed to be considered as an element in latent conflict and intentional or negligent non-decisional situations. In other words, the powerful may choose to ignore, deny or suppress the concerns of the less powerful so that these never become observable as such. Those with less power may also have a defeatist attitude based on prior experience and therefore never bring their grievances forward. They may even be culturally patterned in such a way that they don't know their own wants or preferences. This set of ideas was pushed further by Steven Lukes in his widely referenced Power: A radical view (1974, 2005). The original text and its new edition critiqued previous theories, spotlighting latent conflict and bringing the ideological workings of power to the foreground:

> Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable or because they value it as divinely ordained and beneficial. (1974, p. 28)

In power discourses, ideology reflects a form of norm aggregation that distorts reality. Understood in the sociological sense it denotes a belief system which can be used to mobilize people for action, or as an interpretive lens through which social groups understand themselves (Bullock and Stallybrass, 1977, p. 298). In a Marxist political sense, ideologies are systematic views of the way the world ought to be. Embodied in religious doctrines and political values, they become justifications that mask some specific set of interests (Kendall, Murray & Linden, 1997, pp. 548-548). The normative consensus implied in ideology may be unconscious, as a habit or emotional tie to something whose meaning and consequences are not clearly understood. If human agency depends on thought and consciousness, then the potential for manipulated consensus to legitimate power needs deconstruction in democratic context. Albeit coming from a different historical moment, Antonio Gramsci (1891-1937) elucidated a now familiar concept of how ideology can involve both purpose and compliance in the manufacture of worldviews.[25] He

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[25] Gramsci, a founding member of the Communist Party of Italy, was imprisoned by Mussolini's fascist regime; most of his analyses of culture and political leadership are contained in a series of "Prison Notebooks," which he wrote while incarcerated.

explained that dominant cultures rule with the consent of the governed, by shaping a hegemony of values, norms, perceptions and beliefs. In his words hegemony exists in:

> …the intricate network of relations that bind political and economic power with cultural authority to produce social order sustained in large measure by the legitimacy conferred upon it by the manufacturers of consent. (1929-1930, p. 21)

The key feature here is not just political or economic control exercised by one class, but its success in projecting its own way of seeing and doing, so that it is accepted as common sense by those who are in fact subordinated by it. Feminists have further emphasized that such hegemony marks the boundaries of permissible discourse and discourages clarification of social alternatives (Goldstein, 1992, p. 62). As an entity, the state itself is complicit. Louis Althusser has emphasized that the ideological state apparatus is in a position to promote goals and ideas in society that are in line with its own, without having to admit that this may be an agenda (1999, p. 317). The idea dovetails with Gramsci's material structure of ideology, which includes everything that can influence public opinion, such as the media, scientific reviews, parish bulletins, libraries, schools, and even street names (1930, p. 53).

A word of caution, however, is in order. A criticism of theories coming out of the conflict perspective is their tendency to over-emphasize the Machiavellian element in power as something that is consciously held and deliberately wielded. For anthropologist Clifford Geertz, ideology itself has become ideologized – the term having become a value-laden accusation rather than an analytic concept denoting one kind of cultural symbol system among others (1973, p. 194). The distinction is critical for this research, given the complexity of the interaction among social, psychological and cultural factors in individual autonomy and choice. A non-evaluative conception of ideology opens the way to a more even-handed exploration of why and how communitarian groups would orient their normative framework toward harmony. Geertz (1973) has argued that a non-evaluative conception would direct attention to:

> [T]he role that ideologies play in defining (or obscuring) social categories, stabilizing (or upsetting) social expectations, maintaining (or undermining) social norms, strengthening (or weakening) social consensus, relieving (or exacerbating) social tensions. (p. 203)

3.4   Power, empowerment and dispute resolution

Set in the context of dispute resolution, the concept of power also has to include agency at the micro level of analysis, as in the interactionist approach to sociology. According to this perspective, "people continually negotiate their social realities" and co-author their lived culture by reinterpreting values and norms in each social situation they encounter (Kendall, Murray and Linden 1997, p. 93). Thus, while most conflicts involve power, it is not always top-down, asymmetric, uni-directional, competitive or fixed (Deutsch, 1973; Boulding, 1989; Kriesberg, 1982; Hocker & Wilmot Burton, 1985; Blalock, 1989; Bush & Folger, 1994; P. Coleman, 2000; Menkel-Meadow, 2001; Saposnek, 2006):

> Power can be usefully conceptualized as a mutual interaction between the characteristics of a person and the characteristics of a situation, where the person has access to valued resources and uses them to achieve personal, relational, or environmental goals, often through using various strategies of influence. (P. Coleman, 2000, p. 113)

This tactical view of power adds nuance to the relational dynamics in situations of conflict and is relevant as much to disputants as to third-party interveners. It allows for a distinction between actual, potential and perceived power, between power as means or end, and between power expressed in process or outcome. An important strategy of influence, for example, is the power of persuasion (appeals to emotion, or conscience and shared values, or data and logic), which can be deployed in complex ways by either side in a dispute or by persons trying to facilitate a resolution (Kriesberg, 1982, pp. 115-117; Chaiken, Gruenfeld & Judd, 2000; Cobb & Rifkin, 2001; Bush & Folger, 2005). Naturally enough given its focus, the conflict resolution literature rejects a purely competitive or coercive view of power. Though scholars may attach different labels, a common categorization of power distinguishes between three broad types, the last two finding strong emphasis in feminist writings:

- **Power over**: implies dominative and competitive forms that can be physical, psychological or ideological - finding their source in authority, human or material resources, skills and knowledge or sanctions and threats;

- **Power to**: implies the ability to realize one's goals and places the focus on empowerment – that is, an ability to define one's issues and the settlement terms that would be acceptable; voluntary trade-offs can be made in response to the possibility of reward or reciprocity, sometimes referred to as exchange power;

- **Power with**: implies collaboration with others to achieve desired ends in an integrative, mutually productive way; legitimacy based in loyalty and respect, for example, is an aspect of integrated power.[26]

In practice, the different categories of power are rarely distinct because, as strategies, they are dynamically invoked by different parties, in combinations that seek to achieve desired ends. The distinctions have implications for intervener ethics, as well as for different approaches to dispute resolution.

Issues around power asymmetry, control, and empowerment in dispute resolution are at the heart of a debate, particularly evident in North American scholarship, between advocates of rights based litigation and proponents of alternative approaches that seek consensual outcomes rather than court adjudicated ones. It is easy for a discourse dichotomized in this way to overlook the varied forms that dispute resolution actually can take in both formal and informal venues. It pays limited attention to reflexive debates within opposing camps. Reciprocal evaluation from opposite poles also skims over caveats that acknowledge the situation-specific nature of dispute resolution as a socially constituted and gendered activity as emphasized by scholar-practitioners such as Lederach (1991, 1995, 2005), LeBaron (2003) and Grillo (1991). In other words, the relative advantage of an adjudicative or consensual model cannot be determined without full attention to the particularities of a circumstance and its context. That being said, the debate does crystallize important critiques associated with each model, in North America as elsewhere. For modernizing traditional societies, it also encapsulates tensions in the encounter between customary law-ways and state law as a basis for resolving disputes.

Before considering what the dichotomized form of the debate brings out, a look at common classifications of the range of institutions will be helpful. As summarized by Chrisptopher Moore (2003), disputants have a number of options for working through their differences even before approaching a third party and after exhausting institutional supports. Typically, the spectrum of possibilities varies in terms of several factors, including: the degree of coercion or disputant control, the authority of any third party intervener, the formality of the process, the extent of

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[26] See P. Coleman (2000, pp. 110-111) and more generally the extensive files on power in relation to conflict and conflict resolution analysis that can be accessed at: http://www.beyondintractability.org/essay. For a feminist analysis of power in conflict, see Taylor & Miller (2001, pp.70-73).

confidentiality or privacy, and characteristics of the outcome. These are illustrated in Chart # 2 below, which is adapted from Moore (2003, p. 7):

Chart # 2:   Continuum of conflict management and resolution approaches

Private (decision making by disputants)				Private (decision making by third party)		Legal, public (authoritative third-party decision making)		Extralegal (Coerced decision making)	
Conflict avoidance	Informal discussion and problem solving	Negotiation	Mediation	Administrative decision	Arbitration	Judicial decision	Legislative decision	Nonviolent direct action	Violence
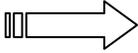
⯈ **Increased coercion and likelihood of win-lose outcome** ⯈
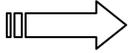
Other classifications put the spotlight on levels of voluntary submission that are indicative of the overlaps and mixed processes – for example: conciliation, voluntary mediation, mandatory or court annexed mediation, non-binding arbitration, binding arbitration, mini-trials, summary jury trials and litigation.[27] Arguably, the most ubiquitous term associated with alternatives to litigation is mediation, but many Western scholars have noted that the term is used in an immense variety of ways, frustrating consensus on the appropriate role for mediators and the establishment of standards for contemporary professional practice (Love, 1997, p. 34; Nolan-Haley, 1996, p. 94). Moore (2003) has provided an operational definition of the mediation process which highlights some of its more widely recognized distinguishing features:

> Mediation is generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute. In addition to addressing substantive issues, mediation may also

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[27] For a succinct overview of the broad distinctions, see Meek (1996, pp. 2-5). More generally, see Kolb (1983), Herrman, Hollett & Gale (2006, pp. 19-78) and McEwen (2006, pp. 81-98).

establish or strengthen relationships of trust and respect between parties or terminate
relationships in a manner that minimizes emotional costs and psychological harm. (p. 15)

References such as "voluntarily," "mutually acceptable" and "limited or no authoritative
decision-making power" underline the centrality of party autonomy and self-determination. From
the point of view of ethics, Morris has confirmed this principle: "Overwhelmingly, the dominant
underlying principle articulated (or implicit) in the [ethical] codes is party self-determination"
(1997, p. 307). At the same time, individual mediator orientations are influenced by the context,
as well as diverse values, goals and ethics. Such factors determine the relative emphasis placed
by mediators on party control, party satisfaction, distributive justice, communal solidarity or
even transformative potential at individual, group or societal level (Morris, 1997, pp. 304-305).
Thus, for example, as described by Peter Coleman, party control may have to be tempered by the
mediator with power balancing tactics when high-power holders jeopardize the well-being of
low-power holders (2000, pp.124-126). Trina Grillo (1991) has pointed to process dangers for
women in mandatory mediation if mediators fail to deal with oppressive power dynamics,
particularly in cases of spousal abuse. While party satisfaction may seem to be an obvious goal, a
substantial body of research has clarified that procedural justice or fairness can be even more
valued than finality of resolution or a favorable outcome (Bush, 1996, p. 19). In communitarian
contexts that value harmony, the so-called neutrality and impartiality of a mediator may bend in
favor of solutions that support communal goals. On the other end of the spectrum, transformative
mediation which seeks to enhance disputant capacity for self-empowerment imposes little in the
way of structure or third party direction ((Bush & Folger, 2005, p. 224).

Viewed across a spectrum of cultural and social contexts, the degree of directiveness in
mediation equally is a function of the kind of relationship that a mediator has with disputants.
Based on his experience with a range of Western and non-Western cultures, Christopher Moore
(2003) has delineated "three broad types of mediators, defined by the relationship the mediator
has with involved parties: 1) social network mediators, 2) authoritative mediators, and 3)
independent mediators" (p. 43). This categorization is particularly useful for considering cultural
inflections that apply to third-party interveners in the Tibetan Diaspora, as well as to those
customarily used in rural India where most settlements are located.

Social network mediators are common in all cultures, especially for interpersonal disputes but
also larger public ones that require intervention by trusted leaders. Such mediators are a staple in

many non-Western societies which priorize relationship mending for the communal good. They can be friends, neighbors, respected elders or religious figures with whom the disputants have an ongoing, enmeshed relationship and for whom a return to harmony is the overriding goal. They are not necessarily impartial but are perceived by all to be fair. A sense of security, credibility, and trustworthiness are key to the relationship between such mediators and disputants. In inter-group conflicts, the type parallels what John Paul Lederach (1995) has referred to as an "insider-partial." Lederach's analyses of regional dispute resolution in Central America led him to argue for recognition of the insider-partial, whose stature and personal familiarity with the disputants allow for "confianza" mediation – that is, one based in trust and the expectation of ongoing relations. The insider-partial has the advantage of knowing the history and context of the conflict, and of being invested in the success of the mediation. By contrast, the outsider-neutral derives legitimacy from being outside the conflict situation - which in principle allows for greater objectivity and non-alignment with either disputants or particular outcomes.

Moore's second type of mediator is one who has a more formally authoritative relationship to the parties in dispute, by virtue either of an official position (elected or appointed), or generally influential status. As described by Moore:

> [T]hese interveners usually try to influence the parties indirectly and attempt to persuade them to arrive at their own conclusions. This does not mean that they do not, on occasion, exercise significant leverage or pressure, perhaps with a view to limiting the settlement parameters. They may even raise the specter of a unilateral decision, as a backup to collaborative decision making if the parties cannot agree on their own. (p. 48)

Three sub-types distinguish the extent to which this authoritative mediator defines the parameters of acceptable procedures and outcomes: the benevolent authoritative mediator, the administrative/managerial mediator and the vested interest mediator. The first sub-type is the least directive of the three and again very common in non-Western cultures - namely, highly respected religious or community leaders or elders who have enough influence to decide a dispute but value the ability of parties to arrive at their own agreement. The second sub-type generally has a legally or organizationally mandated authoritative role and a substantive interest in the outcome for the organization or the community - although a margin of autonomy for disputants may still be respected within certain bargaining parameters. The third sub-type is what Moore has called a vested interest mediator or a third party advocate – that is, someone who is outright directive inasmuch as specific goals and interests are promoted with vigor. A number of

considerations can come into play for all three sub-types, including fairness, efficiency, economy, reputation, and bureaucratic or organizational guidelines.

Moore's final category is the independent mediator who, like Lederach's outsider-neutral, is characterized by an ethic of impartiality toward disputants and neutrality toward outcome, as well as professionalism in terms of a commitment to such procedural standards as open communication, equity, durability of settlement over time and enforceability. As suggested by Moore, the independent mediator is the one most common in Western societies, insofar as their dominant cultures tend to compartmentalize varied group affiliations and may rely on similarly compartmentalized specialists for advice or assistance. The existence of a tradition of independent judiciary also is determinative, according to Moore, because it presents a "model both for widely perceived fair procedures and impartial third parties as decision makers" (p. 52).

In the Tibetan community the first two sub-types of authoritative mediator described by Moore are typical of CTA Representatives, who have an official responsibility to resolve disputes arising in the community. Incumbents have a great deal of discretionary power in terms of process followed. Although they may prefer that disputants reach consensus voluntarily, expectations are that the intervener will be as proactive as required to get them to that point – including fact-finding if necessary, and adjudicative decision-making which, however, is not binding. In conflicts with Indian hosts, CTA Representatives can be viewed as vested interest mediators or even insider-partials insofar as they negotiate on behalf of the community of which they are a part.

Although Moore's categorizations are useful, the labeling of mediation is problematic because the CTA Representative loosely straddles not only several mediator types, but also administrative/decision and arbitration approaches to dispute resolution. Even the Tibetan Supreme Justice Commission, which is structured like an independent judiciary, actually functions as an arbitrating body whose decisions are binding primarily through moral rather than legal authority. To forestall confusion of terms, the thesis will refer to "third party interveners" in the Tibetan context, rather than mediators. As discussed in the next chapter on methodology, Richard Abel (1973) used this term to cover the whole spectrum of informal and formal dispute institutions, focusing more on a sliding scale of process and outcome attributes than labels.

3.5   Harmony ideology and alternative dispute resolution

If the promise of litigation is finality and public justice based in law, the promise of alternative approaches to dispute resolution is private justice based on consensual solutions focused on interests and needs rather than on legal argumentation and zero sum outcomes (Burton, 1990; Fisher & Ury, 1991). For the proponents of litigation as the highway to justice, both the private nature of informal, non-court venues and the implied emphasis on compromise or conciliation constitute red flags within the dichotomous debate referred to earlier. Not surprisingly, the literature delivers contradictory evidence about the extent to which informal dispute settlement and court adjudication are empowering or dis-empowering for the individual, or the collective. Where "harmony ideology" expresses the most extreme critique against conciliatory processes, "pathology" expresses opposing critiques of unduly adversarial litigation. Lariviere (2005) has stated that: "In every modern Indian language I know, litigation is referred to as a disease" (p. 469). On the other extreme, Nader (2002) has referred to the consensus seeking models of "Panchayat justice" in India as patriarchal pacification (p. 132) and to alternative dispute resolution rhetoric as "therapy talk" (p. 141).

Since the mid-1960s, alternative dispute resolution took élan in the West as a diverse movement carrying different subtexts about value choices within a shared goal of social justice. As described by Joseph Scimecca (1991), its roots in the United States can be traced to four, often interrelated movements: 1) rejection of a hierarchical and centralized model of bureaucracy in organizational management; 2) introduction of problem solving workshops as a new paradigm for dispute settlement in organizational and international relations; 3) the growing prominence of conciliation and peace-making services at local and international levels by such religious groups as the Mennonites and Quakers; and 4) the emergence of what became known as Alternative Dispute Resolution (ADR), in particular the use of mediation and arbitration to address grassroots needs for equitable access to justice, as well as problems related to congested courts, lengthy settlement times and the soaring costs of civil litigation (pp.19-29).

Within the adjudicative setting, ADR represented a form of settlement prior to suit. That is, it promoted reconciliation or truce "in the shadow of the law," often brokered in a pre-trial conference, or in court-annexed mandatory mediation or arbitration. The movement also

included development of neighborhood justice centers or community mediation centers, which served goals of communitarian jurisprudence - that is, community empowerment through self-governance and decentralized decision-making (Scimecca, 1991, p. 31). Proponents of mediation as an alternative have emphasized the potential for social transformation and personal growth – in contrast to protracted adversarial situations that merely raise the level of anxiety, ill feeling, uncertainty and dis-empowerment for disputants, while increasing the legal bills on either side.

Also a factor in the growth of ADR was the perceived loss of control to lawyers, both in terms of interpreting the language of the law and of navigating the formalities of the adjudicative process (Macfarlane, 1997). It is well known that the original personal facts of a case are often restructured to fit relevant legal rules, in a skeletonized version that does anything but tell the whole story (Geertz, 1983; French, 1996). As described by Clifford Geertz, evidence rules, courtroom etiquette and the scholasticism of law school education all contribute to "close-edited diagrams of reality" that barely capture the real issues or interests behind a complex dispute, let alone resolve them (p. 173). In mediation, "parties are provided a forum where they can vent their feelings while telling their 'stories' so that they feel heard and understood" (Rogers & Salem, 1987, p. 10). There is evidence, albeit somewhat mixed, that better quality results and higher rates of compliance can be achieved through mediation in a range of contexts (Macfarlane, 1997; Bush & Folger, 1994). In principle, the sum total of satisfactory individual outcomes would translate into reduced court caseloads for the justice system as a whole. This utilitarian view – focused on efficiency and timely access to justice for the majority - is espoused by most practitioners, jurists and sympathetic academics (Burger, 1982; Fisher & Ury, 1991; Susskind & Cruikshank, 1987).

In non-Western cultures, particularly modernizing traditional ones, the encounter between formal state law and customary law-ways also had a mixed record in terms of improving access to justice through law reform. From a neo-colonial perspective, Leon Sheleff has written extensively about how western secular law "has ridden roughshod over the rights and dignity, the culture and customs, of indigenous people in all parts of the world" (1999, p. 467). He has argued forcefully for the recognition within modern legal frameworks of tribal law-ways with their restitutive aspects. From a less polemical viewpoint, Richard Lariviere (2005) has highlighted the disjuncture in rural India between local customary law and the way in which state law imposed from above is interpreted and implemented locally. The introduction of secular state

law in Independent India was intended as an instrument of social reform but several factors frustrated the lofty goals, as summarized by Jonathan Lindsay and Richard Gordon (2005):

> Critiques have focused on the failure of political will to enforce laws designed to redress inequalities, the failure of the secular court system to provide a meaningful alternative to local dispute settling forums, and the persisting dissonance between the egalitarian ideology of modern law and the ideology of local religious tradition. (p. 480)

The result very often was a pervasive distrust of state courts and state legal apparatus. Lariviere (2005) recounted that formal legal reasoning was worse than meaningless for the headman of the Nandiwala caste:

> He vows that he will never have recourse to those courts since they make the truth into a lie and a lie into the truth, and he and his castemates have no need for the government's courts. They can handle dispute settlement very well amongst themselves. (2005, p. 470)

On the other side of the debate, Western proponents of litigation on the basis of moral, legal, political or economic entitlement have expressed a number of reservations about informal dispute resolution processes. Common concerns have included the potential for: imbalance of power between parties assumed to be equal, absence of authoritative consent in enmeshed circumstances, lack of judicial supervision, non-enforceability of agreements, lack of safeguards or support services usually provided by the courts (e.g. full disclosure of finances for divorce settlement, Legal Aid, interpretation), and uncertain grounds for appeal if one of the parties is not satisfied. Owen Fiss (1984, 2003), Richard Abel (1982), Marc Galanter (1983, 1989) and Laura Nader (1991, 2002) are among those who have contended that equal access to justice is by no means assured by a process that takes place behind closed doors, often with limited procedural and substantive rules. Coercion and manipulation by the stronger party cannot be ruled out. Assumptions about the mediator's neutrality can thinly mask his or her power to frame issues and influence parties.

Moreover, those favoring litigative approaches claim that adjudication is not about resolving disputes, but about justice. As conceded by mediation proponents Robert Baruch Bush and Joseph Folger (1994), the private handling of individual disputes does not invoke jurisprudence or the public interest and thus potentially disaggregates public interest problems. Even within formal legalism, Fiss (2003) has made the distinction between the individualist bias of the dispute resolution lawsuit and the structural lawsuit which opens out to an array of competing

interests organized around a number of issues and a single decisional agency – the judge. He has stated that public officials in the courtroom possess a power conferred by public law and that:

> [t]heir job is not to maximize the ends of private parties nor simply to secure the peace but to explicate and give force to values embodied in authoritative texts such as the Constitution and statutes: Their job is to interpret those values and to bring reality into accord with them. (p. 101)

Fiss' vision is meaningful in the context of disputes that have implications beyond the actual parties in dispute (e.g. racial equality, control of corporate malfeasance), but it is unnecessarily dismissive of the more mundane goals of dispute settlement, which do not go away for having been co-opted into an advocacy ritual.

Coming from a conflict perspective, American legal anthropologist Laura Nader (1991, 2002) has developed a family of concepts related to informal processes of dispute resolution, which she has characterized by the term "harmony ideology." She has argued that a harmony model of society and the conciliative processes that protect it have more to do with the silencing of disputes than with the absence of disagreements. Nader has spent over forty years tracking the origins, uses and consequences of harmony in law, overseas, at home and transnationally (Goodale, 2005, p.2; Nader, 1991, p.44, 2002). She explained:

> The basic components of harmony as ideology are the same wherever it appears as cultural control: the emphasis on avoidance and conciliation, the belief that conflict resolution is inherently good and that its opposite, continued conflict or controversy, is bad or dysfunctional, the belief that peaceful, orderly behavior is more civilized than confrontative behavior, the belief that consensus is of greater survival value than controversy. (Nader, 2002, p.32)

For Nader, the rhetoric of harmony - unity, consensus, cooperation, compliance, passivity, docility - imposes a form of cultural control that denies the functional value of conflict in society and suppresses dissent. She has referred to conflict resolution as a hegemony because it propagates the belief that confrontation is bad, dysfunctional, uncivilized (2002, p. 32). Nader has extrapolated this family of concepts from her fieldwork with the Zapotec in Mexico, concluding that Spanish colonialism and Christian evangelism consciously exploited harmony ideology over 400 years, as a pacification scheme to serve political or missionizing ends. That one should be law-abiding before the eyes of God was a deeply epistemic proposition that fed directly into mission justice. More critically, Nader has claimed that such epistemology embedded a belief that lawsuits are at odds with Christian belief in conciliatory process, and that the individual assertion of rights is evil (1991, p. 53).

On the home turf, Nader also has linked the alternative dispute resolution (ADR) movement and American religiosity with harmony ideology:

> Harmony ideology is significant in the light of the expanding Protestant fundamentalism in the United Sates and in the light of an ADR law-reform program that may silence disagreement for the sake of achieving consensus and adopting a worldview that transforms facts and legal rights into feelings, relationships and community writ small. (2002, p. 131)

Nader's concept of harmony ideology has to be understood against her belief in rights-based, formal law as an agent of social change, and in courts as the best venue for seeking justice.[28] Although similarly inclined legal centralists and skeptics of alternative dispute resolution, such as Fiss, Galanter and Abel, are not uniformly or invariably adamant about the superiority of formal law, they have argued for an enlargement of its scope and improved access to litigation as a means of addressing grievances, particularly for marginalized groups. Grievances involving product liability or environmental damage, for example, would mean taking on powerful economic actors. The issue is not only to press for recompense of past wrongs in an individual case but, in the public interest, to establish precedent that would facilitate the success of future cases and even stimulate regulation to prevent reoccurrence of the problem. The cumulative effect of empowering plaintiffs would be a shift in the interests served by law – an idea subsumed under Nader's user theory of law which stated that: "the direction of law is dependent in large measure on who is motivated to use the law and for what purpose" (2002, p. 169).

By contrast, where disputes between unequal parties are shunted into informal dispute resolution channels, procedural safeguards for the more vulnerable side may be inadequate. There may be limited oversight and no record from which to build authoritative jurisprudence in the public interest. By emphasizing "a configuration of compromise, reconciliation and win-win solutions" over legal entitlement, the harmony law model deflects questioning of root causes (Nader, 2002,

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[28] It is worth remembering that American ADR came in the wake of a rights explosion and surge of litigation in the 1960s, including class action suits. Champions of the adversarial mode - like Nader, Fiss, Galanter, Abel and others - were buoyed by the momentum of agitation for civil rights, women's rights, environmental rights, consumer rights and American Indian rights. Their focus was justice writ large, not just the settlement of individual spats behind closed doors (e.g. the Dalkon Shield, asbestos, Agent Orange, poisoned rivers). By the 1970s and 1980s, there was a backlash to the litigious trend in some legal circles. Chief Justice Warren Burger spearheaded procedural reforms that took a large volume of private conflicts out of the courts and channeled them into non-judicial agencies for private arbitration, mediation and conciliation (Nader, 1991, p. 53). A rapid proliferation of ADR philosophies, institutions, and professional bodies followed suit, resulting in what Nader called a kind of "cultural soma" that tranquilized potential plaintiffs – in short, the onset of a harmony model of law (1991, p. 52).

p. 148). By pacifying weaker parties it re-inscribes psychological, economic or political advantage. Conciliatory processes thus become suspect to the extent that they naturalize harmony and suppress fair contest of interests:

> Harmony law models are coercive when they mandate unity, consensus, cooperation, compliance, passivity, and docility – features often taken for granted as humankind's normal state and considered benign. (2002, p. 34)

At the same time, Nader's research has demonstrated that communitarian or indigenous groups may promote dispute resolution practices as a way of reaffirming their identity and autonomy in the face of statist or colonizing forces. Her conclusion was that harmony ideology is inevitably political, serving to justify control, pacify populations or assert group autonomy in the administration of law. The range of contexts for this body of thinking was extensive and Nader supplemented her own research with the work of several like-minded scholars who have illustrated:

- The instrumental uses of Christian harmony rhetoric about conciliation, for the **missionizing and colonizing** of native populations in Latin America, the Pacific, Africa and North America;[29]

- The exploitation of harmony ideology by **indigenous elites** to legitimate their administrative roles and validate the continuance of traditional hierarchical privileges (Rose, 1992);

- The **internalization by indigenous people** of romantic visions of their culture and their **conscious projection of that image** outward for political purposes (Nader, 2002, pp. 58,59, 124);

- The **failure of scholars depicting harmony** as a feature of customary law to see the harsher side or the colonial sources of these practices (Nader, 1990, 2002; Chanock, 1985);

- The political expediency of **state-sponsored legal informalism** (i.e. promotion of indigenous or communitarian systems of arbitration and compromise) - arguably the case with "panchayat justice" in Imperial and Modern India (Nader, 1991, p. 50; Meschievitz & Galanter, 1982) and as well as in Native American battles against storage of nuclear waste on their lands (Nader, 2002);

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[29] Among scholars making the link explicit between harmony and colonizing objectives were Marie Reay (1974), George Westermark (1986) and Edward Shieffelin (1981) in New Guinea, and Martin Chanock (1985) in Africa. According to Nader, other scholars - such as J. Gibbs, Max Gluckman, Paul Bohannan and P. Gulliver – observed the operation of harmony models but made only passing references to colonial government and missionary influence (Nader, 1990, pp. 45-49; Chanock, 1985). The implicit argument here is that anthropological study has to move away from ahistorical analyses of societies.

- The promotion of harmony by evangelicals, as a way of silencing dissent and **preventing disintegration of their religious communities** (Greenhouse, 1986; Merry, 2000);

- The capitulation to tenets of **management and efficiency rather than justice** in the promotion of alternative dispute resolution (ADR) in the United States – and arguably elsewhere in the West; and

- The co-opting of ADR and its harmony objectives by **powerful corporate interests.**

As Nader and others have emphasized, the encounter between centralized law and customary law-ways takes many forms and is laden with a variety of political sub-texts - whether in the context of colonization democratization, secularization, nation-building or community empowerment. **The implication is that any research concerned with harmony-oriented community has to shed the rosy lens in order to properly account for the origins, uses and consequences of that orientation.**

3.6   Summary: Formal versus informal law venues

To consider the impact of harmony norms on individual agency within a communitarian setting, this particular research needs to compare different dispute types and the different processes for dealing with them. Only through such a comparative exercise can the reach of harmony as ideology be interpreted as part of the discourse on the encounter of informal law-ways and formal law. Importantly, while this research needs to draw on Nader's insights, it is Geertz' open conception of ideology that will guard against a foreclosing of ideas of the very sort attributed to ideology in its more pejorative sense. Particularly relevant is its interaction with social norms, expectations and tensions. As noted by Law professor and mediator Trina Grillo:

> The process by which a society resolves conflict is closely related to its social structure. Implicit in this choice is a message about what is respectable to do or want to say, what the obligations are of being a member of the society or of a particular group within it, and what it takes to be thought of as a good person leading a virtuous life. (2001, p. 85)

I have made the links between communitarianism, norms of social control and harmony orientation explicit, along with attendant reservations about the workings of authority, ideology and power. I also have paved the way for understanding informal dispute resolution and formal legal process as mechanisms of social control, with differential effects on individual agency and

group concerns. It now remains to fold the various frameworks for thinking about these components into a methodology for collecting data on how the Tibetan Diaspora handles disputes. As a communitarian entity preoccupied with harmony, it will have its own political sub-text, its authority structures, rational and non-rational norms of social control and empirical realities expressed in dispute scenarios.

IV   METHODOLOGY

This research is qualitative in character, using a mix of methods common to legal ethnography. It is based largely on case studies acquired through interview, and on archival materials which supplement as well as triangulate the information from verbal exchanges. This section will clarify the logic behind the general approach taken, referencing some of the latest thinking on ethnographic research methodology. It will define disputes for purposes of this research, delineate categories of dispute and chart the research plan. Finally, it will reflect on the challenges of this form of inquiry, identifying precautionary measures, research shortcomings and the strategies used to mitigate constraints.

4.1   General approach

The Tibetan Exile Government's website indicates that each of its settlements has a Local Tibetan Administrator (LTA), whose official functions include informal dispute resolution. As a group, LTAs (more commonly called CTA Representatives) have the authority to carry out the task in a way that differentiates them from other persons such as village heads, family members, or elders who might engage in a dispute as third parties (Norbu, 2004, p. 196). A Tibetan Supreme Justice Commission (TSJC) also is in the process of formalizing a system of commissions to function as courts at local, district and apex levels. Thus, both poles of the informal-formal spectrum of dispute institutions exist in the Tibetan Diaspora, providing the opportunity of analytical comparison in terms of normative interplay.

Against this backdrop, four methodological points require some explanation:
1) The decision to focus on CTA Representatives as a conduit for case study information on informal processes;
2) The decision to focus on disputants for court based processes;
3) The inclusion of inter-ethnic conflict as a category of dispute; and
4) Multi-sited, multi-method data collection and analysis.

The central research question and thesis statement placed individual agency in the foreground. Readers might have assumed that individual disputants should be the primary source of data.

Given the exile government's efforts to promote harmony inward and project it outward, however, I did not want to assume that individuals would be willing to discuss personal disputes with an outsider, at least not in sufficient numbers to make comparison meaningful. In fact, I very much found this to be the case. I also did not want to draw conclusions based on responses from randomly selected individuals who were not speaking out of their own experience with conflict. Moreover, my interest was in the interrelations between behavior, value systems and beliefs in the context of social order within a specific community – in short, the domain of legal anthropology, or more specifically legal ethnography.[30] Scholars in this discipline have stressed that ethnography is implicitly comparative and there have been longstanding debates about how to overcome researcher bias in the process.[31] I chose to follow the lead of legal anthropologist Richard Abel, who broached that challenge by focusing on third party interveners in his comparative theory of dispute institutions in society (1973). Such interveners could speak to multiple cases, rather than only one. Their perspectives could make the bridge between individual disputants and the broader normative issues at play, including those affecting people's preference for informal versus formal ways of dealing with grievances. As Abel has explained:

> Because so many disputes involve such a role [third party intervener], it offers a common denominator for comparison between governmental courts and unofficial dispute institutions. (1973, p. 247)

The anthropological literature is replete with cautions about ethnocentrism and inadvertent manipulation of what is learned when researchers impose categorizations based on Western analytical concepts (Nader, 1965, 2002; Starr & Collier, 1989; Starr & Goodale, 2002; Seligman, 2005). Abel approached the categorization of law and law-like systems by breaking down the constituents of dispute resolution into 87 structural and process variables – in short, casting a net large enough to capture variation in any number of societies. I reasoned that by relying on the voice of third party interveners as Abel had done, I could mitigate the risk of cultural distortion. Importantly, I could also situate that voice by understanding how the characteristics of the role might correlate with processes and outcomes for disputants. Abel's Weberian framework laid out

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[30] As defined by Starr & Goodale, in Practicing ethnography in law , ethnographic methods are tools for deconstructing the complex ways in which law, decision-making and legal regulations are embedded in wider social processes (2002, p. 2).

[31] This concern with the authenticity of ethnography in law was made prominent in the 1950s with the so-called Bohannan-Gluckman controversy, which interrogated the use of Western jurisprudential concepts and legal terminology to compare or describe non-Western cultures. See Nader's commentary (2002, pp. 25-27), and contributions by Paul Bohannan, Max Gluckman and Sally Falk Moore in Law in culture and society (1965), edited by Nader.

a progressive specialization, differentiation and bureaucratization of the third party intervener role, indicating associated shifts in norms, practices and expected outcomes. Thus, for example, a variable like "distance from disputants" would be relatively small in an informal system but increase as the intervener role became more legally specialized, in tandem with impersonal values, tighter procedural rules and legally framed outcomes. I drew liberally on Abel's inventory of questions to develop interview protocols for CTA Representatives in the settlements. Later, I used his role-process-outcome correlations as an analytical device for comparing case studies, in conjunction with concepts relating to the operation of norms previously discussed under analytical frameworks. See Appendix 1 for interview protocols.

When it came to exploring the more formal end of the dispute institutions spectrum, I knew I could rely on at least some archival material, which was not the case with informal venues. In addition, I had easier access to disputants because their cases were already public – widely discussed and recorded in Tibetan media, such as Tibetan Review, Tibetan World and Bo Gyalo. I therefore opted to pursue two in-depth case studies, one based on the narrative of a plaintiff, the other on the story of a defendant. In terms of Abel's framework, the third party intervener now would be seen through the disputant's eyes and would include reactions to the whole system, as a recent evolution in Tibetan disputing venues. In this way, the research could investigate the encounter of old law-ways with newer ones, the better to assess the applicability of Nader's contentions about harmony as ideology. Because the Tibetan court system is relatively untested, this choice further allowed me to explore a minimal version of Nader's user theory of law (2002, pp. 168-211), which Abel also addressed in his own way (1973, pp. 288-299). The theory suggests that those who opt for court process actually contribute to the direction of its evolution, not only by setting jurisprudential precedent but by influencing potential future users. In this venue, the kinds of arguments made are important social indicators in their own right, inasmuch as they play to and influence public opinion (Friedman 2002, p. 188). To borrow a familiar aphorism, justice has not only to be done; it has to be seen to be done (Abel, 1973, p. 296).

Having established this general approach to data gathering on informal and formal dispute processes, a third kind of disputing phenomenon needed to be incorporated into the research – namely, inter-ethnic conflict. Technically, this type of conflict lies outside the spectrum of institutional comparison in that many actors are involved in both disputant and peace-making roles. It might be argued that its inclusion unduly stretches the research focus. As case studies

will demonstrate, however, inter-community conflict is intimately linked with communitarian issues and harmony imperatives. More significantly, in the Tibetan Diaspora, it has a marked bearing on the norms invoked in many dispute scenarios. In addition to being an important category of dispute in its own right, it thus becomes a critical feature of context, without which analysis would be too narrow given the research objectives.

4.2   Multi-site, multi-method research

The importance of contextualizing dispute related findings within a macro-level picture cannot be over- emphasized. In Nader's words:

> [a]n ethnographic study of law is more than a study of judicial institutions, and legal systems themselves constitute only parts of larger systems ….Ethnography is the science of context. (2002, p. 27)

For contemporary ethnographers broadening the scope increasingly has meant a multi-sited approach which recognizes that the context for what occurs at a particular research site may include other research sites (Seligman, 2005, p. 235; Nader, 2002; Friedman, 2002; Starr & Goodale, 2002). This is a marked departure, for example, from village ethnography with its thick descriptions of a bounded locale, its kinship relations, authority structures and flow of social discourse whose symbology awaits interpretation (Geertz, 1973, pp. 3-30). For Nader, multi-sited research means looking at the interactions of the local with regional and global processes, to arrive at a higher level of understanding about hegemonic forces (2002, p. 38). For others, it could be a requirement of comparative analysis that seeks to "make sense of systems of power and flows of information and knowledge" (Seligman, 2005, p. 236).

In the case of this research, the transnational and the comparative element combine with characteristics of the community itself to recommend a multi-sited approach. As a Diaspora, the Tibetan community is relatively unified in terms of identity, yet scattered physically in settlements across India and elsewhere. In addition to location differences, there is a homeland orientation which emanates strongly from Dharamsala - the site of the exile government and the Dalai Lama's personal residence compound. The town sees a steady stream of new arrivals from Tibet and foreign sympathizers with Western, secular ideas. Thus, the Dharamsala normative milieu is not static, but rather subject to continual cross-fertilization. It thus is very distinct from

other, more isolated settlements, which nonetheless are governed by the same exile administration. To understand the patterns of disputing and dispute resolution efforts in the community, therefore, it is necessary to understand legal and normative influences coming from India and from Western supporters, as they filter down through the exile government to differently situated settlements.

Finally, recent scholarly reviews of ethnography in law have strongly recommended an approach that is not only multi-sited, but also eclectic (Starr & Goodale, 2002; Nader, 2002). Nader has been adamant that: "in ethnography the methods are subordinate to the questions being pursued" (2002, p. 20). Participant observation – the hallmark of traditional ethnography - can bring out more nuance than the edited text of an interview, which is shaped by the researcher's interests and tends to deliver a clear cut, relatively unambiguous picture (Kritzer, 2002, p. 153). On the other hand, interviews have the important advantage of getting at the unseeable - that is, thoughts, motivations and feelings. Griffiths (2002) has pointed to the growing use in legal scholarship of individual narratives that can be juxtaposed against the official narratives embodied in legislation, judicial decisions, and government policy.

In keeping with the multi-method principle, I sought out a range of archival material - including leadership statements, government documents, policy manuals, court records, NGO publications, school textbooks, census data, Tibetan and Indian media accounts, and of course academic sources relevant to my research agenda. Although targeted interviews constituted the backbone of the research, I sought out a range of viewpoints in more casual conversation. Such "sampling," if it can be called that, was more opportunistic than random, but nevertheless proved essential for cross-referencing viewpoints and filling knowledge gaps. Accompanied transect walks helped orient me to new surroundings and to initiate conversation on issues of concern to the community visited. The principles of content analysis were useful for dealing with some materials while narrative analysis brought life to others. Though limited by my time in the field, participant observation also provided a sense of daily life, and of the importance of special public events, such as Tibetan New Year festivities, processions and masked dances, TCV school anniversary celebrations, the use of oracles, H.H. Dalai Lama's annual Spring Teachings, Election Day, and commemorative demonstrations.

4.3   **Defining disputes and dispute categories**

Abel's definition of disputes emphasized that they were not instances of deviance, but rather a form of significant interaction containing an element of conflict, in which inconsistent claims between two or more people were being asserted publicly – that is, communicated to someone and justified in terms of a norm (1973, p. 227). The definition fed into his focus on the third party intervener. I prefer to supplement this definition with one attributed to Sally E. Merry and Susan Silbey by Trina Grillo, because it accentuates the normative element more, opening its range in ways relevant to this community:

> Disputes are cultural events, evolving within a framework of rules about what is worth fighting for, what is the normal or moral way to fight, what kinds of wrongs warrant action, and what kinds of remedies are acceptable. (2001, p. 84)

What then do people fight about? What has been the content, frequency, scale and intensity of disputes in which third parties were involved as facilitators, mediators or arbitrators? As noted previously, legal anthropologists today are extremely wary of imposing Western categories on the culture under study, including what constitutes a dispute. The Tibetan Center for Conflict Resolution (TCCR), which is well placed to assess the disputing landscape, suggested I use a "realm" categorization – that is, disputes in the communal realm, the inter-ethnic realm, the political realm, religious realm, economic realm and judicial realm. Of these categories, I selected three for more intensive case study focus.

1) In the **communal realm,** I examined:
   a. Family disputes (marital discord and succession issues);
   b. Inter-personal conflicts (law and order issues); and
   c. Disputes over land, (encroachment issues).

   Selection of the sub-categories was guided by the frequency of occurrence. Taken together, these disputes represented normal tensions of the sort regularly handled by CTA Representatives within the settlements;

2) In the **inter-ethnic realm**, I considered conflicts between Tibetans and local Indians, where the number of people involved, and the intensity and duration of the conflict were of significant concern to the affected settlements. This selection was guided by the fact that getting along with host communities is an imperative of refugee existence and signals a special kind of vulnerability. These conflicts also speak to a crucial debate in

communitarianism. How should individual communities relate to each other and to the society at large? At what point is a particularistic enclave antithetical to the interests of inter-group harmony?

3) In the **judicial realm**, I examined two cases that were placed before the Tibetan Supreme Justice Commission (TSJC) in Dharamsala. The TSJC is a final court of appeal and also the exclusive jurisdictional court for grievances against the Central Tibetan Administration. This choice of dispute highlights a second key tension in communitarian philosophy – namely, between an individual's right to adversarial process, and socially or politically construed ethics associated with communal harmony.

The categories are not necessarily mutually exclusive, but conceptualizing them in this way helped to bring out features and challenges unique to each.

4.4   Research phases and research sites

I conducted fieldwork over a period of six months, in two phases. The first phase took place during October-November, 2005, in Dharamsala, Himachal Pradesh State, Northern India. The second phase of fieldwork took place during January-March, 2006, and focused mainly on two settlements in Bylakuppe, Karnataka State, Southern India. In addition to the numerous casual conversations, I was able to conduct 90 semi-structured interviews of between 60 and 90 minutes duration each. Appendix 2 provides a list of persons interviewed by category, indicating detail of position, location of interview, language of interview (i.e. whether an interpreter was used), and the code assigned for confidentiality within the body of the dissertation for directly attributable information or quotes. The map of India on the following page indicates the location of all settlements. One dot designates the settlements from which information was gathered through the respective CTA Representatives. Two dots designate the settlements visited in person.

Chart # 3:   Map of Tibetan settlements in India

Tibetan Settlements in India and Nepal

*Figures in brackets indicate more than one settlement.
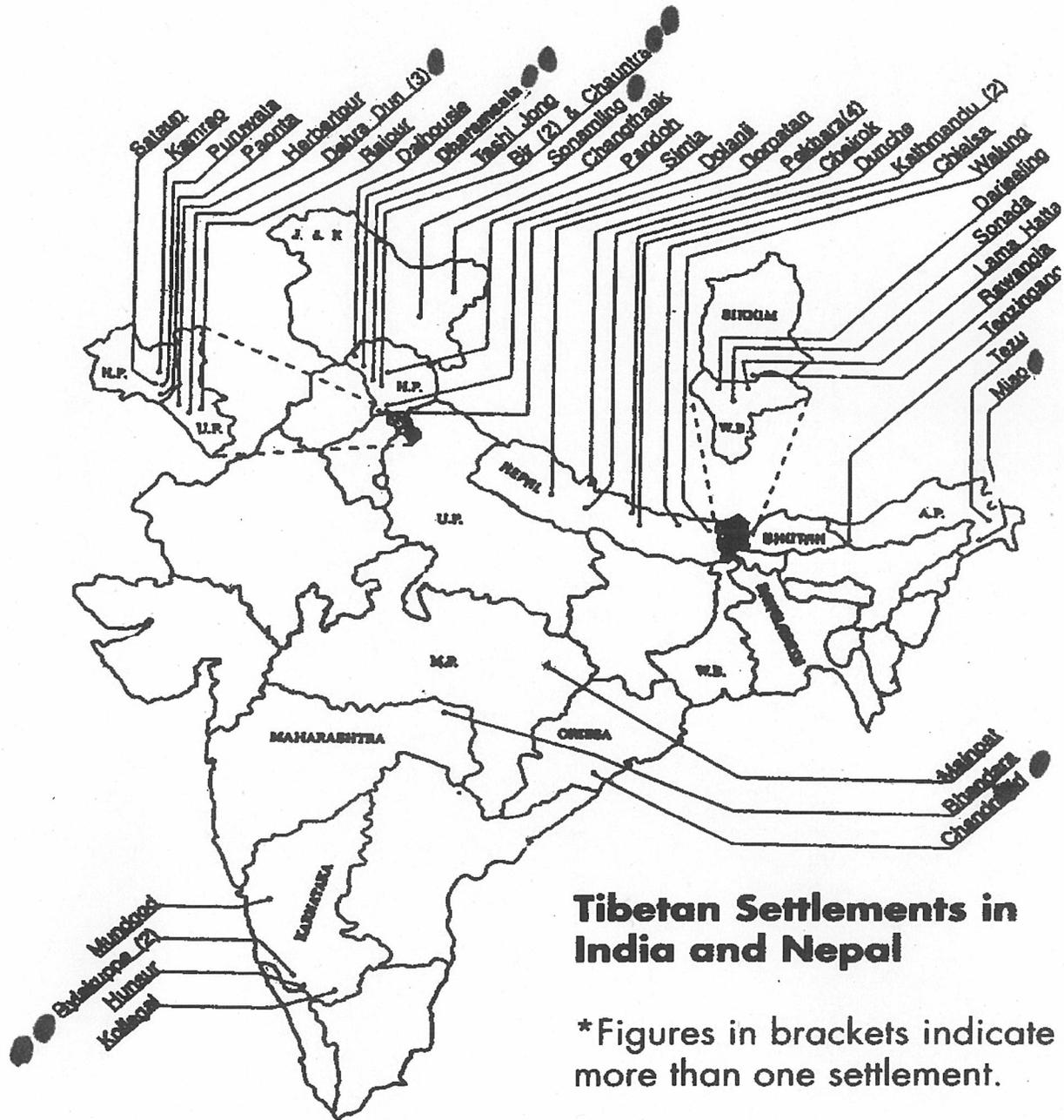
Source: CTA

Dharamsala area was a necessary choice for access to the exile government's executive, legislative and judiciary branches, the Library of Tibetan Works and Archives, H.H. Dalai Lama's private office, and the headquarters of the major NGOs. Prior contacts were indispensable for securing interviews with senior government officials who, in turn, provided personal introductions to facilitate my research in the settlements. By serendipity, a TSJC

workshop, November 19-22, 2005, brought the CTA Representatives in from all the settlements, affording me the unique chance of interviewing a number of them in Dharamsala over that period. Although my research was not seeking quantitative validity, this circumstance allowed me to generate a modest data set representing over 25% of listed settlements in India. Moreover, the selection covered major geographic differences, offering a better range of case studies for comparative analysis. In addition, I made separate visits to three agro-industrial settlements in Kangra District and incorporated Dharamsala as a comparative site in its own right. Finally, in Dharamsala, I was able to develop a cooperative relationship with the Tibetan Center for Conflict Resolution (TCCR), which plays a special role in norm entrepreneurship related to conflict. From an early point, the Center assisted with testing of interview protocols for the CTA Representatives, vetting ideas, verifying perceptions, translating texts, and conducting three interviews under my close guidance.

Bylakuppe was important as a second major site for fieldwork because its two overlapping settlements are together the largest in India, numbering over 18,000 residents. Geographically one of the farthest points from Dharamsala, Lugsung Samdupling in Bylakuppe is the oldest established rehabilitation settlement in India, very rural, with an economy based in agriculture. It was the model on which all other agricultural settlements were based. By contrast, the scattered communities of Dharamsala are a densely populated, mountain town environment with roughly 10,500 Tibetans, high levels of transience and an economy based in handicrafts. Although Dharamsala has a number of Tibetan Buddhist institutions, in Lugsung Samdupling there are massive monastic complexes, such as Sera and Namdroling, which house about 5,000 and 3,000 monks respectively. In short, the environments could not be more different.

As part of the Bylakuppe fieldtrip, I conducted archival research at Bangalore Law School, Mysore University, Pune University and Mumbai's Centre for Education and Documentation. I also met with the Mumbai chapter of Friends of Tibet, a group of Tibetan sweater sellers, an Indian dharma group and Indian legal specialists. These contacts provided an Indian perspective on Tibetan refugee issues and, importantly, oriented me to Indian sources of information.

Chart # 4 at the end of this section summarizes my research work plan, divided into macro-level components that contributed essential context, and the institutional level components that focused on disputing phenomena. The chart relates each component to the methodological

questions guiding data collection, the methods/sources used, and the analytical questions relevant to my thesis statement. As indicated already, individual agency at the micro level is considered directly under disputes in the "judicial realm." It also is inferred from case studies in the other two dispute categories. Taken together, macro context, disputing institutions, and individual agency (inferred or direct), account for the sources, uses and consequences of harmony, as urged by Nader. The accounting, in turn, brings into relief the trade-offs that might be involved between autonomy and social responsibility in communitarian context.

4.5   Research challenges and constraints

While the strength of ethnography lies in thick description, there are commonly acknowledged weaknesses, including: lack of structure for analytical purposes, problems of generalization from local minutia, and pitfalls associated with both participant observation and interview. I took particular note of the following tendencies to avoid:

- **Romanticizing** or essentializing the culture being studied (Friedman, 2002, p. 186; Seligman, 2005, p. 245);
- "Observer's paradox" whereby respondent's engage in **impression management** when strangers come asking questions. Respondents may give ideal answers which don't conform to actual practice, or "the observed" may behave differently than usual when being observed (Seligman, 2005, p. 234; Mansell, Meteyard & Thomson, 2004, p. 30);
- A related but slightly different problem is that of getting at the "**native's point of view**" (Geertz 1973), or translating deeper meanings about people observed in their natural habitat (Mansell, Meteyard & Thomson, 2004, p. 29). Friedman has further emphasized that the observed also can be "**trapped in a web of familiarity**" that makes it difficult for them to question assumptions about their own culture and that, in any case, all cultures have some wordless language that strangers cannot penetrate (2002, p.186);
- **Informants who stand in for whole villages** leading to **reductionism** and overgeneralization (Seligman, 2005, p. 241).

In the case of this research, as an outsider there were stop, go and amber lights at different turns. In the first instance, it would have been very difficult for me to have the access I did, without endorsement from the office of H.H. Dalai Lama and the Central Tibetan Administration. That

fact alone has to be factored into the perspectives from which respondents shared information. Other interlocutors may have responded favorably to me as a potential friend of the Tibetan cause, or a potential sponsor or conduit for immigration assistance. Alongside any natural mutual empathy, I might be someone to complain to, someone who might understand their circumstance better for being detached from any enmeshed relations. Alternatively, I might appropriate information which could be appropriated by others with more subversive intent. The outsider inevitably captures only fragments with limited understanding of the whole. When disputing is the focus, outsider questions can be seen as stirring up trouble where people would prefer to let sleeping dogs lie.

Most respondents spoke excellent English but it might be argued that my Tibetan language insufficiency narrowed the field of respondents. In Bylakuppe, there were several interviews for which I used an interpreter, and cautions about the role of informants apply in double measure. I needed to remain aware not only of how the interpreter was affecting my views, but also of how he and my association with him were seen by respondents, inasmuch as that could affect the information people were willing to provide. In short, this type of research requires a constant reflexivity and self-critique to minimize distortion. Interviews require frequent paraphrasing and cross-referencing with other sources to verify understandings. In that respect, the broadened scope of this research and multi-sited, eclectic methods helped to enrich results while also mitigating my particular research constraints and the minefields of the ethnographic style.

Finally, a different class of issues needs mention – research ethics. Ethical research entails not only integrity and a respectful attitude on the part of the researcher, but also specific attention to:

- Obtaining any proper permissions to conduct fieldwork (in this case from both the CTA and, for Bylakuppe, from Indian authorities);
- Obtaining oral consent from interview subjects;
- Explaining to respondents what the research objectives are and how their information will be used, as well as protected by anonymity; letting them know that they can terminate the interview at any time or refuse to answer certain questions;
- For in-depth interviews in particular, giving respondents the opportunity of reviewing the transcribed text and verifying the accuracy of any part attributed directly to them;
- Ensuring the confidentiality of interview data through coding of respondents and properly secured storage.

As required by the University of British Columbia, this research obtained prior approval from the Behavioral Research Ethics Board and respected its provisions.

Chart # 4:   Research work plan

I MACRO CONTEXT			
FOCUS	**METHODOLOGICAL QUESTIONS**	**DATA COLLECTION METHODS**	**ANALYTICAL QUESTIONS**
Historical, political context	- Reasons for exile? - Implications of refugee status? - Extent of homeland commitment?	- Scholarly literature; - Interviews: Indian legal experts, DIIR, Dept. of Home; - Exile media.	How does this context define the communitarian nature of this society? How does it contribute to non-rational and rational behavioral norms?
Tibetan Buddhism	- Relation to nationalism? - Relation to non-violence as political strategy and social value? - Norms relevant to disputing?	- Scholarly literature; - Interviews with monastic heads, government officials, NGOs and CTA Representatives; - Public opinion in exile journals.	What kind of moral authority derives from religion? To what extent do symbols and rituals affirm identity and support social cohesion? What general values and norms are internalized and how are these reflected in dispute resolution situations?
Governance	- What is the structure of the exile government? - What is the mandate of the Department of Home in relation to settlements? - What is the relationship with broad-based NGOs?	- Scholarly literature; - Interviews with government officials (Home, DIIR), NGO officials (TWA, TYC, TCCR, NDPT, ITFS/A); - Public opinion in exile media.	What types of power and authority are involved in social control and norm entrepreneurship? How do the democratization efforts of the exile government interact with communitarian and/or religious norms?

II	DISPUTING PHENOMENA AND DISPUTE INSTITUTIONS		
FOCUS	**METHODOLOGICAL QUESTIONS**	**DATA COLLECTION METHODS**	**ANALYTICAL QUESTIONS**

Disputes in the <u>communal</u> realm;
 	
<u>Informal</u> means of dispute resolution.
	What kinds of things do people fight about?
	
	What are the characteristics of the third party intervener role?
	
	How do role characteristics relate to processes and outcomes of disputes?
	
	What factors make a dispute difficult to resolve?
	
	What roles do third party interveners play in conflicts between Tibetans and local host populations, and who else is involved?
		• Interviews with 12 CTA Representatives, camp leaders, monastic heads & TCCR;
		• Participant observation in TCCR workshop;
		• Review of TCCR evaluation files for other workshops.
			What do dispute processes and outcomes say about the quality of compliance with norms of social control?
			
			What do dispute processes and outcomes say about the efficiency and fairness of norms used for social control? What can be inferred about individual agency?
			
			What kinds of trade-offs do individuals make in using one form of dispute resolution over another?
			
			To what extent can harmony be said to be operating as ideology?
			
			What insights can this research contribute to:
			  1. Policy debates about diversity and integration?
			  2. Challenges specific to legal pluralism?

Disputes in the <u>judicial</u> realm; <u>Formal</u> means of dispute resolution.		• Multiple in-depth interviews with two court users; • Interviews with TSJC justices and legal spokesperson; • TSJC publications; • Public opinion on court cases in exile media	
Disputes in the <u>inter-ethnic</u> realm;		• Interviews with CTA Representatives, NGO officials, community leaders; • Discussion with Indian observers; • Newspaper clippings • Scholarly work on communal tensions in India.	

PART TWO: MAPPING OUT THE MACRO CONTEXT

INTRODUCTION

Both Western and Indian scholars have commented on the remarkable success of the Tibetan exile community in terms of its adaptation and self-reliance (Vijayakumar, 2002; Subramanya, 2004; Goldstein, c1975; Avedon, 1985; Saklani, 1984, p. 216; Subba, 1990, p. 28; Alam, 2000, p. 218; Norbu, 2004, p. 190). The community is exemplary for its achievements, not the least of which has been the realization of a relatively unified polity out of the chaos of exodus almost half a century ago. Tibetans in exile also have gained an international reputation as a harmonious people committed to non-violent pursuit of their homeland politics. As discussed in the section on the operation of norms, if leaders project a positive image with which to identify and if others in the community visibly conform to that image, then socialization toward pro-social behavior along those lines is more likely to be achieved. In this respect, the Dalai Lama's speech to the 11th Assembly of Tibetan People's Deputies in 1993 is illustrative of many such messages directed to the exile administration, as well as the public:

> We Tibetans are taught by Buddhism, and Mahayana Buddhism in particular, to be kind and compassionate and from that our society has naturally developed an ingrained tendency of nobility. Tibetans when compared with other cultures and communities are found to be more noble, peaceful and patient.[32]

On sober reflection, other scholars have argued that this ideal image is part truth, part identity construction and impression management (Korom, 1997; Frechette, 2002, 2006; Magnussen, 2002; Anand, 2002; Klieger, 2002). International publics are complicit in perpetuating the image because of their sympathy for the Tibetan cause, their respect for the Dalai Lama as an advocate of world peace, and their unconscious transposition of his aura onto Tibetans as a whole. Jamyang Norbu - a leading political writer recently voted one of the ten most influential Tibetans in exile - flags Western gullibility:

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[32] Dalai Lama's speech to the 11th ATPD, July 28, 1993. The political philosophy of His Holiness, the XIV Dalai Lama: Selected speeches and writings. Ed. Shiromany. Delhi: Tibetan Parliamentary and Policy Research Centre, c1998, p.298

> There is a tendency these days among many of our more admiring Western friends to ascribe to the Tibetan people extraordinary qualities, not only of serenity and peacefulness, but even a special wisdom, not merely traditional but proto-scientific — a characterization which is so flattering and advantageous that quite a few of our leaders and lamas are avidly endorsing and promoting this view.[33]

Jamyang Norbu's commentary should not be seen as contradicting the Dalai Lama's words, both having been placed in specific contexts not necessarily reflected here. Rather, the juxtaposition adds a layer of complexity that is necessary to understanding the normative workings of social cohesion - absent the rose-colored lens but also allowing for an even-handed interpretation of the imperatives involved. Tibetan history has been marked by political intrigue across sectarian, regional, and class divisions (Goldstein, 1989; Shakya, 1999; Kapstein, 2006; Tucci, 1980). The trauma and the stressed circumstances of the early years in exile exacerbated these divisive tendencies and disputes were legion (Woodcock, 1970; Sangay, 2004). Forging social cohesion and a pan-Tibetan identity anchored in religious norms was as vital to the psychological survival of the community, as humanitarian aid was to its physical survival. Regaining the homeland also required cleaner, less fractious narratives if the goal was to attract the needed support of well-wishers.

It is this feature of the Tibetan Diaspora in India that makes it a compelling study in how norms and rules interact with dispute resolution to promote harmony. Exile was a dramatic turning point that made it possible, as well as necessary, for the Tibetan community to reconfigure its identity, and its social and political institutions. Over four decades in exile, societal divisions have been attenuated by institutional structures, normative frameworks and conscious socialization processes, under the charismatic leadership of the Dalai Lama.

Part Two sets the stage for the case studies by elaborating the macro context that is the source of both rational and non-rational norms of social control operative in the Tibetan Diaspora. It first establishes the communitarian characteristics of Tibetans in exile, as a function of historical legacy and refugee status. Next, it examines Tibetan culture as a product of socialization into values rooted in Tibetan Buddhism, nationalism, non-violence and conflict avoidance. Finally, it

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[33] From"Back to the Future: Enduring Phobias and Superstitions in Tibetan Society (Part II)" by Jamyang Norbu , posted on Phayul.com March 29,2005. http://www.phayul.com/news/article.aspx?id=9412&t=1&c=4. Accessed October 29, 2007.

considers the structure of the exile government and its experimentation with a spiritually informed democracy; these are important indicators of the social change that the community has undergone, and the source of new norms that coexist with some of the old.

V   HISTORICAL LEGACY OF MARCH 10

March 10, National Uprising Day, is the commemorative event that is most defining of the Tibetan Diaspora. It stands in symbolically for the moment of loss, not only of individual brave souls, or of the 300 year old tradition of religion and politics combined under the governance of Dalai Lamas, but for all that was good, retrospectively, in a way of life uniquely Tibetan. Year after year, March 10 commemorates the loss of the nation and reaffirms the commitment to regaining it from exile.[34] On that day, in the year 1959, Tibetans in Lhasa had initiated a massive revolt against the progressive military occupation of Tibet since 1949/1950 by Communist China. After almost a decade of disparate attempts to either thwart or negotiate the terms of coexistence with the Chinese occupiers, Tibetan officialdom was in disarray (Goldstein, 1989). Refugees and resistance fighters from the turmoil in the eastern regions of Kham and Amdo were spilling into Lhasa, placing added pressure on communal resources (Shakya, 1999, p. 166). When rumor spread that the life of the Dalai Lama might be in danger, the general populace in Lhasa unleashed its anger with the Chinese and its resentment with the Tibetan ruling elite for what seemed to be betrayal of their leader (Shakya, 1999, p. 192). The uprising lasted one week before it was brutally crushed by the People's Liberation Army – branding the moment in Tibetan memory. It is the first page in a "narrative of flight and solidarity" that is retold from generation to generation. The narrative grew with reports of continuing trauma in Tibet, imbuing

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[34] Tibetans and sympathizers around the world commemorate March 10 with large rallies, each of which can number from the hundreds to the thousands. Typically there are noisy processions to Chinese Embassies/Consulates, and/or other politically meaningful locations animated with nationalist songs, speeches, slogan shouting, Free Tibet banners, Tibet flags, placards, umbrellas. Interestingly, the 47th anniversary (2006) witnessed during my stay in Dharamsala, had a softer tone than others viewable on YouTube. In his speech, the Dalai Lama made the usual references to the historical event, reiterated the commitment to a Middle Way approach to negotiating Tibetan autonomy with Beijing, and commented optimistically on the fifth round of talks completed just weeks prior. Importantly, it also called on Tibetans and supporters alike "to work toward the creation of a conducive environment for negotiations." Thus, as also noted in Tibetan World (March 2006, p.31), "Mimang Langlu" (the song of people's rising) which contains strong anti-Chinese phrases was not officially sung, although the more passionate youth did sing it as they made their way down the narrow roads, from the official proceedings at the Tsuglhakhang (Main Temple) to the Kachari District Magistrate's office, about seven kilometers distance. On this occasion the Tibetan Youth Congress typically writes memoranda to the Secretary of the United Nations, the Human Rights Commission, the Prime Minister of India and the Chinese leadership.

those who fled with a deep sense of responsibility to help others left behind.[35] It inscribed a freedom fighting legacy that would become the source of an overarching set of norms associated with communitarian social cohesion.

5.1   The first wave

The story of the Tibetan refugees is now well known and amply documented. The Dalai Lama fled Tibet, arriving in India on March 31, 1959 with a small coterie of religious and political officials, mostly aristocrats, who would be instrumental for the reconstruction of a provisional government in exile (Dalai Lama, 1997, pp. 157-175).[36] The group was granted asylum by Prime Minister Jawaharlal Nehru and, within three months, some 20,000 more Tibetans followed suit, including a prominent contingent of ordinary monks and religious hierarchs (Kapstein, 2006, p. 288; Phuntso, 2004, p. 133). The latter would play a key role in preserving the rich heritage of Tibetan Buddhism under siege in Communist China (Gyatso, 2004, p. 232). The presence of so many eminent high lamas would also stimulate Western spiritual imagination (Bishop 2001, p. 13; Lopez, 1998; Coleman, 2001), which merged with support for the Tibet cause (Powers, 2000; Misra, 2003).[37] The exodus continued unabated, with a broadening base that included large

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[35] The numbers in exile (currently approximately130,000 worldwide) have to be seen against the numbers who lost their lives in Tibet, as a direct consequence of the Chinese invasion. Although such statistics cannot be verified, the exile government estimates that as many as 1.2 million died, in a total Tibetan population of 4.7 to 6 million (depending on whether one uses Chinese or Tibetan figures). Sangay (2004, p.42n131) provided a breakdown of the specific death counts drawn from a special report of the Scientific Buddhist Association for the UN Commission on Human Rights (1990). According to that report, 173, 221 died in prison and labor camps; 156,758 were executed; 342,970 died of starvation; 432,705 perished in battles and uprisings; 92,731 died from torture and 9,002 by suicide.

[36] In his autobiography <u>My land and my people</u>, the Dalai Lama indicated that the entourage was quite large, initially including only four Cabinet ministers, his tutors, personal officials, bodyguard and some close family members. The group left in small parties that met up further along the way, growing in size to one hundred (1997, pp. 158-175). They were escorted by 350 Tibetan soldiers and 50 Khampa guerillas who turned back at the Indian border, to carry on the resistance. See Shakya (1999, pp. 282-286, 165-170) for details on the resistance effort and the role played by the CIA. See McGranahan (2002) for an analysis of the divisive effect in exile society of the eventual disbanding in 1974 of the major resistance group, Chusi Gangdrug (Four Rivers, Six Ranges), which had been operating with CIA assistance out of Mustang in Nepal.

[37] John Powers (2000) has mentioned several Tibetan Buddhists who became activists for the Tibetan cause, firmly believing that the homeland of such spiritual wealth needed their full support. Among others, now well-known Buddhists such as Robert Thurman, Jeffrey Hopkins, Tim McNeill and John Avedon, publicized the Tibetan story in their varying capacities as writers, academics, researchers, publishers and translators. They helped arrange the landmark visit of the Dalai Lama to the United States in 1979, the first of many travels that would internationalize the Free Tibet campaign. Other engaged Buddhists are Richard Gere, Harrison Ford and Goldie Hawn, who have used their celebrity status to promote a range of activities associated with Tibet and the Tibetan Diaspora.

numbers of commoners – traders, farmers, pastoral nomads, and artisans (Dalai Lama, 1997, p. 187). By 1962, some 80,000 Tibetans – men, women and children - had made their arduous way across the high Himalayas into exile (Shakya, 2004, p.2; Phuntso 2004, p.133). As argued by Indian sociologist Tanka Subba, a key factor in the successful adaptation of Tibetan exiles was this transplantation of a whole mini-society, together with the head of state as a symbol of its identity (1990, p. 28). Although thousands perished in the journey and in the extreme duress of the early years, the exile community managed to rehabilitate with hard work and the generous support of the Government of India, state governments and numerous NGOs. Known as the Central Tibetan Administration (CTA), the exile government evolved into a full fledged bureaucracy, located in Dharamsala, Himachal Pradesh State.[38]

Despite the emergency assistance that flowed in from sympathetic nations and the Dalai Lama's repeated appeals to the United Nations, the international community was not prepared to intervene in China on Tibet's behalf. Given the realpolitik of the times, what initially looked like temporary exile soon needed to be re-conceptualized as a repatriation struggle that might take much longer, even generations.[39] In a recent interview, the Dalai Lama recalled the urgency of the cultural task implied in such a prospect (Bernstorf & von Welck, 2004, pp. 107-108). In the first place, he emphasized the importance of education for Tibetans so that their language, history and culture would not be forgotten in exile. Secondly, he stressed that Tibetans should not be scattered all over India, but brought together in settlements so that they could rebuild a cohesive society based on mutual support and shared values. Thirdly, he clearly recognized the need to modernize and democratize the government in exile, to ensure equality for all the community's members. Finally, he underscored how critical it was to preserve the integrity of the Tibetan Buddhist religion, jewel-in-the-crown of the Tibetan civilization and the core of Tibetan identity. From the earliest months, the inward communitarian focus went hand in hand

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[38] The Dalai Lama's residence compound and main temple are actually located in McLeod Ganj, Upper Dharamsala, which is popularly dubbed "Little Lhasa." The complex of government buildings, including the Library of Tibetan Works and Archives, is located in Gangchen Kyishong, mid-way between Upper and Lower Dharamsala.

[39] As discussed by Kharat (2003), by the time the Dalai Lama fled Tibet, Sino-Indian relations were already extremely tense and the Government of India was cautious about aggravating the situation, even though it responded with humanitarian grace to the request for temporary asylum (pp. 284-288). Prime Minister Nehru hoped for a speedy and peaceful resolution to the refugee problem, but the 1962 Sino-Indian border war made that prospect unlikely. Anti-Chinese public sentiment in this period favored Tibetans and the Government found it strategic to provide refugees with a means of economic independence. It employed approximately 18,000 to 21,000 Tibetans in road construction along the northern borderland areas, and deployed others in the Indian army along the border zones (Kharat, 2003, p. 288; Shakya, 2004, p. 2). It also made the political decision to spread Tibetan settlements strategically across the country for long term rehabilitation (Woodcock, 1970, p. 415).

with a dual vision of guardianship and reform for the benefit of a regained Tibet, and as a counterpoint to everything that was happening under Chinese rule. The importance of the cultural tasks gained acuity with disturbing reports brought by a continuing stream of fleeing Tibetans up to 1962. By that point, according to Sangay, more than 98% of the estimated 6,000 religious institutions in Tibet had been destroyed (2004, p. 42, Ch. II).

5.2   The second wave

The Sino-Indian war of 1962 created an abrupt hiatus of movement into India and a wall of silence about the fate of Tibetans in Tibet. During the period 1962 and 1979 Maoist orthodoxy was at its most radical and surveillance of the Tibetan population made flight difficult if not prohibitive.[40] With the death of Mao in 1976 and the ascendancy of Deng Xiaoping, however, a more conciliatory phase ensued, during which delegations from the exile community were able to visit Tibet, and Tibetans were permitted travel to India to visit relatives (Shakya, 1999, pp. 375-37; Phuntso, 2004, p. 142). The significance of this period for the narrative of flight and solidarity cannot be underestimated. For the first time in almost twenty years, those in exile learned in horrific detail about the devastation that Tibetans had suffered in the Mao years. Goldstein (1994, p. 97) and Shakya (1999, pp. 376-379) have described the profound effect on Dharamsala of the passionate welcome and litany of grief that met the exile delegations to Tibet in 1979 and 1980. The visit confirmed that despite twenty years of communist Chinese rule: 1) popular support for the Dalai Lama was unabated; 2) atheist ideology had not dampened the people's religious fervor; and 3) Chinese claims about social progress under communism had been ill-founded. If their own tremendous struggles to find their feet as refugees preoccupied them before, now the exiles' concern for the ancestral homeland took on a whole new dimension.

The synergistic effect of communication between Tibetans in Tibet and those in exile arguably contributed to the wave of 30 to 50 major political demonstrations in Lhasa in the late 1980s and 1990s (Shakya, 1999, p. 431; Barnett 1994, p. 252; Misra, 2003, p. 195). Monks and nuns played a prominent role, underscoring the persistence of religious persecution, but also using religious symbolism to represent the grievances of the general population. The protests met harsh military

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[40] These were the years of the great leap forward and the cultural revolution, which wreaked havoc in much of China and, by all accounts, devastated what was left of social and religious infrastructure in Tibet.

reprisal which resulted in yet another surge of exiles. Kharat, citing a USCRI country report, noted that between 1986 and 1996 nearly 25,000 Tibetans took refuge in India, roughly 44% of them being monks and nuns (2003, p. 297). The protests also happened to be captured by Western media. Thus, although a hardening of China's Tibet policies ensued, so did internationalization of the Tibet cause, culminating in the Dalai Lama's receipt of the Nobel Peace Prize in 1989. This distinction too was folded into the narrative, conferring legitimacy on the shared struggle from exile.

My aim has been to sketch out a narrative of flight and solidarity that has sustained the communitarian orientation of the exile community for three generations. The Diaspora exhibits most of the key features that communitarian thinkers have theorized as defining of community - a strong identification with place, culture, and tradition (both in relation to the homeland and its transplanted variant); and multiplex relations characterized by emotional attachment, loyalty, and solidarity within the collectivity (Frazer 1999, p.45). It further reflects Talcott Parson's "fiduciary association" which embodies the choice to safeguard past tradition and cast one's lot with a projected common destiny. The narrative is a powerful source of non-rational norms, as theorized by Etzioni. In other words, to not be concerned with the cause of Tibetan independence or autonomy is, for most exiles, anathema to being Tibetan. It would imply an individualism of the most selfish kind, a departure from the collective responsibility that constitutes them. Moreover, any number of norms can find their source in the requisite of solidarity for the cause – from participating in commemorative events, to paying taxes to the exile government, to resisting acculturation.

5.3   Differentiating the waves

The historical sketch is also important in that it periodizes the refugee flows. Today there are over 120,000 Tibetan exiles around the world, 85,000 of them resident in 35 settlements across 10 states in India.[41] According to the Tibetan Refugee Reception Center in Dharamsala, as many

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[41] Statistics for the exact number of Tibetans currently in exile vary from source to source, for a variety of reasons. There is a continual flow of new arrivals from Tibet, many of them being children – some of whom return to their families after receiving an education in exile. There also are children born in exile who may not have been recorded. The nomadic lifestyle of sweater sellers or movements from settlement to settlement or going abroad equally frustrate accurate census. Several Indian informants suggested that all figures under-represent the numbers in India, by as much as 15%. According to the Tibet Demographic Survey conducted by the CTA Planning Council in 1998,

as 2500-3000 Tibetans continue to arrive in India every year.[42] Where the earlier two waves of exiles fled because of a fear of religious persecution or collectivization of lands and herds, lack of food, increasing hardship and mental torture (Woodcock, 1970; Nowak, 1984), perhaps 90% of current arrivals are coming for educational purposes. More critically, the three main periods of refugee influx correspond with different Indian policies regarding rights to stay. The variations were partly a result of shifting internal and geopolitical security concerns, but they also reflect the ad hoc nature of India's refugee policies in general. Both the exiles' legal status and India's strategic interests have bearing on norm messaging within the community and the rationality of norm compliance at an individual level. Where the historical legacy generated communitarian imperatives related to homeland politics, the ambiguity of legal status creates normative challenges of another sort.

5.4   Legal limbo: status of Tibetan exiles in India

The vast majority of Tibetans currently living in India do not hold Indian citizenship. Several writers, as well as various interviewees, have emphasized that the exile government discourages Tibetans from seeking citizenship because it would dilute cultural distinctiveness and community solidarity needed to press the cause of Tibetan freedom or autonomy (Subba 1990, p. 151; Kharat 2003, p. 304-305; Frechette 2002, 2006). To the extent that such is the case, the choice to forego the benefits of citizenship represents a considerable sacrifice for individual Tibetans, especially the younger generation in need of more income earning latitude. Other interviewees, however, have emphasized that Indian law does not give them the option of taking up Indian citizenship. There is considerable ambiguity around the question. In addition to the varying perceptions among Tibetans interviewed, I found contradictory information in other sources, including Indian media reports, the Indian Citizenship Act (1950), the Indian Ministry of Home

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there were 122,078 exiles, 85,147 living in India. The official website of the Government of Tibet in Exile mentions 111,170 exiles worldwide, roughly dispersed as follows: India 85,000; Nepal 14,000; Bhutan 1,600; Switzerland 1,540; Rest of Europe 640; Scandinavia 110; USA and Canada 7,000; Japan 60; Taiwan 1,000; Australia and New Zealand 220. Tsewang Phuntso (2004), citing updated information from the CTA, mentions 130,000 exiles worldwide, a rounded figure often found in less official accounts.

[42] This figure was provided by the former Under-Secretary responsible for the Reception Center, interviewed February 24, 2006. Again, however, statistics do vary. Shakya (2004, p. 3) mentioned "over 1,000" new arrivals per year. According to the Director of the Tibetan Refugee Center in Kathmandu (interviewed November 16, 2005), Nepal receives 2,300 to 2,500 new arrivals yearly, most of them going onward to India as soon as they have obtained exit permits from Nepali authorities and special entry permits from the Indian Embassy.

Affairs and the Canadian High Commission in New Delhi. The Research Directorate of the Immigration and Refugee Board of Canada recently sought clarification of the issue, with similarly inconclusive results.[43] Thus, whether Tibetans voluntarily forego a citizenship option for political reasons, or they are daunted by Indian rules and regulations in effect, or they are simply not eligible on one count or another, the likelihood remains that over 99% do not enjoy rights of Indian citizenship.[44]

As non-citizens, Tibetans officially are viewed as: 1) a special category of foreigner, or 2) illegal migrants, or 3) pilgrims. In his affidavit to the United States Department of Homeland Security (2004), Tsering Shakya has emphasized that Tibetan refugees who entered India prior to 1962 fall into the first category. They were given legal documents confirming their right to stay indefinitely in the settlements to which they had been assigned. Members of this first wave, and their direct descendants, possess a Foreigner's Registration Certificate (commonly called an FRC or RC), which they must carry with them whenever traveling in India, and which they must renew annually at the Foreign Registration Office, located in the Office of the Superintendent of Police. As described by various informants, the annual registration also can be done through the Tibetan Settlement Office by showing one's face at least one month in advance of the deadline and filling out a form with a 25 Rupee fee. If Tibetans miss the renewal deadline, there is a US

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[43] A simple reading of the Citizenship Act 1955 indicates that citizenship can be acquired by birth (Section 3), by registration if marrying an Indian citizen (Section 5c), or naturalization (Section 6). For example, Section 3 states:

> A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents. A person born in India on or after 1st July 1987, is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth. Further, those born in India on or after 7th January 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

Section 6 states:

> Citizenship of India by naturalisation can be acquired by a foreigner who is ordinarily resident in India for twelve years (continuously for the twelve months preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months).

According to the Research Directorate of the Immigration and Refugee Board of Canada, however, correspondence received from the High Commission of India in Ottawa, dated March 23, 2004, stated that citizens of Tibet are not eligible, nor are their children even if born in India. Correspondence from the Canadian High Commission in New Delhi, dated January 17, 2000, stated that Tibetans born in India between 1950 and 1987are indeed eligible but few apply because they consider their stay in India to be temporary. The Refugee Board Research Directorate further cites statements from the Office of Tibet in New York to the effect that Tibetan refugees in India have experienced difficulties in obtaining citizenship. For more detail, see http://www.cisr-irb.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449889.

[44] I encountered some individuals believed to have acquired Indian citizenship, but no-one actually admitted to having done so. There are apparently no official statistics on the number of Tibetans who might have applied for naturalization or who were granted it. According to the source cited above, the Dalai Lama's Office in New Delhi estimates that less than one percent of eligible Tibetans have applied for citizenship.

$30 penalty - substantial considering local conditions. In addition, any change of address has to be registered with the local police. Thus, while Tibetans are not confined to refugee camps, their movements around India are constrained by bureaucratic regulations backed by law.

According to the U.S. Committee for Refugees and Immigrants (USCRI 2005), FRC holders have to get permits from the Indian Ministry of Labor if they want to work outside the settlements. Other sources maintain that work permits are not de facto in use (Thinley, 2003, p. 3). Similar ambiguity surrounds a host of regulatory devices, including permits for trade and restrictions on what can be sold. Large numbers of Tibetans work in the informal sector. Roughly one third travel throughout India selling sweaters from October to February, often without the protection of the law and subject to harassment. The following excerpt from my meeting with three Tibetan sweater sellers in Mumbai is illustrative:

Case # 1: Fashion Street

We assemble in a corridor like room, roughly 12 feet by 8 feet, lined on both sides with deep shelves holding inventory – home to the three sweater sellers for three or four months out of the year. The men are aged 41, 49 and 45 - all originally from the Ü-Tsang region of Tibet, arriving in India in 1967. They have had schooling up to Grade Five, a level of education they feel is not enough for being gainfully employed. They have learned to cope on their own with sweater-selling, supplemented by working the fields at home. They have learned to speak Hindi, and some have at least basic fluency in the local district languages.

They estimate that there are roughly 250-260 Tibetans selling sweater every year in Mumbai. Sweater sellers have formed groups, with agreed norms of business conduct to ensure that their reputation with suppliers is protected. All have FRCs, but Indian rules for selling are both informal and in flux. Just now there is a problem because some of their main selling spots have been declared "no hawking" zones by a new municipal law. They have their merchandise on credit and are anxious about the new law, on top of poor returns due to a short winter. In the past they simply applied for a spot on the street but received no particular permit. Local authorities were kept informed and turned a blind eye. Now authorities sweep their areas with trucks, apprehending the goods. They have to

pay bribes to be left alone. A recent court ruling has confirmed that they have no legal permission for this activity.

> The sellers mentioned having legal, fixed spots in "Fashion Street" but they fear this too may be shut down eventually. The notion of "legal" is clearly fluid. They did get permission to sell near the slums but felt that this was not appropriate. I assumed they meant that it was not attractive to them or to potential customers as a selling venue. They clarified: "We are foreigners here, how can we squeeze out even the slum-dweller?" [45]

Being respectful of Indian law and local custom is a form of meta norm, strongly promoted by the CTA. As reported by Pema Thinley, Editor of <u>Tibetan Review</u>, the Kalon Tripa (Prime Minister) Samdhong Rinpoche has emphasized the importance for the whole community of "legal scrupulousness and moral probity in all its affairs and dealings." [46] What the above account suggests is that, even if Tibetans try to conform to these norms, there is lack of clarity about what constitutes a law. The ambivalence combines with shifting rules and irregularities in enforcement to destabilize the normative attitude and make even honest trade a precarious undertaking.

While the FRC requirements can be seen as a nuisance, it is the procedure for requesting travel documents in lieu of passport that is most cumbersome. If planning to leave India, Tibetans have to deposit their FRC with the local police and request an Identity Certificate (referred to as an IC, yellow book or yellow passport), from the Indian Government. The process can take from six months to one year as papers have to go from the Tibetan Settlement Office, to the Indian police office, to the Indian Ministry of Home Affairs and elsewhere. Moreover, as indicated by Shakya, some countries are willing to issue visas on the basis of this document, while others are not. The possession of the yellow passport does not even guarantee a right to return to India without a separate "no objection to return" statement from the local and district police, in addition to a special entry visa issued by the Indian Embassy or Consular Service - at its discretion. Again, this drawn-out, uncertain process does not prevent international travel by Tibetans, but it certainly inhibits it.

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[45] The interview took place February 4, 2006, in Mumbai. Present were three Indians from Friends of Tibet and three sweater sellers from Mundgod settlement in Karnataka State, all of whom knew each other.

[46] Editorial (March 2003): The Bardo of Statelessness. <u>Tibetan Review, XXXVIII</u> (3), .3.

Whatever its onerous procedures and limitations, an FRC is necessary for engaging in work or trade, renting accommodation, running a business, opening bank accounts, securing ration cards, accessing Government of India programs, seeking admission to colleges or universities, and registering a community newspaper (USCRI, 2005; Shakya, 2004, p. 9; Thinley, 2003, p. 3). Those entering India without valid travel documents after 1962 are in a very different position from their forerunners because they are not eligible for an FRC and have no legal right to remain – nor for that matter to leave, because the FRC is requisite for official travel documents.

Thus, refugees in the wake of political upheavals between 1987 and 1999 mostly fall into the second category of exile – illegal migrants. Because the FRC is required for so many basic livelihood needs, this group is in constant transgression of one law or another. Moreover, their illegalities reflect badly on the exiles as a whole and can be fodder for local politicizing. As noted by Shakya (2004), this group has tended to congregate in the already crowded environs of Dharamsala, where they are subjected to random searches and can be arrested or deported at any time for failure to produce valid documents.[47] I met several who explained that most of them resort to petty trade between India and Nepal but, lacking papers, they frequently are exploited by customs officers at the border. They told stories of being accosted at bus stops and train stations even by non-uniformed locals who demanded to look at the merchandise and then confiscated some or all of it, threatening to report them as illegal migrants if they protested. Moreover they claimed that virtually all petty traders in their position as illegal migrants have experienced similar dilemmas. Despite sizeable personal losses (ranging anywhere from 50,000 to 300,000 Rupees), they do not dare complain to the local police, nor to the Tibetan exile government. Their only real alternative is to secure an FRC through fraudulent means by forging documents, bribing corrupt officials or claiming to be married to a legal RC holder – which, confirmed Shakya, is what most end up doing.

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[47] According to Tapan K. Bose of the South Asian Forum for Human Rights (SAFHR), 21 Tibetans were arrested in Dharamsala for not holding valid residence permits in January and February 1998. See SAFHR Occassional Paper Series # 6, "Protection of Refugees in South Asia: Need for a Legal Framework" (2000, p. 17). Although the detainees were released after a few days, Bose noted that Tibetan advocacy groups feared the arrests might be signaling a change in Indian policies toward Tibetan refugees – partly in response to reports about hostile infiltrators posing a threat to the Dalai Lama and, ironically, partly to an improvement in Sino-Indian relations. Shakya (2004) also cited Indian press reports of 14 arrests for illegal entry in October of 2003 (Press Trust of India), as well as 8 repatriations of Tibetans without proper documentation in March of 2003 (Tribune News Service). The numbers may not be significant given the six to seven thousands of Tibetans in this category who have managed to stay in India, but they do suggest a level of uncertainty and harassment.

Those who fled the volatile conditions of the late1980s and 1990s, are again in a different position from more recent arrivals who are drawn by educational opportunities they cannot access in China. According to the Tibetan Refugee Reception Center in Dharamsala, most Tibetans arriving in India these days hold Chinese passports and have five year visas, allowing for pilgrimage or educational stays. The vast majority is children, monks and nuns who, after a brief stay at the Reception Center, are assisted in their onward travel to whichever educational or monastic institution they choose (Kharat 2003, p. 297). At this point it is not known how many of them return to Tibet, which complicates the census picture overall.

5.5   Tibetans as privileged refugees

While the issue of legal status creates vulnerabilities and associated social problems, particularly for those fleeing without documents after 1962, Indian commentators have underscored the preferential treatment accorded Tibetans refugees (Vijayakumar 2001, pp. 10, 12; Bose 2000, pp. 12-13; Subba, 1990, p. 45). Tibetan refugee leaders are scrupulous in projecting appreciation of India as their host country, emphasizing the government's longstanding moral and financial support, as an outgrowth of centuries of spiritual and cultural ties. Many refugee scholars speak with pride about India's ancient tradition of providing shelter (Bhagwati, 1999, p.11; Nair, 1997, p. 88; Subramanya 2003, p.101; Saha, 2002, p. 205). Others have explained India's generosity in the case of Tibetans as a humanitarian compensation for having withheld diplomatic or military support to Tibet in her time of need (Norbu, 2004, p. 194). Yet others have indicated political and strategic considerations that entered the Government of India's policy toward Tibetan refugees (Woodcock, 1970; Kharat, 2003; Shakya, 2004). Although the fifties was the decade of "Hindi-Chini bhai bhai" (Indian-Chinese brotherhood), the "brothers" were already exchanging accusations of expansionist plans into the 4,000 kilometers of disputed border when the Tibetan exodus began.[48] Indian Government and popular sentiment toward the Tibetan refugees grew more favorable in direct proportion to the increasing geo-political hostilities that followed the 1962 Sino-Indian border war. The overall situation contributed to the Indian Government's willingness to allow Tibetans greater autonomy in governing themselves.

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[48] For analysis of strategic relations between Tibet, China and India leading up to this period, see Lamb (1989) and Sharma & Nagar (1986); for works including more contemporary perspectives, see Garver (2001), Addy (1994) and Liu (1994).

There currently are over 300,000 refugees and asylum seekers in India, with Tibetans representing the largest group.[49] It is a fact that state authorities discriminate among them based on their country of origin and existing political circumstances (Vijayakumar, 2000, p. 26; Bhagwati, 1999, pp. 12-13; Chimni, 1999, p. 52). The issue clearly is of concern to legal scholars, and is a frequent target in the media. As a <u>Frontline</u> correspondent recently put it: "the pampered lot include the Tibetan refugees." [50]

My discussions with two Indian legal scholars brought out the following points in regard to the differential treatment of Tibetan refugees:[51]

1. In the absence of refugee-specific legislation in India, government policy with respect to particular <u>groups</u> can be given legal standing by an official statement made in Parliament. The asylum granted to Tibetan refugees between 1959 and 1962 was made binding by an official statement delivered on the floor of the House by then Prime Minister Nehru. There has been no such formal granting of asylum to any other group. There has been acceptance, but nothing like this formal statement;[52]

2. Tibetans have been given land by State governments to establish their settlements. Other groups may have been given shelter, but not land for creating their own subsistence;

3. In lieu of formal citizenship, Tibetans have been given the Foreigner's Residence Certificate (FRC) and the "Yellow Book" which acts as passport. No other groups have been given papers that effectively legitimize their long term stay in India, <u>as a group,</u> in recognition of the fact that repatriation cannot be an immediate prospect.

4. The Tibetans were allowed to start an exclusive education system and institutions, which continue to be funded by the Government of India. The Central Tibetan School

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[49] According to the U.S.Committee for Refugees and Immigrants (USCRI) Country Report for India 2007, there are currently 435,900 refugees and asylum seekers in India: 110,000 from Tibet, 100,000 from Nepal, 99,600 from Sri Lanka, 50,000 from Myanmar, 35,000 from Bangladesh, 30,400 from Afghanistan and 10,000 from Bhutan.

[50] <u>Frontline</u> is India's national news magazine, published out of New Delhi. This quote is taken from an article entitled "No real refuge: Asylum-seekers in India are a vulnerable lot in the absence of a national law to protect their rights," by Naunidhi Kaura, August 16, 2002, pp.73-75.

[51] Dr. Veerabhadran Vijayakumar, Chair on Refugee Law and Registrar of the National Law School of India University in Bangalore, (Personal communication, March 6, 2006), and Dr.Subramanya from Mysore University, (personal communication, March 3, 2006).

[52] Tamil refugees fleeing civil violence in Sri Lanka also were given asylum and an initial sympathetic reception by the states of Tamil Nadu and Orissa between 1983 and 1991. With the assassination of Rajiv Gandhi in 1991, however, thousands were repatriated without international supervision and camps for the remaining have been left to deteriorate (Nair, 1997, pp. 95-99).

Administration (CTSA) follows an all-India syllabus as set by the Central Board for Secondary Education (CBSE), but with Tibetan language built into it. Minority groups have such a right according to Articles 30 and 21 of the Indian Constitution, based on their being citizens. Some refugee groups have provisional schools but none have the privilege of a full-fledged educational system.

5. Although the Central Tibetan Administration has no legal recognition, it functions as an exile government and all major financial contributions to the community are funneled through its institutions. No other group enjoys such autonomy because typically there is no unified leadership to articulate the refugee community's needs. The main reason for the Tibetan exception has been responsible leadership from the outset, in the person of the Dalai Lama.

6. Refugees are not allowed to pursue homeland politics on Indian soil – the potential for related violence being epitomized in the assassination of Indian Prime Minister Rajiv Gandhi by a suspected Sri Lankan Tamil guerilla in 1991. Despite assurances in high level talks with China (that anti-Chinese political activism by Tibetans in India will not be tolerated), the Government of India in fact has tacitly tolerated peaceful campaigns for a free Tibet.

5.6   Policy landscape relating to asylum seekers in India

The Tibetan case also needs to be understood in the broader context of India's approach to and experience with asylum seekers. Group versus individual refugee status determination has been one of the reasons that India, among other South Asian nations, has not acceded to the UN Refugee Convention of 1951, or the 1967 Protocol (Vijayakumar, 2001, p. 10). Indian legal scholars are agreed that the region's porous borders and large population movements make the individual-based Convention definition of refugee unrealistic and impracticable. With the arrival of large numbers often fleeing from ethnic violence or human rights abuse, border security forces can be overwhelmed. The administrative tasks of relief and rehabilitation overtake preoccupations with who enters and who stays. Since 1947 some 36 million people in South Asia have crossed international borders. According to official estimates there are 11 million illegal Bangladeshis in India, and unknown numbers of illegal Sri Lankan Tamils, Afghanis and others.[53] The order of magnitude speaks for itself and it is important to see the few thousand

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[53] Taken from an article entitled "Uprooted and unwelcome" written by a representative of the International Committee of the Red Cross (ICRC) in New Delhi, (Savita Varde-Naqvi, The Hindu, June 6, 1999).

Tibetan illegal migrants in perspective. Because of their sheer numbers relative to officially sanctioned refugees or internally displaced persons, so-called "illegal" migrants are seen to compete with the indigenous population for scarce resources and, as illegals, are easier to resent. Clashes become inevitable when issues like identity, culture and civil rights come into play. It is also the case that frustration with the illegal migration problem – and nefarious activities such as human trafficking or terrorism attributed to some - can be invoked by local politicians for vote banking and projected onto any group as convenient. Thus Tibetans, while well viewed in general, can fall prey to xenophobic sentiment inspired by these larger forces.

The resort to group determination of refugee status goes hand in hand with policy makers retaining the power of decision making. In the absence of a legal framework, the consequence has been discretionary outcomes ultimately inconsistent with rule of law. There can be mass rejections at the border, or non-recognition of those managing to enter, or sub-standard conditions in refugee camps (Nair, 1997, p. 89). A number of legal scholars have pointed to the role of the judiciary as a safeguard for constitutionally embedded equality of rights applicable to refugees, as much as to citizens (Vijayakumar, 2001; Subramanya, 2003, pp. 101-109). They also have emphasized that the National Human Rights Commission of India (NHRC) has functioned well as a watchdog for the protection of refugees (Bose, 2000). Most equally are agreed, however, that India does not have a clear policy on the determination of refugee status and no means of distinguishing asylum seekers lacking papers, from illegal economic or political migrants.[54] Ad hoc decisions are made on the basis of a variety of acts, including: National Security Act, Border Security Force Act 1968, Illegal Migrant Determination by Tribunals Act 1983, Illegal Immigrants (Identification and Deportation Act) 2001 (Shakya, 2004, p. 6).

Asylum seekers accepted as refugees are treated as foreigners under the Passport (Entry into India) Act 1920, Passport Act 1967, Registration of Foreigners Act 1939, and Foreigners Act 1946 (Vijayakumar, 2000, p. 235; Subramanya, 2003, p.101). The significance for Tibetan refugees of the Foreigners Registration Act 1939, as well as the Foreigners Act 1946, has already been addressed. The former deals with registration of all aliens entering, being present in and

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[54] In recognition of these problems, the drafting of a Model National Law on Refugees was launched by an Eminent Persons Group (EPG) under the guidance of the former Chief Justice of India, Justice P.N. Bhagwati (Abrar & Malik, 2000). It is currently undergoing review and revision among legal scholars in the South Asia region.

departing from India. The latter empowers the state to prohibit, regulate or restrict the entry of foreigners into India, or their departure, or their continued presence. Section 3 of the 1946 Act, in particular, elaborates a wide range of prescriptions and prohibitions, in a language general enough that it leaves substantial discretionary powers to the authorities (for example: restricting movement and association with persons deemed inappropriate, limiting possessions, and "otherwise regulating his [the refugee's] conduct in any such particular as may be prescribed or specified" (Section 3 (2) (e) ix). As noted by Shakya (2004, p.7), the police and judiciary use this Act, or its 2003 Amendment, to detain and deport those suspected of infringement. Shakya further explained that, aside from laws at the national level, there are many others at state, district or even local level that circumscribe what Tibetans may or may not do – particularly in respect of trade or land purchase.

The issue of land purchase requires some clarification because it has posed problems for local relations. The Indian Constitution 1950 confers a number of rights on all persons (citizens and aliens alike), such as equality before the law, equal protection of the law, religious freedom, right to education, and so on (Vijayakumar, 2000). Other rights included in the Constitution, however, are conferred on citizens only, such as the right to vote, own property or be in Indian government employ. Thus, for example, Article 19 (1) (f) of the Constitution reads: "All citizens shall have the right to acquire hold, and dispose of property." Legal scholar Jagat Narain has clarified that the Article literally means that the provision applies to citizens only and not to foreigners (1966, p. 202). As non-citizens, therefore, Tibetans cannot individually own property. The land given by states for their various settlements is on the basis of a collective long term lease. Some Tibetans have purchased land in the name of silent Indian partners, a form of transaction later designated as illegal under the Benami Transactions (Prohibition) Act, 1988. When communal conditions are restive, Tibetan infractions of the Act are strongly denounced, even though the practice is widespread.[55]

In sum, the narrative of adaptation, which includes being law-abiding guests in a gracious host country, is muddied by the sub-text of daily life as refugees. This is not to suggest that Indians

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[55] Benami land transactions date back to the British Raj, but the inequalities, legal complications and loss to public revenues and creditors eventually made them the subject of radical land reforms relating to ownership and tenure. The Act of 1988 made Benami transactions illegal, but its enforcement presupposes a mobilization of bureaucrats, politicians, and police – some of whom have been involved in such deals themselves. Thus the invocation of this Act in the case of Tibetans rarely is a stand-alone issue.

themselves do not face a similar precarious existence, whether as part of the poverty mass, or the population displaced internally due to development schemes or civil strife. There is no question that the Indian government has taken a remarkably generous attitude toward Tibetans considering its own domestic challenges and security concerns. Tibetans are genuinely appreciative of that fact. It is equally clear, however, that legal limbo creates a vulnerability which explains another dimension of communitarian social cohesion. Although there are tensions as in any society, Tibetans by and large stick together as an imperative of their refugee condition. As noted above and also highlighted by Dawa Norbu (2004), sweater sellers form voluntary associations to maintain discipline amongst themselves, with elected members who act on their behalf in dealing with local Indian authorities (2004, p. 211). Survival information flows rapidly through such a community despite large distances between settlements. Thus, for example, the sweater sellers in Mumbai were aware of the troubles of their confreres in Nagpur, Central India, who had just been evicted by army personnel from their customary selling spot in front of grounds belonging to the Defense Department. In similar fashion, any news of communal disturbance with local Indians flashes through all the settlements as a normative caution to keep a low profile.

In exile, the historical legacy of March 10 and the present reality of indeterminate legal status are critical overlays to whatever can be said about Tibetan culture as a backdrop to the operation of norms of social control. What then is Tibetan culture? In pre-1950 Tibet, religion was central to how people interpreted their world and it was the dominant mode of economic, social and political organization. Significantly, the nationalist spirit awakened by March 10, 1959 and its aftermath were intimately linked with religious belief because the Chinese occupiers were and, to a large extent, continue to be seen as enemies of the faith. Thus, despite modernizing and secularizing changes in the Tibetan Diaspora today, Tibetan Buddhism remains a core feature of culture and identity. Its norms are the more powerful because they are fused with nationalist spirit in a way that was not the case in old Tibet.

VI   TIBETAN BUDDHISM: IDENTITY, AUTHORITY, WORLDVIEW

This section examines Tibetan culture from three perspectives: 1) ways in which Tibetan Buddhism constitutes Tibetan culture, including the later overlap of religion and nationalism; 2) socialization into non-violence; and 3) norms relevant to disputing.

Like Max Weber, Clifford Geertz saw man "as an animal suspended in webs of significance he himself has spun" (1973, p. 5). Geertz' view of culture as an "ordered system of meanings and of symbols in terms of which social interaction takes place" (p. 144) is very apt for the Tibetan case. In the first place, it resonates with the epistemological basis of Tibetan Buddhism – that is, the belief that conventional reality or relative truth is merely a construction, a projection of the collective mind.[56] As such, it points at once to the fact that all phenomena are empty of inherent existence and that all things are interdependent - from which important philosophical as well as socializing concepts such as karma derive. In the second place, given its prominence as a marker of identity, Tibetan Buddhism provides important conceptual structures for understanding orientation, communication, and self-control within Tibetan communities. As Geertz has emphasized, these structures refer not to the symbols themselves but rather to the way in which they are used to convey meaning in distinct social situations. They are, in a sense, public "inscriptions" of a "communal sensibility" (1983, p. 66). The literature abounds with examples of how such religious symbol systems operated in pre-1950 Tibet to structure power relations (Goldstein, 1989; Tucci, 1980), to settle disputes (French, 1995), or just to engage in the daily business of living (Norbu, 1987; Ekvall, 1968; Neumaier-Dargyay, 1982). Scholars have described the use of religious symbolism in occupied Tibet to express political protest (Barnett, 1994), to demonstrate communal solidarity (Epstein & Wenbin, 1998) and to make claims to self-determination (Norbu, 2001; Choedon, 2002).

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[56] As stated in J. Hopkins (Ed. and Trans.) (1999) Kalachakra Tantra: Right of Initiation: "The fundamental innate mind of clear light abides in or pervades the heart of all sentient beings. It also is the final essence and creator of all environments and beings, the basis of emanation of all cyclic existence and nirvana. For, all phenomena – environments and beings – are the sport or artifice of the fundamental innate mind of clear light, called the basis of all" (p. 273).

6.1   Brief historical retrospective

One of the main reasons why religion grew to be such a cohesive force in Tibetan society was that Tibetan Buddhism more or less stabilized as the state religion as early as the 7th and 8th centuries AD. It infused the first law codes (French, 1995; Snellgrove & Richardson, 1968) and was soon embedded in the system of land tenure (Carrasco, 1959). At the height of the Tibetan empire, during the reign of Tri Songdetsen (755-797), the first Tibetan monks took vows and became tax exempt, while church hierarchs and monasteries were endowed with lands and revenue. This was an incipient pattern of the elaborated system that would survive into the 20th century. By the 9th century, monks began to be appointed as government ministers. This was another emergent pattern that later blossomed into the "chösi nyiden" system of governance (religion and political affairs combined), which characterized Gelukpa rule from 1642, right up to the time of Chinese occupation.

When the Tibetan empire fragmented into petty estates between the years 842 and 1247, different Tibetan Buddhist schools – Nyingma, Kagyü, Sakya, Geluk - established their doctrinal positions and worldly hierarchies. Over the centuries their monasteries grew to be centers of learning, culture, medicine, law and politics. In a primarily pastoral and agricultural economy, monastic estate holding meant that religion was not only the source and medium of cultural expression, but also was entwined with the means of production and distribution. Sending sons to a monastery became a culturally valued way of earning spiritual merit while serving the practical ends of preserving family inheritance. Monasteries vied to recruit young monks as a measure of their own success. The cumulative result was an ideology of mass monasticism, with enrolment of candidates at a young, impressionable age. By 1733, 26% of males in Central Tibet and Kham were monks, again a pattern that survived to the 20th century (Goldstein, 1989, p. 21).

According to Carrasco, monastic orders spread through different regions and political units forming a net of overlapping allegiances that helped to integrate a country otherwise naturally segmented by ecological and political boundaries. Others have emphasized the criss-crossing of alliances and rivalries that ultimately undid the system in the 20th century (Goldstein, 1989; Shakya, 1999). Tibet had a long history of fiercely independent tribal chieftains in the provinces of Amdo and Kham, who entertained differential relationships with Chinese officialdom, while keeping a wary distance from Lhasa's control ambitions. Tibet also had a long history of rivalry

between Nyigma, Sakya, Kagyü, and Geluk sects of Tibetan Buddhism, as well as the pre-Buddhist Bonpos – each of which had enjoyed various degrees of influence until the rise to supremacy of the Geluk Sect. Whatever the divisive forces characterizing different periods, however, few scholars would deny that religion and a unique mass monasticism were at the very core of social organization.

The broad themes described above are well known in all historical accounts of Tibet. The point is that trade routes, pilgrimage circuits, holy sites and the religious and political tentacles of the monastic system created something of a shared identity based in Tibetan Buddhism. Scholars such as Choedon (2002) and Drefyfus (2002) have suggested that the dense networks also created a sense of territorial belonging that was at once local and arguably (or at least retrospectively) proto-national.[57] While local dialects were often mutually incomprehensible, linguistic unity was achieved through the standardized written form of classical Tibetan, which allowed for the development of a vast corpus of Tibetan Buddhist literature (Snellgrove & Richardson, 1968). At the same time, individual identity could be based in the extended corporate family, the specific locale, region, status or occupation. One could be a Khampa or an Amdowa, a high pasture nomad, semi-nomad or peasant farmer, a tribal chief or nomad-servant (Ekvall, 1968; Neumaier-Dargyay, 1982). As a monk one could be affiliated with one of the great monastic centers, such as Drepung, Sera or Ganden, and within that, with one of its colleges, or one of the residences organized within the colleges on the basis of regions and dialects. One could also be a monk official in Lhasa or a monastic administrator and/or a member of one of the noble families with entrenched economic and political privileges. Within what was essentially a theocratic feudal order, these differing affiliations very much defined how life was experienced, but the overarching cosmology and worldview remained that of Tibetan Buddhism.[58]

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[57] The idea that any pan-Tibetan sentiment prevailed historically is much contested. Accounts by Goldstein (1989) and Shakya (1999) illustrate the limited extent of Lhasa's political or bureaucratic influence over principalities outside the central region of Ü-Tsang, and even rivalry between the provinces of Ü and Tsang.

[58] A number of authors have written about the widespread and variegated practices of folk religion that have existed alongside the dominant Bön or Buddhist trends since earliest times (Tucci ,1980; Snellgrove & Richardson, 1968; Epstein &Wenbin, 1998). More accurately, both Bön and Buddhist sects assimilated a variety of local deities and spirits. Local spirits residing in mountains, rocks, trees, lakes or rivers were easily offended and could cause illness and misfortune when angered; avoiding them, counteracting them or placating their potential negative power was an abiding preoccupation, alongside more esoteric concerns about karma and enlightenment (Goldstein, 1998; des Jardins, 2004; Tucci, 1980; Neumaier-Dargyay, 1982). While the Tibetan Buddhist religion unquestionably has come to define the pan-Tibetan culture, there are "residual" Bönpos, Muslims and Christians who do not share the same bonds of religious affinity but do share the sense of religiosity.

6.2   Charismatic leadership

A critical feature of culture, as defined by Tibetan Buddhism since the rise of the Geluk sect, was the institutionalization of political and spiritual legitimacy in the office and person of the Dalai Lamas. For all its flaws, the "chösi nyiden" system of government, headed by a succession of Dalai Lamas and served by equal numbers of monk and lay bureaucrats, placed a broadly accepted priority on religion in the management of worldly affairs (Goldstein, 1989; Carrasco, 1959). The principle behind this near universal acceptance was the conviction that the Dalai Lamas were all reincarnations of Tibet's patron saint Avalokiteshvara, and progenitors of the Tibetan race. For Tibetans across the plateau, Dalai Lamas were thus enlightened beings whose special "wisdom combined with compassion" evinced deep trust in their authority as heads of state. Consistent with Buddhist belief in rebirth, Tibetans believed that the mind stream of the Dalai Lama and his enlightened qualities were passed on after his death to a newborn that only needed to be discovered. Of course, the period between discovery and the child's coming of age left a power vacuum filled by various ambitious figures, including the regents governing on his behalf. Many politically influential high lamas equally were accepted as reincarnations of their previous selves, creating strong regional and/or sectarian pockets of power. The machinations of regents or the testy independence of regional power holders, however, did not diminish Tibetans' faith in religion, or in reincarnation as a principle of legitimacy.

Although the Chinese occupation of Tibet, and the exodus that followed, created a historical rupture, the Tibetan Buddhist heritage has been carried over into exile. It is cherished and retold – albeit in edited fashion - as part of a civilizational legacy, as opposed to just an ethnic one. In exile, institutional structures of democracy continue to make room for spiritual inputs, within a unique framework of secularization. Monastic institutions rebuilt in exile continue to thrive with large numbers of monks and nuns.[59] Most importantly, aside from his extraordinary dedication and capability in leadership, the 14th Dalai Lama's moral authority is paramount. He stands as a symbol of the past, present and future of Tibetans in exile.

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[59] Sherab Gyatso (2004) has reported that Tibetans in exile still have one of the highest monastic populations of any ethnic group. The combined Tibetan monk population of India and Nepal is 11, 067, representing about 11% of the exile population, or one in five males. There are 214 established Buddhist monasteries in the two countries (p. 214).

6.3   Enemies of the faith: Religion meets nationalism

Tsering Shakya (1999) has argued that while religion was central to people's interpretation of how events were unfolding under Chinese occupation, there was no immediate sense of pan-Tibetan nationalism. If the Eastern regions of Kham and Amdo were resistant to Lhasa based political power, Lhasa was unresponsive to their pleas for support in the early years of uprising against Chinese brutalities there. Yet, natural calamities occurring around that time were taken as bad omens with more than local import. An earthquake on the eve of the Chinese invasion of Chamdo in Eastern Tibet, and a killing flood in Gyantsé in 1954 convinced people that the teachings of the Buddha, the status of the Dalai Lama and the future of the Tibetan people were all under threat (1999, p. 165). Rumors were spreading that the Nechung State Oracle had predicted that invasions from the east would be bringing about the collapse of Lhasa (French 1995, p. 49). These religious convictions coalesced in the offering of a golden throne to the Dalai Lama in 1957, at the Norbulingka Summer Palace. It was orchestrated by a newly formed coalition of Khampa guerillas, the Chuzhi Gangdruk who would sustain armed resistance to the Chinese forces for over thirteen years. The offering ceremony was both a religious protective ritual and a symbolic affirmation of loyalty to the Dalai Lama's leadership. Shakya stated:

> For the first time all Tibetan people were united in common purpose and shared values, which helped to identify the common enemy. The Chinese were labeled Tendra (brtan dgra) 'the enemy of the faith,' and the Khampa resistance groups were seen as the 'fidei defensor.' (p. 165)

The focus on the enemy and the galvanization around a threatened religious civilization helped to unify otherwise fractious elements in exile as well. Symbolic structures officially recreated a civilization rescued from the abyss. It is not just that precious religious artifacts and texts were brought out to safety, or that famous Geluk monasteries like Sera, Ganden or Drepung were rebuilt, or that various institutions were created to preserve and pass down a rich cultural heritage. These were extraordinary achievements in themselves. The symbolic meaning, however, lies in the transference of religious and cultural authenticity to Indian soil, where exile Tibetans enact the heritage their brethren in Tibet cannot. Equally, they fight the fight their fellow Tibetans are constrained from doing. The resulting conflation of religion and nationalism is everywhere symbolized - in homes, offices, institutions, shops - by the juxtaposition of a

miniature Tibetan flag with a photo of the Dalai Lama. The following excerpt from a speech by the Dalai Lama to the Assembly of Tibetan People's Deputies in 1991 made the link explicit:

> Even now, in Tibet, many people have been sacrificing their lives in the struggle for freedom of Tibet which, in their minds, is associated with the Buddhist Dharma. As for me, also, if I am working for the Tibetan cause, it is with the conviction that I am struggling not only for political freedom, but also for the freedom related to the Buddhist Dharma. (c1998, p. 272) [60]

Cultural theorists such as Anthony Smith (1999) have emphasized the role played by 'ethno-entrepreneurs' in forging identity around nationalist aspirations. Leaders capitalize on emotive elements, such as memories of a golden age with all its symbols, to rally the ethnic community around its historic uniqueness and, in the words of Weber, its "irreplaceable culture values" (Smith, 1999; Mach, 1993). Particularly effective are myths of ethnic election, which imbue a community with a sense of being "chosen people." The distinction places members under a heavy obligation to preserve ritual, moral and legal codes, and can even justify imperialist expansion and war. Furthermore, almost all religious traditions contain metaphors of spiritual warfare which can be exploited to legitimate violence. In that respect, religious nationalisms have a dangerous edge that is seen in ethnic conflicts around the world whether in secessionist or irredentist forms. Homeland itself is a charged term because it can be invoked to stoke nationalism in a way that denies the place of competing ethnicities within a single territory.

Sri Lanka is a compelling contrast and comparison with Tibetan exile nationalism. The Sri Lankan national flag, with its sword-wielding lion and martial resonance, has become a proud symbol for the majority Sinhalese Buddhist population, but an insult to the Hindu Tamils who see in it the reflection of their dispossessed minority status (Juergensmeyer, 2003; Sampson, 1997). Premasiri (2003) and Bartholomeusz (1999) further have argued that while Buddhist canonical texts provide no justification for war, both monk and lay Sinhalese Buddhists have drawn on post- canonical Buddhist texts to legitimate their ethical stance on 20 years of civil war with Tamil separatists. As stated by Batholomeusz: "according to contemporary readings of the 'Mahavamsa,' some Sinhalas maintain that they are the Buddha's chosen people, and that the island of Sri Lanka is the Buddhist promised land" (p. 6). The sense of ancestral homeland with nowhere else to go plays a crucial role in relations with later arrivals to the island such as the

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[60] Importantly, references to Tibetan "freedom" are no longer part of the Dalai Lama's political vocabulary since the adoption of a Middle Way Approach to dialogues with Beijing, which emphasizes religious, cultural and resource autonomy rather than complete independence.

Tamils. As the indigenous, rightful heirs of the land and protectors of the dharma, many Sinhalese leaders feel that "under no circumstances should the territorial integrity of the Sri Lankan state be sacrificed in the interests of peace" (p.1). The devastating death toll and continuing tensions are a legacy of that outlook.

Within India, radical nativist groups such as Shiv Sena promote a homeland vision for the 'sons of the soil' in Maharasthra that is at once regional, anti-Muslim and virulently aligned with the Hindu majority. Nor is Maharashtra an isolated example in India. Similar dynamics of communal violence in Gujurat, Karnataka, Uttar Pradesh, Punjab, Kashmir, Assam – to name only a few states – have been analyzed by many observers of the nationalism phenomenon (Brass, 1997; Juergensmeyer, 1993; Sen, 1993). Like Sinhalese Buddhist invocations of homeland, these visions are aggressively exclusionary.

While the nationalism of exile Tibetans also has the elements of nostalgia and commitment characteristic of Smith's 'chosen people,' it is distinctive in its inward purposes of unifying the polity, and its official abdication of violence as a means to the desired end. Dhawa Dhondup (1993) and George Dreyfus (2002) have commented at length on the religious nature of this nationalism as reflected in the anthems sung by Tibetans and the symbolism of the national flag – both having been introduced in exile. Songs are replete with cryptic but profoundly epistemological, spiritual phrases that non-scholastics are unlikely to truly understand. The very complexity, however, points symbolically to the highly evolved Buddhist culture that was Tibet. The national anthem, for example, is modeled after traditional religious prayers and begins with:

> The light of wish-fulfilling gem-like Able One's Teaching,
> The source of treasury of all happiness mundane and
> Transcended, Shines ablaze.
>
> The Play Oceans enlivened benevolent activities of the
> Widely-nurturing Protector who retains the Teaching and
> The migrators' gem, Expand forth. (Dhondup, 1993, p. 16)

Dhondup explained that these opening lines refer at once to Buddhist cosmology and the supreme capability of overcoming the most subtle failings of the non-enlightened mind. The anthem ends with: "May their magnificence bring victory over war against darkness, the destructive camp" – a clear reference to the Chinese occupiers of Tibet. In the Prayer of Honest Words, penned by the Dalai Lama shortly after arriving in exile, the spiritual and political

aspirations are yet more overtly conflated. Two stanzas call for compassion for the "barbaric forces of destructive camp lacking loving kindness," and are immediately followed by the wish for "complete independence of entire Tibet, with spiritual and political harmony." As translated by Dhondup (1993, pp. 15-16), the final stanza casts both aspirations into metaphysical form:

> In brief, I request You all to kindly produce now the
> Wonderful Fruition of extensive prayers, pledging to take
> Care of the Snow Country,
> By Protector Avalokiteshvara at the presence of Buddhas
> And their scions
> By the independent link of the profound
> Appearance-empty reality,
> By the energy of the Three Sublime's compassion,
> By the power of my honest words
> And by the power of the truth
> Of cause-effect infallibility
> May our honest prayers, without obstacles, actualize soon.

The "Snow Country" of course is Tibet, and "Protector Avalokiteshvara" is the Dalai Lama, backed by the sacred lineage of Buddhas and Bodhisattvas – powerfully re-inscribing the legitimacy of both leadership and cause. The Tibetan national flag similarly encodes a dense range of historical, political and spiritual meanings. The songs and flag display are incorporated in daily school openings, in the year round calendar of commemorative events and the orations of government officials. The focus on leadership and cause reinforces exile orientation, internalizes pride in Tibetan culture and communicates a unified Tibetan identity.

On this general level, it can be said that, whatever the diverse affiliations they left behind, Tibetans in exile have embraced an abstracted, homogenous identity defined by Tibetan Buddhism rather than specific sects, and by a territorial re-imagining of Greater Tibet rather than specific regions of origin. The abstracted homogenization of identity was more conducive to the enactment of resistance to a common enemy and it had to be consciously nurtured by the community's leaders. This is not to suggest that regional or sectarian loyalties do not persist, especially among the first and second generation of exiles, but it is evident that the youth of today have been socialized to think of themselves as first and foremost Tibetan. It is also the case that smoothing over differences was an imperative of bringing order to the chaos of exodus and of institutionalizing democratic egalitarianism as an antidote to internal conflict.

6.4   Little Lhasa

As the seat of the Dalai Lama's personal residence compound and the Tibetan exile government since May 1960, Dharamsala embodies the symbolism of cultural and political legitimacy. McLeod Ganj in Upper Dharamsala is referred to as "Little Lhasa" in Tibetan government publications, on Indian tourism sites, and others such as www.tibet.com, www. himachalonline.in, and www. tibetanworld.com. Conscious efforts to recapture the spirit of old Tibet are evident in the Tsuklak Khang, a modest version of the Jokhang Central Cathedral in Lhasa, and the adjacent Namgyal Monastery which was traditionally the personal monastery of the Dalai Lamas. From this location, the Dalai Lama makes commemorative addresses and conducts his annual Spring Teachings for the many thousands of devotees. A walkway for circumambulating the Dalai Lama's residence compound is reminiscent of the barkor around the Potala Palace and, further down, is Nechung Monastery, home of the traditional State Oracle. Not only are such recreations architecturally impressive, they are the site of monthly religious ceremonies, ancient rites and ritual dances, following the Tibetan calendar. For these reasons, McLeod Ganj has become a pilgrimage destination for Tibetans, Western adherents of Tibetan Buddhism, spiritual seekers in general, and tourists drawn by the curiosity of it all. McLeod Ganj is also pivotal for newly arriving refugees. A Reception Center temporarily houses the refugees and arranges an audience with the Dalai Lama, before they move on to other settlement locations. The practice reinforces the legitimacy of the CTA as the rightful representative of all Tibetan peoples, re-enacting a relation to the Potala Palace as the seat of temporal and spiritual power in pre-1959 Tibet.

Aside from the politically resonant symbolism just described, the task of cultural preservation is explicit in the teaching and showcasing activities of several institutes located in the vicinity. The Library of Tibetan Works and Archives, for example, is an important repository of books, manuscripts, film footage, and ancient cultural objects of interest to Tibetan scholars. The Tibetan Institute of Performing Arts is a teaching and performing venue for both a traditional repertoire of music, dance, and theater, and contemporary initiatives. It also teaches the intricate arts associated with masks, costumery and musical instrument production. Aside from numerous monasteries and nunneries associated with different sects, the Institute of Buddhist Dialectics draws scholars and practitioners from all sects for scriptural study through special debating techniques that emphasize the logic of Buddhism. The deep tradition of Tibetan medicine and

pharmacology is preserved as a valued medical service and research facility in the Tibetan Medical and Astro Institute, or Mentsi Khang hospital complex. The Norbulingka Institute teaches skills in traditional works such as religious statutes, thangkas, woodcraft and metal craft. In short, these institutes represent a huge investment of human and financial resources whose primary purpose was civilizational rescue but whose presence today has the vital communitarian function of stimulating collective pride and memory associated with the ancestral home.

Dyibesh Anand (2002) has written perceptively about the symbolic geography of Dharamsala as the focus of individual, communal and institutional practices of Tibetan culture that recall the role played by Lhasa. Today, Dharamsala also is the temporary capital of the entire Tibetan world and hub of the Tibet movement as a transnational network of supporters for cultural survival and human rights. Anand made the point that names such as Amnyé Machen Institute or Gangchen Kyishong used in non-commercial establishments reflect Tibetan desire to recreate a familiar environment. Others, like Shangri-la and Snow Lion, used mostly in commercial establishments, pander to exoticised representations of Tibet lapped up by tourists and spiritual seekers (p. 24). At the same time, he argued that the very desire to preserve a culture under threat is an act of resistance to dominant forces of modernity as well as to Chinese statecraft. As such, the many festivals celebrate not only religious beliefs and politically commemorative dates but also are a technique through which narratives of communal identity are reproduced and regulated, just as the grand pageantries in Lhasa were essential rites for the well-being of church and state (p. 26). Although Anand's main intent was to problematize what he saw as the reification of culture in "Little Lhasa," my interest is in placing the symbolic geography within a communitarian problematique of building social cohesion around ethnic or religious identity. This is the kind of cultural tapestry that Etzioni described as the source of non-rational norms of social control. Without a grasp of these cultural dynamics, the rationality of norm compliance choices made by individuals in specific circumstances cannot be properly interpreted.

6.5   Invention of tradition as social control

Eric Hobsbawm has theorized extensively on the invention of tradition in both nationalistic and communitarian contexts. He distinguished three types, each of which can be seen to operate in the Tibetan Diaspora:

- Those establishing or symbolizing social cohesion or the membership of groups, real or artificial communities;

- Those establishing or legitimizing institutions, status or relations of authority; and

- Those whose main purpose was socialization, the inculcation of beliefs, value systems and conventions of behavior. (1992, p. 9)

As observed by Houston and Wright (2003), some invented traditions in the Tibetan Diaspora can be subtle transformations of familiar practices, while others "are consciously reconstructed for their political utility" (p. 222). Undoubtedly, the most prominent examples of overt legitimation exercises are the annual commemorations of the March 10 uprising that marked the exodus from Tibet, and the celebrations of the Dalai Lama's birthday in July. Both events are pure exilic products replete with ritualized activity and symbols of nationalism such as the Free Tibet flag and the national anthem - themselves created in exile. For Dhondup (1993), the singing of three popular nationalistic songs – "Tibetan National Anthem," "The Prayer of Honest Words," and "Arise!" - "injects a euphoria of nationhood, a common belonging" (p. 14). So powerful are such symbols and rituals that, according to Shakya (1993), they have been adopted by people inside Tibet as well (p. 11). As he explained, March 10 events unify the real polity in exile, as well as the imagined community of Greater Tibet, by demarcating the Chinese "other" deemed responsible for the Tibetan plight. Celebrations for the Dalai Lama's birthday achieve a similar goal, while also providing the opportunity to focus on a single leader. Moreover, participation in these public affirmations of Tibetan "raison-d'être" is well nigh compulsory. To abstain would be viewed as unpatriotic, an unacceptable deviation from social norms that would be punishable by communal scorn or even ostracism.

Mönlam Chenmo and the Kalachakra are more subtle examples of how ancient traditions are adapted to modern purpose – particularly those of promoting social cohesion and inculcating beliefs and conventions of behavior. Although participation is entirely voluntary, these religious events draw large numbers of Tibetans and provide occasion for interpersonal networking, as well as for top-down political and social messaging. Since the time of Jé Tsongkhapa (1357-1419), the Mönlam Chenmo, or Great Prayer Festival, was the most important public celebration of the year, held in Lhasa at the Jokhang Temple, as part of Losar or Tibetan New Year. For 21 days, Tibetans would stream into the capital for the pageantry and prayers, with some 20,000 monks participating in varied religious ceremonies (Tandzin, 2004, p. 46). Aside from the

broader spiritual purposes of the Mönlam, Robert Barnett (1994) has explained that its essence was for the clergy to convey an ecclesiastical endorsement on the Tibetan government, in return for a commitment to the religious establishment. After almost thirty years, the Chinese took a chance in allowing revival of the Mönlam in 1988, only to have the Tibetans boycott the occasion in a symbolic refusal to legitimate the Chinese presence in Tibet. As Barnett has put it, the fiasco left Chinese authorities feeling very vulnerable with respect to the Mönlam, while reaffirming for Tibetans its past and current significance. The site of numerous subsequent demonstrations, the Jokhang itself came to represent the fusion of religious and secular aspirations that constitutes contemporary Tibetan nationalism.

In exile, an abbreviated Mönlam Chenmo has been resuscitated in various forms and locations as prayer festivals for world peace and prosperity. Klieger (1992) has described both March 10 and the Mönlam in great detail, observing that together "they represent the dynamic of change and continuity, the outward and the inward, the profane and the sacred, the nation and its religion" (p.67). In Dharamsala, on the final day of a three-day festival, the Dalai Lama holds teachings on ethics and morality, thus reinforcing the Diaspora's identity around a Tibetan Buddhism made relevant beyond the narrow confines of the locale. Massive gatherings in Bodhgaya under the Nyigma sect head, Penor Rinpoche, blend prayers for world peace with prayers for the preservation and propagation of Buddhism and for the pacification of the Dalai Lama's inner and outer obstacles. Couched in religious language, nationalist sentiments are sublimated into more diffuse aspirations – which, for many, nonetheless feed the legitimacy of the Tibetan cause. Purely secular variants include the US Tibet House annual Benefit Concert which commemorates the Mönlam Festival with celebrities who are sympathetic to Buddhism and the Tibetan plight. Again, the focus is on world peace but, as illustrated in the 1998 Carnegie Hall Concert, the final song "People Have the Power" makes its nationalistic imprint, putting homeland politics on a par with spirituality.[61]

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[61] See Jeff Magness' "Review of 03/09/98 Tibet House Concert, Carnegie Hall, New York City" Retreived from the World Wide Web November 2, 2007 at: www.oceanstar.com/patti/crit/980309ap.htm Tibet House was first established in New Delhi by the Dalai Lama in 1969, as a repository of old and rare art objects and manuscripts. A Tibet House was established in the US by well-known American Buddhists such as Richard Gere and Robert Thurman. Inaugurated in 1987 in New York City, one of the main goals of the organization has been to help preserve Tibet's unique culture and spiritual heritage through public events and donations to various Tibetan institutions. Today there are Tibet House organizations in several major cities, including Barcelona, Mexico City and Moscow.

An even more ancient and esoteric tradition, the Kalachakra initiation, showcases some of the most complex of tantric teachings, places Tibetan Buddhism on the moral high ground, and coincidentally provides the occasion for promoting social norms within the Tibetan community. Historically, the Kalachakra Tantra teaching has been associated with preparation for a holy war against barbarians, to be fought out of Shambhala. Ambiguity about whether Shambhala exists in the conventional world, or merely on the level of myth, or as a pure land that manifests only to the highly evolved, has allowed for a certain malleability of the messaging for political ends (Yoeli-Tlalim, 2004, pp. 99-103). Interpretations can emphasize an external war to be fought against evil forces, or they can stress war as spiritual analogy for overcoming the three mind poisons of ignorance, attachment and aversion. As of 2006, the Dalai Lama had given more than 30 Kalachakra teachings to mass audiences in India and elsewhere. For Tibetans, receiving the Kalachakra initiation from the Dalai Lama is a major event in their lives, as it is popularly held that this will plant the seed for their rebirth in Shambhala (Hopkins, 1999, p. 64). In her analysis of the ambiguity of Shambhala, Yoeli-Tlalim has explained that the Dalai Lama has chosen to avoid war references in the Kalachakra texts, preferring to stress that world peace is achievable only if personal inner peace is developed through the skillful means expounded in the teachings. This emphasis, she explained, is connected to the Dalai Lama's engagement with Western perceptions of Tibetan Buddhism as a philosophy of non-violence and universal ethics. Projected as defining of Tibetans, the image becomes a socializing model through which Tibetans end up recognizing themselves. Yoeli-Tlalim quoted the Dalai Lama:

> I have given the Kalachakra in more than one country outside India – my motive for doing so being not only to give some insight into the Tibetan way of life and thinking, but also to make an effort, on an inner level, in favor of world peace. (2004, p. 105)

The Kalachakra in Amaravati, Andhra Pradesh, India from January 5 to 17, 2006 is a good example of how profound spiritual teachings become the occasion for normative messaging of a more quotidian nature. According to special coverage of the event by Tibetan World, over 100,000 people participated in this two week teaching[62] – in some cases with whole villages from the Tibetan settlements being in attendance. Although the vast majority of participants were Tibetan, there were sizeable numbers from 75 different countries, including roughly 8,600 from Tibet itself. The Kalachakra provides a tremendous meeting ground for Tibetans, with numerous side activities including ritual masked dances, four day Tibetan Music Concert, photo exhibition by Gu Chu Sum, candlelight rally for the release of the 11th Panchen Lama, and NGO

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[62] Special Coverage of Kalachakra 2006. Tibetan World, II. (8) February 2006. 12-24.

booths promoting vegetarianism and Tibetan wildlife conservation. A lecture and film screening area, maintained by the Tibetan Directorate of Information and International Relations, provided a podium for speeches by government officials. Peace marches and bicycle rallies to and from the Kalachakra site propagated the Tibetan issue to local communities along the route. Following is a small sample of normative statements, taken from <u>Tibetan World</u>'s day-by-day account of the proceedings that demonstrate the promotion of beliefs, as well as behavior conventions quite outside the esoteric purposes of the Kalachakra, though not necessarily inconsistent with them:

- The Dalai Lama, addressing Tibetans from Tibet, states that he deplores adornment with banned animal skins, and the increase in the number of butchers in Tibet, while being proud of those campaigning for animal welfare and vegetarianism (Day 5);

- The Dalai Lama requests that those propitiating the controversial spirit known as Dorje Shukden desist from attending his teachings and generally discourages preoccupation with guardian deities, rather than true Buddhist teachings (Day 5);

- The Dalai Lama emphasizes that "the only way to achieve happiness is to put others before self" and to abstain from self-popularity; he reminds the congregation of their pledge as lay Buddhist practitioners to restrain themselves from killing, lying, stealing, engaging in sexual misconduct and taking intoxicants (Day 6);

- The Dalai Lama exhorts listeners to maintain a pure mind, give up greed, jealousy and selfishness, and embrace all of humanity in their prayers in order to develop a better karma (Day 7);

- The Dalai Lama directs attention to the people of Tibet, asking the congregation to pray for their welfare (Day 9, Day 11);

- The Dalai Lama emphasizes the need for Tibetans to learn local Indian languages; he exhorts them to take deeper interest in Tibetan Buddhism, culture and language with a full understanding of the reason for preserving these; he cautions Tibetans from Tibet not to engage in smuggling of holy statues and banned furs (Day 12).

As case studies will show, the promotion of norms such as vegetarianism, sensitivity to endangered species, or attention to local Indian languages is part of a continually adaptive process that Tibetans are socialized into in India. Some norms are a reiteration of the moral responsibility exiles have toward their cultural legacy and homeland commitment. Others reinforce the internalized moral voice of everyday Buddhist ethics, which are a prerequisite to deeper realizations of the dharma as expounded in the Kalachakra teachings.

Some statements also point to the nature of sanctions associated with these norms. The public shaming of Tibetans arriving at the Kalachakra "decked up in elaborate costumes adorning banned animal furs and skins" and the Dalai Lama's urgings to abandon such practices were powerful messages with multiple purposes (p. 15). They at once signaled to the Indian Government that illegal practices (poaching, smuggling furs), would not be tolerated, cautioned the exile community to keep Tibetan public image respectable, and asserted a superior environmental standard vis à vis China. That the sanctions were effective can be seen in the fact that around 3000 Tibetans from Tibet forthwith presented a signed pledge to the Dalai Lama not to wear, buy or sell animal products (p. 23). News reports a month later indicated that a campaign to publicly burn animal skins had begun in Amdo and rapidly spread to four out of the five Chinese provinces with large Tibetan concentrations.[63] Reportedly, Chinese authorities, in turn, grew alarmed at what they perceived to be nationalistic stirrings and banned the burning of pelts valued in millions of yuan. In this particular niche then, it can be said that such communitarian norms were supportive of Indian laws on endangered species. They equally were rallying points for re-affirming the importance of the Dalai Lama to Tibetan identity and of his moral authority in Tibet as well as in exile.

Another potent sanction is the one directed at Shukden practitioners – namely, asking them to leave the teachings. To be barred from participation in such an important, publicly shared spiritual event is tantamount to excommunication in a society bonded by religion and reverence for the Dalai Lama. While some lay Shukden practitioners can be identified by their allegiance to certain lamas, and some monks by their residence in Pompra Khamtsen at Sera Mey Monastery in Bylakuppe, others may maintain the practice in secret. Thus the sanction works on the level of public deterrence through shaming, while injecting a measure of private guilt for those who secretly persist with the practice.

The Kalachakra also gave occasion for speeches by government officials on the democratic functioning of the CTA, on the Middle Way Approach to negotiations with Beijing, and on

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[63] For a detailed discussion of the prevalence of these practices, their origin and the various implications, see "Desperate Plight of Wildlife: Is the use of animal pelts in Tibetan chupas the main driver?" written by Tenzin Tsultrim in Tibetan Bulletin (May-June 2006) Vol. 10 No. 3; also see "Tibetans Set Endangered Pelts Ablaze, Rousing Chinese Ire" in Environmental News Service, Dharamsala February 24, 2006. Retrieved November 12, 2007 from the World WideWeb at: http://www.ens-newswire.com/ens/feb2006/2006-02-24-01.asp

health and environmental issues – important messages not only for Tibetans in exile but also for Tibetans to take home with them to Tibet, and for foreigners to recognize as worthy of their support. The Kalon Tripa (Prime Minister) Samdhong Rinpoche, in particular, promoted his visions of a more Tibetanized education system, a Gandhian economic orientation, and strategic non-violence. Young Tibetans know well that the visions subsume norms of resisting acculturation, of making do with less in an overly materialistic world, and of reigning in the impulse to pursue a more militaristic approach to Tibetan independence. Sanctions associated with such norms are much more subtle, at least in part because the younger generation is exposed to multiple influences from India and the West. Its unquestioning compliance would come at the cost of foregone initiative or complacency, both being detrimental to the community's self-sufficiency and democratic evolution.

This discussion of religion and nationalism as foundational for culture, and as a medium through which various norms are propagated in the Diaspora, does not imply that other cultural elements are not important. It also does not claim that compliance with such norms is universal or that other more utilitarian norms are not operative. Nor does it ignore the fact that Tibetan identity is increasingly viewed as a hybrid and contingent one, contrary to the essentialized representations found in earlier works (Lopez, 1998; Anand, 2002; Klieger, 2002; Diehl, 1997; Korom, 1997). Identity distinctions abound between the first generation and the second and the third, between Tibetans in Tibet and those born in exile, between those in the Indian sub-continent and those in Europe or North America. These themes have been thoroughly vetted in a series of conferences in 1995, 1996 and 2000.[64] What I mean to highlight here, however, is the synergism of religion and nationalism as factors of social cohesion and social control.

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[64] One of the first conferences to take a more discerning look at Tibetan identity was "Tibetan Material Culture in Exile" held in Santa Fe in 1995. It asked what kinds of identity dynamics operate in exile and what images of Tibet are sustained for instrumental reasons. Taken together, the papers considered how representations of Tibetan identity are co-opted, and reflexively reabsorbed by the Tibetan community through various transnational and local interactions. The following year in 1996, the "Mythos Tibet" conference in Bonn consciously navigated the discourse away from essentialist, idealized images of Tibetan ethnicity to more constructivist ones. The orientation was a reaction to simplistic representations of Tibet as an innocent and inherently "good" or exotic Shangri-la, and to the imprisonment of Tibetan identity in that paradigm. From these two conferences a critical tone moved into the 9th Seminar of the International Association for Tibetan Studies held at Leiden University in 2000. The symposium entitled "Tibet, Self, and the Tibetan Diaspora: Voices of Difference" was explicit in consigning romanticized approaches to the dustbin. Papers by Anand, Klieger, Yeh, and Magnussen presented a range of contradictions, paradoxes and ironies in the ongoing negotiation of what it means to be Tibetan today.

If the pairing of religion and nationalism is powerful as a means of orientating group energies, it bears repeating that there are other contemporary contexts in which the same synergism has been wielded to devastating effect in violent ethnic conflict. Examples abound – in Palestine, Israel, Former Yugoslavia, Somalia, Iran, Afghanistan, to name only a few. I have already commented on Sri Lanka, which has seen over 20 years of armed conflict between ethnic rivals for whom religion has become a banner for competing nationalisms. Moreover, leaders of the majority Sinhalese Buddhists have appropriated moral justifications for their violent actions from Buddhist narratives and post-canonical texts. In contrast, the religious nationalism promoted by the Tibetan exile leadership draws its legitimacy from canonical narratives of pacifism. Significantly, the exile government and community leaders also draw on human rights and democratic discourse to legitimate both the religious and the nationalistic enterprises as modern and universally relevant, despite their anchor in communitarian particularism. In his "Guidelines on Future Tibet's Constitution," written in 1992, the Dalai Lama stated:

> The issue of Tibet is not merely a question of survival of a people with their own distinct history and culture; it also has direct bearing on the fate of this world, Asian peace, and particularly upon the relationship between the world's two most populous nations, India and China. At stake is also the serious question of human rights, as enshrined in the United Nations' Universal Declaration of Human Rights, and the world body's effort to put an end to the era of colonialism and expansionism. (c1998, p. 278)

Conceptually, one of the bridges between the particularistic and the universal is the emphasis placed on ahimsa or non-violence in the socialization program of Tibetans. Again, this theme draws inspiration from Tibetan Buddhism, and feeds into nationalistic aspirations because it is part of the campaign to establish free Tibet as a zone of peace, for the well-being of all humanity.

6.6   Socializing for non-violence

The platform of non-violence has three main streams: 1) encouraging Tibetans to pursue the campaign for a free Tibet using non-violent strategies; 2) socializing Tibetans to internalize non-violence as a value; and 3) creating institutions and promoting norms that inhibit structural violence, both as a functioning mode in exile and as a model for the future Tibet.

6.6.1   Non-violence as a strategy

Rabgey and Sharlow (2004) have traced the course of dialogues with Beijing over the fate of Tibet, the Dalai Lama and the exile community. They have indicated that as early as October 1984, the delegation from Dharamsala proposed a demilitarized zone of peace in a unified Tibet, which would have a high degree of autonomy in association with the PRC. This was an important compromise from the Tibetans' earlier insistence on complete independence and came as a shock to many within the Diaspora. The inclusion of the three provinces of Ü-Tsang, Kham and Amdo – known as "chokla sum"- on the other hand, sealed an important commitment on the part of the Dalai Lama to unify his exile community and to work for all of ethnic Tibet, rather than only those areas historically under Lhasa's direct political control. On September 21, 1987, the Dalai Lama pursued the same theme in a "Five-point Peace Plan for Tibet" which he also presented to the Congressional Human Rights Caucus in Washington, D.C. [65] On June 15, 1988, the Dalai Lama elaborated on the Plan in his "Strasbourg Proposal," which he took to the European Parliament. In 1991, in the wake of the Lhasa riots and Beijing's opposition to the Strasbourg Proposal, Dharamsala formally withdrew the proposal. The internal commitment to Tibet as a zone of peace, however, remained firm and a comprehensive program of non-violence (Satyagraha or "Insistence on truth") was immediately put on the drawing boards (Samdhong, 1999, p. 328). The principle of a zone of peace for Tibet, and of strategic non-violence in the struggle to achieve it, was enshrined in the Charter of Tibetans in Exile in the same year. Article 7 of the 1991 Charter, under Fundamental Principles, stated:

> The future Tibet shall be a zone of peace and shall strive to disengage itself from the production of all destructive weapons, including Nuclear and Chemical; and, currently, the Tibetans-in-Exile shall refrain from all warfare as a means to achieve the common goal of Tibet, or for any other purpose.[66]

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[65] Point One of the Peace Plan, paragraph 3, reads:
> The establishing of a peace zone in Tibet would require withdrawal of Chinese troops and military installations from the country, which would enable India also to withdraw troops and installations from the Himalayan regions bordering Tibet. This would be achieved under an international agreement which would satisfy China's legitimate security needs and build trust among the Tibetan, Indian, Chinese and other peoples of the region. This is in everyone's best interest, particularly that of China and India, as it would enhance their security while reducing the economic burden of maintaining high troop concentrations on the disputed Himalayan border. See full document at http://www.tibet.com/Proposal/5point.html (Accessed November 4, 2007).

The Peace Plan also calls for: the abandonment of China's population transfer policy; respect for the fundamental human rights and democratic freedom of the Tibetan people; the restoration of Tibet's natural environment; and the commencement of negotiations between the Tibetan government in exile and the People's Republic of China.

[66] See Chapter One of the Charter, "Renunciation of Violence and the Use of Force," page 135. [Online] at: http://www.tibetjustice.org/materials/tibet/tibet6.html

Ahimsa, or non-violence, as practiced in Gandhian "satyagraha" is not pacifism, but rather an insistence on truth as justice and the refusal to succumb to any kind of injustice (Samdhong, 1999, p. 314). The campaign therefore arms itself with sophisticated strategies drawn from the annals of non-violent action literature, but also inspired by methods used by Tibetans in Tibet itself. These are well summarized in "Truth is our Only Weapon: The Tibetan Nonviolent Struggle" published by Nonviolence International in 2000. The document provides examples of over 30 different non-violent methods used regularly throughout Tibet, and in the Diaspora. The methods are propagated through a variety of media and networking forums, facilitated by the exile government, international NGOs (such as Human Rights Watch, Amnesty International, Nonviolence International), and NGOs in the exile community including their transnational variants (such as Friends of Tibet and Students for a Free Tibet). Information flow is critical to these campaigns and the CTA's Department of Information and International Relations (DIIR) has as its mandate to educate Tibetans and international public opinion on the political, human rights and environmental conditions in occupied Tibet – the better to strategize appropriate interventions from abroad, and orient dialogues with Beijing. In addition to providing important updates through the DIIR, the CTA's own direct campaign focuses on "constructive actions" such as:

- Promoting official government resolutions that condemn China's actions in Tibet;
- Meetings with official government Heads of State to discuss Tibet;
- Major media coverage to publicize the conditions in Tibet and to garner international support for the cause; and
- Participating in events and recognition ceremonies that highlight the Dalai Lama's commitment to non-violence, inter-religious harmony and world peace.

Aside from its external affairs agenda, the CTA is prominent in commemorative events within the exile community with speeches that revalidate the non-violent approach. In the past at least, it has actively encouraged Tibetans to be creative in deploying the arsenal of tactics available, offering positive sanctions in the form of recognition and praise for those who have dedicated themselves fully. The following are illustrative of actions that have been taken in exile, some more frequently than others, some more aggressive than others:

- Poster campaigns
- Public display of symbols of independence (flag, images of Dalai Lama)

- Demonstrations, peace marches, chanting of pro-independence slogans

- Production and distribution of pamphlets

- Buddhist/cultural ritual as protest

- Economic boycott

- Self-immolation

- Hunger strike

- Petitioning

- Blockades

The younger generation of Tibetans of course brings tempers and passions to the cause, sometimes in excess of what meets the norm of non-violence. In many such cases, the CTA uses negative sanctions of withholding praise, rather than shaming with public reprimand –provided no criminal offense was involved. It might also refrain from intervening on the activists' behalf if their behavior results in police action. Lately, both the Dalai Lama and the CTA have been asking Tibetan activists to desist from harassing visiting Chinese leaders, on grounds that it could create embarrassment for their Indian host government or jeopardize an atmosphere conducive for Dharamsala-Beijing talks. In an interview in August 2006, Tibetan World asked Samdhong Rinpoche if his government would continue asking Tibetans to scale down their level of protest for the upcoming visit to India of Chinese President Hu Jintao. His response was:

> …I would appeal to them not to demonstrate at all because protests staged against the visiting Chinese dignitaries does not help the cause of Tibet…I have also always maintained that demonstrations always bring about some kind of anger and are seen as violent expressions of your thoughts. (2006, p. 31)

Activist icon Tenzin Tsundue, has staged a number of flamboyant protests in India – for example during the visit of Chinese Premiers Zhu Rongji and Wen Jiabao, in 2002 and 2005. By his own account, in anticipation of President Hu Jintao's visit to New Delhi, Agra and Mumbai November 20-23, 2006, the exile administration had indeed made "desperate appeals asking all Tibetans and supporters not to [engage in protests]." He further reported that the Office of the Indian Superintendent of Police had issued an order prohibiting him from leaving "the territorial jurisdiction of Dharamsala Town" – even threatening him with deportation to Tibet under the Foreigners Act of 1946 if he did not comply. [67] Despite the CTA appeals and the Indian stay

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[67] See his article "Protest as Celebration of Difference" posted April 8 2006 [Online] at: http://www.thesouthasian.org/archives/2006/protest_as_celebration_of_diff.html

order served on Tsundue, large rallies and a hunger strike took place, culminating in the attempted self-immolation of Lhakpa Tsering in front of Jintao's hotel on the last leg of his visit.[68] While the commitment to Tibet is a common goal, definition of means and ends is hotly debated. Members of the Tibetan Youth Congress and of the former political prisoners' organization Gu Chu Sum are particularly resistant to the cautious posture of the CTA, in protests as well as in homeland politics. They agitate for Tibet's complete independence, in opposition to the exile government's official Middle Way Approach – a compromise position which advocates religious, cultural and resource autonomy, but not independence. Keeping the exile community motivated in its nationalistic aspirations, without overstepping the boundaries of what the host country will tolerate is a major challenge for the promotion of the campaign of non-violence.

Samdhong Rinpoche (1999) has explained that satyagraha is not only a peace movement with strategies and tactics supported by a rational understanding of the truths that legitimate the cause. It also is a mental attitude that has to be inculcated. His elaboration of the qualifications required for a satyagraha activist is extremely rigorous. Among attributes of courage-to-the-death and impeccable personal integrity are the enduring Buddhist values of compassion and other-regarding norms. He stated that in no way should satyagraha be self-serving. It should always be seen on the plane of a spiritual enterprise with the purest of intention, which also means that: "one must have no anger, hatred, or intent to harm the objects of our resistance" (1999, p. 306). As seen earlier, this stance is reflected in the National Anthem whose theme of non-violence is reflected in the call for compassion toward certain others lacking in loving kindness.

In assessing the official discourse around non-violence as a strategy, it has to be acknowledged that there is a selective, instrumental dimension to this self-representation in that it glosses over some of the historical conditions of violence in Tibetan society and irregularities in the exile community. Ethnicities and nations continually re-invent themselves and, in so doing, attempt to distance themselves from elements of the past that are inconsistent with present value schemas to be promoted. The motivation to emphasize positive aspects of Tibetan civilization and pacifist dispositions in exile is the more compelling because international sympathy for the cause is predicated on the commitment to a non-violent approach. So too is the credibility of Buddhism in

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[68] See "Hu in Mumbai: Tibetans Go on Hunger Strike." The Times of India, November 23,2006. [Online] at: http://timesofindia.indiatimes.com/articleshow/540523.cms

the West and, critically, the financial sponsorships that flow from both. Indeed, Klieger (1992) has argued that the West has assumed the patron role in the priest/patron dyad that had defined the relationship between Tibet and the Mongol and Manchu empires from the 17th century to the time of the Chinese revolution in 1911 (pp. 18-22). In exchange for the Tibetan hierarch's spiritual guidance, the emperors lent military force and security.

In exile, a contemporary incongruency can be seen in Tibetan military service in the Indian army. In the course of my fieldwork, a number of informants alluded to such service, either as a form of conscription for those graduating from Central Tibetan School (a practice only recently discontinued), or as an earlier phase in their own career as public servants, or yet as a source of budgetary concern for settlements having to deal with military retirees without pensions. While such allusions arose spontaneously, respondents were not comfortable elaborating on the theme. The reticence may be attributed to cognitive dissonance, given the community's projection internationally of a non-violent struggle for Tibet or, more likely, to an acquired sense of military secrecy surrounding deployment in sensitive border zones. McGranahan (2002) has written about the "arrested" resistance history of the Chuzhi Gangdruk, which received special training and support from the CIA for covert operations in Tibet for thirteen years (up to 1974), out of a base in Mustang, Nepal. Once disbanded, its valiant efforts went unrecognized by many in the exile community. Veteran guerillas did not fit the homogenized identity and narrative of peaceful adaptation promoted by the CTA. Mostly Khampas, their strong regional affiliation – together with their own fractious internal politics – have remained an inconvenience for inward coalescence of community as much as for outward impression management. At the same time that Chuzhi Gangdruk was active in resistance, McGranahan has indicated that other Tibetans were trained by the Indian Central Intelligence Bureau (CIB) and either recruited into its ranks or into the special Tibetan force of the Indian military which exists to this day as "Establishment 22." In short, while the aspiration of non-violence as strategy undoubtedly is genuine, as is the official conviction that violence would only beget more violence, elements of realpolitik remain behind the curtain as insurance.[69]

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[69] There apparently is no definitive work as yet on Buddhism and violence, although cases of violence in specific times and places are the subject of an expanding scholarship – as seen in a panel on the topic at the XIIIth Conference of the International Association of Buddhist Studies held in Bangkok, 2002. In the subsequent volume edited by him, Michael Zimmerman (2006) explored the ethical dilemmas of rulers and kings responsible for dealing with crimes or conflict that threaten the security of their Buddhist subjects – from the distinctive perspectives of Mahayanist and Tantric Buddhism in which the cultivation of compassion is paramount. He found a range of interpretations used historically, from ethically fundamentalist rejections of violence and violent punishment to more

6.6.2   Non-violence as societal value

As an educator and monk philosopher, the Prime Minister Samdhong Rinpoche has stressed that his vision of a non-violent society can only be achieved if it is mainstreamed through the education system, as opposed to being compartmentalized in ethics or religious study. Education for non-violence does not rest on faith or indoctrination, he insisted, but on the awakening of the learner's powers of discrimination, reasoning, self-sufficiency and self-control in a variety of contexts (2004, pp. 461-463). Recognizing that teachers need a high level of skill to facilitate such a process, he has advocated that they take compulsory training in education for non-violence and that this be a prerequisite for tenure and promotion. Samdhong Rinpoche has been at the forefront of efforts to develop a new education policy that would meet the needs of the young generation without undermining the collective action goals of the Diaspora community. Currently in its second draft, the "Basic Education Policy for Tibetans in Exile" is being discussed by Indian and Tibetan experts, and is avidly debated in the exile press. There are a number of contentious points, particularly around the balance between tradition preserving and modern competency needs, between Tibetan language focus and Hindi or English, and between science/technology and Buddhist worldview.[70] At a higher level of abstraction the issues revolve around individual versus communitarian group needs, or otherwise stated, a preoccupation with

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tempered ones that acknowledged those possibilities, on condition that they are used only to the minimum degree necessary and only with an attitude of compassion. As discussed earlier in relation to Sri Lanka, Premasiri (2003) and Bartholomeisz (1999) have demonstrated that while violence and war are antithetical to the psychology of Buddhist liberation, the absence of direct and unequivocal statements in the Theravadan canonical texts - that war can never be righteous - has left the door open to different interpretations among Sinhalese Buddhists. Thus some have alleged that there are stories that depict the Buddha as an advocate of coercion if there is a just cause – foremost among them being the protection of Buddhism itself from inimical forces. For example, according to Bartholomeusz, the Venerable Athuraliya Rathana (Coordinating Secretary of the National Sangha Council) has seized upon texts such as the "Cakkavatti Sihananda Sutta" which depicts "a king committed to the dharma, who is flanked by a four-fold army nonetheless" (p. 4).

[70] The Basic Education Policy for Tibetans in Exile was published in the March 2004 issue of <u>Tibetan Review, XXXIX</u> (3) and elicited thoughtful response from readers in the April 2004 issue. See, for example, "Mother tongue as the medium of instruction in schools" by Ms.B. Tsering (pp. 24-5), and "Some questions concerning the Draft Education Policy" by Tenzin Jigme (p.30). Several of the issues debated by Tibetans in response to the draft policy actually had already been raised by sociologist Dawa Norbu a decade earlier (See "Motivational crisis in Tibetan education system: Some personal reflections," in <u>Tibetan Review, XXIX</u>, (5), May 1994. Norbu decried the lack of understanding among parents about the intrinsic value of education and he countered the traditionalist argument that refugees require neither specialized qualifications for modern competency nor high ambitions . He reminded readers that the Dalai Lama and Pandit Nehru had conceived the Tibetan education system in the early 1960s, based on the explicit understanding "that Tibet fell because Tibetans failed to cope with changes in the modern world due to the absence of modern education" (pp. 13-14).

the past (precious traditions) or the future (free Tibet), at the expense of the present (livelihood needs of everyday exilic life).

From the perspective of education for non-violence, however, Samdhong Rinpoche has maintained that personal responsibility and self-empowerment are not to be thought of as narrow ends, but rather as the building blocks of collective action. Values associated with Tibetan Buddhism, nationalism, non-violence and even a universal mission weave through the draft Education Policy document, for example:

- Under Chapter Two, Purpose of Education (B) 2.5: The long term goal of Tibetan people is to make entire Tibet, consisting of the three Cholkas, into a zone of non-violence and peace; to transform Tibetan society into a non-violent society; and to lead other peoples onto the path of non-violence and compassion. Thus the primary objective of education for Tibetan people is to communicate fully and correctly the direction and way towards that goal.

- Under Chapter Three, Meaning of Education (B) 3.6: Education is about maintaining discipline through restraint of delusive human minds and undesirable behaviors arising from them…; and (B) 3.8: Education is about a process of learning the principles of truth, love and compassion, altruism and noble spirit of universal responsibility, based on "inter-dependent origination" as the view and "non-violence" as the conduct.

I would argue that the values reflected above are reiterated often enough as aspirational statements to be considered norms of social control, even without the added evidence of sanctions being applied as stipulated by Ellickson. They become part of the language through which Tibetans understand themselves and a benchmark against which they judge one another's actions, although not necessarily in overt ways. To instill nobility of character in the minds of school children from a very young age has been a goal articulated by the Dalai Lama on countless occasions (Dalai Lama, c1998, p. 300). In my visit to the SOS Tibetan Children's Village in Bylakuppe, such messaging was everywhere apparent – signs posted on trees, inscriptions on walls and buildings, notations in student diaries. The following small sample illustrates how culturally derived norms of noble mindedness also support moral, affective and rational aspects of communitarian cohesion:

- "Others Before Self"- prominently displayed school motto;

- "I think our very survival is largely based on human affection. Without it one cannot survive." (in English)

- "It is very important to be attentive to your [Tibetan] society's attitude and language" (translated from the Tibetan);

- "The compassion is not just an emotional response but a firm commitment founded on reason." (in English)

- "The compassion is not only about sympathy or a feeling of closeness but a sense of responsibility as well" (in English)

- "The combination of wisdom and motivation is the proper way to transform your mental attitude."(in English)

Most of the sayings were attributed to the Dalai Lama in honor of his 70th birthday. Other signs such as "Hope for the best, prepare for the worst" and "Truth Always Triumphs" though less culturally resonant were still attributed to the Dalai Lama, and the attribution alone gave them a political subtext. Samdhong Rinpoche has carefully explicated the logic of Tibetan Buddhism as a source of norms for the socialization of Tibetans into non-violence within a nationalistic framework. Among other points, he has stated that a purpose of Satyagraha in the Tibetan context is a kind of karmic self-purification to rectify the moral and ethical weaknesses that were the root cause of Tibet's inability to thwart Chinese occupation (1999, p. 320). The Dalai Lama also has made allusions to the accumulation of bad karma over past lifetimes as one of several possible explanations for the Tibetan plight (c1998, p. 268). Thus, remedying bad karma through cultivation of non-violence rooted in compassion cannot be confined to formal schooling. It must be a sustained training endeavor involving everyone – a point that also is made in the Education Policy document:

> Education is a lifelong process and practiced by all peoples in formal and informal ways. Of the two ways, the non-formal education system shall be of prime importance (Chapter Seven, 7.1).

Nor is the issue only one of expiating past karma. In challenging circumstances non-violence is counter-intuitive and therefore needs to be reinforced with continual training in principled non-violent action and/or conflict resolution (2004, p. 470). The foresight is as relevant for Tibetans in exile, as for their eventual interaction with fellow Tibetans and Chinese upon repatriation to Tibet. As a systematic program, Samdhong Rinpoche has been advocating specially structured courses for the general public, local community leaders, members of parliament and the judiciary, and civil servants. Some of this work has been taken up by the Tibetan Center for Conflict Resolution (TCCR) which was established in 2001 as a partnership project between the

Department of Home and the Danish Center for Conflict Resolution. In just three years since its inception, the TCCR had conducted over 52 workshops in most of the vastly scattered Tibetan settlements in India. The 1200 participants included NGO leaders, camp leaders, educational institutions, monasteries, nunneries, college students, and school drop-outs. Future plans include workshops for the staff of the CTA and institutions such as Norbulingka and the Tibetan Medical and Astrological Institute. [71]

To summarize my argument, the triad of Tibetan Buddhism, nationalism and non-violence constitutes a normative framework in which the three elements draw their logic from each other. The interlocking of the three, together with their emotional overlay, provides a primary normative context that is non-rational, to the extent that Tibetans are born into it and most see themselves as constituted by it. This is not to imply that Tibetan exiles are any more virtuous in practice than other people. What it does suggest, however, is that a consistently strong moral voice coming from the highest sources of moral authority establishes firm ideals in the manner espoused by communitarian thinkers. There are, of course degrees to which individual Tibetans submit themselves to the normative constraints implied and in that sense there is a rational choice aspect even here. Tibetans are always observant of who is doing, or not doing, what for the nationalistic cause – which implies that some at least consider themselves less duty bound than others. Individuals may ignore a religious norm against intoxication counting on tolerance for deviation, or against embezzlement counting on a laxity of vigilance. They may engage in fisticuffs, even pulling knives, judging that defense of their self-respect is more important than momentary communal disapproval. The point is that the moral voice of the community is sufficiently strong and sufficiently consonant with Tibetans' public image of themselves to elicit a reasonably high level of what Etzioni called normative compliance.

It is also the case that the overarching primary norms legitimate a range of what I would call second order norms of social control. For example, norms around cooperation, non-confrontation, criticizing leaders, speaking out, socializing with Westerners, eating meat, wearing chubas, or displaying wealth all find some rationale in the primary normative framework. To a much greater extent than with the primary norms, individuals comply

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[71] Based on interview with the TCCR Director, March 16, 2006, and the 2004 TCCR Bulletin. Interestingly, despite its earlier affiliation with the Department of Home, the TCCR is an NGO and, as such, CTA rules and regulations disallow official participation by civil servants. Future workshops for this group are envisaged as personal development training offered outside the hours of work.

differentially, depending on the strength of positive or negative sanctions, personal disposition, circumstances or even interpretation of what conduct is appropriate in relation to the primary norms.

As a norm, non-confrontational behavior is promoted as a requisite of unity for the cause. Yet, Khampa men are known to be more outspoken and quicker to anger than their Ü-Tsang brothers whose reserved comportment, on the other hand, can seem suspiciously evasive. As seen in parliamentary debates, a decision to disregard norms of non-confrontational behavior can be based in personal disposition or in an implied criticism of the other as lacking honesty. A young woman might choose to wear Indian or Western dress rather than the Tibetan "chuba," even though there are pressures to retain traditional attire as part of asserting Tibetan identity and conforming to patriarchal expectations of propriety. She may think of herself as modern and judge that her dress has no bearing on her commitment to Tibet or her respectability as a woman. On the other hand, the pressure to conform would be comparatively stronger if she were a civil servant in the Dharamsala bureaucracy, where she is more explicitly expected to be representing Tibetan-ness to the community and the outside world. The Miss Tibet pageants are the epitome of secondary norm variance legitimated by the same primary norm. Miss Tibet 2004 declared: "I now have a platform to draw attention to the plight of the Tibetan people and the abundance of culture we have," and indeed she grabbed all the headlines.[72] Others were vehemently opposed to the idea that Tibetan spiritual culture should be represented in a bathing suit. Thus compliance with these second-order norms is more situational.

6.7   Norms relevant to disputing

Much has been said about the legacy of Tibetan Buddhism as a general source of norms but here I highlight specific concepts from the perspective of a conflict situation. Rebecca French's seminal work "The Legal Cosmology of Buddhist Tibet (1995) is a reminder that no research on dispute settlement can afford to overlook the cultural mindset out of which people might respond to questions. French found that the ideas expressed by her informants about legal culture, and the vocabulary used to describe experiences with legal structures and processes, were very much entrenched in a Tibetan Buddhist worldview. She, in fact, was adamant that without an

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[72] Thinley, P. (2004) Miss Tibet crowned amid rancour. Tibetan Review, XXXIX, (11) 18.

understanding of that worldview, no interpretation of observed practice could be complete. French's description of Tibetan legal cosmology referred to pre-1959 Tibet, with emphasis on elements such as: concepts of reality and illusion, inner morality, karma, nonduality, power and hierarchy, ritual process, myth and narrative, and multiple concepts of time and causation (1995, p. 59). She found that legal language was filled with proverbs and phrases drawn from 17th century law codes which, though secular, reflected Buddhist understandings of the self (p. 46).

I found that modernizing government structures and norms in exile had the effect of shifting some religious themes to a more tacit level in conflict resolution. References to karma, compassion, other-regarding behavior, and the three mind poisons frequently surfaced but not necessarily with a philosophical coherence that people could articulate. For example, in my previously mentioned interview with a group of sweater sellers in Mumbai, when I asked about Buddhist values in their daily lives, they could not relate to the question. Yet minutes later, despite their own uncertain future, they demonstrated the effect of compassion and other-regarding norms in their attitude towards the poorest of the poor: "We are foreigners here, how can we squeeze out even the slum-dweller?" The comment, made by one member, earned the nodding approval of all present, reinforcing the merit of adherence. I observed what could be called compassionate behaviors on numerous occasions – whether alms giving, or helping a sickly person, or sharing a taxi – with the approving glances of standers-by as positive sanction. The Dalai Lama often has complained that many Tibetans have not studied the dharma in sufficient depth to understand its rigorous logic and have not developed a commitment to meditative practice on the basis of which they could recognize the truth of its theories. From the perspective of socialization, however, a great deal has nonetheless been internalized through the symbolic ethos within which Tibetans in exile live.

It is difficult to pull out concepts without disrupting the philosophical coherence of Buddhism, but I found the following to be expressed or alluded to with enough frequency in relation to conflict resolution to require some clarification for the reader: karma, interdependent origination, mental afflictions, the Ten Non-virtuous Actions, antidotes and the Six Perfections. The brief discussion of these concepts is drawn from Jeffrey Hopkins' analysis of Nagarjuna's <u>Precious Garland,</u> Patrul Rinpoche's <u>Words of My Perfect Teacher </u>(both being sources often cited by the Dalai Lama), and others as noted. The links with conflict resolution draw on French (1995) and my own fieldwork.

6.7.1 Karma

Karma is the natural law of cause and effect. The word literally means intentional action of body, speech or mind, but in popular usage it refers to the result produced by past actions (Patrul, 1999, p. 421). Karma is related to the belief in cyclic existence, all sentient beings being reborn time and time again into any of six realms characterized by different degrees and types of suffering. Rebirth into one or the other is based on karmic propensities developed over current and previous lifetimes. In its widest sense, positive or negative karma either enhances or hinders liberation from the suffering of cyclic existence – liberation being the eventual attainment of enlightenment. Meanwhile, within the span of unenlightened (samsaric) existence, the cumulative effect of karma determines not only the realm of rebirth but, for human beings, the conditions that will be experienced. Thus, while the law of cause and effect is implacable, its workings are much more subtle and complex than a one-to-one relationship, such as being murdered as a result of killing, or being poor as a result of having robbed. Multiple causes interact and ripen into results in unpredictable ways.

French has argued that in pre-1959 Tibet, karma entered the legal process as part of argumentation in court, or the calibration of punishment, or rationalization for non-punishment, or yet as a byproduct cleaving to the judge if his own motivation was not correct (1995, p. 318). In the exile community, processes of conflict resolution, including those under the judiciary system, lack an enforcement capacity that would formalize karmic considerations in the ways described by French. Yet, karma definitely provides a framework within which people interpret what transpires in their lives and whether a course of action is appropriate, all things considered. In that context, "karma is at the tip of the finger," was an expression I heard repeatedly. As a socializing moral, the saying reminds Tibetans that karma can ripen at any moment. Alongside the longer term view of karma unfolding in future lives, there is the ever present threat that any unvirtuous act can bring negative karma to fruition this very day in the form of bad fortune. In a conflict situation the socializing effect can play out on several fronts. Where there has been an offence against someone, for example, karma is believed to be at work on both victim and offender. A person may be a victim today, but the realization that one is reaping the seeds of past negative actions, can diffuse a sense of victimization that might otherwise have propelled the person to seek retribution or legal action. By the same token, an offender or potential offender is

reminded constantly that actions have consequences that cannot be evaded. There is no escape, or lie or ruse that can protect from karmic effects because no phenomenon arises without causes and conditions.

An important consequence of the karmic perspective is that individuals own the responsibility for what has happened to them because motivation and agency reside in the individual mind. Mind is the locus of moral self-regulation or conscience. It also is the site of karmic conditioning that has to be deconstructed through mind training or meditation. Tibetans emphasize that everything is in the mind – how people perceive their situation and with what emotions they respond to it. The Dalai Lama has told the story, often retold by Tibetans, of the old prisoner who came to him for blessings upon his release. Asked what difficulties he had experienced over long years of incarceration that included torture, the former prisoner responded "no problems with prison itself but problem a few times with fear of loosing his patience and compassion towards the Chinese." The story underscores that whatever is important is all up to the individual.

6.7.2   Interdependent origination and mental afflictions

Closely related to karma, interdependent origination is one of the core tenets of Buddhism. Popularly understood as interrelatedness of the sort that underpins universal responsibility as propagated by the Dalai Lama, its metaphysical meaning is ontological – that is, dealing with the nature of being. The principle asserts that "everything which exists does so because of the aggregation of causes and conditions – nothing exists independently, in and of its own right" (Palmo, 2002, p. 250). Thus emptiness – the lack of inherent existence of both objective phenomena and subjective self – is the very nature of reality. Ignorance of this principle leads people astray into 84,000 mental afflictions (notionally speaking), which proliferate out of the basic I-centric emotions of aversion (which intensifies into anger and hatred) and attachment (which intensifies into desire, craving and clinging). From the six root afflictions of ignorance, desire, anger, pride, doubt and incorrect view, arise 20 secondary afflictions, or proximate factors of instability, which include belligerence, malice, resentment, deceit, jealousy, avarice, spite and so on (Guenther & Kawamura, 1975, p. 82). Out of such emotions, human beings engage actions which generate negative karma and a propensity for more of the same, in a never ending cycle

that keeps them bound to the suffering of samsaric existence. Conversely, positive karma is generated through the accumulation of merit and wisdom – the former being in the form of virtuous acts, the latter in the clarity of perceiving reality as non-dual and empty in nature. Clear perception is the substance of enlightenment, but on a more mundane level it implies that people must keep trying to dispel the clouding effect of confused and conflicting emotions. Mental afflictions are obstructions on the path toward liberation but, equally, obstructions to harmonious relations in everyday life.

In contrast to Abel's definition of disputes as the public assertion of inconsistent claims between two or more people, and of Merry and Silbey's definition of them as cultural events with norms about what is worth fighting for and how, French has suggested an entirely different perspective based in Buddhist philosophy. For Tibetans, she has stated, "conflict was definitely related to incorrect vision, to afflictions in the perceptual abilities of human sentient beings" (p.73). Thus the actions of litigants were not only unmeritorious, but were seen as contaminated with mental afflictions such as anger, belligerence or spite. Importantly, engaging in conflict also reflected an excess of individualism, interpreted as the erring-bewilderment of personal ego. Within this framework of thinking, the pursuit of conflict could only be seen as negative, even though French was not certain that it actually inhibited litigation. She stated:

> The goal of legal proceeding was to calm the minds and relieve the anger of the disputants and then – through catharsis, expiation, restitution and appeasement – to rebalance the natural order. (p. 74)

Conflict resolution as practiced within the Tibetan Diaspora in India reflected similar characteristics, with the restoration of harmony being a paramount concern. The process typically involved dissipating strong emotions with an attempt to get at motivating factors and find a common ground of understanding about the nature of the problem. A measure of guilt often was attributed to both parties, emphasizing that it takes two to make a dispute out of what otherwise might be regulated through peaceable negotiation or self restraint. Often, both disputants were ordered to pay compensation, the effect being to cancel out a strong advantage for one or the other, while making the symbolic gesture of payment for mutual wrong-doing. The customary exchange of white scarves at the end of a dispute symbolized reconciliation and the restoration of peace. Of course, not all cases proceeded so smoothly. Indeed, those interviewed as interveners in disputes lamented the fact that Tibetans were becoming more individualistic, insisting on their rights in a way that made dispute resolution a much lengthier and more

unpleasant affair. In light of the litigation option provided by the Tibetan judiciary system in exile, such comments demonstrate a friction between Buddhist norms of other-regarding behavior and secular, rights-based norms seen as excessively self-regarding. Although individual responsibility is much emphasized in Buddhist teachings, actions suggestive of ego-clinging are considered to be lacking both wisdom (because there is no inherent self) and virtue (because they lead to harm or exploitation of others).

6.7.3   Other-regarding behavior, virtuous acts and antidotes

Other-regarding behavior is epitomized in the Bodhisattva vows which most Tibetans will have taken on repeated occasions. It is the commitment to work toward enlightenment for the benefit not only of oneself, but for all sentient beings. This high altruism characterizes the Mahayana variant of Buddhism that Tibetans practice. It is recalled to mind in virtually every prayer, molding a disposition to subordinate the individual to the needs of a vastly greater good. In this aspiration, all sentient beings are seen as being similar to oneself, carrying their various burdens of ignorance and afflictive emotions and, whether they realize it or not, needing the succor of liberation. This understanding is the source of limitless compassion, as well as of directed compassion serving as antidote to one's own or another's harmful inclinations. The Six Perfections, or six perfected actions of the Bodhisattvas, are the standard for behavior: generosity, ethics, patience, diligence, concentration and wisdom. "Perfected" implies the metaphysical achievement of an enlightened being and the supreme compassionate goal to which the actions are directed. As everyday standard, however, the first four are pervasive as norms of social control and are invoked liberally in conflict resolution.

Stout's discussion of the rationality of other-regarding preferences has an interesting parallel in Nagarjuna's concession that compassion can help both others and oneself. The perfected forms of generosity, ethics, patience and diligence are: a) unbounded, unconditional; and b) free of any desire for worldly rewards, such as gratitude, recognition, advantage, or reputation. This view contrasts with the Law and Economics analysis of behavior preferences based on rational self interest, even where regard for others' well-being is manifest. Stout has argued that people are willing to incur personal costs to cooperate but postulated rational limits and conditions under which such a preference would prevail. A number of those conditions are met in the Tibetan

Diaspora, notably the forging of identity around altruistic values, active promotion of other-regarding norms by authoritative religious and secular leaders, and the collective stakes of cooperation implicit in the shared destiny of Tibetans as exiles. Stout's analysis, however, made no room for altruism as a meta norm, to which Tibetans aspire even if with the understanding that imperfections will intrude. Thus, actions deemed to be selfish are associated less with rational calculation than with lapse of moral integrity due to mental afflictions, while actions that serve self and others are rationalized through karmic causality. The distinctions, though subtle, are meaningful. The compassionate mind-set reflected in giving, tolerance or forbearance can be seen as karmically attracting a corresponding fortune to oneself, as expressed in a common Tibetan saying: "With kind mind your place and your way will be kind to you; with unkind mind the place and the way will be unkind to you. All thoughts depend upon you." At the same time, embracing the Bodhisattvic virtues can be interpreted as being instrumental for one's own spiritual evolution, which ultimately is dedicated to the welfare of all sentient beings. Jeffrey Hopkins' analysis of Nagarjuna's advice to kings and householders alike made the points clear:

> Thus he appeals not to self-desire but to intelligent self-concern, although one might starkly characterize his maneuvers as calling for altruism within appealing to selfish concerns. In a similar way, the current Dalai Lama recommends "wise selfishness" for those who cannot be altruistic without hope for return – that is to say, selfishness realizing that other-concern yields far better effects for oneself. (1998, p. 30)

In terms of conflict, the infinitely expanded field of intent helps Tibetans look beyond small aberrations of behavior, while skillfully applying antidotes assists in neutralizing one's own and others' negative emotions. As explained by Samdhong Rinpoche, in the cultivation of Bodhisattva mind, mental afflictions are to be overcome by applying the appropriate antidote:

> It is as clear as crystal that a fire cannot be extinguished by another fire; it can only be put out by a thing that possesses the opposite property of the fire e.g. water. Likewise hatred cannot be eradicated by hatred; it can only be eradicated through its opposite nature which is 'love and compassion.' (1999, p. 236)

In similar fashion, giving is an antidote for afflictions of greed, miserliness and possessiveness of the sort that generates conflicts over land or belongings. Ethical behavior and self-discipline are an antidote to the Ten Nonvirtuous Acts, which the law codes of pre-1959 Tibet cited as the source for all laws and which Tibetans themselves cited most frequently as their moral guide (French, p. 80). Divided into the three categories of body, speech and mind, these were: 1) killing, stealing and sexual misconduct; 2) lying, abuse, gossip and slander; and 3) craving, ill-will and wrong views. The virtue of morality is understood as refraining from these actions. The

violations associated with speech and, more particularly mind acts, can be difficult to prove within a formal legal framework. In the informal format of conflict resolution, however, they often are the content of accusatory or defensive arguments that a skillful mediator would subject to collaborative examination in hopes of reaching a consensual determination of what really had transpired.

The values of tolerance, forbearance and acceptance - subsumed under the virtue of patience - are antidotes to resentment, emotional reactivity, irritation or aggression of the sort characterizing most family or neighbor disputes. Third party interveners have stressed that both they and disputants need patience to calm down anger, control emotional outbursts, and contain the use of abusive words. The accepting third party is better able to understand what disputants are really arguing about and where the constructive work of resolution should be directed. The intervener invokes forbearance to urge reconciliation, quite apart from his attribution of guilt or his determination of pragmatic matters such as custody arrangements or boundary markers. The fourth virtue of diligence denotes the power of endurance or sustained application to dharma principles in the face of adversity. It is the antidote to laziness, complacency and disillusionment. Endurance, in particular, is urged along with forbearance to make the best of difficult circumstances without resorting to retaliatory, non-virtuous behaviors.

All antidotes are part of the trousseau of skillful means deployed by third party interveners, to the extent that they possess the persuasive qualities needed to make disputants shift their perspective on the problem at hand. As Samdhong Rinpoche has pointed out, the Buddha's teachings on the virtues of compassion have specific meaning for the judiciary as well (1999, pp. 276-279). Punishment must be meted out fairly, minimally and with pure motivation, rather than a spirit of anger or retribution. Punishment should be compassionate - only as harsh as absolutely needed for deterrence purposes. Due consideration must be given to whether the guilty party is capable of bearing the punishment, so that rehabilitation purposes are not jeopardized. In exile, the option of severe physical punishment does not exist given the absence of police or prison, but the principle of compassion remains an important one for those playing an adjudicative role in conflicts. If disputes get out of hand, a measure of coercion does exist in the threat of taking the issue to Indian police, which often acts as sufficient inducement to cooperation. Otherwise, psychological punishments – such as ostracization, barring from CTA positions, or revoking of the right to vote in Tibetan elections - are considered to be extreme measures - in principle

imposed only as a last resort. A Tibetan could choose to leave the community but, depending on factors such as level of education, employability or accessibility of Indian citizenship, the choice could imply radically different consequences.

6.8 Absence of conflict or conflict avoidance?

Not surprisingly, the socialization to non-violence and the emphasis placed by Tibetans on such virtues as patience, forbearance, and endurance have the effect of devaluing conflict. In 2005, the Tibetan Center for Conflict Resolution (TCCR) conducted a series of workshops on non-violent communication, a method for transforming conflicts into dialogues, in ten different locations across India. The feedback from participants, parents, elders and influential people was that many more such workshops were needed. The reaction is interesting because it confirms: 1) that the exilic condition generates conflicts that are of concern, despite attempts to discourage or even suppress them through normative messaging and socialization; and 2) that people recognize the need to empower the younger generation with constructive means of addressing conflict, while also preparing them for leadership roles that require a degree of self-assertiveness. The TCCR responded by organizing a similar series in 2006 in 12 different cities. I had occasion to examine 50 feedback sheets from the workshops conducted in Mysore, Mangalore, and Dharwad, in January and February of that year. The participants were college students aged 20 to 23. As stated in the program, the workshop objectives were:

- To encourage the Tibetan students to **take up leadership roles** in the community and enable them to **contribute to the Tibetan struggle;**
- To enable them to **contribute to the democratic system** in the Tibetan community and **strengthen the Tibetan community** as a whole;
- To equip the participants with **the skill and the tools to facilitate harmony** in the community;
- To encourage them to **become role models** for their generation;
- To enable them to **nurture a harmonious relationship with their Indian counterpart** so as to gain their support and understanding.

The promotion of harmony orientation and nationalism along lines discussed earlier is evident in the objectives, but the addition of contributing to democracy is of special interest. A democratic system assumes diversity of opinion, informed debate and free speech – important counterpoints

to the normative pressures implicit in communitarian solidarity. The feedback sheets gave insight into the sensibilities of young people socialized by these dual forces. In the first place, participants were effusive about the interactive, energizing format of the workshop, and the opportunity to speak up, rather than be talked to – the implication being that speechifying and top-down teaching ultimately can be de-motivating. There were numerous references to being shy, but now having gained the confidence to be frank about their feelings, interests and needs – suggestive of the reserve expected of youth in public fora and in front of elders or authority figures in the community.

Particularly appreciated were such techniques as active listening and making eye contact. As explained by the workshop trainers, body language is important in conveying the openness of an egalitarian mindset. There is a Tibetan saying about eye contact between teachers and students, youth and elders, women and men: "To bow down your head is a sign of respect; therefore we never look people full in the face." It is not uncommon to see even more respectful forms of body language in front of superiors, such as breathing in with the sound "hla, hla" with a submissive bowing of the head. When passing someone of lesser importance, an official may cough softly rather than acknowledge the person's presence. When an inferior says something, the official may respond with "ah" in a questioning tone, such that the person has to repeat what he has said twice, maybe even three times. While such customs were more prevalent in old Tibet, there remains a tendency to mark hierarchical difference in these small ways, as I observed and confirmed with informants. For this reason the experience of eye contact and active listening were empowering for workshop participants. As communication techniques, they signified that dialogue was taking place on an equal footing, without any loss of respectful demeanor. As conflict resolution techniques, they connoted empathy - an antidote to the impulse of parties (or self) to interrupt, pre-judge, blame, or threaten each other, or to exaggerate or evade issues.

Most important for many participants was the realization that conflict is inherently neither positive nor negative. They had been conditioned to thinking of conflict and disputants as a kind of societal blight. Speaking from the perspective of a dispute resolution specialist, one of the trainers had explained that disputants are not so much villainous as errant:

> We are born as white as the Katak [offering scarf] but due to ignorance we can label some people as bad, like a permanently sullied Katak - useless, needing to be discarded. On the other hand, if we differentiate person and act, it is as if we see the Katak and the dirt as

separable. Washing with care we can make the Katak white again. We can help the person doing the wrong act to become useful. (G4)

The comment is consistent with Buddhist teachings relevant to the judiciary, as noted earlier – that is, emphasizing compassion and rehabilitation rather than punishment. According to TCCR's definition: "[c]onflicts are disagreements, disputes and dissatisfactions, which are due to ignorance and lead to tensions within and between people."[73] This interpretation casts conflict as a problem that has to be solved, still imputing a negative valuation. Comments from participants, however, showed that they also learned to think of conflict as a potentially energizing, creative opportunity. The following are illustrative of attitudes changed by the workshop:

- Something which deals with our day to day life but which we avoid to resolve -"Conflict." The coming of this very topic in my mind creates tension, but never thought that it could be resolved so peaceful and beautiful…I learned… to be bold in expressing your views.
- Before we think the word conflict is negative and also it is unsoluable but from this workshop we know how to stop our conflict.
- Before we use and see "conflict" words as negative point but this workshop made us realize that "conflict" is neutral.[74]

The trainers had used Buddhist thinking to convey a number of ideas that had a breakthrough effect. Reflecting the transformational language of Buddhist texts on mind training, participants talked about "constructing our personality," "illuminating my gloomy mind," "awakens our thoughts." From the perspective of acculturation to democratic norms of engagement, the shifts had to do with empowerment, as noted in connection with techniques like active listening. The following comments reveal how liberating it was for participants to shed their disposition to shy, reserved behavior:

- [T]his workshop has lots of interactive activity which might remove the shyness nature of Tibetans as a whole and we can stand firmly against any circumstances.
- I found that it gives us the confidence to stand up on the stage and face the people.
- I felt much much comfortable and shyless…First day I felt very confused but day to day I felt very comfortable and frank.

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[73] Meeting conflicts mindfully. (A 71-page booklet outlining the mandate and basic approach of the Tibetan Centre for Conflict Resolution). Published in Dharamsala, undated, p. 7

[74] The feedback sheets were all in English although the workshop mixed Tibetan and English.

- The participants should speak loudly, with confidence like some of our friends presented just now.
- Most important, frankness and understanding…as being an introvert guy I fully participate in every section and feel very nice to speak at all.
- It creates a confident and we feel free to express our views or thought in a large audience. Really it is very great and helpful in our daily life.
- The workshop as a whole was immense selfless act…TCCR is generously and selflessly filling our hunger for love and respect.

The permission to be self-assertive had implications as much for cultivating leadership, as for encouraging dialogue to dispel obstructive views when relations are tense. The latter goal was more explicit in another workshop that TCCR conducted in Dharamsala to address growing tensions between Tibetans born in Tibet and those born in India. Facilitators brought 10 persons from each group face to face so that they could actually speak to each other, rather than harbor their separate grievances to the point of occasional flare-ups. A round robin process elicited the experiences and difficulties faced by participants, bringing out heated issues. In brief, those born in Tibet felt that they were looked down upon. Those born in India felt that the Tibet-born were rough, quick to draw knives and aggressive. They could understand that the newly arrived might be dejected as a result of their desperate escape and uncertain new environment. However, they resented the fact that new arrivals had access to all kinds of facilities and were blithely unaware of how difficult it was for the original refugees and for those born in India. It also became clear that there were language problems due to mutually incomprehensible dialects, leading to misinterpretation of words, misunderstanding of intentions and meanings. After 2-3 heated rounds, facilitators posed questions about what could be done to bridge the gulf between the two groups. It was widely agreed that just being able to open up to each other and share perceptions was hugely beneficial.

What the TCCR workshops have underscored for participants is that conflict has sources and that disputants have choices in whether and how they engage it. In that respect, its training programs are more about internalizing a morality of self-regulation balanced with transparency and openness to others – all critical qualities of responsible group membership. Within a society that is clearly harmony-oriented and communitarian, the initiative is both necessary and innovative. It is necessary because, as the Dalai Lama has stated, "As long as human beings have conscience

and intellect to think about the future, definitely there will be conflicts."[75] It is innovative because, if such programs continue, a broad base of citizens will have been exposed to constructive engagement methods for everything from business meetings, to political and public policy debates, to tension producing situations. An eventual repatriation to Tibet, for example, would not be without its interpersonal challenges, as much between returning exiles and native Tibetans, as between Tibetans and Chinese. That being said, at this point, the Centre itself does not mediate actual conflicts, nor thus far has it provided training for those within the CTA who have responsibilities for conflict resolution in the settlements. The distinction is pivotal because real life conflicts can be unexpected, resistant, and even intractable – as case studies soon will show. The public targeted programs conceivably would have the effect of decentralizing conflict resolution to yet more informal levels where persons closest to a dispute situation could take up the third party role more confidently, whether they are students, teachers, employers, employees, neighbors, friends or family. Arguably, a more conflict literate population would communicate better and would provide a stop-gap for unruly disputes without stifling legitimate contest of interests.

Thus far, I have represented the normative framework of exile Tibetans as derived from historico-religious legacy, current refugee circumstances and conscious policies promoting religious nationalism and Ahimsa or non-violence. That the TCCR workshops also addressed democracy is not accidental, as the Dalai Lama has been advocating this difficult yet important normative and institutional shift for almost 50 years. As early as 1960, in a speech delivered at Bodh Gaya, the Dalai Lama had made it clear that the community in exile would be governed by a system which would be "endowed with the characteristics of liberal democracies yet possess the values and traits of Tibetan culture and tradition" (Tsering Tsomo, 2004, p. 151). Moreover, just as religion was linked with nationalism, and both with non-violence, so too were the three linked with democracy in the 1963 Provisional Constitution for a Future Tibet, the Five Point Peace Plan of 1987, the Strasbourg Proposal of 1988, and the Charter of Tibetans in Exile of 1991. As discussed in the earliest chapter, a communitarian orientation is prone to a number of ills including hierarchy, conservatism authoritarianism, nepotism and problems of representation. How democratic the community's internal structures are therefore becomes an important measure of its ability to militate against these pitfalls.

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[75] Meeting conflicts mindfully, p. 6.

VII   NORMATIVE AND INSTITUTIONAL FEATURES OF DEMOCRACY IN EXILE

Within the debate on communitarianism, apologists for liberalist doctrine have emphasized that social cohesion very often relies on authoritarian structures inconsistent with liberal values. Samuel Huntington (1996) had claimed that non-Western cultures with a strong heritage of hierarchy, order, authority, and subordination of the individual to the collectivity were ill-suited to democratization. Central to his thesis were the unique circumstances of Christianity in Europe and of the crucial separation of church and state. To an extent, Tibetan democracy in exile contradicts these predictions, although the trajectory of getting there does not. That the TCCR is still actively promoting democratic norms (as are other Tibetan government and non-government groups in exile), demonstrates that acculturation to democracy has been an arduous process. This has been true on two fronts: 1) the introduction of norms of egalitarianism, political participation and rule of law, with their institutional embodiments; and 2) the accommodation of religious values in secular affairs.

My thesis is not concerned with political process per se, but there is no question that dispute resolution is a site that reveals the tensions inherent in the normative shifts involved in the democratization project. The new way of thinking and doing has generated conflicts, mediated conflicts and managed them in this exile community. An understanding of the evolutionary dynamics is essential to reading case study experiences of both the informal and court venues available. It is pivotal for interpreting the encounter between the two systems, and between communitarian imperatives and liberal aspirations. Alfred Stepan's definition of democracy is useful because it foregrounds conflict as constitutive of democracy:

> Democracy is a system of conflict regulation that allows open competition over the values and goals that citizens want to advance. (2000, p. 39)

Recently a number of scholars have taken a theoretical interest in what democracy can mean in this exile context - for example, Subramanya (2004), Ardley (2003), Tsomo (2004) and Frechette (2006).[76] It is, however, Sangay (2004) who has provided the most detailed exposition of how

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[76] Subramanya (2004) provided a useful tripartite discussion of the institutional structures existing in exile today, comparing them with the governance structures of pre-1959 Tibet and the provisions elaborated for a future free Tibet in the 1991 Constitution. Ardley (2003) used a Weberian framework to assess the extent to which democratization has taken and can be expected to take hold given the charismatic nature of the Dalai Lama's leadership and the exilic context. Frechette (2006) examined government-in-exile institutions as a strategy that discursively associates Tibetan settlement camps with the Tibetan homelands. Her constructivist argument turns on

the process was, and continues to be, experienced by Tibetans themselves. This section will briefly review relevant historical points and milestones achieved in the democratization process of Tibetans in exile. It will highlight the unique requirements of the community and the correspondingly tailored institutional features. It will introduce NGOs that have a strong presence in all settlements – not only because civil society is a requisite of democracy but also because such NGOs play a role in social cohesion as well as in dispute resolution. Finally, it will outline the bureaucratic structures of the government in exile, with specific attention to the departments most directly concerned with disputing phenomena and social control.

7.1   From feudal theocracy to spiritually informed democracy

Whether feudalism or theocracy accurately describe Tibet under the 317 years of rule by the Dalai Lamas, it is important to highlight authority relations that accompanied Tibetans into exile.[77] The majority of first wave exiles were illiterate and dramatically dispossessed of their traditional means of livelihood, accentuating a dependency on established power structures. For the sake of regaining Tibet, old relations of power and privilege necessitated reconfiguration, but they also frustrated its accomplishment in the early years of democratic reform.[78] If today TCCR

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defining the Tibetan Diaspora as a latent state, "an organization that is in the process of assembling the elements of statehood … yet that presently lacks exclusive sovereignty" (p. 127). Tsomo (2004) gave a very clear and concise overview of the current state of affairs without too much theorizing.

[77] Carrasco (1959) and Tandzin (2004, pp. 51-52) emphasized that Tibet was manorial rather than feudal because social relations were defined more in terms of landlord and peasant tenants, than in terms of the politico-military lord and vassal relations characterizing feudal Europe. Most Communist Chinese depictions of pre-1950 Tibet use feudalism pejoratively to emphasize the backwardness, cruelty and exploitation from which Tibet needed to be liberated. Other scholars, such as Stein (1972) employed the term more neutrally to denote certain institutional features, such as: primacy of lord-vassal relations; political action that is dependent on personal agreements between a limited number of individuals; political authority treated as a private possession; relatively few distinctions of office (military, judiciary etc..); pronounced hierarchy within the aristocracy; and land given by the lord in return for certain services (p. 290). As for theocracy, or rule by a god figure, the term does accommodate the possibility of governance by something like a priestly order claiming divine commission. Nevertheless, some scholars, including Samdhong Rinpoche, rejected the term as a misnomer mainly because neither Buddhism nor the pre-Buddhist Bön religion were ever theist in the sense of believing in a creator God (Sangay, 2004, p. 12, Ch. V; Stein, 1972, p. 138; Tandzin, 2004).

[78] Scholars have attributed a variety of reasons for the Dalai Lama's decision to promote democracy for the exile government and the regained homeland. In the first instance, in numerous speeches, the Dalai Lama recognized that significant reforms to the feudal order were long overdue. Based on the experience of Chinese occupation, communism was not an option even though he had sympathy for socialist ideals. Moreover, by espousing democracy he could demonstrate to the Chinese that there was no question of reverting to conditions that they had used to justify the liberation of Tibet. In the second place, logically enough, he was influenced by the political philosophies of the Indian host government, as well as by Western governments providing relief and development

workshop participants reflect a culture of reticence to engage contention, the same cannot be said for those in positions of relative power. Neither the more subservient nor the more influential have found it easy to adapt to a culture of egalitarianism – the former because it means taking up unfamiliar responsibilities and the latter because it implies giving up privileges long assumed to be normal. During my fieldwork, informants sometimes alluded to "familiar patterns" or "the same old games"- as did some of the bolder commentary in the Tibetan exile press. The meaning of such references cannot be deciphered without some reference to the past. Tibetans fled with their histories and memories are long.

7.2   History and its continuities

The Ganden Podrang (Government of Tibet under the Geluk sect 1642-1959) embodied a stratification of society reflected in land tenure and personalized bonds of dependence running through lay and monastic sectors. In principle all land in central Tibet was the property of the ruling Dalai Lama, and was assigned to peasants as family allotments, or to monasteries and nobles as estates, on a long term, inheritable basis. Carrasco (1959), Stein (1972) and Goldstein (1989) have described the considerable economic and political privileges accruing to the holders of estates. They constituted a small, hereditary ruling class that included the bureaucratic nobility of Lhasa, incarnate lamas, monk officials and territorial chiefs. Overall, authority relations were marked by a keen sense of hierarchy, expressed in a distinctive language used to address superiors in bureaucratic, monastic and family contexts (Stein 1972, pp. 125-126).

The vast majority of Tibetans were illiterate peasants or agro-pastoralists, with little social mobility.[79] They had no voice in government affairs, but owed often onerous taxes and transportation corvées to the government and labor services to monastic or lay landholders. The aristocrats rendered service by contributing one male from the family, usually privately educated, to the government bureaucracy where he would be further trained. The system – far more variegated than represented here - reduced the need for an elaborate central government structure

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assistance. In the third place, by representing the exile community as a democratic, human rights abiding polity, he could seek international support – if not recognition – for the legitimacy of its homeland aspirations.

[79] Most areas of Tibet included some territory sparsely inhabited by pastoral nomads; these were more loosely integrated into the political structures than were the agricultural centers.

because functions such as policing, resolving disputes and tax collection were devolved to the estate holders. All segments of society engaged in trade of one sort or another, with the government and large monasteries having major financial and business dealings. Outside the central area of Tibet, the various districts of Kham and Amdo were ruled by territorial chiefs, kings or lamas whose landholdings and political function to a large extent were determined internally via inheritance or incarnation. They were not part of the central bureaucracy and often harbored a mistrust of Lhasa's intentions commensurate with their degree of independence from or subordination to its authority over the years. Similarly, the different religious sects, for the most part, played no role in the Geluk dominated central government and were protective of the autonomy inscribed in their own long histories of separate existence and even sectarian supremacy.

While the patrimonial social stratification was antithetical to modern egalitarianism, a number of authors have stressed that Tibetans were never discontent enough to engage in popular revolt before the arrival of the Chinese. Aside from a general devotion to the Dalai Lama, Tibetan allegiance was strongly rooted in native place. Stein has hypothesized that group cohesion and the personal character of bonds of dependence counterbalanced inequitable aspects of hereditary authority. At the same time, he alluded to common forms of exploitation, also noted by Carrasco (1959) and Goldstein (1989):

> In this system where work is not paid for directly and private property is tied to service, the representative of authority, at any level, obviously had a hundred and one ways of abusing his power to force excessive services and taxes from his subordinates. (1972, p. 129)

Goldstein (1989) has written one of the first in-depth analyses of the workings of the political establishment in Lhasa in the period 1913 to 1951, based on primary research sources. His detailed descriptions revealed a rather unique administration that nonetheless had the features of a regular bureaucracy – namely: a hierarchy of offices and positions; definition of spheres of activity; recruitment based on qualifications (albeit from a closed candidate pool); a system of merit-based internal promotions; extensive use of written records; and disciplinary action for failure to perform (p. 10). Among its distinctive characteristics were:

- A roughly equal number of monk and lay officials in about 20 offices, including the all-important treasury;

- A Cabinet of Ministers (Kashak) presiding over secular affairs, with a counterpart Grand Secretariat for monastic and religious affairs – both halls of massive power;
- Various scales of National Assembly with strictly consultative status, comprised of all abbots and ex-abbots of the great Geluk monasteries of Ganden, Sera and Drepung, and a variable array of government and army personnel.

The structure of the politico-bureaucracy left no room for public participation. It concentrated power in a manner resonant with elite theory – that is, a social order planned and organized by a small cohort of comparatively competent, trained and dedicated individuals across a spectrum of social and economic functions. Although religious priority was universally accepted and a homogenizing force, Goldstein has chronicled the endless palace intrigues, abuses of privilege, and power struggles that ultimately contributed to Tibet's inability to thwart Chinese occupation. In the first place, the Dalai Lamas did not have the absolute authority popularly attributed to them, particularly in light of the lengthy interregnum by powerful regents, not to mention the fact that the 7th to the 12th Dalai Lamas died an early, sometimes suspect, death. They were always chosen from commoner families, which then became ennobled as a special class of aristocrat called "Yabzhis," who had their own stakes in the power landscape. In the second place, the Dalai Lamas, the great monasteries and the monk officials often worked at cross-purposes with several points of overlap in interests and alliances that weakened the country's ability for consolidated resistance to aggression from without.[80] It is also the case that monasteries, trying to preserve or enlarge their endowments, were an extremely conservative force that blocked necessary social reforms. Most of the lay aristocracy, including Yabzhis, were equally fearful of losing traditional privileges and therefore acted as a barrier to social and military modernization. Such factors are glossed over in more sympathetic - not to say, romanticized - accounts of the period, whereas Goldstein gives a window onto the references noted earlier of Tibet's fate being a karmic result of previous causes and conditions. Indeed, Sangay (2004), confirming these broad lines, has stated that:

> Exile Tibetans almost unanimously blamed the loss of their homeland and freedom on the traditional feudal government of Tibet and saw the need to replace it. (2004, p. 3, Ch. IV)

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[80] For example, Sera, Drepung and Ganden - the three most powerful monasteries, usually referred to as the "Three Seats" were located in the Lhasa vicinity, together numbering about 20,000 monks. Goldstein noted that they were not only an economic and political force to be reckoned with but also a military one as they had 2000-3000 fighting monks, engaging in ritualized combat, athletic competitions, and acting as bodyguards for church hierarchs.

Not surprisingly, the specter of monastic and aristocratic vested interests, misuse of privilege, nepotism, and patrimonialism reasserted itself when the differently situated Tibetans were thrown together as refugees in India. Significantly, a majority of the main wave of escapees were from the central province of Ü-Tsang (65%), not only because they followed the Dalai Lama, but because they were relatively close to the Indian border. Those from Kham (30%) and Amdo (5%) had a more daunting journey, reflected in the proportions fleeing (Sangay, 2004, p. 11, Ch. III). Similarly, the Geluk sect was far more strongly represented than the other four sects – the Kagyü, Nyingma, Sakya, and Bön, in that order of relative numbers. Consequently, Sangay has argued that leaders who were <u>not</u> from these dominant groups were suspicious of any attempt to subsume them and their followers under old structures of governance controlled by the Lhasa-based ruling elite. Woodcock's descriptions of the early days of refugee rehabilitation make a similar point since negotiations with Indian officials, as well as the distribution of relief funds, were more or less centralized under a provisional administration headed by the Dalai Lama and members of that very elite.

7.3 Democracy Day: September 2, 1960

Keenly aware of the divisive forces at work and recognizing their detrimental effect on any consolidated freedom movement from exile, the Dalai Lama moved swiftly to introduce a consociational election plan that sought to open up the governance structure.[81] Equal representation would be given to each of the three regions, and to the four Buddhist sects, in a rudimentary national assembly, modeled on the Indian parliament.[82] All scholars of the democratization of Tibetans in exile have pointed to the singularity of the arrangement. The regional proportionality was based not on the numbers in exile but on the roughly equal populations in Tibet of the provinces of Ü-Tsang, Kham and Amdo. In this way, the Dali Lama hoped to unite the regional factions and at the same time, arguably, to compensate Khampas and

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[81] Sangay referred to the election scheme as being consociational, following Arend Lijphart's use of the term to describe a form of representation that allows ethnic groups to form political parties with representation based on their proportionate numbers in the larger community. In principle, consociational arrangements provide a political outlet for ethnically divided societies, but in practice they can exacerbate rivalry between ethnicities because of their parochial orientation in electioneering as well as in parliamentary debate.

[82] The three regions could elect three representatives each from amongst themselves, and the four Buddhist sects one each, for a total of thirteen seats. The small number of pre-Buddhist Bön were not given any representation at this point, but were allotted one seat in 1978, and later two seats in line with the other religious sects.

Amdoans for the valiant resistance they had mounted in Tibet, as part of the Chuzhi Gangdruk volunteer army. Similarly, the equal representation for the four Buddhist sects formalized the ceding of Geluk supremacy for the benefit of unity. That the voting was not by secret ballot was less important than the fact that most of those elected were men from ordinary backgrounds, a breakaway from past tradition (Sangay, 2004, pp. 16-17, Ch. III). Significantly, however, the Assembly did not have any more real power than its namesake in the pre-1951 Tibet described by Goldstein. The power remained vested in a four-member Kashak or Cabinet, appointed by the Dalai Lama, and made up of male Ü-Tsang aristocrats of the Geluk sect. Nonetheless, September 2, 1960 marked an important beginning - the first session of the newly elected Assembly - which is celebrated annually as Democracy Day. Absorbed into the calendar of commemorative dates, the anniversary is a collective ritual of affirmation of new norms, even if acclimatizing to them has been an uphill battle.

Scholars tracking the democratization process in exile have delineated three periods: 1) 1960-1990; 2) the decade of the 1990s; and 3) May 2001. The first period saw a number of politico-administrative reforms, some of them more symbolic than functional. Milestones were the promulgation on March 10,1963 of a Provisional Constitution for a future democratic Tibet, which incorporated the Universal Declaration of Human Rights and Fundamental Principles of the Law of the Land (Tsomo 2004, p. 154). In that same year, legislation was introduced by the Assembly to abolish hereditary titles and traditional positions that had been the preserve of the former ruling class. Sangay noted that even the term "Kungo" was banned, as it designated aristocratic title (2004, p.19, Ch. III). Gender discrimination also was addressed by reserving one seat from each region for women. Together with an additional seat for special appointment by the Dalai Lama, the total Assembly was expanded to 17 members. Each step was an improvement, emphasizing a new era of egalitarianism. The fact remained, however, that the general population was preoccupied with survival and had little appreciation of election principles. The Assembly had limited experience and resources, and the Ü-Tsang aristocrats comprising the Kashak continued to control affairs, being appointed by the Dalai Lama and responsible only to him, rather than the Assembly.

Most problematic, however, were a series of controversies which demonstrated the tenacity and intensity of regional and sectarian rivalries, despite the experiment with proportional representation, as well as on account of it. Sangay has detailed the twists and turns by which a

large breakaway group called "Tsokpa Chosum" (Thirteen Associations) attempted to wrest influence from the fragile, democracy-styled exile administration of the Dalai Lama. It was not that the group rejected the Dalai Lama, but that they mistrusted the Kashak and other members of the entourage who they saw as clinging to patrimonial privileges and free-loading on his charismatic leadership. The Dalai Lama responded by appointing Khampa and Amdo ministers to the Kashak from 1969 onward. He also recognized that any hope of a non-sectarian, non-regional, democratic leadership for the freedom movement would have to lie with the younger generation. In response to his urgings, the Tibetan Youth Congress (TYC) was born in 1970 and arguably remains the most dynamic force in exile society. Even here, however, Sangay notes that the Kashak worked to clip the TYC's wings when it tried playing the "loyal opposition" to the exile administration. In short, despite the Dalai Lama's best efforts to establish democratic systems, his own limited experience with the concepts and the tumultuous circumstances hampered progress. [83]

The second period – the decade of the 1990s - continued to be plagued by suspicions and accusations of nepotism and patrimonialism involving the Yabzhis, as well as others, but it also saw dramatic reforms. The Dalai Lama took executive action in May 1990 to dissolve both the Assembly and the Kashak, with a view to restructuring troublesome power relations through a carefully drafted Charter for Tibetans in Exile. Where the Provisional Constitution of 1963 elaborated democratic institutions for a free Tibet, the Charter of 1991 incorporated a regulatory and governance framework for the exile circumstances:

> The Charter is the supreme law governing the Central Tibetan Administration and is binding on all Tibetans under the jurisdiction of the Government-in-Exile. (Tsomo, 2004, p. 156)

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[83] Sangay's description of this period is probably the most thorough one available. While various scholars have mentioned regional and sectarian rivalries, the references tended to be brief. In Chapter III pp.13-35, Sangay has put names to the individuals, groups and incidents that made this period so complex, particularly in his footnotes. The Tsokpa Chosum, for example, was rumored to have financial links with the Kuomintang Party of Taiwan - which, considering the politics of the time, was anathema to the Tibetan Freedom Movement. Allegations of receiving funds from Chinese sources in any context continue to be a tinderbox in Tibetan relations, even though there has been a rapprochement between the Dalai Lama and Taiwan based on their mutual struggles for self-determination vis a vis the PRC. The murder of the President of the Tsokpa Chosum in 1978 escalated tensions to dangerous levels. Sangay also noted that Bonpos, who had no representation in the Assembly until 1978, were part of the Tsokpa Chosum group. Nor was this the only source of controversy. Heated rhetoric also surrounded the short-lived Tibetan Communist Party, attempts by Ü-Tsang and Kham forces to claim votes from the people of Kongpo (an area lying between the two regions in Tibet), and the dissolution of the Chuzhi Gangdruk guerrilla forces that had been supported by the CIA in Mustang. All this agitation, power wrestling and confusion about which leaders to follow occurred on top of serious livelihood challenges where everyone was basically dispossessed by exile status.

In 1991, a new, expanded Parliament was elected, with a stronger mandate. The Assembly of Tibetan People's Deputies (ATPD) now had 46 seats, with ten reserved for each of the three regions, two for each of the five religious sects, two for Tibetans settled in Europe, one for those in North America, and one to three seats for nominees of the Dalai Lama. In a form of affirmative action, two seats from each regional allotment were set aside for women, assuring a minimum presence of six women in the Assembly. The 1991 Charter also empowered the ATPD to elect the seven members of the Kashak, rather than have them appointed by the Dalai Lama as was formerly the case. In this way, the Kashak, though still nominally subordinate to the Dalai Lama in its exercise of executive powers, would be responsible to the people through their elected representatives.

Interestingly, this critical change did not immediately diminish the influence of the former ruling elite, yet not always for insidious reasons. As noted by Sangay, for example, between 1991 and 2001 virtually every Kashak included some ministers from among the Yabzhis, despite the fact that the Dalai Lama himself assiduously avoided nominating them (2004, p. 40,Ch.III). Long habits of allegiance to the Dalai Lama made it difficult for the populace to conceive of not electing persons known to be important by virtue of their direct relation with him. Whether Yabzhi members were elected and performed honorably or were manipulative behind the scenes, their presence in governance was problematic for the acculturation to public participation.

In 1992, again on the emotionally resonant date of March 10, another safeguard for egalitarian reform was put into place with the establishment of an independent Tibetan Supreme Justice Commission (TSJC). As described by the Tibetan Center for Human Rights and Democracy, the TSJC would "act as the watch dog of the rights and liberties of the citizens" and as a "constitutional arbitrator to ensure that each of the government organs carry out their responsibilities as defined by the written Charter." [84] The issue of judiciary independence will be discussed in conjunction with case studies, but the point is that, for the first time, provision was made for the public to challenge incompetence or abuses of privilege in governance. As for the issue of proportional representation, Sangay and Tsomo both have highlighted the fact that although the ATPD matured steadily in this period, the institutionalization of parochial affiliations made electioneering a yet more divisive affair. Particularistic obligations were played

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[84] <u>What is democracy? How does it work</u>? A booklet of the Tibetan Centre for Human Rights and Democracy, published in Dharamsala, 2000, p.16.

up by candidates and the general public continued to make choices based on those ties. Once elected, Assembly members perpetuated the problem throughout the system. A contributor to the May 1993 issue of <u>Tibetan Review</u> summed up the frustrations very clearly:

> By faithfully and unfailingly nominating and in turn electing or appointing brothers, sisters, in-laws, their friends and sycophants to one or the other post in the Tibetan society, including Cabinet and the Assembly, without consideration of their suitability, capability and qualification, the Tibetan administration and the Assembly have brought glorious shame on themselves as it is a clear expression of their lack of confidence in the democratic spirit of the ordinary Tibetans for whose benefit the Dalai Lama has introduced democracy.[85]

The third period of reforms brought something of a resolution to the conundrum of proportional representation – again, notably at the behest of the Dalai Lama. The ATPD passed a new rule whereby the most influential exile post, the Chairman of the Kashak, or Prime Minister (referred to as Kalon Tripa), would be elected directly by the public. In this way, there would be some counterbalancing between group affiliations and the need for a broader mandate backed by popular support. With great difficulty, and often with tremendous public resistance to the idea, the Dalai Lama thus extricated himself from day-to-day secular governance. This, he has maintained, was imperative for strengthening the sustainability of democracy in exile, as well as for its eventual implementation in Tibet.

Through a two-stage process beginning with primary elections on May 12, 2001, the Venerable Samdhong Rinpoche was elected as Prime Minister by an overwhelming majority - 84.54% of total votes cast (Sangay, 2004, p. 47, Ch. III). Born in Kham to a poorest-of-the-poor family, Samdhong Rinpoche was recognized as the incarnation of the 4th Samdhong Rinpoche at the age of five, and educated in the Geluk tradition.[86] The elected nature of the office aside, his person thus reconciled concerns related to regionalism and aristocratic bias. Even though he was from the dominant sect, he was at least a learned monk who could be trusted. Samdhong Rinpoche was a strong proponent of building an egalitarian, decentralized and liberal social order, as a deterrent to structural violence (Samdhong, 2004, pp. 457-8). In his acceptance speech he

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[85] Written by K.Dondup, this article was in response to an editorial in the April issue entitled "'Ugly Face of Democracy.," which protested Yabzhi power maneuvers. Tibetan Review XXVII (5) May 1993.

[86] From an interview with Samdhong Rinpoche in June1999 by Professors Krishnanath and Ramesh ChandraTiwari, translated by Ven. Tenzin Rigzin. "Towards an autobiography." <u>In search of truth</u>, Varanasi: Editorial Board of the Alumni of Central Institute of Higher Studies (p. 313).

pointedly insisted on a high standard of integrity in civil service and on transparency in the functioning and finances of the CTA:

> I believe that it is imperative for the Administration to follow the rule of law in all its activities. I also believe that the Administration should be completely transparent and accountable. [87]

Over his first term in office, Samdhong Rinpoche was a principled leader, true to his words. Highlights of his tenure included: control systems for the executive budget and accountability to the ATPD, promoting a conducive atmosphere for negotiating with China, privatization of government-run businesses, introduction of organic farming methods in the settlements, revitalization of the cooperative societies for sustainability of the refugee settlements, educational reform, and the "Tibetan Non-Violent Grand Strategy" (Tsomo, 2004, p. 161). He is highly respected, even though not all of his policies are equally popular with the younger generation. For example, as noted already, aspects of the Draft Education Policy and of suggestions that Tibetans should be content and non-competitive, pose dilemmas for graduates facing an extremely competitive labor market in India. These, and other normative urgings related to activism, draw their legitimacy from Buddhist and Ghandian philosophies. They have broad communitarian appeal but signify sacrifices not everyone is prepared to make. General support for Samdhong Rinpoche continued unabated, however, and he was re-elected by an overwhelming 90.72% vote, to a second term of office beginning August 15, 2006.[88]

7.4   Taking stock

Because of the exile community's aspiration to nation status for Tibet, scholars have discussed its progress and lacuna with reference to yardsticks predicated on the sovereign state. My concern has been to understand the exile community in India as a communitarian entity and, within that optic, to ask what accommodation to liberal values it has made as a way of mitigating negative side-effects of a communitarian orientation. In specific, how have the imperatives of

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[87] A commitment to strive for a culture of democracy. Tibetan Review XXXVI (10), 19.

[88] Exclusive One-on-one with Kalon Tripa Prof. Samdhong Rinpoche. Tibetan World III (2), 14. As noted in this interview, Samdhong Rinpoche taught at several settlement schools before becoming the Principal and later the Director of the well known Central Institute of Higher Tibetan Studies in Varanasi, India. From 1991 onward, he served as a member of the ATPD, first as a special appointee of the Dalai Lama and, after 1996, as an elected member to one of the Kham seats.

social cohesion impacted on authority relations within the community? Communitarian thinkers such as Etzioni, Selznick, Taylor and others have stressed that, in order to avoid an incompatible drift toward conservatism or authoritarianism, communitarian groups within democratic states need to: 1) develop democratic internal structures; 2) align their norms with the Constitution and Charter of Rights and Freedoms of the larger state; and 3) engage inclusive moral dialogue to arrive at consensus on shared values. The foregoing discussion reveals just what a challenge those criteria represent for groups coming from a different historical background. It is worth summarizing the exile community's extent of conformity with each of these criteria.

7.4.1 Criterion 1: Democratic internal structures

In Chart # 5 on the following page, I have compared the key indicators of a consolidated democracy drawn from Dahl (1971), with additions proposed by Stepan (2000). For each item, I note provisions within the exile community, together with current problem spots as pointed out by Tsomo (2004, pp. 162-166). In general terms, it can be seen that the exile community has made remarkable inroads, considering that it lacks the financial resources, the sovereign territory, powers of legal enforcement and recognized status that democratic states enjoy. The principle of public elections is now well established for the ATPD and Kalon Tripa, as well as for settlement level local assemblies.[89] It is also the regularized practice within public bodies, such as the ATPD (for election of Kashak members, Assembly Chairman and Vice-Chairman) and the Co-operative Societies and camps in the settlements. Monasteries have their own separate constitutions, defining the basis of election for the powerful positions of Abbot and Disciplinarian (Gyatso, 2004, p. 230). Major NGOs elect their officials and some, like the broad-based Tibetan Youth Congress (TYC) and Tibetan Women's Association (TWA), are actively promoting democratic norms at the grassroots. Even less formal groups such as sweater sellers or regional self-help groups elect their representatives. A culture of elections is gradually replacing a culture of patrimonial hierarchy. In one sense the Tibetan Diaspora disproves Huntington's pessimistic prognosis regarding democracy in non-Western cultures with a strong legacy of

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[89] According to Subramanya's exposition of local processes, the local assemblies can be constituted by election, or on an ex-officio basis by including persons already elected to other leadership positions within the community, such as camp leaders, Co-operative Society Board of Directors, committee members of the Tibet Freedom Movement and monastery representatives. Direct election is the more common practice, in which case it proceeds through a local Election Commission, comprised of the Settlement Officer as Chairman and members from the three regions. See Subramanya (2004, pp. 87-89).

authoritarianism and subordination of the individual will to the collective good. While the latter remains an important feature of the society, the former has definitely been eroded by the institutional and attitudinal commitments to democratic principle.

Significant problems do continue to exist, however, because there is no official opposition party, that role being played individually by ATPD deputies in this party-less system. During my time in Bylakuppe, camp leaders were dutifully posting candidate information in a central location in the villages for the upcoming ATPD elections. There was no sign of campaigning, however, and the information was limited to a few biographic details rather than relevant achievements or political platform statements. In these circumstances, political awareness is constrained and the polity is less likely to take up its voting responsibilities. In consequence, personalism and particularistic obligation dominate the election process, especially in settlements outside the Dharamsala hub which is exposed to a steadier diet of democratic rhetoric. Indeed, as also revealed in the TCCR workshop evaluations, many in the settlements feel left out of training opportunities available to Dharamsala residents. Without those opportunities, they do not relate to the empowerment promised by democracy and can even be alienated from experimenting with its untested principles. In Bylakuppe, for example, this was evident in a hesitancy to take advantage of the Local Justice Commission, and in a reluctance of settlement residents to opt for election of their CTA representative, or a local assembly. I will elaborate on these points under the case studies.

Chart # 5:   Democracy in exile: Measuring up?

Dahl's indicators	Exile status	Difficulties
Freedom to form and join organizations	The Charter Ch. II Art. 12 (g) ensures the right to form, and become a member of any religious, cultural, economic, corporate, union or other association. Self-help associations, & cultural & political NGOs thrive; high levels of participation.	Section 3 of the Foreigners Act of India 1946 can restrict association at the discretion of the government; the CTA and the Dali Lama's office have brought strong pressures to bear against the practice of Shukden propitiation, essentially ostracizing that segment of the community.
Freedom of expression	The Charter Ch.II Art. 12 (b) provides for freedom of speech and (c) right to publish and distribute newspapers, periodicals, articles and other writings. Good variety of media exists; opinion exchange is animated.	CTA exerts pressure on activists to refrain from aggressive protest; while there is a strong independent press, government approbation remains important for the survival of specific new initiatives.
Right to vote	Exile Tibetans in 25 countries around the world are allowed to vote. Conditions are that they have to be 18 years or older, and possess a "Rangzen Lakhdeb" indicating that they are up to date with their annual tax payment.	Prop. Rep. still a problem. People vote based on religious & regional affiliation but # of seats is based on proportions in Tibet not exile; elsewhere voting is from within each community but # of seats no longer reflects community size (e.g. N.A. has one seat for over 7000 exiles; Europe has two for 2,324; Australia and New Zealand have none).
Eligibility for public office	Exiles over 25 are eligible for ATPD nomination. Charter Ch.II Article 12 assures freedom of employment in the CTA according to merit; a Public Service Commission is in place for recruitment, training, promotion of civil servants.	The no-party system makes it difficult for individuals to mount a campaign for themselves; Some mistrust still exists as to whether or not public positions are commandeered by patrimonial, regional or sectarian affiliations.
Right of political leaders to compete for support and votes;	Exile Tibetans over 25 are free to compete for election to the ATPD or local assemblies; Information on the candidates is posted in a central location in every settlement; issues of concern to the population are vetted in exile media.	It remains culturally uncomfortable for many to be promoting themselves; Candidate information tends to be purely biographic rather than performance and issue based. Thus choices are often influenced by personal, status, religious or regional affiliations.
Free and fair elections;	Elections are held for the ATPD, Prime Minister, local assemblies. Voting is by secret ballot – according to rules set out in the Charter and overseen by an Election Commission.	Political awareness is still limited and voter turn-out sometimes too low for all seats to meet the 33% of votes required. Resources are too limited for re-polling to be an option. Some settlements have no local assembly.

Stepan's Indicators	Exile Status	Difficulties
A Constitution that itself is democratic, respecting fundamental liberties and offering protection for minority rights;	The 1991 Charter of Tibetans in Exile has all the provisions of a democratic constitution, including in Article 12, the guarantee of rights and freedoms as articulated in the Universal Declaration of Human Rights. The Charter is based on the Indian model, with adaptations from the US, or French system for electing the highest office.	As noted above, there are limitations on the practice of Shukden propitiation. The limitations - expressed in the form of ostracization - are socio-religious rather than formal.
A democratically elected government that rules within the confines of the constitution, is bound by rule of law and has a set of vertical and horizontal institutions that ensure accountability; and	The Charter is a comprehensive working constitution that defines the structure of the executive, legislative and judiciary branches of government and the rules governing them. The Executive is responsible to the ATPD. Three Statutory Commissions oversee governance operations: Tibetan Election Commission, Tibetan Public Service Commission and the important Office of the Auditor General.	The ATPD also should be accountable to the people but the wide geographic spread between voting constituencies makes this difficult. Because of resource constraints, officers wear several hats, which can compromise the principle of independent executive, legislative and judicial functions. While rules of law are laid out, their observance is still irregular across different government departments.
Conditions for a robust civil society that can advance alternatives and help to check the power of the state.	A robust and growing civil society exists, including the TYC, TWA, TCCR, Gu Chu Sum, New Democratic Party of Tibet, Amnyé Machen, Tibetan Centre for Human Rights and Democracy, regional associations and various committees for cooperation at all levels.	Most groups tend to focus on the needs of the freedom movement and therefore play only a modest role in government oversight. Checking the power of the state is not a concept that presently fits Tibetans' conception of why they coalesce in civil society groups.

7.4.2   Criterion 2: Norms aligned with state constitution

A Charter promulgated by an elected ATPD and incorporating Fundamental Rights and Freedoms, has brought the community's normative statements in line with the "community of communities." Etzioni and Selznick have used the term to refer to the reciprocal obligations of various communitarian entities within a state, as well as of the state within an international order. Without a common normative commitment at the level of constitutional principles, inter-community diversity would compromise higher levels of civic allegiance. Virtually every Tibetan government official with whom I had occasion to speak emphasized the importance of the Charter to the conduct of their own work, and to emerging community values. It is not only a symbolic document espousing the ideals of a democratic, liberal entity, but a comprehensive working constitution that guides the evolution of institutions in that direction. The 1963 Provisional Constitution was modeled closely after the constitution of the host country, having been drafted by Indian lawyers (Sangay, 2004, pp.18-19, Ch.IV; Alam, 2000, p. 114; Subramanya, 2004, p. 91). The 1991 Charter, though adjusted to exilic circumstances, retains its essence and in Article 6, is explicit about aligning with both international and host country laws:

> All laws, ordinances, regulations, administrative and executive orders of the Tibetan Administration in-exile shall endeavor to conform to the generally accepted principles of international law as specified by the United Nations, and in particular comply with the local laws of the host countries.

Like elections, "rule of law" norms in the Charter represent a radical alteration to the legitimation of authority based in charismatic leadership. As theorized by Weber, the charismatic leader is one "set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities" (1968, p.48). With this type of power, it is not criteria such as election or rule systems that matter, but purely "recognition on the part of those subject to authority which is decisive for the validity of charisma" (p. 49). Tibetans retain their emotional support for the Dalai Lama as their supreme leader but, in principle at least, the Charter moves toward a routinization of authority structures which eliminates the basis for any extended charismatic authority claimed by government officials. The Charter articulates not only a primary set of rules applicable to each institution of governance, but also secondary rules about how rule making is to proceed. With eleven chapters and 115 articles, the Charter itself is under continual refinement, having seen eleven amendments from the time of its passage by the ATPD in 1991 to 2004 (Tsomo, 2004, p. 157).

While the Charter asserts the supreme authority of the Dalai Lama, its elaboration of rules for the machinery of government conforms to Weber's view of modern bureaucracy as pure rationality. As illustrated in Chart # 6 on the following page, the legislative, executive and judiciary branches are functionally separate.

Chart # 6:   Organization of the CTA

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                        ┌─────────────────────────────┐
                        │ His Holiness the Dalai Lama  │
                        └─────────────────────────────┘
                                      │
  ┌────────────────────────┐ ┌────────────────────┐ ┌──────────────────────────────┐
  │ Supreme Justice        │─│ The Kashak         │─│ Tibetan Parliament in Exile  │
  │ Commission             │ │ (Cabinet)          │ │ (Assembly of Tibetan         │
  └────────────────────────┘ └────────────────────┘ │ People's Deputies)           │
                                                     └──────────────────────────────┘
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- His Holiness the Dalai Lama
- Supreme Justice Commission
- The Kashak (Cabinet)
- Tibetan Parliament in Exile (Assembly of Tibetan People's Deputies)

Kashak Secretariat

Planning Council

Tibetan Computer Resource Center

Election Commission

Public Service Commission

Audit Commission

Religion & Culture	Home	Finance	Education	Security	Information & International Relations	Health

46 Settlements & Welfare Offices in India & Nepal

Charitable Trust

82 schools with about 30,000 students in India, Nepal & Bhutan

Research & Analysis

Branch Security

12 Offices of Tibet:
Delhi, New York, Geneva, Tokyo, London, Paris, Kathmandu, Moscow, Taipei Budapest, Pretoria Canberra,

Tibetan Medical Institute & 37 branch clinics in India/ Nepal for Tibetan medicine;

Delek hospital & 66 other hospitals & clinics for allopathic medicine

- Norbulingka Institute of Tibetan Culture
- Tibetan Institute for Performing Arts
- Central Institute of Higher Tibetan Studies
- Library of Tibetan Works and Archives
- Tibet House
- Over 200 monasteries & nunneries

SOURCE: CTA

156

The Executive comprises seven departments, each with a specific portfolio, as well as responsibilities for a number of subsidiary institutions: 1) Religion and Culture; 2) Home; 3) Finance; 4) Education; 5) Security; 6) Information and International Relations; and 7) Health. While different departments can have a presence in the settlements through the subsidiary institutions, it is the Department of Home that is directly responsible for ensuring settlement well-being. It does this through a network of representatives, whose tasks are also delineated in the Charter. Three statutory bodies ensure the accountability of the full machinery. An Elections Commission organizes and oversees free and fair elections, with authority to investigate any allegations of impropriety or fraud. An Audit Commission audits the accounts of all departments of the CTA and its affiliated bodies such as co-operatives, hospitals and educational institutions. A Public Service Commission is responsible for recruitment, training, appointment and promotion of civil servants on merit-based principles. Moreover, all three commissions are subject to oversight by the independent judiciary if there is contestation of their fulfillment of obligations as laid out in the Charter. Thus, not only does the exile community have a Charter that is well aligned with Indian host and international democratic principles, it also has a functioning bureaucracy based on them.

I have argued that aspirational statements relating to homeland commitment, Buddhism and non-violence are strong indicators of the existence of correlate norms, even if compliance is uneven or enforcement undetectable. Norms related to Buddhism are culturally imprinted from centuries. Norms related to homeland commitment are viscerally felt out of the direct experience of exodus or the continual stream of information about the plight of Tibetans in Tibet. Together with the strategy of non-violence they are tied into a discursive framework within which the experience of exile is rationalized. In the case of democratic norms, I would have to agree with Ellickson that the additional evidence of enforcement of the norm becomes necessary, because democracy itself demands that form of accountability. New norms also do not "stick" as well as those of older vintage. As reported by Tsomo, Samdhong Rinpoche was fully cognizant of the need to be vigilant about the disjuncture between Charter ideals and actual behavior:

> He believed that a Charter only relevant on paper would have no value. However, the Rinpoche felt that many officials saw the Charter as hindering and constraining their work. Most of the rules became tools of individuals who either quoted it to attack someone or ignored it to support a friend. (2004, p. 163)

From a socio-legal perspective on communitarianism, the rule edifice of Tibetans in exile more than satisfies what can be expected without the enforcement capacity enjoyed by the state. Moreover, I would argue that the Indian state gains by not having to interfere with issues internal to the community, because it can devolve regulatory power knowing that the community's principles are congenial to its own. Expression of ideals is a critical inducement to pro-social behavior, just as a template for self-governance is essential for negotiating the terms of social order. Samdhong Rinpoche's comment, however, is an important reminder not to expect patterns on the ground to conform entirely to the written word. For communitarian entities, just like their host states, living the values of democracy involves a continuum of learning and adjustment.

7.4.3   Criterion 3: Inclusive moral dialogue on shared values

Liberal tolerance in a democratic society would imply that each individual is free to hold his or her view of what the good is, hence the emphasis on secularism. An important critique brought against communitarianism is the assumption of shared values embedded in the rhetoric of cohesion, particularly where morality is defined exclusively in religious terms. Whether in fact values are shared is most severely tested in deliberations over means and end in public policy, because boundaries between religious and secular values readily blur. There is little difficulty in agreeing on the sanctity of life as a moral good. Set in a legal context, there would still be wide agreement that murder should be punishable, whether to deter potential offenders, to protect the public from the actual offender, or to rehabilitate the offender. Capital punishment, on the other hand, becomes a values debate in which means and end messily overlap with respect to the relative sanctity of one life over another (the victim's, offender's, or hypothetical future victim's). Similarly, reaching consensus on the need to introduce ethics in education is easier than negotiating the values controversy over whether and which religious beliefs can serve as means.

The exile administration has managed to forge a shared conception of the good by continually directing attention to the end goal of Tibetan nationalism. It has been able to sustain the vision, transmitting it to successive generations, in great part because it was backed by the moral authority and charismatic leadership of the Dalai Lama. Paradoxically, as most writers concede, it was due to the Dalai Lama's sustained urgings that Tibetan leadership gradually was able to

move in an anti-authoritarian direction with institutional features basic to a liberal democracy. Yet, emotional devotion to the Dalai Lama and faith in his leadership arguably remain an obstacle to the political maturation of Tibetans or, in Weberian terms, to the full routinization of his charismatic authority. As head of state and government, he is not legitimated by election, although there is no question that, if subjected to election, he would win by acclamation. More importantly, as the spiritual head of Tibetan Buddhism, it is almost unthinkable for Tibetans to oppose his views on something as fundamental as values. Ultimately, then, moral dialogue on shared values is always susceptible to a conflation of the religious with the secular. Under that circumstance, what constitutes a truly inclusive moral dialogue?

Secularism as embodied in the Indian Constitution was a prime example of what Taylor (1998) called the "common ground strategy." Its goal was to unify the newly independent nation across its variegated polity by maximizing the sense of inclusiveness. Yet, whether or not the word "secular" should appear in the Constitution was hotly debated because spirituality of one sort or another was recognized as a pervasive feature of most of the country's sub-cultures (Bhagwati, 2005, p. 36; Coward, 2005, p. 65; Tambiah, 1998, p. 423).[90] Reflecting on the early years in exile, in an interview with Sangay, the Dalai Lama commented: "At the time (1960's), we did not take much interest in secularism, we did not even know about it" (2004, p. 30, Ch. V). The comment demonstrated how deeply naturalized the system of combining religious and political affairs was for Tibetans. Yet, the Dalai Lama followed logic parallel to India's. To unify Tibetans across regional and sectarian divides, he gradually separated monastic and political institutions, and devolved responsibility for governance from himself (and the traditional Geluk sect) to elected representatives of all sects and regions. Interestingly, again paralleling the Indian experience, Tibetans engaged an extended debate over whether and how aspects of secularism should be incorporated in the 1991 Charter. In the Tibetan case, it was never a question of eliminating any reference to religion but, as explained by Sangay, the Dalai Lama had strongly advocated use of the word "rimé." This term would have placed emphasis on an ethic of non-sectarianism, in preference to one denoting the tradition of religion-and-political-affairs combined (2004 p. 12, Ch. V). In a rare show of independence from the Dalai Lama, however,

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[90] In the end, the word "secular" was left out of the Constitution in order to acknowledge the importance of religion in people's lives. The debate endured, however. In 1976 the specter of communal tensions prompted Indira Gandhi's government to insert "secular" in the Constitution's preamble, to emphasize the importance of sharing an independent political ethic above and beyond parochial affiliations.

the Assembly voted in favor of the latter. Among other supporting arguments, was the conviction that religion ultimately was superior to politics, as a source of values for governance and societal well-being.

If the exile community is largely agreed on Tibetan nationalism as an end, consensus on means is more problematic, framed as it is by religious values. Are democratic norms, such as egalitarianism and freedom of expression, a means or an end? Is non-violence a means or an end? Democratization was a pragmatic means of unifying the polity, and also a strategic means of sustaining the nationalistic goal. At the same time, Tibetan leaders including the Dalai Lama and Samdhong Rinpoche have validated human rights and democratic norms with reference to Buddhist philosophy, hence casting them as moral ends.[91] The same is true for norms of non-violence. Inasmuch as violence begets violence and exacts a long-term toll on social relations, Ahimsa is a strategic choice for exile life and homeland politics. It also is inherent in an enlightened mind, thus again a moral end. What the Dalai Lama and Samdhong Rinpoche have been stressing is that democracy, nationalism and non-violence represent a triad of values whose ends and means are morally inseparable. In this conviction they follow Mahatma Gandhi who was adamant that, like the two sides of a coin, ends and means could not be separated if action was to be ethical. Moreover, nowhere was the ends-means challenge greater than in considering options for the solution of conflict (Bose, 1987, p. 34).

Sangay's detailed account of ideological splits in the community exposes the dilemmas in a means-end debate that has one foot in religious morality and the other in secular rationale. Some Tibetans view democracy as a form of license that foregrounds individualistic interests and power struggles, at the expense of the nationalist cause (2004, pp. 11-19, Ch. VI). In this perspective, democratization without the resources and enforcement capacity commanded by a proper state is a serious diversion of energy, time and scarce finances, not to mention an invitation to disunity through excessive freedom of expression. Inclusive processes and rules of accountability are an encumbrance on the efficiency of those dedicating their entire effort to the national struggle. I found similar reactions in relation to dispute resolution. For some informants, the insistence of disputants on their rights was tantamount to pure selfishness, particularly if it

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[91] The basic theme is that all human beings are equal, all want freedom from suffering, and all individuals are responsible for their own enlightenment. See, for example, the Dalai Lama's speech to the 16th ATPD, May 6, 1989 in H.H. Dalai Lama (c1998, p.257) and Samdhong Rinpoche's essay entitled "The social and political strata in Buddhist thought" in Samdhong (1999, pp. 276-282).

threatened the social cohesion necessary for homeland aspirations or claimed an inordinate amount of the government's energy. This vein of thinking tends to be stronger among the first generation of refugees who, despite the departure in thinking on democracy, avow unquestioning obeisance to the Dalai Lama. Their mistrust settles on unruly, contentious elements in society. As for the strategy of non-violence, it is more likely to be opposed by the younger generation of activists who are passionate about the need to be forceful. They decry the timidity of conservative forces, pointing to contemporary cases of successful battles for self-determination like Bangladesh and East Timor. While also claiming total allegiance to the Dalai Lama, their mistrust fixates on complacent or self-serving bureaucrats. In both conservative and militaristic variants of nationalism, the means are taken to justify the end. If the means subvert religious principles (direct, indirect and structural non-violence), the end is inspired by them (restoring the spiritual civilization of Tibet).

Trust is an essential feature of social cohesion. Whether they embrace democratic values or not, Ahimsa or not, secularization or not, most Tibetans want the Dalai Lama to retain some temporal power because they don't trust others to operate by the same standards of probity, let alone wisdom. While the election of Samdhong Rinpoche has allayed that concern, moral dialogue on values inevitably comes back to what the Dalai Lama says, is known to have said, perceived to have said or claimed to have said. Setting the moral barometer by these attributions can have problematic outcomes, contrary to the Dalai Lama's intentions with democratization. Consciously or unconsciously, people in positions of control can exploit the assumption that everything they do proceeds from the wisdom of the Dalai Lama's leadership. The following comment from one respondent is illustrative:

> His Holiness' aura makes young people feel awkward about protesting anything or complaining. It is seen as disrespectful toward him. The voice and attitude of the youth can't be shown openly. It's a battle between worrying about the stomach [getting a job] and resting the mind [suppressing our reservations]. My generation - we want to remove the equation between the CTA and His Holiness. We are inclined to act for the people, not for the hierarchy. If anything we see His Holiness and the people as one and the government as something else. (J15)

Nor is it only people in positions of authority who, acting in the Dalai Lama's name, misconstrue his intent. In casual conversations with Tibetans about democracy and freedom of speech, I learned about the experience of the late Professor Dawa Norbu. One of the foremost scholars of the exile community, Dawa Norbu was castigated for speaking his mind on what he believed to

be the public good. In a recent <u>Tibetan Review</u> article entitled "The Young Ones," Buchung D. Sonam recounted the full story which had occurred in 1972 and obviously made lasting impact on the community's young intellectuals. Reportedly, the then young Norbu had written an article arguing that the exile leadership was "more interested in spiritual pursuits than in the mundane affairs of a people who is gasping for its national existence." The response was immediate. As described by Sonam (2006):

> The mob was up in arms demanding Dawa Norbu's death for insulting their holy leader…Tibetan women came out in full force shouting and shrieking. They took off their beautiful aprons and flapped them in the air, as a last measure of insult generally reserved for Communist China….A group of Tibetans in their fanatic refusal to violate customary norms of blind faith and utter narrow-mindedness chased Dawa Norbu with their fists firmly clenched. (p. 11)

According to Sonam, the Dalai Lama promptly quelled the fury by publicly praising Dawa Norbu for his courage and independent thinking. Yet, when he returned to Dharamsala some years later with a PhD from the University of California, the exile government refused to give him a job even though it needed bright young minds. If Dawa Norbu's story is being retold, it is that freedom of speech, though robust in principle, can be constrained by the closed mentality of these communitarian settings. Etzioni (2004) had emphasized that shared norms become part of the self through non-rational processes. They are reinforced through persuasion, religious or political indoctrination, leadership and moral dialogues that build particularistic obligations. What these examples corroborate, however, is that for moral dialogue to be inclusive of all voices there has to be a basis of trust going beyond particularistic obligations. In principle, moral dialogue on values is meant to foster respect and trust across different groupings, whereas in reality such dialogue most likely has to rely on their prior existence.

7.5   Civil society: Pulling in the same direction?

Before turning to a discussion of disputing behavior and resolution practice in the Tibetan Diaspora, a few words need to be said about the unique character of civil society in the exile community. The two most broad-based groups are the Tibetan Women's Association (TWA) and the Tibetan Youth Congress (TYC), which have extensive reach into familial structures, into virtually all but the smallest settlements, and have chapters around the world. Their primary focus is the struggle for the Tibetan cause but, by their nature, they also become involved in

community issues, typically sitting on various settlement committees and collaborating unofficially with different exile government initiatives. Their efforts are synergistic across the spectrum of NGOs, particularly with respect to the promotion of democratic principles and the visioning of a future Tibet. They assiduously avoid the kind of regional, sectarian and class partisanship that often has divided the exile community in its transition to democracy. Thus, their philosophical orientation and their energies have contributed substantially to the project of unifying a modern, democratic polity. Given their prominence in exile life, they also constitute an important candidate pool for leadership positions within the CTA. Given the large membership, the opinions of members appear frequently in Tibetan media but, as a group, they do not engage in significant advocacy or oppositional criticism vis à vis the government. I say this with some reserve, because with so many members there always are different currents of thought, including degrees of criticism with respect to specific policies. As a group, however, their main raison-d'être is not one of confrontational politics.

Tibetan Women's Association (TWA)

This NGO has the oldest roots, having been formed on March 12, 1959, when thousands of Tibetan women gathered in Lhasa to protest the occupation of Tibet by Chinese forces. After a hiatus of some years, members in exile revived the organization in 1984 as a freedom movement and social service organization. Today its focus has broadened to include the social, economic and political empowerment of women in exile. The TWA has 46 regional chapters and over 12,000 members outside Tibet.[92] Originally to be Tibetan and a woman automatically meant membership in the TWA, but today it is more a question of choice. Young women have been more reticent about joining what they see as a conservative constituency, but the leadership now is committed to an outreach program that takes account of their particular interests.

Tibetan Youth Congress (TYC)

If the TWA is the oldest NGO, the TYC is the largest. It has a vibrant presence in exile and numbers a good many community leaders and senior government officials among its earliest members. Founded in Dharamsala in 1970, in response to the Dalai Lama's call for a modern-educated youth engagement in the cause of Tibet, the TYC today has over 30,000 members in 78 chapters in some 11 countries worldwide. The TYC is actively engaged in numerous lobbying,

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[92] President of TWA Centrex, Dharamsala (personal communication, November 10, 2005).

awareness-raising, mobilizing, cultural, educational and social welfare activities. Characteristic of its idealism, the TYC is a prominent voice for Tibetan independence, as distinct from the Middle Way Approach favored by the Dalai Lama and the exile government. The TYC brochure, however, is careful to describe its efforts as being complementary to the struggle shared by government and polity alike.

There are numerous other organizations focused on more specific issues but virtually all of them share the common concern for Tibet, and embrace the democratizing project launched by the Dalai Lama.[93] It bears mentioning, however, that these forms of organization are actively encouraged by the CTA because of their unifying character, whereas residuals of other, more compartmentalized traditional forms - such as the mutual aid groups known as "Ganyes" and "Kidus" - are not. Beatrice Miller (1956) has described these groups as formalized systems of close social or neighborhood friends and kin, who banded together voluntarily to support each other financially, morally and socially for the major celebrations surrounding births, marriages, and deaths. Implicit in such groups, according to Miller, was a "customary compulsion to continue the relationship" (p. 159). Thus, they also played a role in social control and dispute conciliation - fining members for illegal activities such as illicit brewing and for disruptive activities such as fighting. Membership could be based on a number of factors, including occupation, or location of work or residence. Significantly, Miller stated that "Ganyes" and "Kidus" existed below the radar screen of scholars and outsiders because their membership was primarily non-noble, non-serf and non-ecclesiastical (p. 157).

The prevalence of these mutual aid groups in exile today is something I have been unable to ascertain, and indeed did not investigate given my focus on the role of the CTA Representatives and the Tibetan judiciary in dispute settlement. Significantly, Miller's fieldwork was based mainly in Kalimpong, Darjeeling and Gangtok in 1954-1955, thus before the Tibetan exodus. Her work is therefore useful as a signal of possible residual forms of organization, but I have come across only isolated references to "Kidus." Either they have been strongly de-emphasized

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[93] By way of example, other organizations include the Gu-Chu-Sum which is an association of former political prisoners in Tibet, founded in 1991. Numbering roughly 250 members, most are passionately pro-independence like the TYC and their testimonials have great resonance within the exile community. The Gu-Chu-Sum supports former prisoners with accommodations and subsidized medical care, and organizes campaigns for the release of current prisoners. The National Democratic Party of Tibet is an offshoot of the TYC. Contrary to its name, this NGO is not a political party but is dedicated to instilling democratic values through training and awareness raising activities. Similarly, the Tibetan Centre for Human Rights and Democracy is concerned with broadening support for human rights advocacy (focused on Tibet) and plays an important information gathering and networking role.

by the exile administration, or they have been subsumed, particularly in agricultural settlements, by camp and village structures, or they continue to exist in a way that is not easy for an outsider to discern.

PART THREE: DISPUTING PHENOMENA AND DISPUTE INSTITUTIONS

INTRODUCTION

I have given considerable importance to the large canvas against which Tibetans in exile live their lives. Following philosophical, political and socio-legal proponents of the communitarian perspective, I have argued that as individuals Tibetans are embedded in the society that constitutes them. Both their freedom of choice and constraints have to be interpreted with reference to a normative environment that is more than just a set of rules about what are and what are not proper forms of behavior. The rules themselves are embedded in the society's history and are continually evolving in response to environmental factors. While a harmony orientation is sustained by pervasive norm entrepreneurship, disputes occur as they do in any society.

Part Three focuses on disputing phenomena as a way of probing the border zones between harmony as communitarian imperative and harmony as ideology or, to borrow Hunt's phrasing in relation to regulatory systems, between "the fate of the individual" and the social ordering of the collectivity (1993, pp. 10-15). The conflict scenarios described in Part Three reveal agency as socially encumbered, yet not necessarily in ways presumed in Nader's harmony ideology.

As discussed under Methodology, I have selected three categories of dispute to examine, based on criteria of frequency of occurrence and significance to the community:

- Disputes in the communal realm, handled by CTA representatives as third party interveners in informal processes;
- Disputes in the inter-ethnic realm, which involve a more diffuse set of actors in resolution efforts, including CTA representatives; and
- Disputes in the judicial realm, which mark an incipient engagement with formal law.

Each category, including any sub-categories, has its own story to tell and thus brings into relief differing elements of the analytical frameworks in Part One. Common denominators for comparative purposes, however, can be summarized in the following focus questions:

- What is the quality of compliance with norms of social control?
- What do dispute processes and outcomes say about the relative efficiency and fairness of social and legal norms of control in communitarian context?
- What kinds of trade-offs do individuals make in the differing scenarios and what can be inferred about individual agency in this communitarian setting?

As a prelude to the first and second category of disputes, I examine the role of the CTA Representative as third-party intervener in the Tibetan settlements, loosely along lines proposed by Abel. That position best captures the professionalized role of interveners across the spectrum of informal mechanisms, that is, out-of-court processes seeking some form of conciliation for socially framed outcomes. As a prelude to case studies in the judicial realm, I examine the provisions of the Tibetan Supreme Justice Commission, that is, formal court processes which adjudicate for legally framed outcomes.

Some scholars (and even some exiles) have emphasized that the CTA has no means of enforcing norms, policies or regulations in the absence of coercive state mechanisms. Sangay (2004) and Frechette (2006), on the other hand, have identified soft mechanisms that are nonetheless powerful. In the first place, the exile government "controls hospitals, schools, and financial enterprises that provide vital services to exile Tibetans, the majority of whom live in settlements" (Sangay, p. 21, Ch.VI). Tibetans rely heavily on these subsidized and culturally adapted services, which coincidentally are a source of needed employment. The dependency encourages conformity with norms and rules promoted by the CTA, on top of the implicit moral authority that cleaves by virtue of the Dalai Lama's prominence in exile life. Thus the liberalist confidence in voluntary association – namely, that individuals have the freedom to exit their community if it no longer serves their interests - has to be read with reserve. Aside from the psychological stress of leaving one's community, there is a clear loss of material benefits as well. In her argument that the Tibetan Diaspora constitutes a "latent state" Frechette (2006) also briefly highlighted the embryonic elements of coercive enforcement in: 1) the Tibetan judiciary; 2) the conflict resolution functions of settlement officers; 3) the ability to expel Tibetans from settlements if they have broken the laws; 4) the ability to deny Tibetans the right to vote by revoking the

Freedom Booklet in which tax payments are recorded and on the basis of which holders also can access foreign assistance programs, including the coveted U.S. sponsored Fulbright scholarships; and 5) the ability to deny Tibetan identity documents or other letters of reference needed as an interface with Indian authorities (pp. 129-134). In the settlements, for example, even permits for construction, electrical or telephone connections, and residence have to be routed through the CTA Representative's office, which provides the requisite letter of recommendation.

VIII PRELUDE: THE CTA REPRESENTATIVE AND CONFLICT RESOLUTION

The role of the CTA Representative in the case studies to follow has to be understood in terms of the incumbent's: 1) authority status; 2) professional responsibility; and 3) degree of specialization in the conflict resolution task. As theorized by Abel (1973), the characteristics of dispute resolution process and outcome are directly related to these aspects of the third party intervener role. In the following sections, I examine how the CTA Representative's position is situated within the governance structure and the extent of overall responsibilities. These factors suggest the degree of authority vested in the position and reflect how the incumbent is likely to be perceived by disputants. I then consider CTA Representatives as a professional category to highlight shared traits that define behavior and margins of discretion in the role. Finally, I focus specifically on dispute resolution as a sub-category of the CTA Representative's professional responsibilities.

Role differentiation is a central variable in Abel's schema of how dispute resolution processes operate in any society. How specialized is the CTA Representative's function and, within that, how specialized is the dispute handling component? Abel has related the degree of specialization to Weber's notion that bureaucratic structure can be associated with certain characteristics of process, such as efficiency and certainty (p. 269). By way of example, he notes that a source of efficiency is finality which, in turn, favors qualities such as precision, unambiguity, knowledge of files, predictability, continuity – these being associated with the more specialized end of the spectrum represented by court adjudication.

In general, I follow Abel's choice to use the term third party intervener because "it is free of the connotations which attach to such alternatives as judge, mediator, or dispute settler" (p. 247). As

will be seen, the CTA Representative's role is not readily pigeon-holed according to distinctions found in the dispute resolution literature which emphasize degrees of control over process and outcome - for example: conciliation, voluntary mediation (facilitative, problem-solving, narrative, transformative, evaluative/advisory, authoritative, managerial or other), mandatory mediation, mediation-arbitration, non-binding arbitration, binding arbitration, and litigation.[94]

8.1   CTA Representative as authority figure

The Tibetan Diaspora in India is organized into 35 settlements and 11 clusters of scattered communities, each being administered by a CTA Representative under the Tibetan Department of Home.[95] Popularly referred to as Settlement Officers - or, in the case of scattered communities, as Regional Welfare Officers – CTA Representatives wield significant power given the breadth of their mandate. They are responsible for ensuring the socio-economic welfare of the resident population and the long run stability of the community, as laid out in Chapter VII of the 1991 Charter of Tibetans in Exile. The mandate spans housing, education, health, environment, and social assistance for the vulnerable. It includes budgets, political liaison, and staff management, as well as linkage with other settlements and with the nerve center in Dharamsala. It includes local external relations, that is, protocol and administrative relations with Indian authorities. In practical terms the mandate means that the incumbent has a strong voice in the utilization of the local budget, including permission for development projects and allocation of sponsorships or subsidies. It is a position that commands the respect of the community, not only because of the discretionary powers associated with financial control, but also because it

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[94] Categorizations specific to mediation abound. For one that I found useful, based on the type of relationship mediators have with parties, see Moore (2003, pp. 43-56). More generally, see Kolb (1983), Herrman, Hollett & Gale (2006, pp. 19-78) and McEwen (2006, pp. 81-98).

[95] The Department of Home is responsible for all rehabilitation schemes for the Tibetan refugees – these being organized under settlement and welfare offices, handicraft centers, cooperatives and various societies. It has four divisions:1) administration (personnel, finances and CTA government building construction and maintenance); 2) agriculture (needs assessment, consultancy, training and support for agricultural works and animal husbandry); 3) planning and development (design of agricultural and non-agricultural development projects and related fundraising); and 4) welfare (stipends for those with no means of income, support of Old Age Homes and coordination of emergency relief). The number of settlements in India varies according to sources mainly because of how scattered communities or handicraft centers are treated in the totals. The total number of settlements in South Asia (India, Nepal and Bhutan) is 46, comprising 100,451 refugees, according to the 1998 Tibetan Demographic Survey – which does not include a floating population estimated at 6%. See Norbu (2004, p. 189) and the Department of Home's official website from which this information was retrieved January 20, 2007 available at: http://www.tibet.net/home/eng/

carries the full authority of the CTA which, in turn, is often conflated with the moral authority of the Dalai Lama. For the same reasons, it equally is respected by local Indians.

As described in the previous chapter, the 1991 Charter recognizes that democratic governance requires not only elected leadership, but also checks and balances on the powers of those in positions of authority. The same principle holds for local governance in the settlements. Election of the all-important CTA Representative in each settlement is provided for under Chapter VII Article 73. However, the Charter recognizes that there can be circumstances under which election is not viable. Article 74 enumerates circumstances in which the CTA can appoint someone to the position. A settlement population, for example, may have expressed an unwillingness to proceed by vote, or a candidate may have failed to secure 51% of the vote, or may have lost the confidence of the populace. Despite the provision for election and inducements from the Department of Home to assume the responsibility locally, only three or four settlements have taken that democratic plunge.[96] The rest have opted to have the CTA appoint a representative to administer them. My conversations in the two settlements of Bylakuppe evidenced some reticence on the subject, and a strong ambivalence about whether an elected official would perform more reliably than one appointed by the CTA. These attitudes reflect both misgivings about election process and habits of trust, even if guarded, in officials taken to be somehow personally endorsed by the Dalai Lama.

The Charter also provides for a local assembly of elected community members in settlements with a population of at least 160, to ensure that local needs are taken into account and to exercise oversight on the settlement finances.[97] Local assemblies are empowered to make rules applicable to resident and transient Tibetans, and are to be implemented by the CTA Representative. In Dharamsala, for example, in response to troublesome behaviors - such as fighting, dealing in drugs, gambling or intoxication - the Local Assembly set out explicit rules in a leaflet published

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[96] In India, the settlements that have elected a CTA Representative are: Choepheling Tibetan Settlement at Miao in Arunachal Pradesh State; Tibetan Khampa Industrial Society, at Dege Division - Bir in Himachal Pradesh State; and (formerly but not at present) Dharamsala, also in Himachal Pradesh State. In Nepal, one settlement has elected a CTA Representative - Samdupling Tibetan Handicraft Centre at Jawalakhel in Kathmandu (as at April 2006).

[97] Local assemblies consist of anywhere from 7 to 35 elected members, depending mainly on population size; members may be elected directly by settlement residents or be constituted ex officio by persons already elected to various positions of community leadership, such as camp leaders, members of a Cooperative Society Board of Directors or of a Tibetan Freedom Movement Committee, or representatives from local monasteries (Subramanya 2004, p. 88). At the present time, 38 major settlements of the 52 in India, Bhutan and Nepal have local assemblies.

in 2004. Circulated widely, the leaflet detailed not only the prohibitions, but also the responsibility of both community members and the Welfare Officer (that is, the CTA Representative) to act on infractions. Thus, the Welfare Officer is publicly accountable to the Local Assembly for enforcing norms of social control formulated by the elected body. While most of the larger settlements have availed themselves of this important charter provision, it is not uniformly the case.

According to the Secretary of the Department of Home, some communities (such as the two I visited in Bylakuppe) cannot come to agreement on whether a local assembly should have proportional representation by region and religious sect based on local conditions or, as with the Assembly of Tibetan People's Deputies, on the population distribution in Tibet.[98] The impasse can be problematic on two fronts. In the first place, while settlements have to be integrated with the CTA for the common thrust toward repatriation, their needs while in exile are best met through decentralization - both leadership and public oversight on that leadership being devolved to local levels. In the second place, while the CTA has financed much of the rehabilitative effort of settlements in the past, its own financial sustainability is strained by growing numbers of vulnerable persons – the young, elderly, and ill or otherwise disabled. In recent years, in order to concentrate its efforts on the vulnerable population, the Department has been emphasizing settlement self-reliance inspired by Gandhian "gram swaraj" or village self-rule bracketed by principles of sustainable development, truth (i.e. justice for the homeland) and non-violence.[99] The devolution of responsibility to the settlements concentrates even more power in the hands of the CTA representative, as the highest official in the local administrative structure. If the incumbent is not elected and if there is no local assembly, then there is little direct accountability to the settlement population. Although the Department of Home has strict rules and a requirement for annual reporting and audit, Dharamsala is far away.

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[98] Secretary of Department of Home (personal communication, March 25, 2006).

[99] Gandhi's conception of "gram swaraj" was a radical antidote to the ills of modernity and the hegemony of centralized political and economic production processes in the lead up to Indian independence. It represented a decentralized social order in which the village was the center of democratic process and economic production oriented to the fulfillment of basic human needs, utilizing mostly indigenous resources. The Tibetan exile government's Third Integrated Development Plan 2004-2007 sets a high priority on the revitalization of settlements on the same principle: strengthening local institutions for democratic governance, and encouraging local investment in locally produced goods and services for a "Content-life" (as distinct from a wants-driven, consumer life which has to rely on unpredictable factors external to the community). Tibetan exile Government. Retrieved November 2, 2007 from the World Wide Web http://www.tibet.net/publication/pc/download/IDP3%20rationale.pdf

At issue for the purposes of this thesis is not whether the CTA Representative performs well or not, but that the authority inherent in the position affects the way in which dispute resolution proceeds. Dispute resolution is clearly listed in the Charter among the extensive duties of the CTA Representative, under Article 77 Clauses (2) and (3):

> (2) To carry out judicial responsibilities authorized by the Tibetan Supreme Justice Commission;
>
> (3) To make efforts to maintain mutual harmony, safety and security among Tibetan citizens and between Tibetans and the indigenous people of the respective area; and shall also make efforts to adhere to the local laws of the respective host countries and respect the customs and traditions of the people therein.[100]

The implications of Clause (2) will be discussed at a later point. For now it is Clause (3) that establishes the mandate for dispute resolution. The Secretary of the Department of Home further clarified that under the CTA Representative are informally elected camp or village leaders called "gyapon," who usually are the first line of involvement when an issue goes beyond the circle of family or friends.[101] The gyapon's role is to inform the CTA Representative of camp activities, issues, and problems. If a dispute cannot be resolved at camp level, or if it involves more than one camp or local Indians, then it is referred up to the CTA Representative. Some camps also formalize rules of social control, applicable only at that level. For example, Camp #'s 5 and 6 in Lugsung Samdupling at Bylakuppe have a system of fines for anti-social behaviors, such as shirking on communal work programs, or not attending camp meetings, or gambling or indulging in games of idleness like "Carrom." Third party enforcement becomes the business not only of the camp leaders, but also of neighbors whose gossip and disapproving glances and comments mitigate deviance even before negative sanction in the form of fines need be applied. Since camp leaders are elected by the village residents, such rules are an effective means of social control, as long as a majority feels that the collective interest is served by them.

Each camp leader is assisted by four or more block leaders called "chupon" who represent ten or more households. Elected for a one year period, often on a rotational basis, the chupon looks after the practical organization of community projects, festivals and meetings. In practice, the

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[100] Tibetan exile government. <u>Draft Translation of the Charter of Tibetans in Exile, 1991</u>. Retrieved January 20, 2007 from the World Wide Web: http://www.tibet.com/Govt/charter.html

[101] Both gyapon and chupon are derived from indigenous decimal organizations, the former meaning "head of 100" and the latter meaning "head of 10" (Norbu (2004, p. 195). The term reportedly was used to designate military units in pre-1959 Tibet, as well as the road construction work brigades to which Tibetan refugees were assigned in the Indian Himalayas in the early 1960s.

chupon also hears grievances and either facilitates their resolution or relays them upward to the gyapon or to the CTA Representative. Neither gyapon nor chupon, however, have the authority or collegiality of a professional group, which is why this research focuses on the CTA Representative's role in dispute resolution. As expressed on the website of several settlements:

> The role of Chief Diplomat, Chief Justice and Head of the settlement are all combined in one post. Daily tasks for the representative range from adjudicating disputes to communicating with group leaders and outside authorities, and generally watching over the running of all aspects of the settlement.

In the following chart I illustrate the nested character of the three layers of decision making at settlement level, and their relation to the overall government structure:

Chart # 7:   Settlement structures in relation to exile government
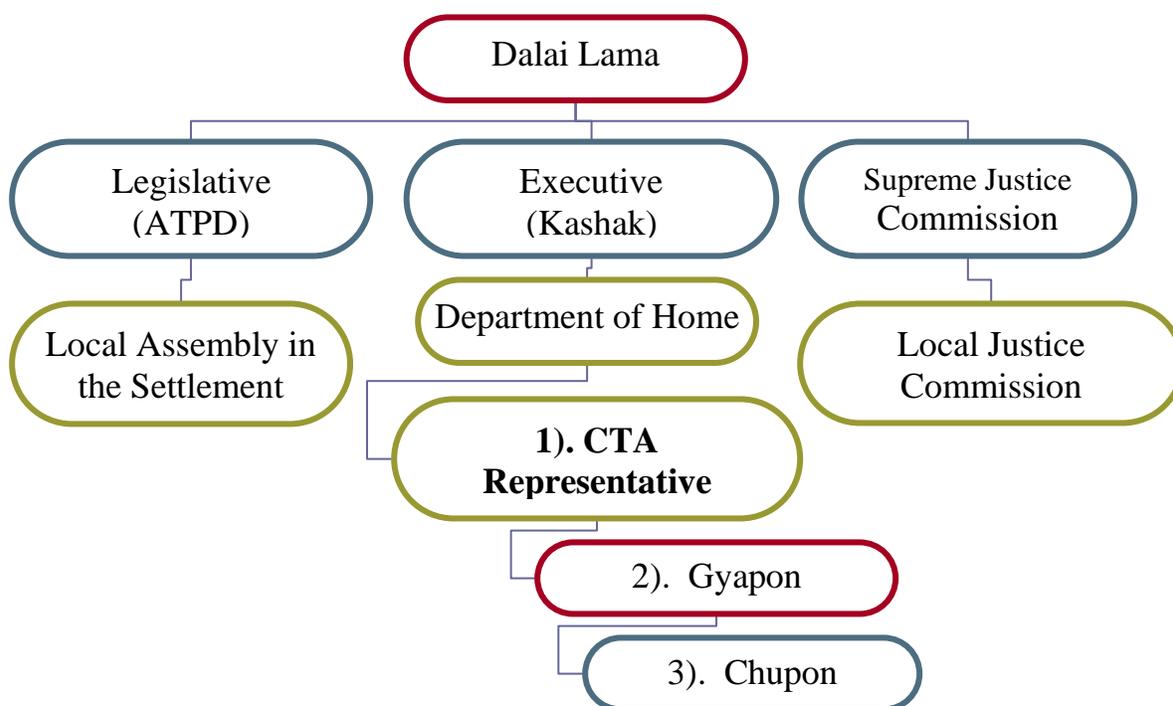
A view expressed by many informants, including the Secretary of the Department of Home, was that conflicts today are quite minimal in Tibetan society. The stable peace is attributed in part to the wisdom of the Dalai Lama's leadership and in part to sound communal structures as sketched out above. Disagreement or discord is dealt with as close as possible to the root, so that

communal harmony is not disrupted. Samdhong Rinpoche's program of education for non-violence equally emphasized that any situation with potential for violence has to be immediately investigated, its causes uprooted and preventative measures taken (2004, p. 470). The possibility of several levels of recourse – from family to friends to chupon to gyapon and to CTA Representative – provides a system of pressure valves keeping disputes manageable. Positive and negative sanctions to reinforce rules and norms at different levels also provide the kind of moral infrastructure that communitarians have proposed as a non-coercive means of social control. Recalling the words of Etzioni:

> Once moral commitments are internalized and reinforced by the society, they help shape a person's preferences toward pro-social behavior, thus reducing the need for coercion by the state and diminishing the tension between liberty and social order. (2004, p. 6)

If the CTA representative's position as authority figure affects how dispute resolution proceeds, so too do its characteristics as a professional group.

8.2   CTA Representatives as a professional category

In sociology, professions are considered to be high-status, knowledge-based occupations which have the license and the mandate to perform certain activities or apply particular policies (Freidson, 1994; Larson, 1977). Aspects emphasized by different scholars include authority (based on knowledge and training), self regulation (licensing, accreditation and regulatory associations), collegiality (communication, shared ethical standards and sense of identity), and a degree of altruism or sense of service (Kendall, Murray & Linden (2000, pp. 415-416). The classic professions of law, medicine and the ministry were among the first to be analyzed in these terms. For the administration of justice in democratic context, for example, Weber (1978) has emphasized features of the legal profession that guarantee formal and rational objectivity over the arbitrariness and personal discretion characterizing patrimonial domination. In Abel's schema for dispute institutions, informal and formal third party interveners share many features of their profession, but to different degrees depending on the extent to which the roles are bureaucratized in the rational-legal sense hypothesized by Weber.

As noted by Moore (2003), it is very common in non-Western cultures for third party interveners to fulfill this role in the context of other functions or duties (p. 22). Indeed, CTA Representatives

are first and foremost government functionaries - appointed or elected - as opposed to dispute resolution experts or legal professionals. It therefore is useful to look at the professional category of bureaucrat in Weberian terms - that is, someone whose authority is based in rational systems and rules rather than in charisma and patriarchal or patrimonial tradition:

- Official jurisdictional areas, with duties delineated and authority within that sphere;
- Office hierarchy and channels of appeal, that is, supervision of lower levels by higher ones, and recourse for the governed if they disagree with lower office decisions;
- Previous training in a field of specialization;
- General rules which can be learned and constitute a special technical expertise;
- Management by written files;
- Positions demanding full working capacity;
- Office holding as a vocation rather than merely a source of income;
- In principle, tenure for life;
- Social esteem deriving from a system of rank and order;
- Appointment rather than election;
- Rank as a basis of salary; and
- Career within the hierarchical order of the public service (1978, pp. 957-958, Vol. II).

Most of the above features are recognizable in the CTA Representative's position, although perhaps not to the depth or rigor envisaged in Weber's ideal type, and also with vestiges of the charismatic basis of authority that is the legacy of Tibetan history and religious belief. My 12 semi-structured interviews with CTA Representatives from markedly different environments within India brought out fairly consistent patterns, allowing for some generalization to the full population of persons in this particular role.[102] Moreover, of the 12 persons interviewed, a majority had at least six years of experience in various settlements; indeed one-third had over 15 years of experience. In addition, as public servants, CTA Representatives are rotated every few

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[102] All of the interviews were conducted in a fairly private setting: six in the private office of the CTA Representative where disputes are usually heard, and six off site in conjunction with the TSJC workshop in Dharamsala (November 15-22, 2005). As indicated previously, the methodology chosen for this study was not survey based. Rather, it was designed to elicit as much qualitative information as possible within the time constraint of one and a half to two hours per interview. This sometimes meant skipping a section of the interview to allow respondents the opportunity of following through on a line of thinking that seemed important at the time. Information from supplementary sources (interviews with camp leaders, government, NGO or monastic officials, and other informants) are noted accordingly.

years to different settlements.[103] Thus, although interviewees were asked to respond to questions in relation to their current posting, they in fact were able to provide consolidated, matured reflections on the role as a whole.

The duties of the CTA Representative are outlined in six brief clauses under Article 77 of the Charter, which virtually all interviewees referenced as the source of their mandate and authority. Since the position is meant to be an elected one, however, the only qualifications listed in the Charter are those for any elected official, as opposed to a body of prior expertise.[104] In the early years of settlement rehabilitation, appointments to such positions of authority were based on patrimonial or traditional considerations, as indicated in the preceding chapter. Moreover, the literacy required to handle files tended to be the preserve of ruling elites among the largely illiterate population. Currently, with an effective literacy rate of 74.5%, and 27.1% of the population having higher secondary education, the candidate pool for the public service is much larger.[105] Generally speaking, although exile government salaries are extremely modest, the limited positions have a strong vocational appeal and are sought after among the educated younger generation.[106] Although some casual respondents claimed that nepotism is still operative, most were agreed that public service recruitment today follows the merit-based principle. Considering that the CTA Representative's position is fairly senior in the overall public service hierarchy, experience or modern education can be said to constitute an equivalent of prior expertise for the job.

Seniority within the cadre is typically expressed in appointment to settlements with larger populations. Among the 12 persons interviewed, all had served in one or another department of

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[103] The Charter stipulates rotation on a three-year basis, although some of those interviewed had experienced shorter cycles – of two years, or even one.

[104] The main criteria for nomination to an elected position include: aged at least 25; being a citizen of Tibet (in exile, this would imply having a "Rangzen Lakhdeb" or freedom booklet that indicates tax payments being up to date); not having been declared medically unsound by a competent authority, or declared bankrupt or having been convicted of a criminal offence. Nominees for elected positions also should not be civil servants – a small irony considering that appointees by default are civil servants. They also should not be "enjoying service, status or economic benefit from other countries detrimental to the interests of the people of Tibet." For the full and accurate listing, see Article 38 of the Charter available at: http://www.tibet.com/Govt/charter.html

[105] Planning Council, Central Tibetan Administration, Dharamsala (2000). Tibetan demographic survey 1998 (pp.10-11).

[106] According to the Tibetan demographic survey of 1998, CTA staff represent 12.88% of the working population (defined as those engaged 183 days or more in economic activity), p.15.

the exile government in Dharamsala, or as Cooperative Society Secretaries or accountants in a settlement, prior to their first appointment as a CTA Representative. They thus were completely familiar with systems and philosophy at the center, as well as with structural aspects of the settlements. Annual meetings organized by the Department of Home build their familiarity with rules, essentially constituting a special technical expertise acquired on the job. The meetings also reinforce a collegial sense of shared identity, as well as an altruistic sense of service. Moreover, a government imperative to manage scarce human resources economically has often meant that the Representatives undertake additional responsibilities as Elections Officer and Local Justice Commissioner, for which they are groomed through additional workshops in Dharamsala. As an elected position in principle, the CTA Representative has a three year term of office. A consequence of appointment as the primary operative mode, however, is that the incumbent enjoys more or less permanent tenure as a public servant, but subject to a three-year cycle of rotation to different settlements, which again enhances technical expertise.[107]

The system of rotation for CTA Representatives supports the development of a cadre of competent, experienced administrators who can cross-fertilize ideas from one settlement to another while bringing consistency to the role. At the same time, rotation can mitigate fiefdom tendencies natural to decentralized positions of authority, while maintaining the guiding influence of the center in Dharamsala. The rotation system also can have disadvantages because it takes time to become familiar with the issues that are of concern to a particular community. The drawback is most marked with local development initiatives that require a longer time frame for needs assessment, project design, and implementation. With irrigation or infrastructure projects, for example, there can be lengthy negotiations with Indian authorities, donors and beneficiary groups - all of which benefit from continuity of relationship. Rotation can interfere with deeper understanding of dynamics proper to the community, which may negatively impact both commitment and capability for solving more recalcitrant problems. These are some of the trade-offs communities make in opting for external appointment, rather than local election of the CTA Representative for their settlement.

If the CTA Representative's work creates a specific professional expertise, what does the position entail? In September 2003, the Department of Home formalized the job description in a

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[107] The Charter does provide for replacement of an appointed CTA Representative, if an alternative is elected by the population during the former's three year tenure (Chapter VII, Article 75).

detailed document entitled "Guidelines for Settlement Officers." Every office I visited had a well worn copy of this "Yellow Book." Interviewees indicated that it regulated all aspects of their work, making them accountable to the Department through 6-monthly and annual reports following a prescribed format. A brief look at the contents of the guideline document will demonstrate the breadth and nature of responsibilities, as well as the degree of central direction and oversight:

1. **What is a Settlement Officer**: This chapter sets the tone for the whole document. On the one hand it establishes a secular principle of rule of law, prescribing that the incumbent is to abide by the rules and regulations of the position. On the other hand, it prescribes certain religious duties, including those related to the safety and security of the charismatic leader. The CTA Representative, for example, is charged with informing Indian officials of any upcoming visit of His Holiness; he or she must appoint voluntary security officers based in the settlement, following guidelines laid down by the Department of Security and the Kashak, and report any suspicious activity or non-residents during His Holiness' stay. Reflecting deep religious tradition, the CTA Representative also is to organize Long Life Prayers for His Holiness. It is believed that, at certain times of his life (according to his astrological chart), the Dalai Lama may face increased obstacles to his physical or spiritual well-being. At those vulnerable times, people are invoked to prayer and, according to the Yellow Book, the CTA Representative is to count the number of people attending prayers, count the number of prayers and report these figures to the Private Office of His Holiness or to the Department of Religion and Culture. The counting and reporting of prayers may seem like micromanagement, but such tallies are a common practice within the Buddhist context. This chapter also includes a religious events calendar, for which the Kashak has issued separate guidelines in 2001.

2. **Administration, Education, Political issues, Health & Environment**: In addition to detailing administrative duties and powers, this chapter evidences a strong responsibility for norm entrepreneurship on several fronts. Under "Education," for example, the incumbent is instructed to coordinate talks on the first or third Sunday of every month, for youth under 25 years of age. Topics are to include: ethical values (avoiding alcohol, cigarettes, drugs, gambling, and unruly behavior); understanding the local people, their

customs and rules; Tibetan culture and tradition; the history of Tibetans in India; the conditions of Tibetans in Tibet; and events around the world. Furthermore, the CTA Representative is expected to document who delivered the talk and how many people attended, reporting these details to the Kashak, ATPD and the Department of Education.

The normative dimension is again reinforced under "Political issues," wherein the CTA Representative is instructed to keep the public informed about the Tibetan political situation. The incumbent also is to be the official bearer of not infrequent messages from the Dalai Lama in relation to ethical values, homeland politics via the Middle Way Approach, and new developments in the exile administration. The CTA Representative presides over official holidays and ceremonies, including the annual commemoration of March 10. For the latter, strict guidelines were separately issued by the Kashak in 2003, the effect being to ritualize the commitment to Tibet, while containing excessive zeal that might invite backlash from Indian authorities. The normative concern with the Indian host population is prominent throughout. The CTA Representative is firmly instructed to establish friendly relations with local Indians, various authorities and the state government, and to ensure that a robust Indo-Tibetan Friendship Association is in existence. Again, the incumbent is charged with educating young Tibetans about the importance of understanding and respecting local people – their laws, customs and rules. Beyond education, the incumbent must ensure conformity with Indian laws and administrative regulations such as those governing residence certificates, visiting permits, and business licenses.

The "Administration" section of this chapter is revealing of both accountabilities and limitations on the CTA Representative's powers. Considerable money flows through the office, whether for sponsorship of students, or projects financed in part by the relevant department and in part by local contributions (e.g. hospital programs). The CTA Representative has an obligation to respond to questions from the ATPD about finances or accounts in the settlements, to track all expenditures and to prepare a yearly annual audit. Also falling under this office is the registration of all households present in the settlement, including those migrating out for sweater selling. While the CTA Representative does not have the power to issue certificates of birth, death, marriage or divorce, he/she can facilitate the process following strict guidelines from the Kashak.

3.   **Public welfare**: This chapter concerns the long run stability of the settlement. The office of the CTA Representative implements a range of development projects, such as training for improved farming methods, preserving grain during drought, or helping the young to find or generate jobs. It is charged with identifying needy persons who require subsidy or special assistance; an ad hoc committee usually helps by surveying the whole settlement to identify poor pockets and the reasons for the poverty (e.g. illness, family size, loss of job). Recommendations are then made to the Department of Home which can solicit the Kashak and obtain approval for funding a sponsorship from one or another donor agency. Overall emphasis in this chapter is on helping, caring and creating a friendly atmosphere among settlement residents. Interestingly, there is no particular mention of conflict resolution in the Yellow Book, beyond positively framed allusions to harmony. Consistent with the consensus rather than conflict perspective in sociology, disputing is taken to be a temporary breakdown in harmony - to be restored promptly. In principle, the legitimacy of contestation or the conflict value in democratization finds its recognition in the Tibetan judiciary, which will be discussed separately.

I have elaborated on Chapters One to Three because they establish the CTA Representative's position as: a) jurisdictional – that is, defined by territory and level of decision-making; and b) delineated by duties, authorities and accountabilities within a bureaucratic hierarchy. Importantly, they also establish the CTA Representative as norm carrier or transmitter, which has important bearing on the kind of normative pressures that might accompany dispute resolution process. Through the CTA Representative, the central administration can maintain a program of consolidating Tibetan culture, religion and core values in exile. It can sustain the all-important commitment to and preparation for an eventual return to Tibet.

Chapters Four through Twelve of the Yellow Book provide detailed regulations pertaining to budgets, staff recruitment, and procedures for different activities under the Representative's aegis. Below, I summarize the contents briefly to illustrate the degree of specificity proper to a bureaucratic position of this level:

4. **Yearly budget and rules for monitoring expenditures**: Entries circumscribe the discretionary use of finances with rules governing the use of the budget, the keeping of accounts, limitations on donations and audit responsibilities;

5. **Staff management**: Entries forestall nepotistic practice by circumscribing undue discretion with respect to the recruitment of local staff. Regulations provide for four to six month probation periods and confidential performance records.

6. **Procedures for documents and reports**: Entries emphasize the importance of written files, following prescribed formats for systematic record keeping and continuity. Guidelines and templates are provided for semi-annual and annual reports to be submitted to the Department of Home;

7. **Gift giving and receiving for official staff**: In a gift giving culture, limits are drawn on gifts that might constitute bribery or inappropriate rewards when an official is transferred into the community or leaves it;

8. **Staff quarters and use of office vehicle**: Discretionary allocation of these privileges is limited by rules about which local staff may benefit and within what boundaries;

9. **Official tours, daily allowances and leave**: Ambiguity with respect to time or money spent in government service is minimized by rules which differentiate between official tours, official leave, leave of absence, and leave without pay;

10. **Permission for development projects, resources and implementation**: This entry regularizes the basis of decision-making with respect to new initiatives;

11. **Rules for local staff and rules regarding local child labor**: This entry reflects a standardization of labor practice, including its human rights dimension;

12. **Retirement**: Reflecting the expectation of tenure in government positions, this entry sets out provisions for retirement, including a staff providence fund comprised of self contributions and office contributions kept in the central Department of Finance.

Overall, it is clear that the CTA Representative's position is fully bureaucratized as a specialized executive function with responsibilities for lower level staff but answerable upwards to headquarters, that is, the Department of Home. The position demands the full working capacity of the incumbent and carries the social esteem accorded to career positions within the hierarchical order of the public service. Moreover, even without the performance incentives associated with elected status or oversight by a local assembly, rules governing accountability and the margins of liberty are detailed and explicit. The question now becomes, where and how

do the incumbent's responsibilities for conflict resolution fit? Does the same level of oversight and direction apply to this specific task?

8.3   Conflict resolution as a component of the CTA Representative's role

I examined the conflict resolution component of the CTA Representative's role with selective reference to the structural and process dimensions in Abel's theory of dispute institutions (1973, pp. 253-283). Abel's schema was useful because it provided a basis for eliciting information that eventually could be compared across the spectrum of informal and formal processes. By structural dimensions, Abel meant qualities of the third party intervener role that reflected varying degrees of specialization, bureaucratization, and differentiation from other roles. Thus, in my interviews, I sought answers to the following questions:

Functional specialization

- o   Are there other roles which the intervener is obligated to perform?
- o   How much time is devoted to the role?

Bureaucratization of the role

- o   What kind of training is involved in the role?
- o   What are the qualities of the intervener, and are they ascribed or achieved?
- o   Does the role constitute a career? Does it confer social status?
- o   Is the role defined by explicit prescription rather than implicit custom?
- o   Is there external enforcement of role expectations?

Social distance and cultural differentiation

- o   What is the location and environment in which disputes are heard?
- o   What is the authority/status of the intervener relative to the disputants and what markers of this are evident?

Some of these variables already have been addressed in the preceding sections dealing with authority and professional aspects of the CTA Representative as functionary. Here I draw out implications for the role of third party intervener.

8.3.1   Functional specialization

To some degree, performance can be inferred from knowing how many years an incumbent has served in the capacity of CTA Representative, how many conflicts he/she typically handles in a year, and what percentage of time is devoted to the conflict resolution task, relative to other duties. Given the place of elders in Tibetan culture, and indeed their involvement in sorting out disputes closer to home, a certain minimum of life experience would be expected of the CTA Representative to be credible in a third party intervener role. On top of several years of prior public service, more than half those interviewed (7 out of 12) had at least six years experience as CTA Representatives and a third had over ten years, as seen in the response table below.

Question: How many years have you served as a CTA Representative?

# of years	< 5	6-10	11-20	>20
# of responses (n=12)	5	3	3	1

Age and general experience aside, the next response table illustrates the frequency of disputes, from which the cumulative repetition of the dispute resolution task can be deduced. The most elevated figures (10-15 disputes a year) were for the settlements of Dharamsala and Bylakuppe – these being the largest communities by far, with over 10,000 residents each.

Question: How many conflicts have you handled over the past five years?

Average # per year	"Few" (unspecified)	< 2	2-10	>10	"Many" (unspecified)
# of responses (n=12)	1	1	6	2	2

The estimates included only those disputes that were brought forward to the CTA Representative and it can be assumed that many more were dealt with at camp levels by what Moore (1996) called social network mediators. These would be family, friends, neighbors, respected elders, gyapon or chupon – namely figures with whom disputants have ongoing, enmeshed relationships. The numbers have to be interpreted with caution because they likely do not reflect the severity of cases uniformly, and do not include myriad incidents that are defused with relative ease at this level. In other words, what has registered for respondents as "disputes" (as opposed to "difficulties" or "routine problems") are the more troublesome cases that required a

lengthy and intensive engagement with the resolution process. How much of the CTA Representative's time is taken up by such conflicts brings this point into better perspective. The question was answered in different forms by those interviewed, but all made it clear that harmony disrupting conflict was accorded the highest priority when it arose. Of the 12 respondents, two estimated that at least 10 to 20% of their time was regularly claimed by conflicts. Others emphasized the unpredictability of when conflict might occur, but indicated that a single episode could require anywhere from 6 to 16 hours of attention at a stretch, possibly over several days. Thus, in a day filled with many responsibilities, the emergence of a conflict solving task conceivably was not a welcome intrusion. Despite the inconvenience, however, these sessions could not be unduly expeditious because their effectiveness depended on disputant readiness for reconciliation.

These estimates of frequency and effort may not seem significant, but they do demonstrate that the task is sufficiently recurrent to be taken seriously. At the point interviewed, most CTA Representatives will have acquired a reasonable body of experience with their six years and more of service and averaging at least two conflicts per year. In Western mediation literature it is recognized that intervention in family disputes requires special training and a higher level of experience because repercussions can extend beyond the disputing parties to the whole family unit and involve special dynamics and vulnerabilities.[108] Most CTA Representatives interviewed had some experience with family disputes but I was unable to ascertain what percentage of their interventions involved such cases.

8.3.2   Bureaucratization of the role

In Abel's schema both experience and training are structural variables that distinguish ascribed qualities from achieved ones, as the third party intervener role becomes professionalized and bureaucratized. In some contexts, age, status or humanistic qualities may be adequate criteria for the role, while in a rational-legal system epitomized by the courts, technical competence

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[108] For an idea of professional qualification and training requirements, for example, see the British Columbia Family Mediation Roster which was developed in consultation with the Dispute Resolution Office of the BC Ministry of the Attorney General. British Columbia Dispute Resolution Office Bulletin (July 2007). The British Columbia Mediator Roster. [Online]. Available: http://www.ag.gov.bc.ca/dro/publications/bulletins/mediation-roster.htm

acquired through formal training becomes mandatory. Thus, for example, in pre-1959 Tibet, depending on local custom, respected elders, tribal chieftains, village headmen or incarnate lamas often were approached to help with local disputes (French, 1995; Ekvall, 1964). At the same time, French has indicated that Lhasa sent monk and lay officials to different regions of the Plateau, to act as district officers or governors – one of their tasks being to decide local conflicts (p. 47). These still were thought of as internal processes guided by implicit custom and distinct from court procedure. They aimed at conciliation and did not presume training specific to the task, although monk and lay officials received general training for their role as government functionaries. Once a case was taken to the official realm of government courts, however, the process was intricate, involving forty-four steps from initiation of a case through to its closing. According to French, this formal legal procedure, though not written, was a universal across the Tibetan Plateau.[109] It required that judges and clerks acquire specific expertise, learned on the job and transmitted through practice (pp. 123-126).

Significantly, CTA Representatives have received no specific training in the techniques of informal dispute resolution. As noted already, however, the exile government has provided professional development opportunities for them, in respect of both their full mandate, and their provisional function as Local Justice Commissioners. Central administration sponsored meetings and workshops also are occasions for collegial exchange on problem patterns, such as disputes over land encroachment. Role occupants thus are in a position to build a substantive knowledge base about rules, policies, and technicalities that often define the range of outcomes possible. The rotation system strengthens their competence in managing disputant interaction because of the accretion of experience and the exposure to different kinds of disputes and disputants. Importantly, rotation enhances neutrality and impartiality in the dispute resolution role, to the extent that CTA Representatives are less likely to have developed preconceived notions about, or attachments to individual disputants – unlike the socially enmeshed circumstance of the gyapon or chupon.

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[109] For historical reference, I draw heavily on French's comprehensive work on legal process and dispute resolution in pre-1959 Tibet. It could be argued that she has not given enough attention to regional variations. To be fair, while her focus was on centralized aspects of Tibetan law, she has cited reports about nomadic legal processes in Nari (Western Tibet) and Nangchen (Northeast Tibet) that relied only rarely on Lhasa (p. 204). Ekvall (1968) also claimed that nomadic communities in the Amdo region were independent in their system of law and order, but his work was criticized in a review by Goldstein (1969) on grounds that it ignored adjudication of disputes by governors and district officers appointed by the central government (p. 944). In as much as the CTA Representative's function is somewhat similar, I would argue that some general imprint of central Tibetan legal thinking can be expected.

For their provisional function as Local Justice Commissioners, six of the twelve CTA Representatives interviewed had received one or two trainings offered by the Tibetan Supreme Justice Commission (TSJC) on how to deal with rules of law in civil cases. In 1996, the TSJC had produced three volumes detailing the Civil Procedure Code and the Law of Evidence to be applied – these being patterned on their equivalents in Indian civil law. While I was in Dharamsala, all CTA Representatives were gathered there for four days of TSJC training, November 19-22, 2005, to familiarize themselves with the contents of the three volumes. Those who had already participated in similar workshops indicated that the volumes provided a clear legal framework within which to exercise the Local Justice Commissioner role, if the necessity arose. I will look more carefully at that particular role later, in conjunction with cases that were brought before the TSJC. For now, the point is that the trainings and TSJC volumes have added a technical, legal layer to the CTA Representative's knowledge base, even if it is not directly applied in the informal venues of dispute resolution.

This type of training coincidentally is a qualification required for some forms of mediation in the West. Court ordered or voluntary mediation cannot compel parties to exercise their legal rights, but legal rules do have a role to play in ensuring that protection and settlement provisions meet certain minimum standards (Leeson & Johnston 1988, p. 139; Sampath 1991, p. 28). In principle, mediated agreements are legally binding as contracts, but any number of loopholes and complications can scuttle enforceability in practice if the document is poorly worded (Meek 1996, p. 165; Rogers & Salem 1987, pp. 155 -170). At the same time, there is little consensus on the propriety of non-lawyer mediators providing legal assistance, whether in the form of advice or information - as opposed to referring parties to independent legal counsel.[110] In the Tibetan context, the enforceability of any agreement is even more tenuous, although in principle parties could appeal to the Tibetan judiciary, either to the nearest local commission or to the Supreme Justice Commission in Dharamsala. A familiarity with Indian law, on the other hand, is pertinent to the CTA Representative's responsibilities for law and order, as well as for understanding the jurisdictional limitations of the intervener role – for example, in disputes involving assault or other criminal aspects.

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[110] Rogers & Salem have elaborated on the "unauthorized practice of law prohibitions as they affect mediators who are not lawyers" – that is, mediators may not give legal advice or presume to draft legal documents (p. 107).

Does the third party intervener role constitute a career? Does it confer social status? Is there a fee for service? If the CTA Representative's position constitutes something of a career, with relatively secure tenure, upward mobility and social status, it is by virtue of its being a public service position. Even though CTA Representatives may move to settlements with larger populations as a reflection of career maturity, they also may be promoted out of this category entirely, to more senior posts in Dharamsala. Thus it cannot be said that the third party intervener component represents a career in itself. While most respondents were conscious of the authority vested in their overall position, none felt that the intervener task conferred social status, unlike an appointment to the judiciary which technically is the highest organ of the exile government. While some felt more comfortable with the task than others, most would agree with research reported by Deutsch & Coleman (2000) to the effect that "mediation is an inordinately stressful social role," not only because of associated emotional unpleasantness, but because of ill-defined elements of the process (p. 538).

There is no fee for the dispute resolution service, as it is part of an already remunerated function. A few respondents commented that, following customary practice in pre-1959 Tibet, disputants in the early years sometimes tried to offer payment to encourage favorable treatment of their side. Today people understand that the practice is not appropriate because it invites abuse of authority on the one hand, and on the other, it subverts the neutrality and impartiality on which fairness is grounded. As Morris (1997) has stated "codes of ethics universally condemn the idea of mediating cases where the mediator has a pecuniary or other kind of self-interest in a particular settlement outcome (p. 321). Indeed, French has indicated that the practice of gift giving or bribery, although fairly widespread in pre-1959 Tibet, could not guarantee advantage and was actually "punishable if revealed to higher offices" (p. 123).

In Abel's framework, explicit prescription of the intervener role and external enforcement of role expectations are associated with the more formal end of the dispute resolution spectrum. They take an exhaustively precise written form that can regulate conduct and provide records subject to public scrutiny and/or review by a superior (p. 262). Mediation, on the other hand, emphasizes disputant responsibility for resolving issues and, as is frequently observed, it involves more art than technicality to foster that end. Deutsch & Coleman (2000) have emphasized that "it is impossible to give a universally accurate account of what transpires in mediation since the process occurs across so many domains of conflict and since mediators often strive for quite

contrasting goals" (p. 528). As described by Leeson & Johnston (1988), "[u]nlike litigation, mediation has no prescribed form or set of rules the disputants must follow. No two mediations are identical; each responds to the needs and expectations of the disputants and the style of the mediator" (p. 136). Mediator styles vary dramatically. There is little consensus on standard approaches, although Western mediation literature evidences a growing concern with accreditation, standards and ethics as part of professional self-regulation (Honeyman, 1996; Morris, 1997). Whatever norms mediators may subscribe to, however, knowledge about what actually happens behind the closed doors is constrained by rules of confidentiality.[111] The success of mediation often is attributed precisely to the intervener's assurances of confidentiality, which encourages parties to deal with real interests and needs, rather than the artificially narrowed issues characteristic of the more public trial process.[112]

As noted previously, the 2003 Department of Home guidelines for CTA Representatives did not elaborate on how the third party intervener role was to be conducted. Although some procedural regularity will be discussed shortly, respondents tended to feel that their approach was dictated more by the particularities of the case than by explicit rules. Their intuitions and personal judgment, often influenced by disputant expectations of an authoritative intervention, guided how they went about the task. Under normal circumstances, this activity was not subject to external oversight, although parties could appeal to the Department of Home, Kashak or Tibetan judiciary if they were dissatisfied with the performance of the incumbent. That being said, there clearly have been directives of one sort or another over the years from the Department of Home,

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[111] Methodological difficulties in comparing different dispute resolution types (from litigation to arbitration to mediation) and the lack of consensus on key variables and concepts in mediation have not discouraged scholars from trying to measure and theorize from any number of disciplinary perspectives. Herrman, Hollett & Gale (2006) have surveyed a "voluminous literature" that they described as both "rich resource and a source of confusion for scholars and mediation practitioners" (p.19). Their Handbook of mediation is an interdisciplinary attempt to catalogue and categorize the range of mediation constructs and empirical studies that exist, organizing them into a model that invites dialogue and testing.

[112] The desirability, scope and consequences of confidentiality in mediation are the subject of much policy debate. There is little legal consistency on the subject and limited knowledge about how much disclosure actually occurs (Rogers & Salem, 1987, pp. 103 – 105). Morris (1997) has stated that confidentiality has generally been respected by the courts in North America (p.333) and that most mediator codes of ethics assume that mediation processes normally will be confidential (p. 235). In favor of confidentiality are such arguments as: a greater disposition towards cooperation; more clarity for the mediator about what is at stake for the parties; protection for legally naïve parties making disclosures that could be used against them in court; and safeguarding of the mediators' credibility as neutrals. Concerns associated with confidentiality include: potential for more aggressive and legally informed parties to exploit disclosures; information or evidence kept secret may not be in the public interest, or may contravene the ethic of warning when there is threat of harm; and finally, confidentiality may not be as big a factor in mediation success as averred by its proponents. For a fuller discussion of confidentiality issues, see Rogers & Salem (pp. 61 – 105), and Morris (1997, pp. 332 – 335).

even if these have not been organized into a systematic code of conduct or standard overall process. Respondents consistently indicated, for example, that land disputes required verification of boundaries or succession rules, and cases involving illegality needed to be turned over to Indian authorities. Latitude for the latter was much greater in the early years of exile, but the CTA increasingly has urged Representatives to steer clear of anything that might fall under the Indian Criminal Code. During the years of greatest duress, for example, knife wielding fights were frequent occurrences in some settlements and CTA Representatives did everything in their power to coax disputants toward reconciliation to restore communal harmony. Keeping such troubles under the close wraps of the community was essential to securing host population tolerance of the refugee presence.

Today, CTA Representatives emphasize to their communities that they are not in a position to protect those who break local laws. Although I did not pursue the question directly, a number of reasons might explain this shift. In the first place, respondents have suggested that the enforcement will and capacity of the Indian police force has improved markedly over the years; in the second place, individual illicit behaviors were imputed to several incidents of communal unrest, for which the whole Tibetan community paid a dear price; in the third place, there has been a gradual adaptation of Tibetan norms to those of the local environment and a commensurately less forgiving attitude toward deviance; and, in the fourth place, the establishment of a Tibetan judiciary in 1992 re-emphasized the jurisdictional limits within which Tibetans could handle their own disputes – namely, strictly civil cases. In practice, the very threat of turning a case over to Indian authorities, often acts as an inducement for disputants to cooperate in resolving their disputes quietly while they have the chance.

8.3.3   The ideal third party intervener

If there are no specific standards for the intervener role, CTA Representatives nonetheless have a sense of the ideal to which their own conduct aspires. Their perceptions of the required competence and ethics are based on their experience and the context in which they fulfill their role – which, according to Morris (1997, p. 338), is the basis upon which most claims on the subject are made. While Morris' point related to the indeterminacy of qualification debates, she has emphasized the importance of knowing one's values concerning the practice of mediation.

Deutsch & Coleman equally have stressed that mediators need to be reflective as practitioners and should be aware of their own role predilections (2000, p. 539). Morris (pp. 326,) and LeBaron Duryea (1994, pp. 109-129) further have made critical arguments to the effect that one qualification or values template cannot be expected to apply universally across the spectrum of cultural or religious groupings, whether in multicultural or intercultural settings. Moreover, I have found that the distinctions between learned skills, ethics, attributes of process and personal qualities often are blurred in the dispute resolution literature in general.

Asked to name the two or three most important qualifications they personally have for the task, CTA Representatives offered their perception of what it takes to be an effective third party intervener. In Chart #8 below, I have listed the qualities they mentioned, together with the frequency of mention. Like terms are separated out in the first column but grouped together in the second, for a better grasp of the patterns. A third column ventures a distinction between groupings, on the basis of whether the qualities are personal (P), ascribed (A), learned through education or experience (L), ethics related (E) or defining of process (Pr) - though not necessarily in a mutually exclusive way.

Chart # 8:   The ideal third party intervener

Qualities of a good intervener (n=12)	# of mentions	Grouped Totals	Group Type
Experience	5		L
Honesty, integrity	4	Integrity	E
Respect for policies of the government	2	6	
Kindness, warm-heartedness	4	Caring	P/E
Concern for welfare of the community	1	5	
Know facts for informed judgment	3	Knowledge	Pr
Know community issues	2	(Investigative)	
Know family backgrounds	1	8	
Investigate thoroughly	1		
Get to the root causes	1		
General education	3	Knowledge	L
Know rules of the land	3	(Substantive)	
Know Dept. of Home Guidelines	1	10	
Have some training	2		
Professionalism	1		

Judge-like	2	Judge-like	P/E/Pr/A
Leadership qualities	1	11	
Determination and persuasiveness	2		
Balanced/judicious	1		
Impartiality	2		
Neutrality	2		
Take the job seriously	1		
Status and respect	3		A
Open mindedness	2		P/E/Pr
Don't use power blindly	1		E
Spirit of cooperation	1		P/E/Pr
Listen carefully	1		P/Pr
Qualities have to come naturally	2		P

There are several ways to analyze the above table to extract insight about the nature of the role – beginning with the individual mentions which are unadulterated data. The most frequent single mention – experience (5) – is not surprising, considering what has been said earlier about the relative seniority of the CTA Representative's position and the number of years in the role. Close seconds – honesty/integrity (4) and kindness/warm-heartedness (4) – further reflect enculturation into a public service that the Dalai Lama has worked assiduously to infuse with Buddhist ethics. A caring, social government is today very much part of the CTA corporate self-image – particularly in the Department of Home whose specific mandate is to ensure the welfare of the settlements.

The mentions of status/respect (3) indicate awareness of the authority vested in the CTA Representative's position and a belief that it is an ascribed quality needed for credibility with disputants and effectiveness in conflict resolution. Indeed, one of the respondents cited a Tibetan saying that indicates the three qualities a mediator should possess:

1) One should be very eloquent, as a great orator or speaker;

2) One should be socially powerful, respected, accepted by the community;

3) One should be economically sound (presumably to be resistant to corruption).

Most discussions of mediation in the Western context disregard status/respect as a qualification because of the stress placed on disputant self-determination, rather than persuasive power. However, in many collectivist cultures, individual autonomy either is not an overriding principle of informal dispute resolution processes, or is not necessarily antithetical to authoritative styles

of mediation predicated on the status of the intervener.[113] Studies of village India have shown that known and respected elders, or a panel of them in the form of "panchayats," are widely preferred over the impersonal power of the courts, not only despite their status power in the community, but indeed because of it (Moore 1996; Wall, Arunachalam & Callister 2003). Ekvall (1964) also has emphasized that to be effective, mediators in the Amdo region of pre-1959 Tibet "had to stand high in the social and power scale" (p. 1140). Similarly, French, has indicated that in central Tibet conciliation with the intermediary of educated and/or respected community members, far from being inhibiting, was preferred to courts because it allowed for flexibility and unusual compromise while reinforcing the value of consensus and agreement in the community (1995, p. 122). As seen in previous chapters, the residual effect of historico-cultural tradition asserts itself in exile in myriad norms, arguably including these social expectations of mediation. Where patrimony was a source of esteem in the past, however, many Tibetans today see modern education and professional skills as the new basis for social status.[114] Thus, entries grouped under "substantive knowledge" (10) reinforce the status/respect entry in that they set the CTA Representative apart from the more casual roles played by social network mediators whose involvement in disputes may be intensive but not professionalized.

The largest grouping is "judge-like" (11), representing qualities associated with a judge or arbitrator who weighs evidence carefully and functions without partisan bias. Understood in the context of an informal dispute resolution process, it again suggests that the intervener's powers of persuasion derive at least partly from the disputants' expectations of the role as being an authoritative one. Of course, I might have made an alternative grouping for a similar score, as evidence of comparability with Western mediator qualities that incline toward a more facilitative role – namely, getting at root causes, kindness/warm-heartedness (as a proxy for empathy), impartiality, neutrality, listening carefully, open-mindedness, and cooperation. These would have aligned well with the "Interim Guidelines for Selecting Mediators" reported on by Honeyman (1993, pp. 560-561). The following, for example, were among the six qualities deemed necessary

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[113] Similar points have been made by Morris (1997) and LeBaron Duryea (1994) in their cautions against trying to universalize ethics and standards of mediation practice.

[114] In old Tibet, the aristocracy enjoyed privileges of education and status, derived from wealth associated with land ownership (Carrasco 1959); in exile Tibetans, cannot own land as refugees and thus the determinants of social status have shifted to income derived from educational, professional and occupational skills. For an analysis of these issues, see J.E. Ziman (1996), A People in exile: A sociological study of structural change in the Tibetan exile communities. Tibetan Review, 30 (10), 22-23.

for performing the most common and essential tasks in mediating family, communal and commercial disputes:

- **Investigation** (effectiveness in identifying and seeking out relevant information pertinent to the case);

- **Empathy** (conspicuous awareness and consideration of the needs of others); and

- **Impartiality** (equal respect and listening to both sides, objective questions, demonstrating an open mind). [115]

Despite the similarity, my sense was that respondents perceived their roles as being ultimately adjudicative - rather than only facilitative – even though their decisions were not in any sense legally binding. They may prefer that disputants come to consensus on issues and settlement agreements on their own but, as I was told many times, disputants expect an authoritative manner. Part of their reason for bringing forward a grievance is to achieve finality and closure in a way that had eluded them to that point. It is also the case that CTA Representatives draw only a soft border between facilitating an agreement (with the requisite qualities of careful listening, empathy, impartiality) and having to make a final determination (based on investigation and balanced judgment). Mediator impartiality and neutrality have been key norms within the principle of party self-determination espoused in the West, even though discerning scholars and practitioners have deconstructed their meaning when power imbalances or public interest are involved.[116] CTA Representatives, however, understand these terms to mean non-bias within an ethic of compassionate justice and joint responsibility for restoring harmony, more along the lines of Moore's benevolent authoritative mediators, or even Lederach's insider-partials. In other words, mediator neutrality cannot override the imperative of fairness according to Buddhist morality.

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[115] The remaining three criteria of performance being: generating workable options, generating realistic agreements and managing disputant interaction.

[116] As reported by Morris, the Model standards of conduct for mediators, has defined impartiality as "evenhandedness and lack of prejudice based on the parties' personal characteristics, background or performance at the mediation" (p. 321). The principle is not contested but precautions need to be taken against potential corruptibility when the mediator has a prior relationship with one party, or a direct conflict of interest. It also is increasingly recognized that the behavior of parties during mediation can bring forth sympathy or antipathy that inadvertently affect the mediator's attitude. Neutrality, on the other hand, is at the core of debates about the degree of mediator intervention that is appropriate given that party self-determination is a foundational principle of mediation, particularly in individualist cultures (Morris, p. 323). The problem comes into sharpest focus in family mediation, in which fairness to absent parties or to the more vulnerable party cannot be assured with the passivity mandated by neutrality as to outcomes. For discussions on these issues, see Morris (pp. 318-327), LeBaron Duryea (1994, pp. 109-129), Cobb & Rifkin (2001, pp. 24-30), and Rogers & Salem (1987, pp. 137-150).

Once again, it is worth juxtaposing these observations against what might have been culturally familiar patterns in pre-1959 Tibet. Ekvall has indicated that among the nomadic communities of Amdo, the very term used for mediators was "between men," – that is, persons "who were centered between two sets of claims, and of rights and wrongs, and as such deemed to be impartial" (p. 1140). For that same reason, the most preferred mediators were lamas because disputants assumed that "they were immune to partisanship and mean motives" and were credible when invoking "the transcendent ethics of Buddhism" (p. 1141). Importantly, as argued by French, impartiality or non-bias also was a standard set for judges and conciliators in the 14th century Neudong Law Code (p. 276), on which the Ganden Podrang law codes largely were based right up to the time of Chinese occupation (p. 46). The notional parameters for judges and conciliators in the Code would have applied equally to district officers playing those roles across the Plateau, in ways somewhat parallel to CTA Representatives in exile.[117] They were reflected in "General Rules of Conduct" for district officers, publicly posted in the form of an edict at district headquarters (p. 234). Concerning a conciliator's or judge's affective qualities, for example, French has cited the Code as saying:

1. He should not announce a decision forcefully if one side does not agree.
2. He must not be biased by those near to him.
3. He should decide the case in the most suitable way.
4. He should consult with unbiased, learned people. (p.277)

About the conciliator in specific the Code stated:

> The conciliator should ask a learned person (about the case), think hard (about the case) for three days, look at the history of the dispute between the parties, and look to the root of the guilt. (p.122)

Whether as conciliator or judge, the role occupant needed to exercise patience with disputant pleadings, get to the bottom of things and uphold fairness to all parties. French further stated that the consensus of disputants was instrumental at each stage, including the eventual outcome or punishment (pp. 137-139). She called this a "jurisprudence of truth" whereby facts proved

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[117] Ostensible similarities in the roles of the district officer and the CTA Representative include: their being the main, if not only, link of far flung populations with the central government; a responsibility for settling disputes "internally," but at a more formal level than roles played by family or local, respected monk or lay figures; rotation of role occupants and guideline-defined similarity in the duties, functions and professional aspects of the role; training for bureaucratic service as opposed to dispute resolution as such; and wearing two hats - one as conciliator and one as judge, according to whether or not disputants wished to press a formal legal case. I draw these parallels with caution as French herself does not reflect on the CTA Representative role in exile, and there are important differences as well. For her full description of the district officer's role in pre-1959 Tibet, see pp. 333-241.

themselves not only by external verification, but by the disputants' coming to a consonant view of what they were. Thus, while dispute resolution did not rest on party autonomy in the sense espoused by Western mediators, neither did it rest entirely in the hands of the intervener. Also of note is the normative wording of the Code. Though secular and detailed in substantive law, the Code was imbued with the Buddhist morality of its subjects, just as the exile community's normative framework for democracy, nationalism and non-violence is permeated by Buddhist thinking. What this juxtaposition points to is the prominence of an ethical overtone in the CTA Representatives' perception of the intervener role. With the exception of "status/respect," all the qualities mentioned convey an ideal standard - whether worded as part of process (investigate thoroughly), or attitude (kindness, impartiality), or competence (professionalism, technical/legal/policy knowledge).

8.3.4   Social distance and cultural differentiation

Taken together, the CTA Representatives' substantive knowledge base, experience, professional ethics and ascribed status clearly distinguish them from the informal mediators of the social networking type as described by Moore (2003). By the same token, CTA Representatives also are more socially distant from disputants, physically and psychologically, even though they reside in the same community during their tenure. Where elders, gyapons or chupons may visit disputants in their home, or receive them in their own, CTA Representatives entertain most cases in their private office. In towns, the office is centrally located for ease of access. However, in agricultural settlements such as those in Bylakuppe, villages are scattered at a distance of two to four kilometers or more from each other, and not all households have a means of transportation to the one village where the office is located. Thus status distance can be exacerbated by cumbersome access. Psychological distance can be accentuated by individual attitudes, conveyed in dress (office clothes as opposed to laborer or casual clothes), body language (marking hierarchy as noted in the review of TCCR workshop evaluations), or availability. In my observation of their office manner in general, some CTA Representatives conveyed a paternalistic manner that nonetheless was warm and empathetic - looking after the flock, as it were, as the representative of a government that saw itself as caring. In other cases, the incumbent seemed more conscious of his authority, expressed in a disinterested look or a preoccupation with more important matters, while the visitor to the office waited respectfully. In

yet other cases the CTA Representative had a business-like energy, ready to pull up his sleeves to tackle problems as they arose. These characteristics clearly were personal – that is, untutored in terms of a professional intervention practice that consciously monitors itself for attitudes that can negatively or positively impact on the process.

8.3.5 Variables of the dispute resolution process

Abel's schema distinguished structural variables that define intervener qualities (as discussed above) from process variables that characterize what they actually do as the dispute institution becomes progressively more specialized, bureaucratized and differentiated. Thus, in my interviews, I sought answers to the following questions:

- What procedural requirements govern the process of mediation?
- To what depth are issues explored and by means of what techniques?
- What is the role of evidence, beyond the claims made by disputants?
- What is the role of social (communal or religious) norms?
- What is the significance of prior decisions?
- To what extent does the mediator influence outcomes?

Respondents found it difficult to elaborate on process because they tended not to see it as a pre-determined course of action. They insisted that it was very much dictated by particularities of the case – the source of dispute, the attitude of disputants, degree of consensus on what the issues and facts of the case were, needs for additional clarity, legal implications, and impact on the community. As noted previously, there were general guidelines for certain categories of dispute (such as land encroachment, succession or criminality), but these did not prescribe the way in which parties were to come to terms with each other. One of French's conclusions about the legal functioning of pre-1959 Tibet was that it reflected Buddhist thinking on the radical particularity of being. As the momentary accretion of circumstance, elements and karmic seeds, each human being was considered to be uniquely individual, from which it followed that every act of that individual was also singular. She stated that:

The legal consequences of these views were innumerable: the absence of extensive categorization in law, factoring as opposed to categorization of legal events, minimal rule formation, and the lack of precedent. (p.161)

Undoubtedly this aspect of Tibetan worldview also inclined CTA Representatives to consider each dispute as unique. Patterns might be discernible and might require rule-making to forestall reoccurrence but each dispute has its own real time dynamics requiring mindful response. From the CTA Representative's perspective, the long term goal is communal harmony, the means is reconciliation of the individuals, but the details of getting there depend on what seems most suitable to the particular circumstance. That being said, there are some procedural regularities that can influence how the process unfolds. For example, disputants must submit a statement of grievance to the CTA Representative before it can be entertained. This measure serves a number of purposes, not the least of which is to establish a record for successors who may have to revisit a problem, or for the Department of Home which may need to bring in new measures if cases are suggestive of a wider issue applicable to other settlements. The written statement also acts as an inducement for disputants to work out problems on their own as much as possible. It encourages a cool-down from the heat of the dispute and it provides an opportunity for disputants to define their issues more clearly before bringing the case forward. In principle, it encourages a commitment to work through the problem and to abide by the eventual agreement, if such is reached. The requirement can be a burden for the older generation among whom illiteracy is high, as assistance will be needed for formulating a letter. Filtering a grievance through another party can have the effect of dimming it, but also of entrenching positions.

Once a request for intervention is received, the disputants are called into the office either singly or together, depending on circumstances, preference of disputants, and level of agitation. The camp leader may accompany the disputants, if there have been prior attempts at resolution, or if the camp in some way is collectively affected or implicated. If the grievance concerns land or building, the CTA Representative will visit the site and deal with issues on the spot. Most cases are handled in a fixed location, however - namely, the private office, as noted previously. With the exception of Dharamsala, which is a crowded, busy environment, the offices visited were located in compounds that added to an air of quiet formality. There may be other staff members nearby in an adjoining room so, if the private office is not sufficient for confidentiality requirements, a more isolated location may be agreed upon for the mediation process.

Typically, the office itself has a clean, orderly aspect, dominated by a large desk, with a Tibetan flag. On the wall, invariably, is an image of the Dalai Lama laden with white scarves, and often one of Mahatma Gandhi. These elements are mutually reinforcing in a compact symbol system that brings together the hierarchy of position (desk), respect for the Dalai Lama's spiritual and temporal leadership (image with scarves), the commitment to Tibetan autonomy (flag), the model of "gram swaraj" for village management and the principle of non-violence (image of Gandhi). These symbols are familiar to all Tibetans and in that sense reaffirm both community identity and norms. Though the formality of the environment can have a socially distancing effect, the mediation is usually conducted around a coffee table at one end of the room, with an informal seating arrangement that softens the sense of hierarchy and is more conducive to dialogue.

Decisions reached are formalized with the signing of an agreement and the presentation by disputants of white scarves to the image of the Dalai Lama, and to each other. Both signed agreement and exchange of scarves are meant to secure commitment to abide by the decisions taken. The latter gesture is a carry-over of old traditions, also described by French as a "getting together ceremony" in which disputants "reharmonize themselves to one another and the cosmos" (p.245). As with the request for mediation, the signed agreement becomes part of the file which provides a record of the parties, the issues, how the dispute came about, and the settlement. In principle, the full documentation is kept in a binder, arranged by date, for easy reference if needed to verify a predecessor's case, or to follow some degree of precedent if appropriate. I was unable to ascertain how consistently the different offices followed this documentation practice. The Department of Home does not require a copy of the record, unless there are issues of broader import. Thus, there is really no oversight of role expectations, other than by successive role occupants who might consult the file and have occasion to question decisions that result in a re-emergence of the same conflict.

In between the beginning of an intervention and the end, most respondents described what they felt was a common sense process that involved listening to the issues on both sides, trying to encourage parties to understand each other's viewpoints and helping them to negotiate a mutually acceptable solution. The process initially relies on internalized norms of truthfulness on the part of disputants, but there can be contradictory allegations or reciprocal accusations that frustrate the factual consonance needed to move forward. The intervener then has to investigate,

perhaps seeking testimony from witnesses, calling different groups together and finally making his own assessment of guilt and any compensation payment appropriate. In these close-knit communities, there also may be a widening circle of involvement of family members on either side, which necessitates rounds of consultation. In such cases the scope of issues inevitably broadens before efforts can refocus on the original points of dispute. If disputants are not easily brought around to substantive problem solving, CTA Representatives will often assume a proactive role, pushing for consensus and recommending remedies based on past experience, or communal and religious norms. They do not hesitate to make judicious reference to Buddhist principles, or to the Dalai Lama's expectations of the Tibetan community, or yet to the examples of what can happen if the local host population becomes irritated by its presence. As described in previous chapters, each of these allusions relate to norms deeply internalized through long tradition, socialization through school and public gatherings, and shared emotional experiences as refugees. While intervener moves such as investigating, attributing guilt, pushing for consensus and recommending solutions are clearly outside the Western conception of professional mediation practice, it is important to recognize them as part of the CTA Representative's repertoire of techniques for restoration of harmony in a manner consistent with disputant expectation or approval.

If there is any illegality or physical assault involved, the CTA Representative will either refer the case directly to Indian police, or use the threat of doing that in order to force disputants to settle their grievances peacefully while they have the chance. In some cases disputants already may have been taken into police custody when there has been a fight involving injury. Often the police will call the CTA Representative to work things out informally, even where there is an inter-ethnic dimension. If the dispute involves a lot of people, the Representative enlists the help of community leaders to quiet things down - including members of the local assembly, camp leaders, and representatives of the Tibetan Women's Association and the Tibetan Youth Congress.

Having established the nature of the CTA Representative's responsibility for dispute resolution in the settlements, it remains to be seen how actual cases present on the ground. Given the prevalence of harmony norms in exile and the authoritative position of the CTA Representatives in dispute resolution, how constrained is individual agency in this communitarian setting? Do case studies support the argument that communitarian norms and their application in mediation

are an efficient and effective form of social control? If harmony can be said to be operating as ideology in the Tibetan Diaspora, are there realistic alternatives?

FOCUS ON DISPUTES: CASE STUDIES

"The test of peace is in the ability to handle conflict….peace is what we have when creative conflict transformation takes place non-violently." (Galtung, 1996, p. 265)

CTA Representatives tended to see the conflicts within their community today as being: 1) minimal given the communal emphasis placed on harmony; and 2) generalizable with respect to patterns seen in family disputes, interpersonal disputes and disputes involving land. A closer examination of discussion points, examples and case studies offered in the three areas will demonstrate the workings of hidden law – that is, "the norms, conventions, implicit bargains, and folk wisdoms that organize social expectations, regulate everyday behavior and manage interpersonal conflicts" (Rauch, 2004, p. 97). It will show that communitarian constraints on individual agency are dictated less by oppressive forces of conservatism or hierarchy, than by the contingencies of refugee status, the rationale behind norms and the utilitarian efficiency of norms in everyday life. I argue that the resolution of disputes is a pragmatic affair, in most cases reflecting Tibetan adaptability and harmony imperatives related to interdependence.

IX   FAMILY DISPUTES

 "It is not necessary to raise the cymbals to the sky; keep the bell in the palm of the hand"
(Tibetan proverb, meaning keep troubles to yourself or within the family).

As a category, family disputes instantiate a number of points raised in the analytical frameworks, in subsequent sections on the institutionalization of norms and in the discussion of issues around the CTA Representative as third party intervener in disputes - namely:

- That intervention principles – such as **confidentiality, impartiality, neutrality and party self-determination** - are not universals, but rather inflected with **culture-specific logic**;

- That **communitarian identity and cohesion are strengthened** by the right to resolve disputes internally, in matters relating to marriage, divorce, maintenance, adoption and succession;

- That **individual agency is variable -** thus less suggestive of harmony ideology than of the particularity of the person and the situation.

One of the most incisive debates in the Western literature on family mediation concerns the extent to which a weaker party might be disadvantaged in processes that priorize neutrality and impartiality regardless of power imbalances (Kolb & Williams, 2000; Gray, 1994; Menkel-Meadow, 2001). Absent parties (such as children or grandparents) also can be seriously affected yet have no voice in outcomes negotiated exclusively in terms of the needs of the actual disputants (Walker & Hayes, 2006). Family mediation, especially in its mandated form, is particularly sensitive to the possibility that women can be vulnerable parties as principal care-givers with more limited economic means (Grillo, 2001). Women also can be more socialized to conform to society's expectations of them as compliant and giving, in such a way that their moral choices are dictated by these terms (Gilligan, 1993). They can be more susceptible to normative pressures toward subservience to husband and family, in a way that is inconsistent with constitutional guarantees of gender equality and equal protection of the law (Boyd, 2004; D.L.Coleman, 2001). Most critical are cases where there is spousal or child abuse, such that latent intimidation enters into what on the surface seems to be problem solving between equals. An important factor in mediation, as opposed to litigation, is its confidentiality – the fact that everything occurs behind closed doors so that neither substantive nor procedural outcomes can be scrutinized. These are concerns that any argument for communitarian control of dispute resolution processes must address.

In this section, I look at two kinds of family disputes: 1) marital discord; and 2) succession with respect to land allotments in agricultural settlements – the former being more norm bound, the latter more rule bound. Case material was collected through interviews with CTA Representatives, camp leaders, members of the Tibetan Women's Association, and other informants met casually or through referral.

9.1   Marital discord

The Tibetan proverb "It is not necessary to raised the cymbals to the sky; keep the bell in the palm of the hand" is expressive of the intense privacy with which family matters are regarded

among Tibetans – foremost among them being the relations between husband and wife. Indeed, a constraint in collecting more specific, in-depth information in this area was the cloak of privacy associated with the topic and, not surprisingly, the lack of literature or archival data to support interview material.[118] Marriage or divorce counseling does not exist as a professional activity (Thonsur, 2004, p.335), although sexual/gender violence counseling reportedly is available as part of reproductive health care (TWA Survey, 2005, p. 76).

9.1.1   General pattern

In disputes between husband and wife, every effort is made to work through problems without exposing others to the discord, and third parties are not lightly drawn into the process. There is an element of shame associated with disharmony and imposition on others, as well as a strong valuation of family obligations over individual grievance. The concern for preservation of family is further accentuated by the involvement of parents and in-laws in disputes that persist between couples, or where events get out of hand, such as in cases of domestic violence. In intensive collogues of moralizing, coaxing and cajoling toward reconciliation, these elder family members bring both their experience, and caring to bear on the problem. They equally can bring their own temperaments and prejudices into the melee, or simply fail to navigate the situation to a peaceful resolution. The family dynamic can become complicated as rumor spreads to other family members who take sides, each for their own reasons. Typically, disputing parties then approach or are approached by a close circle of friends who act as a kind of panel to help work through the difficulties with advice and expressions of concern. Thus far, the denouement is still private in the sense that the community as such is not involved.

If a dispute finds no peace through these private channels, then it can be taken to the camp leader, who is still a known entity. Often a representative of the Tibetan Women's Association (TWA) will lend support, still very much within a nurturing, communitarian model of

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[118] The Tibetan Women's Association published a survey in 2005, entitled : <u>Tibetan women: The status of exiled Tibetan women in India</u>. I draw heavily on this document as it was the first study of its kind. In relation to privacy, for example, many women chose not to answer a question related to marital violence, presumably preferring not to reveal their personal matters (p.36). Klieger (2002) also has commented on the reluctance of Tibetans to speak about gender dynamics (p.152), observing that "the most guarded secrets of Tibetan culture are not those of tantric processes, but rather of the mundane world of the gendered Tibetan self" (p. 153). Grent's (2002) research on polyandry in Dharamsala encountered similar difficulty, although in this case the reticence had to do with shame associated with a practice considered to be anathema to modern images of the self in exile.

intervention that sees intact families as the building block of community. Finally, the last logical stop for a particularly recalcitrant situation is the CTA Representative who carries sufficient authority to pass judgment. The vast majority of cases are resolved well before reaching this stage, but CTA Representatives interviewed each have had some cases to deal with in this category of dispute, suggesting that a full progression through all levels is not altogether rare. Even at that, as lamented by several respondents, disputants don't always abide by the advice they get.

Whatever dissatisfaction there may be with the dispute resolution process or outcome, as I have been told time and again, nothing would seem more alien to Tibetans than to take their marital problems to a stranger, or to an expensive, impersonal, culturally unfamiliar Indian court system. While the CTA Representative's self image embraces the concept of impartiality, it is clear that neutrality as to outcome does not obtain in these interventions. There is a vested interest in the goal of keeping families intact for communitarian cohesion, which itself serves a higher goal of homeland politics. That this approach, with its considerable normative framing, is effective can be seen in the fact that the divorce rate among couples in exile is very low. According to the survey conducted by the TWA in 2005, less than 10% of respondents indicated their status as divorced (p. 21). Nonetheless, Thonsur has voiced concerns that increasing cases of divorce could be disastrous for the Tibetan community (2004, p. 335), echoing many proponents of communitarianism in the United States, where divorce rates are four times that figure. Ambert (2005) has warned of difficulties in interpreting divorce rates cross-nationally. However, she cited comparative figures for 2005 from the UN, which are useful as indicators of the relatively high divorce rates seen in individualistic countries like the United States (43%), the United Kingdom (31%), France (27%) and Canada (22%).

In actual fact, unlike formal states, the exile community keeps no civil or religious register of marriages and divorces, nor traditionally has it done so. French has described marriage in pre-1959 Southwestern Tibet as neither a civil nor religious event, but rather a contractual arrangement between the families of the bride and groom (1995, pp. 38-39). This approach primarily had to do with the inalienability and indivisibility of land as a basis of the household unit's income and status. The contract itself could be quite elaborate, detailing what the girl's side was to receive during the ceremony, including a clause about payments to be made in cases of violation. In exile, marriage rarely follows this contract model, or any of the many regional

customs. Rather, the marriage bond materializes over successive stages, which typically involve: reciprocal visits between the families, parties for a widening group of friends, and consultation with a Tibetan astrologer to determine an auspicious date and place for the final celebration, and cohabitation of bride and groom. In perhaps 90% of cases the bride moves to the groom's household, although exceptions are readily accommodated. The event is not recorded in any judicable document but the festivities are inscribed in communal memory, whether at camp or settlement level.[119] Since the union is not legally conceived, neither is divorce – although both are taken very seriously. Indeed the same word is used to designate separation and divorce, unlike their distinctive meanings in Western legal thought. Reportedly, couples sometimes go through Indian courts to obtain a marriage certificate for purely instrumental reasons related to travel abroad, but this has little relevance for Tibetans' non-legal orientation to divorce.

9.1.2   Normative framing

Whatever the difficulties being experienced by a married couple – adultery, domestic violence, drinking problems, neglect of family – the CTA Representative frequently invokes normative arguments to encourage both parties toward correct behavior <u>within</u> the relationship. What constitutes correct behavior is understood in terms of both communal norms and Buddhist philosophy, rather than technical rights grounded in Family Law, which in any case does not exist as a piece of legislation within the Tibetan legal framework. Even where a dispute ends up in divorce, custom is what guides associated decisions - most often with the extended family jointly determining the fairest and most practical arrangements for custody, alimony and any separation of assets.

The most powerful communal norm affecting the resolution of husband-wife disputes is that couples should stay together for the sake of the children. Each layer of involvement by third parties begins from the premise that "a parent's first duty is to the child and both father and mother are equally important to the child," as expressed by the President of the TWA Central

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[119] Grent (2002) has described a revival of old marriage customs blended with new ones, especially as people become more affluent. Thus invitation cards in Tibetan and English are not uncommon in Dharamsala and, alongside wedding gifts for the new household, are offerings of money in a 'Free Tibet' envelope wrapped into a "Katak" for presentation in a traditional "Katak" ceremony (p.127-8).

Executive Committee (Centrex). Motherhood is highly valued in itself, as are children of both sexes, but a father figure equally is seen as requisite to family health. Importantly, it is the positive value of family rather than any stigma associated with divorce, widowhood or single parenting that predominates, unlike what would be the case in equally family-oriented village India (Alam 2000; Sampath 1991). The focus on the child's well-being is also distinctive even where divorce prevails and considerable latitude can be left to the child's preference in custody decisions. Both similarity and distinction can be discerned in how D.K. Sampath has described mediation by village elders or the village panchayat in India:

> The institution of matrimony is sacred and hence the marital tie has to be preserved as inviolable whatever be the depth of conflict between spouses….The alternative of an agreed separation, maintenance and custody of children and the like are just swept aside as not arising for consideration. (2000, p.76)

While not as draconian in application among Tibetans, communal norms of family preservation do provide serious incentive for the parties to cooperate. At all levels, counseling to that end is a prolonged and persistent affair. CTA Representatives have emphasized that these disputes simply cannot be handled expeditiously. In the words of one respondent:

> In disputes between husband and wife I could be listening to their complaints morning till night. 10-16 hours straight. I do everything I can to bring peace. My goal is always to encourage them not to build small-small things into big issues. I may have to tell some white lies – that the husband really loves the wife, that she or he is so pure….By the end I'm usually able to make them understand the importance of reconciling their differences. (D7)

A tacit layer of understanding sits behind the words "small-small things" and "the importance of reconciling their differences," as revealed in another respondent's comments in relation to family disputes: "In these situations appeal is made to the larger cause….We are in India to fight for the freedom of Tibet, so forget the small problems." The minimizing of interpersonal disputes and the deflection of focus to the homeland commitment that is the community's shared destiny can have the effect of leaving deeper issues unresolved. Also, despite best intentions, a lack of professional intervention techniques can mean that privileging reconciliation short circuits disputant empowerment or capacity building. The communication and creative problem solving skills needed to cope with the sources of distress in the home remain insufficiently developed to withstand re-entry into that environment. In the words of the TWA Centrex President, who has frequently assisted with such disputes in concert with the CTA Representative:

> If families don't get to the root of the problem jointly and make joint decisions, then the outcome can often be miserable, creating an atmosphere of perpetual quarrel. (G1)

Dispute resolution literature recognizes the detrimental effect on children of open parental fighting and aggression within the home (Opotow, 2000, p. 412). What stand out here are the implied involvement by, and the repercussions for, the extended family. Although demographic surveys of the Tibetan Diaspora have noted a trend toward more nuclear families, up to one third of households still include some combination of a couple's parents, in-laws, siblings, grandchildren, nephews or nieces.[120] In that case all extended family members have a direct stake in the outcome of a husband/wife dispute. They all are affected by the dysfunction of a bickering pair in their midst. Who will look after elder members if the couple separates? Who will be responsible to whom for household assets? How will custody arrangements affect their relationship with the children of the couple?

The TWA survey of 3076 women across the various settlements in India reported that divorce rates were highest in the 41-50 age bracket, which was also the group with the largest number of children.[121] This age bracket is equally the most likely to be carrying old age dependents, whether they cohabit or not. This finding is in marked contrast to Statistics Canada data for the same year, showing that the highest rate of divorce in Canada occurs much earlier - in the late 20's to mid-30's age bracket, after 4 years of marriage (Ambert, 2000). A reasonable conclusion to draw is that the communitarian context of exile Tibetans places greatest strains on the family in this period when the household dependency ratio is high – that is, the ratio of economically inactive dependents in relation to those working to support them. By extension, I argue that it is the proximity and interdependence of extended family members in the Tibetan community that gives critical edge to the norms of family preservation, over and above the more abstract values of communitarian cohesion. In other words, there is a very practical rationale behind these norms

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[120] General observations about the prevalence of multiple generation households are mixed. Klieger (2002, p. 145) and Alam (2000, p. 178), for example, state that it is still common for young married couples to live with parents, while Thonsur (2003, p. 335) and Subramanya (2002, p. 210) state that couples are tending to live in small nuclear families. Quantitative evidence is also difficult to decipher. The Tibetan Demographic Survey of 1998 conducted by the CTA Planning Council inclines toward the latter view, with about 60% of total households in India and Nepal indicated as having less than four members. However over 33% had between five and eight members which, combined with a very low total fertility rate of 1.22 births per female, does suggest that up to one third of households may not be nuclear. More tellingly, a social and demographic survey of 54,537 Tibetan refugees in India (Bhatia, Dranyi & Rowley 2002, p. 416) calculated a mean household size of 5.6 individuals, broken down as 18% being head of household, 12% spouse and 47% children – the rest being a combination of grandchildren, parents, in-laws, grandparents, siblings, nieces/nephews and others, representing 23%.

[121] The survey indicates a 10% divorce rate for the 41-50 age group, half that for the 31-40 group and half that again for the 51-60 group. The status of exiled Tibetan women. Dharamsala: Tibetan Women's Association, 2005, p.21

which, in an individualistic culture, would be construed as invasive of personal autonomy. For those involved in mediation efforts in this community, the principle of neutrality as non-intervention thus would go against the cultural logic.

Aside from the pragmatic communal norms, there also are moral and religious norms that enter the search for settlement on a regular basis. As in so many other contexts, a combination of forbearance, enduring and compassion are part of the exhortation toward a Buddhist-inspired response to disputing. Often quoted are snippets from Acharya Nagarjuna's (c. 150-250 AD) words of advice to householders: practice patience, do not give way to anger, abandon resentments.[122] One CTA Representative explained his approach this way:

> For husband/wife disputes especially I remind them that we have to die so the precious lifetime we have should be used peacefully, being kind to each other. If a neighbor or husband mistreats you, try to bear it– the outcome will be better. (D8)

On the surface, the comment appears to be little more than platitude, one that dismisses the need to hear the narratives, to be alert to power imbalances, or to invest the parties with the confidence needed to sort through legitimate grievances. It is important, however, to decode phrases such as "precious lifetime," "have to die" and "better outcome" from within the Buddhist framework, in order to capture the depth of resonance that such words can have. Every Tibetan knows that without a human life it would be impossible to encounter the dharma; every Tibetan also will have heard the turtle analogy for just how precious and rare human life is:

> Imagine the whole cosmos of a billion universes as a vast ocean. Floating upon it is a yoke, a piece of wood with a hole in it…this yoke tossed hither and thither by the waves …never stays in the same place even for an instant. Deep down in the ocean lives a blind turtle who rises up to the surface only once every one hundred years…. The chances of the yoke and the turtle coming together are therefore extremely small. Nevertheless, by sheer chance the turtle might still just slip its neck into the yoke. But it is even more difficult than that, the sutras say, to obtain a human existence with the freedoms and advantages. (Patrul R., 1994, pp. 33-34)

Even for Tibetans who are not conversant with the fine points of Tibetan Buddhist philosophy, the mere phrase "precious human life" evokes what they know has filled whole books of dharma teachings associated with reincarnation. In the same way "have to die" alludes to the

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[122] Acharya Nagarjuna was an Indian philosopher, founder of the Madhyamika (Middle Way) School of Mahayana Buddhism and one of the most influential Buddhist thinkers since Buddha himself. The Dalai Lama's teachings frequently refer to Nagarjuna's Middle Way; his name is therefore familiar to most Tibetans. In his "Letter to a Friend," addressed to King Dechoe Zangpo, Nagarjuna, has condensed his vast wisdom into 123 four-line verses of advice for the householder and king. See Nagarjuna's letter, with Commentary by Venerable Rendawa, Zhoe-nu Lo-droe..Dharamsala: Library of Tibetan works and Archives, 1979, 42-43.

fundamental principle of impermanence. A profound realization of impermanence is an inducement to seize the moment to practice dharma – in this case, to pursue right actions:

> Nobody has ever seen anyone or heard of anyone in any realm – even in the world of the gods – who was born but never died. In fact, it never occurs to us to wonder whether a person will die or not. It is a certainty…….Do you know for sure when you will die, or where? Might it be tomorrow, or tonight? Can you be sure that you are not going to die right now, between this breath and the next? (Patrul R., 1994, p.41)

Similarly, "better outcome" refers not only to a more comfortable relationship based on mutual kindness in this life. It also alludes to the consequences in this short and precious life, of death intervening and imposing a karmic burden for future lives, based on parties having clung to conflictive emotions and unkind actions in the present. Moreover, as described by Dawa Norbu, the religious principle of karma is "reinforced by a social norm called "Ngo-tsa" that might be roughly rendered as 'loosing face'" (cited in Subba, 1990, pp.113-114). Thus, any social action with negative karmic effect would be interpreted as a violation of "Ngo-tsa" as well.

Some scholars have argued that the influence of Tibetan Buddhism on individual behavior has been overstated – for example, Pirie (2006), Huber (1998), Ramble (1980) and Childs (2005). French's (1995) depiction of the legal cosmology of pre-1959 Tibet and Ortner's (1978) analysis of Sherpa society have been criticized on those grounds by Huber and Ramble. Indeed any number of cultural ideals projected outward – such as non-violence, compassion, being law-abiding - can mask the contradictions of lived experience and the extent of individual agency assumed in relation to social expectations. My response to that argument is that the exile community represents a particular case in which moral suasion is forceful because of the vigorous norm entrepreneurship made possible through the network of CTA Representatives. Their self-reported intervention process is not to be dismissed as window dressing. Not only is norm entrepreneurship stipulated in the Department of Home guidelines, but it is reinforced by the immediacy of the Dalai Lama in people's lives, in a way that was not the case in earlier times or in remote villages not forming part of this imagined community in exile. Moreover, 25% of the Tibetans in India live in institutions like schools, monasteries and nunneries (TWA Survey, p. 11), which sustain a concentrated normative messaging. Unquestionably, individuals will vary in the extent to which moral themes guide their everyday interactions – indeed the variability is a measure of individual agency in this communitarian setting. The point to retain is that dispute resolution is an occasion to remind disputants not only about appropriate behavior, but about the irrefutable, fundamental nature of things that puts problems into a wider perspective. However

much parties may wish to dispense with moral advice, norms of respect for both Tibetan Buddhism and the Dalai Lama are hard to oppose when invoked in these sessions. As explained by a camp leader who sees her role as a message bearer between her village and the Settlement Office, and also an occasional helping hand in small household conflicts:

> If a certain family has a problem, I will go to the family and then if necessary I may call on a respected elderly person (usually the same one, a farmer with leadership qualities and experience); together we will negotiate. Typically the elder will explain His Holiness' viewpoints and remind people of the Buddhist way of handling life, e.g. patience, tolerance, compassion and abiding by the rules and regulations of the government, if applicable to the problem. (E3)

I also explored the possibility that monks might be taken into the family's confidence and perhaps be asked to intervene on occasion, given people's respect for their wisdom and education in logical analysis - a combination of qualities that could cut through worldly troubles with lucidity and impartiality. Most informants, however, saw no obvious relationship. On the contrary, some mentioned that when monk relatives return home for a visit, any discord is papered over and family members take pains to be on best behavior. Yet, in Bylakuppe where several large monasteries of old Tibet are well established, I did encounter more casual mention to the effect that sometimes, if a conflict is bad, a lama can be invited to do rituals that will dispel evil spirits and obstacles. In the tea or meal customarily shared afterwards, the trials and tribulations of the family could be aired, albeit in a very discrete and restrained manner, and certainly with no allusion to any sexual detail or impropriety. Such indirect support for the troubled process of disputing typically would be solicited by an elder family member in joint households, but all would be involved in the ritualistic event. As discussed in the section on norms derived from Buddhism, the dispelling of evil spirits and obstacles is very much related to mental afflictions which, in turn, are seen as a root cause of conflict (French 1995, p. 26). Documentation from the Tibetan Center for Conflict Resolution similarly attributed disputes to ignorance of reality which leads to mental contaminations like desire and hatred from which conflicts arise (p.7). I cannot say how generalized the involvement of monks might be in this indirect way, but a monk-administrator from Tashi Lhunpo monastery in Bylakuppe confirmed that it certainly was not exceptional:

> When the environment is not propitious for friendly relations, problems can arise. The prayer most frequently requested [for home visits] is the one entitled "Driving out Obstacles and Clearing the Path." (F3)

9.1.3   Customary practices

Aside from the use of communal and religious norms as pressure tactics in dispute resolution, there also is consideration of practical, customary norms. While children of either sex are highly valued, custody negotiations are not a question of entitlement with its overtones of ownership, but purely of what is in the child's best interest. In most cases daughters will remain with the mother and sons with the father. This is not a fixed rule, however, and children can move from one household to the other without specific arrangements for joint custody (Alam, 2000, pp. 150-151). Many children also are in residential schools which attenuates custody issues. Similarly, alimony is not a matter of claiming rights, but of determining which party is in a better financial position, all things considered. If there are allegations of serious wrong doing, such as in spousal abuse, the CTA Representative will call in neighbors or relatives to testify. Where separation is the looming outcome, the mediating effort typically takes a more problem-solving turn, but with the CTA Representative making the final judgment of what seems fair and right for the situation at hand.

The following case description was offered by a Settlement Officer who took up this marital dispute after others had failed to arrive at satisfactory arrangements for custody. I present it verbatim here because it illustrates in simple language a number of the points discussed previously: family embroilment, progression through different levels of attempts at resolution, persistence of issues, child's right of choice, and problem solving approach. The only elements not represented are the invocation of norms - although it is reasonable to assume that they were part of the language of persuasion in the earlier stages of the dispute.

Case # 2:   Victor Mother

It was August 2002. A lady named Tashi[123] had extra-marital problems with a guy from same camp. Tashi's family consist of her aged father, husband and two children. Her problem led to divorcé with her husband. Her husband was stayed with the son after divorce. Due to Malaria cum Jaundice disease, he was died soon after. Now died husband's brother rejected to hand over the son to her. Till this end the camp leaders and

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[123] I have changed the name of the person in this case study to respect her right to confidentiality.

influential people of the camp resolved conflict. But new issue or conflict between late husband's brother and Mrs. Tashi was unable to resolve by the Camp leaders and elite people of the camp and it was hand over to the Representative Office. I studied the case history and set the time frame on the Monday. Monday actually is the first day of the working week and always coming to office with refreshed mind. I was invited the camp leader and elite member of the camp for better judgment. First of all I called Brother of the late and asked him why he is not going to hand over the son to his mother. He had enough reason why he was not hand over the son. Secondly I called the Mrs. Tashi and asked her why she rejected to keep her son with her. She had no other reason than that she had no proper source of income to feed two children. By this time she had got a job in co-operative shop. She proves that she could feed both the children. Thirdly I called the son (He was around seven years of age at time). I asked him to whom with wants to stay. He said I wanted to stay with the mother. Lastly I call both parties in my office and decided that son should be hand over to his mother immediately after the decision. Mrs. Tashi the mother should have give written assurance that she can look after the child's education and health. Also she asks for forgiveness to the brother of the late. Finally outcome of this conflict was victor mother. (D3)

While the case illustrates several points made earlier, it also has its own unique quality, demonstrating that approaches are not necessarily rote. Nor are outcomes necessarily pre-determined by considerations of precedent or dogmatic viewpoints. Another saying I heard frequently was "30 people having 30 minds, 30 yaks having 60 horns" - meaning that everyone is different and no single rule can apply. Judgment and discretion always are needed to work out problems between people. In this case, the original dispute resulted in divorce despite efforts by family, camp leaders and elders to apply the usual pressures. Clearly too, all relevant issues were not fully vetted. The brother, who was not even part of the household, had taken charge of his nephew - possibly out of a genuine belief that he was better positioned to assume the responsibility of surrogate father. He also may have judged that Tashi's adulterous behavior and/or her lack of employment at the time made her unsuitable for parenting the boy. The complications surpassed the intervention capacities of camp leaders and needed the more authoritative voice of the Settlement Officer (referred to as the Representative).

The Settlement Officer accords the situation his fullest attention (fresh mind), assuming a very proactive role and an investigative mind-set to understand what would be the best solution. He consults with all parties to obtain details - one-by-one rather than in joint sessions that might encumber the process with emotional interactivity. Importantly, he seeks the external verification of camp leaders who know the personal histories of the people involved in the dispute. Finally, he also consults the son who is only seven years old – far too young by Western standards to be able to speak for himself. Although problem solving appears to be the main technique used in this resolution process, the Settlement Officer's choice of words "victor mother" underscores that he is the problem solver, not the disputants, and he is the final arbiter. At the same time, bringing the parties together for the final decision, and encouraging an apology to the brother, transforms the adjudicated outcome to a conciliated one that – on the surface at least - seeks restoration of familial relationships. Viewing the case against the discussion of mediator interventionism and normative pressure, there is no evidence that individual agency has been diminished for being socially-embedded. The wife may have been punished for her adultery through the acrimony of her brother-in-law, but her case was heard with non-partisan fairness by the CTA Representative. Clearly, the well-being of the child was at the center of his deliberations and the caucusing with affected parties was less concerned with confidentiality than with acting as a bridge over the communication barriers.

9.1.4   Gendered effects

The "victor mother" was not disadvantaged in the above case but, given concerns about power imbalance in mediation discourse, the question has to be asked: are there cases in which women's vulnerabilities are not adequately protected? A first general consideration is whether the confidentiality concerns seen in Western mediation are relevant here. Given that divorce does not involve court process for Tibetans, the danger of legally exploiting the disclosure encouraged in caucus or joint sessions does not apply. There could be psychological or practical repercussions to admissions made, but I would argue that, by the time a CTA Representative is drawn into the dilemma, the troubled relationship has been subjected to a fair bit of scrutiny. Once a dispute breaks through the family/friend circle, closed-door confidentiality is no longer the same kind of concern it might be in less communitarian settings. My initial hypothesis, on the contrary, is that by bringing an unjust or abusive relationship out of the privacy of home,

more people become vigilant about reoccurrence of behaviors that the community does not condone and, at the very least, they can apply the sanction of disapproving glances and gossip.

If normative pressure displaces the principle of neutrality as to outcome in these interventions, what about the principle of neutrality as non-partisan fairness? In the main, the normative messaging in Tibetan marital disputes seemingly is directed at both parties - on the one hand to overcome individual grievance for the benefit of children and family, and on the other to act in accordance with dharma values. The overall normative pressure from family and community does not necessarily contravene principles of gender equality, but can falter on gender equity. The emphasis on forbearance, for example, can result in a more aggressive party coming out of the encounter relatively unchallenged, with the more vulnerable party being left to forbear. As argued by Gilligan (1993), to the extent that women have internalized a morality of caring and accommodation within the family, the task of forbearance can impose an asymmetric burden on them. The issue demands a culture sensitive reading of gender relations in exile - one that is less ideologically charged than the feminist scholarship in the West, but is attuned to its insights.

The literature on gender equality in Tibetan society is emergent and contradictory. Early accounts by Bell (1928), Stein (1972) and Ekvall (1968) have depicted marital relationships in pre-1959 Tibet as being strikingly egalitarian, with men and women sharing responsibilities and decision-making within the household unit. Stein, for example wrote about "women's exceptionally independent character and status:"

> - they are very free, both economically and from a sexual viewpoint. They have their own property which makes divorce easy for them. They often manage their husband's finances. Their economic position is as strong among the herdsmen as the cultivators. (p. 108)

Other writers have challenged these uncritical views, pointing to women's lack of access to education, their complete absence from public roles, their inferior status as nuns, tantric practices premised on male physiology, and even the etymology of the word for woman - "kyeman", meaning low birth (Gyatso & Havnevik, 2005; Miller, 1980; Ortner, 1983; Klieger, 2002). Notwithstanding the significance of these feminist re-evaluations of the past, most writers have conceded that, in the final balance, Tibetan women did enjoy a higher degree of freedom and status than their sisters in China or India. To quote old Tibetan sayings recalled by Thonsur: "Though I am the head of a hundred men, my leader lives at home" and "Men are the guardians of the courtyard and women, the pillar of the house" (2004, p. 324).

Whatever the occupational, regional, class or marital variations that affected gender roles in Tibet, exile life created more uniform and improved conditions for a fuller emancipation of Tibetan women. Mass education in mixed schools, for example, has resulted in a female literacy rate that went from 2.5% before 1959, to 97% for males and females of the young generation (Thonsur, p.333). Wives and mothers generally work outside the home to supplement family income. One third of the CTA is comprised of female civil servants, with equal pay based on position and responsibility (TWA Survey, p. 68). As noted previously, two seats per region (for a total of six) are reserved for women in the Assembly of Tibetan People's Deputies, and there have been as many as 12 female deputies in one assembly.

Yet, for Tibetan women, the opportunity to participate in the political arena is less about sharing power with men or working for women's rights, than about contributing to the freedom struggle (TWA Survey, p.37). Indeed a majority of women see the TWA's primary goal as being a nationalist one, rather than a feminist one (TWA Survey, p. 42). In part this inclination originates from the genesis of the organization in the mass protest by women on March 12, in the wake of the Lhasa uprising. More importantly, the activist energy of the organization has been directed toward the alleged dire circumstances of sisters in Tibet – the double discrimination, sexual exploitation, rape, torture, imprisonment, forced birth control and so on (Subramanya 2004, pp. 218-242). Aside from the reports of human rights abuse in Tibet, are the accounts of problems experienced by many women in India - female foeticide and infanticide, dowry, strictures on movement, general subjugation and stigma associated with single motherhood, widowhood or divorced status (Alam 2000, pp. 176-179). Indian writers, in fact, have been effusive about the degree of gender equality observed among Tibetan refugees (Alam, 2000, p.139; Subba, 1990, p. 111).

The TWA Survey asked respondents if they felt that gender discrimination existed in their own community and, if so, whether they were seeing this in the home, in public, in the workplace, or in educational institutions. Out of 3076 questionnaires, only 303 women answered the first part of the question (55.1% said yes, 44.9% said no), and only 187 answered the second. The drop off in response rate suggests either that the level of awareness of what constitutes gender discrimination is very low or that there is relatively little discrimination to be concerned about. My own sense is that women do not feel comfortable giving a "yes" or "no" response on power

relations that are more fluid than assumed in a rigidly patriarchal society. The preoccupation with human rights abuses in Tibet and perceptions about the treatment of women in India also have the effect of trivializing gender issues for Tibetans within their exile society. Comments offered by respondents are indicative. A woman in her 60's wrote: "75% of Tibetan women are heads of household; the man is head just in name; it's the woman who is the real head." A woman in her 30s commented: "Let's not make an issue of a non-issue" (2005:45). Some women even voiced strong disagreement to inclusion of this question in the survey.

The above cursory analysis suggests that women can be expected to hold their own in a dispute, under normal circumstances. I would argue that having a role in household decision-making is an even better predictor of agency in the negotiation process. In the TWA survey, of 2426 respondents, 29% of the women believed they were the main decision makers; 43% believed it was the husband and the rest indicated parents, in-laws or others (p. 26). The survey did not offer respondents the option of saying that decisions are made jointly between husband and wife but a smaller, in-depth, follow-up survey did, with a dramatic shift in the empowerment picture. Of 25 women interviewed in Dharamsala, 44% claimed that they were the decision makers and another 24% stated that decisions were made jointly between husband and wife (p. 94). This dynamic again is quite distinct from Sampath's characterization of the lack of agency accorded to women in rural India in a husband/wife dispute:

> She is often looked upon as not capable of choosing her own course of action. Her husband exercises that power for her, or if she is separated from him, her father or any other male relation proxies for her choosing. (1991, p. 16)

On the other hand, where Tibetan couples do split up, customary practice with respect to custody can contribute to gender disparity in economic terms. As indicated already, children are given the option of which parent they want to live with, and are free to move between households. Nonetheless, most often daughters will go with the mother, and sons with the father, contrary to the outcome in the case study "Victor Mother." Although women are active in the workforce, if they are employed in lower income jobs, the daughters of a divorced couple can be doubly disadvantaged. Unless the mother remarries (which communal norms encourage), single parent daughters can grow up in a poorer household and, in turn, have inferior earning capacity as

female adults.[124] (G1) On the other hand, if the mother remarries, there can be conflicts between step-daughter and step-father, sometimes involving sexual molestation. This type of abuse is usually the result of drinking problems or, conceivably in some cases, a sense of license associated with vestiges of old world polygamy and polyandry, particularly in older settlements.[125]

Domestic violence is the abnormal case which creates inequitable circumstances, if the woman abides by communal and religious norms of forbearance and patience while the husband fails to respond to the same pressures. Incidents of spousal abuse are almost always the result of heavy drinking and, unfortunately, inebriation among men, especially on festive occasions, is not uncommon. Situational violence of this type may seem less disturbing than chronic patterns. In fact, it is of concern precisely because deterrence measures based on assumptions of a rational, sober actor are unlikely to work. In the same way, noble intentions to reform and promises made in mediation readily slip to the wayside with the next bottle. Many mediation programs in the West screen for domestic violence in recognition of the added vulnerability and bargaining weakness of victims of abuse (Morris 1997, p. 324). Some will refuse to mediate cases where spousal abuse is known to be involved, or terminate mediation if such is revealed in the course of a session. These options are not realistic in the Tibetan context because one way or the other the troubled situation has to be dealt with, while respecting the victim's face-saving needs.

The TWA survey is again instructive, however. Of 1825 respondents across all age groups and settlements in India only 3.2% said that they had experienced marital violence (p. 36). By way of very general comparison, a massive Canadian survey in 1999 found that 8% of married women and common-law partners had experienced spousal abuse in the past five years – but then, so had 7% of men (although for women victims the severity and frequency of abuse were much higher).[126] The dramatic drop of responses to this particular question in the TW Survey, however, is a red flag. In-depth, follow-up interviews later were conducted with 15 women in

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[124] The observation about lower income potential for a single-parent female came from a knowledgeable TWA representative but, in the absence of gender disaggregated data on income, it is difficult to verify how consistently the assertion may be true for women in that position.

[125] There is consensus that the practices of polyandry and polygamy are dying out in the Diaspora, but nonetheless still exist in some pockets, particularly in elderly populations (Thonsur, 2004, p. 335; Klieger, 2002, p. 144; Grent, 2002).

[126] See the report: Federal-Provincial-Territorial Ministers Responsible for the Status of Women (1999). Assessing violence against women, (pp. 13-14). [Online]. Retrieved January 16, 2008 from the World Wide Web at: http://www.swc-cfc.gc.ca/pubs/0662331664/200212_0662331664_e.pdf

Dharamsala, as a way of probing the accuracy of the 3.2% figure. In this more intimate format, 50% of the women said that they have, or someone they know has suffered domestic violence (p. 91). None of the figures should be taken at face value, however. Wording of survey questions and methodologies are very different from one study to another, making comparison of dubious value in the absence of extensive detail and analysis. The main point is that domestic violence does exist in the Tibetan community and, as everywhere, it is likely to be under-reported because of factors like shame and continuing threat (Rogers & Salem, 1987, pp. 197, 202). Losang Rabgey (2002) has reported that even among Tibetans in Canada, excessive drinking takes its toll in terms of spousal abuse. From the perspective of mediation, her comment about normative constraints sets off a warning bell:

> ..the enormous pressure to maintain family structure and the social shame of divorce often force Tibetan women who are the victims of domestic violence to continue living with emotional, psychological, and physical abuse. (p.7)

Echoes of the same can be heard in the TWA Survey which stated that many women said their husbands had drinking problems and that dependence on in-laws could force women to tolerate beatings. When asked how they countered marital violence, specific comments from female respondents included the following:

- "Accept in silence" (21-30 age group)
- "When I was beaten, I simply kept quiet in the hope of bringing peace in the family" (31-40 age group)
- "In the early years of our marriage, my husband used to beat me; I kept quiet and it automatically stopped." (51-60 age group) (p. 36).

While family, friends or neighbors may intervene or provide advice when they detect domestic violence or spousal abuse, they are inhibited from seeking appropriate legal counsel from outside, as much on account of their non-legal orientation in general, as of face-saving concerns. For the victims of abuse this trade-off of individual rights in favor of responsibility to or dependence on the collectivity (family or communal) is a heavy one, only slightly offset by the accessibility of divorce.

9.1.5   Final reflections

Rather than impose a uniform civil code, India has recognized the right of its various ethnic and religious groups to regulate matters relating to marriage, divorce, maintenance, custody and succession through their personal laws. The laws are protected by the Indian constitution to the extent that they do not contravene its fundamental principles of equality (Mansfield, 2005). The communities benefit from the validation of their ethnic or religious identity through this recognition of the right to resolve their own disputes (Mansfield, 2005, pp. 226-227). At the same time, by legitimating legal pluralism, the state assumes that the well-being of the individual in a given group is protected by group norms and systems of disputing. The assumption has been problematic for women in strongly patriarchal communitarian societies, but I would be cautious equating the Tibetan experience with theirs, despite what has been said about the incidence of domestic violence. On an informal level, Tibetans benefit from communitarian jurisprudence, understood as the freedom to regulate their affairs through what Rauch (2004) called "hidden law." Given that marriage and divorce traditionally are not viewed as legal matters, interventions following customary practice are effective precisely because the process is informal and the norms diffuse. By keeping marital disputes within the community, important shared goals of family preservation, social cohesion and communitarian harmony can be actively promoted for the ultimate well-being of all who constitute the community. Within that cultural logic, dispute resolution ethics demand an impartial approach defined as non-partisan fairness, but one that cannot be entirely neutral as to outcome.

Whether women in particular are disadvantaged by this dispute resolution approach depends on the extent of gender equity upheld in the process. In general, Tibetan women display a relaxed attitude with their men-folk, interacting easily, with few outward signs of disadvantage attributable to patriarchy. In exile, their traditional strengths have expanded through educational opportunities, equality principles laid down in the Charter of Tibetans in exile, equity provisions in the ATPD, and repeated encouragement by the Dalai Lama. They are decision-makers, income earners and in many cases act as heads of household. They wield influence in the private and public realm, even if they are slow to assume prominent leadership roles. Under normal circumstances these factors support their negotiating capacity in mediated disputes and equity safeguards are less salient than they would be where more systemic gender discrimination is a concern. The exception arises if women are in abusive relationships and if they are counseled to

endure as part of communal norms to preserve family, and/or religious norms to practice patience.

Although domestic violence is not as widespread as elsewhere, women in the TWA are well aware of its occurrence and are frequently involved in attempting to bring pressure to bear on the husband to change his behavior, often with the weight of the CTA Representative behind them. In the absence of legislation or some understanding of legal prohibitions on spousal abuse, however, husbands can challenge any such intervention in private family affairs. If relevant legislation were drawn up and actively publicized, both victim and offender gradually would come to recognize spousal abuse as something that cannot be tolerated. Even if women would not readily take their private issues into the public realm (for example to the LJC or SJC), and even if legislation cannot be enforced, a legal framing of the problem would have important deterrent effect. This expressive use of law would help to create a new basis for shame as an external public sanction, as well as for guilt as a sanction that offenders impose on themselves once the new norm is internalized.

Unfortunately, there are few women in local level governance structures where such issues could be taken up in a more targeted fashion. Unlike the ATPD, local Tibetan assemblies do not have reserved seats for women. Consequently, of the 11 to 35 members per local assembly, only one or two are women in most cases, and even these often serve as mere tokens (TWA Survey, p.48). There have been few female camp leaders and even fewer female CTA Representatives - both positions being central to dispute resolution in the settlements. Incumbents try to be judicious in their interventions, but understanding the power dynamics in cases involving domestic violence requires a greater degree of sensitization to the woman's position and a more aggressive moral commitment to providing the necessary safeguards.

9.2   Discord over land succession

Like marriage, divorce, custody and other family matters, succession also falls under personal laws in the Indian constitution, with real property being a significant element of inheritance. In traditional Tibet, immovable property succession – both testate and intestate - took a number of different forms given the variety of marriage arrangements, entitlements to land tenure and

associated occupations. French (1995) has indicated that inheritance patterns did allow women to receive real and personal property (p. 32) but that "the preference for inheritance of the main family lands by a male and for continuing ownership of the land by someone within the descent group of the father was very strong throughout Tibet" (p. 174). In exile it is the CTA and the settlement administration that provides landholding continuity, rather than the individual household unit. As will be elaborated more fully under land disputes, Indian states provided leased land for agricultural settlements so that the refugees could rehabilitate on a sustainable basis.

This discussion draws on interviews in the two settlements of Bylakuppe in Karnataka State. Together they are the largest and oldest agricultural settlements, the first being Lugsung Samdupling which became the model for others established in subsequent years. When the first generation of refugees went to Bylakuppe in 1960, each household got a small house and three acres for six members, not including children under the age of 18; a second settlement, Dickyi Larsoe, was established in 1969 on a similar basis. A list is kept of those reaching the age of 18, as a way of tracking future needs and anticipating succession candidates. Once someone dies or if a house is vacated via emigration, the CTA Representative takes the property back and re-assigns it to someone else. Succession is a purely internal, executive decision on the part of the CTA, regulated by the "Kashak" or Cabinet, and implemented through the Representative.

While a dispute concerning succession of land allocations in agricultural settlements does not necessarily involve mediation, nor is it necessarily intra-familial, here I draw attention to several closely related issues:

- The importance of **perceived impartiality and neutrality** in the CTA Representative's role as decision-maker cum arbitrator;
- **Power relations** in communitarian context; and
- Scope for social tensions when **centralized rules are not responsive to local needs** or when they are inconsistent with diffuse local norms.

The issue of succession is important because the original allocations will be coming up for review more and more frequently as the older generation dies out in the agricultural settlements. Despite several inquiries on what constitutes the re-allocation rules, I was able to get only a very

general statement from authorities, but one that I was given to understand provided a clear decision framework. Two basic rules prevail:

1) Construction is not allowed on land allocations; and

2) If anyone in the family already owns land then he/she is not eligible to take over the land of the last deceased family member.

9.2.1 Rule flux

My casual tour through various camps of the two Tibetan settlements in Bylakuppe promptly revealed that the first rule is at odds with what seems to have become common practice. A good deal of construction was taking place in fields reportedly dedicated to cultivation. My observation was subsequently confirmed by a settlement resident:

> Those who want to build give a lot of cash to those holding land, in exchange for being allowed to construct, even though this is against the rules of the settlement. I don't know why the Settlement Office is not reacting to this infraction. Over the past two or three years I see that whole stretches that were fields now have double-storied houses. (J5)

A form of meta norm can be seen in the respondent's disapproving commentary on the negligence of officials to fulfill their enforcement responsibility with respect to the no-construction rule. Yet, there are exigencies that explain the practice. With growing families over the years, population pressures on the land have increased, and the old agricultural and animal husbandry practices have failed to keep apace in generating enough family income. This circumstance has led to high levels of seasonal out-migration for sweater-selling and a disinclination among the younger generation to farm the land. The CTA's Development Plan 2004-2007 has recognized these emergent patterns as problematic for the communal vitality needed for economic sustainability, as well as for cultural and political solidarity.[127] If, at a local level, seasonal residential needs have begun to supplant agricultural field needs, the increased off-farm income also has tempted families to invest in expanded housing. For their part, the large monastic complexes in Bylakuppe have been receiving a steady stream of third wave, new arrivals from Tibet, and have had to build over most of their agricultural fields to accommodate them (M2). Although monasteries petitioned government authorities for approval to construct,

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[127] Planning Council, CTA, Integrated Development Plan 2004-2007 (p.8). [Online] Retrieved February 12, 2007 from the World Wide Web at: http://www.tibet.net/publication/pc/download/IDP3%20rationale.pdf

onlookers may perceive the result as a rule violation rather than a rule exemption. These factors help to explain why there would be a dissonance between old rules and rational choices to disregard them in the absence of punitive repercussions.

A communitarian jurisprudence, as described by Selznick (2006), would be one in which law, including administrative regulation, is "responsive to changing circumstances and to the needs of the community" (p. 29). Tibetans in exile constitute a communitarian entity within India, defined by their shared ethnic and religious values, shared destiny and shared acquiescence to rules of governance. In that sense the CTA can be seen as the source of communitarian law for Tibetans in exile, but also of centralized (latent state) law for the dispersed settlements. The decentralized settlements are themselves communitarian entities additionally defined by proximate relations and regular, multi-faceted social interactions. The disjuncture between the centralized rules of the CTA as latent state and local exigencies in relation to land allotments not only impairs rule compliance, but also leaves room for normative ambivalence, as demonstrated by those who construct versus those who disapprove of the lack of enforcement of the rule not to construct. The result is an increase of social tensions.

The second rule – that if anyone in the family already owns land then he/she is not eligible to take over the land of the last deceased family member –also has encountered flux, destabilizing normative expectations. The following case of family dispute over succession, described by another settlement resident, raises a number of issues that entwine with perceptions of rules that do not have local provenance:

Case # 3: It is said that….

It seems like the rules keep changing from the government side and that creates confusion and dispute. If my father passes on, the land goes to the eldest son or daughter unless they already have land. If I die with no children, then the land goes to a family with many children or someone who needs it most. But there was a case in my camp - a family with four kids, only the youngest one still at home. The father dies and the widow insists that the youngest child who lives with her is supposed to get the land according to the new rules. But the eldest daughter who is married and lives separately with her husband is claiming she has the right to it, even though she is quite well off and even has a son in America. The Settlement Officer decided that it should go to the eldest daughter and now

it's terrible… we all hear the daily fights between mother and this daughter because she won't give up the land. I don't know...but in my camp…it is said that…some people are thinking that maybe the camp leader was partial or maybe it was the Settlement Officer who was not being right. Anyway mother and daughter are neighbors and now mother just wants to keep shouting and picking fights with the daughter over small matters. (J3)

This commentary gives no information about the process that might or might not be used if someone contests a re-allocation decision. It does illustrate, however, that the decision-maker cum arbitrator has to be seen as neutral and impartial for his decision to be respected. Gossip is not only something that stirs up idle trouble. In a close-knit community it is an effective conveyor of information about who is in breach of norms and who is not, who can be trusted, who not. If the integrity of a camp leader or settlement officer is questioned, it affects the extent to which disputants will feel confident seeking out his assistance to settle a dispute. If the mother wanted to resolve issues with her daughter, for example, the only way she could bypass the Settlement Officer would be to approach the Local Justice Commissioner. As will be discussed later, the Local Justice Commissioner has not entertained a single case to date. This too is common knowledge, which in itself discourages attempting recourse through that avenue. The mother might write a letter to the Department of Home contesting the re-allocation decision itself, but like most women of her generation in this farming community she is probably not literate. Finally, if she wanted to challenge the comportment of the CTA Representative, she could take her grievance against him direct to the Tibetan Supreme Justice Commission in faraway Dharamsala. The cost of travel and lodgings and the unfamiliarity of the whole proposition, however, make this alternative extremely remote. In short, if all these assumptions are correct, the deck is stacked against the mother. She is reduced to "shouting and picking fights with the daughter over small matters" - much to the detriment of communal peace.

The respondent's opinion on this dispute derived from his feeling that the needier party – namely, the mother and youngest daughter - should have received a fairer hearing. An important component of the Settlement Officer's mandate is to see that the most vulnerable receive special consideration and subsidies designed to equalize economic and social welfare within the community. Camp leaders, often in concert with the TWA, are the ones who draw up the initial list of needy persons in their camp because they have intimate knowledge of the families in their village. As several respondents have pointed out, neediness changes all the time. It happens not

infrequently that someone who was previously poor becomes rich but continues to draw subsidy. The reverse also occurs - the formerly well to do can be down on their luck but not be recognized as needing assistance. If there is no review of the basis for subsidy then the equalizing concept is subverted. Indeed, according to another respondent, the Dalai Lama made a speech in nearby Hunsur in 2004, in which he emphasized repeatedly that subsidy needed to go to the poor - contrary to what had happened just the year before in Orissa where the "needy list" was headed by the wealthiest family in the settlement.

I do not mean to suggest that there was wrongdoing on the part of either camp leader or settlement officer in this case. I have absolutely no evidence to that effect. What I am saying is that because these positions have power and because effective intervention in disputes requires a level of trust, incumbents have to be seen to be honest and transparent in their processes. These are social expectations of the role and ethical norms of the public service. Repeated breach of such norms erodes the mutual interpersonal trust on which communal morality and solidarity are founded. Unfortunately, the above case does not appear to be an isolated one. Another respondent offered a similar reflection on the disempowering effect of not knowing what the grounds for decision-making were in different instances.

Case # 4: What can a poor man do?

Five different cases from Bylakuppe and Hunsur have come to the desk of the Local Justice Commissioner but were rejected by him. These were not criminal or land cases. The cases concerned properties within the settlements, e.g. someone died, and there was no one in the family to take over, so it concerned a re-allocation of property on the basis of known rules and regulations. The cases involved some kind of mis-allocation. One or two years ago, in 2 or 3 cases people approached the Settlement Officer but he said he couldn't handle them, take it to the Local Justice Commission. When they went to the Local Justice Commissioner, he said he couldn't handle the case but gave no clear explanation why. It is quite well known in the settlement that no cases have been dealt with by the LJC. The disputants were uneducated and had no resources to handle the problem themselves. So the cases were left unsettled. What can a poor man do? (J2)

I cannot say what proportion of succession claims goes uncontested - or is satisfactorily dealt with once contested - but it is not difficult to see a thread running through the stories. It is not

only that issues are side-swept by passing of the buck. Three concerns are evident: 1) that rules are invoked to justify decisions; 2) that the rules themselves are not necessarily clear or transparent; and 3) that despite the provision of several levels of recourse for bringing forward grievances, there may be a perception that access to these levels is blocked for reasons unknown. Earlier I noted that the "Kashak" or Cabinet of Ministers in Dharamsala regulates the re-allocation of available land, but that would be on the level of legislation and possibly ratification of recommendations coming from the CTA Representative in the settlement. In other words, in the absence of transparency, doubts linger, gossip proliferates. The reiteration that "rules exist" or "Dharamsala decides" can seem like a smoke screen for decisions based on other considerations. The following additional comment suggests that land succession has become a troubled area needing not only more transparent process, but also regulatory overhaul if family and communitarian harmony are to prevail:

> As far as land transfer is concern, in Hunsur, even if people return the land, nobody is interest. But in Bylakuppe, all officer who is retiring want the land and house for old age but nobody is willing to transfer …..Sometimes if all family members leave for USA or Tibet then a big dispute do happen but there is no specific rule and law. Whoever is more violent and powerful do take away the land. In future I don't know. (J4)

9.2.2   New rules, old norms

Fifteen months after collecting these cases in the field, I contacted one of the respondents whose update on the succession issue confirmed my hypothesis that rules had to catch up with customary practices developing on the ground, and also that there were other issues in the wings.[128] Reportedly, a new set of rules have been declared by the CTA and a committee has been struck to look at each village, house by house, to determine the level of vacancy. If a house is vacant, the adjoining land will be assigned to the next qualified person based on six criteria:

1)   Other things being equal, the rule that has primacy is that priority goes to the family with the most children - more or less as in the past;

2)   A person who has worked for the CTA for many years and has no house for retirement will be entitled to one - a new rule;

3)   People cannot build on agricultural land – a reaffirmation of the old rule;

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[128] Personal communication, August 14, 2007.

4) People cannot sell the right to have business conducted on their property – a reaffirmation of an old rule;

5) In general, inside the villages, everyone gets a house plus 8 gundhas land (roughly 300 square feet) on which they can construct for an expanding family; children get an additional 20 gundhas agricultural land and elders get 32 gundhas – on which building construction is not allowed;

6) Someone who is old and has no land should be considered for an allotment.

Only time will tell how much competition there might be between the rules, should house and land resources become too scarce to accommodate all those qualified. In the meantime the encounter of old and new rules generates its own social tensions – an example being the reaffirmation of rules #3 and #4 regarding construction and business. Those who have already made deals and/or constructed buildings on their agricultural land allotment were in breach of the old rule but maintain their arrangements, a tacit exoneration that ends up as unfair advantage. Those who abided by the old rules are now expected to commit to obeying the same old "new" rules, in essence underwriting their own inequality. The resulting perception about the arbitrariness of centralized rulemaking relative to local realities creates normative ambivalence which is a weak support to compliance. In short, in the absence of local control in this sensitive area, adaptive habits and rule centralism will frustrate each other until a new balance is reached. Meanwhile, families have to make strategic choices about housing and income generation, within the philosophy of self-reliance promoted by Dharamsala, but without the commensurate autonomy. Even where local input is considered by Dharamsala, settlements which have no local assembly (such as the two in Bylakuppe) probably cannot easily organize resident input considering the vested interests involved.

To the extent that rules serve needs other than those locally manifest, there also can be normative resistance or friction rather than support. Rule #2 concerning CTA retirees, for example, has the potential to disrupt communal sensibilities. From a Dharamsala perspective the retirement needs of someone who has devoted decades of service to the exile government, at modest pay, has a legitimate claim to consideration for property allotment. The rotation system for CTA Representatives appointed by Dharamsala means that incumbents have no fixed home base; retirement in Dharamsala is not an option given the town's over-crowded conditions. Independent purchase of property is also not an option given their non-citizen status. It is thus

reasonable that the CTA would seek to find place for retirees on secured land in the agricultural settlements, particularly if there are vacancies. According to the respondent who provided this update on succession rules, however, there already may be a problematic dissonance between new rule #2 and old norms of reciprocity and cooperation that have evolved among locals:

> In the village if there is work to be done everyone has to work - except the CTA retirees. Even if they will contribute payments, this will create injustice in the village and ruin our social unity. Bringing in this kind of inequality is not good….why should one person be exempt and another not? (C7)

I cannot judge whether others share this viewpoint but I am reminded of Sheleff's argument that in small scale societies it is not only law or morality that create solidarity, but social life itself:

> Social life demanded an interlocking participation in the performance of regular rituals….annual cyclical ceremonies, occasional commemorations of the life-cycle and ongoing participation in shared economic activities, such as harvesting or fishing expeditions, as well as constant physical presence entailing further interactions into the foreseeable future of people linked together in a network of contacts described by Max Gluckman as 'multiplex.' (1999, p. 292)

Communitarians such as Selznick (2002) similarly have emphasized that the cooperation and commitment needed to sustain community are rooted in the multiplex relations of everyday life. In Bylakuppe, as in most of the settlements in rural areas, activities follow the cycles of the growing season, with work groups often sharing certain tasks. As indicated previously, some camps even have instituted fines for shirking on communal work, which includes preparation for the annual calendar of commemorative events, ceremonies and rituals that reinforce local solidarity on a moral level. The events themselves have the effect of reaffirming ethnic, religious and political exile identity – for example, Tibetan New Year, Lord Buddha's birthday, the Dalai Lama's birthday, National Uprising Day, birthday of the disappeared Panchen Lama, or Anniversary of the Dalai Lama's receipt of the Nobel Peace Prize. Such events are accompanied by myriad activities - whether demonstration marches, celebratory concerts, ritual masked dances, or day-long picnicking – which provide rich occasion for social interaction. Often the CTA Representative's participation in such events is compartmentalized and socially distancing – for example, in terms of formal seating or being limited to delivery of speeches conveying messages from the Dalai Lama or Dharamsala administration. Thus, if they have not been locally elected, CTA Representatives retiring in these communities may have little connection with

everyday life and workaday norms. Their former authority status, in fact, risks distancing them from their neighbors, unless new ways of expressing reciprocity and cooperation evolve.

9.2.3 Final reflections

Admittedly, the latter reflections are speculative, based as they are on one informant's perception of the updated rules and local response. However, I argue that they are reasonable suppositions, given the picture that emerged from several independent descriptions prior to the change of rules concerning land re-allocation. In those interviews, the subject of succession was not prompted but arose spontaneously, in response to a very general question: Could you describe for us any dispute/quarrel that you or someone you know has had over land, family, business or other issues? The respondents themselves were what I call "casual encounters" – that is settlement residents, met in the course of my fieldwork, who were willing to sit down and chat. Though not random sampling in the statistical sense, they were untargeted interviews, unlike those with CTA Representatives, camp leaders, government or NGO officials and monastic heads. Their perceptions need not even be accurate representations of the government's intent or what is actually taking place because the issues ultimately are about perceived justice.

Where the CTA Representative's resolution efforts in cases of marital disputes evidenced a culture-specific logic of neutrality as to outcome, the discussion on succession drew attention to more universal understandings of neutrality as non-partisan fairness. Because land succession falls under the CTA Representative's administrative portfolio, it is not confidentiality or party self-determination that are the focus of interest, but rather transparency and inclusiveness in a process of vital importance within and between families. Yet, because the incumbent wears both hats – and indeed often a third one as Local Justice Commissioner (although that is not the case in Bylakuppe) – there are cross-over effects between roles. The Bylakuppe reports suggest that a perceived lack of fairness in succession decisions, combined with the disempowerment of rule obscurity or the selective justice of rule flux, can end up jeopardizing public confidence in the dispute resolution role as well. In that sense there is also a risk of eroding communitarian social cohesion at the local level, even if cohesion remains strong at the level of imagined community across the scattered settlements in India, Nepal, and Bhutan. As observed by Fowler (1995), any

community is fraught with paradox – which is precisely why he has argued for "existential watchfulness" against structures and attitudes that compromise the legitimacy of the messy disagreements intrinsic to politics (pp. 93-94).

The key point to take away from this section is one made by Witteveen in relation to responsive law – namely, that interactivism is important wherever "local knowledge, power relationships and gradual evolutionary change are at issue" (2006, p. 240). The settlements in Bylakuppe have made a choice not to elect their own CTA Representative and not to create a local assembly. If implemented, these Tibetan Charter provisions could ensure local accountability for individual succession decisions. They also could provide a focus and a process for the negotiation of varying local interests in relation to equally legitimate central government needs. The enhanced transparency and inclusiveness would attenuate the difficulties inherent in rule change, and better rationalize the required normative re-orientation.

X   INTERPERSONAL CONFLICTS

Where disputes over marital or succession issues focused on areas outside the immediate purview, or at least jurisdictional interest of Indian law, interpersonal conflicts can graze law and order issues that potentially are of direct concern to Indian authorities. This section considers cases of disputing that involve misdemeanor, as a test of communitarian arguments that the maintenance of law and order cannot be left entirely to centralized government law and its coercive enforcement mechanisms. The argument is based on three main premises:

- That a **preference for pro-social behavior precedes legal regulation**, in as much as shared values and moral outlooks are intrinsic to the concept of a cohesive community;

- That, as emphasized by Etzioni (2000a), "the more a society can rely on shared norms as its basis for social order, **the lower the conflict between order and autonomy**" (p. 220). His contention has been that the socially embedded individual responds better to the community's moral voice than to alienating forms of compliance;

- That, **where there is deviation from behavioral norms**, as expressed by Lehman (2000) "**informal, persuasive control** is a surer guide to identifying and complying with shared values than officially sanctioned measures, whether they are **coercive, utilitarian, or even 'pure' normative**" (p. xxiii). As an adaptation of Lehman's statement, I argue that CTA Representatives are effective because they bring all three forms of sanction to bear on interpersonal disputes, albeit through informal, persuasive methods rooted in the cultural reality of Tibetans in exile.

10.1   Toward pro-social behavior

The CTA Representative prepares the ground for law and order in the settlements by taking every appropriate opportunity to crystallize the moral voice of the Dalai Lama in ways that prioritize harmony. This involves distilling the practical morality of Buddhism as pure norm for the situation at hand. As observed also by Childs (2005), common statements such as "We Tibetans believe…" or "We Tibetans are Buddhist, so therefore…" are reflective of widely recognized norms of thought and behavior. Childs' interest was in the disjuncture between cultural ideals and individual actions, but I argue that these kinds of statements are active reminders that attempt to bring behavior back in line with values that are confessedly shared.

Similarly, the invoking of homeland aspirations in public speeches serves to redirect preoccupations from minor issues to "the main reason we are here as refugees." This type of utilitarian appeal emphasizes the interdependence of individuals and the communal cause that constitutes them. Another form of utilitarian appeal centers on the repercussions of impulsive behaviors with respect to Indian neighbors. For the sake of maximizing the collectivity's security, individuals should suppress any impulse to violence and refrain from any criminal activity that could reflect badly on the community as a whole. These references are overt in public addresses. In dispute resolution processes they often are tacit, or implicit in small phrases or attitudes that would be difficult for outsiders to discern without an understanding of the non-rational norms underpinning the utilitarian ones.

In addition to the pure norms provided by Buddhism, and the utilitarian norms of refugee existence, the CTA Representative's toolkit of persuasive techniques includes coercion via the threat of taking a case to Indian authorities. In a previous chapter I noted a number of other coercive measures that the CTA could take to punish deviant behavior – such as denial of the right to vote in Tibetan elections, or of papers required by Indian authorities. Frechette (2006) also has referred to the expulsion from the settlements of Tibetans deemed to have broken the law (p. 130). Although I do not doubt that such extreme measures have been deployed in isolated cases, I have not encountered one myself, at least not in the realm of interpersonal conflict. Dispute resolution as a mechanism supporting communitarian law and order focuses on restitution and reconciliation, rather than punishment. At worst, there may be house arrests and the imposition of societal jobs or manual labor for a short period, but the goal is to restore the mutual interpersonal trust needed for community survival.

That a communitarian model of law and order has been effective in the settlements can be seen in the reduced incidence of interpersonal conflicts and criminality over the years, as reported by the Secretary of the Department of Home and CTA Representatives interviewed.[129] The Settlement Officer for Tibetan Khampa Industrial Society, for example, described the belligerent temperament in the early years of this Khampa dominated community, today numbering roughly

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[129] Secretary of the Tibetan Department of Home. (personal communication, November 2, 2005). The cases in this section were drawn from interviews with the Welfare Officer for Dharamsala and the Settlement Officers for Bir Tibetan Society, Tibetan Khampa Industrial Society and Tibetan Industrial Rehabilitation Society – all in the Kangra District of Himachal Pradesh State. The latter three are small sized agro-industrial settlements with from 800 to 2000 residents each.

2000. Khampas were accustomed to more isolated, nomadic living conditions and had no tradition for working things out under the cramped conditions in which they found themselves as refugees. From 1978 to 1995, he estimated that there were 10-12 fights a year, often involving knives and often provoked by very little other than drunken aggressiveness. Demoralized conditions, forced idleness, and a dearth of food brought many to drinking alcohol, especially the ubiquitous, home-made "chang" and "arak." Home-made liquor was a source of income for many Tibetan families struggling to survive at that time. They found a ready market niche among local Indians, much to the protest of Indian wives. The general situation invited harassment by local Indian police and the community responded by prohibiting the production of "chang" and "arak," albeit with only sporadically successful outcomes. Even nowadays, this respondent explained, when building foundations are being laid, old bottles of liquor are sometimes found, from the days when they were buried in the ground to escape police detection.

Today, he confirmed, law and order in his community has become much more manageable. Only one or two families make liquor and perhaps 2% of the population imbibes. In the last five years there were only 2 to 3 cases of fighting, and 5-6 cases of disputes within or between families, for a total of not more than 10. People are more educated and learning not to get physical in disputes. This is particularly true of the younger generation who also feel less regionally affiliated, that having been a territorially based loyalty that made for feisty, identity-spurred disputes. According to this respondent, it is the 500 Rupee rule, introduced around 1972, which finally turned the situation around: "anyone who picks a fight has to pay 500 Rupees just for coming to the Settlement Office, plus a fine once guilt has been established." Even if only one party in the fight approaches the Settlement Office, both parties involved are subject to the initial fine, and to the subsequent one levied at the time of judgment, typically between 500 and 5,000 Rupees depending on the severity of the case. The payment system is only to discourage fighting and weapon use. Otherwise there is no cost for placing a grievance before the Settlement Officer. Today the sum may not appear significant, but in the early days it was a substantial negative sanction with powerful deterrent effect. Not only did it check open fighting, it also encouraged disputants to work out compromises on their own. Yet, the regulatory device could not operate on its own without the normatively familiar option of submitting the dispute to an intervention process in the first place. In other words, as also observed by Sampath (1991), submitting to dispute resolution already represents a choice of values, a preference for conciliation over entrenchment of conflict (p.44).

If anti-social behaviors require more than invocations of Buddhist morality and non-violence for the sake of homeland solidarity, they also require more than rules. As expressed by the same respondent, the third party intervener himself needs determination and an ability to convince parties of the right action: "If the mediator is too flexible, parties will take advantage to press their own version of the case." As with marital discord, the commitment to seeing a dispute through to its conclusion can absorb an inordinate amount of the intervener's time. This Settlement Officer is one of the few who have been elected to the position of CTA Representative. With 25 years of experience in the position, he still feels that disputes are a challenge requiring close listening, much discussion and informed judgment based on facts revealed through investigation. Several settlements are in proximity of each other in this rural Kangra Valley setting, which means that more than one settlement can be involved in a given dispute, with a multiplier effect in terms of consultative time and energy required. The following case is indicative:

Case # 5:   Lick the wounds and let it go

It began as a petty dispute between two quarrelsome older men in their 60s, over a few hundred Rupees in a business deal. They were from two different settlements so both Settlement Officers had to get involved. In spite of five hearings and cross-examinations, the discussions did not arrive at a clear picture of the guilt or judgment needed. An ambiguous case like this could be dealt with in one of two ways: 1) split responsibility for the money owed evenly between the parties; 2) throw dice or draw straws to determine the case – it's almost as good as consulting an oracle. That would have been simple. But families on both sides got involved. It became more complicated when fighting broke out with injury to one party and later retaliation by the other. Basically, both sides made allegations, both sides told lies, both engaged in fighting and both sustained injuries. In this kind of case, declaring one a winner and the other a loser would leave angry feelings in both communities. The Settlement Officers consulted and decided to let the case die. They told the parties to look after their wounds and listen to the elders who were trying to smooth over the ruffled feelings in each community. They also made it clear to both parties that anyone starting up the fight again would be judged the one at fault. It was really not about the amount of money involved. It was the insult and injury of the whole

mess. The outcome was satisfactory because there was no further fighting, relations were restored. (D6)

Now eight years later both disputants are dead and the philosophical perspectives of Buddhism can be felt in the Settlement Officer's final reflection on the case: "In the grand scheme of things, why get into such a scuffle over nothing?" The overall feuding dynamic is reminiscent of Ekvall's description of folk-laws among nomadic pastoralists in Tibet, which included retaliation in kind by direct action, followed eventually by mediated indemnification (1964, p. 1123-4). Ekvall's research focused mainly on Amdo, but included southern areas adjacent to Kham. He stated that: "Anti-social behavior was mostly controlled or dealt with by reprisal: contained by the process of mediation within limits set by society, in the interest of its own survival" (p. 1124). Given that both the Settlement Officer in this case and the disputants were of the older generation born in Kham, it is reasonable to assume that the general pattern, if not the specifics, remained as cultural residual. Similarly, the reference to using dice is an interesting throw-back to practices described by French (1995) in villages of Southwestern Tibet. Dice-throwing was a legal device resorted to where there was not enough evidence for a satisfactory resolution (p.134). It was accepted as an impartial form of decision-making within the context of conciliation or even a court proceeding – the chance outcome being taken as an expression of karmic forces. Resort to the casting of lots or oracles also sometimes helped in the discovery process, although requiring substantiation by other evidence (p.130). Although there was no indemnification in this case, the durability of the outcome (cease in fighting) relied on social pressures applied by respected elders. Thus, even the "500 Rupee rule" and the submission to dispute resolution are supported by communal consensus as to process for dealing with disruptions of the peace, and social expectations of the follow-through.

The next case, again offered by the same respondent, was of more recent vintage but displayed a number of similarities, such as complications with family involvement, collusive lying and the abetting of retaliatory behavior. This time indemnification was part of the final agreement.

Case # 6:   Just a stray broken pipe

This one happened about two years ago and involved not two but three communities. It started as a drunken brawl after a party. The fight turned ugly with injury from a sharp object. A third party tried to intervene and also got hurt in the process. A doctor was

called in to look after the wounded parties, who claimed that the injuries came from a knife. The accused and his family maintained that the injuries were not caused by a knife but by a stray piece of broken pipe. The three Settlement Officers asked the doctor about the nature of the wounds and he advised that such a wound could only be caused by a knife. This information exposed the family of the accused as liars, a fact that was taken into account in the final judgment. But it got a bit more complicated than that. The wounded man retaliated a day after the fight, by damaging the house and property of the accused. Still, after two whole days of discussions and calling of witnesses, we fined both sides 500 Rupees. Then we ordered the family of the accused to pay reparation of 6000 Rupees to the family of the injured man and to pay for the medical expenses amounting to 1200 Rupees to the man who tried to break up the fight. We also ordered the wounded man who retaliated to pay 2000 Rupees reparation for the damage caused to the other's house and property. (D6)

As suggested by Abel (1973), in informal processes of dispute resolution, the burden of proof is diffusely shared. Several parties, including the disputants, relatives and bystanders can enter the contest to convince the intervener of their version of events. Moreover, he stated that: "The value of truthfulness is only one among a number of competing influences, and may bow before personal loyalty to one disputant or spite to another, the desire to curry favor or repay a debt" (p. 277). Although the Settlement Officers' role is not constrained by rules about the reception of evidence or standards of admissibility typical of a more formal process, common sense investigation and inferences produced a version of the truth that both parties eventually accepted. For the family of the accused, conceding that a knife was involved would have implied a habit of carrying a knife or a level of intentionality suggestive of assault. Either or both factors would have cast the accused in a more negative light, given communal strictures against the carrying of weapons and violence. The impulsiveness of using a stray piece of broken pipe in defensive action would have attenuated his guilt, thus for the family of the accused, objective truth had to be relegated to the back seat. However, the doctor's opinion, possibly with reports from witnesses, undermined the family's strategy and brought it around to something akin to what French described as "a jurisprudence of truth." That there was consensus as to the true facts of the case can be deduced from the acceptance by all of the indemnification distribution. Just as the altercation extended beyond the original pair, so too the attribution of guilt and indemnification extended beyond the individuals to the families. With the involvement of all

three Settlement Officers, there clearly was a concern to contain any further taking of sides and reprisals that would jeopardize harmony within and between the settlements involved. Aside from the fairness principle behind reparations ordered for both parties for their respective wrong-doing, the reciprocity saved face for both, making it easier to accept the solution.

10.2   No police needed

Notable in both cases was the absence of intervention by Indian police. The settlements are self-contained and, to the extent that problems do not spill outside those boundaries, there is a measure of efficiency for Indian authorities in leaving some law and order issues to the community's own resources and culturally appropriate processes. Even without language constraints, Indian police cannot be expected to embark on the lengthy discussions that were needed to bring parties around to reconciliation. Moreover, the outcomes sought were not legally framed because there was no independent institution to satisfy, and certainly not at the expense of the socially framed outcome of viable continuing relations. The number of substantive issues entertained necessarily broadened so that all aspects of the case could be resolved, not just the original injury with a broken pipe. Even if the disputants were versed in court process and had the finances, the tightly edited version of events, narrowing of issues and restricted involvement of third parties proper to that forum likely would have delivered a pinched remedy, adding insult to injury.

Although there are many cases where an altercation begins and ends with two people, the tendency for a multiplicity of parties to get involved in a law and order dispute reflects the close-knit nature of the community. For better or worse, the embroilment of bystanders and relatives is an unconscious enactment of community, a normative choice to engage rather than remain aloof from the fate of the individuals that make up the collectivity. The CTA Representative's third party intervener role is critical for dealing with problems in their context, rather than in a removed institutional setting that operates on abstract principles. He has to balance emotions, egos, interests, needs, and consequences in the immediacy of their occurrence, as demonstrated in the following case offered by the CTA Representative for the Tibetan Industrial Society at Chauntra:

Case # 7:   All one community

After the mid-day meal, the Parent-Teacher Association (PTA) handed out fruits to students at the Central School for Tibetans. One youngster took his banana home to offer it as a gift to his father. It turns out the banana was partially rotten. Outraged, the father rushed to the school's Headmaster in protest. A teacher standing nearby tried to lighten the exchange by saying that the banana just had a small over-ripe spot. The father punched him. The PTA, teaching staff and headmaster called the Settlement Officer, who arrived promptly with the President of the Local Assembly. Emotions were running high all around. The teachers refused to teach until the problem was sorted out. The Settlement Officer kept a cool head with kind heart. He first emphasized that the incident was an accident, not intentional and that they were all one community. He would decide the case within a few days and asked that the school be kept open. After that, he approached the irate father, tried to calm him down and explained the inappropriateness of his behavior. The Settlement Officer stressed that failure to arrive at an agreement would result in his abandoning the case and handing it over to the local police for action. The injured party was known to be a kind-hearted teacher, and a lot of blood was spilt unjustly. The father eventually agreed to compensate the teacher. Next, the Settlement Officer spoke to the teacher to placate that side. Finally, all reconvened - the Vice President of the Local Assembly, the teacher, the Headmaster, the office secretary and the irate father –for a ceremonial closure, complete with signed agreement and general handshaking. The father presented the teacher with a "Katak" and 1000 Rupees compensation. From that day onward the disputants became friends. (D5)

In this case, a relatively innocent situation went into a tail-spin that needed rapid, sensitive intervention. A sole party was clearly at fault, but dragging him to the police station would have been like using a sledgehammer to swat a fly (even though the threat of doing it was useful). In these small communities, work, school, commercial and social relations are multiplex, not compartmentalized. Although there is no further mention of the child, he would carry the stigma everyday at school unless the situation was resolved amicably. The Settlement Officer is seen here in his role as norm entrepreneur rather than investigator – reiterating norms of appropriate behavior, kindliness, and cooperation for the restoration of group harmony. The choice of words

reflected the frequent counsel of the Dalai Lama and Samdhong Rinpoche and, being recognizable as such, carried added weight. Moreover, because there were so many people reacting and taking sides, the Settlement Officer felt that his own comportment – cool head, warm heart and cooperative spirit - had to project the way in which the community should comport itself. By involving a member of the Local Assembly, he also could exert more pressure for conformity to social norms. The case is less about an act of judgment than about a course of future conduct, urged through caucusing with both sides until there is readiness for the gestures of reconciliation for the sake of community.

If the settlements are fairly peaceful now, it still could be argued that Indian law enforcement would have achieved the same level of order as the normatively directive community-based methods. After more than forty years, people would have adapted to the dominant legal norms of the host country, learning from the punishment inflicted on deviant behaviors like assault with weapons or willful property damage. What makes that hypothesis less plausible is that mediation through elders or panchayats is in fact the norm in rural India, where some 75% of the population resides. Confirming literature to that effect, an empirical study in Northern India by Wall, Arunachalam and Callister (2003) concluded that disputes arising in a village - including domestic violence, business problems, land disputes, unpaid debts and violence outside the family - very seldom rely upon the police or the courts (p. 5). If the frictions cannot be tolerated by the community or managed by the disputants, villagers take the case to a respected elder or to the panchayat (panel of five persons), both being known entities who understand the community history and dynamic. Where the former uses caucusing, persuasion and a variety of forceful pressure tactics, the latter is an open, pseudo legal institution that operates in a more inquisitorial mode and has the power to dictate terms if it so chooses (p. 6). The more public the process, the less need for written agreements because the attending community implicitly monitors the follow-through. Dispute settlement by the CTA Representative is very consistent with these traditional rural patterns, falling somewhere between the two in terms of the extent of authority and flexibility of tactics.

Where Indians are involved, all CTA Representatives were emphatic that the case would immediately be turned over to the Indian police. Yet, even here, there are situations in which Indians themselves prefer to deal with the Tibetans rather than their own authorities. The following is a simple, typical case:

Case # 8:   Indian brother

An Indian taxi driver accidentally hit a Tibetan pedestrian. The Settlement Officer called the owner of the taxi, who admitted his mistake and agreed to pay the medical expenses of the injured pedestrian and some compensation, the total amounting to about 6000 Rupees. The agreement was not spontaneous of course. The Settlement Officer had to coax it with threats that he would take the case to the local police if cooperation was not forthcoming. Eventually both parties signed a document sealing the agreement. Although the Indian party did eventually pay up, it took almost a week for the case to settle. Sometimes the Indian taxi driver tried to run away and the injured man's family hunted him down, all the while abiding by the Settlement Officer's injunction: "Don't fight with the Indian brother because we live in their land and have to tolerate." (D5)

The Settlement Officer concerned placed great importance on fostering constructive relations with "Indian brothers" - and for good reason. Not only is this emphasized continually by the Dalai Lama and highlighted in the Department of Home Guidelines for CTA Representatives, it also is a lesson learned from the community's direct experience with a dramatic incident over a decade ago. Half the settlement was razed to the ground by Indians who were reacting to the murder of an Indian youth by a Tibetan, in a fight fuelled by alcohol. German, Italian and other foreign aid agencies helped to rebuild the area and since then Indian police have become more vigilant in protecting settlement security. For their part, successive CTA Representatives have capitalized on large gatherings to remind Tibetans of the repercussions of aggressive or criminal behavior. Thus, law and order has become more of a partnership with Indian authorities, even if offences involving only Tibetans are tacitly left for the community to resolve, in ways consonant with village India.

10.3   In partnership with the law

In the case of city-dwellers, the Wall, Arunachalam and Callister study referred to earlier found a marked increase in the inclination of disputants to call the police or use the courts, rather than panchayats or even elders (p.5). Compared with the Kangra Valley village settlements discussed

so far, Dharamsala is a much more complex town environment in terms of social order dilemmas because of the relative heterogeneity of the population, its incidence of transience, and the difficulty of shielding youth from harmful influences. Although it cannot be said that Tibetans prefer Indian police or court action to their own dispute resolution provisions, prevention and remedy require a much greater degree of partnership with Indian authorities, as well as more explicit rules.

Where Indians are involved, the inter-community dimension is much more unpredictable, demanding close collaboration with police authorities at several levels. Like Chauntra, Dharamsala has learned painful lessons on that score, a subject more fully developed later in this thesis. Following is a case described by the President of the TWA Centrex, which demonstrates the circuitry of response to a serious criminal act across the ethnic boundary and the elusiveness of justice caught between communitarian norms and legal norms, despite best intentions on both Indian and Tibetan sides.

Case # 9a: Rape of a nun

In 2005, a newly arrived Tibetan woman from the nomadic regions of Kham, aged 38 and a nun all her life, was raped by a young Indian man aged about 18. The nun was still staying at the Reception Center in McLeod Ganj. It was her suddenly changed and downtrodden demeanor that alerted people that something was amiss. Responding to the concerns of those around her, the nun admitted that she had been raped while shopping for fruits and vegetables at a roadside shop. As she described the incident, the shop assistant urged her to come off the road into the shop, saying that she would find more foodstuffs to choose from. Once inside, she was pushed into a back room where the criminal was waiting. In other words, this was a set-up planned by the two who were exploiting her naiveté and lack of familiarity, likely noticed in her previous visits to the shop.

The claim of rape was submitted to medical investigation, and the attending physician confirmed that there had been forced entry. Questioned closely by women at the Reception Center, the nun took them back to the shop to point out the perpetrator, whereupon they accused the man and he promptly disappeared. Then they reported the incident to the local police who set up a search for him. Meanwhile, the Reception Center

staff reported the incident to the Welfare Officer for Dharamsala, who took the matter to the TWA. The President of the TWA Centrex was quick to recognize the potential for a flare-up of communal hostilities over the incident and went straight to the police station, to ensure that the case would be dealt with strictly. The TWA local chapter submitted a memorandum to the Superintendent of Police for Dharamsala, urging the same. Indian authorities immediately put huge resources to the task. Police fanned out over a large area and within two days were able to capture the perpetrator, who admitted to the rape and was arrested. (G1)

Clearly, the severity of the crime registered on several levels – grievous harm done to an innocent person, insult to the sanctity of Tibetan Buddhism represented in her person as a nun, and the audacity of the act in broad daylight, in the middle of the Tibetan precinct. The prompt response by all parties and the coordinated action between Indian authorities and Tibetan community leaders were critical for apprehension of the culprit. At the same time, concerted efforts to quell the angry response within the Tibetan community headed off what could have been explosive. Even before the arrest, members of the local TWA chapter had been agitating for street demonstrations which the President strongly discouraged. The President emphasized that she would take on the police and high officials, but would not be accountable for any repercussions if Tibetans took to the streets. Previous experiences in Dharamsala had amply shown that group action can get out of hand, with anger prompting people to speak or act inappropriately with potential for escalation to inter-communal conflict. Once the rapist was jailed, some Tibetan men and women pressed even more insistently for public demonstrations and openly questioned the value of the TWA if it was not willing to support such action. These tensions were a real test for the TWA, and the whole community. If a wider disaster was averted through informal communitarian means, however, legal enforcement saw truth sacrificed to procedural rules.

Case # 9b: Rules with blinders

Subsequent legal process required that the nun formally identify the accused, a problematic issue in virtually all such cases. The trauma of recall, fear of the accused, and sense of shame now that the incident had become so public, put the nun into psychological distress. Recognizing her total lack of understanding of the legal process and anticipating communication problems because of her near incomprehensible regional

dialect, the TWA coached her closely for the moment of identifying the accused. They did dry runs of the process, refreshed her memory of the rapist by showing a photograph of him, assured her of their support and of course fully expected to accompany her to help with translation. All the nun had to do was point at the accused when requested.

When the dreaded moment arrived, the TWA representatives were not allowed to accompany the nun into the room with the accused. Instead, a Tibetan was called in randomly from the street to do the translating, for a dialect he likely could not understand. When the nun and the translator emerged from the room, the police said that she had not pointed to the culprit but rather to the assistant who had colluded by luring her into the shop. (G1)

A great deal was at stake for all parties. Both the police and the TWA recognized the public importance of bringing justice to the case, given its potential to incite communal hostility. The police had outdone themselves in efforts to solve the case, largely because of the urgings of the TWA. Rape is sharply on the rise in India and although Indian police reportedly are becoming more gender-sensitive, the low incidence of convictions remains disturbing.[130] The burdens of proof are humiliating for women. In this case, medical examination, prior identification of the accused and actual confession to the crime by the accused constituted reasonably strong evidence. Yet the rigorous interpretation of procedural law and rules of evidence became the trickster, whisking justice out of everyone's grasp. To everyone's dismay, the accused was let out on bail and disappeared into the woodwork. Some Tibetans grew angry with the nun for failing to point out the accused. Others understood the lapse as an effect of trauma, fear of the real perpetrator and confusion engendered by language difficulty. The fact that the victim was deprived of the psychological support of a familiar TWA presence at the crucial moment was decisive.

This case again reveals the paradox of community. On the one hand, there was a tremendous show of support for the nun initially – or at least an identification with her as a symbol of Tibetan religion and collective security. Her failure to vindicate the community's dignity and security rights created something of a backlash, among some members. Ironically, while the

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[130] Information based on National Crime Records Bureau statistics for 2006. For analyses of rape cases in India see Infochange Women [Online] at: http://www.infochangeindia.org/WomenItop.jsp?section_idv=1 and for a broader discussion of violence against women , see http://www.un.org.in/IMAGES/kmsbk_67-87.pdf

culprit was free, the nun found herself in an economic quandary. I learned that, having been violated, she automatically lost the vows which would entitle her to live in a nunnery. At the same time, she had no education for supporting herself outside a nunnery and was not entitled to free education through the Reception Center on account of her age. Thus, once again, the nun fell through the cracks of rigidly defined rules - this time within Tibetan institutions that one might have expected to cede to the moral imperative of supporting their own. It could be argued that as a new arrival she was not yet fully integrated into the communitarian entity, but the CTA and the Reception Center set great store by their responsibility to fellow Tibetans and thus failed to protect her interests as an individual. At the same time, the argument that formal law is there to protect the individual according to his/her constitutional rights also is revealed as imperfect. Eventually, the TWA picked up the pieces by finding a sponsor for her so that, for now at least, her livelihood is covered. She has a small place to live, continues her Buddhist practice and continues to wear her nun's robes.

10.4   It takes a village to prevent a crime

In his arguments that communitarian social norms support legal compliance, Etzioni has observed that "It takes a village to prevent crime" (2000a, p. 222). While the above case is something of an anomaly in terms of the eventual outcome, it does demonstrate the potentially supportive role that communitarian norms and communal monitoring can play in dissuading criminal activity. Given the particular social problems underlying patterns of disputing in Dharamsala, the Local Assembly, drew up an elaborate set of regulations in 2002, which was circulated widely to the lay and monastic population, including organizational heads and landlords. A brief look at that document reveals both the kinds of misdemeanor of concern, and the assignment of broad based responsibility for enforcement of the prohibitions enumerated.

As amended in April 2004, the document is entitled "Rules and Regulations for the security of the residents of Dharamsala." It begins with the familiar formula:

> Under the guidance of Tibet's spiritual and temporal leader His Holiness the Dalai Lama …the Tibet exile government…based on truth and non-violence and the perfect doctrine of democracy…as provided by the Tibetan Charter… members of the local assembly have the full responsibility and authority to make these rules.

After establishing the moral authority and constitutional basis for the rules, and date and reach of their application, the document targets:

- Inappropriate use of a Tibetan official title for personal gain;
- Public meetings without prior approval of the Tibetan Welfare Office;
- Eating, buying and selling of meat;
- Buying, selling and using of dope;
- Failure of Tibetan restaurants and guest houses to prohibit dope related activity;
- Selling of "chang;"
- Disturbances caused by intoxication;
- Carrying a knife in public;
- Prostitution and improper words or behaviors;
- Episodic or chronic fighting;
- Gambling or running a casino in the private home; and
- Lapses of monks and nuns in the disciplines of their sect.

While the Local Assembly is the rule making body at that level, the local head (CTA Representative, or Tibetan Welfare Officer in this case) is charged with the responsibility to detect, investigate and act upon any reports from the public on infractions of these rules. Also made explicit is the incumbent's responsibility to hand culprits over to Indian authorities where the infractions contravene Indian law. The first two sections confirm the Tibetan Welfare Officer as the reference point for community cohesion in matters related to the security of the collectivity and discourage independent action that could compromise that principle. Moreover, each of the subsequent sections places a responsibility on all members of the community to monitor compliance with the rules and to report breach without delay. This communitarian system of social control is comparable to initiatives in the West which have been fairly effective, such as community policing, crime watch, or community patrols (Etzioni, 2000a; Karp, 1998).

While most of the entries are self explanatory, some merit a second look. The issue of meat, for example, relates to both Tibetan custom and Hindu sensitivities around the sacred cow (Article 5.5). On the one hand, according to this rule Tibetans are not allowed to buy or sell meat on the day it was slaughtered. On the other hand, as part of the Hindi belt, Himachal Pradesh State does not allow cow slaughter or sale of cow meat. For millennia, Tibetans have been a meat eating

culture and beef is a close approximation of the traditional yak favorite. Although I have not observed this practice myself, I have heard that enterprising Tibetans from Dharamsala, Dehra Dun and Mussoorie make trips to Saharanpur in Uttar Pradesh - a Muslim city of about half a million people, where cow meat is readily available. The fresh meat is brought home disguised in suitcases and sold or distributed to Tibetan families. The normative re-orientation called for by this rule is at least partly a response to accusations made by Indians when relations with Tibetans are restive – such as in the violent altercations of 1994. In recent years, the Dalai Lama has lent strong moral voice to vegetarianism, as has the CTA, but deep rooted habits are slow to change. Despite the non-rational norm of compliance with the Dalai Lama's directives, people are inclined to follow a rational norm of interpreting the rule to mean "use discretion" rather than desist from doing.

Another entry requiring clarification is the one concerning monks and nuns (Article 5.15a). According to the Tibetan Welfare Officer, monastics represent over 10% of the Dharamsala population.[131] Their red-robes make them very visible in the community. Buddhism, including mass monasticism, in addition to defining Tibetan culture inward, is central to the image Tibetans project of themselves outward, as much to local Indians as to international supporters. Although monasteries and nunneries are largely self-governing and have strict regulations of their own, improper comportment by monks or nuns outside those precincts reflects badly on the whole community. Nor does the behavior have to be particularly reprehensible to be seen as contrary to the abstemious life expected of monastics. Mixing with Westerners, hanging around in cafes sipping cokes, wearing Rolex watches or brand name shoes, surfing the web or riding a motorcycle all contradict the representation of monastics as having a disciplined, structured existence.[132] Ironically, part of the problem derives from the Western enthusiasm for Buddhism - an interaction which brings monks into the modern world with all its attractions, not the least of which are the well-meaning sponsorships that give them personal access to material possessions (Prost, 2006).

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[131] Personal communication, November 11, 2005.

[132] For comments to this effect, see Dr. YosayWangda. (2004) Dharamsala: Hub of cultural globalization. Tibetan Review XXXIX, (8), 20; and Prahlad Shekhawat (1995). McLeod Ganj: A cross-cultural town in India. Tibetan Review XXIX, (9), 16. Also see Gyatso's (2004) chapter on monks and monasteries.

If monks are susceptible to mundane corruption through contact with Westerners, the large numbers of young unemployed are even more vulnerable to influences outside the Tibetan home. As commented by Dhondup Tsering, snooker games, drugs and alcohol are increasingly popular among the majority of the young who "languish in boredom, despair and frustration" with their educated joblessness.[133] The moral voice of the Dharamsala Rules and Regulations document is strongly condemning of loitering and gambling, which:

> …wastes precious time degrading good habits…and causing the falling apart of the family structure by taking loans from others, resorting to stealing…creating a bad impression in the community…all this is absolutely not allowed. (Article 5.14a)

Even dance nights, especially with "insiders and outsiders," are discouraged because of the potential for drinking and fighting to overtake the fun (Article 5.14c). This latter clause has to be read alongside the entry on fighting which exhorts Tibetans to:

> …respect Indian people and not look down upon them or make fun of them. Sometimes Tibetans overreact and resort to argument using weapons and fist fighting – this is not allowed. (Article 5.12b)

Throughout the document is the concern to be seen to be law abiding, together with the stern warning that failure to comply with the rules or to settle problems arising from deviance, will result in an obligation to turn the matter over to Indian police. Furthermore, the local head (Welfare Officer) is constrained from intervening on a Tibetan's behalf if deviant behavior brings the errant person into trouble with the law.

10.5   Final reflections

From the foregoing it is evident that norms prohibiting belligerence, violence and lawless behavior are reinforced with a cohesive moral voice emanating from the Dalai Lama, the CTA and its network of Representatives. The latter's authority in dispute resolution further has demonstrated that norms are backed by sanctions, which in turn are integral to the normative make-up of the community. It is not the rational choice to risk sanction for contravening a norm that is relevant to my argument, but the choice to submit to a resolution process once a dispute has gotten out of hand, because that is a choice that represents an internalized norm. It is in this sense that the preference for pro-social behavior precedes legal regulation. Where relations are

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[133] Dhondup Tsering. (2004). No vacancy in Dharamsala. <u>Tibetan Review XXXIX</u> (8), 23.

multiplex and enduring in a bounded environment, anti-social behavior cannot persist easily without loss of face for the individual, and the family or community that condones it. The relatively small size and regional composition (largely Khampa) of the three agro-industrial settlements in the Kangra Valley doubtless contribute to the contained dynamics, compared with the more complex, porous heterogeneity of Dharamsala. Even the "500 Rupee" rule does not deter disputants from seeking a form of justice that they know will likely result in reconciliation and a split award.

Had there been absolutely no breach of the norms of law and order, arguments against "harmony as ideology" would be harder to defend. As it is, individual agency is expressed through breach, but its social embeddedness is expressed in the submission to a resolution process. The CTA Representative's authority is not coercive in the direct sense, only in the indirect sense of denying an intervention service if parties are not willing to cooperate. Disputants make a rational choice to avoid Indian law enforcement, based either on direct experience or on hearsay about police inaction, bribes payable by complainant and accused, and unpredictable, cumbersome process. The intervener's powers of persuasion, moreover, are only as good as the consonance with norms that are recognized by the community, whether they are derived from Buddhism or from utilitarian understandings of what is needed for the well-being of the collectivity. This is not to say that pragmatic concerns are not entertained. They definitely are, but they are bracketed by what the community deems reasonable to demand. Therein lays the balance between order and autonomy peculiar to this community, and to this category of dispute.

I also draw attention to Merry and Silbey's definition of disputes as cultural events that are enacted within a framework of what is worth fighting for, what kinds of wrongs warrant action and what kinds of remedies are acceptable (Grillo, 2001, p. 84). The case of the raped nun shows that the customary aversion to court process, and the preference for conflict avoidance with the Indian brothers, can be overridden if the sense of outrage is acute enough. The legal centralist argument that government made law provides better protection of individual rights, and creates jurisprudence that fosters justice writ large, cannot be sustained in this context. The rigid, impersonal character of formal law could not take account of the victim's background and the particularity of her case. As it turned out, the nun herself would have been better off with discrete but close community support and psychological counseling. The paradox is that the communitarian drive for order deprived her of individual autonomy by subjecting her to the very

process supposedly capable of upholding her rights. There was a deep sense of the wrong done to the individual, but also to the order of the community she symbolized – the integrity of its religious culture, its communitarian right to exist in safety, and its refugee vulnerability.

XI   LEGAL PERIPHERALISM AND PROPERTY DISPUTES

Disputes between Tibetans over land or property are essentially a sub-category of interpersonal dispute with comparable dynamics, but they provide another window onto the limitations of a legal centralist view of social order. The liminality of refugee entitlement to land or property renders law effete as a basis of dispute resolution. At best, case studies show that operating in the shadow of the law bolsters the efficacy of community-based informal dispute resolution. At worst, in disputes between Tibetans and Indians, the invocation of law is preempted by power asymmetry between refugees and citizens – a sabotage of law's intent that is abetted by deep norm variance. Where norms, sense of entitlement or views of justice vary across group boundaries, disputes between groups can be difficult to resolve without recourse to government laws. Yet, a party's option to mobilize formal law to pursue justice can be sabotaged by any number of factors - including ignorance of legal entitlement or procedures, or an adversary operating unlawfully after having calculated the risk of legal repercussion. As argued by Ellickson, legal centralists "seem unduly prone to assume that actors know and honor legal rules" (1987, p. 83). In this section, I use case studies to argue three main points:

- That, in communitarian context, **social norms are efficient if they serve the collective good** and achieve **voluntary compliance** with less effort than state systems;

- That, where there are communally shared resources such as land, **informal resolution of disputes serves the community better** than litigation, even if it fails to satisfy individualistically construed rights; and

- That **legal peripheralism best characterizes** the social control dynamic in the Tibetan community. It is not that Indian law is irrelevant, but that legal ambiguities, irregularity of enforcement, and socio-legal aspects of refugee status make formal law a distant prospect for justice.

11.1   Going by the book

CTA Representatives regularly deal with land disputes but, as one respondent put it: "All these kinds of things proceed according to clear instructions and are easy to resolve according to the books." (D11) Rules notwithstanding, disputes can vary in character and intensity, depending on

factors specific to the location. Most settlements fall into one of two legal categories: those on leased land and those with no land.[134]

In Dharamsala, the community does not enjoy a collective land grant and few individual Tibetans have legal title to land. In a previous chapter I highlighted the fact that the Indian Constitution gives rights of property ownership to citizens only (Narain, 1966, p.202). To the extent that Tibetans in India choose to retain their refugee status, they also forego the right to own property. Some Tibetans have tried to circumvent the limitation by purchasing land in the name of silent Indian partners, a form of transaction later designated as illegal under the Benami Transactions (Prohibition) Act, 1988. Now, in Upper Dharamsala living conditions are crowded, putting pressures on the aging and limited local infrastructure - roads, sewage systems, electricity, and water. Thus most land disputes revolve around encroachment resulting from unauthorized building construction, or else from rental disagreements – and they tend to be rife with legal ambiguity. By contrast, in Miao, Ladakh, Bylakuppe and indeed most settlements in the south and central portions of India, lands were provided on 20, 50 or 90 year renewable leases by state governments, with settlements being responsible for reallocating parcels to resident families. On this basis, individuals or households do not own the land but for all intents and purposes can use it for habitation and farming until they die or otherwise vacate, with payment of a small land tax. Disputes here tend to be concerned with issues of succession as discussed previously or, more frequently, with deliberate or inadvertent encroachment on contiguous plots.

Unlike other disputes that may first go to the block or village leader, land disputes go directly to the CTA Representative's office because that is where land lease documents, boundary details and allocation lists are kept. In scattered communities like Dharamsala, Dehra Dun and others without land, it is the interface with Indian laws that requires this level of attention. Legally speaking, Tibetans in these locations can only have access to land or housing by renting it from Indian owners, or by purchasing it in the name of an Indian national and then using it through General Power of Attorney. Thus whatever other issues may be dragged into a property dispute, the core of the case can only be decided with reference to legal documents authorizing use of that

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[134] An exception is the Bir Tibetan Society (BTS) in Himachal Pradesh State, which operates as a registered society on land purchased from private landholders. For individual families the arrangement resembles that in settlements on leased land, but for the settlement as a whole there is a margin of security in outright ownership and flexibility of use.

property. In the few cases where title is owned outright, a property dispute by definition would lie outside the jurisdiction of the CTA Representative and, in theory at least, should be referred to Indian authorities. Where the dispute concerns lands within a settlement, checking boundary markers and verifying them against the register of lands leased to the settlement, as well as against internal allotment records, will usually determine the outcome for disputants. If some detail of the external boundary cannot be tracked down, the Representative may consult the Indian Revenue Inspector who oversees the maintenance and updating of land records at "taluk" level.[135]

11.2 Reality check

How do actual cases measure up to expectations of being easy to settle by standard procedure? Human beings are never as predictable as rules would have one believe. Nor do rules tell the whole story. The following case analyses are based on interviews with CTA Representatives and officials in five very different regions of India: Dharamsala in the north, Ladakh in the northwest, Miao in the northeast and Bylakuppe in the south. The selection captures at least some of the variation in the geographic and social features of settlement environs in India. Cases run from banal to intractable with darker meanings. Taken together they demonstrate some of the wildcards that can defy tidy resolution of property disputes, while pointing to the precariousness of refugee existence in the absence of rights to land ownership.

11.2.1 Dharamsala

The Dharamsala environment as a whole is an excellent example of how shades of entitlement result in dispute resolution processes that are best described as bargaining in the shadow of the law. Although outcomes may not be entirely satisfactory for disputants, they reflect the delicate balancing required between individualistic claims and social responsibility in a vulnerable communitarian context. It is a context in which law is palpably present, ready to assert itself, but not in the sense generally associated with positivist depictions of a predictable, stable legal

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[135] "Taluk" is a local government entity with prescribed fiscal and administrative powers at a sub-district level. Serving as headquarters for surrounding villages and sometimes towns, the "taluk" is the executing agency for land records in the area.

system that facilitates contractual relations. Ambivalence about what constitutes a law combines with shifting rules and irregularities of enforcement to destabilize the meta norm promoted by the CTA to respect Indian law and local custom.

Located in the North Indian state of Himachal Pradesh, Dharamsala is often referred to as "Little Lhasa" on tourist websites and in CTA publications because it is the seat of the Dalai Lama and of the Tibetan government in exile. Bureaucrats, monastics, pilgrims, shopkeepers, mobile traders, tourists, truth seekers and NGO workers mix freely in the people landscape. The accessibility of Dharamsala contrasts sharply with the controlled access to settlements in other states where special permits must be requested from the Indian Government months in advance of a visit, followed by registration with local police. With a population of 10,571, Dharamsala actually comprises several distinct settlements at different elevations between Kangra Valley and the Dhauladhar Range.[136] Lower Dharamsala near the valley floor is inhabited mostly by Indians, while Upper Dharamsala or McLeod Ganj is inhabited mostly by the Tibetans, with a steady through-stream of visitors from the settlements, Tibet and abroad.

Over the years, the setting has grown congested and it is difficult for resident Tibetans to secure satisfactory accommodations. There are large numbers of exile government staff members in Dharamsala, but less than half of them have a residential facility because of the limited amount and poor quality of the land.[137] Tibetans have described the area as sinking and earthquake prone, in consequence of which, no more construction is allowed. An earthquake around 1986 shook the area but did very little damage, a fact that devout Tibetans attributed to the sacred presence of the Dalai Lama. The allure of a rich, distinctive culture and spiritual traditions also has drawn an increasing flow of tourists, which puts additional strain on the environment as both Indian and Tibetan entrepreneurs build facilities to accommodate them. A 2006 seismic assessment has warned of difficulties as McLeod Ganj continues to be built out.[138] With the

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[136] The figure is taken from the Dharamsala Welfare Office's 2005 annual report to the Department of Home.

[137] I have been unable to ascertain the exact number of government employees. The TWA Centrex President gave a very conservative estimate of 500 civil servants (personal communication, November 11, 205), while L. Sangay (2003) has stated that: There are roughly 3,500 full-time government employees. Most work in Dharamsala, which also contains the residence and office of the Dalai Lama. (p.120). The exact figure is less pertinent than the widely shared perception that accommodations for them are difficult to come by.

[138] GeoHazards International. (2006). A culture at risk: An initial assessment of seismic vulnerabilities in Upper Dharamsala, India. [Online]. Available at:
http://www.geohaz.org/contents/publications/DharamsalaAssessmentReportFinal.pdf

shortage of available safe land, marginal lots have been developed on downhill slopes characterized by soil creep, which seriously compromises the stability of house foundations. Compounding the problem is the quality of construction as well as of materials which are often below building code standards – standards which in any event are not always enforced by municipal authorities.

As explained to me by the Welfare Officer (CTA Representative) for Dharamsala, the lands in this vicinity were originally a reserved forest jungle, settled by Tibetans in the 1960s, when there were no restrictions, or at least no rules that were being enforced. The Dalai Lama's residence compound is owned by the Private Office outright, bought directly from the State government. Gangchen Kyishong also was bought outright by the exile government. A few other lands were legally bought by private Tibetan individuals in their own name into the 1970s. By the 1980s restrictions were placed on foreign ownership of Indian land - and were being enforced - with the result that some Tibetans resorted to buying in the name of silent Indian partners. This form of surrogate ownership has been quite widespread in India, despite passage in 1988 of the Benami Transactions (Prohibition) Act, which defined the term as: "Any transaction in which property is transferred to one person for a consideration paid or provided by another person." [139]

Inasmuch as buying in an Indian name is now illegal, problems arise for Tibetans either caught in the changeover, or choosing to chance infraction. The Indian government occasionally sends notices challenging ownership and requiring that Tibetans prove their right to the property in question. In such cases, the Welfare Officer can only point to the importance of observing the laws of the land, being in no position to resolve the dispute or give legal counsel. Although such inquiry apparently is infrequent, the issue is sensitive because the press often exposes Indian politicians, bureaucrats and other influential people as being involved in Benami transactions.[140] It also was invoked as a grievance against the Tibetan community during the communal disturbance that rocked Dharamsala in 1994. Rightfully or not, all manner of frustrations are projected onto target community groups when communal tensions erupt.

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[139] See the Benami Transactions (Prohibition) Act, Chapter 2. [Online] at:
http://www.indialawinfo.com/bareacts/benami.html#_Toc500069885

[140] See for example: Sharma, A. (2000, October 6). Benami land deals multiply. The Tribune [Online] at:
http://www.tribuneindia.com/2000/20001006/himachal.htm#2

A slight variation on the theme concerns present forest lands around Dharamsala, which belong to the Indian government. The shortage of housing has prompted some Tibetans to construct homes, without permits of any sort from the Municipal Planning Bureau. They have no rights to water and electricity connections, but pay bribes under the table to the authorities who are then willing to turn a blind eye and allow hook-up. Problems arise when Tibetans encroach on each other's land or water use because there is no legal basis for their claims, given that they have no rights to the land and services in the first place. Originally, Tibetans settled the area in tents and the Indian Government gave water and electricity access on sympathetic grounds. These gradually solidified into homes but no-one has legal title to land and so the question of who has a right to what when disputes arise is a slippery slope.

For most disputes, including those involving land, the Welfare Officer for Dharamsala uses a rule of thumb that is well expressed in the Tibetan proverb: "let the wound heal itself in the mouth," in other words, keep it to yourselves, and work it out internally. He explained his technique this way:

> When disputes of this kind come to me, I first ask if the disputants have title documents or surveys showing the boundaries of their land. Of course I know they don't. But in this way I can claim their attention and stress to them again and again: "this land is not ours, so resolve your differences quietly!" I try to get disputants to work out a compensation or compromise between themselves without even bringing it to me. If anyway disputants want me to sort the thing out, I will visit the site and make recommendations I think are fair and appropriate. (D8)

It may seem that this technique falls somewhere between complete abdication of the intervener role and arbitration, but in most of my discussions with CTA Representatives I found that there is a genuine effort to understand the viewpoint and underlying interest of disputing parties. The dilemma here is that the intervener is caught with a Pandora's Box. The more questions he might ask of disputants to understand their situation, the more he may be apprised of details he knows contravene the laws of the land - details he probably would prefer not knowing about. He certainly would not want to report anyone, given housing needs and the various shades of right or illegality that are the legacy of past legal ambivalence.

Nor is the Welfare Officer alone in this quandary. The Forest and Revenue Departments of the State Government have detected numerous cases of encroachment on government-owned forest land over the years – by Tibetans and, even more so, by non-Tibetans. They, however, have been

reluctant to initiate action in the absence of appropriate legal training in this sensitive area.[141] In short, the Welfare Officer's role again is mainly one of normative training – that is, 1) emphasizing the need for self reliance in terms of negotiating problems, given disputants' precarious legal position; and 2) stressing norms of compliance to the extent possible with Indian and state laws. The latter is not always easy, as rules keep changing even for Indian citizens. I was informed for example that Himachal Pradesh, which is a very small state, passed a resolution in 1975 disallowing the sale of land to non-State residents. Even within Himachal Pradesh some districts like Kangra are disallowing sale of land to non-District residents.

Under the circumstances described above, it is no wonder that most Tibetans are renting accommodations from Indian owners. Interestingly, when there are problems of late payment or non-payment of rent by Tibetan lodgers, Indians again prefer to complain to the Welfare Officer rather than go to the police. By law, Indians should be reporting who is living on their premises, and also should be reporting any income from rental – neither of which they tend to do. Once again, the Welfare Officer finds himself in the position of promoting adaptive norms, on the basis of which the legitimacy of competing claims can be established. He urges Indian landlords to draw up a lease indicating the amount to be paid and the name of the renter and to insist on one month of advance rent as deposit. For Tibetans, the message is: "creating problems with landlords creates problems for the whole community." It bears repeating that, with the memory of 1994 still vivid, Tibetans can be made to feel the visceral interconnectedness between what one individual does and what the repercussions might be for the collectivity.

Legal centralists from Thomas Hobbes to Ronald Coase have expressed faith that government made law and the capacity to apply external sanctions to force compliance constitute the backbone of social order. Introduction of messy considerations such as those raised in the Dharamsala situation cannot simply be dismissed as bad law or poor compliance. They reflect a form of survival in a vast country in which it would be impossible to devise rules to cover all contingencies, without bogging the system down in over-enumeration of regulatory detail and oppressive surveillance for enforcement. A ginger and flexible approach to formal law may be

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[141] These issues were prominently aired during the communal disturbance in Dharamsala in 1994. A special inquiry was launched at that time, but as noted by journalist Rajesh Deol, actions cannot be taken on some cases and not others. In other words, all encroachers would have to be dealt with. Given the larger number of non-Tibetans involved, and possibly monied interests, the officials are themselves reluctant to risk legal backlash. Source: Deol, R. (1994, July 2). Encroachers get reprieve under Tibetan issue. Indian Express. Dharamsala.

preferable, allowing communities to regulate themselves through everyday norms that make sense in light of their survival needs. From a local perspective, to the extent that groups in proximity to each other can reconcile any norm variance that might otherwise have negative cross-over effects, laws can be more intrusive than helpful – particularly if driven by outside interests that undermine the collective local interests.[142] Disaggregating "collective" interests in a stratified society such as India goes beyond the capacity of this research. The point is that political winds, increasing pressures on land and local claims of entitlement to the scarce resource put an edge to land ownership issues. Even if these factors are extrinsic to the Tibetan community, they exacerbate the liminality of refugee status.

On the other hand, if local self-regulation through norms is encouraged, the question arises: how can governments engineer rule change in response to new perceptions of societal needs, given the tenacity of customary ways? Rules and laws may change but their dissemination can be inconsistent or their meaning can be obscure for those who are not conversant with the language of the law. Over and above the legal meaning of ownership, people can develop a personal sense of ownership by having invested in improvements on seemingly vacant land, or they may be born into a communally defined interpretation of ownership, as in the case of many tribal groups. The Dharamsala situation demonstrates that legal consciousness enters the Tibetan community through its normative infrastructure. Samdhong Rinpoche, on his first election to the highest position of the Tibetan government in exile, emphasized the importance for the whole community of "legal scrupulousness and moral probity in all its affairs and dealings."[143] Repeated messages of this sort are further reinforced by the Welfare Officer in his intervener role. Such officially promoted Tibetan social norms play a companion role to Indian law. Whatever lapses there may be, the norms are efficient from the perspective of Indian authorities because they achieve better results than an already over-burdened legal system would. This conclusion is supported by the fact that Indian police and higher authorities cooperate as much as possible with the Welfare Office and look to it as a primary partner for maintenance of general order. Moreover, the community's information network is an effective medium for spreading the word about any renewed zeal on the part of Indian authorities to enforce laws grown lax.

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[142] Indian scholars have charged that even courts can stand in the way of social progress with respect to land tenure legislation, when judges adopt too narrow or conservative an approach to interpreting the law and the constitution (Prakash, 1985, p. 159).

[143] Thinley,P. (March, 2003). Editorial: The Bardo of Statelessness. Tibetan Review XXXVIII (3), p. 3

11.2.2 Ladakh

The following, relatively straightforward case study - offered by the CTA Representative for Sonamling Tibetan Settlement in Ladakh – confirms the patterns of conciliation seen in interpersonal disputes, with the added promise of a more predictable, regulated process. The respondent expressed confidence that the case had been resolved by resort to: 1) CTA regulations; 2) Settlement rules 3) Indian Land Act (i.e. the survey map); and 4) communal norms (such as cooperation, moral self-regulation, acknowledging one's transgressions, and the need to maintain neighborly peace). At first glance, it would seem that social and legal norms, rules and regulations are neatly nested, for a mutually reinforcing effect in a dispute resolution process that could go by the books.

Sonamling Tibetan Settlement (Leh, Ladakh) is located at a height of 3505 meters in the State of Jammu and Kashmir. The settlement comprises five villages spread out, at a distance of three or four kilometers from each other. It was established in 1969 with a population of 928, consisting mostly of nomads from the Western regions of Tibet. The 522 acres provided by the State at that time were divided between the original families so that each had a small plot to cultivate. Since then, the population has mushroomed tenfold to its current level of 5584, with attendant pressures on the availability of land. High in the Himalayas, the settlement has a harsh desert climate such that farming alone is often not enough to sustain a family.[144] Close cooperation is essential between neighbors for the maintenance and repair of the limited irrigation facilities on which farming depends.

<div align="center">

Case # 10:   Much ado about nothing?

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Family A and Family B shared an irrigation canal for 20 years. Canal for Family B goes through Family A's land. A leakage of water from Family B went through the land of Family A and so Family A blocked that channel. Family A was working in the field

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[144] The background detail has been taken from the Sonamling Tibetan Settlement website available at: http://www.tibet.net/home/eng/settlements/sonam/ The case study itself was provided in written form through the intermediary of the Director of The Tibetan Center for Conflict Resolution (TCCR), presented here with only minor edits. SO as used in the text stands for Settlement Officer – that is, the CTA Representative.

when an angry member of Family B arrived and hit the head of Family A with a hand plough. The injury was serious but not enough to need hospital. The case was taken to the SO [CTA Representative] by both parties. SO went to the camp leader and discussed the issue, and they accepted to settle the case together. They spent three days discussing with the disputants and finally based on the settlement rules and regulations the two were fined Rs. 500 each because they had failed to inform the settlement officer of their problem and had taken to fight instead. A white "Katak" was presented by each to the image of His Holiness hanging in the Settlement Office. At that point the disputants were able to accept their respective guilt. Family A which blocked the water without proper consent was additionally fined Rs. 200, payable to Family B; Family B which had inflicted injury had to pay Rs. 300 compensation to Family A. This more or less solved the immediate problem of restoring water to Family B and smoothing disturbed feelings. (D3)

A number of points can be extrapolated from this scant text. Having shared the irrigation canal for a long time, both parties must be aware of communal expectations that neighbors will cooperate in its upkeep, and obviously not tamper with another's water supply. There is a parallel with Ellickson's thesis about common sense, utilitarian norms of neighborliness, even to the extent of using violent self-help to punish breach of the norms (1991, p.167). Yet there is a difference in this Tibetan village context. While there has been a temporary breakdown of utilitarian workaday norms, violent self-help as a response represents a lapse in the more fundamental norm of not allowing anger to overtake moral self-regulation. Although anger is one of the three mind poisons which Buddhist morality seeks to subjugate with mental discipline, Pirie (2006) has cautioned against over-interpretation along religious or cosmological lines. Based on her own work in a more isolated Ladakhi village, Pirie claimed that: "The villagers do not invoke Buddhist moral injunctions in their condemnation of individual anger and aggression" (p. 175). The operative ethic, she has claimed, is a pragmatic one to preserve village unity: "overt antagonism is regarded as undesirable, even dangerous, for the whole community" (p.179). Doubtless in this case as well, the requirements of interdependence in village life make harmony norms as much pragmatic as moral.

The more remote a location, the less likely individuals would be to defy important group norms. Community disapproval is hard to ignore, while voluntary exit from the group association is not the ready option liberalists might assume. The disputants could have chosen to stew in their own

animosities and evade the 500 Rupee fine. Instead they opted to take their respective grievances to the Settlement Officer whose task is to see that harmony prevails in the settlement. Yet, their decision to go that route likely had little to do with wanting to resolve their conflict, and much to do with wanting the satisfaction of seeing the other branded as guilty. After all, the water leakage cannot have been a major problem in itself, considering that the parties must have faced maintenance issues over the twenty years of sharing the irrigation facility. On the other hand, blocking the channel can only be construed as a mischievous act, as opposed to an innocent corrective measure. Otherwise, the blocker would not have been ordered to pay compensation. At the same time, the other party was motivated enough to cross over to the blocker's field, instrument in hand, to carry out an intention of assault. It is hard to imagine that there wasn't a history to the dispute, pushing the small provocations to more vengeful retaliation. A simple assignation of guilt based on technical evidence would not have taken three days to determine, unless a good deal of emotional airing was involved. The reciprocal compensations to be paid left only a small advantage to the side that sustained physical injury – a mere token, symbolizing the relative weight given to non-violent comportment. Finally, the presentation of white offering scarves (Kataks) to the image of the Dalai Lama expressed obeisance to his spiritual and temporal authority, and a tacit acknowledgement of transgressions committed on both sides. It also symbolized the reconciliation of grievances and restoration of communal order.

The story would have ended there, with a fairly good prognosis for norm effectiveness, had it not been for a renewal of hostilities:

> It was not long before the two parties were in the Settlement Office again. As it happens, the boundary marker between the two families' fields was a huge boulder. Several years ago Family B took the boulder to construct a new building on his property. Family A then accused Family B of encroaching on its land by two footsteps. The SO had to look up the original survey map according to the Indian Land Act to determine where the exact boundary lay. The survey showed that there actually had been no encroachment. Still, Family B had been wrong to take away the boulder that marked the boundary. (D3)

On the surface, the entire dispute looks like much ado over nothing. The alleged encroachment by two footsteps and absconding with the boundary marker hardly seem cause enough for re-opening a dispute that has already claimed at least three days of the camp leader's and the Settlement Officer's time. The problem is in the relationship, not in the technicalities of the dispute. Both Indian and Western literature on mediation have acknowledged that disputants can hijack mediators (as well as courts) by finding ever new pretexts to keep the conflict alive, as a

way of vilifying the other (Lindsay & Gordon 2005, pp. 487-488; Sampath 1991, p.35). In this case, there may be jealousies in the background (one has the means to build a new house, the other perhaps not), or there may be power struggles (the weaker party may be using the conflict to assert resistance to the other's power, or the stronger party may be bullying). There may be longstanding regional or sectarian rivalries unrelated to either jealousy or current power imbalances. Such detail cannot be teased out of the bare case study text. Asked what difficulties he generally encountered in resolving conflicts, the Settlement Officer's response provided an inkling of the dynamics that may have been at play:

> People's lack of knowledge about the rules and regulations, or their pretended ignorance of them is a constant problem. Also, people never listen but rush to speak out their own version of events. Everyone wants to win and stick with the original position. It takes a long time to break through this win/lose attitude. Another problem is groupism, based on sect, but more on region and even class. (D3)

This brief text reflects the Settlement Officer's full engagement in a community based interaction that needed socially framed outcomes, rather than the legal ones of a culturally alien, impersonal court. In principle, the wounded party could have chosen to press charges for assault but rather turned to the community's designated third party intervener. That being said, the Settlement Officer also reflected on difficulties of the role. Being from this settlement, he felt that bias inadvertently could creep into the process, despite his best efforts to remain impartial. Doubts could arise about people with whom he has had negative experiences personally or who are known to him as being troublesome. Also, if he has known someone from a young age, he feels awkward taking on the patronizing mantel of a judge, even though in the final analysis people expect him to assume such an authoritarian role. The reflexivity in these comments is noteworthy, considering the extent to which many Western mediators currently are preoccupied with interrogating their own practice. It also reflects an awareness of judge-like responsibilities, such as "the rule against bias" or "the neutral judge" (Shetreet, 1985, pp. 631-633) - as befits Local Justice Commissioners, which is a role that CTA Representatives sometimes have been asked to assume.

What the case study and supplementary comments suggest in relation to my main argument against legal centralism is that communities have all manner of relational frictions which benefit from dispute settlement processes that are sensitive to community patterns. However banal this particular dispute and however indeterminate its particular outcome, the resolution process itself is a normative exercise. It is a form of dialogue that attempts to find consensus on the values that

make the community what it is, and thereby reinforces both values and community. It is also evident in this case that individual disputant agency was not unduly constrained by group norms of harmony – a concern sometimes associated with conservative communitarianism. Moreover, considering that the problem here was a relational one, the mere application of formal law and a zero-sum ruling on a single issue would be even less likely to bring about a durable solution for the parties, or the community.

11.2.3 Miao

If the previous, relatively straightforward case cannot be described as "strictly according to the books" then this next case represents the wildcard. Non-citizens are entitled to equality before the law and equal protection of the law on a par with Indian citizens. Moreover, these constitutional guarantees have been upheld by Supreme Court decisions in cases involving refugees (Vijayakumar, 2000; Bose, 2000; Subramanya, 2003). If lands have been leased to a Tibetan refugee settlement by the state government, then resident Tibetans have the collective right to use that property, according to their internal allotment. Yet, the following case study from Choepheling Tibetan Settlement in Miao illustrates that insidious infringement of these legally defensible rights by Indian neighbors can be supported by multiple, obscure factors that are difficult for Tibetans to challenge because of their social standing as refugees.

The Choepheling Tibetan Settlement located in Miao, Changlang District, Arunachal Pradesh can be a difficult post for Settlement Officers – a restricted area, isolated, traditionally ignored by the Indian government, poor infrastructure, bad roads and unreliable telephone or Internet communication. Tibetans here also live under the shadow of the Naga separatist movement which claims that Changlang falls under Nagaland. As expressed by the official interviewed:

> Guerillas sometimes extort money from Tibetans in exchange for being left alone: "We never harass or torture but ask for a donation…" At the same time, if the SO gives something to the guerillas, the Indian authorities get upset because the guerillas buy weapons with the money. There are also a lot of drugs among Naga guerillas; they roam drug-addicted in the name of insurgency and rob bus passengers including Tibetans.[145]

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[145] This case was described not by the current Settlement Officer but by a Settlement Officer who had also served in the Choepheling Settlement in recent years, and was familiar with these issues.

The settlement was established in 1976, on 2000 acres of land donated by the state. The population currently stands at 2247, with five villages averaging 45 families each. Each village has an elected leader and the Settlement Officer is currently one of only three elected to the position, rather than appointed to it by the CTA. Unlike the harsh Ladakhi environment, the land here is fertile, allowing for the cultivation of a good variety of crops. Nonetheless, limited landholdings mean that family needs are barely met, a problem compounded by the lack of irrigation and technical know-how.

Case # 11:   Rats!

In this Northeastern part of India, there is a huge encroachment problem with local tribes, especially the Singhpo. Every year there is a meeting of Settlement Officers and land issues are raised every time. The Department of Home always says you have to survey the land of the settlement and mark its borders. It always pressures Settlement Officers to keep track of the acreage, to fence it in and to keep accurate documents because eventually the lands will have to be returned to the state.

The Tibetans put up fencing and the tribals take it down. In this area Tibetans mostly cultivate with crop rotation – land is worked for three years and then left to rest for three years. During the rest periods, tribals take the fields to be vacated land and then they remove the fencing to plant their own seeds. The problem is that the Tibetan farmer doesn't go to the limits of his landholding regularly, especially in the phase where the land is left to rest. By the time the farmers do get out to inspect, the tribals have taken over. The Tibetans complain to the Settlement Officer but the tribals' response is that they have been planting here for the last two-three years so the land is theirs. The Settlement Officer many times tried to approach the local chief of the offending tribe without success. He has also taken the issue to higher authorities, such as the Additional Deputy Commissioner for Miao under Changlang District, but there have been no results and this situation has been going on since the mid 1980s.

The heart of the problem is that the Settlement Officer is unable to produce the original survey documents because they have been chewed up by rats. To date, out of the 2000 original acres belonging to the settlement, some 160 to 180 acres have been seized by tribals through encroachment. Also, Tibetans have been farming the land without use of

fertilizer because the land is fertile and the local agricultural extension officer has been telling everyone about the benefits of organic farming. But local Indians are stubborn and conservative. They are using pesticides. They don't think about the long term harm to the human body or to the soil caused by fertilizer and pesticide. (D12)

Since1988 the computerizing of land records has been a key component of land reform in India, but progress has been very uneven (Habibullah & Ahuja, 2005). In more remote areas, such as Arunachal Pradesh, the mutation and updating of land records are still vulnerable to problems of bribery and bureaucratic negligence, making replacement of lost documents an uphill battle. Yet, the lack of documentation to prove rights to the land may be just a convenient justification for dismissing the Tibetan claims. Other cases of encroachment by Indian neighbors in Karnataka State that I reviewed did not fare much better, even with the existence of detailed maps and registers showing boundary lines. Moreover, the perception that land issues surface at every one of the meetings convened for Settlement Officers by the Department of Home already suggests that many cases of this sort can be anything but easy to resolve. In a situation where people are playing by different rules and there is no enforcement of whatever rules might be shared, a legally centralist view of social order may be fine in principle, but irrelevant in practice.

Even assuming that the situation as presented could be negotiated, the skills would have to be very sophisticated cross-cultural ones for a number of reasons: 1) local and Tibetan populations are equally subject to the stresses of the environment and have to develop strategies for survival; 2) tribal populations like the Singhpo have grievances of their own and are likely to cling to what they may think of as their ancestral lands; 3) the encroachers may have no motivation to "come to the table," knowing that the Tibetans are in a weak position without proof of rights to use the land; and 4) there may be a host of complex political, strategic or bureaucratic reasons behind the reluctance of Indian authorities or tribal leaders to entertain the Tibetan complaint.

The Northeastern frontier is a sensitive zone as Arunachal Pradesh (formerly part of the North East Frontier Agency or NEFA) has large stretches of contested border with China (Sharma & Nagar, 1986; Lamb, 1989). From the time of the British Raj, the Government of India has pursued a policy of protecting the Himalayan tribes as part of the strategy to secure the border. According to the Government of India website, 63.7% of the population in this area is classified

as scheduled tribes, as defined in the Indian Constitution in Article 366 (25). [146] Such status means that seats are reserved in political forums such as the parliament, as well as in the civil service and educational institutions. This provision for affirmative action, or protective discrimination as it is sometimes called, was designed to redress endemic disadvantage in Indian society and is a highly politicized issue when it comes to implementation. Singhpo (sometimes referred to as Kachin or Jingpo) number roughly 20,000 in India, living mostly in Arunachal Pradesh and Assam.[147] One of twelve scheduled tribes in the area, they are located near the tri-junction of India, Burma and China with much larger populations in the latter two countries. Although circumstances can vary widely across India's different tribal groups, a common grievance still revolves around the right to autonomy to preserve their way of life, particularly in the face of encroachment on their lands by non-tribals (Gurr, 2000).

Among tribals, clan or village membership has traditionally defined customary rights to land use, more than individual ownership. In general, land was not something to buy or sell, but to use freely as a communal resource. Despite protective legislation there has been large scale privatization of clan held lands since the 1970s. On the one hand, there has been exploitation of unguarded tribal understandings of entitlements to land:

> The means of subverting protective legislation were legion: local officials could be persuaded to ignore land acquisition by nontribal people, alter land registry records, lease plots of land for short periods and then simply refuse to relinquish them, or induce tribal members to become indebted and attach their lands.[148]

On the other hand, surveys and land records themselves have been inadequate in isolated areas such as Arunachal Pradesh, so that tribal entitlement to any given parcel was legally ambiguous. As noted in the Government of India's 1981 Report on Development of Tribal Areas:

> …the tribal was not legally recognized as owner of the land he cultivated and he could simply occupy it till such time as a superior claim got enforced (p. 73). [149]

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[146] Government of India. Tribal Populations of India. [Online].Available at: http://www.//tribal.nic/introduction.html

[147] K. Dean (2005). Territorialities yet unaccounted. Paper presented at the Gateway to the East Symposium on Northeastern India and the Look East Policy, June 2005. [Online] at: http://www.india-seminar.com/2005/550/550%20karin%20dean.htm

[148] See http://www.indianchild.com/Indian_tribe.html

[149] For a thorough discussion of the problems of adivasis, their regional variations and government initiatives, see the Report on development of tribal areas by the National Committee on the Development of Backward Areas. Delhi: Planning Commission GOI, 1981 [Online]. Available at: http://planningcommission.nic.in/reports/publications/pub81_tribdv.pdf

Baruah (2003) and Singh (1997) have offered more recent perspectives suggesting that an aggregated view of even a single tribe overlooks internal exploitative dynamics that can occur as some members become wilier or better educated than others. Baruah's work on tribals in Northeastern India, for example, has shown that the elites among them have become "zealous defenders of their statutory rights" (p. 52). He noted that Arunachal Pradesh has provided a comprehensive degree of protective discrimination, with 59 out of 60 seats reserved for scheduled tribes in the State Legislative Assembly. That means that development planning has been under the control of the tribals - which has tended to correlate with their improved economic wellbeing. As Baruah has stressed, however, it is tribal elites who have been in a position to mobilize social and political resources to hold on to lands allocated to them or to benefit from clan held lands. More backward members have been left behind in the process.

Without actual field research into the Singhpo pocket abutting on lands given to the Tibetan refugees, I cannot say to what extent these factors explain why encroachment issues cannot be resolved. Yet it is reasonable to expect that the humanitarian resettling of Tibetan refugees in the area in 1976 was something of an anomaly in terms of its meaning for the land rights of local "adivasis," that is, the indigenous people. The first incidences of encroachment may have been an innocent tribal assumption that unused land could be appropriated, or a gesture of resistance to what they considered to be encroachment on their own traditional preserve, or yet a testing of the waters. Subsequent instances surely were shrewder, along the lines of Oliver Wendell Holmes' well known theory of law as prediction (1897).

As a legal realist, Holmes theorized that the duty to observe law is not grounded in morality but in a sober calculation of the risk of being caught and punished. The idea has its correlate in norms which, as an informal means of social control, rely on positive sanctions that encourage conformity and negative sanctions that discourage breach. The fact that progressive encroachment has persisted for over twenty years, despite the Settlement Officer's attempts to argue the legitimacy of Tibetan tenure, is indicative that neither legal entitlements nor norms of neighborliness have had the needed teeth to exact compliance across the ethnic boundary. Scholars such as Ellickson (1991) have pointed to the existence of inefficient norms that cause people to ignore the law, or that serve the interests of some over others. Indeed, taking advantage of windows of opportunity for encroachment may well have developed into a norm among the

Singhpo neighboring the Tibetan settlement. The inefficiency of such a norm would relate not to their internal social order, but to the external effect on non-group members. However profitable for the group, such a renegade norm is also inefficient from the perspective of constitutional safeguards against "might makes right."

The preponderance of tribals in the state, the political nature of land ownership, its relation to insurgencies in neighboring states and the military significance of tribal areas as the Inner Line of Indian border defense would support a guess that there may be loose collusion between political and bureaucratic authorities – not to dispossess Tibetans per se, but to regard the gradual incursions as too minor to risk upsetting more important strategic relations. Even from the Tibetan perspective the land encroachment is only one part of an overall picture of normative friction, as suggested by the frustration with pesticide use adjacent to organic farming efforts.

In sum, given the complexity of factors surrounding this case, legal peripheralism is a better descriptor of what is happening. As in the Dharamsala context, it is not that law is absent but that other factors ultimately carry more weight. In the Ladakhi case I argued that, in close-knit communities, informal resolution of disputes serves the community better than litigation, because relations have to continue. In this case negotiation on the part of the CTA Representative clearly has failed to protect community interests, but then neither does litigation represent a viable recourse. While politicized tribals may embrace court process for defense of their statutory rights as suggested by Baruah, Tibetans are burdened by a form of self-disempowerment related to the harmony imperatives of their refugee status. It is not just that crucial evidence (documents consumed by rats) are missing, but that Tibetans judge that the situation is not grave enough to warrant a more proactive search for new ways of dealing with this continually arising challenge. As I have found in other contexts, they prefer to swallow their hardships rather than stir up animosity by vigorous contestation.

11.2.4 Bylakuppe

Settlements in the Southern Zone experience a range of encroachment problems and resource poaching that can have outright intimidating effect on Tibetans. In the settlements of Dickyi Larsoe and Lugsung Samdupling in Bylakuppe (Mysore District), Karnataka State, I encountered

several stories of what I would call latent disputes. That is, they concerned legitimate grievances that have not found an avenue of resolution, although different measures of damage control have eased frictions in some cases. In other cases, redress was not even attempted. Epstein (2004) has identified the fact that a group norm may well be that members should not make use of legal rights and should keep their disputes out of the legal system. It may seem that a norm to bypass legal confrontation with Indian hosts is dysfunctional for the Tibetan community, but that blanket view would be too simplistic as the following cases will illustrate.

The Southern Zone currently is home to more than 40,000 Tibetans - roughly half of the exiled population in India. Close to 35,000 of them live in Mysore District alone, in Karnataka State. The two settlements of Dickyi Larsoe and Lugsung Samdupling together account for more than half of the refugees in Mysore District. [150] Lugsung Samdupling is in fact the largest and oldest of Tibetan settlements, established in 1960 on 3000 acres of land provided by Karnataka on a 90-year renewable lease – essentially in perpetuity. The settlement has seven villages or camps, spread out at a distance of four to six kilometers from each other, with some 30 families per village. An additional 210 acres were provided on the same basis for the re-establishment of traditional monastic centers for the 200 or so monks at that time. The original 3000 inhabitants of the settlement have more than quadrupled to 13,830 as of February 2006, while the monk population has risen exponentially to 7,900. The figures reveal that land pressures have increased much more for the monk population than for the lay farmers. Not surprisingly, monasteries used most of their land for the construction of temples, residences and schools, leaving little space for cultivation. In some cases they purchased additional land to accommodate the continual new arrivals from Tibet, by using the individual names of Indian resident monks from the states of Arunachal Pradesh, Sikkim, and Ladakh where Tibetan Buddhism also is practiced.

In 1969, a second settlement, Dickyi Larsoe, was established on an additional 2,000 acre parcel of forest land, 1645 acres of which were divided between the 2,000 new arrivals at that time. The population as of January 2006 has doubled to 4,430. Since the number of monks here is much smaller, the increased pressures on land fall more heavily on the farmers. The settlement has 16 villages, dispersed about two or three kilometers from each other, with the exception of two villages that are more isolated at a distance of 25 kilometers. Each village originally had 32

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[150] All the figures in this summary were provided by the respective CTA Representatives in 2006, based on their most current records.

families but now some have as many as 45 families, with the younger generation building within the family allotment but having no land. Some families can have 18 members aged anywhere from one day to 90 years, in a traditional joint family arrangement.

Despite population pressures on the land, Tibetan communities look affluent in the overall setting, particularly with the highly ornamental and massive architecture of the large monasteries. The aura of organized well-being is not lost on landless or poorer local farmers, who may well forget that the settlements were carved out of jungle at great personal effort by the first generation of refugees. In Bylakuppe, fields can be located up to five kilometers from the village, which makes it hard to keep the land worked and protected to the borders. Tibetans also have planted many trees such as the Silver Oak,[151] but during the time when fields are left fallow, both field and trees are vulnerable. Indian shepherds often cut the trees down as soon as they reach a height of 8 feet, with no concern for environmental or ownership principles.

Initially, in the early 1970s and late 1980s, people with land far from the village constructed a farmhouse in the fields for ease of access and better surveillance of their land. Reportedly, however, some suffered attacks by Indians. The experience of threat and isolation, coupled with rumors of danger, brought most back to their villages, although a few still live in their fields and have formed small sub-communities of mutual support. Others, instead of farming their land gave a lease to local Indians or other Tibetans closer to the field, but attempts to eventually reclaim their property proved problematic. More recently, some of the older generation are too tired to keep working the land, while the younger generation often is not interested in taking over. For individual households in generational transition, sub-letting became an attractive option. Since 1994, the CTA has set down rules to circumvent problems related to such arrangements: 1) land can be sub-let to a Tibetan within a limited timeframe of one to two years, with a valid reason; and 2) in order to forestall Tibetan-Indian disharmony, land cannot be sub-let to non-Tibetans. These rules are basically utilitarian norms that are generally observed by Tibetans even if there is no formal enforcement mechanism, because the community has come to recognize that compliance will enhance their aggregate welfare, given circumstances.

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[151] The problem of tree poaching is not limited to Tibetan settlements of course. See for instance the national Indian newspaper, The Hindu, July 8 2005 "30 Silver Oak Trees Smuggled." The incident in neighboring state Tamil was reported to police by village administrators but "The police stayed quiet."

Similar norms came into being to control trespass of animals on neighboring fields during the growing season, and this norm is mutually observed across the Indian and Tibetan enclaves. What makes norms work in close knit communities is the quality of gossip, reciprocal power and enforcement by persuasion, as suggested by Ellickson (1991). Upping the ante, Axelrod's (1984) Tit-for-Tat Strategy suggested that individuals in a setting of ongoing encounters will often act cooperatively until crossed and then apply eye-for-an-eye remedies. In other words: if you let your animals trample my crops, I can do the same. Ellickson defined a close-knit group as:

> A social network whose members have credible and reciprocal prospects for the application of power against each other and a good supply of information on past and present internal events. (1991, p. 81)

In comparison with the tribal encroachment described in Miao, it could be argued that a tenuous cross-enclave normative dynamic is operating. Farmers in Bylakuppe have harnessed some small power of defense in disallowing the sub-let of land to Indians, and in the implicit recognition that they equally could be neglectful of where their animals wander. The devices are sufficiently low key to engender cooperation and do not contravene Indian laws. Moreover, increasingly, Tibetan farmers and monasteries hire landless Indians to work the fields and Tibetan-run health facilities extend their services to locals – both being positive reinforcements to cooperation in general. The more troublesome cases are those where Indian brothers feel no constraint in crossing the legal line – that is, they are confident in their powers of intimidation and ability to evade the forces of the law. The following experience described by one of the Tibetan camp leaders is illustrative.

Case # 12:   Poaching sandalwood

There was a large sandalwood tree growing naturally in front of my house. One day around 2003, in broad daylight, 8-10 Indians arrived with saws and began to cut into the tree. I watched this but was afraid to say anything because of their aggressive way. After a short time the poachers checked the scent of the dust and left. I thought maybe the scent wasn't strong enough and they decided the tree was not worth cutting down. But a few nights later 4-5 men came in the dark and chopped it down completely. I didn't dare to protest. Not to the police, or the Forest Ministry which owns the rights, or even to the Settlement Office. The poachers came a third time and dug a big hole to take out the tree roots. I didn't plant this tree myself so really it is not mine. Last year some additional 10

sandalwood trees disappeared in and around the camp, and it was whispered that the poachers were arriving with guns in hand. It is sad for our community but our philosophy is to take our losses and keep quiet. (F3)

Unlike Silver Oak trees - which if planted on Tibetan leased land become Tibetan property - Sandalwood trees are a state monopoly.[152] They cannot be planted, grown or cut and everyone knows that there is a hefty penalty for breach of this Karnataka State Law. Pride of the region, the tree fetches a high price in the scent industry, for soap, oils, incense. To be found selling sandalwood one could be accused of a serious smuggling offense. The poachers evidently were not overly concerned with detection, possibly relying on the intimidating effect of their numbers or weapons. Reportedly, they were not local neighbors and may not even have been from Mysore District or Karnataka State – which makes legal redress very remote. Clearly they knew where to look for these valuable trees and, based either on their own previous experience or rumors from other poachers or colluding locals, they were counting on the unlikelihood of a Tibetan reaction. More telling, however, is the camp leader's rationalization that, since he didn't actually plant the tree himself, he couldn't claim it or make a fuss, although he was well aware of the illegality of the act, not to mention the environmental loss to the community.

Why the concern was not shared with the Settlement Officer I can only guess had something to do with a defeatist attitude about the scope for collective protection given past experience. This is an aspect of power relations theorized by Bachrach and Baratz (1970), in which those with less power have learned to suppress their grievances or rationalize them away. The philosophy that it is better to take your losses and keep quiet may well have been the only reasonable one to take in this case, but I heard it as a recurring theme in many contexts. The apparent pacifism can be disempowering. Tibetans in all settlements walk a fine line between asserting their rights to justice and keeping themselves in check for fear of transgressing the Dalai Lama's injunctions to get along well with the "Indian brothers." The next case of encroachment, described by another camp leader, shows that even if a situation has been negotiated to a win-win outcome, it can fail the durability test when political winds shift.

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[152] Dr. N. Subramanya (personal communication, March 2, 2006).

Case # 13:   Political trump

Last year an Indian family, whose property was hemmed in by Tibetan land, constructed a road through the Tibetan owner's property. The trouble was taken to the Settlement Officer and the Cooperative Society Secretary. There was a big meeting with lots of shouting. The Indians refused to compromise. Documents were consulted and the matter was eventually settled with the Indian owner giving one acre of his own land for the Tibetan farmer to use, in exchange for the road use. The arrangement worked fine until the Indian property ownership changed hands. The new owner was not willing to keep giving one acre of his land to the Tibetan farmer, unless he paid 1000 Rs a year in rent. The new owner is a more political person, a Janata Dal party worker, always pulling strings and threatening that he has a lot of connections and will get possession of the road. (C7)

In Round One of this case, the Settlement Officer played the role of a vested interest mediator as defined by Moore (2003). He more or less negotiated with the Indian party as an advocate pressing the Tibetan cause, with both disputants being in attendance along with a supporting cast. There is little evidence of a formal, facilitated process although an outcome was jointly decided upon in the end. Round Two of the case points to a problem when informal norms come up against formal law, that is, when the neighborly agreement to exchange right-of-way for use of an equivalent amount of land encounters a change of land title.

There does not appear to have been an attempt at bringing the parties together for renewed negotiation, possibly because the new Indian owner refused to budge from his position or because he realized that the Tibetans had a strong legal basis to theirs. Similar to the cases of encroachment in Miao, Tibetans could claim guarantees of equal protection of the law as applicable to refugees and citizens alike, as well as of the legal standing of the state-granted lease of land to the settlement. Furthermore in this case lease documents and survey maps were available as evidence to legitimate a Tibetan claim. It is highly unlikely that any court would re-draw the collective lease arrangements for the settlement as a whole merely to accommodate a single – and questionable - Indian claim. In other words, from a legal perspective, the Tibetan rights to the area used for road construction should stand. At the same time, to recover the road area for planting could be more effort than it is worth, while undoing the road risks fanning the fire of this new owner who purchased his land assuming right of way to access his property. It is

the reference to political clout that signals unfair Tibetan vulnerability. The comment carries shades of an attitude that brought about a communal clash in 2005, to be discussed shortly, in which politically affiliated Hindutva activists may well have had a hand.

Encroachment of land for road construction appears to be a minor irritant, but as the next case study shows, it can be sneakier and more strategic than meets the eye. Responsibility for the dispute in this particular case fell not to the Settlement Officer but to the Secretary of the Cooperative Society because the Society actually owns the title to lands for three outlying camps of the Dickyi Larsoe settlement where the incident occurred.[153]

Case # 14: Unfinished story

Just yesterday an Indian family living adjacent to the Tibetan agricultural boundary built a road through Tibetan land while most of the settlement was at Kalachakra 2006.[154] The road was about 15 feet wide, so about one acre, but cutting right through the field in a way that isolated another strip of Tibetan land between the road and the actual boundary. The fields of 7 "migyal," or individual Tibetan family allotments, were affected. They went to the Indian family asking why the road was built through their land and the Indians responded: "anyhow you are going back [to Tibet] so what's the point of arguing?" So the camp leader came to me [Cooperative Society Secretary]. I checked the fields, consulted the survey register and verified the boundary rights. Then I wrote a letter to the "tehsildar" on behalf of the farmers as members of the Cooperative Society.[155]

In the letter I requested that the encroachers be made to vacate the Tibetan lands and mentioned that the Indian party had created a situation that was physically threatening to

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[153] As noted already, land disputes go to the Settlement Officer because they concern lands collectively leased to the settlement. This case is an anomaly because the land for three outlying camps were donated direct to the cooperative by an NGO that owned it in 1970 (that is, Camp #14 at Lakshmipur, and #s 15 and 16 at Chowkur). This year, when Samdhong Rinpoche's administration brought in more decentralized policies for the settlements, the Cooperative Secretary was assigned responsibility for properties owned by the Co-op and for any disputes arising in relation to them.

[154] Kalachakra is a potent, public empowerment given by the Dalai Lama to large gatherings, along with teachings from Nagarjuna's Fundamental Wisdom of the Middle Way. Kalachakra 2006 – the 30th that the Dalai Lama has given in his lifetime - is believed by many to have been a rare and particularly auspicious event as it coincided with the 2550th anniversary of the passing of Lord Buddha. It took place in Amaravati in Andhra Pradesh, South India from January 5 to 16 and was attended by many Tibetans from across the country, as well as by other Buddhists from around the world. More than 100,000 people participated, including close to 10,000 pilgrims from Tibet.

[155] "Tehsildar" is the civil administrator at "taluk" level, which is the lowest level of local government.

the Tibetan parties. The Tibetans did not dare stop the encroachers because they were afraid about repercussions like what happened in 1997 or 98 when a physical confrontation occurred in a similar situation. The tehsildar has called to say he will send the Revenue Inspector to the site tomorrow to examine the boundaries and make a report on the exact limits. On that basis a decision can be made.

The problem of encroachment is not new. Over the years, the area from the road to the edge of the Tibetan boundary has already been captured by the same Indian family and divided up among its members. In 1997 there was a big confrontation over the capture and there were physical injuries on both sides. The case was taken to the police station. I don't know the details but the Tibetans abandoned their claim and the Indians kept the land. (C7)

The Indian response that Tibetans will be returning to their homeland is a loaded statement that indicates the provocative character of the situation. The threatening subtext is "Tibetans, go home!" or "You don't really belong here" or "This land isn't really your land" and so on. There have been occasional protests with similar slogans reported in the local Indian press around the time of the communal disturbance referred to previously.[156] I subsequently had the opportunity of visiting the site where encroachment had occurred, with the Cooperative Society Secretary. Not only had a stretch of land already been appropriated earlier, but even the placement of the road was such that it left another piece stranded, cut off from the Tibetan acreage. For all intents and purposes, the total amount of land at stake was thus considerably more than just a road width. Given what seems a poor rate of success in negotiating these disputes, I asked the Secretary what kind of denouement he anticipated. His conjecture follows:

> If the Revenue Inspector shows up as promised and if he reports that encroachment has occurred, then I hope that the local administrator ["tehsildar"] will act. I'm not sure how he will react but I hope and assume he will abide by the Constitution. If by chance, he favors the other side, going against the evidence in the Revenue Inspector's report, then I can take the case to the Registrar of Cooperative Societies' sub-office in Periyapatna. If it is the Revenue Inspector who does not report a boundary that is consistent with the settlement's original records, then again I can take the case to the Registrar of Cooperative Societies. Where Cooperatives are involved, such civil disputes are handled not by the Indian courts but by the Registrar, who is a bona fide judge who must have a minimum of three years of experience as a magistrate and as a High Court judge. (C7)

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[156] Activists go on rampage at Tibetan meet. (2005, December 4). New Indian Express; Anti-Tibetan stir turns violent. (2005,December 5). Star of Mysore.

The Secretary had a clear sense of his legal position, as vested in his role and responsibilities with the Cooperative Society, and anticipated the contingencies. In this case it is no longer a matter of neighborly or inter-enclave norms, but about law and potential litigation. As articulated in the Karnataka Cooperative Societies Act, the Secretary is specifically responsible "to sue or be sued on behalf of the Society" ("Rights, Duties and Responsibilities of the Chief Administrator", Section 29G, Sub-section 4, Clause (j)).[157] Cooperative societies conduct a good deal of business for their members and rely on the legal enforceability of contractual obligations. As a voluntary business association, the Co-op is legally registered according to the Karnataka Cooperative Societies Act, and every household of the Dickyi Larsoe settlement is a shareholder. It stores and markets agricultural produce on behalf of its members, provides seeds and fertilizer on credit; it runs two consumer shops, a handicraft center, tractor rental service, school bus, two flour mills, general repair workshop, and so on. It employs about 170 people, including a number of Indians. The position of Secretary is probably the one that requires the most daily interaction with various sectors of the Indian community. It is also a position for which the Department of Home sponsored 9 months of training in 2004-2005, at the Regional Institute of Cooperative Management in Bangalore. Although Secretaries report to the CTA through the Representative, the position carries a singular kind of weight and credibility.

In short, several key factors seem to be aligned for a successful outcome for the Tibetan disputants in this case and the legal messaging could act as a deterrent to future encroachment. It remains to be seen, of course, whether the Secretary's legal and business acumen, combined with the Society's outright ownership of the land, will make a difference to how the dispute unfolds. Given the attitudinal problem on the Indian side, it is also important to consider whether loss of face or vindictiveness would accompany a win-lose outcome. This is the balancing act that Tibetans as refugees have to manage time and again.

11.3   Final reflections

Tibetans have an expression that illustrates the value that land traditionally has had for them: "land in the form of lotus blossom" which alludes to the precious potential of the soil. In farming

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[157] H.S. Renukaprasad (Ed.). (1998). The Karnataka Cooperative Societies Act, 1959, as amended by Act 25 of 1998. Bangalore: SBC Law Publications, p. 59.

communities in India, Tibetans know that land values are increasing and this awareness makes them more careful to protect their allotment, especially as their own family needs grow. Yet land in itself is not a source of wealth for them insofar as it is not owned and cannot be sold. It must be worked to yield benefit. For that the younger generation has to adopt an agricultural lifestyle - which it is not always prepared to do, especially after receiving a modern education and being exposed to urban lifestyles. These factors doubtless also contribute to the Tibetan hesitancy to take Indians to task over land disputes.

I have argued that in communitarian settings where resources such as land are collectively shared, informal resolution of disputes serves the community better than litigation, even if it fails to satisfy individually construed rights. That some cases eluded satisfactory resolution does not nullify that argument. Indeed I was told that many minor disputes between Tibetans occur simply because boundary markers become overgrown with weeds or shift position, and these disputes would be straightforward to resolve according to cadastre maps, allotment lists and so on. In these cases there may be emotional venting and minor disturbance of the peace, but there is no need to invoke law or enforcement mechanisms from outside the borders of the community. Moreover, as noted in the case of Miao, and to some extent Dharamsala, the mediation process becomes something of a normative ritual in which parties are reminded of moral commitments to the Dalai Lama and everything for which he stands. The injunction is to set aside individualistic squabbles for the sake of the exile community and the homeland, and to respect the laws of the host country. These and other norms promoting harmonious adaptation are effective by and large. They have achieved a high level of voluntary compliance, as reflected in frequent observations by both Indian and Western scholars to the effect that the Tibetans have been a model refugee community (Goldstein, c1975, p. 397; Subramanya 2004; Saklani, 1984, p. 216).

It is also the case that, when reflecting on disputing behavior and resolution methods, respondents gravitated toward instances where there was additional detail to recount, situational particularities to describe, conundrums to mull over. Most commonly, these were cases involving Indian neighbors and/or the precarious legal position of Tibetans as refugees. As suggested by legal anthropologists Llewellyn and Hoebel (1941), and later by Nader (1965, 2002), trouble cases focus attention on the challenges of rule making, the ambiguities of human agendas, and the confrontation of competing views of justice. In the encroachment cases described, sense of justice was grounded less in legal entitlement than in an assumed hierarchy of rights that placed

rights of refugees on the bottom vis à vis local citizens. Tibetans have been co-dependent in that ordering because their concern for avoiding confrontation often has enabled more tenacious parties to gain the upper hand. Yet that normative choice has to be seen as a rational one serving the collective interest. In disputes involving Indian locals, the CTA Representative acts as a negotiator or a vested interest mediator on behalf of the individual Tibetan, but he is a negotiator without the leverage of what Fisher & Ury (1991) called a BATNA – best alternative to a negotiated agreement. The transaction cost of bringing a land dispute into the Indian court system would be too much to contemplate in terms of time, money and the potential for corruption at various levels of evidence controlling officials. Moreover, the more public an inter-ethnic dispute over land, the greater the risk that Tibetans become fodder for political vote banking around a resource that already is scarce.

XII DISPUTES IN THE INTER-ETHNIC REALM

Looking back at the preceding sections, and in particular at the disputes over land with Indian neighbors, it could be said that evidence has been mounting in the direction of harmony operating as ideology. Tibetan structures and norm entrepreneurship have coalesced political, cultural and religious values into a belief system that mobilizes the refugees for their homeland aspirations. This ideological diversionary power is significant in terms of claiming exile attention, psychological orientation and living time. The coherence of the normative framework also has reinforced community solidarity and socialized Tibetans toward pro-social behavior, expressed as a preference for conflict avoidance and harmony in their workaday affairs. Where lapses occur, as represented by disputes and misdemeanors, CTA Representatives (and social network mediators) re-socialize parties through processes that emphasize cooperation and problem solving. The goals and methods of dispute resolution have all the markings of harmony ideology that Nader held as suspect:

> Harmony law models are coercive when they mandate unity, consensus, cooperation, compliance, passivity, docility – features often taken for granted as humankind's normal state and considered benign. (2002, p. 34)

By portraying the Tibetan Diaspora through a communitarian lens, however, I have demonstrated that the rationale behind harmony norms is defined less by power machinations within the community than by the realities of refugee circumstances, and the associated homeland politics. The two are linked by a choice that may appear rational (forego citizenship in solidarity with the cause), but is more in the order of a moral legacy. That there have been fierce power struggles in the process of democratization, or cases of power misuse, or other actions motivated by strategic self-interest does not undo the argument. For the majority of Tibetans in India, the non-rational norm to remain an exile and a refugee has been internalized as part of the socially constituted self. A serious consequence of that choice can be seen in the compliant disempowerment of Tibetans in land disputes with Indian neighbors. Nader's mistrustful depiction of harmony ideology and her loyalty to legal centralism, while compelling, ultimately proved too narrow as explanations for such social control dilemmas. This section drives the point home more forcefully.

I have alluded in several places to flair ups with local host populations. A danger with communitarianism is that boundaries – actual, perceived or ascribed – mark one community off

from the other in ways that inhibit constructive contact (Etzioni, 2000a; Frazer, 1999). Tibetan settlements tend to be self-contained enclaves, made the more visible by signs of affluence relative to the poorer segments of the surrounding host population. As often happens with refugees, the more successful their adaptation, particularly when aided by national and international support, the more they become a source of envy and a ready target for any number of local grievances (Chambers, 1993; Harrell-Bond, 1986). This section has a dual significance within the overall dissertation:

1) It analyses the **genesis of communal disturbance** as a particular category of dispute with its own resolution dynamics; and

2) It provides a critical backdrop to why Tibetans would **comply voluntarily** with **norms relating to adaptation, non-violence and law-abiding behavior**.

I argue that a lynchpin in the orchestration of norms promoted by the CTA and the Dalai Lama is the record of painful lessons learned from communal disputes with local host populations. They are actively used as reminders of what can happen if Tibetans are careless about the laws of the land, or don't nurture active, harmonious relations with their Indian brothers and sisters. I stress, however, that this section should not be taken to mean that there is any kind of widespread resentment against Tibetan refugees, quite the contrary. India is a robust democracy with constant frictions between different religious, ethnic, caste, political and other groups that episodically burst through the seams in violence.

12.1   The nature of communalism and communal disturbance

Up to this point I have used the term "communal" fairly loosely, simply to convey that which relates to the community in question. Indian communalism, on the other hand, has a specific and charged meaning best described as a form of false consciousness – a political exploitation of religion and/or ethnic group status in conflicts over economic resources or political power (Chhachhi, 2005, p. 218; Tambiah, 1998, p. 426). Used in that context, "communal" implies a cross-community phenomenon of hostility. Although communalism mostly has been associated with Muslim-Hindu or Hindu-Sikh relations, it is the mentality and its susceptibility to manipulation that is problematic for any inter-group dynamic. Thus, communal disturbance, as I use the term, means a situation where members of a local community collectively manifest anti-

Tibetan sentiment in acts that threaten their physical person or property, and openly promote ill will against them. In Indian newspapers and various Tibetan reviews I noted scattered references to episodes of communal unrest in Chauntra, Bylakuppe, Manali, Clement Town, Dharamsala, and even Sikkim and Ladakh, where it might have been expected that cultural and religious similarities would pre-empt hostilities expressed along ethnic lines. In terms of resolution, these were not single person interventions, but something more akin to Ury's conceptualization of the third side – namely, the spontaneous mobilization of community members at several levels to prevent a pattern of violence from taking root.

A conceptual and historical analysis of communalism and communal incidents in Karnataka by the Alternative Law Forum can be usefully applied to the cases in this section.[158] The Bangalore-based organization, established in 2000 by a collective of lawyers, is dedicated to critical research and a practice of law that responds to issues of social and economic injustice. In its analysis, Karnataka is referred to as a potential "Gujarat of the South," underscoring the fact that there, as elsewhere, a communal mind-set easily can move from inter-group tensions beneath the surface, to flare ups, to communal riots. Drawing on the empirical record in the State from 1929 to 2004, the study differentiated incidents on the basis of violence intensity, spread of influence areas, communal history and other causal factors. Included among the foremost overt causes were the following, not in any particular order:

1. **Disputed spaces** (mostly spiritual, as in the case of Ayodhya in Gujarat, and its close cousin Baba Budangiri in Karnataka);

2. Villages being **prone to regular incidents**;

3. **Festivals** (communal in themselves, they also provide the occasion and the heightened mood that becomes easy to manipulate);

4. **Appropriating nationalism and patriotism markers** (chants, flag-hoisting, anthems that symbolize national spirit in a way that insinuates the primacy of Hindutva over minority rights);

5. **Spreading of Hindutva (**propagation of communal attitudes and prejudices by several groups such as the BJP, the RSS and the VHP);[159]

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[158] The study can be found at:
http://www.altlawforum.org/Resources/COMMUNALISM/communal%20incidents%20in%20karnataka

[159] RSS stands for "Rashtriya Swayamsevak Sangh" (Hindu Volunteers' Union), a Hindu organization with perhaps the largest grassroots volunteer base in India; the group dedicates itself to social service, charity and relief work but

6. **Language chauvinism** (growing psychological importance of the state language);

7. **Committed activists** (incidents are not only spontaneous but often orchestrated by people with vested interests);

8. Role of **politics** (in run-ups to elections especially, local politicians can be vote banking on communal platforms);

9. **Settling of private scores** (using disturbances to settle a score or the settling of a score having communal repercussions);

10. **Rumor** (the fuel that moves the communal engine, key in all riot situations);

11. Role of **the media** (extends rumors, often spreading the influence area);

12. Role of the **police and judiciary** (permissive, inflammatory or deterrent); and

13. Role of **economics** (perceived relative prosperity and destruction of livelihood as targets, for example burning of shops).

These causal factors are not mutually exclusive. They can have catalytic effect on each other, or can reinforce each other in additive ways, whether by coincidence or strategic design. The more factors come together in an incident, the more dangerous the situation can be. While some factors have inflammatory potential in themselves, others can influence communal incidents in positive or negative ways, for example the spin given by the media or the response of police and judiciary. Although the factors were extrapolated from a study of Karnataka events, they clearly are applicable for other contexts as well.

The three case studies I have selected for analysis share a number of characteristics with others I heard about. In the first place, the disturbances were sparked by minor provocations and, being the first incidents of their kind for the settlement in question, they came as a traumatizing shock. In the second place, whether there was scape-goating involved or abetting by local politicians with a vested interest, the disturbances ultimately were reflective of deeper socio-economic or

its political orientation is right wing, promoting Hinduism as a way of life for all. The VHP, "Vishva Hindu Parishad," is a Hindu umbrella organization founded by an RSS activist; ostensibly a social service organization, it was prominent in mass campaigns reflective of a stated objective on its website "to consolidate, strengthen and make invincible the global Hindu fraternity." The BJP or "Bharatiya Janata Party" (Indian People's Party) was founded in 1980 and has grown to be one of the two major national political parties in India; a conservative party, its platform almost always involves defense of Hindu religious and social values. RSS, VHP and BJP are closely linked and have been implicated to varying degrees in several incidents of communal violence, including the Ayodhya massacres in Gujarat, 1992. For an overview of the dynamics within the "Sangh Pariwar" (the vast network of groups ideologically associated with the RSS), see Hellman (1996), Brass (1994), Rudolf S & L (1987), and Sen (1993).

identity malaise between groups. In the third place, all point to difficulties associated with what are often unconscious enclave behaviors.

The three studies also have distinctive local features that are important to an analysis of this category of dispute. The first one is from Ladakh, a discrete instance in 1995, but one which shows that subtle frictions can get out of hand, even between groups sharing largely the same physical features and traditional Buddhist beliefs. The second situation analyzed is recent, from Bylakuppe in Karnataka State. I treat it as a syndrome rather than a discrete instance because there were various accounts and several versions of related or overlapping events within the same year, 2005/6. The syndrome reveals links and complexities in daily inter-ethnic interaction, which need to be managed to avoid more substantial problems. The third case concerns Dharamsala 1994, and it unquestionably was the incident that had most resonance for the entire Tibetan Diaspora in India. For that reason, it is analyzed in greatest depth. Its lessons were a rude wake-up call and it struck at the heart of Tibetan vulnerability and identity. It became a normative guidepost which can be discerned in most cases of dispute resolution. It also ushered in a policy of proactively bridging enclave mentality, which most settlements now try to implement.

12.2   Ladakh 1995

The core of this case study was provided by the Settlement Officer for Sonam Ling Settlement in Ladakh who had some reservations in sharing it, possibly because sensitivities linger even ten years after the fact. I was able to flesh out additional detail by asking questions of the Director of the Tibetan Center for Conflict Resolution who had several friends involved in the melee. The story as pieced together has to be taken as strictly impressionistic, the more so because it is based on recollections from ten years ago. Although I was unable to trace written accounts of the dispute, an inkling of animating factors on the Ladakhi side can be found in writings by Van Beek (2001) and Aggarwal (2004) about the intense politicization of communal identity leading up to that time. From the perspective of communalism, the case demonstrates how festivals and settling of private scores can provide the spark for mob dynamics when overall conditions are politically restive, even if those conditions do not implicate Tibetans themselves. It shows that the effect on the Tibetan refugee psyche can be long lasting.

Case # 15:   Hot blood and compassion

In June many college students, both Ladakhis and Tibetans, returned home for their two month vacation. The conflict occurred around the time of the Gu-stor festival celebrating the anniversary of the birth of Padmasambhava, with large numbers participating.[160] A young Tibetan college student was seen walking down the street, hand in hand with a Ladakhi girl. A few Ladakhi boys taunted the pair, saying that Tibetans had no right to go with their Ladakhi girls. Some verbal ripostes were exchanged and finally the Tibetan threw out a challenge: "if you want to fight me, come on, do it!" At this point the two parties went their own way, but that night both rallied their friends for a major confrontation. Each side was going to teach the other a lesson.

The Tibetans rented a truck for the following evening. Armed with knives, chains and what have you, they traveled the one and a half hour journey from the Sonam Ling settlement to the hilltop monastery where a second day of ritual activities would be taking place. A masked dance was in progress, marking the victory of the Precious Guru over evil and the enemies of Buddhism. The Tibetans wound up the slopes in single file, led by the offended boy. The Ladakhis were already arraigned in a circle on the top, with sticks and stones in hand. When the Tibetan boy caught sight of his main opponent, he went straight up to him and stabbed him. In outrage, the Ladakhi boys let fly their stones and some 60 youths joined in the melee. Bones were broken left and right. At one point a Tibetan fell to the ground unconscious and the Ladakhis continued to beat him into a pulp. An old Ladakhi woman nearby yelled at them to stop the senseless violence, but the youths were in no mood to listen. She then threw herself on top of the unconscious body of the Tibetan boy and dared the youths to keep throwing their stones. This magnificent gesture of compassion in action brought a brief pause to the melee. Soon enough though, the Tibetans and the Ladakhis were at each other's throats again, chasing each other around the mountain. At times one couldn't tell who was with which party because

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[160] Padmasambhava an Indian tantric adept, is considered to be a realized practitioner and in fact is venerated as the Second Buddha, whose coming was predicted by the first one, Buddha Sakyamuni. He brought the special teachings of Vajrayana Buddhism to Tibet in the 8th century of the common era, at the invitation of King Trisong Detsen. Having subjugated evil forces hostile to the propagation of Buddhism in Tibet, Padmasambhava founded the first monastery in Tibet, Samyey Gompa, and initiated the first monks. He is popularly known as Guru Rinpoche or Precious Guru. Although honored by all sects, he is special to the Nyingma sect which traces its origins to him.

Ladakhi and Tibetan features are very similar. Local police swarmed the scene trying to bring the situation under control. About seven Ladakhis and five Tibetans were rushed to the hospital for medical attention. A number of youths were jailed. A curfew was imposed by police for the rest of the night. (D3)

Although large scale violence has been a feature of the state of Jammu and Kashmir for over a decade, the region of Ladakh has been relatively peaceful, particularly in Leh District, which is 81% Buddhist, according to the most recent census figures available (Van Beek 2001; Aggarwal 2004, p. 15). The sacred dances symbolizing the eradication of all evil are an ironic backdrop to this upheaval, as is the whole imagined canon of Buddhist exhortation to peaceful comportment. For those caught up in the heat of the action, neither religious nor communal norms had much restraining power. Again I recall Pirie's (2006) rejection of the whole premise that this Buddhist society regulates itself according to morality based in religion. She has argued that, for Ladakhis, norms of conflict avoidance are purely pragmatic and do not implicate animist spirits, Buddhist deities or deep philosophies. As I have argued elsewhere, however, for Tibetan refugees, religion is a core feature of identity politics conducted from exile. Consciously nurtured and showcased to the West, it was the very rationale for the original exodus from Tibet. Its language and principles are actively used by the Dalai Lama, government officials and community leaders to frame the struggle for a free Tibet through non-violent action and to reinforce harmony norms for exile solidarity. This discourse has become the means through which Tibetans recognize themselves, which is not to say that they invariably follow its tenets. Most of Pirie's conclusions derived from fieldwork in an isolated Ladakhi village seven days walk from the capital. In more urban Leh, she described a situation more consonant with the Tibetan Diaspora in India – namely, where the educated elite (including monks) instrumentally conflate Buddhist principles with moral, political and legal norms involved in social control. Nonetheless, she stated that informal practices of dispute resolution through village headmen or through the mediation services of the Ladakhi Buddhist Association (LBA) do not invoke Buddhist ethics in their efforts to coax marital, inheritance or land disputes to reconciliation. CTA Representative self-reports have suggested otherwise in Tibetan refugee settlements. As several sections have demonstrated, Buddhist ethics are invoked instrumentally in conjunction with the Dalai Lama's views. The LBA operates as an alternative to official courts, but its reason for existing is primarily political. The organization has led the agitations for Ladakhi autonomy from Kashmir and is embroiled in struggles against dominance by the old elite (Van Beek, 2001, p. 545).

The Tibetan-Ladakhi confrontation was a law and order issue that might have been handled exclusively through coercive law enforcement mechanisms. As with other cases described in the previous section on interpersonal disputes, however, the police made an emergency call to the Settlement Officer, to inform him and to solicit his assistance in containing any repercussions.

Tibetan officials were dumbfounded. By now it was late at night, but the Settlement Officer called the heads of the Ladakhi Buddhist Association (LBA), the Ladakhi Youth Association, and the Ladakhi Mothers Association, as well as others known to be supportive of Tibetan refugees, to ask their advice. He was told that the Tibetans should hold to a very low profile, keep very quiet, because Ladakhis were on the verge of a broader communal agitation. The Settlement Officer assured them that he could control the Tibetan youths and, that same night, he – together with the Cooperative Society Secretary and camp leaders - went to each of the main students involved, exhorting them to stay at home.

On the third day, a formal meeting was convened with the District Commissioner, the Tibetan officials, representatives from the associations just mentioned, as well as from the Tibetan Women's Association, the Tibetan Youth Congress, and the Ladakhi-Tibetan Friendship Society. Initially emotions ran high, particularly among the younger representatives, but the LBA took pains to mediate the ruffled feelings and to minimize the incident. Little was resolved, however, other than both sides agreeing to control their people.

On the fourth day, another meeting was convened with the same groups, but this time including the father of the Ladakhi boy who had been stabbed. This man was a former member of the State Legislature, highly respected in the community and someone who had always been gracious to the Tibetan refugees. His presence was a fortunate turn in the tense discussions because he emphasized that this was a dispute not between two communities, but between two youths. He assured those assembled that his son was recuperating well in the hospital and that the long-standing Tibetan-Ladakhi relationship couldn't be destroyed so easily. His calming influence allowed the dialogue to focus on what needed to be done. In the end, it was agreed that all the 60 or so Tibetans who had been involved in the fighting would pay 1500 Rupees each, in compensation for the

trouble caused. Both parties agreed to advise their youths to be respectful and friendly toward each other. The local police also undertook to monitor any group formations for a month to ensure that hostilities did not resume. The agreements were drawn up in writing and signed by those present, but this did not include those actually involved in the physical brawl. (D3)

It is not clear from the case information what the content of the agreement was, other than to restore normalcy with compensatory payments to acknowledge responsibility for disruptive behavior. Did the Ladakhi side also have to pay compensation and if not, why not? Nor is it clear whether underlying grievances found their way into the discussion. Youths who were jailed had been released shortly thereafter, but little is known of the Tibetan boy whose stabbing unleashed the outburst. He reportedly was never caught by the police. Supposedly he had escaped back to his settlement and at the crack of dawn made his getaway to Delhi where he was studying. In any event, the father of the stabbed youth declared that he did not want to know who the culprit was and did not want to press charges. He likely took this forbearing attitude in recognition of the futility of initiating an adversarial legal process when everyone shared in the blame. Being a former politician well aware of the volatility of Muslim-Buddhist relations in the region, he clearly wanted to defuse any Buddhist to Buddhist tensions, as implied in his emphasis on "the longstanding Tibetan-Ladakhi relationship."

Ury (2000) has described the workings of the "third side" – an amalgam of engaged community members at several levels who prevent, contain or resolve conflicts arising among them through dialogue and peer pressure. Outcomes targeted are consensual because they are recognized as a triple win - a win for the parties on either side of a dispute and for the society that is affected by their disputing behaviors. In this case a number of experienced individuals came together with responsibilities for informal dispute resolution – that is, the LBA, the Settlement Officer, camp leaders and even the District Commissioner. Their discussions, however agitated, did result in an agreement that both sides were prepared to sign. The restraint shown in the aftermath of the confrontation can be attributed in large part to authoritative figures able to influence and control their constituencies. The Settlement Officer, as a representative of the Dalai Lama was respected by Ladakhis and Tibetans alike. The father of the stabbed youth was equally held in high esteem by both communities. Moreover, his ability to place community interests before personal family grievance was exemplary. Most likely it was what softened the opposing positions so that

energies could be redirected toward reconciliation. A second tier of conflict containment can be seen in the inclusion of broad-based organizations on either side – mothers, women and youth groups - each having networks running deeply through familial structures. Importantly, local police also did their part by watching out for groupings that might spell trouble. As a result of these multi-level endeavors, there apparently has been no recurrence of hostilities.

In discussing this case with the Director of the Tibetan Centre for Conflict Resolution (TCCR), I learned that while social harmony has been restored, a problem persists insofar as relations have not been mended between the fighting youths. There are friendships between individual Tibetan refugees and Ladakhis, but group situations are still awkward; they are generally avoided and even dissuaded by the respective authorities. Where in other communities the sharing of special events has become part of a conscious attempt to build bridges between cultures, here relations appear to be frozen in mutual avoidance. Like a root fire, such a situation always has the potential of bursting to the surface unexpectedly. The youths involved in fighting were never invited to the table for dialogue. No-one can even say what provoked such a sudden and fierce interaction.

Consciously or not, college students from Delhi personify modern success in opposition to traditional cultures left behind by development. One could speculate that the Tibetan youths, having no land or property, wore their modest wealth as clothes and 'attitude' to compensate. One could imagine that the Ladakhis felt their home-ground was being invaded, the girl being the ultimate symbol of appropriation by an alien other. On the other hand, did the festival setting of the confrontation carry political overtones? Aggarwal, in fact, has theorized Ladakhi festivals as sites for negotiating and contesting status and power since the inception of agitations against Muslims in Ladakh. Her meaning was that "cultural performances are frames in which the drama of life is mimicked and exhibited" (p. 16). To the extent that Padmasambhava has been revered for subjugating evil forces hostile to Buddhism, the festival dedicated to him conceivably could have been playing into localized Muslim-Buddhist identity politics in Leh District. Yet as fellow Buddhists, one would expect that Tibetans fall outside that web of beliefs and animosities. Was it then that a communal event simply provided the occasion and the heightened mood for releasing tensions built up over other issues?

For some observers attached to the mystique of an ancient Ladakh and an idealized way of life, the region's troubles are attributable to pressures to modernize under centralized development, and exposure to Western tourists since1975. Norberg-Hodge (1992), for example, has claimed that these factors contributed to a devastating breakdown of traditional culture, and a concomitant cultural inferiority complex among young Ladakhis. She has observed that youths now rush after the symbols of modernity – sunglasses, walkmans, blue jeans – and that these very symbols have contributed to an increase in aggression. She claimed that the smallest markers of difference can have political overtones, becoming exaggerated or distorted, bringing out "bitterness and envy on a scale hitherto unknown" (p. 18). These depictions would seem to fit the case study, but are they academically supported?

Aggarwal and Van Beek have provided scholarly detail that corroborated the broad lines above. Both described the economic backwardness of Ladakh and its strategic location in the ongoing border war between India and Pakistan over Kashmir. These factors motivated a centralizing and nationalizing development agenda for Ladakh, based on the expectation that Ladakhis would repay the government of India with their loyalty. Aggarwal stated, however, that disillusionment with the promises of modern development was widespread, and that discourses on alternative grassroots development were gaining a foothold (p. 45). Meanwhile, Ladakhis embarked on intense agitation for cultural and political autonomy from the control of the Muslim-dominated State of Jammu Kashmir. The movement to free Ladakh from Kashmir was launched in 1989, led by the LBA and included a three year social boycott that prevented Buddhists from eating, marrying and interacting with Muslims. Van Beek's analysis of communal politics in this period focused on what he called "identity fetishism" in the practices of representation and democracy. He argued that a whole generation of young men in Leh had assumed a "communal perspective on their own lives as well as on the wider society and the Indian political system" (p. 544). Aggarwal similarly claimed that youth had been raised in an atmosphere of mutual distrust, including counter-accusations of who was siding with whom (pp. 51, 53).

12.2.1 Final reflections

Virtually two weeks before the Tibetan-Ladakhi confrontation I have described, the agitations culminated in the granting of a measure of autonomy in the Ladakh Autonomous Hill

Development Council, Leh. The period leading up to that point was one riddled with threats of violence from the most radical elements of the LBA - namely, young educated but unemployed urban males who saw themselves as the "real fighters"(Van Beek, p. 545). Communal politics, according to Van Beek, primordialized collective identifications, masking backstage motivations and players, while "at times violently turning neighbors against each other" (p. 551). Thus, I would contend that, whatever their own misdemeanors, the Tibetans actually were caught in the cross-fire of Ladakhi Muslim-Buddhist relations within a testy, complicated, politico-economic regional scenario. A more direct link can be inferred from the fact that the stabbed Ladakhi boy was the son of a member of the State Legislature. Whether or not he was involved as an activist with the LBA, it is reasonable to assume that he would be well aware of the political mood of his peers – "the real fighters."

Meanwhile, Tibetans have their identity issues as refugees. Having their own struggle for an independent homeland and no voting or representation rights as non-citizens, they are likely to be less concerned with Ladakhi preoccupations for autonomy. Not sharing this key rallying point of collective identity can set Tibetans apart in a way that overrides similarities in religion and physical appearance and breeds resentment. At the same time, Aggarwal's comment about "who is siding with whom" is suggestive of how dangerous it can be for Tibetans to side with, or be seen to side with one or the other, particularly as they travel between Muslim-dominated and Buddhist-dominated areas of the region. Here, as elsewhere in India, sweater selling provides income supplementation for Tibetans and mobility is critical. As K. Dhondup expressed it: "When guns were roaring and bombs were blasting in Kashmir, Tibetans were not far behind selling their wares wherever the curfew was relaxed."[161]

Interestingly, TCCR ran three conflict transformation workshops in Ladakh in 2002 - one for teachers at the Tibetan Children's Village, one for the school's House Mothers and one for the Sonam Ling Settlement's elected camp leaders and representatives of the TYC and TWA. Although the 1995 incident was well known, no-one volunteered it as an example in the context of discussions about coming down from conflict escalation. As these workshops are experiential - that is, drawing on the lived experience of participants - the absence of any reference to this single, emotionally charged communal clash adds to observations made earlier that effects of the conflict linger.

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[161] K. Dhondup (1994), Dharamsala revisited: Shangrila or Sarajevo. Tibetan Review, XXVIII (7), 18.

12.3   Bylakuppe 2005

When exploring conflict scenarios, the response I heard most often in this pleasant rural location was "chung chung" – small, nothing significant. The Bylakuppe syndrome does not share the scale or intensity of the Ladakhi case just presented, nor the Dharamsala one to follow. Yet, I gradually became aware of a number of situations and interactions that added up to more than just isolated, insignificant incidents. If the Alternative Law Forum's study on communalism and communal incidents was relevant to the Ladakhi case, it is doubly so in Karnataka, the potential "Gujurat of the South," where Bylakuppe is located. The syndrome, beginning with the "rickshaw wallah" incident, is illustrative of incipient patterns that come to the surface with the settling of private scores, and underlying factors such as differentials in economic advantage, rumor, media reports, communal politics, and Hindutva activism.

Bylakuppe is a small Indian village straddling the Mysore-Madikeri Road, in Periyapatna "taluk," about 87 kilometers from the City of Mysore, which is the headquarters and revenue division for the District of Mysore. The Tibetan settlements of Dickyi Larsoe and Lugsung Samdupling adjoining Bylakuppe were carved out of elephant-roaming jungle just fifty years ago. Today, the neatly ordered Tibetan camps are connected by serviceable arterial roads that are plied by three-wheeled auto-rickshaws. Indian rickshaw "wallahs" or drivers jealously guard their taxiing preserve, even though their customers are almost exclusively Tibetans, with the occasional foreigner visiting the splendid monasteries of Sera Mey, Sera Jey, Trashi Lhünpo, Sakya, Namdroling (Golden Temple) and Nalanda. While their taxi services are indispensable, frictions with passengers are not uncommon because fares between different locations are not fixed while the inevitable bargaining is not appreciated. Miscommunication on price or a bad combination of tempers can lead to altercations. On busy market days at Camp #1 of Lugsung Samdupling, auto-rickshaws and Tibetan motorbikes squeeze past each other on the narrow roadway. An inadvertent scrape against vehicles can result in exaggerated damage claims and heated charges. There have been cases where Tibetan chauffeurs from outside the area were beaten up when they picked up passengers on the rickshaw "wallah's" route after delivering their out-of-town customer. I myself experienced the edgy mood of some of these drivers, intent on getting in as many runs as possible. I also observed several gradations of argument between them and their riders. All told, it came as no surprise when I heard that a rickshaw driver was involved

in the first, and so far only, communal disturbance in Bylakuppe. What follows is a composite of the most detailed accounts, out of the sixteen that I gathered of the same event.

Case # 16:   Auto-rickshaw wallah

In June or July 2005, a few monks from Sera Mey monastery were strolling in the middle of the street in Bylakuppe, on their break from morning prayers. Coming up from behind them, an auto- rickshaw wallah blasted his horn for them to move aside, but the monks continued on their way. The driver skimmed past them yelling something in Kannada [local language] and one of them yelled back "saala!" [Kannada word meaning "bastard"]. The monks were recent arrivals from Kham and this was pretty much the only Kannada word they knew. The driver screeched to a halt, furious that "a refugee in my own country insults me!" He set to beating the monk. When the monk fought to defend himself, about 20 local Indian bystanders joined in the fray, leaving the monk severely injured with two broken ribs. The monk ended up in jail, because the rickshaw driver and bystanders were in a position to give their own version of events to the local Superintendent of Police and the monk lacked both language and connections to make a counter case.

Meanwhile, the "sarpanch" [Head of the Panchayat], went to Periyapatna to demand that the jurisdictional court sentence the monk to a jail term. It is the "sarpanch's" responsibility to press charges. He was a Hindu, who converted to Islam when he married a Muslim woman. His taking up the case against the monk was probably politically motivated, playing to the Muslim vote. The court rejected his claims, however, as the "sarpanch" had little education and was known for his record of extortion and robbery. He, in fact, demanded 300,000 Rupees from Sera monastery to drop the case against the monk. The monk was released from jail and hospitalized for his injures.

Sera monastery refused to pay and was prepared to take the case all the way to the Supreme Court of India if need be, because the monk in question was known to be a good person. Now it was the "sarpanch" who offered money to Sera Monastery, so it would drop the case against him, but the monastery was adamant that the case should not be

withdrawn. Aside from the injustice to the individual monk, there was a disturbing element in the participation of Indian bystanders. At least one member of the crowd was well known to Tibetans and had always maintained friendly relations with the Tibetan community as a whole. Yet, when the melee began, events took a nasty turn with him leading the shout that all Tibetans should be kicked out of India.

As the foregoing is an amalgam of recollected events, the details cannot be taken as definitive fact. The number of monks involved, what happened to the other monk(s), whether or not the monk(s) were actually jailed, the amount of money demanded as reparation or possibly bail and by whom, the exact sequence of events and other small details vary from account to account. The reputation and political affiliation of the "sarpanch" could not be verified elsewhere, although as demonstrated by Lindsay and Gordon (2005, p. 486) accusations of corruption and nepotism in this position are part of Panchayat politics. In another version, authorities at the police station in Periyapatna asked the monks to pinpoint the offenders but as the perpetrators were a mob this wasn't possible and so the case died there. In yet another variant, it was the Auto-rickshaw Drivers Union that took the monk(s) to court, first to the ex-officio Magistrate for Periyapatna "taluk," and then to the District Court in Mysore, demanding 1.25 lakhs Rupees in settlement. The former Abbot of Sera Mey monastery assured me that no case was laid either way, so the details likely were a combination of rumor, and of informal exchanges or threats back and forth. What all agreed upon is that a savage incident did occur and that the ready involvement of Indian bystanders with anti-Tibetan slogans was upsetting to the whole Tibetan community. The Tibetan manner toward rickshaw drivers had generally been friendlier than that of the more caste-conscious local Indians. They commonly used terms such as "sir", "bhaiya" or "babu-ji" in addressing the rickshaw wallahs, signifying brotherly respect. Tibetans felt deeply betrayed by the Indian attitudes displayed.

Not only was the incident upsetting but, as I was told by several informants, this was perhaps the first time in the history of Bylakuppe that all Tibetans, lay and monastic, were united in defensive reaction, "realizing that the Tibetans had endured enough" (F2). The monasteries had instructed the monks to go on foot rather than take rickshaws and, in solidarity with the monks, the Tibetan community collectively refused to use any rickshaws in Bylakuppe. The boycott amounted to a potent economic sanction, as most rickshaw driver earnings derive from Tibetan sources, either directly or through inflated rates charged when Westerners and visiting Rinpoches

generate extra rickshaw demand. Tibetans boycotted not only rickshaws, but also the shop-keepers and vegetable sellers of near-by Kushalnagar where daily provisions were bought. For 20 to 30 days, they went the extra five kilometers to Periyapatna. Food shopping for the more than 8,000 monks of Sera alone made a huge difference in local business. The loss of Kushalnagar was the gain of Periyapatna. Thereupon, the shop-keepers of Kushalnagar had a dispute with the Union of Auto-rickshaw Drivers, with the former claiming that the latter's actions had cost them their livelihood.

The two Settlement Officers interviewed distanced themselves from the social boycott, emphasizing that it was a spontaneous action, not one instigated or in any way encouraged by them. Yet, as noted earlier in this dissertation, boycotts are part of the arsenal of non-violent action with which Tibetans are familiar. Slogans such as "Boycott Chinese goods!" can be seen here and there on exterior walls. Throughout that period, all kinds of informal discussions were taking place independently and between sides, with Tibetans as usual being advised to "lie low". After a few weeks, representative groups finally were prepared to sit down formally to address the issues. A large meeting of some 50 people was convened, chaired by the Assistant Commissioner who fulfills the role of ex-officio Magistrate for Periyapatna "taluk." Included were the heads of monasteries, the two Settlement Officers, all village leaders, the Deputy Superintendent of Police, the local Panchayat President, members of the Panchayat, and representatives from the Auto-Rickshaw Drivers Union, the Indo-Tibetan Friendship Society, the TWA and TYC – in short, all senior members involved somehow in community leadership and social control.

> For one and a half hours each side told its woes and all agreed on the mutual need for brother-sister relations. All was resolved and participants took the information/outcome back to their constituencies. (G2)

The simple description of how the conflict was resolved belies more intricate dynamics. I would argue, for instance, that the social boycott empowered average Tibetans and helped them to equalize their power relations for a more fairly negotiated eventual outcome. Indians themselves came to realize the extent to which Tibetan presence fueled their economy and backed down from further agitation. Any local politicians wanting to exploit the situation no longer found it in their best interests to do so. According to Tibetan respondents involved in the meeting, no money changed hands, many Indians personally apologized for the mishap, and the Auto-Rickshaw Drivers Union agreed to fine drivers if they were found to be mistreating Tibetans. That being

said, I observed that frictions do persist half a year later, which suggests that a smaller working group might have followed up to devise other practical measures. A shopkeeper who looks onto the daily pell-mell of motorbikes and auto-rickshaws commented that it was just a matter of time before another incident flared up. Having an auto-rickshaw stand at one end, he suggested, could easily pre-empt problems, as could the negotiation of fixed fares for well frequented routes, much the same as happens in Dharamsala and other settlements. In other words, large public meetings of officials are necessary for sending communal messages, but minimizing the sources of dispute requires sustained, focused effort - before and after – and at several levels of the local hierarchy. I learned, for instance, that a "trülku" from one of the monasteries had been instrumental in bringing parties to the table in the first place, having expended considerable effort just to bring different individuals and groups to the point of being ready to face each other in a public meeting.[162]

Recent works by Yeh (2003) and Pirie (2005) on conflicts over pastureland in Amdo have documented a surprising recurrence of traditional mediation patterns in former ethnographic Tibet, with religious leaders and tribal elders often assuming a more meaningful role than PRC government officials. I had initially expected that I might find a similar residual pattern of religious authority in dispute resolution in the Tibetan exile community, but generally found little evidence that such was the case. In relation to this dispute, however, I received the following account of the "trülku's" role in the background:

> There were demonstrations brewing with large numbers of Indians and so the Chair of the Monasteries Committee assumed an important mediating function. People went to the various officials asking for their help to diffuse the brewing conflict but these representatives wouldn't touch it, preferring to bury their heads in the sand. The trülku held a number of anxious meetings at his monastery with different Indian leaders at taluk and district level, with political representatives, police and the taxi union. Slowly, he was able to cut through the tensions to eventually arrive at more peaceable understandings. He was respected as a monastic person as opposed to a public authority or political figure. Only after the trülku had paved the way, was the large public meeting convened "to resolve" the conflict. The Indian leaders were even ready to make favorable statements about Tibetans in the press, which would have been very powerful coming from them. However, Tibetan officials would have none of it. They didn't want the incident flashed in the press, preferring to keep it quiet. (F5)

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[162] "Trülku" is an honorific term used for "recognized incarnations of lamas who are often found in childhood and brought up to inherit the lineage and monastic foundations of their predecessors" (Patrul Rinpoche, 1994, p. 439).

According to this account, the trülku's patient caucusing with different parties not only brought them to the table for discussion, but also prevented a scaling up of something that several officials initially had described to me as "a very minor incident." The inclination of officials to down-play incidents is understandable, given the volatile nature of communal interactions. The benefit of clarifying what may already be circulating as mis-information has to be weighed against the danger of adding grist to the rumor mills or of feeding the media's appetite for sensational reporting. In casual conversation with local Indians, I learned that the incident had received some local coverage and mention was made in vernacular daily papers. Seemingly it was even aired on E-TV Crime Diary two-three months later in an evening time slot. Basically the content was that Tibetans are indulging in illegal activities such as smuggling, and that their assets are a direct result. It also accused them of eating beef. The program was denigrating and was generally questioning the legitimacy of Tibetans as refugees. The curious thing about these comments is that they have nothing to do with the actual altercation. Being only a recollection, the media reports actually may have occurred before, rather than after the incident - in which case they may have contributed to the Indian disputants' sense of justification for their actions. A Tibetan respondent made a similar connection:

> The main reason for this problem with rickshaws is that Hindus don't eat the sacred cow but monasteries did eat beef. All Geluk monasteries have now gone vegetarian, but the individual monks can still be snacking on meat between meals, at outside eating places. (F2)

The confusion about what was heard, when and through which report probably has to do with the fact that, just prior to the taxi wallah incident, a group called Bhagat Singh Yuva Sena Samiti (BSYSS) had issued a press release to the Star of Mysore newspaper. According to various respondents, one or more articles subsequently claimed that Tibetans were living luxuriously, constructing fancy houses and eating too much beef. The articles basically called on the Karnataka government to "send them back to Tibet!" I was able to obtain a copy of one article from the New Indian Express - Mysore, dated May 11, 2005 entitled "Forum wants Tibetans to go home." This article definitely preceded the rickshaw wallah incident and contained a litany of complaints and allegations that may well have played into people's minds. Although Mysore is 87 kilometers away and the local Indians involved were not necessarily literate, this type of news was sure to be picked up by local press and radio stations, given the size of the Tibetan settlements in the area. The study referred to earlier on communal disturbances in Karnataka

provided numerous examples of how the "influence spread" of communal agitation can widen with irresponsible media stories which then become the substance of rumors.

The May 11 article reported that the Bhagat Singh group had staged a protest in Mysore: 1) demanding that Tibetans leave India ; 2) raising fears that more than 100,000 Tibetans in Bylakuppe and nearby Kollegal would soon be demanding voting rights; 3) alleging that Tibetans had purchased land and employed Indians as laborers; 4) condemning the Tibetan protest against the recent visit of the Chinese Premier on the grounds that it would damage India's relationship with other countries; 5) accusing Tibetans of marrying local brides to acquire land and property; 6) alleging that Tibetan women in street sales were involved in human trafficking; 7) implicating Tibetans in cases of adultery, murder and burglary; and 8) raising the alarm that the growing domination of Tibetans would pose a threat to national security. The only complaint left out is the consumption of beef.

Although the May 11 article may have been reporting objectively on the content of the Bhagat Singh protest, it is not difficult to see how such reportage validates a confusion of fact with fiction for the reader. There is no attempt to correct statistics, or to verify allegations that are clearly intended to arouse communal agitation. Thus a fact, such as Tibetan employment of Indian laborers, is given a negative Hindutva connotation, on a par with pure fiction, such as women engaging in human trafficking. The latter problem actually is often featured in diatribes against Bangladeshi or Sri Lankan migrants but is conveniently used here to press the usual buttons. The article also published a photograph of Dalai Lama posters being burned which, in a Hindu or Muslim context, could be cause for riot. References to national security and international relations again bring in the China card which, for some Tibetans, is always a source of suspicion in terms of whether Chinese agents are somehow instigating the disturbance, perhaps paying people to agitate. Similar whispered allusions are made to certain lamas who practice Shukden propitiation, also sometimes associated with Chinese agendas, and discouraged by the Dalai Lama. There may or may not be any true basis for suspecting such agents provocateurs, but the attribution is a reaction of sheer bafflement as to why a group would trouble itself to scapegoat Tibetans, who by and large take pains to be inoffensive. In any case, it appears that the Bhagat Singh protest died down rather quickly, with businesses and hotels speaking up for the benefits that Tibetans had brought to the community. The two Settlement Officers nonetheless convened a meeting with Cooperative Society Secretaries, camp leaders,

monastery heads, TYC and TWA to discuss what to do with the press reports in the local English and Kannada papers. They felt they needed to respond to the press articles yet, wanting to downplay the importance of the Bhagat Singh group, they finally decided not to make a rejoinder. But who were these people? How many were they? How significant was their movement? What provoked them in this way?

12.3.1 Connecting dots

The rickshaw wallah incident followed closely on the heels of the Bhagat Singh protest. Respondents tended not to see a direct connection, but the trülku's intimation that a wider agitation was brewing is indicative that Hindutva, committed activists, and rumor were afoot. Historically, Bhagat Singh (1907-1931) was one of the most famous revolutionaries of the Indian Independence Movement, yet the antithesis of independentist Mahatma Gandhi and Congress ideals. A Marxist, his tactics were both violent and extremely nationalistic. Given the choice of name – Bhagat Singh Yuva Sena Samiti (Bhagat Singh Youth Brigade) – it is not unrealistic to hypothesize that this group's political disposition aligns with the BJP and its "India for Hindus" platform, which by all accounts has been gaining ground in Karnataka. As identified by the Karnataka Communal Harmony Forum, local newspapers like Vijaya Karnataka and Udayavani are known to be pushing a Hindutva agenda and the former is known to have direct links with a BJP MLA. To what extent the locals involved in the rickshaw case were aware of the Bhagat Singh group's agitation, or sympathetic to its cause, is unknown but under the circumstances a direct link between the two cannot be ruled out.

From my interviews with the Nyingma Monastery, I understood that the head of Bhagat Singh Yuva Sena Samiti was in the business of selling LPG or Liquified Petroleum Gas for use in cooking and gas lamps. The Nyingma monastery and people from the various Tibetan settlements were his largest customers. In another public demonstration in Mysore, the Bhagat Singh group reportedly had chanted "Down with the Dalai Lama" and also burned a picture of the Head of the Nyingma monastery, Penor Rinpoche. The main protest at the time apparently was the eating of beef, although it remains unclear why the head of the group would have gone out of his way to antagonize his own customers. In any event, the Nyingma monastery responded by saying that it would no longer be purchasing gas from this person. The head of Bhagat Singh

then went to Delhi to demand that the Government of India evict Tibetans from Karnataka State. At that time he also tried to organize a protest in Kushalnagar, with little success. Thus it would appear that the desire to retaliate (settle a score) propelled the head of the group to ratchet up his activism against Tibetans, and to do it closer to home. There are very few Tibetans in Mysore City itself, so the agitation was really targeting the large settlements in Mysore District, like Lugsung Samdupling and Dickyi Larsoe in Bylakuppe.

On December 4 of the same year – thus after the rickshaw incident - the Bhagat Singh group surfaced a second time with a more violent public protest, this time against the Indo-Tibetan Friendship Society's First Anniversary function in Mysore. A number of reporters were already on hand to cover the function, so their articles focused less on the protest content than on its denouement. From five articles I was able to glean only a handful of complaints or demands that made it into the press, such as: 1) that the function should be cancelled because repeated memoranda to the Chief Minister for Karnataka and Deputy Commissioner about the Tibetan menace had fallen on deaf ears; 2) that Tibetans were indulging in illegal activities and anti-social behavior; 3) that a Tibetan monk had assaulted the police in Kushalnagar; 4) that some Tibetans were assuming franchise in the gram panchayat elections; and 5) that Tibetans should be sent back to their country.[163] In terms of denouement, it is significant that police were deployed at the venue and acted decisively to contain the violence. According to the New Indian Express, the Central Government had ordered the police to provide security for the Tibetans.[164] Both the Deputy Commissioner of Police and the Assistant Commissioner of Police were quick to denounce the lawless aggression and police forces did not hesitate to bring out the canes when the Bhagat Singh activists resorted to violence. The group, ranging in reported size from 150 to "hundreds," caused considerable damage to Mahajana College's Vivekananda Hall, where the function was to be held. No Tibetans were injured but 16-25 activists were wounded in the police action. Nine were arrested, of which seven were remanded to judicial custody.

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[163] Mob ransacks function hall, caned. (2005, December 5) Times News Network – Mysore.; Activists go on rampage at Tibetan meet. (2005, December 4). The New Indian Express – Bangalore; Police cane mob at Tibetan function. (2005, December 5). Vijay Times News – Mysore; Bhagat Sena activists in judicial custody till Dec. 19. (2005, December 6). Star of Mysore; Anti-Tibetan stir turns violent. (2005, December 5). Star of Mysore.

[164] Activists go on rampage at Tibetan meet. (2006, December 4). The New Indian Express – Mysore.

Eye-witness accounts from Indian and Tibetan participants at the function confirm that while the protest was totally unexpected and deeply disturbing, the police response was a consolation. A meeting was subsequently held with the Superintendent of Police for Mysore district, the District Commissioner, and local Indian authorities for the Periyapatna area.

> They assured the Tibetans that all was well, not to worry - just maintain your discipline with the young generation. Some people cried but finally, as a refugee, people felt that you just have to take your losses. (E1)

The reference to younger generation underscores the ongoing socialization and re-socialization responsibility that the community as a whole has to assume – from family, to school, to NGOs, to monasteries, and to leaders at block, village and settlement level. It also points to tensions within the community around the more militant capers of activists for a free Tibet, or with new arrivals from Tibet – which in the South would mean mostly monks. The struggle for a free Tibet, or the Middle Way approach which emphasizes genuine autonomy over independence, is part of the community's "raison-de-être," actively promoted centrally and locally by the whole exile government apparatus. Although the TYC pursues a more independentist platform in homeland politics, it and the TWA play a very important role in mobilizing the population for protest marches on commemorative dates and in general keeping the commitment alive. Maintaining the drive from generation to generation inevitably runs the risk of overstepping boundaries of Indian tolerance, particularly in periods of rapprochement between China and India. Just a month prior to the first Bhagat Singh protest, Tibetan poet-activist Tenzin Tsundue had embarrassed the Karnataka State administration by breaching security for the visit of Chinese Premier Wen Jiabao.[165] He had climbed atop the Indian Institute of Science in Bangalore where meetings were to be held and, at a crucial moment, unfurled a banner criticizing China's occupation of Tibet and letting loose a flurry of pamphlets. The flamboyant theatrics were not appreciated by police authorities and provided ammunition for the Bhagat Singh activists. Though Tsundue is a hero to young Tibetans, his exploits are viewed with some apprehension by the more conservative members of society and that apprehension is confirmed by this type of backlash.

The thin line between maintaining Tibetan traditions and sensitivity to the limits of Indian tolerance also can be overstepped by those new to the exile situation and hence not yet aware of

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[165] Tenzin does it again. (2005, April 11). World Tibet Network News. [Online] Available at: http://www.tibet.ca/en/wtnarchive/2005/4/11_3.html

normative exigencies. In relation to the rickshaw wallah incident, a number of respondents mentioned that sometimes newcomer monks can create troubles because they have not been socialized to assume a respectful manner toward their host country. They don't understand the precariousness of the refugee circumstance and have not been exposed to the messaging about Gandhian non-violence promoted by the Dalai Lama, Tibetan Prime Minster Samdhong Rinpoche and the whole CTA administration. New monks may have been subjected to brutality in China, leading them to develop self-protective reflexes that can exacerbate small disputes in exile. They may initially exhibit sharp, rough or loud mannerisms, have a short temper or have difficulties with the local language. Until they are socialized into communal norms, incidents can occur. In this regard, another of Bhagat Singh's accusations had some basis in fact – the attack on police in Kushalnagar. A newly arrived monk got into a quarrel with an auto-rickshaw driver over the fare being charged in Bylakuppe. The police came by and tried to smooth out the incident but the monk fought back. While in custody at the police station in Kushalnagar, he reportedly pulled out a nanchak and attacked six police officers, out of which two had to be hospitalized. The case is currently before the courts. The matter is "sub juris" and no one talks about it. Tibetans float the idea, however, that the monk was not in his right mind.

12.3.2 What's the beef?

Bylakuppe has not known communal violence on a scale that happens on a regular basis in Karnataka and elsewhere in India. However, it is evident that the rickshaw incident was sandwiched between agitations that were persistent, being led by a committed activist. Although I have no confirmation of the political affiliation of the Bhagat Singh agitators, the rhetoric on beef is known to be standard fare for the Bharatiya Janata Party (BJP), as noted in an article on the Communalism Watch website:

> The slaughter of cows for meat and the sale of such meat is not in itself a crime in many states of India, including Karnataka. The BJP campaign against it is neither in the interest of cows nor Hindu sentiments. Their sole motive is to generate communal unrest from time to time and keep the tension alive.[166]

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[166] Rajashekhar, G. & Phaniraj, K. (2006, September 26). Karnataka is fast emerging as Hindutva's new hate laboratory. Communalism Watch. [Online] Available at: http://communalism.blogspot.com

As mentioned earlier, BJP influence has been steadily rising in Karnataka. From just 4.7% representation in 1984, it has claimed 79 of 224 seats in the State Legislative Assembly in the 2004 elections, as well as 18 of 28 Karnataka seats in the Lok Sabha or House of Parliament to become the largest single party in Karnataka.[167] The national BJP Party Manifesto is careful to dissociate itself from its earlier communalist platforms and to refocus attention on bringing a united India to its modern apogee. Yet, there are themes enough in the Manifesto for local BJP politicians to exploit for communal support – such as, the commitments to rebuild Ram Mandir in Ayodhya, to implement a Uniform Civil Code and to reinforce the nationalist "parivar" (family). Each of these themes goes against the sensibilities of the Muslim minority and has been the catalyst for violence between the two communities in the past. The meat quote above concerns the case of a Muslim meat trader, Kasim Saheb, whose license was unlawfully revoked as part of a Hindutva campaign against cow slaughter. In fact, as confirmed by the article, beef is consumed by Muslims, Christians, Adivasis and Dalits. In retrospect, the beef issue and other xenophobic themes in the Bhagat Singh protests, though not directed at the Muslim minority, have all the markings of a communal mentality often associated with BJP politics. Tibetans thus are never immune to what is happening around them, but that does not necessarily mean that they are aware of circulating currents, particularly in these rural settings.

Ironically, the beef complaints came at a time when Tibetans had been under some pressure from the CTA and the Dalai Lama to adopt a vegetarian diet – no mean feat for a high altitude culture that was very meat dependent for nutrition. In his discussion of this new directive, Buchung Tsering quipped that the Tibetan response initially was "If there is no meat, what is there to eat?"[168] He noted that in 2004, the Assembly of Tibetan People's Deputies introduced a motion encouraging Tibetans to make special efforts toward vegetarianism in that year. The Tibetan Department of Health even organized vegetarian cooking classes. In Dharamsala, vegetarian signs are posted everywhere, and new references to "the food of Bodhisattvas," and vegetarian cookbooks are displayed in shops. Fresh meaning is given to the mantra of "compassion for all sentient beings" and Tibetan yogis who had espoused vegetarianism, such as Shabkar Tsedruk

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[167] The closest runners-up were the Congress Party (INC) with 65 seats and the Janata Dal Party (JD (S) with 58 seats in the Vidhan Sabha or the Lower House of the State Legislature; In the House of Parliament elections, INC won 8 seats and JD(S) won 2 seats. For 2004 election results, and the different Party Manifestos, see the GOI Elections website [Online] at: http://www.indian-elections.com/assembly-elections/result-karnataka-assembly-2004.html.

[168] Buchung Tsering. (2005, February 23). Why Be Vegetarian? The Times of Tibet.

Rangdrol (1781-1851), enjoy new prominence. The 2006 Kalachakra empowerment given by the Dalai Lama in January in Southern India was presented to the more than 100,000 participants as the first ever vegetarian Kalachakra. During side events, an NGO called the Tibetan Volunteers for Animals was prominently featured. For their part, the large monasteries of Bylakuppe had already converted to vegetarian cuisine for communal meals. Monks typically eat their morning and evening meals at the monastery but are free to eat outside during their afternoon breaks. It is not uncommon to see them enjoying beef "momos" or "thukpas," as well as Indian meat snacks at local eateries – the optics of which are not good, given the current mood.

12.3.3 Final reflections

In summary, the importance of the Bylakuppe syndrome is that small incidents, even in a relatively peaceful environment, can take on unexpected significance when different frictions come together. When the various dots are connected, between incidents and the larger socio-political context, Tibetan vulnerability and its communitarian challenge become more manifest. The Bylakuppe syndrome shows that the features of harmony ideology that Nader found suspect are again explainable by another kind of dynamic. There is a predisposition to voluntary compliance with pro-social norms because the rationale behind them is anchored in the adaptation imperatives of exile life, in addition to the long term vision of the correct path to the promise of homeland. If agitators like the Bhagat Singh activists decry the meat-eating habits of Tibetans, or their alleged illegal or anti-social behaviors, or even their devotion to communitarian goals expressed in ways seen as objectionable, then compliance with counter-norms such as vegetarianism or lying low or being demonstrably peaceable and law-abiding, become a matter of survival. Again, while there is spirit enough to suggest that individual agency is not arbitrarily suppressed, the option of communal aggression or a collective adversarial posture against Indian hosts is simply not a realistic option.

I also want to highlight the contingency of optics – how an incident, anecdote or vignette reads – as a research problematic. In the context of communal disturbance, this point is linked to the connecting dots game played by the media, which can be as much a source of information as of misinformation. Optics, rumors, latent jealousies, and facts can be combined in ways that mask media agendas or those of their informants. Yet, in some fashion, the resulting amalgam has to

be factored into a researcher's understanding of what in fact is happening and how that fits with the operating culture. These situations are rarely mono-causal, which means that perspectives are just as divergent. The incident described in the next case study was pivotal for the Tibetan community as a whole. Its salience is reflected in the many voices heard in newspaper commentary over the crucial period.

12.4 Dharamsala 94

While consulting the Briefing Center resources of the CTA Directorate of Information and International Relations, a thick set of files marked "confidential" caught my eye, alerting me to the importance of Dharamsala 94. When I began to explore the crisis that took place in 1994, I typically had to make specific reference to it, before respondents volunteered that such an event had taken place. Of course, more than ten years had transpired since and a question about Indian-Tibetan relations in the context of research on dispute resolution might not have generated an automatic recall. In retrospect, however, I would argue that there were several reasons for the seeming discomfort or reticence on the topic:

- **Loss of face:** The image of Tibetans that had been projected instrumentally to the international community, and indeed was embraced by it readily, was one of a compassionate Buddhist people; that image subsumed Tibetan gratitude toward Indian hosts, naturalized on the basis of ancient cultural and religious ties;

- **Center of gravity for Tibetan-ness**: Manifestation of Indian hostility in Dharamsala - the seat of the Dalai Lama and the entire exile government apparatus –was experienced as a fundamental lack of respect for the legitimacy of the exile presence, and for its highest symbols;

- **Cognitive dissonance**: The arduous work of refugee rehabilitation and the preservation of a precious civilizational culture in exile were suddenly cast in negative light. The very successes that were a source of modest pride became characterized as enclave behavior resented by local hosts;

- **Domestic security connotations**: Any impression that Tibetans are unwelcome has to be carefully managed in order to prevent mindless contagion of that attitude in a country known for volatility of communal tensions;

- **Implications for dialogues with Beijing:** Tibetans are acutely aware that any questioning of the integrity of Tibetans in exile can be used to undermine the legitimacy of their claims to represent Tibetan people in China; and finally

- **Closed chapter:** It was painful, but is no longer an accurate reflection of the state of Tibetan-Indian relations. Lessons were learned and radiated out to all settlements as both rules for proactive initiatives to prevent cross-cultural conflict, and as normative messages for better social control.

Such reasons may reside more in the minds of those in positions of leadership and authority, but all Tibetans who experienced the disturbance retain some imprint of its various implications. Dharamsala 94 instantiates many of the factors underlying communal disturbances as defined earlier, and as seen in the Bylakuppe and Ladakhi scenarios. For those cases, I used something of an investigative reporting style to uncover facts that could link incidents and their socio-political context. In this case, access to a body of archival material dealing directly with the incident allowed me to take a social constructivist, narrative approach to analysis – that is, one that would try to understand the conflict by looking at the narratives constructed by various socially embedded actors. This approach is fitting because communitarian groups are prone to insular attitudes and story lines when conflicts arise with other groups. Enclave mentality inhibits interaction with outsiders, shields insiders from outsider viewpoints or concerns, and incubates misperceptions on one or both sides. As highlighted by Johnson (2005), Winslade and Monk (2000) and Cobb (1993), narrative analysis of conflict is less about objective fact than about the consequences of how subjective information is perceived and used, and about contest over which meanings get privileged. Narrative theory is grounded in Wittgenstein's theory of the constitutive function of language – that is, talk literally constructs the experience (Winslade & Monk, 2000). The observation points to the performative aspect of language and its use as a form of social action (p. 40). By extension, a narrative view of conflict asserts that:

> [P]eople do not have direct access to the truth or to the facts about any situation. Rather, they always view things from a perspective, from a cultural position. Drawing on this perspective they develop a story about what has happened and continue to act into a social situation out of the story they have created….From time to time these stories lead to diametrically opposed readings of events …Nevertheless these stories have effects and produce realities. (Winslade & Monk, p.41)

Rumor and media are critical adjuncts to a narrative approach to conflict analysis because they have the power to frame events in such a way as to sway a large body of opinion on what the

narrative is. Das (1998) has theorized the perlocutionary force of rumor – that is, a form of action conceived to be spread: "...instead of being a medium of communication, language becomes communicable, infectious, causing things to happen almost as if they had occurred in nature" (p. 117). Her hypothesis helps to explain why rumor would be the fuel that moves the communal engine in so many instances of communal violence. The media in turn extends rumors, spreading the influence area. Scholars concerned with the role of media in conflict have further pointed to its capacity to bestow legitimacy, promote the strategic advantage of one party over another, intensify a conflict or provide a conduit for inter-group communication (Galtung, 1998; Ellis, 2006; Mander, 1999).

To develop a thick narrative on Dharamsala 94, I drew on several sources: 1) three recollected eye-witness accounts derived from interviews in Dharamsala; 2) forty newspaper and journal articles drawn from the Library of Tibetan Works and Archives; and 3) scholarly and newspaper articles that flesh out contextual features. Though brief, the eye-witness accounts are significant in that they encapsulate key impressions that remain for Tibetans ten years after the fact. As for the media, it gave voice to the conflicting parties over the crucial period, as well as to those whose efforts mediated an eventual resolution. The press coverage thus constitutes a record of real-time accounts, and illustrates what Cobb (1993) has called the "interdependence of the circuitry of the narrative"- that is, how narratives shift in response to being heard by the other. The media enabled the different stories to emerge, with the added twist that it was at times exploited by disputants and at times itself manipulated the course of events, either as agitator or conciliation seeker. Media was strategically used by local politicians as a mouth-piece for vote banking, by villagers who otherwise had no means of making their grievances heard and by government authorities who wanted to propagate an official narrative to quell the unrest. Individually, each account necessarily represents a selective simplicity. By reading across the accounts, and supplementing gaps with additional commentary, a richer narrative becomes possible.

12.4.1 Memory and its imprint

With recollected narratives, details fall away and hindsight contributes to a more rounded perspective of how the conflict emerged, what it meant, and what was important to take away

from it. My interviews with the President of the TWA (Centrex) and two Dharamsala Welfare Officers (one of whom was the incumbent at the time) provided an entrée to the subject. Rather than separate their three brief accounts with my commentary, I present them together as a master narrative that represents the vantage point of Tibetans in positions of leadership within the community.[169]

Case # 17a: A different perspective

It started as an ordinary quarrel over India's loss of a cricket match to Pakistan. Usually the Tibetans fully support the Indian side but on this occasion, while discussing the game in a tea shop, one Tibetan commented that the Indian side did not play so well that day. The Indians took offence. Sensing trouble, the Tibetan boy ran away, entered a handicraft shop and grabbed a knife to protect himself. A struggle resulted. One Indian boy got stabbed and died. Whenever issues are between two ethnic groups, it is the local politicians who jump to drum up trouble. Local politicians took advantage of the case the next day by inciting reprisals. They recruited young boys even from remote villages to march on Dharamsala, breaking windows, stealing property and burning shops throughout McLeod Ganj. There was no control of the ransacking mob. But - they spared the Delek Hospital. Tibetans urged each other not to retaliate. The Dalai Lama was away at the time but when he returned he seriously considered re-locating to a larger city and made public statements about that. In McLeod Ganj a few thousand Tibetans are a very visible presence, but in a larger urban setting they would be less conspicuous. That prospect shut the Indian politicians up because they all know that Indians have benefited from Tibetan services, business energy and the market for Indian goods. State government officials appealed to His Holiness not to move and assured him that such an incident would never be allowed to happen again. Since 1994, the police are trying to be vigilant to defuse anything that has the potential to turn into a major incident. The whole incident put things into a different perspective. (G1)

Case # 17b: Keep calm!

My main duty was to calm things down so that it didn't escalate into a major communal problem. I did this by visiting families in the village where the stabbed boy lived, as well

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[169] The accounts are close to verbatim, with only minor edits for the sake of clarity.

as surrounding villages from which youth were coming to rampage through the Tibetan quarters. I met with the MLA and local politicians, some of whom were trying to politicize the issues for their own benefit. I met with the press, some of whom were covering the issues in an inflammatory way. I also urged Tibetans to remain calm and exercise patience and tolerance until the matters were resolved. On both Indian and Tibetan sides, some were cooperative, others not. The tensions were so high that even I had to sleep in the office to keep an eye on things. It took about ten days to bring the situation more or less back to normal. (D7)

Case # 17c: New homes, shiny motorbikes

The 1994 incident was politically motivated. It was a wake-up call for Tibetans to learn that local communities can be feeling envy, jealousy and hostility because of the Tibetans' growth in prosperity. In Tibetan communities both men and women work hard but Indian wives usually stay at home. Slowly Tibetans try to rebuild what they have lost. Their prosperity - especially when it can be seen in new homes or shiny motor bikes or what have you – creates dissatisfaction in the local people because they have been poor for so many generations. (D8)

Taken together the three accounts give a succinct initial overview. From the perspective of narrative analysis, they constitute a victim narrative conveying little sense of complexity, or responsibility for the events that transpired. Obviously, had I probed different aspects of the story with questions, the renditions would have acquired more depth and nuance. I chose not to pursue that course because I wanted to capture the natural imprint of meaning associated with the incident. I also knew that I would have other sources through which to explore alternative stories for thicker description of the whole episode – namely newspaper articles. Basically, the accounts introduce the actors and the plot.

Primary parties to the conflict were Tibetan and Indian youths watching a cricket match, one of whom armed himself with a knife and one of whom "got stabbed and died." Secondary parties to the conflict were local Indians, seen in fairly polarized terms as perpetrators acting against the whole Tibetan community as victim. The accounts articulate the link between causal and resultant factors – namely, envy, jealousy and hostility, goaded on by local politicians and inflammatory media, all implicating a generalized "other"- that is, the perpetrators. The only

causal factors attributable to the victims are the relative shift in economic well-being between Tibetans and locals, and the high visibility of Tibetans in a small town environment. Neither of these factors is personally internalized as blame for any wrongdoing. Cultural differences are implied in the juxtaposition of home-bound Indian wives and hard working Tibetan men and women, and between tolerance versus mob behavior – both distinctions maintaining a fairly thin perpetrator-victim narrative.

In the three accounts, the goal of conflict resolution is described mainly as one of containment. Vis à vis the perpetrators, containment is sought through meetings with aggrieved individuals and those likely to inflame the situation. Vis à vis the victims, containment is pursued by urging each other not to retaliate. By now phrases such as "remain calm and exercise patience and tolerance" are recognizable as a form of speech associated with Buddhist and non-violence principles promoted by the Dalai Lama and exile government. I would argue, however, that the phenomenal restraint shown by Tibetans was due as much to shell-shock and fear of potential consequences, as to strategic non-violence as a conscious choice. The first and third accounts make direct reference to the threat of communal escalation which, as refugees, Tibetans would know can only result in negative backlash for them. The restraint also was a measure of the strong communal norms that made it possible to act as one. A suggestion in the second account that some Tibetans were not cooperative merely highlights how difficult it must have been to manage the range of emotional reactions so that they did not explode in retaliation. The situation is a significant counterpoint to the Ladakhi case where return provocation unleashed mutual mob frenzy.

The possibility of a shift going beyond containment to a search for reconciliation based in a transcendence of communitarian standpoint is only faintly implied by the phrase "a different perspective," in the first account. The phrase connotes a reframing of the story in less victimized terms, one that opened the door to new self-understandings for the Tibetan community and new ways of thinking about future relations with Indian neighbors. In a sense, prior to the disturbance, Tibetans were still acting out a narrative of flight and adaptation. Their focus was turned inward through four decades of effort to rebuild their individual lives, as well as their collective society and traditions. Any outwardly focus tended to be directed at the plight of brethren in Tibet, and at the international community whose interest in them, their religion, their culture and their political cause bolstered confidence and a sense of security. The Dalai Lama's

receipt of the Nobel Peace Prize just five years prior was an affirmation that the Tibetans' non-violent approach to homeland politics had wide sympathy. Now Indian sensibilities intruded brutally on that story line. Perhaps more than the actual rampage, it was the ensuing litany of complaints from Indian neighbors that made Tibetans cognizant that there were perspectives closer to home needing attention.

12.4.2 Symbolism and social context

A brief sociological excursus will help to contextualize the crisis. With reference to the Karnataka report on communalism and communal violence, the accounts already hint at features typical of communal incidents in India: symbols and markers of patriotism, exploitation by local politicians, the influence of media reports, economic grievances and livelihood targets. First there is the charged symbolic content of the cricket match which Sen (1998) has identified anecdotally as a common source of violent dispute between Hindus and Muslims whenever the latter are seen to be cheering for the Pakistani team. Spectator sports count on the emotional involvement of the viewer. The excited allegiance to one team or the other easily can be transposed into markers of patriotism or national disloyalty. Not to be unequivocally for the Indian team can be construed as being against it. In that moment, all the imagined wrongs of history and the individuated grievances of the present can be condensed into dark meanings. As described by LeBaron (2003):

> Symbols communicate meanings and messages about identity. They mobilize people through stirring their emotions and evoking connections to ideas and groups, and they can be used for constructive or destructive ends. (p. 214)

In the context of Hindu nationalism, Buddhists, Sikhs and Jains – unlike Muslims, Christians or Jews - are generally considered to be part of the fold, insofar as the sacred sites associated with their founding fathers are located in India.[170] As Buddhists, Tibetans have banked on this historical advantage, always recollecting that India was the birthplace of Buddhism and that the Indian tantric adept, Padmasambhava, was the one who introduced the Vajrayana variant practiced by them in Tibet. Yet, it is in the nature of Hindutva as an ideology that the boundaries of inclusiveness can be redrawn along any number of parochial lines with imputations of one sort

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[170] Buddhist temples actually were run by Hindus until about 1920 when the Mahabodhi Society began recovering sacred, Buddhist sites, stimulating a revival of Buddhism in India. See Charles Allen. (2002). <u>Buddha and the sahibs: The man who discovered India's lost religion</u>. London: John Murray.

or another. This mutability is what allows local politicians to seize on incidents which themselves become symbols for all that the politicians want to get mileage on.

In the Dharamsala incident, where the cricket match became a symbol of nationalism, the killing of an Indian boy was deliberately projected by local politicians as a symbol of Tibetan misdemeanor at large. License to punish the perceived communal misdemeanor became a convenient outlet for feelings of envy and jealousy, harbored perhaps even unconsciously against Tibetan achievements. New homes and motor-bikes were symbolic of those achievements, just as destruction of livelihood sources (looting and torching shops) was symbolic of the resentment felt about the preferential treatment that allowed Tibetans to make economic headway relative to local Indians. In these latter examples, I am no longer using the term symbolic as a conventional sign or as a consciously shared meaning, but as something obliquely mood generating, almost intuitively connoted – particularly in the context of mob behavior. Interestingly, despite its unrestrained character, the mob had enough discernment to recognize Delek hospital - and to avoid attacking it, knowing that Indians have access to that service.

Going back to the accounts themselves, there is indication that the victim narrative acquired an empowered voice with the return of the Dalai Lama. The leverage provided by his statement about possibly relocating the exile administration's headquarters is what created a turning point. Indian disputants and senior State authorities now were forced to consider the contribution Tibetans had made to the communities that were expressing resentment. Yet, none of the three accounts really delved into the cross-currents of feeling aired at that time. The press, on the other hand, played a major role in mirroring back to Tibetans what differently placed Indians felt about their presence and attitudes. The press was the vehicle for public messaging and competing narratives of fact, factoid and fiction. A close analysis of what the media was saying, and how the dominant discourse gradually changed in the aftermath will corroborate these points. It will also reveal details that lead to altered readings of what now seems to be a dyadic perpetrator-victim story.

12.4.3 Media and the foundational story

Although the Library of Tibetan Works and Archives does not have a regular news-clipping service, it assembled a collection of some forty articles from daily newspapers which covered the incident over the crucial period and its immediate aftermath, roughly April 23 to May 22, 2005. From this collection, I would have to conclude that press reaction on the whole was quite responsible, considering the media's penchant for sensational reporting. Only two or three articles demonstrated anti-Tibetan bias and the rest either were impartial or evidenced concern for the restoration of amity between the two communities. I have to assume that the collection was fairly representative of what large Indian papers were saying because, taken together, the articles drew on testimony from a full spectrum of sources, including the Gaddi boy's family, the Gaddi villagers and those elements most active in propagating anti-Tibetan sentiment. This will become apparent in the voice analysis that I undertake once the milestones of the foundational story have been established. On the other hand, it is entirely conceivable that vernacular papers, that I did not consult, initially carried reports more partisan to the Gaddi community from which the stabbed youth originated. Brief mention to that effect was made in the <u>Tibetan Review</u> of July 1994 – namely that local dailies such as Vir Pratap, Punjab Kesri, and Tribune of Chandigarh had run articles "that depicted Tibetans as meat-eating smugglers who sold contraband items openly in McLeod Ganj."[171] The rumor effect of such reportage clearly stoked local fires until other sources of information on the situation filtered down to village level. Several of my newspaper sources, such as Indian Express, Hindustan Times and Times of India, are feeder services to smaller local papers – which supports my assumption that outsider viewpoints eventually insinuated themselves into village consciousness, as well as the other way around.

My main interest is in analyzing the voices that came to the fore in media accounts, but the following chronology of relatively uncontested facts will help to situate those subjectivities. With each entry I also note the significance of the added detail.

April 22, 1994: Upenderjit, a 20-year old Indian from the local Gaddi tribe, was stabbed and succumbed to his wounds the same day. The Tibetan assailant, Yeshi Choephel, also suffered multiple knife wounds and was hospitalized. Although he proclaimed his innocence, the police

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[171] Dharamsala revisited: Shangrila or Sarajevo. K. Thondup. <u>Tibetan Review, XXVIII</u> (7) July 1994, p.20.

registered a case against him under Section 320 of the Indian Penal Code which defines grievous hurt. The altercation took place in the evening, on Kannyara Road, half a kilometer from the Tibetan Arts and Metalcraft Institute, where Yeshi was an apprentice of traditional painting.

Of significance is that both Tibetan and Indian boys had knives and both sustained injuries - key points given the mob's unquestioning ascription of guilt, which is in the nature of rumor as an anonymous, enunciative act (Aggarwal, 1998, p.116). Indeed, the guilt for the killing ultimately could not be established and Yeshi Choephel was acquitted by District and Session Court Judge R.L. Khurana several months later, as reported in the February issue of <u>Tibetan Review.</u>[172]

April 23: Upenderjit's body was cremated in the Gaddi village of Ghamroo, which is in close proximity to the Metalcraft Institute and also to the Lower Tibetan Children's Village school (TCV). Immediately after the cremation, the deceased boy's uncle, a local BJP MLA by the name of Kishan Kapoor made a speech inciting the 300-600 villagers gathered there to take revenge. The Metalcraft Institute and the TCV School, with about 600 children in residence, suffered the first retaliatory attacks. No one was injured but the mobs broke many windows, set fires and disrupted water works.

This entry reinforces the victim narrative in that innocent, unguarded children at the TCV in fact were placed at risk. Aside from the effect on the children themselves, the sheer injustice of their being made a target touched a visceral nerve in all Tibetans. As the TCV Headmistress later stated:

> Most of the children in my school were born in India – this is the only home they know. But the harrowing experience that they had to undergo when the mob attacked our school has left them both traumatized and scarred. (Times of India, May 1).

With this entry, the key instigator also is confirmed as belonging to the BJP, a political party which has been most active in what has been called the Hindi belt, stretching across northern and central India where Hindi is the dominant language. With the exception of states like Punjab, Delhi, Gujurat and Haryana, many states along that stretch have high levels of economic inequality, low levels of elementary education and low adult literacy. Sen (1993) has attributed the success of BJP style nationalism in the Hindi belt precisely to this type of political exploitation of the credulity of uneducated people (p. 9).

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[172] Gaddi 'murderer' acquitted. <u>Tibetan Review XXIX</u> (2) February, 1995. p. 7.

April 24: Mobs descended from various directions on homes and shops in McLeod Ganj, as well as on a number of well known institutions, such as the Tibetan Medical and Astrological Institute, the monastery of the Gadhong oracle, Namgyal monastery, the Buddhist School of Dialectics, the Ganden Choeling nunnery, the Silnon Kagyeling monastery, the Tibetan Institute of Performing Arts, and so on. The government compound at Gangchen Kyishong also was attacked. Windows were broken, cars were burned and some 15 Tibetans were manhandled and injured. A curfew was imposed by the police. About 100 Indians staged a demonstration in Dharamsala, coinciding with a visit of the Chief Minister of the State of Himachal Pradesh. The demonstrators presented a petition to government authorities, demanding the ouster of the Tibetans and the Dalai Lama, with a list of grievances against them.

Here the physical scale of the damage becomes more apparent, as does its symbolic import. Tibetan icons such as religious, cultural and government institutions were deliberately subjected to disrespect and abuse, as were Tibetans caught up in the melee. Moreover, the explicit call for eviction of Tibetans and the Dalai Lama, who is the ultimate symbol of Tibetan identity, was an unnerving threat to their very existence – not to mention a sharp slap in the face to their legitimacy as refugees with a valid homeland cause. At the same time, the petition listing grievances signals a role reversal in which the perpetrators tell themselves stories about being victimized.

April 28-30: The curfew imposed four days earlier, was lifted but tensions remained high. The Himachal Pradesh State Government instructed district administrators to provide full security to Tibetans in the state.

This information is significant because, even if the first mobs were not under control, Himachal Pradesh police and state authorities acted responsibly from the outset to contain violence and restore normalcy. In many other cases of communal unrest in India in the early 1990's, police were either negligent or complicit in dealing with violence against minorities, notably Muslims, Christians or Sikhs (Brass, 1997; Sen, 1993, p.6). Thus, while local sentiment could be manipulated by vested interests, at higher levels the stature of the Dalai Lama and the contributions made by Tibetans to the regional economy were implicitly recognized.

12.4.4 Going back in time to hear the voices

Although the foundational narrative has elaborated on the plotline, little is yet understood about actor motivation and interaction. The device through which I propose to explore this shading of story is voice analysis, using direct quotes reported by the newspapers. Direct quotes can be taken to constitute the voice of various parties to the dispute – namely, the father of the deceased boy, local villagers, the BJP local politician, Indian government officials, Tibetan government officials, the Dalai Lama, Tibetan victims, and media commentators who expressed personal opinions partisan to one side or the other. Focusing on direct quotes, mostly in the first person, arguably is an artificial device. It is contingent on newspaper writing conventions and moreover is subject to inaccurate representation by the media of what informants actually said. My main concern, however, is to capture the content of rumor as it spread through this medium, and the changing tones as the situation evolved. Direct quotes give a sense of immediacy and live voice, in a way that the three recollected accounts and the foundational story could not.

Phase 1: Escalation

Dharamsala 94 unfolded in three phases. The first of these, April 22 to May 2, was the period of greatest unrest. Three days after his son's death, **the father of the deceased** was quoted as follows:

> What has my son done? Why was he killed? Have we allowed Tibetans to settle here to kill our people? (Indian Express, April 25)

> My son had just appeared in plus one examinations. We thought he would now support the family which has no means of livelihood. Now we are orphaned. (Indian Express, April 25)

In her analysis of the role of rumor in the social production of hate, Veena Das (1998) has shown that the images of the perpetrator and victim are frequently reversed depending on the perspective from which an incident is being recalled (p. 114). Where the first accounts were victim narratives from the Tibetan vantage point, these quotes spotlight not only the son as victim, but also the father ("…no means of livelihood. Now we are orphaned"). Not satisfied with expressing his grief, the father feels compelled to project his anger onto the entire community of Tibetans, with a rhetorical question that begs to be repeated, stirring up negative sentiment as a form of moral indignation. In contrast to the forbearance of the father in the

Ladakhi case, this father's comments ignore the fact that the Tibetan assailant also lay in hospital with multiple knife wounds. Either he deliberately shielded himself from that inconvenient truth, or he chose not to verify the rumors on which he was acting. In any event, the following quotes from **Gaddi villagers** demonstrate that the rhetorical question had its contagious, perlocutionary effect:

> Either we should be evacuated from here and settled somewhere else or Tibetans should be sent to some other parts of the country like Sahaul Spiti or maybe Rajasthan. (Youth, Indian Express, April 25)

> Either we live here or they! (Enraged villagers, Indian Express, April 25)

> The fight will go on until we win. (Villager, Indian Express, April 25)

The quotes appeared in the same article and it would be reasonable to assume that villagers were speaking to the press in earshot of one another. With each repetition of the idea, the pitch appears to increase, building an oppositional solidarity and culminating in battle rhetoric (although not necessarily in that order). At the same time, the victim story on the Indian side begins to diversify away from the original issue to a range of grievances, as seen in the following quotes from **Gaddi villagers** on the same occasion:

> Our taps are dry but the administration has provided the Tibetans with drinking water facility and bent backwards to provide them with electricity supply. (Housewife, Indian Express, April 25)

> Every Tibetan keeps some sort of weapon with him. Lately the influx of Tibetan refugees to Dharamsala has increased. Why is the government not stopping the flow of refugees who create troubles here? (College boy, Indian Express, April 25)

> The state administration and the local administration have turned a blind eye to large scale acquisition of land holding through benami transactions by the Tibetans. This has sent the land prices spiraling. (College teacher, Indian Express, April 25)

Evident here is an escalation of the scale of grievance, from the father's very personal plaint, to village-level complaints that go well beyond the stabbing incident to perceptions of favoritism and generalized Tibetan misdemeanor. Nor do the villagers trust their own government officials, since they are still under the thrall of the **BJP local politician**'s conflict-saturated narrative. He takes their voices to yet another level:

> They would tomorrow demand a homeland, the nation must act before it is too late, they are being aided and abetted by powers inimical to India. We do not want them here at all. The Centre should choose another state for them (BJP MLA Kishan Kapoor, The Hindustan Times, April 28)

In this scaling up of the incident, there is no mention of the injury inflicted either on the Tibetan assailant, or on the Tibetan community at large. The voices are accusatory and alarmist. Gaddi villagers are experiencing themselves as the victims - if not of Tibetans directly, then of the system that privileges refugee well-being over theirs. Moral outrage legitimates the conflict saturated victim narrative and resists its deconstruction with counter-insights.

The general pattern is recognizable as one that Sen (1998) has identified in relation to the anti-secularism critiques popularized by the "Sangh Parivar" – the family of like-minded organizations oriented toward a Hinduism-based Indian politics, like that associated with the BJP. The favoritism and sectarianism critiques of secularism really are metaphors for anti-Muslim sentiment, but conveniently extensible to other minority groups. In this case, the favoritism critique can be read as meaning that the government is giving preferential rights and treatment to refugees while ignoring the needs of local Gaddi Indians. A similar phenomenon has been well documented in refugee studies – namely, that international support for a refugee group can generate hostility if the local hosts do not get equal attention (Chambers, 1993; Harrell-Bond, 1986). The sectarianism critique can be read as meaning that Tibetans do not integrate well, fail to see themselves as part of the Indian family, and cannot be trusted to abide by the law. Indeed the Karnataka study on communalism also noted that one of the favorite thrusts in rumors propagated through media is the "presence of a foreign hand," which invokes ideas of conspiracy and national threat.

For their part, **Indian authorities** maintained a sober voice, indicating that at the highest levels of the state government and police hierarchy, every effort was being made to nip communalization in the bud. They were well aware that local Indian elections provided ripe circumstance for communal vote banking, with familiar side effects. As political analyst Ajit Bhattacharjea later reported, the main BJP agitator in fact won the local seat by 400 votes on an anti-Tibetan platform, for which the Gaddi vote was crucial (Pioneer, May 27). Again, the direct quotes express all this in selectively simplified form:

> Extremely tense", "Extremely unfortunate" (Superintendent of Police, Indian Express, April 24)

> The issue should not be blown out of proportion and the resentment of locals against Tibetans should be contained to restore amicable relations among the two communities. (Chief Minister of Himachal Pradesh, Indian Express, April 26)

> We are trying hard to bring the leaders of the two communities together and to build confidence between them. We hope to succeed despite some vested political interests dictating otherwise. (Deputy Commissioner and Police Chief, The Hindustan Times, April 28)

Brass (1997) has argued that inter-group conflict in India is both a means and a by-product of the efforts of local political elites to acquire power. In other words, it is not only a matter of taking on a group's cause in order to win its support but of planting the seeds for, and counting on, spontaneous regeneration of inter-group hostility. As described by Fearon and Laitin (2000), "political elites use violence to construct antagonistic ethnic identities, which in turn favor more violence." (857). The turbulence provides a medium in which they can champion a cause very publicly, piggy-backing on media coverage. Villagers may buy into such machinations for short term advantage, but ultimately they are the losers because they are fodder for exploitation and take the fall if there is retaliation.

Any misstep by Tibetans at this crucial point would have fed the incipient, hostile communalism. Like the Indian authorities, **Tibetan officials** recognized the danger signs and were only too ready to begin deconstructing the conflict narrative, to build an alternative story of longstanding friendships. Tibetan and Indian officials used almost identical language in characterizing the incident as "unfortunate" and "blown out of proportion," in efforts to downplay this aberration in the alternative story:

> [The entire episode was] unfortunate and it should not be blown out of proportion. As a race we do not like to socialize much. But we always try to maintain good relations with Indians and there is scope for improvement in our relations. (Senior Tibetan Official, Indian Express, April 26)

> India has given us shelter, provided sources to survive, more than other countries have done. We have a guru-shishya relationship with India. It is the birthplace of Buddhism. We want to check the rise of communal tensions. We have issued strict instructions all over the country and no Tibetan is above the Indian law. (Senior Tibetan Official, Hindustan Times, April 28).

> Tibetans are harmless people and simple in habits. We hope the relations with the Indians would improve in the future. (Secretary of Tibetan Department of Security, Indian Express, April 26)

> I want to say that we bear no ill will towards Indians. The culprit has been captured and law will take its own course. (Deputy Secretary of Tibetan Home Department, Indian Express, April 24)

Tibetan officials are almost apologetic and eager to reaffirm their commitment to respect host country sentiments and laws. Reference to the "guru-shishya relationship" between Tibetans and Indians harkens back to the introduction of Buddhism to Tibet by Indian adepts and scholars.[173] It reads as an attempt to raise the dispute out of the quagmire of local rumors to a higher realm of memory where the relationship was very intimate. There is a subtle acknowledgment that Tibetans had perhaps indulged an inward looking attitude ("we do not like to socialize much"), which would need to open up for improved relations with Indians. Indeed the Tibetan insularity is echoed in a local Indian comment, with the added edge that foreigners enjoyed closer ties with Tibetans than did locals:

> If the Tibetans keep away and live their mainly secluded life, it is only natural to be left out…they developed a ghetto mentality. But the Indians too kept away showing very little interest…Foreigners come and study here but not many Indians. (Hindustan Times April 28)

As observed previously, the Dharamsala experience also marked a pivotal shift in the messaging that radiated from the CTA out to settlements. According to "strict instructions" crimes and misdemeanors would not be shielded by the community, but would be handed to Indian police for action, with the culprit left to bear the consequences. The gesture of reining in any Tibetan carelessness with respect to Indian law was essential for addressing allegations being made about a range of offenses. An even-handed observation by **media commentator** G.Thurkal brought the point to a head:

> While most locals are not really seeking the ouster of the Tibetans there are some real issues that need urgent attention. (Hindustan Times, April 28)

As reported in the Indian Express, April 26, while the BJP spearheaded the memorandum of demands presented to the government, the recently defeated candidate of the rival Congress Party also signed it, signaling that certain grievances were acknowledged across party lines. There were a number of spurious accusations - such as that Tibetans were keeping illegal arms, selling drugs, engaging in criminal activities and promoting anti-India propaganda – but these were refuted as being insignificant, by the Police Superintendent after verifying police records. What stood as accusations meriting inquiry were those related to the benami land transactions and encroachment on forest land by Tibetans in the region. I have already noted this conundrum from a Tibetan perspective, under the section on land disputes, but here it manifests as a serious

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[173] A guru-shishya relationship involves a form of surrender by the disciple and attunement with the wave length of the guru for transmission of transcendental knowledge.

causal factor in communal hostilities, from the perspective of local Indians. The General Secretary of the Kangra District unit of the BJP even claimed that the Indian External Affairs Ministry and intelligence agencies had been suppressing facts about such simmering tensions between the two communities.

12.4.5 Sociological digression

At this point, some supplementary information will be useful for clarifying the nature of what may be at issue in those simmering tensions. As part of the Hindi belt, Himachal Pradesh lagged behind more robust states for many years but has been rapidly catching up with the strongest states in the region. Within the State, Kangra District - where Dharamsala is located - has fared reasonably well in relation to other districts, on such development indicators as literacy, per capita income and village infrastructure. For example, compared to a 77.13% literacy rate for Himachal Pradesh, the rate for Kangra District was 80.68% in 2001. In 1999-2000, the district ranked 8th out of 12 districts in per capita income, while for village infrastructure it ranked 2nd in both 1990-91 and 1999-2000. [174] The rising curve of favorable indices, however, masks the fact that some pockets are being left behind, so that relative shifts in well-being become sources of conflict between ethnically marked groups, as theorized by Horowitz (1985).

A report published by the UK Department for International Development (DFID) in 2000 entitled "Pastoralism in India: A Scoping Study" adds important insights. It analyzed the problems faced by pastoralists, including the Gaddis of Himachal Pradesh, which is the community involved in this conflict. [175] Gaddis are the second largest group of pastoralists in the Himalayas, mainly concentrated in the Kangra and Dharamsala regions of Kangra District. According to the DFID report, pastoralists are viewed by government as being less civilized and are routinely neglected in various policy level decisions. They are a marginalized, low-priority group whose future will depend heavily on political decisions at state and central government

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[174] This data is taken from a Government of India Planning Commission document, Chapter 1: "Himachal Pradesh: A profile" available at: http://planningcommission.nic.in/plans/stateplan/sdr_hp/sdr_hpch1.pdf

[175] Sharma, Vijay, Ilsa Kohler-Rollefson and John Morton. Pastoralism in India: A scoping study. Published by the UK Department for International Development in conjunction with the The Indian Institute of Management (Ahmedabad, India) and the Pastoral People's League (Germany), 2000.

levels. They generally have low literacy, high infant mortality and are poor in cash and land ownership.

An underlying dilemma is that the Gaddis actually think of themselves as owners of the pasture resources in the Himalayas and, although there is extensive customary usage of these resources, no entitlement is documented in government records (30). The report, for example, has described a case in which the winter pastures of Gaddis in Himachal Pradesh were allotted to landless people under a social welfare program – completely ignoring their traditional use and access. The Gaddis actually are agro-pastoralist Hindus, herding goat and sheep and engaging in trade and transport to supplement income. The immediate threats to their livelihood are shrunken pasturage and disturbed migratory routes due to encroachment on pasture resources by infrastructure and development, especially afforestation activities, road construction, tourism and increased human population (32).

This description suggests that the presence of Tibetans, and the growing number of visitors to Dharamsala, may well contribute to a creeping urbanization and spreading network of roads that adds to the duress of the Gaddi community. The fact that Tibetans and Punjabis have migrated to the area and are beginning to prosper aggravates the sense of dispossession Gaddis already experience. Moreover, the easy socializing that Tibetans enjoy with foreigners compared to their limited interaction with Gaddis can only underscores any inferiority that Gaddis may feel in the tenuousness of their traditional lifestyle. Pastoral communities also have little political voice at state and central levels.

In short, the BJP MLA Kishan Kapoor and fellow local politicians had issues enough to capitalize on at the grass roots. While it is true that the stabbed Gaddi boy was not an uneducated shepherd - nor was his father or BJP uncle - his death became the platform from which to air long held communal grievances against state and central governments. In response, the Chief Minister of Himachal Pradesh agreed to establish a three-person fact-finding committee to look into the sources of dispute and, specifically, into benami land transactions and forest encroachments attributed to Tibetans. As revealed in the section on land disputes, however, Forest and Revenue Departments continue to be slow to take action on the cases uncovered, at least partly because non-Tibetan encroachers were found to be in far greater number. Evicting only Tibetan refugees would look very bad, while dislodging voters would be politically thorny.

Phase 2: Turning point

The phase of the conflict covered so far was the most virulent. The second phase, May 3 – May 22, was primarily a period of negotiation, initiated with the return from abroad of the Dalai Lama, on May 3. He immediately issued a statement of condolences to the bereaved family and assured the local community that he would look into all grievances:

> We shall take immediate actions on those issues directly relating to Tibetans, and on which we are in a position to take action.[176]

As if picking up the gauntlet, on May 6, the **BJP MLA** Kishan Kapoor presented a memorandum to the Deputy Commissioner with a number of demands:

- That Tibetans change their attitude toward Indians, accord their lifestyle with Indian tradition and learn Indian languages;
- That the government establish not just a fact-finding committee but a judicial inquiry into all benami land transactions by Tibetans;
- That strong action be taken against illegal distillation and drug trafficking in McLeod Ganj;
- That Tibetan messages be printed in Hindi and English;
- That there be a prohibition against descriptions of McLeod Ganj as "Little Lhasa;"
- That family planning be enforced among Tibetans. (Indian Express, May 6)

Legal issues are always of concern to Tibetan officials, especially as the younger generation or new arrivals from Tibet take on bad habits, as seen in the 2004 Rules and Regulations for Dharamsala in the previous section. However, as confirmed by the Police Superintendent at the time, criminality was really not a major problem from their perspective, and illegal land transactions were a hornet's nest to tackle. What is interesting about the demands is that they targeted much of what Tibetans had dedicated their efforts to over the decades of exile – namely, preservation of their language, rebuilding their cultural and religious icons, unifying their own often fractious community, and generally solidifying their Diaspora presence. Even the point about family planning hits hard, considering that the very low 1.22% Total Fertility Rate reported in the 1998 Tibetan Demographic Survey is a serious concern for the community's ability to regenerate itself in exile.

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[176] Statement of His Holiness the Dalai Lama on the recent development in Dharamsala. Issued May 3,1994 by the Secretary, Department of Information and International Relations, CTA.

In his discussion of how perceptual and cognitive factors can exacerbate incompatibility in inter-group conflict, Fisher (2000) has drawn on social identity theory which claims that discrimination can arise from in-group favoritism, as much as from out-group derogation (p. 171). This is consistent with Etzioni's description of communitarianism as subject to an inherent flaw of exclusion, by virtue of the bonding that constitutes community (2000a, p. 223). Bonding by definition makes a distinction between members and non-members, and naturally leads to preferential treatment for the former. In short, in the absence of meaningful social interaction with local Indians, "Little Lhasa" came to symbolize Tibetans' neglect of local language and tradition. It provided a visible target for negative attributions, indulged by Gaddis as part of their own identity issues. Citing research by Tajfel and Turner, Gray (2006) pointed to the fact that "identities are maintained through social comparison processes …in which groups elevate their own standing in society by demeaning that of others" (p. 199). The impulse to stereotype and blame other groups also can meld with substantive concerns, further complicating the conflict narrative as seen from the Gaddi side.

Thus while there were some legal problems for Tibetans to own, the cognitive dissonance awakened by the incidents was another matter altogether. Cognitive dissonance describes "a feeling of discomfort caused by the realization that one's behavior is inconsistent with one's attitudes or that one holds two conflicting attitudes" (Aronson et al. 2001, p. 202-203). Tibetan self-image as compassionate advocates for universal human rights, and as heirs of a valued civilization, was suddenly challenged as being self-centered disregard for local tradition. The BJP-led demands required a fundamental re-thinking of how Tibetans could negotiate their existence in India without assimilating.

On May 7, the **Dalai Lama** let it be known that he could move the whole government compound and Tibetan community to another location if local Indians so wished. This announcement created a turning point in the conflict. Whereas Tibetans had been trapped in a muted, disempowering, victim storyline, now the narrative became ennobled with the Dalai Lama's stature, and empowered with the prospect of collective agency:

> But this time I have been faced with a human earthquake – I think the time has come for me to move and, if possible, I will move to Bangalore. (The Times of India, May 7)

> My views about possible shifting from here were not aired in a fit of anger. I thought that Tibetans and Indians have been friends for 35 years. Some political elements tried to take advantage of the situation created by a small incident which has hurt us. I think if friends

have to depart they have to depart in a happy frame of mind and not by sullying their relations. (Indian Express, May 15)

I deeply respect the feeling expressed by you and also by Chief Minister Virbhadra Singh and former Chief Minsiter Shanta Kumar who have met me and requested me not to leave Dharamsala. I will reconsider the question of leaving Dharamsala. (Indian Express, May 15)

In the one word "earthquake" the Dalai Lama conveyed the magnitude of what was at stake, and the incalculable damage done. Details covered thus far illustrate why reasons such as threat to security, cognitive dissonance, loss of face, and contested legitimacy would have created reticence among Tibetans to re-open Dharamsala 94. Following the first days of marauding, scattered groups still chanted "Death to the Dalai Lama!" and "Long Live Deng Xiaoping".[177] From a Tibetan perspective these slogans constituted the epitome of desecration, another feature commonly seen in communal incidents. Vandals pelted stones at Tibetan buildings, planted black flags in McLeod Ganj, and littered the streets with leaflets threatening to bomb Tibetans out of Dharamsala. The chanting of pro-Chinese slogans, in particular, raised concerns about how the incident would be represented in the Xinhua News (Official Chinese Press), together with strong suspicions that Chinese "agents provocateurs" had a hand in introducing this unholiest of slants. As also noted in the Tribune of May 12:

The Chief Minister feared that some foreign agents might be active in the state who were trying to disrupt the harmony and cordial relationship that existed between Indians and Tibetans during the last 35 years of their association in various parts of the state.

Thus far, there have been few quotes from average Tibetans evidencing their reaction or the kind of rumor that might have passed from mouth to mouth. The silence projects a muted or resigned frame of mind, rather than one empowered to engage in any form of negotiation or dialogue. The Times of India did report what it called "a common refrain" among Tibetans, on May 1: "If we are forced to leave our settlements here, where will we go?" The angst in the simple question is palpable. Doubtless that was the nature of an indeterminate, panicked rumor circulating among many Tibetans prior to the return of the Dalai Lama. Overt expression of that panic, the letting loose of uncontrollable words outside the community, would have risked adding fuel to the fire, as implied in another comment by a Tibetan elder: "Yes we are very upset over the incident but we will maintain our patience and not react to the developments in any way. Please excuse us" (Indian Express, May 12). As noted already, community leaders exhorted the public to exercise

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[177] Exile Government may move out of Dharamsala. Tibetan Review XXVIII (6), 6.

restraint, not to retaliate in any way or even talk to the media lest they inadvertently feed the fire. Where the BJP politician seized on media as ally and left free rein to his followers to spill out their grievances, the Tibetans were attempting to control any loose canon commentary by restricting media contact to a few officials. The Indian Express of May 12 in fact noted that: "The Tibetans have been consciously avoiding interaction with the media, which they feel would create misunderstandings between the two communities." Indeed the choice to keep low profile was applauded by some locals, allowing the victim narrative to acquire some dignity: "Throughout, the Tibetans were at the receiving end. The restraint shown by the Tibetan community in the face of such a great provocation is commendable." (P.C. Guleria, Indian Express, May 7)

Once the Dalai Lama took charge, the muted Tibetan voices acquired a public face that received considerable media attention. In a lucid yet respectful manner he did not shy away from owning problems flagged by agitators, nor did he capitulate to a victim-perpetrator storyline. The effect was a defusing of the battle atmosphere, clearing the way for dialogue on a way forward. As observed by a media commentator: "The Dalai Lama's eagerness to comply with the hosts' wishes has acted as a safety valve and taken a lot of steam out of the agitation to seek the Tibetans' ouster." (The Tribune, May 11) At the same time, the Dalai Lama made an unexpected, powerful move in offering to relocate the exile government and the Tibetan community. Suddenly this almost inconceivable prospect became imaginable to Tibetans, despite the hardships it would entail:

> Nothing was easy for the refugees. To build fresh settlements and initiate fresh efforts to preserve our culture at a new place would not be easy. (Secretary of Tibetan DIIR, Indian Express, May 11)

> I left far more behind in 1959 than this small guest-house. The Dalai Lama's security is far more important and as long as that is ensured, I will continue to live next to him wherever he goes. (Guest-house owner, Economic Times, May 5)

The brief period between the Dalai Lama's announcement that a move would be considered and his announcement that there would be no move (May 3 to 22) created a vacuum of knowledge, inviting substantial speculation, commentary and rumor – opening the scope for a new narrative co-authored by all parties. Among local Indians, there was still some confrontational posturing, but also a growing perception of what might be at stake with the loss of the Tibetan enclave.

Although not uniformly conciliatory, local voices in this period evidenced a significant softening of the contours of their former conflict saturated narrative:

> If the Tibetans cannot feel secure in Himachal Pradesh, which is the most peaceful and quiet State in the country, then what will be their plight in any other state? (Hindustan Times, May 11)

> The exodus of Tibetans will be a disaster for the local economy and tourism. (Indian trader in McLeod Ganj, Indian Express, May 11)

> Dalai Lama is an international personality. It is because of him that Dharamsala is on the world map. If he goes it would downgrade India's image abroad. (Former advocate general and president of Indo-Tibetan Friendship Society, Indian Express, May 11)

> There is no tension and everything is normal. If he wants to go, it is his wish. We cannot prevent him. (Indian Express, May 11)

Even the **BJP politician** Kishan Kapoor, made room in his blaming rhetoric to pay respect to the Dalai Lama, and indulge an inversely expressed desire to see Tibetans mix more with Indians:

> We hold His Holiness Dalai Lama in high esteem but are against the majority of Tibetans who do not want to mix with the Indians and have an arrogant attitude towards the locals. They are also indulging in illegal activities without caring for the law. (Hindustan Times, May 11)

In a press conference a week later, the thrust of the **BJP politician**'s grandstanding is directed even less at Tibetans than at externalized problems affecting both communities, problems that are " due to increasing pressure on water supply, electricity supply and sanitation which has been created by the myopic policies of the Centre and state governments" (Indian Express, May 19). By finding common cause, the language of blaming loses its motivational energy, or at least is externalized onto the problem – namely, government authorities.

Meanwhile, the voice of the Gaddi as agro-pastoralist sinks back into oblivion, overtaken by those with a more direct stake in the status quo. Those Gaddis who have made the transition to employment in trades or transport recognized the potential loss to their livelihood of a massive pull-out of Tibetans and their steady flow of foreign visitors. Reportedly, fervent pleas for the Dalai Lama to abandon ideas of moving were made by high state officials, but also by representatives from the Gaddi and Gorkha communities, trade union leaders , businessmen, traders, members of Beopar Mandal, taxi unions, Rotary Club, Lions Club, hotel unions, Citizen Protection Forum, intellectuals and the Indo-Tibetan Friendship Society (Indian Express, May 15). In other words, there was now a broadened base of individuals who wanted to co-author a

new narrative out of which joint problem solving could be essayed on both relational and substantive issues.

At the same time, no process with so many stakeholders can be tidy. The main group supporting the BJP politician - Himachal Bachao Sangarsh Samiti – persisted in its agitations, claiming that those urging the Dalai Lama to stay had no mass base and were pursuing their own self interests (Indian Express, May 19). There also were a few reports of suspicions that the Dalai Lama was using the threatened move as a ploy to deflect attention from wrong doing by Tibetans, or to pressure the State and the Centre to abandon the inquiry into benami transactions, or yet again to gain sympathy for dropping the case against the Tibetan assailant. Others insinuated that the Dalai Lama was exploiting the occasion to maneuver a strategic relocation to more urban centers, such as Delhi or Bangalore, for easier internationalizing of the campaign for Tibetan autonomy. Yet others blamed the Dalai Lama's globetrotting for not knowing about problems of Tibetan youth and Indian locals, and expressed resentment for Tibetan activism on Indian soil. From the collection of articles as a whole, however, these appeared to be increasingly isolated voices. The following quotes from media commentators illustrate a narrowed range of sentiment, which leans toward reconciliation:

> We did our duty by offering refuge to His Holiness and the suffering Tibetans. It was not our job to shoulder the fight for Tibet's sovereignty, as political activists from our soil. We should go on showing nothing but honor to our Tibetan guests. Yet there is no case to treat them as gods, in a fit of blind faith without telling them that enough is enough. (K.L. Joshi, Observer, May 16)

> We all belong to the land of great saints like Buddha, Guru Nanak, Kabir and many others. Let us all get together and condemn the violence to which the refugees have been subjected. (B.B. Roy, Times of India, May 19)

For their part, Indian government officials persisted with an official storyline meant to sideline any communalization narratives that could reanimate trouble:

> The incident was nothing beyond a small law and order issue and nothing should be seen beyond this. (Chief Minister Himachal Pradesh, Indian Express, May 12)

Phase 3: Aftermath

On both Tibetan and Indian sides, a collective sigh of relief doubtless accompanied the Dalai Lama's statement on May 22 that there would be no move. The statement officially filed away the whole episode as a "closed chapter" - a phrase already used by the Chief Minister as early as May 12 in a bid to remove the issue from the public eye, and one that would be used several

more times in attempts to keep it closed. I would argue that the phrase "a closed chapter," repeated by both Indian officials and the Dalai Lama, acted as an agreement of sorts, publicly documenting the change from a conflict-saturated narrative to an alternative story – that is, one about an enduring friendship that had seen a momentary glitch. The repetition was critical to the survival of the new story, given the possibility of renegade versions reasserting themselves after the calm. One such attempt to keep the old narrative alive was published in the Indian Express of June 8. The article by P. Stobdan was laced with references to illegal earnings, Tibetan martial spirit, Tibetanization of the Himalayas, and the blanket comment that:

> Contrary to the Dalai Lama's preaching of Ahimsa, members of his community often resort to killing and stabbing of their host citizens. Such incidents are usually downplayed and ignored by the Indian people.

The article was promptly rebutted with facts and explanations by the Associate Secretary of the Tibetan DIIR (Indian Express, June 16) – as if to safeguard against contamination of the alternative story by unsympathetic elements. An important aspect of consolidating the official narrative has to be the isolation or ostracizing of local politicians and others, who would make it their business to build small tensions into larger controversies. Around this time, for example, there was a wandering sadhu who accused Tibetans of poisoning fish in nearby Dal Lake. After trying to propagate the rumor, he disappeared as mysteriously as he had appeared. Fortunately, responsible media commentators, such as political analyst Ajit Bhattacharjea proved the claims to be unfounded, before they could set the rumor mills in motion. As noted previously, Bhattacharjea also confirmed that the BJP MLA Kishan Kapoor had won his seat by a narrow margin, on the basis of an anti-Tibetan agenda pitched to the Gaddi community. The tactic of isolating errant voices proved effective in the end, as even the regional and national BJP leaders distanced themselves from Kapoor's allegations.[178]

Communities are not monolithic, however, and rarely do they speak with one voice. The communitarian emphasis on shared features denies this diversity and begs the question of who is speaking for whom (Joas 2000, p. 37). A grass-roots variant to the official alternative story was told in a Special Report appearing in the July 1994 issue of Tibetan Review. The 7-page report offered a much more graphic account of the shock, chaos and disappointment that average

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[178] At the national level, the BJP and RSS have been supporters of Tibet on the reasoning that 1) Among others, Mount Kailash in Tibet is one of several ancient pilgrimage sites that drew Indian sages; 2) Buddha was Indian; and 3) China still is viewed as the enemy that occupies Indian territory. T.Shakya (Personal communication, March 29, 2007).

Tibetans had experienced at the height of the episode – certainly not a minor event from their perspective. Contrary to the impression of a passive victim posture among Tibetans, this account traced some very proactive initiatives taken by ordinary Tibetans while the Kashak or Cabinet dragged its feet in indecision, wanting to play down the crisis. Individuals worked through informal networks to access Indian authorities for advice and support; they visited the slain boy's family and developed a strategy for pre-empting misrepresentation of the event in media reportage. Unlike the more ingratiating tone in the official alternative story, the report expressed pride in the contribution of Tibetans to the State of Himachal Pradesh and evidenced disappointment with the reaction of Tibetan officials:

> It was only six days after the rioting that some Tibetan officials paid a visit to the school on their way from somewhere else. After all that the school had gone through, the only thing the bureaucrats did was publicly admonish the staff for indulging in flashy or colorful life-style, which the locals disliked. (p. 17)

This account was also more honest in acknowledging the not infrequent altercations that had been taking place between Tibetan and Indian youths, as well as some specific behaviors and incidents that Tibetans needed to own. It noted that some Tibetans attribute the more troublesome behaviors among their compatriots to "anti-social and criminal elements, sent by the Chinese to destabilize the exile society and tarnish the Tibetan image" – a familiar refrain when the unexpected happens (p. 17). Yet, the report emphasized that Tibetans must engage actively with Indians in a genuine attitude of respect before economic and political prospects strengthen the pro-China lobby in India (p. 20).

12.4.6 Final reflections

A narrative approach to analyzing the Dharamsala conflict has enabled me to illustrate the socially embedded nature of the actors and the socially constructed character of their stories, whether based in perception, fact, factoid, fiction or a combination. I have argued that by inviting parties to tell their conflict story, the media set relational dynamics in motion, including everyone's awareness of playing to a larger audience, and potentially enlisting the sympathetic ear of media as ally. It allowed shades of old and new stories to emerge from different vantage points – each a constructed mini-narrative, gradually orchestrated towards one agreed version for official purposes of public order.

Returning to my earlier points about why Dharamsala 94 might be an uncomfortable chapter to re-open, it is not difficult to see how Tibetans' image of themselves was shaken. In hundreds of appearances around the world, the Dalai Lama has been quoted on his views about non-violence and universal responsibility.[179] Foreign publics take away his prescriptions for right living and compassion, projecting these perfected qualities onto Tibetans at large, unconsciously configuring a sense of Tibetan-ness as represented by the Dalai Lama. As theorized by a number of authors dealing with identity issues in the Diaspora, Tibetans have been absorbing such perceptions into their image of self through their encounters with Westerners (Korom 1997; Klieger 2002). Alongside the imputed qualities of peacefulness, are qualities of the ideal refugee, a model of cultural preservation balanced with integration with host populations (Alam, 2000; Furer-Haimendorf, 1990; Subba, 1990). Tibetan leaders consciously use these images as part of international campaigns for the Tibetan cause, just as individual Tibetans use them to conform to the expectations of their actual or potential Western sponsors (Prost, 2006; Klieger, 1992,1997). As noted by Korom: "Tibetans constantly and consciously redefine themselves according to the expectations of their new patrons" (1997, p. 5). When the Dalai Lama was targeted with disrespectful slogans, and buildings of the CTA were vandalized, everything that Tibetans stood for seemed under attack. Accentuating the sense of vulnerability as refugees, Tibetan officials immediately flashed messages to other communities that had seen some unrest in the past to ensure that they remained calm – namely, to Bir Chauntra, Dalhousie, Shimla, Kullu and Manali (Indian Express, April 26). The cognitive dissonance of being confronted with accusations of behavior contradictory to espoused values would have been confounding. A feeling of discomfort must have accompanied the realization that hard work could be construed as unfair advantage, or tradition preserving behaviors as cultural arrogance, or one person's aberration as a failure of the whole community's commitment to non-violence. Because views were widely aired in the media, there were fears that Chinese agents would be alert to the disturbance and could use it to tar the Dalai Lama and his "splittist clique."

If Dharamsala 94 holds unnerving memories, it also has had some constructive outcomes in relational terms. Given the inward looking, communitarian orientation of both Tibetans and local Indians, bridging associations were needed to broaden identities and foster cooperation and trust

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[179] Sangay (2003), for example, reported that the Dalai Lama had made 183 trips to 57 countries from 1954 to 2000 (p. 123).

between them. An Indo-Tibetan Friendship Association (ITFA) was started up in the wake of the incident, with equivalents in each region. Distinct from the more political, Delhi-based Indo-Tibetan Friendship Society (ITFS), this is a local organization focused on nurturing good relations through meetings of a broadly representative group of members from both communities. In Dharamsala, the membership includes the Tibetan Welfare Officer, monks and nuns from different monasteries, Indian Village Heads, Head of Tibetan Handicraft Centers, ITFS, President of the Shopkeepers Association, the Taxi Drivers Union, Footpath Shopkeepers Association, Hotel Association, new arrivals from Tibet, representatives of the TWA, TYC, Assembly of Tibetan Peoples' Deputies, Tibetan-Jewish Youth Exchange, an Indian College professor, Voice of America, Tibetan newspapers, local Indian reporters, camp leaders, Bharat Tibbat Sahayog Munch, and so on. The last organization listed is a political one similar to the ITFS, reflecting the Dalai Lama's suggestion at the time that there should be more work done to spread awareness of the Tibetan cause among the Indian masses. Another organization called Himalaya Pariwar was founded to unite peoples of the Himalaya in their respective needs to preserve their cultures. In other words, the communal disturbance ultimately served to bring the enclaves closer together through an active seeking of common cause, information sharing and dialogue on many fronts.

The conflict also had a strong impact on the Tibetan community's tolerance of deviance from norms of respect for Indian people or compliance with Indian laws. Abiding by Indian laws may seem like a self evident expectation but, as noted earlier, India's flexibility with law enforcement makes minor infringement a non-issue for Indians as much as for Tibetans - to the point of being unselfconsciously integrated into their modus vivendi. Such response to enforcement flexibility applies to benami land transactions, as well as to a myriad of more administrative laws relating to taxes, custom duties, permits and licenses of all kinds. Dharamsala 94 made all Tibetan authorities and the community hypersensitive about conformity with rules, even though the reality of life in India continues to make such conformity an interpretive challenge. The creativity and adaptability of young Tibetans trying to make a living, and the comportment of new arrivals from Tibet, who have not yet been socialized into local norms, are constantly teasing the frontiers of legality. The informal economy is particularly susceptible to technically illegal practices, and it is equally susceptible to arbitrary legal enforcements, as well as extortion by Indian officials or others posing as such. The preponderance of Tibetans in the informal economy is a direct result of their refugee status, and they thus are often legally vulnerable.

The line is drawn at criminal offenses, which are viewed as unquestionable transgressions, such as the stabbing of the Gaddi boy. The section on inter-personal disputes included some cases of assault which were treated within the community in a more restorative than punitive mode and the tendency still exists quietly. It is the legacy of Dharamsala 94, however, that CTA Representatives in all locations officially have let it be known that criminal cases will be turned over to the Indian police forthwith and that if Tibetans engage in illegal activities, the Tibetan government will no longer intercede on their behalf. The prospect of having to face a culturally alien, punitive court system can be a significant deterrent to misdemeanor. The threat of being turned over to such a system can be a strong inducement to comply with norms of reconciliation when conflictive issues arise. Thus, what was an Indo-Tibetan dispute also has had an impact on how Tibetans resolve disputes amongst themselves.

Dharamsala remains a complex environment with many tensions and infrastructure problems competing for attention and budgets. Nevertheless, according to the current Tibetan Welfare Officer, the presence of bridging associations, reinforced norms, and explicit rules governing behavior have significantly reduced the number of incidents between Indians and Tibetans. He stresses to the community that disputes with Indians should be brought to his attention immediately, so that he can work things out with the Indo-Tibetan Friendship Association. Wisely, he also encourages Tibetans to write a formal letter of complaint to the police with a copy to him, so that a record can be kept to substantiate claims should any major incident re-surface. From the perspective of legal centralism, Dharamsala 94 illustrates that, while communitarian entities can be effective in regulating themselves, inter-group situations require partnership with state mechanisms that are capable of enforcing a common standard of civil behavior across the boundaries.

XIII SEEKING JUSTICE THROUGH THE COURT

Introduction

Part Two elaborated the normative and structural conditions that underlie the legal culture of Tibetans in exile – best characterized as a harmony orientation with emergent democratic features. Adapting Friedman and Scheiber's definition, I use the term in its broadest sense to encompass "the attitudes, values, beliefs, and expectations about law and the legal system" (1996, p.1). By examining dispute phenomena at the level of the CTA Representative, I have placed communitarian dynamics in prominence and demonstrated that informal mechanisms of dispute resolution play a vital role in social control within the overall harmony model. Whether outcomes were indeterminate or definitive in the cases reviewed, formal law and law enforcement mechanisms were largely peripheral rather than central to the everyday regulation of behavior. The special circumstances surrounding disputes over land with Indian neighbors, and communal hostility across ethnic boundaries extended the significance of harmony as a preference over more confrontational postures. Together these sections have accounted for the origins, uses and consequences of harmony - as urged by Nader (1991, 2002) in her defense of court process. Indeed, the harmony orientation that is structured into Tibetan communal life carries with it a strong preference for conciliation rather than litigation – with attendant costs and benefits for the individual and the collectivity. That too is part of legal culture. As described by Ewick and Silbey (1992):

> To know the uses of law, we need to know not only how and by whom the law is used, but also when and by whom it is not used. The ways in which law is experienced and understood by ordinary citizens as they choose to invoke law, to avoid it, or to resist it, is an essential part of the life of the law. (p. 737)

That Tibetan refugees and the entire CTA have liminal legal status within India merely adds another dimension to the Ewick/Silbey description. Whether individual Tibetans are unaware of Indian laws or choose to ignore them, or do not understand their constitutional rights, or are inhibited by visions of a Kafkaesque legal process, very few would resort to Indian courts, even though the Indian Constitution grants them access as aliens. In the normal course of events, their own internal rules provide adequate guidance, and the third party intervener function of the CTA Representative fulfills social expectations of a restoration of harmony in cases of dispute.

Nevertheless, there were cases - "little injustices, which might not be so inconsequential" - which demonstrated that a meaningful confrontation in a higher forum might have been preferable to what Nader decried as "complaining or exiting and 'lumping it,' that is, not doing anything" (2002, p.173).

The significance of this section in the overall thesis is that Tibetans now do have recourse to a Tibetan judiciary for redressing injustices within their own community. The question that needs to be answered, however, is: to what extent does a court option for resolving disputes in this communitarian setting enhance individual agency? That determination is key to a fuller understanding of exile Tibetan legal culture. The research comes at a moment in time when the Tibetan judiciary is in its infancy, straddling old habits and emergent norms informed by international adjudicative practices. The TSJC option represents a giant psychological step from the familiar, informal processes reviewed in Part Two. It engenders new attitudes towards rights and implies a different kind of disputant. Such a shift in legal consciousness, however, is not without risks, as much for the individual as for the community.

Proponents of legal centralism have argued that access to court process is critical to assuring the rights upheld in the tradition of liberal democracy (e. g. Dworkin, 1977; Nader, 1991, 2002; Fiss, 1984). Legal anthropologists like Nader and Starr (1992) have been attuned particularly to what is happening at the point of encounter between informal law-ways and imported or imposed legal practices. Scholars of Indian law as an instrument of social reform equally have been attentive to whether, how and why individuals make the shift from conciliatory practices of dispute resolution, toward confidence in the courtroom as an arena for challenging power relations (Lindsay & Gordon, 2005; Lariviere, 2005; Galanter, 1989; Baxi, 1985).

13.1   Tibetan Supreme Justice Commission

As part of its commitment to the principles of a liberal democracy, the exile government established a Tibetan Supreme Justice Commission (TSJC) on March 11, 1992. The TSJC was to "act as the watch dog of the rights and liberties of the citizens" and as a "constitutional arbitrator to ensure that each of the government organs carry out their responsibilities as defined by the

written Charter." [180] The Dalai Lama was keenly aware of the abuses of privilege in pre-1959 Tibet, and had stressed that all – and especially the downtrodden - should be able to protect their legitimate interests by recourse to a judiciary. The challenging, often circuitous path to democracy in exile confirmed that need. He also recognized that a gradual accretion of power is inevitable in any government administration, and emphasized that the judiciary should be an organ to which people can bring their grievances against the administration itself.[181]

There is an ample scholarly literature dealing with the comparative social and political significance of the judiciary as a feature of strong democracies.[182] A central issue is the extent to which judges are non-political and non-creative. Bell (1985) has summarized three models of the judicial function in response to that dialectic. In principle, if the judiciary is to be qualitatively distinct from the legislative and executive branches of government, then its powers have to be limited to application of the law as writ. Where the political function represents a certain consensus on societal values as expressed through votes, the legislative function represents the codification of norms in the form of statutes, which judges have only to discover or interpret for the circumstances at hand. Much of continental Europe, with its legacy in a Napoleonic bureaucratic model, historically has inclined in this direction (Guarnieri & Pederzoli, 2002, p.155). An opposite view is that, when judges adjudicate difficult cases, they actually are creating law in advance of the consensus curve, and potentially usurping the power of legislative and executive branches of government. A consequence of the former can be that judges are powerful conservative forces in society, simply re-inscribing the status quo of power relations expressed in law. In contrast, the latter can be activist forces that recognize societal problems and respond to them creatively, thus establishing a precedent for like cases in the future. Whether the outcome is progressive or not, the activist judge is bringing in a personal or political value

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[180] What is democracy? How does it work? A booklet of the Tibetan Centre for Human Rights and Democracy, published in Dharamsala, 2000, p.16.

[181] Designated TSJC spokesperson (personal communication, November 16, 2005).

[182] Badinter & Breyer (2004) have edited a very accessible collection of essays on the issues involved, written as an international conversation among experienced jurists. See in particular the chapters on "Judicial activism" (pp.17-66), "The secular papacy" (pp. 67-116), and "The judge confronts himself as judge"(pp.275-316). Guarnieri and Pederzoli (2002) have provided an excellent overview of the different forms of and reasons behind the spread of judicial decision-making (the "judicialization of politics"). The book relates the comparative socio-political context with specific features of the judiciaries of England, France, Germany, Italy, Spain, Portugal and the United States. For Indian comparables, see Dhavan, Sudarshan & Khurshid (1985) – a collection of articles written in honor of Justice Krishna Iyer, one of the foremost activist judges in India. Also see Galanter (1989) and Cunningham's (1991) review of Galanter.

orientation that has not been democratically legitimated. A third way of looking at the question is that represented by Dworkin (1977) who has stated that most controversial cases do have a right answer. It would be one grounded not in shifting political affiliations, but in the enduring political morality of rights as enshrined in constitutions, which both circumscribe judicial discretion and guide the determination of which individual rights should prevail for disputants.

Scholars such as Wiegand (1996), Shapiro (1996) and Friedman (1996) have pointed to the prominent political role played by the courts in American legal culture, in terms both of rights-based legal adversarialism and of judicial review of decisions made by legislatures and administrative agencies. Moreover, they have argued that these features increasingly have been adopted by Western democracies, as part of the general trend toward legal convergence (Friedman & Scheiber 1996, pp. 4-6).

The Indian legal system incorporated many features of U.S. constitutional law, in particular the power of the Supreme Court to enforce fundamental constitutional rights - and beyond that, to make access to that writ jurisdiction itself a right (Galanter, 1989). This provision has been instrumental in the rise of high profile judicial activism, and judicial populism as expressed in social action litigation (Baxi, 1985, pp. 291-292). Moreover, both High Courts and the Supreme Court are vested with enormous powers of judicial review to ensure that all organs of government, at all levels function in accordance with the Indian Constitution (Prakash, 1985, p. 154). Educated Tibetans who follow the news would be well aware of these currents, which have been frequent fare in the national press (Baxi, 1985, p. 294). The Tibetan judiciary itself was patterned on both the Indian and American models, for the dual purpose of protecting individual rights and exercising oversight on government functions.

The establishment of a Tibetan judiciary really had three overlapping purposes: 1) actualizable; 2) conceptual; and 3) aspirational. The first objective was to serve the immediate needs of the exile community, giving institutional embodiment to the classic principle that all are to be equal in the eyes of the law irrespective of birth, caste, sex, religion, language, lay or ordained, rich or poor, social origin, position or other status. Following India's lead to equalize access to the courts as a way of advancing that vision of social justice and human rights, the Tibetan Code of Judiciary (Section 81) and the Tibetan Civil Procedure Code (Section 18) even stipulated that a party could apply for legal aid. If the party can demonstrate that he or she is indigent, the Justice

Commission will waive its fee, and provide a lawyer and translator free of charge if necessary. This "judicare" model, however, is distinct from the American system which includes public defenders, and attorney-led pro bono service or "no win, no fee" arrangements that arguably have facilitated a level of political activism (Guarnieri & Pederzoli, 2002, p.102). No such requests have been received as yet and, judging from the experience of other countries using a judicare model, it is unlikely that the exile government would encourage its use because there are few qualified lawyers and even fewer budget dollars.

A second, more abstract objective has to be seen as part of the conceptual progression towards a fully democratized government in exile. As stated by Abel (1973): "a supreme court has become as essential a symbol of nationhood as a flag, or membership in the United Nations" (p.300). In principle, a hallmark of the three pillars of democracy is independence of legislative, executive and judicial powers. While in reality the borders between these functions have grown fuzzier with the expanded role of the judiciary in Western democracies (Guarnieri & Pederzoli, 2002, p. 10), an independent, impartial judiciary still stands as the guarantor of rule of law. Most writers would agree that independence and impartiality have to be zealously protected if the public is to retain confidence in the judiciary (Deschenes, 1985, p.515). The question is: by what means? Not surprisingly, there is a voluminous literature focusing on intricacies in the substantive, functional or decisional aspects of judicial independence, or lack thereof.[183] That being said, countries have put different mechanisms in place to help free the court of internal, as well as external influence. Shetreet (1985) has enumerated a number of principles, which provide useful referents for considering the Tibetan judiciary and cases brought before it:

- **Personal independence** (judicial terms of office and tenure are adequately secured with provisions for proper appointment, retirement age and remuneration – that are not exclusively under executive or judicial control);
- Independence from financial **entanglements or prior associations that could create bias;**
- **Internal independence** (career structures that do not create a hierarchy among judges such that junior justices would be unduly influenced);

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[183] For a discussion of moral and political influences insinuating themselves into judicial decisions, see Dworkin's "The secular papacy" (2004, pp. 67-116); for a deliberation on the dilemmas of reconciling judicial independence with the judge's governmental role and the need for judicial discipline, see Iglesias' "The judge confronts himself as judge" (2004, pp. 275-316). Guarniere & Pederzoli (2002) have provided a useful comparative tableau of measures employed in different countries to structure the judicial system for impartiality/independence (pp. 78-149). For an overview of debates on the subject from the perspective of judicial activism versus judicial discretion in the Indian context, see Sudarshan's "Judges, state and society in India" (1985, pp. 268-288).

- Principle of **fair reflection of society** - that is, a requirement to include judges with certain representational characteristics as, for example, in a multicultural society;

- **Accountability –** that is, a range of controls including appellate reviews and general press, balanced with legal protections such as judicial immunity, contempt of court;

- **Public confidence in the courts** – proceedings in open court, stating reasons for a decision, and press access all ensure due attention to actual impartiality, as well as the appearance of it;

- **Openness to public criticism** directed at all aspects of the administration of justice, including judicial decision-making, judicial conduct, judicial appointments, court procedure and court management. (pp. 594-633)

Some informants have referred to the second objective of the Tibetan judiciary as pure democratic window-dressing because there is no power of enforcement backing the judiciary system and Tibetans lack the legal awareness to avail themselves of its provisions. Others have seen the judiciary as a serious project in progress, recognizing that effective implementation will require the gradual development of specialized human resources, budget provisions and a sustained program of legal education at the grass-roots. Meanwhile, an incomplete system operates as best it can, incrementally accruing experience and the institutional requisites. A third, related objective is to have the full machinery of democratic governance in place for transplanting to Tibet when autonomy has been successfully negotiated. While the first objective draws its legitimacy from the Arbitration Act of India and is nested within an overall Indian legal system for operability, the second and third objectives are necessarily abstract or disembodied.

I had the opportunity of discussing these matters with the Secretary of the Tibetan Supreme Justice Commission, Chief Justice Commissioner, Local Justice Commissioner for the Southern Zone in Bylakuppe, an Indian lawyer versed in Tibetan issues, and a legally trained spokesperson for the Commission in Dharamsala. Together with an examination of the Charter of Tibetans in Exile, these discussions helped me to get my bearings on how the Tibetan judiciary fits within the Indian legal system, its structure, jurisdictions, procedures, and history of cases.

13.2   Position of the Tibetan judiciary within Indian law

The immediate applicability of the TSJC's first objective and the provisional character implicit in its third objective are evident in Chapter VI Article 62 of the Tibetan Charter:

> There shall be a Tibetan Supreme Justice Commission vested with judicial powers suitable to the temporary and special needs of the Tibetan Administration and citizens in exile.

The TSJC itself is something of an anomaly in that it is structured like a judiciary, tries to function as one, but has legal standing only as an arbitration body. Thus, for example, it is referred to as a commission, rather than a court, in acknowledgement of its being subject to the overriding authority of Indian law.[184] I have previously commented that Tibetans are beneficiary of India's expansive attitude toward legal pluralism, with its constitutional guarantee of personal laws remaining in force for Muslim, Hindu, Christian and other communities to resolve family and succession issues according to customary norms. As refugees, however, Tibetans do not have these minority group rights and cannot be seen to have extra-judicial authority or parallel courts. The TSJC therefore has the formulation of an internal judicial order with limited civil jurisdiction in matters internal to the Tibetan community, under the provisions of the Indian Arbitration and Conciliation Act of 1996.

The Act is structured mainly for commercial disputes and cannot apply to suits for divorce, restitution of conjugal rights, taxation, non-payment of admitted liability, or criminal matters. According to the Act, Chapter III Article 11 (2): "…parties are free to agree on a procedure for appointing the arbitrator or arbitrators" – this being one of the consensual aspects defining of arbitration as a process (Phillips, 1988, p.15; Meek, 1996, p. 243). In the Tibetan case, however, the TSJC a priori assumes the role of arbitrator with a notional jurisdiction on Tibetan refugees, while drawing its entire legitimacy from the Indian Arbitration and Conciliation Act. It does not have a judicial authority to do anything but utilize the Act, fulfilling a justice dispensation function as an arbitrating body. At the same time, unlike arbitration hearings that take place mostly behind closed doors - with very limited access to others and only at the pleasure of the parties (Phillips, 1988, p.26) - SJC hearings to date have been largely open to the public. The

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[184] In the same way, Tibetans have termed their politico-administrative structures with due regard for their non-official, non-legal status. The executive branch is called a Central Tibetan Administration rather than Government-in-exile, the legislative branch is called an Assembly of Tibetan People's Deputies rather than a Parliament, and the Cabinet is referred to by its traditional Tibetan name - the "Kashak" or Council of Ministers.

gesture of access is thus a form of accountability meant to inspire public confidence in a process conceptualized as civil court proceedings, as opposed to arbitration.

Although a commercial arbitration model may not be a perfect fit, the TSJC was established in consultation with eminent Indian and Western lawyers and legal scholars, whose judgment it was that the TSJC could operate under that Act. Since that time, there has been no objection to the arrangement from any legal quarters and Tibetan authorities are extremely careful to remain well within the bounds of the permissible. In fact, I was told that if the Indian government objects to any case, even if it is civil, the TSJC will not touch it.

13.3   Structure of the Tibetan judiciary[185]

In 1996, as provided under Article 67 of the Tibetan Charter, the TSJC enacted the Tibetan Code of Judiciary, the Tibetan Code of Civil Procedure (patterned largely after the Indian Civil Procedure Code) and the Tibetan Law of Evidence. In accordance with the first two Codes, the Tibetan judiciary was structured on the principle of hierarchical courts, with the Supreme Justice Commission (SJC) as the apex body and final court of appeal. Chart # 9 on the following page illustrates the structure. At the present time only the SJC and two Local Justice Commissions (LJCs) are in place.

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[185] For the sake of clarity, I will use Tibetan Supreme Justice Commission or TSJC to refer to the full judiciary, Supreme Justice Commission or SJC to refer to the apex body, and Local Justice Commission or LJC to refer to the primary level where original suits would normally be filed.

Chart # 9:   Structure of the Tibetan Supreme Justice Commission
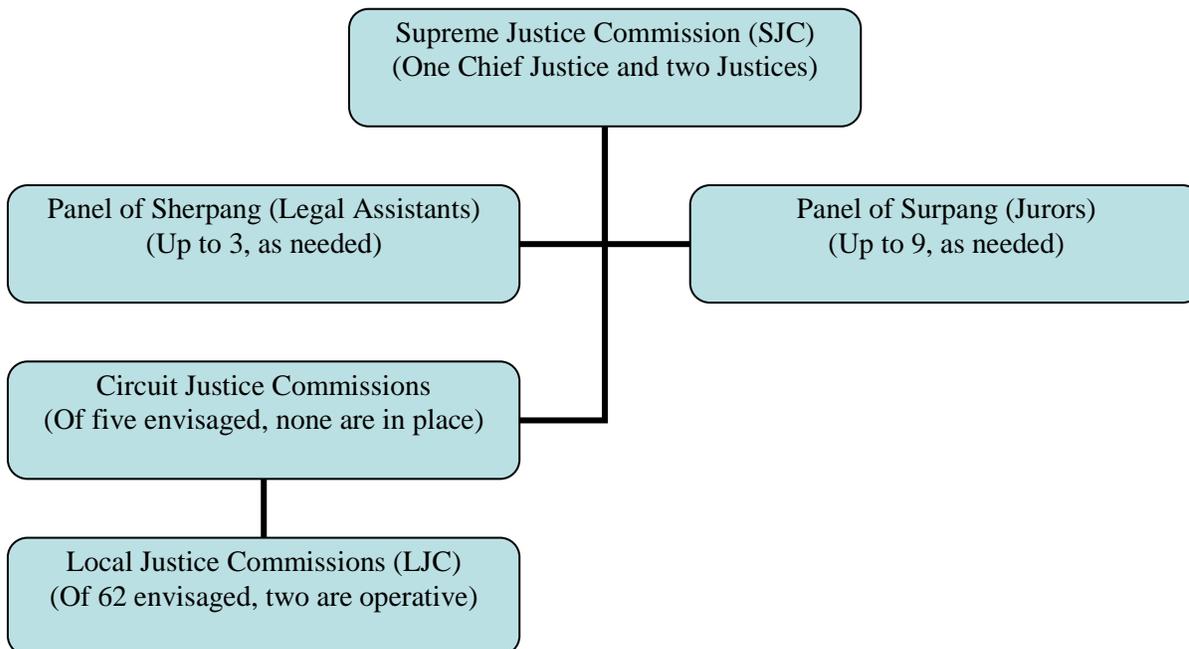
A Chief Justice Commissioner and up to two Justice Commissioners hear cases at the apex level. They have equal decision-making power – thus mitigating potential for biased outcomes through single decisions, or internal judicial hierarchy. The appointment process for Commissioners also favors internal independence, while guarding against a preponderant external influence from either the political or the administrative side.[186] The Secretary of the TSJC serves as Registrar and, together with the Chief Justice Commissioner, acts as the administrative head of the judiciary system.

In consultation with the Kashak, the Chief Justice Commissioner can appoint a panel of "sherpang," or legal advisors to the three justices, for a period of three years renewable. Arbitrators typically are chosen less for their knowledge of the relevant law, than for their expertise in the sector concerned (Meek 1996, p.244; Phillips 1988, p. 16) – in this case, for example, the public service sector. Out of three sherpangs, at least two must possess a law degree

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[186] According to Article 63 of the Charter of Tibetans in Exile, for each post a selection committee - comprised of the "Kalon Tripa" (Prime Minister), and Chairman and Vice-Chairman of the ATPD, and the Chief Justice Commissioner – recommends at least two candidates to the Dalai Lama, who then chooses one for submission to the ATPD for final approval.

from a recognized law college. Thus the sherpang panel would bring legal expertise to the table, providing informed opinion which, while not obligating the justices, would remain as part of the case record. Conceivably, this feature would add a legal reasoning trail to counterbalance any excessively discretionary judgments and would help build a precedent base at this nascent stage of the judiciary. To date, however, the SJC has appointed only one sherpang, who has resigned. For major cases of public interest, again to enhance publicly visible fair administration of justice, the Chief Justice Commissioner can appoint up to nine individuals to serve on a panel of surpang, or observers. Surpangs attend hearings and the trial and submit their opinions or suggestions individually or jointly. No actual case has yet required such a panel. However, three law graduates on staff with the TSJC carry surpang designation and, in addition to day to day research, can be assigned ad hoc surpang duties during case proceedings. The current arrangement is a compromise between principles and resource constraints, and blurs the distinction between arbitration and civil court.

At the secondary level are the Circuit Justice Commissions - facsimiles of Indian High Courts at the state level. They serve as appellate courts to the Local Justice Commissions (LJCs) and can also receive original suits, under certain circumstances. The intention was to establish five such Commissions to cover the six zones into which Tibetan settlements are divided but, as of today, this layer has not been implemented.

The primary level in the system is the Local Justice Commission – somewhat comparable to a District level Indian court. Here again, the plan for 62 Local Justice Commissions - one in each of the major Tibetan settlements and scattered communities – has not been fully implemented. Faced with budgetary and human resource constraints, the TSJC has been able to establish only two such commissions for instituting a case of first instance. One was set up in 2001 in Dehra Dun, which serves 21 settlements in the northern part of India, mostly Himachal Pradesh State. The other one was established in 2002 in Bylakuppe, which serves 11 settlements in the southern half of the country. In 15 other settlements, the TSJC has delegated the function of Local Justice Commissioner to the incumbent CTA Representative. According to my information, the Local Justice Commission (LJC) in Dehra Dun has entertained two cases, while the one in Bylakuppe has not dealt with any.

The TSJC acknowledges that the idea of CTA Representative cum Local Justice Commissioner is a compromise, a provisional stage in the legal institutionalization of an administrative staff - but it is not without its own dilemmas. During the opening ceremonies for the TSJC workshop November 19-22, 2005, Samdhong Rinpoche clarified to the 60-odd Settlement Officers gathered there that they should act as administrators unless disputants specifically ask them to take on the mantle of Local Justice Commissioner, figuratively speaking.[187] He emphasized the importance of not confusing the two roles, opining that something is better than nothing. If Settlement Officers are groomed to fill the role of Local Justice Commissioner, however, it is not only that there is a danger of conflating the two roles in ways that compromise the principle of independent executive and judiciary powers. It is also that, at this embryonic stage, claimants as potential court users could perceive the conflation as undermining their access to impartial justice on new terms, as suggested in the cases involving succession of land allotments.

Viewed in the longer term, the arrangement of Settlement Officer cum Justice Commissioner also could affect role specialization. On the one hand, the function already has an adjudicative aspect, softened by the relative informality and non-binding nature of the process. After hearing the viewpoints of both disputants and investigating details, the Settlement Officer usually offers a solution in the form of decision, unless the parties themselves have come to agreement earlier. The TSJC trainings and resource materials can have the effect of systematizing and further professionalizing this adjudicative competence. On the other hand, the question arises whether such enhancement will erode what is positive about non-adversarial dispute resolution – that is, dealing with underlying interests rather than just legally framed issues, disputant ownership of process and outcome, improved disputant capacity for working through problems, reconciliation for continuing relations, and so on. Even in their most judge-like determinations, most CTA Representatives were concerned with trying to break down adversarial postures to achieve reconciliation for the greater good of their constituency. The question is really whether it is their competence as dispute resolution practitioners that should be enhanced with special training, which currently is not the case.

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[187] Literally speaking, the Chief Justice Commissioner, Justice Commissioners, sherpangs, surpangs and General Secretary and Advocate all would dress in Tibetan attire – that is, the "chuba" – during the case proceedings.

13.4   Jurisdictions

Generally speaking, the Justice Commissions can adjudicate all civil disputes in the Tibetan community, except for Title suits because of the strictures against land ownership by non-citizens. However, cases involving land or buildings administered by any main office or branch office of the CTA (including leased settlement areas) do fall within its jurisdiction. The Commission cannot handle criminal cases or any case if entertaining it is seen to be in contravention of the law of the host country. As noted previously, the perception aspect here is important because of the indeterminate legal status of the whole exile edifice in India, where the many different ethnic and religious groups and sub-groups often are vigilant about who is claiming what rights relative to themselves.

As the highest court, the SJC has both appellate jurisdiction (for appealing decisions from a lower level Commission) and original or concurrent jurisdiction allowing for parties to bypass the LJC if it is deemed inconvenient – particularly in this stage where local structures are underdeveloped. Its concurrent jurisdiction applies to cases involving:

1)   The interpretation of the Charter of Tibetans in Exile, laws, ordinances, executive orders and other rules;

2)   The infringement of fundamental rights and duties of Tibetans as provided in the Charter;

3)   The redress of grievances of CTA staff, including main and branch offices; and

4)   The conduct of the official business of the main or branch offices of the CTA.

It has exclusive jurisdiction in three areas:

1)   Disagreement about Election Commission decisions with regard to election disputes;

2)   Disputes between one or more CTA Representatives and the exile government administration; and

3)   Disputes between two or more CTA Representatives.

Finally, it has advisory jurisdiction – when requested by the Dalai Lama – for providing opinion on Charter interpretations and any other question of legal ambiguity.

13.5 Basis of appointment to SJC

Balancing issues around qualifications, appointment process and oversight are much debated in comparative literature, with historical and political factors playing an important role in leanings toward one model or another.[188] Where appointments are dominated by the judiciary, internal independence is compromised, but accountability for performance is better controlled. Where appointments are dominated by political forces, public will finds its way into judicial sensibility, but there are limited means of accountability to ensure judicial integrity and competence. Criteria for appointment in a common law tradition are more likely to center on appropriate experience (and by extension a certain age), rather than status or rank acquired within a career judiciary with promotions controlled by judicial superiors. The former is meant to safeguard internal independence, in contrast to the civil code countries of continental Europe, which rely more on bureaucratic seniority within the judiciary, and on merit as adduced from processes such as competitive examinations (Guarnieri & Pederzoli, 2002, pp. 45-50).

The criteria for appointment to SJC positions reflect the common law approach. For example, a person must: 1) be a citizen of Tibet; 2) be at least 50 years old; and 3) have been a judge in any justice commission for at least five years, or a practicing advocate for at least 10 years. The age criterion implies seniority as a proxy for merit during this provisional phase where persons with substantial experience do not have any legal training, and those with legal training are short on experience. The last criterion in fact was considered to be non-mandatory for 15 years, from the day that the Charter came into force – June 28, 1991. It was understood, and foreseen in the Charter, that building up the necessary human resource base through formal legal training would take at least that long. In the meantime, appointments are made on the basis of long experience in Tibetan affairs.[189] The current Chief Justice Commissioner, for example, has had 34 years as a

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[188] Generally, see Guarnieri & Pederzoli (2002,pp. 18-77). In India, for example, under British colonial rule civil servants served as judges, with the result that there was a high degree of executive influence. The Constitution of Independent India sought to counteract this source of bias by giving the judiciary an important role in appointments. For Indian views on the subject, see V. Gullapalli & J. Narayan. "A National Judicial Commission: Judicial appointment and oversight."[Online] Retrieved February 12, 2008 from the World Wide Web: http://nac.nic.in/concept%20papers/Judicial_Commission.pdf; and A.P.Darvind "Judicial appointments – The Indian perspective" [Online] At: http://www.law.cam.ac.uk/docs/view.php?doc=862.

[189] The Dalai Lama nominates candidates for the position of Supreme Justice Commissioner or Justice Commissioner to the ATPD for its approval. His nomination is based on a list provided to him by a selection committee comprised of the incumbent Chief Justice Commissioner, Kalon Tripa, and Chairman and Vice-Chairman of the ATPD. A two-thirds majority of the ATPD can still reject the nomination. This process represents a compromise between politically dominated, and judiciary dominated appointments which together with the

civil servant in the CTA, in a variety of departments and senior positions – which he took pains to detail to me as a way of underscoring the importance of experience in lieu of legal expertise. The retirement age of justices is set at 65 years, which is consistent with many countries including India. Some writers, however, have contended that the longer and more continuous the tenure in judicial service, the greater the competency. Ironically, in the Tibetan case it would seem that the combination of age minimum for appointment (50) and age limit for office (65) effectively narrows the scope for experience in judicial service. The fact that the justices' main ground of experience is civil service, also carries potential for executive interference in a function that is meant to include judicial review of that very branch. These again are compromises rationalized by financial and human resource constraints.

13.6   Building legal awareness

Having institutional provisions for court adjudication of disputes and grievances, together with their professionalized actors, is only one aspect of legal culture. Another is legal consciousness, that is, the collective construction of what constitutes grievance and understandings about available choices, based on both attitude and perceptions of access.[190] Ewick & Silbey (1998) have theorized legal consciousness in terms of the mutually defining nature of individual agency and the social institutions, patterns of behavior and ways of thinking in which the individual is enmeshed (p. 39). This dynamic view of the agency-structure problematic implies that court users can shift legal consciousness incrementally, based on public perceptions of that experience. It is a more modest formulation of what Nader called a user theory of law, and one that is fitting for the tentative evolution of the Tibetan judiciary.

Scholars such as Scheingold & Sarat (2004), Hunt (1990) and Nader (2002) have championed legal rights and litigation as a strategy for progressive social causes. As expressed by Hunt:

> The liberal 'myth of rights' is the view that those suffering disadvantage should seek redress by striving to have their grievance protected by securing legal recognition of their claim as right. (p. 390)

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involvement of the Dalai Lama, is more likely to win public confidence. Indeed, while structures vary, most countries now use councils or commissions for this purpose (Guarnieri & Pederzoli, 2002, p. 46).

[190] Sarat (1990) uses a broader definition of legal consciousness borrowed from Trubek – namely: "all the ideas about the nature, function and operation of law held by anyone in society at a given time" (p. 343).

Theoretically, once the claim is upheld by courts, others whose rights are threatened or denied in the same way have a better chance of seeing their rights reinforced – presumably with an eventual cascade effect in the direction of desired change. Others, such as Rosenberg (1991), however, have emphasized that the court's capacity to stimulate social change is contingent on pre-existing support from citizens and higher echelons of relevant executive or political offices. Both kinds of argument derive from a liberalist conception of rights as being somehow central to people's understandings of how law constitutes their social relations. Ewick & Silbey (1992, 1998), on the other hand, have argued that the centrality of rights is very much dependent on the social, cultural and economic contexts in which people are enmeshed.

The Tibetan exile context is singular in that individuals do not possess land as a basis for wealth, power and social stratification, unlike the case in India (Sudarshan, 1985, p. 283), and indeed in pre-1959 Tibet. The exile community also has no significant underclass, elimination of which has been an important unifying goal underlying the democratic thrust and social welfare policies of the CTA. Thus, two important rationales for legal rights advocacy, as practiced in India and the US, have weak basis for this community. Neither the judicial activism of the former in relation to caste or tribal issues, for example, (Baxi 1985), nor the cause lawyering of the latter in relation to class and race issues (Scheingold & Sarat (2004) would find sufficient grist here. Moreover, given that both individual refugees and the exile edifice exist at the pleasure of the Government of India and host populations, rights discourse is not necessarily the appropriate framing for any issues Tibetans might have with them. Nonetheless, there are smaller injustices and power differentials within the community that have elicited a response to the invitation and promise of a Tibetan judiciary. Not surprisingly, however, its reach is less prominent in far-away settlements such as Bylakuppe, than in the nerve center of Dharamsala.

13.7   Empty courtroom in Bylakuppe

In virtually all my interviews on the subject of the LJC in Bylakuppe, respondents commented that either the population was not ready for a court model of working through grievances, or the system was not ripe for dealing with them – particularly at the local level. The two reasons tend to reinforce each other, setting up a chicken-or-egg dilemma. If people do not avail themselves of the option, then the system is not tested in ways that allow it to mature, and it does not

establish a track record by which people might judge whether it constitutes a viable option for them. There is a general awareness of problems with judicial misconduct and injustice in the Indian courts and this may make disputants cautious with the LJC as well. In any event, if disputants do not come forward, then the additional expense of maintaining a separate salaried official, office and court premises becomes difficult to justify.

Public education is a vital piece of the puzzle because without an understanding of the importance of a judiciary and its procedures, there will be no users. A difficulty with building legal awareness at local levels is that settlements are spread out and at least 30% of their population migrates out with sweater selling. I was informed, for example, that three persons in Bylakuppe had received six-month training in the Tibetan law books and a certificate from the TSJC. The trainees would help spread awareness of the TSJC and serve as an informal legal resource. Not only was I unable to track these individuals down, but the Local Justice Commissioner himself did not know who they were, had never met them. Similarly, while he was aware of "a few youngsters taking LLB training" he did not know them and was not in contact with them. With the exception of one phone call with his predecessor, he had not been in contact with anyone related to the judiciary or trained by it even though he himself had been to three TSJC workshops. Very occasionally there might be a circular from the TSJC, but otherwise there is minimal information exchange. Neither collegial support characteristic of a matured judiciary or a sustained program of public education appears to be taking place locally. Under these circumstances, rights and court use are not likely to supplant cultural dispositions toward conciliation.

I asked the Local Justice Commissioner in Bylakuppe what his daily activities entailed. His response was that it was a little like the army: prepare for eventual war. It is a matter of keeping informed and mentally prepared for the eventuality of a case coming forward: "If no one comes to the LJC, what to do? You can't go out and drag people here." (B5)

The LJC building in Bylakuppe was inaugurated by the Supreme Justice Commissioner on February 10, 2004 and has not seen much activity yet, beyond visiting school children. It is situated in a closed compound with the LJC offices on the second floor and the courtroom on the ground floor. The focal point of the courtroom is a dais with the judge's bench, complete with gavel, and above it a photo of the Dalai Lama. To the right is a standing flag of Tibet. On the

main floor there is a desk for the Court Reporter and to its left another for the Court Secretary. On the side, facing the center of the room are the table and chairs for a five-seat jury. In the center of the room, facing the justice are two desks side by side, one for the plaintiff and counsel, another for the defendant and counsel. Just behind and off to the side is the witness box complete with mike. Along the opposite wall is a long table to accommodate legal expertise. At the back, are 25 seats arranged in three or four rows for the public. In short, it is a courtroom in waiting. Settlement residents with whom I spoke were vaguely aware of the edifice itself, but had difficulty articulating just what it was for. On the other hand, they had heard enough about court justice through the Indian media to be thoroughly suspicious of the whole concept given the reported delays, expenses, corruption, loss of control, lack of sincerity, and arbitrariness of judgment.

In principle, the LJC is to be promoted as a form of accountability built into the system of democracy. Following TSJC directives, the former commissioner had made a public announcement about the LJC and whenever the CTA Representative gives a general talk, he includes mention of these new provisions for resolution of disputes or grievances. The TSJC published an easy to understand picture book on the process, some 10-15 copies of which were distributed to 50 families to share across the two settlements. Despite appearances to the contrary, the Local Justice Commissioner claimed that public reaction has been favorable – "people are growing confident that there is recourse if ever the CTA Representative's handling of their plaints should be unsatisfactory." This knowledge, he suggested, also deters the CTA Representative from delivering biased judgments. However, raising legal consciousness is a long endeavor that requires sustained follow-up and, at some point, even active encouragement so that the public can see and experience how the system works.

The subject of public education came up for discussion at the TSJC briefings November 15-22, 2005 and it was agreed that guidelines were needed on the level to which people should be educated on these legal matters. Over-emphasizing the judiciary could promote adversarial choices and place burdens on the system. A related concern would be the inadvertent encouragement of disputing behavior, rather than its containment. In his discussion of the relationship between dispute institutions and society, Abel (1973) in fact conceded that: "the differentiated dispute institution [i.e. formal processes] may become a complete inversion of its undifferentiated counterpart [i.e. informal processes], aggravating disputes where the latter had

pacified them (p. 269). An empty courtroom and idle officers, on the other hand, waste precious resources and perpetuate an implicit message about the futility of the TSJC project.

13.8   Steps to courtroom justice

The process assumes the form of binding arbitration, enforceable by Indian courts if necessary. It reflects the principle of a contract into which disputants enter voluntarily. Before a case can be considered, therefore, both sides to a dispute must agree in writing to abide by the court's decision. The wording, according to the Tibetan Code of Civil Procedures, Article 5 is as follows:

> I am registering my case for suit without threat or power or deception and I sign hereunder to accept whatever decision or judgment is given by the Tibetan court, as per the law of the Civil Court, the law of evidence and the judiciary [which] will be adhered to. Signed and dated by both parties. (1996, p. 215)

To be considered, a case has to be registered with the commission within four months of the grievance's occurrence – at least partly because issues otherwise become too complicated to resolve in the restricted time limit that marks arbitration as a speedy, efficient vehicle for dispute resolution. The narrow window also ensures that there is no subsequent problem with statutes of limitations, if Indian court enforcement of the arbitral award should become necessary. The commission then will study the particulars to determine whether the case can be entertained or must be rejected based on criminality or relevance as defined in Article 7 (Section i) of the Civil Code. There are two kinds of relevance: 1) if the case is accepted by the host country, then the Tibetan Commission cannot take on a competing jurisdiction; and 2) if the Tibetan Commission takes a case and the host country objects for whatever reason, then the case must be abandoned - again to avoid competing or overlapping jurisdictions. From there on, the general process is as follows:

1)   The plaintiff gives notice to the opposing party, providing for one month response time, which gives both sides a chance to solve the problem out of court and/or allows for the opposing party to prepare a defense;

2)   If there is no reply, or if the opposing party does not want to enter into the arbitration process, the TSJC can take action. It would send a first summons to file a written statement of defense; the summons is sent with a copy of the plaint and any

documents in support of the plaint at that point. In this notice a date is also given for the first hearing;

3) At the first hearing both parties should be present. There will be admission and denial of documents. The plaintiff will point out his claims and the defendant will make his reply; if there are counter-claims, these will be submitted in writing before the framing of issues takes place. On the basis of these various statements, the justice will frame the issues constituting the case;

4) Once issues are framed, dates are fixed for a hearing on each issue. At each hearing the parties bring their evidentiary documents and call their witnesses.

What stands out is that the procedures involve a good deal of formal written exchange, as opposed to the oral interaction in the more informal processes at settlement level. Textual documents are meticulously formulated and acquire special meanings with which new court users would be completely unfamiliar, even if they are literate. There is also an introduction of legal time. Traditionally, as indicated by French (1995), "none of the judges or conciliators asked when a particular action occurred" (p. 289). Similarly, with CTA Representatives as third party interveners, time is not necessarily a critical concept in arriving at consensus on what happened or what needs to happen. Unlike the procedures described above, dispute resolution is not perceived as being rigidly sequential. In the settlements, these procedures can seem dauntingly alien and disputants would have to be very motivated indeed to try their luck with the LJC.

In Dharamsala, the environment is much more cosmopolitan, with more sources of information circulating on everything that happens in the broader community as well as the local one. People and document resources are more accessible and the SJC has developed something of a track record since its first case in 1997.

13.9   Cases heard by the SJC

As the seat of government, Dharamsala has a high concentration of educated and experienced individuals. It has large numbers of transients – new arrivals from Tibet, visitors from other settlements and foreigners - for a continual mixing and churning of ideas. It also is where all the large Tibetan NGOs are headquartered. Relatively speaking, a good deal of money and power

circulate through Dharamsala. Given its jurisdiction over grievances with the CTA, it is not surprising to find that the SJC has been through some tests of fire. It is premature to guess what user patterns might evolve in this hub of activity. What will motivate users? How will they be enabled or constrained? Will litigation remain an individualistic rights ritual in the negative sense ascribed to it by traditional communitarians? Or, will contests in court have the capacity to open onto larger justice issues, as envisaged by Nader (2002), Abel (1982), and Fiss (2003).

The information on cases heard has very limited circulation, although the TSJC published a document in 2004, in Tibetan, detailing cases registered with the SJC, together with the final judgments and arbitral awards. With some difficulty I managed to briefly consult this document, with the assistance of a native speaker. In Chart # 10 below, I have summarized the essentials of the 14 cases heard by the SJC, from the year of its establishment in 1992 to June 2004. In order to have an overview, I have included the cases, identified by their registration number, their title or type, date of registration, status and a few explanatory details. Of the ten cases decided – as opposed to dismissed or pending – all but two concerned allegations of misconduct, rule breach or neglect on the part of members of the executive or legislative bodies. That preponderance could conceivably suggest a public attitude of vigilance over government rectitude, which would be a constructive engagement with the purposes for which the judiciary was intended.

Chart # 10:   Cases before the SJC at Dharamsala, from 1992 to 2004

CASE #	CASE TYPE	DATE	STATUS
1	**Defamation**	**2/8/1997**	**Decided**
This was a defamation case filed by the plaintiff about allegations made in the press; it was decided in favor of the plaintiff. The defendant was the Editor of Tibet Times newspaper published in Dharamsala.			
2	**Public interest Litigation**	**19/4/1998**	**Compromise decree**
This case concerned the neglect of public duty. It was filed against an ATPD member who allegedly was not attending meetings because he was busy gambling. There was a compromise and the case was dropped.			
3	**Election dispute**	**11/11/1998**	**Decided**
No comments.			

4	**Establishment of Vigilance Committee**	**12/4/1999**	**Decided**

The former Kalon Tripa claimed that the present office bearer was appointed by the Dalai Lama, a charge which the latter denied, saying that he was appointed by the Kashak. The response to this was "Liar!" This was a case of ego problems manifest in a power clash. The court's decision was that yes, the appointment had been made by the Dalai Lama.

5	**Election dispute of candidate for Kagyü seat**	**14/12/2000**	**Decided**

A Kagyü sect member filed a case against the Election Commission claiming that a ballot box had been opened before the Commission had given its permission. The complaint concerned misconduct of public affairs and the plaintiff was compensated with 3500 Rs.

6	**Dispute relating to rules of Public Service Commission**	**20/7/2001**	**Decided**

The plaintiff in this case claimed that the Public Service Commission (PSC) rules say that a person not appointed by the PSC cannot be promoted or transferred before three years are up. He claimed that the Kashak had transferred someone from the Representative Office in South Africa to the one in France. The Kashak said that the rules had been revised by the ATPD but the plaintiff didn't know about this and so the plaintiff was wrong.

7	**Unfair administration of scholarship**	**25/7/2001**	**Decided**

The plaintiff filed a case against the Department of Education (DOE), claiming he went to the US on a Fulbright scholarship for one year but had problems and approached the Tibet Fund (TF) for another year. He claimed that neither the DOE nor the TF cooperated and someone else got the spot. As defendant, the DOE's three representatives were fined 1000 Rs for administrative negligence. The plaintiff had to pay 1000 Rs to the TF because of unfounded allegations.

8	**Public interest litigation**	**6/12/2001**	**Decided**

A plaintiff filed a case against the owner of a nursery school, claiming that it was public property and should be handed over to the Department of Education (DOE) for public administration. By all accounts the defendant had operated the school effectively for over 20 years, even using his own money for building facilities. The judgment was that the school should go to the DOE and that the defendant should be compensated 10 lakh Rs. (one million Rs.). The case was a complicated one with convoluted legal argumentation.

9	**Relation with Mainland China and Taiwan**	**13/12/2001**	**Decided**

Chuzhi Gangdruk has two bases, one in Delhi and one in Dharamsala. The Dharamsala members charged that Delhi members were accepting money from PRC and Taiwan for the purpose of creating disharmony in the Tibetan community. After several hearings, the JC found that the plaintiffs could not prove that money was being paid as alleged, so the plaintiff had to pay Rs. 1000 to each of the 17 defendants of the Delhi based organization.

10	**Violation of Charter and rules**	**16/3/2002**	**Decided**

Regional ATPD members filed this case against Dharamsala Chuzhi Gangdruk. ATPD had passed a resolution that both Delhi and Dharamsala groups should be de-recognized until a

new united organization could be established, because both were creating problems. Initially the Dharamsala group honored the resolution and closed its office but later challenged the legality of the resolution. The JC decided the group was wrong and fined it Rs. 1000.

11	Paid publication in newspaper	9/8/2002	Pending
12	Dismissed	4/11/2002	Dismissed
13	Defamation	3/7/2003	Pending
14	Defamation	3/5/2004	Pending

Of the eight cases concerning exile government functioning, five were political in nature (#s 2, 3, 5, 9, and 10) and three involved civil service (#s 4, 6, and 7). Given the power of shaming and harassment as punishment for norm breach, the publicizing of alleged wrongs might be expected to have some corrective effect. The prospect of enhanced accountability, however, is muddied by what seem to be personal vendettas in some cases, with rules merely providing a suitable pretext. Even a case such as #4, which was resolved by a seemingly simple resort to rule or fact clarification, evidenced a strong personal element. This personalism points to a difficulty with court use as a vehicle for public oversight of governance when people are known to each other and have particularistic affiliations. Cases #9 and 10 concerning the Chuzhi Gangdruk, for example, which I have classed as political, have been part of an ongoing saga that has rent the Kham community and co-opted the SJC. The regionally-based identity politics have claimed an inordinate amount of ATPD energies, as expressed by one informant, himself a Khampa:

> In exile many of the ATPD deputies concentrate on trivial matters, especially in the "Dodoe" area (Kham). An example is how the ten Kham deputies wasted the House's time with the internal fighting, preoccupied with such things as the Chuzhi Gangdruk controversy. They should have been dealing with societal issues that affect daily life – such as scholarships. (RR6)

The Chuzhi Gangdruk began as a guerilla resistance movement in 1958 to defend Tibet and its religion, which it attempted from bases in Mustang up to 1974.[191] Officially disbanded in 1974 at the behest of the Nepali Government, it has maintained an important, if contentious and splintered presence in exile. The various factions coalesced in 1994 around two main groups - those excommunicated by the CTA because of secret agreements signed with the Tibetan and Mongolian Affairs Office of the Taiwanese government (allegedly in exchange for money), and

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[191] See C. McGranahan's conference paper "After Mustang: Contemporary perspectives on the Tibetan resistance" presented at "The Cold war and its legacy in Tibet: Great-power politics and regional security," Harvard University, April 20-21, 2002.

those who were not involved.[192] As explained by McGranahan, the latter "were installed in Dharamsala as the 'true' representatives of the resistance" (2002, p.10). The painful split was not reconciled until October 2000 by the Dalai Lama but, as SJC case #s 9 and 10 show, legal stratagems simply provided another venue for airing accusations and counter-accusations, as part of the ongoing wrangling internal to that regional grouping within the exile community.

While the two cases involving Chuzhi Gangdruk were prominent in exile news, I selected Case #'s 7 and 8 for in depth study because they were more representative of rights-based claims in which a broader community had a stake. They also involved more complicated attempts at legal reasoning for determinations of where rights lay, while revealing paradoxes in the impartiality and independence imputed to judicial process. These cases were much talked about and had been reported on in various media such as Bo Gyalo (a popular current events video), Tibetan Review, Tibetan Word, and Tibetan language newspapers. They thus represent an incipient legal consciousness based in the 'rule of law' rationale for the judiciary, as opposed to its hijacking for parochial purposes.

Importantly, Case #7 involved individual rights that the plaintiff eventually saw himself as pursing on behalf of all who might need to challenge the powers that be. The public visibility of the case, the tenacity with which the plaintiff pursued it, and the significance of scholarships within the community all are factors guiding this choice for analysis. While the case cannot be considered representative of what courts have dealt with to date (indeed the track record is too short to make such a claim for any one case), it is indicative of the kind of interaction between disputant and court that conceivably could influence how the judicial institution evolves in the future. Similarly, Case #8 is significant because it was titled "Public Interest Litigation," mimicking Indian trends in Social Action Litigation (SAL) as described by Baxi (1985). There were many stakeholders observing the proceedings but, ironically, the case had the reverse effect of placing the defendant's rights in prominence, despite the eventual judgment. Both the plaintiff in Case #7 and the defendant in Case #8 subsequently took their grievances before the Indian High Court in Shimla and those cases are still pending.

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[192] Reportedly, the Mongolian and Tibetan Affairs Commission "has a history of lending financial support to various alternative Tibetan groups – both when the Dalai Lama still lived in Tibet and after his voluntary exile in 1959 creating misunderstandings among the exiles" (Indian Express, Chandigarh, 19 October 1994). Although my informants were circumspect on this matter, there were veiled references to Camp #4 in Lugsung Samdupling, Bylakuppe, as "the aristocrat's camp" - implying that members of that community owed their prosperity to Taiwanese funds.

I had the opportunity of repeated interviews with the plaintiff in the former case, and the defendant in the latter – both counterbalanced by discussions with the legally trained TSJC spokesperson who had been assigned to helping me with my information requests. Although I draw on information from the TSJC and media sources, I base my two case studies largely on the testimony of the plaintiff, in the first case, and of the defendant in the second. My reasoning is that these are the perspectives that will demonstrate user motivation, as well as the enablers and constraints that affected the course of justice through the courts.

XIV   THE ODYSSEY OF PLAINTIFF TASHI, FULBRIGHT SCHOLAR[193]

This case illustrates a number of points in relation to my overall thesis about individual agency being socially embedded, and about the fate of individually construed rights in a communitarian context:

- Court adjudication on the basis of narrowly conceived individual rights does not necessarily serve the interests of the socially embedded individual or of the communitarian entity;
- To the extent that "harmony ideology" has pejorative connotations from a liberalist perspective, its workings do not stop at the threshold of the courtroom;
- Non-rational norms maintain a backroom presence even where rational norms appear to be the drivers for behavior; and
- If judicial independence is problematic in a society of strangers, it is even more so in one with members known to each other.

Introduction

The Fulbright scholarship is the most prestigious award available to educated Tibetans. It was established in 1988 to enhance the administrative infrastructure of the Tibetan refugee community by developing a cadre of younger and mid-level leaders through professional studies and higher education in the United States. It is funded by the US Department of State and administered by Tibet Fund (TF), which is a not-profit, New York based education and cultural institution. TF was founded by a small group of US citizens and Tibetan immigrants living in the US, and is staffed mostly by Tibetans. The Secretary of the Tibetan Department of Education (DOE) is responsible for overseeing the scholarship program and the DOE's High Level Selection Committee (HLSC) in Dharamsala is responsible for recruitment of candidates and selection of awardees. The HLSC awarded roughly fifteen Fulbright scholarships a year for study abroad. Between 1988 and 2002, there were 255 Tibetans who became alumni of the award program.

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[193] Although this case is well known, I have used a fictitious name.

Plaintiff Tashi is a serious person of quiet but alert demeanor. He has taught in Tibetan schools for almost 20 years, of which 7 were in Tibetan Children's Villages (TCVs) in some of the most remote and disadvantaged settlements. He is a past recipient of the coveted Fulbright Scholarships but has experienced a long and frustrating odyssey in relation to that award. In our discussions of his case, he wryly commented that it was a case of "democracy and justice with Tibetan characteristics" – a quip reminiscent of democracy with Chinese characteristics but also recalling some of the foibles of those at the centers of power in pre-1959 Tibet. Although his case began as a simple enough effort to resolve an individual problem with the bureaucracy, it grew to having some public significance as a direct consequence of the court process itself. I first heard about the case through Indian friends, and then repeatedly through Tibetan friends and contacts as far away as Bylakuppe.

14.1   The story begins

Initially, Tashi was selected for a Fulbright award, for a non-degree program of one year, as per his application. The bar for academic standing had just been raised prior to his application and he did not qualify for the 2-year degree version of the award. He applied in February 1996, was selected in April and was sent to the University of Georgia in September – this being the normal timeframe for the process.

When Tashi arrived in Georgia he found that Tibet Fund (TF) had registered him as an auditing student and his status at the university was only that of visitor. He wrote to TF asking to get into a proper one-year degree program, knowing that other candidates for non-degree program like himself had ended up getting a degree from institutions that had one year options, including Harvard. He felt it would make no sense to spend a year abroad without anything to show for it. Through friends he began to contact professors and universities in search of an alternative institution and eventually got accepted by the University of Massachusetts in Amherst, to begin in January 1998 as a non-degree student until the formal start of the school year. If he got good grades he would be able to get a scholarship from the university or at least a tuition waiver to continue. Using the remainder of his Fulbright award, Tashi completed the session with good standing and began his degree program in September, with a tuition waiver. The program was a 48-credit one, which students usually took three years to complete.

14.2   Subsequent chronology

Knowing that his scholarship had a much shorter timeframe, Tashi tried to accelerate his progress, even though he had to take on part time work in the library and a teaching assistant position to make ends meet. By the end of the Spring Semester 1999, he realized that he needed to devote 100% of his time to study for a proper finish to his degree. He went to New York to ask the TF to consider granting him an additional year of support, given the time lost to auditing at University of Georgia and having to switch institutions. TF responded that they had no precedent for such a request, so he wrote to the Chairman of the High Level Scholarship Committee (HLSC) asking for assistance.

In the fall of 1999, the HLSC wrote back agreeing to fund Tashi for another year and advised him to contact TF to release the funds. TF responded that, due to a technical glitch, it was not in a position to give him money. TF staff suggested he send another application - maybe they could look for an alternative source of funds for him. I imagined that this response at least acknowledged Tashi's right to some assistance given the written approval of DOE that he had in hand. Not so, said Tashi:

> This is a game of classic evasion, the way of the old aristocratic administrative system. How can the same old game be played in a supposed democratic society?

Tashi insisted that the technical glitch be spelled out in writing. He further stated that if TF explained the problem in writing, demonstrating that it was genuine, he would not pursue the matter further. TF never sent a letter. Although the situation was not satisfactory, the matter still might have ended there. A few months later, however, Tashi learned that TF had written to the HLSC stating that he had agreed to abandon his claim, since the problem had been explained to him. More importantly, another person in the same situation as himself had been awarded the very extension he was seeking. Tashi immediately wrote to TF saying that he still had not received their explanation on the basis of which he could decide whether and how he might pursue the matter.

By spring of 2000, Tashi had finished his degree program, and went again to New York to speak with TF in person. According to him, TF basically responded: "What we have to say we already

have told you, now go look for justice elsewhere." At this point it was no longer even a question of money for Tashi, but one of principle. He felt someone had to be accountable for this type of bungling, or nepotism, or whatever it was that had transpired behind the scenes:

> If you can do this to an educated, aware person, what hope is there for the ordinary person in the settlements?

Tashi's comment again recalls the early ordeals of transition from old world power machinations to democratic visions of transparency and egalitarianism in exile. It also shows an astute awareness of the Dalai Lama's hopes for the judiciary as an instrument of justice for the poor. Tashi explains that he had worked in some of the most disadvantaged settlements, such as Ravangla in Sikkim and Phuntsokling in Orissa. Families in Sikkim, for example, had barely enough to eat yet never failed to make their monthly contribution to the exile government – such was their faith in the integrity and benevolence of the CTA. What actually happened remains rather convoluted and ultimately is less important than Tashi's abiding sense that TF was using artificial technicalities to justify reneging on the HLSC decision to grant him the extra year. Once back in Dharamsala, he spoke to the Secretary and staff at DOE but was unable to get any answers.

14.3   Going adversarial: A case for the SJC

If even the policy makers and authorities in Dharamsala were powerless to act, then Tashi decided he had no choice but to take the matter to Tibetan Court, to make a moral case. His sense of rights doubtless was heightened by his exposure to a rights mentality in America.

Tashi reviewed the TSJC brochures and decided to plead his own case, without seeking legal counsel, which in any event was in short supply if non-existent at the time. He filed a statement of claims against the DOE as represented by four of its highest officials who together constituted Defendant #2. He also filed a plaint against the TF, as represented by the President and the Director – the two together constituting Defendant #1. The SJC accepted the plaint and drew up the document of agreement to enter into arbitration and to abide by the arbitrator's decision, for the plaintiff and defendants to sign. TF refused to sign, arguing that the SJC could have no jurisdiction over it, as it was not part of the exile government - it was an independent NGO registered in the United States. Some hurried phone calls must have been exchanged because

eventually a TF statement was delivered on blank paper, not TF letterhead, with the explanation that the President and Director were responding to the charges, as individuals, loyal to the CTA and acting out of respect for the SJC. The rational norm behind this self-interested choice would be that they could not presume to interface with fellow Tibetans if they went against CTA expectations, a neglect that could be sanctioned with job loss. However, a non-rational normative explanation is equally if not more plausible – namely that Tibetan-ness means public commitment to the governance structure that represents them in exile.

The case went before the court on July 7, 2001 with a three-judge bench presiding – a public display of judicial weight, as well as implied constraints on individual bias. The DOE was represented by 2 officials and a legal counsel from the Department. No TF official was physically present; its defense was conducted by a legal counsel, who was in fact a CTA official - the Joint Secretary of the Kashak, formerly an officer with the Justice Commission. Tashi raised two objections: 1) he had entered a plaint against the TF as an organization affiliated with the DOE, whereas the case now was being treated as litigation against individuals; and 2) at the same time that the TF claimed no government connection, it was being represented by a government official. The objection was overruled, and with considerable anger on the part of the justices. Tashi reports that he was told:

> If you want to continue the case here, fine, but if you have objections you can go
> somewhere else for justice.

Though taken aback by this outburst from a supposedly impartial bench, Tashi decided to drop his objections and see where the court procedures led. There were several hearings subsequent to the angry outburst, and the courtroom was generally filled to capacity because issues around the scholarship had received considerable coverage over the years. Finally, on March 2, 2002, the verdict was delivered:

1) Plaintiff Tashi failed to prove his allegations against the TF defendants and was ordered to pay compensation of 1000 Rupees to defray their trial expenses;

2) Three of the four DOE defendants were found guilty of administrative negligence and, having wasted the time of the honorable court, were ordered to pay 3000 Rupees for the cost of cassette tapes and transcription of court proceedings.

As I listened to Tashi's story I kept asking myself why the DOE was penalized for what seemed to be a TF blunder. Could it be that neither the DOE nor the justices wanted to make trouble for

the TF because it was an instrumental partner for the entire scholarship program, which they did not want to jeopardize? If the DOE was responsible for overseeing the program, what exactly was the legal relationship between TF and the DOE? Why were Tashi's seemingly reasonable objections overruled by the justices?

It appears that the SJC did not have the jurisdiction to call TF to court as an organization since it was registered in the US. In order to be able to entertain the case at all, it had to pressure the named individuals to respect the Tibetan Charter as Tibetan citizens and respond as defendants.[194] This was the only technical loophole through which the TF could be made accountable in the proceedings. As for the seeming incongruence of having a former officer of the Justice Commission appointed to represent the defendants in court, the SJC clarified that there was nothing untoward in it. Sections 20 and 21 of the Tibetan Civil Procedure Code state that if the defendant cannot be present for whatever reason, he/she may be represented by someone appointed by him/her. This provision is particularly important in a spread out community such as the Tibetan Diaspora, where it is not feasible for people to travel the distances required for hearings. The fact that the defendants chose a government official to represent them is irrelevant to the case because Sections 20 and 21 express no restrictions on who can represent a party. Yet, whatever the technicalities, the optics were not good for the lay person exposed for the first time to court process, nor for the many onlookers who were sizing up the new avenue to justice. The principle of judicial impartiality took a perceptual blow with the former justice official's assumption of a formally partisan position.

The irony in the final judgment of the SJC was that both DOE and Tashi had contravened the "Rules and Regulations for Selection of Tibetan Candidates in India, Nepal and Bhutan for Overseas Study" – the DOE in agreeing to provide for continued study and Tashi in extending his stay beyond the approved date in order to complete his program. The judgment identified numerous fine points of breach as "the root causes of the case" but the original source of the trouble was somehow lost – namely, that TF had failed to enter Tashi in a proper program, relegating him to audit status and thus diminishing the utility of the valued Fulbright award, to the individual and to the collectivity. According to the record, the SJC had framed this issue as

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[194] Even if they might be American citizens, Tibetan officers of the TF presumably are green-book holders, meaning that they pay annual taxes to the CTA and have a right to vote as part of a patriotic Tibetan Diaspora.

an allegation by the plaintiff that there was unfairness in a system that treated awardees differentially, with the burden of proof resting on the plaintiff. The only reference to this issue in the final judgment was that the plaintiff had been unable to prove the allegation. Thus, as predicted by Abel (1973), the burden of proof became disengaged from inferential reasoning and was transformed into a mechanism for deciding the entire dispute (p. 278). The narrowed range of admissible evidence edited out the larger significance of the scholarship award. The rest of the record was concerned with letters written or not written, dates and sequences respected or not, verbal exchanges that took place or did not, the status of documents signed or not signed, and so on – along with denials and accusations of fabrication.

14.4   Mood of the times

I am in no position to assess the merit of arguments made by the plaintiff or the defendants, but given my interest in the perspective of the court user, I was attuned to views that had been circulating about the administration of the Fulbright scholarships. A run of articles in the Tibetan Review in 1995 protested what they saw as a manipulated selection process - just months before Tashi originally applied to the program. In the May issue, for example:

> If every year the CTA bureaucrats keep on manipulating and coming up with dubious devices to pillage and fiddle away the few opportunities and privileges extended to the refugees by the international agencies, then there really is no point in pretensions; why don't the CTA authorities just grab everything on our behalf?... they are causing unnecessary problems, resentments and divisions in our exile community.[195]

That this was not an isolated, disgruntled critic can be seen in another article in the June issue - this time by someone experienced in selection processes, having been associated with college placement for ten years, handling over 150 admission cases a year. The commentator claimed that the High Level Selection Committee (HLSC) was both incompetent and unfair. It further charged that applicants were randomly disqualified on flimsy grounds, while a disproportionate number of seats were reserved for CTA employees.

> Each year rules are changed to suit certain interest groups. There are last minute and sudden replacement of candidates. The distribution of scholarship categories fluctuate. In

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[195] Phuntsok Namgyal. Tibetan Review XXIX (5) May 1995. p23.

a nutshell, what seems to be a simple job of seeking 15 to 20 candidates is turning out to be a fairground for manipulation.[196]

Tibetans readily concede that the Public Service needs qualified people and that civil servants work for the benefit of the community with only modest remuneration. The problem concerns a perceived lack of transparency, and the undying suspicion that those in power are quick to avail themselves of privileges.

The July issue of Tibetan Review[197] published a rebuttal by the HLSC claiming that the Committee consisted of representatives from seven different departments and that it operated under a set of rules and procedures made available to every scholarship candidate. It asserted that of 150 candidates selected up to that point, only 16 (or 10.7%) were allotments to CTA staff. It challenged the writers of earlier articles to substantiate their charges of manipulation with specific cases and facts.

Unfortunately for the HLSC, letters published in the August issue of Tibetan Review picked up the gauntlet. One letter identified the case of a law graduate who was selected despite the fact that he reportedly did not qualify either academically or in terms of rules pertaining to the length of prior study. The selection, it claimed, was political – a reward for having seized documents relating to the Chuzhi Gangdruk controversy and the Taiwan Mongolian and Tibetan Affairs Commission, touched on earlier. The writer pointed to the fact that the HLSC had reserved two seats for itself, based on unclear criteria and cited other examples of candidates being disqualified several months after having been selected – not unlike the case of Tashi. Another letter by a candidate from Pokhara in Nepal recounted a personal story that was even more reminiscent of Tashi's odyssey:

> Somehow they [Departmental authorities] managed to sweet-talk me into keeping quiet by assuring me, verbally, of automatic preliminary selection the following year…The behavior of the concerned authorities leaves very little choice for me other than to believe that it is a part of behind-the-scene maneuvering and fiddling to accommodate somebody….I am absolutely certain that I have been cheated out of a fair chance and if need be I would welcome anybody to conduct an enquiry into the case. [198]

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[196]Thondup Tsering. Tibetan Review, XXIX (6). June 1995. p.21.

[197] Tenzin Dolma (for HLSC). Tibetan Review, XXIX (7). July 1995. p.24.

[198] The first letter was written by Gyurmey of Dharamsala and the quotation is taken from a letter by Phuntsok Tashi of Pokhara Nepal – both in Tibetan Review, XXIX (8). August 1995. p. 24.

From these comments it is clear that there was a mood of growing discontent and skepticism when Tashi applied for his scholarship. Moreover, four years later, "shock" was still being expressed about selection results. This time criticism focused on the disproportionate number of seats being reserved for CTA staff, compared to that for the much larger numbers of NGO staff, particularly those working with Tibetan Children's Villages (TCVs).[199] The article appeared in the November 1999 issue of <u>Tibetan Review</u> - at precisely the time when Tashi began encountering the technical glitch that would set him on the course of seeking justice through the courts. There is something in virtually every article that relates to Tashi's own experience. He too had given seven years of service to TCVs in remote areas and could appreciate both the implied devaluation of NGO service relative to CTA service, and the disadvantages for those in remote settlements relative to those in the Dharamsala hub. He also had learned to mistrust verbal communications and the official retreat behind a veil of technical reasons for dispossessing him of what he believed to be a rightful claim. He saw that the agreement to extend his scholarship was withdrawn while another candidate in the same circumstances was accommodated. Like the other critics, he suspected that rules and regulations were being arbitrarily invoked or ignored, as it suited partisan agendas.

Whatever the strength of his own individual case, Tashi's day in court was part of a larger questioning discourse. In 2004, the US Department of State's Bureau of Education and Cultural Affairs commissioned an evaluation of the Tibetan Scholarship Fund. Out of the 255 alumni who had received a Fulbright award between 1988 and 2002, 162 received survey questionnaires and 70 responded. The survey indicated that a majority had experienced a meaningful educational exchange that supported career advancement. The report gave little prominence to negative opinion, but it did make observations similar to Tashi's complaints and those in the <u>Tibetan Review</u> articles:

> Criticism of the program dealt primarily with issues related to how the program is administered, the selection process, and the lack of choice regarding the university to be attended and the subjects studied by grantees… [Regarding selection] they suggested that the program should be an open competition for all Tibetans in exile…the policy of reserving places for CTA officials should be abolished.[200]

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[199] Tenzin Choegyal. <u>Tibetan Review, XXXIV</u> (11). November 1999. p.25.

[200] <u>Outcome assessment of the Tibetan Scholarship Program</u>. Report by the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs. Washington, DC: US Department of State, 2004, p. 12

14.5   Petition to the Dalai Lama

Although Tashi was far from satisfied with the SJC ruling, he was prepared to show respect for the justice system and honored its order for compensation to be paid – again, a strategic rational choice, but one informed by the legacy of Tibetan-ness. At the same time, he wrote a petition to the Dalai Lama highlighting the misdemeanor and irregularities of the judges and the process in the court. The angry outburst against him demonstrated a hostile attitude unacceptable in a supposedly neutral arbitration, he wrote. Moreover, the case had been turned into litigation between individuals, thus bypassing the whole intent of his plaint.

Tashi's concern with procedural fairness as distinct from substantive fairness is consistent with the Dalai Lama's vision of the judiciary as anchored in rule of law rather than idiosyncratic value judgment. Yet, his attitude is an example of the exile community's resistance to accepting the charismatic leader's abdication to a rational-legal bureaucratic principle. Because of the Dalai Lama's expressed concern for access to justice and accountability for governance, Tashi had hoped to enlist his moral authority, knowing the weight that still could have. This residue of faith in the Dalai Lama is emblematic of non-rational norms that persist in people's minds, directly influencing strategic choices. Tibetans respect the Dalai Lama's vision of democracy, but they still do not necessarily trust each other across the various divisive lines.

Tashi sent a copy of the petition to the SJC, the Kashak and the ATPD. In due course he returned to the Private Office of the Dalai Lama to enquire about the fate of his petition and to request an audience with His Holiness. The Private Office waffled, avoided the request and stressed that it did not want to put His Holiness in the awkward position of having to engage with the issue or interfere with the functioning of the government. The Dalai Lama had made repeated public statements, like the following one to the ATPD:

> Each department should take its own responsibility. ….In future, if any problem arises, it has to be ultimately resolved by yourselves. Do not think that you can put it on the Dalai Lama – please bear this in mind.[201]

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[201] "Speech at the Assembly of Tibetan People's Deputies, February 2, 1996." The political philosophy of His Holiness the XIV Dalai Lama: Collected speeches and writings. Ed. A.A. Shiromany. New Delhi: Tibetan Parliamentary and Policy Research Centre, c1998, p.329.

Reminded thus about the Dalai Lama's desire and his constitutional commitment to abstain from secular affairs, Tashi decided not to impose himself further and to drop the case. At this point he also was in discussion with the Minister of Education about the possibility of working in that Department. Tashi expressed his interest, but respectfully asked to postpone his appointment, until there was proper closure on his case. The issue by now had become quite public. Not only had the courtroom been attended to capacity by observers, but several articles had been printed on the case in the Tibetan newspapers. Tashi felt responsible for the larger justice message that needed to be made. He thus gave a press conference in September 2002, expressing his views and his intention to let matters rest in peace after that.

14.6   The plot thickens

To Tashi's surprise, on September 22, 2002 - a good six months after the SJC verdict - an office order arrived at his door from the Supreme Justice Commissioner. It charged him with contempt of court and withdrew his right to vote or be voted into office, until he apologized. The order claimed legitimacy for the action on four grounds: 1) Tashi "did not comply with the law" but there was no clarification of what this statement meant. If the inference concerned the payment of compensation, he had paid and had a receipt to prove it; 2) Tashi had refused to accept a hand-delivered notice sent by the SJC on such and such a date (according to Tashi he never refused any official notice, nor had any been delivered to him); 3) by addressing the press conference Tashi had explicitly and repeatedly criticized the judiciary; and 4) On specific orders from the Private Office of His Holiness, dated such and such, Tashi was to be punished by depriving him of his electoral rights until such time as he apologized.

To be deprived of voting rights is the maximum penalty for norm breach within the Tibetan judicial system. It is a highly symbolic gesture. Tibetans feel a social and psychological pressure to be part of the voting community, particularly if they expect to hold any kind of public office, as Tashi had hoped to do in the DOE. The SJC probably felt a need to bolster public faith in the judiciary but the legal justification is less clear. Can the Chief Justice Commissioner unilaterally hand down such a punishment? Is there no provision for notification or hearing so that the accused can defend himself before such a radical judgment is passed? Can a process that was meant to be arbitrative suddenly be converted into a prosecution – six months after a verdict had

been delivered? More realistically, I surmise that the criticism in the press is what provoked SJC reaction, not any legal transgression over which the SJC could assume authority. As observed earlier, while open-ness to public criticism and to press coverage are important features of judicial accountability, judges can resort to legal protection from deemed excesses through contempt of court ruling.

Understandably, Tashi was stung most by the idea that the Dalai Lama would have ordered such a punishment. He therefore made a request, in person, that the SJC give him a copy of this order. This was refused. He then submitted the request in writing, hand-delivered; this too was refused. He then sent the request by post; it was returned. Finally, Tashi felt obliged to go back to the Private Office requesting an audience with His Holiness, who was out of station at the time. He had wanted to drop the case, and now this dramatic turn of events forced him to continue pursuing clarity and justice. The Private Office responded that it had not issued any such order. It had merely sent the SJC a brief letter summarizing its discussion with Tashi and it showed him the letter in question. When the Dalai Lama returned and held a public audience on July 17 2003, Tashi seized the opportunity he had waited for so long. The public audience included some 200 foreigners and Tibetans. When the line of people was down to the last 10 or 12, Tashi briefly explained his problem and presented his second written petition to His Holiness. The Dalai Lama expressed dismay, assuring Tashi that he would look into the matter.

A month later, the Private Office wrote to the SJC for a review of the order. To be precise, the Dalai Lama had said "find out if there is a legal provision for review." Tashi explained to me that any Tibetan, reading between the lines, would decode this statement to mean: "In a democracy I can't tell you what to do but I hope you will make all efforts to comply with my request (i.e. review the case)." The Supreme Justice Commissioner wrote back saying that the judgment was irrevocable. Tashi was dumbfounded - but not defeated. By now he was learning how to play the rules game.

14.7   Horoscopes and the tenacity of a plaintiff for principle

Given the intractability of the SJC, Tashi decided, in October 2003, to pursue the matter in Indian courts. He filed a case against the SJC and the Supreme Justice Commissioner in the

District High Court in Shimla, on grounds of: 1) having been deprived of his fundamental right to vote; and 2) forgery in the matter of the Justice's age. The Court informed the defendants and they responded saying that the case was not admissible as it concerned a purely internal Tibetan matter. Yet the case was accepted by the Court, as a defamation case, insofar as Tashi had been deprived of his rights within the Tibetan community, an act which cast a shadow over him in society.

As noted already, the Tibetan Charter stipulates that justice commissioners cannot hold office beyond their 65th year. Tashi had discovered that the Justice was beyond retirement age and had misled authorities about his age. Tashi had obtained a copy of the Justice's registration certificate with his age clearly indicated, and had produced this in court as evidence of forgery. To counter this, the Justice produced a copy of his horoscope from the Institute of Tibetan Medicine and Astrology – which the Indian court rejected as valid evidence. Tashi subsequently procured a copy of the horoscope as well and sent it to the Kashak with another letter, asking if this was the basis on which they decided matters? The Justice had lied by only one year but, given the Tibetan calendar's 12 year cycle, he could equally have used such a document to prove a difference of 12 years. In a bit of ironic nemesis, the horoscope actually contained an assessment of the holder as being a "tactful yet fraudulent person" and one who "will commit adultery." Tashi's point then became: if one accepts the horoscope birth date, why not accept the horoscope assessment of character? The ATPD Standing Committee apparently had debated at length whether money could be sanctioned for the Justice's personal defense and decided to earmark a considerable sum for it. Though not counting as legal aid as provided under the Charter, this oblique provision of financial support compounded Tashi's sense of unfair process. Taking the horoscope line of reasoning further, Tashi asked: "Is this the kind of person you want to support officially, with government funds to defend himself?"

14.8   Backroom drama

Shortly afterward, the ATPD Chairman, the Kashak Vice-Chairman and the Kalon Tripa contacted Tashi through the Tibetan Welfare Officer for Dharamsala, asking to meet with him. The four met in the office of the Chairman in early December 2003. The eminent persons told Tashi that they didn't want to pressure him to withdraw the case, but felt that they needed to

educate him about certain possible repercussions. In the first instance, they pointed out, the CTA does not have legal or political recognition from the host country; the decision of the Indian court on his case could have a deleterious effect on the administration. If something drastic did come to pass, Tashi would deeply regret his actions. In essence, they said, the SJC is an arbitrator but functions as a law court and you cannot have a parallel law court in India. In the second place, the Indian law courts have no sentiment with respect to the Tibetan cause; they simply deliver their ruling according to the books. They may well ask how the SJC can presume to affect the life and career of 100,000 refugees. Thirdly, Tashi had stated at the press conference in 2003 that he would consider the matter closed. Could there not be some kind of compromise?

From a rational norm perspective, the blatant interference in the case by executive and political authorities at the highest level represented a self-interested choice to disregard the principle of external independence of the judiciary. Since the interference was out of the public eye, there would be little risk of negative sanction from public quarters. At a deeper level of explanation, however, it represented a perception of the collective interest based on non-rational norms relating to Tibetan legitimacy in India. The arguments of these eminent persons were forceful, but Tashi's preoccupations lay elsewhere. He pointed out that the order taking away his franchise was issued after the press conference. He said he was open to compromise but there did not appear to be any compromise forthcoming from the other side. Why couldn't they speak to the Justice? All the SJC had to do was restore Tashi's rights and the matter would end there without further embarrassment. Afterwards, Tashi sent the eminent persons a two-page summary of the meeting to have it on record, commenting how unethical it was for the government to actually pay for the Justice's personal defense. There were instances where minor officials had to fight their cases alone, without any government support. Here a high official was being protected. How, he protested, could an ethical system have two sets of rules: one for the higher officials and one for the lower? "It's as simple as this," Tashi continued, "restore my electoral rights and I'll drop the case." He never received an acknowledgement to the letter.

The three eminent persons who had visited him, states Tashi, should be the ones to make the Justice accountable for his actions, not a mere individual like himself. Behind the scenes, there were some tentative discussions later about settling out of court. In the hearings the Justice and the SJC acted as one, with one defense, even though Tashi had laid two separate charges. According to Tashi, the defense's lawyer suggested to his lawyer that there could be room for

compromise, on condition that Tashi did not go to the press. Tashi accepted this condition and, for his part, laid down only one condition - that the defendants should come to him direct if they were serious about compromise. This they never did. In fact, rumors were circulating "from the highest authority" that it was Tashi who had requested the compromise. Tashi suspected that the Justice may have floated the rumor to test him and put him in a weaker, pleading position - in short, more games, as he put it. At this point, Tashi says that if a compromise ever came to pass, his condition would be that the Justice and the SJC apologize not to him, but to His Holiness the Dalai Lama by offering the traditional Katak to his image and prostrating three times before it, as per custom. Such a gesture would properly acknowledge responsibility for the false claim that the Dalai Lama had ordered withdrawal of Tashi's voting rights.

Some months later, the former Secretary of the Supreme Justice Commission, who was on the verge of retirement and incidentally knew Tashi from childhood, called him on his mobile suggesting a meeting. The former Secretary began with: "Is there anything I can do for you?" – a statement which Tashi says is typically Tibetan and really means "What can you do for me?" Essentially, he interpreted it as some kind of last minute bullying to conform to social pressures. Tashi's response was simply:

> I am totally clear on two things: 1) I am faithful to His Holiness; and 2) I am faithful to my conscience and don't care what others may think.

Tashi reiterated that if the SJC was interested in a genuine compromise, he was ready anywhere, anytime, but "don't play games with me. I won't be bullied." And that was the end of that.

14.9   Epilogue

At the last court hearing in Shimla on March 8 2006, none of the defendants, or any of their witnesses, nor their lawyers or representatives made an appearance. Reportedly, failure of the defendants to appear in court resulted in the Court's issuance of a bailable warrant of 5000 Rs, with a contempt notice. To the extent that this information is accurate, the SJC would now be forced to respond to the contempt notice. In principle, if it fails to respond with payment or agreement to be taken into custody, those named on the warrant can be arrested. As the eminent persons who visited Tashi had observed - Indian courts have no sentiment with respect to the Tibetan cause and the SJC situation grows more uncomfortable at the thought.

I am not unsympathetic to the plight of the defendants, on grounds that they cannot afford to lose more public face on the issue or to have their conundrum exposed to the glare of Indian media. As the defendants protested, it is indeed a matter that is internal to the Tibetan community. It should be well within its capacity to resolve. From the beginning of this odyssey, it seems that the DOE, TF and SJC parties entrapped themselves in the letter of the law, to the detriment of its spirit and each in its own way overstepping rule boundaries in small ways that added up to bigger repercussions. The changing of rules or flexibility on rules is at best a necessary expedient, but at worst a slippery slope. On the one hand, for rules to be appropriate they sometimes have to undergo revision and adjustment, which will affect some subjects more than others, and elicit complaints in tandem. Although adherence to rules has to be the norm, there can be exceptions where some flexibility serves the purpose of justice better than the rule itself. Indeed, the DOE's agreement to extend Tashi's scholarship was just such a flexible gesture to redress the problem of his auditing status. If the slightest lack of integrity enters the picture, however, rule change or flexibility becomes very suspect - in fact, or in perception. The articles in <u>Tibetan Review</u>, the US assessment of the scholarship program and Tashi's story point to an already unhealthy dynamic in the relation of rule-makers to rules and rule-subjects.

There remains a troubling question about why authorities sacrificed Tashi's interests, and even their own, to those of the TF. The TF came out of the situation cleaner than any of the others, even though it was implicated in Tashi's original problem. Was the DOE not in a position to exercise some kind of oversight on TF's activities? According to the US Department of State assessment of the scholarship program, the US government contributed $500,000 a year to TF for the program's administration. I heard rumors that there had been an embezzlement case involving a TF staffer, which was brought up in the legislature but swept under the carpet by the Kashak. This was the only hint that all was not well with TF as most criticisms had targeted the HLSC. I found some clarification to this rumor and to the larger issue of DOE's relation with TF, in an interview between Thubten Samdup and Samdhong Rinpoche in October 2003, reported by World Tibet Network News.[202] The Kalon Tripa explained that TF originally had been set up with sizeable contributions from the Dalai Lama's Private Office and the CTA, for the purpose

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[202] Entitled "New Years Interview with Samdhong Rinpoche," this interview sought clarification from the Kalon Tripa on various policies under his administration, as well as some controversies within the Tibetan Diaspora, including emigration, administration of Tibet Offices and cultural preservation. See WTN archives at: http://www.tibet.ca/en/wtnarchive/2004/2/21_1.html. Posted February 21, 2004. Accessed March 10, 2007.

of generating funds for Tibetans inside and outside of Tibet. For some years there had been discussions between TF, the Kashak, the ATPD and the SJC about whether the exile government should have some jurisdiction over TF. The position of TF was that any jurisdiction from foreign sources would threaten its ability under US law to raise money, have tax reductions and charitable status. The Kalon Tripa therefore stated that:

> In order to protect that non-governmental status, it must be very clear that the Tibetan government has nothing to do with Tibet Fund. It must be very clear. Therefore the Tibet Justice Commission did not classify Tibet Fund as a party in the dispute which had come up at the time, and they dealt with Tibet Fund officers as individuals in order to settle the dispute and to save Tibet Fund. The danger was made clear by Tibet Fund authorities themselves saying they could lose their non-governmental status.

In retrospect this added piece of information shows what Tashi was up against. Later in the same interview, when asked about the moral responsibility of the CTA vis à vis Tibet Fund, Samdhong Rinpoche stated:

> At this moment we have a lot of unclarity and a difference of opinion about the utilization of the Fulbright scholarships…we are trying to get the complete picture of the accounts.

In other words, Tashi is just one detail in a larger problematic. At the same time, if they had been able to foresee the denouement, the various defendants in this case surely would have paid more heed to his plaint at the outset. Even if they had been unable to extend his scholarship, they could have dealt more transparently with the entire issue before it became clouded by legal detail. The judiciary too will have learned painful lessons, necessary to its evolution – for example, the appropriate role for an Arbitrator-cum-Justice, the kinds of cases to entertain or not, the level of discretionary authority to exercise, the fairest way to frame issues, and so on. At this stage neither a win nor lose in the Indian courts would serve much purpose beyond entrenching cleavages and I suspect that eventually there will be an out-of-court settlement on the issues – particularly since they have drifted so far off course from the original plaint.

14.10   Final reflections

It might be argued that this entire account simply represents "bad cases making bad law," or the dysfunctionality of the Tibetan judiciary. I contend, however, that dismissing the significance of the case on those grounds would be to overlook the entire issue of how informal law-ways encounter formal law and of the encounter's relation to legal consciousness. The whole concept

of the judiciary is a graft onto a legal culture that was oriented to harmony for instrumental and moral reasons. Tashi's case, convoluted as it was, provides a window onto the operation of this judicial system at a point in its infancy. It was not a tidy process with the certainty of outcome promised by adjudication. What might have been a common-sensical compromise resolution of the dispute in familiar forums became a labyrinthine quest in the language of law, but with cultural and socio-political intrusions and distortions. In that respect, the case brings into blatant relief problems of judicial independence versus insularity that are acknowledged in judicial reform initiatives in India as elsewhere. It also spotlights conundrums of legal transplants into societies that have operated on alternative premises, combined with a lack of professionals trained in the intricacies of imported models (Mattei 1997; Buscaglia, Ratliff & Cooter, 1997).

Abel has argued that, where there are several alternative dispute resolution mechanisms, "the shape of an institution, indeed, its continued existence will be influenced by disputant choice" (p. 287). Thus, how observers and Tashi himself view the procedural fairness of this venue, will affect its future use. That use, in turn, will affect the judiciary's claim on budget resources for its continued development. Tashi's familiarity with rights discourse, his tenacity, his commitment to principle, and the public interest his case awakened are an important part of an emerging track record. As a court user, he challenged what he and his sympathizers have identified as machinations at the highest levels of the CTA. It could be argued that, if Tashi had not made a case of his complaint, it would be just a matter of time before someone else did because dissatisfaction was ripening, criticisms mounting. By forcing the issue, Tashi brought it out into the open where, one way or the other, the administration had to deal with it. Like power, the Fulbright award is a scarce resource, and contestants are now even more vigilant about what legitimates accession to it. Beyond that, to the extent that Tashi might eventually be vindicated, his case would encourage others to use the court to press for redress on the small injustices that otherwise entrench themselves through inaction. The court presumably would become more responsive, responsible and wizened with experience. If Tashi is not vindicated, then his odyssey will be a warning for others inclined to rock the boat, and an invitation to more of the same on the part of the judiciary. Such are the incremental micro-shifts that constitute legal consciousness along the lines of a reciprocal agency-structure dynamic that Ewick and Silbey have theorized.

Public opinion varies on whether the case should have been allowed to take the turn that it has. There are many who know the case in detail and are supportive of Tashi. This includes

government officials who wanted to see justice done and students who knew the functioning of the TF and DOE. There are others who, though well informed, opposed Tashi on account of their sense of loyalty to an ideal that sees the SJC and CTA as unassailable and deserving of everyone's unquestioning respect. There also are those whose loyalty is based in sectarian affiliation. The Supreme Justice Commissioner is a member of the Bön faith, as is a very vocal member of the ATPD who had even called Tashi a Chinese agent - the ultimate insult in the Tibetan exile context, and a powerful negative sanction for perceived breach of cooperation norms. These critics branded Tashi as anti-national, whereas Tashi thinks of himself as being patriotic and even pro-establishment.

More than ten years have elapsed since Tashi's odyssey began with his application for a Fulbright award, and six since he decided to try his case before the SJC. From my conversations with young Tibetans and several articles in Tibetan Review it was apparent that career and guidance counseling at high school level were in great demand – skills with which Tashi had equipped himself abroad. While the functioning of the judiciary likely will improve with experience, the entire process did not serve the community in the immediate. It resulted in the loss of a valuable human resource in the person of Tashi, who had every intention of continuing his service within the Tibetan education system. Tashi currently is working in a large Indian school close to Dharamsala, utilizing the MA in School Counseling (MEd) that he received in the US and earning more than he would in the Tibetan settlements.

XV   THE NIGHTMARE OF DEFENDANT SONAM[203]

Defendant Sonam's case resembled that of Tashi in its labyrinthine course, but I will not test the reader's patience with as lengthy an account. This case demonstrates a paradoxical aspect of legal consciousness where individuals become "legally literate" only through repeated court use. Repeat court users have an edge over first time users because, with experience, they can decode the hermeneutics of legal language and strategically deploy legal reasoning against common-sense moral logic. As one informant who had some experience of Indian courts mentioned:

> First time I went to court I was shivering. After three hearings, I felt confident. I even asked the lawyer to step aside so I could speak up and explain things to the court myself. This was such a long drawn case. Now I think I am more knowledgeable than the lawyers! (C7)

Abel has conceded that improved court access can have the effect of increasing the level of disputing in society – a disturbing prospect for a communitarian entity trying to balance cohesion and justice. The dissociation from culturally inflected ethical arguments delivers an abstract justice that does not necessarily serve communitarian interests. Moreover, save for lawyers, who would invest their time in repeated litigation and for what ends? Defendant Sonam's case illustrates once again that, where people are known to each other, litigation and rights argumentation divorced from social responsibility create more problems than they solve for the community.

Introduction

When I first heard about Sonam's case, the teller had made an analogy with the story of Prince Siddharta and the Swan. In brief, Siddharta's cousin Devadatta brought a swan down with his arrow while the two were strolling through the woods. Siddharta hurried to the place where the swan had fallen. Finding that it was still alive, he removed the arrow and applied balms to heal it. Devadatta angrily claimed that the bird was his, but Siddharta refused to hand it over, saying that he would keep it until it was well and then release it to the sky where it belonged. The two young men took their quarrel to the Court of Elders whose judgment it was that the swan should go to the one who had saved the bird and nurtured it back to health.

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[203] I have used a fictitious name to protect the privacy of the defendant in this case.

In June 1984 Sonam and an association of parents opened a daycare facility, in a rented house. Some months later they moved the daycare onto a small piece of land purchased with a loan from the late senior tutor of the Dalai Lama, and loans from relatives and other supporters. The daycare was very well set up but, by the end of 1985, the debt load (200,000 Rs) was a burden for members of the parents association and they started abandoning the project. Sonam was left with the debt and the responsibility of keeping the daycare going, which he managed to do. In 1986 he wanted to add a hostel for the children and the DOE contributed some funds, perhaps half of what the total hostel project would cost. These early years were very trying times for Sonam and his whole family, yet they were dedicated to the project, kept it alive and made it a success after twenty years of hard work.

15.1   The archer, the bow and the arrow

Without warning, on December 6, 2001 a plaintiff filed a case against Sonam, as public interest litigation. The charge was that he had no right to privatize a school that was public property and that the school should be handed over to the Department of Education (DOE) for public administration. The plaintiff was not a parent of any child currently or previously in the school, nor seemingly did he have any interest in the school per se. He was known to Sonam, however, from the time that Sonam had served as a CTA Representative and carried the function of Local Justice Commissioner.

Sonam states that as Local Justice Commissioner, he had always acted in accordance with the rules and regulations contained in the Tibetan Code of Civil Procedures, and paid proper attention to the facts of cases brought before him. He was firm in his belief that the role required him to set aside any personal ideas or agendas, and to act as an impartial agent of the law. There was one particular case that came before him, which he was obligated to disqualify for two reasons: 1) the Tibetan Code of Civil Procedures stipulates that plaintiffs must file their case within 4 months of a grievance or incident, whereas in this instance 8-9 years had already elapsed; Sonam had asked why the case was only being filed at this late stage and gave the plaintiff two chances to explain. The plaintiff was not able to give a solid reason that could stand as a precedent for waiving the four month rule; and 2) the case concerned land and property,

which clearly fall under the jurisdiction of Indian Courts. Sonam therefore had explained to the plaintiff that the LJC could not entertain his case without contravening the laws of the land and the Tibetan Code of Civil Procedures. This same plaintiff is the individual who eventually filed the public interest litigation against Sonam.

Naturally, Sonam had no interest in entering an arbitration process for something he saw as a case fabricated out of the clear blue sky. He was dismayed that the SJC would even accept the case. Yet, the Tibetan Code of Civil Procedures required him to respond to the plaint. He did this with all honesty and transparency. He stated: "I had nothing to hide. As a Buddhist and human being, I spoke the truth as clearly as I could during the evidential hearings." He now regrets his candor because he feels that the hearings were a trap, that his statements were manipulated and used against him, without a proper investigation into factual evidence.

How the SJC framed the issues gives a glimpse of Defendant Sonam's dilemma. Two issues from the plaintiff's side concerned the question of whether the school was in fact a public property, for which the burden of proof fell on the plaintiff. Defendant Sonam made a five-point counter-claim, which the SJC framed roughly as follows:

- In his written statement, the defendant states that the plaintiff filed this case with a personal grudge against him, showing personal bitterness and calling it public interest litigation. The plaintiff does not accept this statement. The issue as framed by the SJC is then: What is the personal grudge? The defendant has to prove what he means by this and how it is related to public interest litigation.

- The defendant states that the discussion held in the ATPD[204] about the hostel construction concerned the donation made by the DOE to a private school. It was a question of whether such a donation was right or wrong, NOT whether the institution was a public or private one. The plaintiff does not accept this statement. The issue as framed by the SJC is then: The defendant has to prove his statement that the discussion was only about the donation and not about whether the property was public or private.

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[204] During the 5th Session of the 12th Assembly of the ATPD a question was raised about the progress of the hostel to which the DOE had made a contribution. The plaintiff claimed that if the school and hostel were private property, there would be no grounds for raising it in a public forum such as the Assembly.

- The defendant says that this case is a personal grudge against him because the plaintiff ignores all other corrupt people and only pinpoints him. The plaintiff does not accept this statement. The issue as framed by the SJC is then: The defendant has to prove who the corrupt people are that have misappropriated public funds and how the school issue is being pinpointed.

- The defendant says that the plaintiff claims he has built a house for himself and his family out of the public funds; the defendant says that this claim is made without knowing the facts, made out of jealousy and bad intentions and that it is not true. The issue as framed by the SJC is then: The defendant has to prove that the plaintiff's statement is wrong.

- The defendant says that when he was Local Justice Commissioner, the plaintiff had filed a case against another person about the sale of Hotel Kokonor, which was a public property under CTA administration. He had tried to settle the matter by encouraging the two parties to seek a compromise but the attempt failed because the plaintiff said he would only drop the case if he were paid 3 lakhs Rupees - which shows that the plaintiff had a private agenda and not the public interest in mind. As Local Justice Commissioner, he rejected the plaintiff's case and this was unsatisfactory to the plaintiff. The defendant offers this as proof of the plaintiff's current grudge and bitterness against him. The plaintiff does not accept this statement. The issue as framed by the SJC is then: The burden is on the defendant to prove that there is a personal grudge involved which is being given the name of public interest litigation.

What I take from this framing of issues is that Sonam was in reaction mode at this stage of the process, not yet strategizing a defense that could match the premeditated approach of the plaintiff. Could legal counsel have helped Sonam conceptualize his counter-claims differently, so that the SJC framed the issues in a way that got at the heart of what really was at stake? Abel has articulated this very feature of differentiated dispute institutions, (i.e. court process), noting that:

> Now the burden of proof is placed on each party to invoke the norms on which he relies, offensively or defensively, at the outset of the dispute. An error in the selection of a norm will have increasingly serious consequences – ranging from additional expense up to and including loss of the dispute – and rectification of error becomes more difficult, even impossible. (1973, p. 272)

For example, who or which entity was responsible for resuscitating the school at critical points of its survival? Was Sonam hired by the DOE to run the school – or was he somehow a self-appointed manager of a public facility over which no-one seemed to be exercising control or assuming financial responsibility? Was a public entity even willing to assume those responsibilities now and on what conditions? Even taking the hostel into account, does the contribution of public funds to a non-government body make the latter a public property or constitute proof that it is a public property? If so, many an NGO would fall into the same legal conundrum. Finally, if there is public interest litigation, should there not be a constituency or a Writ Petition demonstrating that the plaintiff also speaks for others?

15.2   The public's interest in the public interest litigation

If Defendant Tashi's case attracted public interest, Defendant Sonam's case attracted even more because of the many children who had passed through the school over the twenty years of its operation under Sonam, plus their parents and extended family and friends. In fact, according to Tibetan Review, at the hearing of July 22, 2002, so many people turned up in support of Sonam that the justice commissioners imposed a restriction on the number of witnesses that could be allowed into the courtroom and eventually postponed the hearing.[205] The article also mentioned that the school was temporarily closed pending the outcome of the case, which would explain the stake that many supporters had in seeing that justice (i.e. exonerating Sonam) was not delayed. In another article by Phayul.com, reporter Kelsang Rinchen explained:

> Many even had to sit outside the court premises with security department's people keeping a watchful eye on every development in the court… the court proceeding today was interrupted by public who have come in strong numbers to show their support for [Sonam]. The Judge had to adjourn the court till an indefinite period of time…. As the plaintiff made his way out from the court shielded by security department's staff the public showered their anger using abusive words which could amount to contempt of court had it been inside the court.[206]

Ironically, the public interest was not only backing the defendant, but openly hostile to the plaintiff who supposedly was speaking on their behalf whether as parents, community members

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[205] Exile court postpones school case hearing. Tibetan Review, XXVII (8). August 2002. p.20

[206] Court's adjournment leads to public anger. World Tibet Network News, July 22, 2002. http://www.tibet.ca/en/wtnarchive/2002/7/22_4.html. Posted July 22, 2002. Accessed March 26, 2007.

or even in the abstract as Tibetan voters and tax-payers. Interestingly, this reporter also referred to the plaintiff as a "non-professional legal practitioner." I cannot say whether the phrase was meant literally, but my curiosity was awakened by an article in the Sunday Express, March 18, 2006 on Election Day for Tibetans in exile.[207] The article mentioned that seven persons had been deprived of their voting rights (including Plaintiff Tashi).

On further investigation, I found that indeed, while Sonam's case was still pending, the same plaintiff that took him to court also filed a case against a group of 13 or so people for alleged threats. The SJC then issued a notice to all 13, who asked the SJC not to entertain the case because they didn't feel the plaintiff was worth challenging in court. Ignoring their request, the SJC responded by demanding a proper defense statement, which they failed to submit and so the SJC withdrew their voting rights until they apologized. Half of them did apologize; the other half remained with suspended voting rights, as reported in the article. In other words, the plaintiff in the case against Sonam seems to have taken litigation on as a modus operandi. I can only assume that he mastered the fine points of legal argumentation since he won SJC compliance with his will on more than one occasion. As shown by Starr (1992), Galanter (1974), and Lindsay & Gordon (2005), litigants who go through a court process on repeated occasions develop a strategic advantage because they become familiar with the procedures. They learn how best to frame their case, the kinds of argument that will hobble the defendant, and how judges reason to arrive at decisions.

15.3   The verdict, against the odds

The verdict of the SJC was served three years later, in 2004. After reviewing the evidence submitted by both parties and the testimony of witnesses, the SJC declared that Sonam knew that the school was public property and had persistently tried to privatize it. The preamble to the verdict concluded by saying:

> The defendant knowing that the school is a public property, saying he is serving the public and not having proof of it not being a public property, went against the initial objectives and the hopes of the people and dishonored the letters of the executive….It was held that the defendant persistently tried to privatize the school [and] thereby committed violation.

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[207] Bhatia, V. (2006, March 19). Debarred Tibetan voters knock at High Court. The Sunday Express, p.3

At the risk of skimming over important legal minutia, I maintain my focus on the defendant's perspective which was that he had been rendering public service by offering a needed school facility, had worked hard to assemble finances for its development and had brought it to being a much appreciated, efficiently managed school. In my discussion with a SJC spokesperson, I also understood that there was no question of impropriety, neglect or misuse of funds on the part of Sonam. The case hinged purely on a legally rationalized hypothesis that the school constituted public property because of a contribution made to it by the DOE, a hypothesis that the defendant was unable to disprove to the court's satisfaction. In a sense, it was as if he had been assumed guilty until proven innocent.

Considering that the plaintiff's claims were judged to be stronger than the defendant's counter-claims, the verdict reflects a strange ambiguity. On the one hand, Sonam was to lose ownership of the school:

> It was held that the people of Dharamsala [have] the right to ownership of the documents of this school [and] any public property including other properties.

Sonam was given three months to finalize the hand-over to the DOE of all documents and properties related to the school. On the other hand, the court awarded Sonam a considerable amount of money in compensation, recognizing his years of hard work:

> As initially elected and entrusted by the parents of the Tibetan children, it was held that [Sonam], who was among the members of that committee, has shouldered the responsibility sincerely and to uphold the social work, he shall be awarded Rs. 1,000,000 (Ten lakhs) from the funds of the [school].

Nor did the plaintiff go home empty-handed. The verdict stated that:

> It was held that the Plaintiff has done a public duty and for his physical and mental strain and the cost of the case he shall be compensated with Rs. 20,000.

The final irony was that both financial awards were to be paid out of school funds. The SJC had somehow assumed that the school had money to spare or ample profits from which to pay such sums, which it absolutely did not. For its part, the DOE was not too eager to assume ownership of a school only to have to come up with these sums itself. The snag relates to my earlier question about whether there was even a public entity that wanted to assume responsibility for the school.

What I see in this case is that the kind of justice served was a very abstract one. It may have conformed to a positivist interpretation of legal reasoning but appeared blind to the higher purpose of law as constitutive of social relations. The ruling appeared to go against all parties – the general public, the school users, the defendant and even the SJC since its reputation received a serious blow with the whole case. Unlike the Court of Elders in Prince Siddhartha's case, the SJC handed the plaintiff the right to kill the swan.

15.4 Epilogue

Reportedly, when the verdict was delivered, there was a large public protest in front of the court. Samdhong Rinpoche had to make an appearance exhorting the public to stop shouting and saying that the defendant should go through the proper channels to appeal the judgment if it was not satisfactory. Sonam's sense of injustice was sufficiently strong that he asked the SJC to dismiss the verdict or re-try the case. He did this within the requisite 15 days after the judgment was delivered and gave three main points in support of his request:

1)   The Tibetan Charter clearly states that the SJC cannot entertain any case related to land or property. Why then did the SJC accept this case?

2)   The Indian Constitution states that public interest litigations cannot be heard by lower courts (such as an arbitral body like the SJC), but only by the High Courts or the Supreme Court of India.

3)   Entertaining the case means disrespecting the laws of India and going against the Tibetan Charter itself.

In another confounding tour-de-force of positivist legal rationalizing, the SJC claimed that Sonam's request for re-trial was invalid because the case concerned not title or land but the source of funds with which it was purchased. Focusing on the source of funds ignored the fact that the DOE's contribution was not to the already existing school, but to a hostel addition for which more than half the cost was born by Sonam and his financial supporters. Yet, the SJC declared both school and hostel to be public property. From the perspective of jurisprudence, the illogical implication would be that a donation of public funds to any institution automatically renders it public property. The theoretical implication is contradicted by numbers of NGOs – schools, hospitals, and cultural or religious institutions – with a diversified funding base that

includes CTA sources, foreign donors and private contributions. Arbitrating bodies are not required to provide written opinion to justify arbitral awards (Phillips, 1988, p.13). Thus the SJC has left many questions unanswered, to the detriment of its public reputation and its nascent body of precedent for future cases.

To date, almost two years after the verdict, the SJC's decision has not been implemented. The compensatory amounts remain unpaid and the DOE has not taken over the administration or property of the school. In 2005, in the 9th Session of the Assembly, a deputy asked why the verdict hadn't been implemented. According to Sonam, the Minister of Education responded that: 1) the DOE had requested that SJC clarify the meaning of "other properties" but had received no response (Sonam also had requested this clarification, without which he felt he could not proceed with the hand-over); and 2) given that there was no money in the school account, why should DOE have to use its own accounts to cover compensation that the SJC ordered the school to pay?

15.5   Final reflections

Defendant Sonam is passionate in declaring that the entire legal process to which he was subjected was shameful. From his perspective, procedural fairness and common sense were strangled by contrived norms of legal rationalizing. He is adamant that the SJC should have the courage to admit its mistakes in the interest of the survival of the institution. Despite the legal rhetoric, so many basic answers remained without intelligible response. Why would a plaintiff who had occasioned so much difficulty for others (Sonam, the parents of day-care children, and the DOE which had no funds for the unsolicited transfer of responsibility) be compensated at all, let alone so handsomely? Why, when the public was clearly on Sonam's side, was there no mention of this in the verdict on what supposedly was public interest litigation? Why would the SJC waive the four month time limitation for bringing a case forward, and without an explanation that could serve as precedent?

Again Sonam's story could be viewed as bad case connoting bad law or a dysfunctional judiciary. Again, however, I emphasize the perceptual element that feeds into legal consciousness. Whether additional legal detail could illuminate the case ultimately is irrelevant

because lay questions of the sort posed above are what linger in the public's mind. On the one hand there is a plaintiff who may be acting out of jealousy or unrelated grievance, but one who is strategically prepared for the encounter. On the other hand there are justices who may be taking a biased stand, contaminating the judicial process with personal agendas or sentiments. Such bias may be motivated by a well-intentioned desire to protect the SJC and the CTA from any challenges to their authority, for the perceived benefit of the collectivity. Inadequate legal training and experience may have contributed to some incompetence in the treatment of the whole case. Quite possibly the senior justice officials got in over their heads before they realized the complications or implications. By then they may have had a stake in protecting their own face or that of individuals within the administration. These are the kinds of speculation that Tibetans are indulging as they assess whether the court is up to its vision of protecting the rights of the general public in this small community.

While informal norms and processes of dispute resolution are not without their shortcomings, the question ultimately is: can a more formalized adversarial process achieve better results for the individual and the community? Cotterrell's vision of a communitarian jurisprudence proceeded from his view of community as patterns of interaction that involve a high degree of mutual interpersonal trust (2006). The cases of Tashi and Sonam demonstrate that court procedure was in fact alienating for the individuals and heightened levels of distrust within the community. For Selznick, a communitarian theory of law would emphasize the responsible exercise of rights and a collective decision as to what interests should be protected, in what ways and for what ends (2006, p. 27). Where the flexible format of third party intervention by the CTA Representative would allow something of an exchange along those lines, the rigidity of court process obfuscated the problem and provided a smoke screen for motives unrevealed. If one can speak about individual agency in Sonam's case, it appears to have been monopolized by the plaintiff whose legal experience and combative stamina gave him the edge, illustrating a legally rationalized form of "might makes right."

PART FOUR: ANALYTIC AND COMPARATIVE SUMMARY

INTRODUCTION

Parts Two and Three complete this story of how the Tibetan Diaspora regulates itself, the kinds of disputes with which it grapples and the methods through which it seeks to resolve them. The exposé has drawn liberally yet loosely on the literature review and analytical frameworks in Part One. Those sections guided an ongoing process of inductive reasoning in context, as opposed to fixing theories that the findings would seek to substantiate. Taking the lead of legal ethnographers such as Nader (2002) and Starr & Goodale (2002), I have been concerned less with discipline-based concepts and approaches than with seeking answers to the questions that animated this inquiry into the Tibetan Diaspora's experience with disputing. If indeed harmony significantly describes the normative orientation of the community, what is the rationale behind it, who drives it and with what degree of consensus? How effective are norms of social control within the community, and how are they reflected at the site of disputing? What factors enable or constrain norm effectiveness? How do the informal norms of this community interact with the norms of surrounding communities? The freedom to range between disciplines and concepts has been crucial to developing, within the confines of a single document, as rounded an appreciation as possible of the Tibetan exile community's moral legacy in relation to disputing. If my use of the term "moral legacy" was ambiguous at the outset, it should be clear to the reader by now that, while Tibetans can be as disputatious as any group, their sustained socialization and re-socialization into harmony is rooted in the legacy of exile.

This research clearly has drawn, for the most part, on information provided by persons in positions of leadership within the community, who were the main drivers of its normative orientation and the custodians of its harmony ideology at the site where disputes manifest. In that respect, my own precautions about romanticizing or essentializing the culture being observed, as stated in the chapter on methodology, proved to be challenging indeed. While I was aware that many respondents, deliberately or unconsciously, engaged in impression management, I would have to argue that presenting an idealized representation of themselves and their community is consistent with the role of norm drivers everywhere.

Balancing critical outsider assessment with the need to respect the perspectives of informants could only be an imperfect research task, erring easily on one side or the other, regardless of whose opinions are solicited. There were, for example, rumors about financial misconduct among some exile government officials, reports about the denigration to which Shukden practitioners are subjected, stories of old injustices within families or communities and even a freshly scandalous, private Tibetan business bankruptcy which seriously affected the majority of settlement residents who had invested life savings. Those stories could conceivably form the basis for an alternative thesis, but one which equally would be a partial representation of whatever one might claim as the reality observed. I chose to err on the side of accepting what was shared, primarily by CTA Representatives in the role of third party interveners, contextualizing their inputs as much as possible with other forms of corroborating or questioning evidence. In that respect, it also bears noting that, where dispute resolution is concerned, it is important for fieldwork to remain attunded to gender issues. For that reason, gender analysis was given some prominence in the section on marital discord, with inputs from the President of the Tibetan Women's Association. Otherwise, gender was not something that community members highlighted in fieldwork interviews and pressing the point would have seemed out of place.

That being said, the candidness of many contributions is what made the case studies that are the core of this research meaningful. Moreover, I would argue that the reticence to share information noted in some cases spoke volumes in itself. Finally, as a researcher, my own sympathies for the Tibetan refugees grew from an increasing awareness of their precarious existence in the settlements examined.

Chart # 11 on the following page provides a retrospective of the case studies presented, in order to refresh for the reader some of the main analytical points made. What stands out is that roughly half of the cases did not find a satisfactory resolution, and that these "limbo" cases were predominately those which would have relied on legal rather than social norms. Included in the former characterization are Indian legal provisions (for example, for conviction of the nun's rapist, and for challenging land encroachment by Indian neighbors), as well as the more law-like rules of the CTA concerning land succession.

Chart # 11:   Analytical retrospective on case studies

#	Title	Issue or type of dispute	Outcome	Analytical points in relation to thesis
1	Fashion Street	Selling permits	Limbo	Generally effective self-regulation, but lack of legal consciousness and rule ambiguity heighten refugee vulnerability
2	Victor mother	Custody battle	Resolved	Problem solving approach to resolution brings a solution tailored to the case rather than one based in precedent or blind convention.
3	It is said that….	Land succession & power relations	Limbo	Perceived neutrality is critical given the decision-maker's authority and responsibility for sustainable community peace.
4	What can a poor man do?	Land succession & power relations	Limbo	Transparency of rules and decision processes are essential for securing voluntary compliance with norms of social control.
5	Lick the wounds and let it go	Business deal with assault	Resolved	Peace is restored through a conciliation process that spreads the blame and the sanction in a way that is acceptable to both parties.
6	Just a stray broken pipe	Drunken brawl with assault	Resolved	Coming to a consonant idea of what happened outweighs objective truth. Disputants and issues expand with retaliation and family involvement, each requiring attention for socially defined outcomes.
7	All one community	Misunderstanding with assault	Resolved	Intervener deals with problems in the immediacy of their occurrence, and with a multiplicity of parties to ensure restoration of harmony.
8	Indian brother	Accidental injury	Resolved	Proactive intervention pre-empts more problems; bargaining in the shadow of the law is effective even across ethnic boundaries.
9a	Rape of a nun	Criminal act	Limbo	Although criminal offense falls under formal law, action by community leaders to vindicate the crime and forestall communal backlash is critical…however the legal denouement is unsatisfactory.
9b	Rules with blinders	Legal process	Limbo	Burden of proof & rigidity of legal procedure deny the victim justice; rule rigidity within community also fails to protect victim's interests.
10	Much ado about nothing?	Lapse in norms of cooperation	Partially resolved	The general effectiveness of utilitarian norms is scuttled by relationship factors, as is the dispute resolution process itself.
11	Rats!	Land encroachment	Limbo	Dis-empowerment in the dispute is related to the harmony imperatives of refugee status and the identity politics of the region.
12	Poaching sandalwood	Theft	Limbo	Intimidation by aggressive parties and the Tibetan community's sense of fatalism prove disempowering for any legal action.

13	Political trump	Land encroachment and pulling strings	Limbo	The offending party uses intimations of political backlash to disable legal action, exposing refugee vulnerability.
14	Unfinished story	Strategic land encroachment	Limbo	Although the denouement is not yet clear, veiled threats and the potential for corrupted officials give a poor prognosis for satisfactory legal resolution for Tibetan claims.
15	Hot blood and compassion	Communal flammability	Resolved for now	Broad based communal efforts on both sides bring clashes under control but sensitivities remain 10 years later; Tibetans are caught in the gears of Muslim-Buddhist identity politics in the region.
16	Auto-rickshaw wallah	Communal flammability	Resolved for now	Economic boycott proves effective as a negotiating strategy but tensions below the surface risk flaring up again if provoked by anyone with an axe to grind.
17	A different perspective	Communal flammability	Resolved for now	The community's civilizational rescue mission creates an inward looking enclave that neglects local language and customs.
18	Keep calm!			Keeping low profile and resisting retaliation quells the agitation.
19	New homes, shiny motorbikes			Relative shifts in economic well-being create resentment in the local population.
20	The odyssey of Plaintiff Tashi: Fulbright scholar	Rights to fair procedure	Limbo	Failures of judicial neutrality and impartiality, rigidity of procedure and the narrowing of issues cannot come to terms with a problem that requires judicial review of administrative decisions in the government.
21	The nightmare of Defendant Sonam	Public interest litigation	Limbo	Courts can be usurped by seasoned plaintiffs who have an edge over first time court users. In this communitarian context, the narrowly defined issues were counterproductive for the socially framed outcome needed.

The fact that half the cases remain in limbo underscores what I have referred to as the peripheral aspect of state law in relation to a community such as the Tibetan Diaspora in India. The liminality of refugee status makes claims to rights ephemeral, while legal ambiguity of all kinds sabotages strict conformity with Indian laws. Within the overall imperative of having to be seen as law-abiding, a certain fleet-footedness is required for survival. Social norms operating within the community, on the other hand, play a more direct role in regulating behavior because of the close knit nature of settlements, and the shared legacy of nationalism which acts as a meta norm controlling excessive deviance. Thus, most cases affirmed the theoretical robustness of Etzioni's non-rational social norms, as well as Ellickson's utilitarian norms. Significantly, where cross-boundary norms were not shared with Indian neighbors, they failed to ensure cooperative relations unless there was a form of non-legal leverage, such as the Tibetan boycott of Indian shops in Bylakuppe or the threat of relocating the exile government in the heat of the Dharamsala 94 upheaval. Other sections of the dissertation have highlighted the paradoxical trajectory of institutional and normative change in the face of cultural residuals and traditional power relations. The rocky transition to democracy and the episodes with Tibetan court process demonstrated the challenges involved there because they required not only a new form of consciousness but also a different form of commitment to communal destiny on the part of differently placed members.

An analytical and comparative summary at the intersection of so many ideas could go in any number of directions. In this final chapter I hone in on the specifics of my thesis statement in order to:

1)   Reflect on whether and how it has proven to be valid; and

2)   Set its meaning in a comparative context by drawing parallels with relevant multicultural issues in India and the West, including Canada.

XVI COMMUNITARIANISM, NORMS AND HARMONY AS IDEOLOGY

Both communitarian and harmony orientations have a utopic aspect that demands a sober second look. In assessing the appeal of the former, Fowler called for "existential watchfulness" – that is, vigilance against negative proclivities, foremost among them being authoritarian relations that suppress dissent and boundaries that foster enclave behavior. Where harmony models of social control predominate, Nader has urged an accounting of their origins, uses and consequences – reflecting her concerns that hegemonic forces can exploit harmony in order to silence disputes. It is in relation to these main points that I formulated my thesis statement:

1. In a communitarian context, agency has to be understood as socially embedded and subject not only to internalized norms but also to extrinsic influences;

2. Whether harmony can be said to be operating as ideology in a given community will depend on the rationale behind norms or rules relevant to disputing, and on their efficiency and effectiveness in terms of voluntary compliance.

16.1 The socially embedded individual

Distilled to its most basic form, the liberalist proposition that communitarians take to task can be reiterated as follows:

> Liberals insist that individuals should be free to decide on their own conception of the good life, and applaud the liberation of individuals from any ascribed or inherited status. Liberal individualists argue that the individual is morally superior to the community: the community matters only because it contributes to the well-being of the individuals who compose it. If those individuals no longer find it worthwhile to maintain existing cultural practices, then the community has no independent interest in preserving those practices, and no right to prevent individuals from modifying or rejecting them. (Kymlicka, 1997, p.2)

Implicit in the last sentence is the assumption of voluntary association and mobility. Individuals simply can exit the network of relationships that no longer serve their personal interests. As set out by Walzer (1995) "the right of rupture and withdrawal" can apply to location, job, status, family, and political allegiance (p. 69). Aside from the potentially destabilizing and atomizing effect of these mobilities, Walzer, along with fellow communitarian thinkers, has critiqued the exit assumption on grounds that it radically misrepresents real life as most people know it.

I have argued that in India, communitarianism is a lived reality, more than an intentional response to its purported appeal. It may be accompanied by identity politics and competing claims for minority rights, but its everyday trait is particularism – including the comforts, constraints and obligations that go with that sense of belonging. The tendency is most marked in village India which still represents close to three-quarters of the population. Ethnic and religious groups are predominately ascriptive and the option of exit implied in voluntary association is not a realistic consideration for most members (Mansfield 2005, p.227). Thus, whatever the shortcomings of communitarianism, most individuals are socially embedded and negotiate their existence on those terms.

Tibetan settlements in India very much fit the communitarian paradigm, most of them being located in rural or small township areas of the country. At the settlement level, Tibetans are bonded by ties of language, religion, density of interactions, proximate and affect-laden relations, and reciprocity. Aside from the seasonal out-migration of sweater sellers, most Tibetans are employed in the settlements. Local commerce binds shopkeepers, producers and consumers, who simultaneously can be neighbors and members of any number of associations and committees – the most common being the Tibetan Women's Association, the Tibetan Youth Congress, the Cooperative Society, Handicraft Center, local assemblies, parent-teacher associations, school boards, hospital boards, local business and various regional associations. These bonds overlap with the unifying aura of the Dalai Lama to whom allegiance is virtually universal. Despite diverse loyalties to specific schools or high lamas, the Tibetan Buddhist affiliation thickens social capital. Many Tibetans have monastic relatives. They contribute to and participate in religious events large and small, from Kalachakra, Mönlam and the Dalai Lama's Spring Teachings to local initiations, lama dances, myriad festivals and prayer sessions.

In Dharamsala, in addition to the exile government and its affiliated institutions, there are numerous NGO headquarters and many Tibetans are actively engaged in more than one organization. Moreover, Tibetans unconsciously inhabit the symbolic geography of Dharamsala as the site of resistance to Chinese occupation. As theorized by Anand (2002), the town is a focus for the individual, communal and institutional practices of Tibetan culture. A high level of interaction in this politicized environment, combined with the presence of the Dalai Lama's residence compound, intensifies the sense of commitment to Tibetan culture, even if it is one

negotiated at the edges with Indian and Western influences. Whenever the Dalai Lama returns from one of his many missions away, Tibetans drop what they are doing to line the streets, white scarves and incense in hand. Each occasion is a public avowal of moral allegiance to him and of communal acquiescence to his leadership.

The structure of the individual settlements with block leaders, camp leaders and CTA Representatives also supports acquiescence to rules and principles at each level, which again adds to the coherence of community. Not to be overlooked is the powerful inducement effect of material benefits such as subsidized schooling, medical care, social welfare, and employment opportunities without which Tibetans would be significantly disadvantaged as refugees. Being networked into the Dharamsala hub also extends the sense of community throughout the settlements, reinforcing other elements of cohesion such as shared memories of exodus, passed down through the elders and refreshed with the steady stream of new arrivals. These memories are selectively re-inscribed through schooling, public speeches and frequent rituals that stimulate nostalgia to repatriate, strengthening the commitment to the homeland. Most importantly, Tibetans share the voluntary choice to safeguard past tradition and to cast their lot with a common destiny. Tibetans keep abreast of developments in Tibet through print media, radio, videos, television, web-based information services, personal networks, and word-of-mouth. They participate regularly in peace marches and demonstrations for the Tibet cause, virtually re-enacting community as the legacy of exile. Any restlessness in Tibet or evidence of Chinese clamp down immediately awakens the sense of solidarity with co-ethnics throughout the Diaspora, invigorating the sense of mission. Indeed the speed with which news travels attests to the organizational sophistication that binds the entire imagined community of Tibetans, not only within India but around the world.

Obviously, any of these features of community can be less prominent in individual minds at different times as Tibetans go about their daily survival needs. The mutual interpersonal trust associated with community can be frayed by a variety of factors including regional, sectarian and class differences, or simply conflicting personal interests, as evidenced in the various case studies. Indeed, trust appeared to be a curiously Janus-faced feature, at once withheld from and conferred on CTA officials, or outgroups variously defined. The Dalai Lama, however, is the symbolic intermediary through which trust becomes possible, and emotional allegiance to him ultimately supersedes extremes in fractious tendency. In the final analysis, belief in his divine

wisdom consolidates Tibetans as a group with a shared destiny. Based on the above points, I argue that Tibetans in India are constituted by this dense texture of communitarian coherence. They are socially embedded individuals and assess their choices from within that relational framework.

16.2   Harmony rationale and individual agency

In considering the contours of individual agency, I have emphasized the normative infrastructure and external constraints that define the social order of the unit. There is no question that, as a community, Tibetans have been socialized into a harmony orientation that has the attributes of ideology, including underlying political purposes as suggested by Nader (1991, 2002). Viewed from a social perspective, however, it is the less evaluative sense of ideology proposed by Geertz (1973) that clarifies how such an aggregation of values and beliefs play a role in:

> …defining (or obscuring) social categories, stabilizing (or upsetting) social expectations, maintaining (or undermining) social norms, strengthening (or weakening social consensus, relieving (or exacerbating) social tensions. (p. 203)

Where Nader's view of harmony ideology comes from a conflict/power perspective, the shift to Geertz re-connects this thesis with the interactionist-functionalist underpinnings of a communitarian outlook. I propose to examine the question of agency within a harmony orientation by reference to three types of choice that can be distinguished as: 1) the moral; 2) the situational; and 3) the default. These correspond very roughly to Etzioni's three qualities of compliance: normative, utilitarian and coercive. Moral choice relates to what I have identified as a primary normative framework comprised of the triad of Tibetan Buddhism, nationalism and non-violence. The three elements reinforce and draw their logic from each other. Tibetan Buddhism is represented as the core of a pan-Tibetan identity and conflated with the need to rescue the nation from enemies of the faith. Principled non-violence is repeatedly emphasized as a trait through which Tibetans, as Buddhists, should recognize themselves. Thus it is meant to regulate actual comportment in exile, at the same time that it serves instrumentally to project a favorable image of the community to international and host country sympathizers. It equally is promoted as an innately Buddhist strategy for reclaiming Tibet as a "zone of peace," thus placing emphasis on the moral consistency between means and end. The interlocking of the three norm sets, together with their emotional overlay, provides a primary normative framework that is non-

rational, to the extent that Tibetans are born into it and come to see themselves as constituted by it.

To use Geertz' non-evaluative conception of ideology, the moral infrastructure in which harmony is ensconced defines the social category of "moral Tibetan," obscuring the possibility of violence as a social alternative, even in service of the highest cause – the struggle for Tibet. While there are voices calling for a more aggressive, morally justifiable freedom fight - especially at times of greatest provocation such as the 1987-89 Lhasa protests and the current pre-Olympics turmoil in Tibet – the harmony ideology in exile is resilient enough to both accommodate and contain the diverse impulses in the community. I have described the vigorous norm entrepreneurship undertaken at all levels from the Dalai Lama, to Prime Minister Samdhong Rinpoche, to the whole CTA apparatus, to the block leaders, camp leaders and settlement officers, to teachers, to NGOs. Yet, even if those in positions of leadership are the ones who articulate and actively promote relevant norms, I argue that almost everyone is involved in setting the terms of being morally Tibetan. No Tibetan would disavow Buddhism, the nationalist cause or the aspiration for a zone of peace (at least as an end, if not a means).[208] For exiles in India, there is no such thing as being incidentally Tibetan. Agency consists in the moral choice of accepting the responsibility of what it means to carry the legacy.

That being said, how the legacy is interpreted in action varies widely and is a frequent topic of avid debate in exile media, demonstrating that conformity in the matter is continually negotiated rather than imposed. Activists debate the relative effectiveness and margins of Indian or CTA tolerance for demonstrations that involve self-immolation, hunger strikes, boycotts and noisier or flashier variants of peaceful protest. Whatever criticisms circulate, proponents of the Miss Tibet pageants claim that these are a legitimate forum of nationalist promotion and expression. Whatever pressures there are to maintain societal cohesion, increasing numbers of Tibetans seek immigration to the West, rationalizing that they can do more for the cause by sending money home and spreading awareness abroad. Whatever choices people make, the sense of needing to justify them in terms of homeland commitment is always present. The highest ideal of agency, of

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[208] As I have noted before, there are pre-Buddhist Bön and Muslim Tibetans who equally share the commitment to regaining Tibet as a spiritual civilization, from within their own sense of religiosity. The more militant voices also cannot be denied, particularly among the younger activists who have grown impatient with the compromise and conciliation approach of the Middle Way favored by the Dalai Lama and CTA. At the same time, what they are agitating for in more aggressive protests is not just control over land or material resources, but over the right to restore Buddhist Tibet.

course, is that emphasized by Samdhong Rinpoche - the Satyagraha activist, who brings mental stamina and impeccable integrity to the active pursuit of justice through truth. If Tibetans respond psychologically to that image, then whatever sacrifices are implied are voluntarily chosen. While there is some question about how easily Indian citizenship can be obtained, the sacrifice with widest implications is foregoing that option.

The above brings an important inflection to Nader's conception of harmony ideology in which hegemony, particularly in its covert forms, plays a primary role. In contemplating the question of agency in relation to the primary normative framework, I think rather of George Herbert Mead's interactionist theory of consciousness and Habermas' theory of communicative action. Each in his way argued that the subjective and the socials worlds are reciprocally constructed through linguistic or symbolic interaction. From a social psychology perspective, Mead theorized that a given stimulus A, with response B would have the effect either of challenging A or confirming the orientation and intentionality of A, which then would be expressed in a subsequent set of interactions - essentially negotiating a relational sense of self in situational context (Habermas, 1987, p.23). Adapting this idea to his thinking on socialization processes and normative consensus, Habermas hypothesized that communicative action – that is, forms of speech that are epistemic, exhortative, constative or regulative – demands an orientation to validity claims. It is the generalized willingness to accept such claims that engenders normative consensus on the basis of which socialization along the same lines takes place. Furthermore, whether arrived at by inducement, intimidation or rational trust, it is through the normative agreement expressed in communicative action that group identity is established and sustained (p.53). Group identity and cohesion, in turn makes collective action possible. What this perspective elucidates is that moral choice as the legacy of Tibetans in exile cannot be explained adequately in terms of the command of an external hegemon or meek subjugation to internal hegemonic forces.

If the harmony ideology implicit in the primary normative framework of Tibetans is effective, I have argued that it is less because of coercion than because the rationale behind it makes sense to Tibetans. The responsive spark is an expression of what is culturally familiar and resonant with the shared experience of a precarious exile status. Moreover, despite the democratization of exile society and the routinization of its bureaucracy, most Tibetans still identify with the Dalai Lama as their charismatic leader. He symbolizes their concerns as a community and his vision of the way forward elicits voluntary submission because of the trust in his wisdom, not to mention his

international stature grounded in a non-violent approach to the Tibetan cause. Thus expectations around homeland commitment elicit the highest quality of compliance – what Etzioni referred to as normative compliance, meaning that it is underpinned by a consonance of moral values between the norm promoters and the norm subjects. If the Satyagraha activist is the exemplar of moral choice, all Tibetans do their part by keeping the "rangzen Lakhdeb" or freedom booklet updated with payment of taxes to the exile government, so that it can further the cause of a peaceful resolution to the conflict over Tibet. Most also support or participate in peace marches and candlelight vigils to protest human rights abuses, or the disappearance of the Panchen Lama, or any number of injustices in Tibet that the exiles assiduously track. Whether in individual instances there is a degree of deviance from these primary norms, or differences in the interpretation of what it takes to be in compliance with them, everyone intuitively knows what it means to be morally Tibetan in the sense that I have described.

16.3   Norm effectiveness and efficiency in social control

The harmony rationale outlined above is paramount in the socialization of Tibetans in exile, and predictably manifest in dispute resolution. Sections on marital discord and misdemeanors have shown that appeal is frequently made to the larger cause. As one CTA Representative put it, "when dealing with disputants I remind them we are in India to fight for the freedom of Tibet, so forget the small problems. Our approach is to make people understand each other and to negotiate." To what extent does such an approach constrain individual agency when there are grievances to be resolved?

Nader's depiction of a harmony model of law emphasized the pacification aspect of conciliation processes, which implied a suppression of differences and encumbrances on agency or empowerment. While moral choice has a narrow range of deviation, it still is largely voluntary. That being said, the price paid by younger Tibetans is not insubstantial, given that their prospects in life are severely constrained by refugeehood. Situational choice represents a second type of agency within a harmony orientation. It relates to rational norms that are derivatives of the primary framework. In other words, within a broad understanding of social expectations based in a common Buddhist morality and the imperatives of peaceful co-existence, people comply

variably with specific norms or rules according to how they assess a given situation in relation to their material or psychological needs.

Evidence from the present research suggests that while multiplex relations and mutual needs are a factor in disposing people toward accommodating and cooperative behaviors, disputing is by no means absent from social relations. While Nader's mistrust of conciliatory processes has been extremely useful for critical reflection, I would have to argue that her pejorative perspective does not allow for orders of priority in the Tibetan exile context. Realistically speaking, the conciliation goals of dispute resolution and the CTA Representative's non-neutrality as to outcome are less about silencing disputes than about problem solving with due regard to the proximate and emotional ties that bond communities. Dispute resolution is a site not only of contest but of what I have called a ritualistic affirmation of what it means to be a community of Tibetans in exile. I have argued that submission of a dispute to the CTA Representative itself reflects a voluntary choice to enter a process that is known to have conciliation as its goal. Willingness to pay the 500 Rupee fine for fighting is an example of the preference to end hostilities in a way that diffuses blame over both parties, rather than entrench hostilities with a win-lose judgment that one or the other cannot live with. Most run of the mill disputes within settlement boundaries evidence agency and spirit aplenty to ease concerns about a possibly oppressive internal dynamic attributable to either harmony ideology or communitarian authoritarianism.

There are important exceptions, however. Alongside communal and even personal benefits implied in harmony oriented conciliation, there are costs shouldered by some more than by others. Remnants of patriarchy, for example, revealed oppressive consequences in cases of spousal abuse. The lingering influence of old world patterns and power relations also were evident in problems with succession of land allotments in agricultural settlements and, ironically, in the two cases taken to Tibetan court. These cases demonstrated how very difficult it is to make the transition from communitarian harmony norms to liberalist norms premised in individual rights – even in the ideal circumstances of a committed alignment with democratic principles.

From the perspective of social control, there are pervasive but informal norms and rules that control undesirable behaviors in the settlements without recourse to the coercive mechanisms of the Indian state. The quality of compliance with such rules is generally high, but includes an

element of what Etzioni called utilitarian compliance – that is, being responsive to sanctions, as opposed to just the moral voice. Buddhist principles of other-regarding behavior are civilizing to the extent that the other is seen to be reciprocating. In the agricultural settlements, for example, farmers are careful to keep their cattle from wandering onto the neighbor's fields in the growing season –not only out of respect for the neighbor, or out of a desire to conform with a rule to that effect, but because they also know that neighbors just as easily could retaliate by letting their own animals trespass. In his research on utilitarian norms in ranch country, Ellickson had emphasized the latter rationale, but I would argue that all three aspects come into play as they do in most scenarios - that is, a combination of social expectations around other-regarding behavior, an understanding that most rules serve the common interest, and recognition that rule breach has negative consequences.

There are Buddhist injunctions against gambling, fighting, intoxication, and lawlessness but their force is augmented by rules and modest sanctions that work in tandem with community monitoring to bring people in line with the norms known to all. Sanctions applied by CTA Representatives and community leaders most often take the form of small fines, reprimands or the threat of involving Indian police. Community members participate in third party enforcement of norms through disapproving looks and comments or even harassment. In Dharamsala, rules against drug use are reinforced by rules against allowing public premises to be used for that purpose, and further reinforced by rules prescribing that observers report any breach of the rules. This triple tiered measure does not eradicate the problem of substance abuse among youth entirely, but it significantly contains it by clarifying the community's moral voice on the issue. The same is true for wielding of knives and other disturbances of the peace. The threat of leaving a dispute or misdemeanor to the more coercive mechanisms of Indian law and order is an additional inducement to cooperation. Moreover, frequent injunctions to abide by Indian laws constitute a moral imperative that is linked with refugee security and the community's public image. Yet, if circumstances are compelling enough, individual Tibetans comply selectively and risk the consequence of a detected infraction. For example, onerous permit requirements and the legal ambiguity of property or business entitlements can lead some to rationalize illegal options - pleading ignorance of the law, or interpreting loose enforcement as a sign that the rule is an inconsequential technicality. On the other hand, if there is a backlash in Indian public sentiment – as in the case of benami land transactions - then individual self-regulation and community monitoring of rule compliance become more rigorous.

Overall, what I mean to highlight is the dynamic balance between order and autonomy that characterizes Tibetan settlements in India. Interdependence, reciprocity and a high degree of moral cohesion generally foster the preference for pro-social behavior. This is expressed in the choice to defer to each other and to the collectivity's rules, without the need for coercive force. The emphasis on reconciliation in cases of dispute strengthens social consensus by bringing parties around to a consonant view of substantive justice in relation to their problem. Dealing with issues promptly, yet without the pressures attending fee-per-session services or time sensitive procedures, relieves social tensions so that disputants can get on with a life that in most cases will include continuing contact with each other. The informality and flexibility are what make this diffuse normative system effective. The effectiveness translates into efficiencies for Indian authorities who can rely on Tibetans to manage their own affairs. It also supports a partnered approach to enforcement in cases that involve criminal law or disturbances across communal boundaries. In that sense harmony ideology stabilizes social expectations both within the community and in relation to the surrounding milieu.

The potential social benefits of harmony ideology as described above are the reverse of effects from the more adversarial process observed in the study of two cases entertained by the Tibetan Supreme Justice Commission. In both instances, it can be said that the situational choice to break with harmony traditions and to essay the liberalist approach to justice had the effect of upsetting social expectations on several levels. In the first place, trust as a factor of social relations went by the wayside, both in the very act of taking up an adversarial position and in the labyrinthine denouement that cast suspicion on the whole exercise. In the second place, while the rights of Plaintiff Tashi and of Defendant Sonam were recognized by a significant portion of the observing public, the court itself denied those rights, with a rationale that few observers could follow. In the third place, no-one's interests appeared to be served - neither Tashi's or Sonam's, nor that of potential court users, nor of the community, nor even of the judiciary. The effect therefore was to undermine the evolving social norms of a liberal democracy, as well as the traditional norms favoring a collectivist orientation toward harmony. Rather than strengthening social consensus, rule rigidity had the effect of weakening it because the legal framing masked narrow, individual motivations and obscured broader social implications. The cases exacerbated social tensions between the legal adversaries, and between their respective supporters. It cast a pall on the rhetoric of procedural fairness and on the viability of seeking redress for grievances

against the government. It is likely of course that, with more experience and internalized norms of judicial conduct, this liberalist route to dispute resolution will eventually stabilize as an option, if not a preference. For now, the innate rigidity of court process risks conferring a legal cachet on questionable outcomes.

Finally, the weakest form of agency within a harmony orientation is represented by what I have called default choice. This comes closest to Nader's characterization of harmony ideology as passive acquiescence to injustice or power imbalance, rather than a robust claim to rights. It correlates loosely with Etzioni's coercive compliance - that is, compliance of the unwilling through threat of force. The default choice of pacifism or non-confrontationalism is what Tibetans often fall back upon when disputes involve Indians. This disposition is fed by a combination of fatalism and fear, both of which inhibit freedom of choice. It equally is the result of a rational assessment of the precariousness of any rights claimed as refugees. In the cases of land encroachment, theoretical rights were meaningless in the face of politically sensitive resource competition and the potential for awakening resentment against refugee well-being relative to surrounding populations. When communal disturbances are brewing, the standard advice of Tibetan leaders is to lie low until the storm passes. Indeed, the community has experienced serious consequences when individual Tibetans have allowed themselves to give way to violent impulses, as in the Ladakh and Dharamsala inter-ethnic upheavals.

It is clear that a harmony orientation has costs and benefits for the individual as well as for the collectivity, and that differently situated Tibetans will experience it as more onerous than others. A cursory summary of benefits would include: the sense of belonging and security in community relations, as well as important by-products such as the flow of sponsorships from Western sympathizers and the good will of Indian hosts. Similarly, an inventory of costs would have to include: dampened initiative among the young, a defeatist attitude in the face of injustices and a discouragement of livelihood alternatives including emigration to the West. Critics of communitarianism who are concerned about internal authoritarian structures and oppressive conformity will find some evidence of this in the Tibetan Diaspora in India but, I would argue, in much milder form than in societies without an action plan for democratizing. Critics of harmony models who are concerned about suppression of rights and voice will find examples corroborating their claims but, again, these should not be understood without the important

caveat that the ordering of priorities in this community is deeply influenced by the exigencies and liminality of refugee status.

XVII COMPARATIVE PERSPECTIVES

This research contributes to the ethnography of law by examining the structures and norms of dispute resolution, not in a bounded village of ancient lineage, but in a refugee community that has had to adapt within a compressed time frame to an uprooted existence within a culturally different host environment. The community's law-ways are an adaptation of familiar patterns to current exigencies and new models that are still evolving as part of a project of democratizing for the future.

The research also inserts a needed non-Western case study into contemporary deliberations on communitarianism. The Tibetan Diaspora's regulatory autonomy supports some of the claims made by proponents of communitarian jurisprudence, particularly as regards the need for decentralized, morally meaningful forms of social control. It exposes the contingencies of legal centralism, but also the limitations of informal law. In so doing, it offers an alternative understanding of the internal dynamics of harmony ideology.

17.1   Communitarianism: Indian inflections

In the literature review I highlighted the fact that Indian discussions of communitarianism largely have taken the form of a debate between proponents and opponents of secularism. The dialectical tension lies in the fact that religion is a pervasive feature of communal life throughout the country, but equally has been a source of violent conflict across group boundaries, often exacerbated by identity politics. At independence, Indian nation-building required a civic umbrella to counteract the centrifugal force of the country's immense ethnic and religious diversity. Thus, multiculturalism, with its tenuous balance between integration and diversity, also was a theme automatically subsumed under the rubric of secularism. Though in some respects the Tibetan Diaspora operates as an ethnic and religious minority within multicultural India, it makes no political claims to equality or integration. As a sub-state nation-in-waiting without

territory, its political energies are directed either inward or outward to international rather than national levels.

Despite its singularity, the Tibetan experience can be read as a cautionary tale on two points that I have repeatedly acknowledged in relation to communitarianism, and which have their parallel in discourses framed either as secularism or multiculturalism. I refer to the twin tensions between:

1) Recognition of community identity and enablement of its flourishing through various state laws and government policies - versus drawbacks when these result in enclaves that thicken the boundaries between groups; and

2) The liberal state's responsibility to protect individual rights as embodied in its constitution – versus the right of ethnic and religious communities to freedom from state intrusion in their internal affairs, even if these are inconsistent with liberal values.

India's attempts to create national unity out of communitarian diversity have been complicated by the totalizing, public nature of religious affiliation in the most prominent groups. Its challenges therefore amplify issues that most cosmopolitan states face today in more moderated form. There are many religious observances and identity markers that can be the source of intractable conflict, unless there is a sustained commitment to tolerance and dialogue between communities, led by progressive voices. Given the sacredness of the cow for many Hindus, for example, cow slaughter is a typical flashpoint, as I have indicated in discussions of communal disturbance. Like a worried wound, it is an issue that festers despite court rulings meant to settle associated frictions. Illustrative of this was the case of M.H. Quareshi v. State of Bihar, in which Muslim petitioners challenged the constitutionality of state acts for the prevention of cow slaughter (Baird, 2005, pp. 30-31). The petitioners claimed that Islam actually required the sacrifice of a cow on the holy festival day of Bakr Id, and that they had a fundamental right to uphold this custom under Article 25 of the Constitution. After consulting relevant scriptural texts, the courts denied constitutional protection of the custom, on grounds that Islam gave its followers the option of slaughtering goats instead of cows, even though this was not economically feasible for most of them. Thus while the case was laid to rest, the contentious nature of the issue was not.

What constitutes essential religious practice has been the focus of numerous Supreme Court cases – whether involving the right of Jehovah's Witnesses to refrain from singing the National Anthem, or the Sikh politics around Gurdwara management, or the right of Christians to proselytize, or the right of Anand Margis adherents to parade with garlands of human skulls (Bhawati, 2005, p.46; Barrier, 2005; Mansfield, 2005). These and related issues, such as what constitutes minority rights based on religion, or whether a particular sect falls under the Hindu code, have drawn the secular courts ever deeper into religious affairs. As stated by Baird (2005), the Indian Constitution was basically a human rights document. It was meant to chart the way forward on social reform, particularly with respect to untouchability, equality before the law and provisions for the backward classes (pp. 15, 18). Its drafters wanted to forge a modern, scientific India that distanced itself from superstitious or regressive practices and attempted to stake out what would be the preserve of the secular state. At the same time, they recognized the vital link between communitarian identity and the personal laws that had traditionally governed different ethnic and religious groups, including Christians, Muslims, Hindus, Jews, Parsis, and tribals (Mansfield, 2005). Personal laws covering the domain of family law (marriage, divorce, maintenance, adoption, guardianship, succession) were guaranteed constitutional protection, on the grounds that they were part of religious tradition and distinct from the secular concerns of the state. Since enforcement of these laws remained the purview of the judicial systems of the state, however, in the long run courts invariably affected their content (Mansfield, 2005, p. 231-232). In reality, the disentanglement of religious and secular matters has been a perpetual preoccupation of the courts, often with highly politicized sub-texts.

17.2   Legal pluralism: Bain and bonus of diversity

As discussed in the literature review, one of the main sources of tension with respect to personal laws has centered on the question of their reform for better alignment with the spirit and letter of the Constitution as regards fundamental rights. The issue is most concentrated between Muslims as the largest minority group and Hindus as the majority. While Parliament significantly reformed the Hindu personal law in 1955 and 1956 mainly to improve gender equity, it did not dare to touch Muslim law for political reasons.[209] Reportedly, Nehru had hoped that the Muslim

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[209] The four bills passed at that time related to divorce, polygamy, the rights of women to remarry and the rights of women to inherit property.

leadership would eventually institute reforms from within, but that never happened. Thus for many Hindus, Muslim personal law remains an instrument of regressive practice particularly with respect to the rights of women - in contradiction with the civic values articulated in the constitution that was meant to unite them as a polity. In a bold statement on this sensitive topic, Chief Justice Bhattacharjee (1994) has argued that a sizeable portion of the Muslim Law relating to Marriage and Divorce in fact is void by virtue of being inconsistent with the provisions of Part III of the Constitution relating to fundamental equality.[210]

The plight of Shah Bano thrust these issues to the fore in 1984. It was a landmark case referenced in numerous legal and political scholarly works. As described by Khory (2005), it forced a re-examination of a range of multicultural issues, including: Muslim-Hindu community relations, common misperceptions on both sides, the salience of religious identity in the political arena, the rights of minority groups within a democratic system, and definitions of secularism in the Indian context (p. 150). By way of brief review, after forty-four years of marriage, Shah Bano was divorced by her husband, Ahmed Khan, following provisions set out in the Shariat. Left without resources, she exercised her civic right to sue him for maintenance in the High Court of Madyha Pradesh. The High Court awarded Shah Bano a modest sum for maintenance, but Ahmed Khan refused the judgment claiming that he had done his duty by her as a Muslim. He appealed to the Supreme Court which not only upheld the decision but commented on the need for a uniform civil code to redress inequalities before the law. This outcome ignited already smoldering community relations but also generated diverse and conflicting response within the respective communities. Out of political expedience, Rajiv Gandhi's government undercut the Supreme Court's decision two years later with the passage of a bill that essentially exempted Muslim marriages from the provision used to make the original ruling. This denouement was a blow for women's rights. Despite the attempt to appease Muslims, it also left that community on edge considering the volatile times. It became grist for Hindu nationalist agitations that exploded in the massive communal violence in Ayodhya just six years later, in 1992. Khory's detailed analysis of the varied reactions to the Supreme Court ruling revealed how complex the issues became as they engaged with identity politics.

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[210] The legal reasoning behind the statement concerns whether Personal Laws of the Muslims are indeed 'Laws in Force' as per Article 372 (1) and Article 13 (1) of the Constitution, and thus subject to all the egalitarian obligations implicit in Article 14 related to Fundamental Rights. See in particular Bhattacharjee's concluding arguments on pages 79 and 80.

In light of the tensions heightened by the Shah Bano case and its aftermath, an abiding concern of the state has been how to accommodate or encourage internal reform of illiberal practices within its many communitarian groups while respecting their rights to autonomy (Bilgrami, 1999, p. 165). For many, voluntary reform from within is the only way, and Hindu, Parsi and Christian attitudes have shown some convergence in that direction (Mansfield, 2005, p. 208). Muslim legal scholar Tahir Mahmood is among the most respected voices advocating reform to bring Muslim Personal Laws more in line with modern human rights and also to unify interpretations across the different Islamic sects (Iyer, 1994). At the same time, he has carefully explained that, over a period of 1500 years, Islam established "a complete way of life, a socio-moral ideology and a system of public and private laws" (Mahmood, 2005, p. 122). He has enumerated the many obligatory religious observances and strictures that make it difficult to conceive of any secular intervention by the state. Referring to the cold intrusion of constitutional law by whatever justification, he has maintained that:

> Inside the privacy of homes, to the cases of parental, marital, filial and fraternal relationships, that requirement of the constitution can, we must appreciate, have only a limited application. (Bhattacharjee, 1994, p. 80)

For the Tibetan community, the questions raised by this sketch of Indian secularism, multiculturalism, and communitarianism were critically practical. This was the larger environment within which settlements had to find a modus vivendi, located as they were in rural or small township areas, often adjacent to tribal populations and/or mixed Hindu and Muslim populations. As seen in case studies in Bylakuppe, Ladakh, Miao and Dharamsala, the religious, social and political factors touched upon here affected the Tibetans' interaction with the host population in direct and indirect ways. Despite their assiduous efforts to be inoffensive in their respective milieus, the settlements could not exist in a vacuum and could not afford to cut themselves off from what was happening around them. They inherited tensions around meat eating and cow slaughter, Singhpo tribal politics, Buddhist-Muslim communal identifications, Gaddi dispossession of a herding life, and so on. Tibetans learned at great personal expense that the boundaries drawn by communal norms and the mentality of communalism needed to be recognized. At the same time, their own inclinations toward inward bonding and community rehabilitation had to be deliberately supplemented with a program of bridging, reaching out to local populations at all levels from neighboring farmers, to trades people, local police, media, district authorities and political representatives. While on the one hand, Tibetans share the

spiritual predisposition of Indians, the lavish visibility of Tibetan Buddhist monasteries and temples in this environment of publicly lived religion also sent inadvertent messages to more impoverished local groups.

What I am emphasizing is that, whether or not they consciously pursue identity politics, concentrated communities exude a presence, which elicits a range of reactions from without. It is not enough to quietly pursue one's interests; there has to be active engagement with surrounding communities, preferably on many fronts rather than just a cultural show-and-tell. This proposition is not as easy as it may seem, particularly when people are marginalized and struggle to meet their own needs. They are not necessarily aware of larger issues that circulate around them, or they do not know how to enter wider networks. Nor, I argue, is it enough to assume that seasoned community leaders will lead the way because they may not be inclusive enough of the voices in their own community. It is often the case that the loudest voices, in fact, are the most conservative ones that then invite counter-reaction rather than rapprochement. Few communities have leaders of the caliber of the Dalai Lama or Samdhong Rinpoche whose moral authority is recognized both within and outside the community, across different faiths and cultures. Yet, even Tibetans have experienced the communal backlash when they have paid insufficient attention to the sensibilities of those around them. Thus the issue of boundaries that exclude and include in communitarian contexts is vitally important for policy makers to consider as the number of enclaves builds up in any society.

Another level on which the Tibetan experience is instructive is the tremendous effort it takes to implement reform from within traditionally oriented communitarian groups. The Indian parliament was able to reform Hindu laws at least partly because of the thrust toward restructuring the newly independent nation along progressive lines. That being said, neither Hindus nor Muslims are monolithic. Numerous sects exist in both, alongside widely ranging regional and language diversity, which frustrates attempts to seek reforms that are acceptable to all. The same challenges of regional and sectarian difference had to be overcome by Tibetans in exile. The brilliance of the Dalai Lama's leadership was that he initiated deep-seated reforms from within from the earliest days, deconstructing an ancient theocratic tradition with its patrimonial patterns of privilege. The lesson, however, is that despite the Dalai Lama's exemplary leadership, despite the opportunity structures for change, despite the careful alignment of the Tibetan Charter with international human rights and the Indian Constitution,

despite the urgent timeframe and external supports – this reform took at least forty years, with many setbacks, and it is still ongoing. One is hard pressed to find such an auspicious confluence of circumstances in other communitarian groups. If liberal policy makers are concerned about internal reform of illiberal practices within communitarian groups, they should be well warned that the proposition is not easily implemented in the narrow timeframes of political expedience.

17.3   Western multiculturalism

Indian multiculturalism is much older than its Western counterparts and it carries a burden of history that has built intense sensitivities around the fault lines of difference. Religious frictions aside, the differences have been aggravated by relative shifts in political and economic well-being as modernization picks up its pace and identity politics become instrumental in resource competition. In the Western hemisphere, the past decade has seen an increased focus on multiculturalism in policy debates that have been fed by quantitative research on the effects of migration. The immigrant cultures in North America have welcomed diversity in varied ways, for varied reasons and with varied results. They nonetheless share some of the same concerns as the traditionally more homogeneous nationalities that make up the European Union and now have to find ways of accommodating inflows of people from very different cultural backgrounds. I submit that reservations drawn from the experience of Tibetans in exile are even more salient for these Western contexts because of the rapidity with which mutual accommodation has to take place if deeper problems are to be forestalled.

Perhaps most striking is the comparative research coming out of Europe on the effects of different multicultural policies on key indicators of integration. Joppke (2007) has reported on a review of recent policy trends in the Netherlands, France and Germany. These countries traditionally have represented sharply different approaches to their migrant populations. The star within a liberalist political framework of integration was the Netherlands, which pursued a very generous multicultural policy from the early 1980s. Rather than try to assimilate or segregate the growing number of migrants, the state provided them with the means to develop an ethnic infrastructure including schools for mother tongue education, hospitals, and media. Some twenty years later, studies found that non-European foreigners evidenced a shockingly disproportionate share in the country's levels of unemployment, incarceration, welfare dependency and high

school dropout. What was worse, the comparable ratios in assimilationist France and even segregationist Germany were one-half to one-third of the Dutch figures. Thus the principle of integration through multiculturalism received a severe blow in the Netherlands and reverberated through the countries of the European Union.[211]

The causal links behind these findings have not been conclusively proven, but a few unintended negative socio-economic outcomes have been identified. Foremost among them was an inadvertent inducement to form enclaves. People who barely spoke the country's language or ventured outside their communitarian boundaries had no means of connecting with a wider social network that could help them locate jobs and other opportunities or resources outside the community. Moreover, the supported self-ghettoization fed "an unarticulated groundswell of resentment and discrimination" and a tendency toward "white flight" from neighborhoods with ethnic concentrations, thus further aggravating the problem (p.334). The Netherlands has since done a complete policy turn-about from star-liberal to illiberal, making Dutch language acquisition and familiarity with Dutch norms and values not only compulsory, but also the financial responsibility of the migrant.

Although the civilizational rescue mission of the Tibetan Diaspora in India makes a unique argument for multicultural tolerance and support, the enclave issue raised in the European experience is once again resonant with Tibetan experience to some extent. On the one hand, the community's strong moral voice and infrastructure for self-reliance have generated results opposite to the Netherlands in the areas of delinquency and education. A low crime rate has been fostered by continual emphasis on being law-abiding, on respecting the community's harmony imperatives and on assuming responsibility for the higher nationalist cause. Tremendous literacy gains are the result of a cohesive education policy that was part of the conscious remaking of a modern nation-in-waiting, and was generously supported by the government of India and international sponsors. On the other hand, Dharamsala 94 revealed the vulnerability of enclaves when there is little bridging toward local populations. Even though the community's civic values and spiritual orientation were well aligned with the host population on a generalized level, and

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[211] Within the different national tendencies in the European Union, Joppke has noted a gradual convergence of policy toward civic integration of immigrant groups (pp. 343-344). This convergent policy trend has been accompanied by anti-discrimination legislation and the facilitation of immigrant naturalization for more inclusive citizenship. It also has implied a retreat from multicultural recognition and state neutrality with respect to the diverse groups within its borders.

there were no identity politics pitting Tibetans against Indians, the local dynamics were a reaction to perceived difference. One of the grievance themes voiced by Gaddi villagers was that Tibetans did not learn their language or customs, and held themselves aloof from contacts with local people. Yet, the 1998 Tibetan Demographic Survey indicated that over 50% of Tibetans in India and Nepal speak Hindi, and one in two is conversant in English in addition to Tibetan (p. 13). The problem of course is that local languages are another matter in a country with so much ethnic and linguistic diversity. In any case, the community learned yet another painful lesson and responded with a concerted effort to build the necessary bridges. At the same time, there is a growing problem with unemployment among young Tibetans. Despite strong education levels, they are disadvantaged in Indian labor markets by their enclave existence, lack of citizenship status and comparatively weaker language skills – which again bears some resemblance to the unemployed migrant dilemmas in the Netherlands.

The European retreat from multiculturalism based partly on the Dutch experience with ethnic minority enclaves, and the Tibetan experience as a communitarian enclave in India, have their distinctive causes. Yet, the optimism surrounding Canadian multiculturalism surely will need buttressing with policies to reinforce the positive potentials of community without promoting enclaves. The boutique multiculturalism of an Italian quarter, a Chinese quarter or Indian or Caribbean quarter can quickly deteriorate if the result is an enclavement of those inside and an exclusion of those outside. Policies insensitive to uneven resource distribution in a metropolitan area (e.g. for schools or police or community services) can aggravate a disempowering enclavement, while something as simple as the language of signage can accentuate exclusion. Moreover, once an enclavement mentality takes hold, the smallest markers of difference can be seized upon by vulnerable young persons seeking identity affirmation in group belonging. Clashes between youth gangs in Toronto are reflective of a growing concern in ethnically concentrated neighborhoods.

Significantly, research by Graham and Phillips (2007) and Ley (2007) has documented a quickening pace in residential segregation in cities that are the major destination for immigrants to Canada – namely, Toronto, Vancouver and Montreal. In Toronto and Vancouver, there was close to a 300% increase in the visible minority population between 1981 and 2001 and the single largest groups were from South Asia and China (Graham & Phillips, 2007, p.160). Almost 40% of Toronto's immigrants arrived in the 1990's (p. 157), demonstrating the accelerating

speed with which demographic change is happening. Moreover, the visible minority tendency to settle in own-group neighborhoods has spiked in tandem. Citing research by Hou (2004), Graham and Phillips stated that "the number of census tracts with a 30 percent or higher concentration of a particular group in the three largest cities rose from 6 to 254 between 1981 and 2001 (p.163). From Ley's perspective, segregation levels in Canadian cities are still modest when compared with major American cities (2007, p. 199), but I would argue that, as a young nation, Canada is facing a sharp learning curve and cannot afford to be complacent or self-congratulatory.

Residential segregation is one form of enclave, but religion equally can mark off boundaries that include and exclude. I have demonstrated the salience of religion as a dimension of diversity in India and point to its increasing salience in Canada as well. Banting, Courchene and Seidle (2007) have quoted security scholar Janice Gross Stein as follows:

> The Canadian commitment to multiculturalism is…being tested by a resurgence of orthodoxy in Christianity, Islam and Judaism where lines of division between 'them and us' are being drawn more sharply because Canadians are uncertain what limits, if any, there are to embedding diverse cultures and religious traditions in the Canadian context. (p.9)

17.4   Legal pluralism: A Canadian parallel

Once again, dispute resolution is a revealing site to test Gross Stein's statement, and once again there are telling parallels and differences between the Indian and Canadian contexts of legal pluralism. Ontario recently experienced its first major controversy over the place of faith based arbitration in family law. Aboriginal, Muslim, Rabbinical, Ismaili and Christian tribunals had been operating for many years, both informally and under the provisions of the province's Arbitration Acts of 1991 and 1992. Yet, in 2003 when a retired lawyer, Syed Mumtaz Ali, advertised his newly established organization as a "Shariat Court" to help Canada's "good Muslims" resolve family and inheritance disputes, alarm bells immediately went off among legal professionals and women's groups (Boyd, 2004, p.3). This new Islamic Institute of Civil Justice (IISJ) was not sanctioned by any official body, nor had there been any change in Ontario laws conferring a particular legitimacy to the principle under which it meant to operate. Yet the issue was snapped up by the media and the public airing made its way around the world. It excited a good deal of ill informed polemic but also very searching discussion of religious rights within a

secular, democratic framework (Morris, 2006; Khan, 2007). A similar "avalanche of media hyperbole" had surrounded the formation of a Sharia council in Montreal in 1994, but both council and policy dialogue died quick deaths (Khan, 2007, p. 475-476).

Acknowledging the brewing controversy, the Ontario government commissioned former Attorney General Marion Boyd to conduct a full review of the use of the Arbitration Act for family and inheritance disputes, including its application by religious groups. The review's primary concern was with the differential impact that such arbitration might have on the vulnerable. That category includes women, the elderly and persons with disabilities, but also persons whose education, language or knowledge of the law would put them at an unfair disadvantage in arbitration. Boyd consulted with a wide variety of interested groups and individuals, including representatives from immigrant organizations, groups dealing with domestic violence, religious communities, legal professionals and scholars. The issues quickly broadened to include the role of identity politics, access to justice, and the tensions between multiculturalism and equality rights.

Many reasoned arguments were advanced in support of the efforts of faith communities to help their constituents resolve issues in a harmonious, cost-effective, culturally appropriate manner. In fact, dispute resolution through the intermediary of the CTA Representative in Tibetan settlements evidenced similar merits, even though religious canon or scripture did not play the defining role it does in Muslim, Rabbinical or Christian tribunals. Indeed, the reverse is true of the Tibetan judiciary which operates under the Arbitration Act of India, but uses its provisions to provide a secular, rule-based court process. For these groups, religious-based mediation and arbitration are vastly superior to the battleground of secular courts because of their holistic, principled qualities.[212] The arbitrator is generally a respected person who can appeal to common norms, and whose interest is motivated by altruism rather than money or careerism. In essence the arbitrator symbolizes the community's normative authority. The following excerpt from one of the submissions to the Boyd review is illustrative:

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[212] Of several successful Muslim organizations offering mediation and arbitration services in Ontario, the most sophisticated according to Boyd are the Ismaili Conciliation and Arbitration Boards (p.58). Under the spiritual leadership of Prince Karim Aga Khan, the Boards draw on a professionally qualified, gender balanced, volunteer corps. Though rooted in traditional ethics they consciously align with the laws of the countries in which they are situated, thus limiting the potential for value conflicts of the sort that often trouble other groups. Ismailis make a potentially interesting comparable with Tibetans because of the moral authority and enlightened social philosophy of the Aga Khan.

> Through this authority, the community will pressure the wrongdoer to conform to the norm and encourage him/her to cease their sinful behavior. Finally, it will ensure that justice is administered by holding the person accountable to the very Deity he/she worships – an extremely powerful deterrent against non-compliance…This is valuable to the discourse on the compatibility of Islam with democracy. (pp. 64-65)

The Boyd report further noted that the events of 9/11 led some Muslims to turn to arbitration according to Islamic principles for fear that they would be discriminated against in the secular court system. As also indicated by Khan (2007), identity politics began to insert themselves into the Sharia debate, as Muslims internalized the suspicions and racial profiling to which they were being subjected as a community (p. 478). Some charged that the fear of women being treated as unequal was an example of Western phobia and essentialization of Muslims. At the same time, the Muslim Canadian Congress claimed the opposite – that allowing the use of Muslim law is what would essentialize Muslims who in fact span five different continents and an array of sects, languages, cultures and customs. It would ghettoize the entire Muslim community "into one second-class compartment…behind the dishonest guise of religious tolerance and accommodation" (p. 52). Yet others placed emphasis on the discretionary and even arbitrary character of invocations of Islamic laws, because of the many interpretations and schools of jurisprudence that co-exist, having originated in so many different cultural contexts. Thus any idea of a full Islamic system of justice could only be a form of extremist identity politics promoted by conservative minded males. While such individuals do not necessarily represent the average Muslim, it is often the conservative voice that is most adamant, and draws the most attention.

What stands out most in the report overall is the impassioned voice of Muslim women, including those with personal experiences under Sharia law in Iran, Saudi Arabia, Pakistan, Kuwait and Iraq. A submission by the Canadian Council of Muslim Women detailed patriarchal features common to many forms of Muslim family law – from potentially benign ones, to those that bluntly contradict Ontario's otherwise progressive gender legislation (Boyd, 2004, p.48-49). Power imbalance between men and women was the main reason for strong opposition to the use of arbitration for family matters in many submissions, for example, from the Muslim Canadian Congress, the National Association of Women and the Law, and the National Organization of Immigrant and Visible Minority Women of Canada (Boyd, 2004, pp. 30-34). Fear of violence, or being ostracized, or being declared an apostate, or being barred from work in the community all are pressures that can unfairly affect a woman's ability to stand up for herself in arbitration (pp.

50-51). The freedom of choice assumed by the process is further constrained for immigrant women who are trapped in enclaves, much along the lines reported in the Netherlands. They might lack education, language fluency, economic means and awareness of their rights in Canada, as well as access to information resources.

The intensity of the Sharia debate in Ontario resembles the self-questioning that took place within both Muslim and non-Muslim communities around the Shah Bano case in India. The important distinction is that in Ontario, identity politics stayed in the wings so that the debate actually democratized dialogue about the place of Islamic law within a Canadian framework (Khan, 2007, p.478). Women who are most affected as vulnerable parties in arbitration and conservative forms of Islam were drawn into the discussions on a par with imams in the mosques. This was a critical engagement within and between communities, of the sort that needs to take place to dislodge illiberal tendencies within ethnic or religious communitarian groups. Kymlicka (2007) has been optimistic that immigrant ethnic minorities by the second generation will "come to embrace the basic values and principles of liberal democracy" (2007, p. 66). My response to this is again that old habits die hard, as seen in some of the Tibetan case studies and, moreover, that a generation may be too long to wait given the pace of new arrivals.

17.5   Finale

There is no question that the Tibetan Diaspora in India is a singular case. Yet one is tempted to seek constructive parallels that might yield additional insights, or at least situations to which its learned experience can be applied. The difficulty concerns what the points of focus would be. Parallels are sometimes drawn between Palestinians and Tibetans in terms of their nationalist aspirations, extensive organization and long term entrapment in a stateless existence. Frequently, attention focuses on the contrast between the violent struggle of the former and the non-violent struggle of the latter, but any serious comparison also would have to acknowledge myriad differences in material and historical conditions. From a Tibetan Buddhist angle, an interesting inverse comparison might be attempted with the case of roughly 100,000 Hindu refugees who fled Tibetan Buddhist Bhutan almost two decades ago and have lingered in well-organized but confining refugee camps in Southeastern Nepal. Focusing on dispute resolution, the Nazari Ismaili community could be of interest because of its well organized system of Conciliation and

Arbitration Boards. Residing in pockets around the world, the community maintains allegiance to the current Aga Khan, whose moral authority and enlightened social philosophy can be compared to that of the Dalai Lama. Each of these comparisons could be fruitful, but would require extensive research in its own right and would bring very different issues into prominence.

In the broader context of multiculturalism, I have invoked the Tibetan experience as a cautionary tale, rather than as beacon to show the way forward. I will close with some of its positive illuminations. In this thesis I have demonstrated that the Dalai Lama gave careful attention to international human rights discourse and conscientiously aligned the Charter of Tibetans in Exile with the constitution of the host government. For the implied governance reform, he sought a rationale from within the Buddhist religion, linking it with spiritual tenets of harmony that underlie all faiths and with secular principles of the liberal state. Like any institutionalized religion, Tibetan Buddhism has its conservative side especially considering the need for meticulous preservation of centuries of treasured teachings that were very nearly lost. Yet, it is a religion that has proven to have a uniquely modernizing capacity to reach beyond its particularity, to Tibet sympathizers, spiritual seekers of all faiths, and secular humanists. Madan (1998) has observed that of all South Asian religions, Buddhist philosophy has the most secularist potential insofar as it denies supernatural beings any significant role in human life (p. 302). Tibetan Buddhist leaders have managed to appropriate or naturalize the secular language of liberal politics, human rights and democracy, such that they could exert a level of moral influence in the international public space well beyond their numbers. As observed by Habermas (2006):

> Without a successful translation there is no prospect of the substantive content of religious voices being taken up in the agendas and negotiations within political bodies and in the broader political process. (p. 11)

I agree with Habermas that this is the challenge ethno-religious groups have to undertake for internal reform of any regressive tendencies, as well as for bridging the cultural or secular-religious divides that separate them as communities. Tibetan refugee leaders and government spokespersons have been extremely successful in garnering international support for a free Tibet partly because of their ability to frame the issues strategically, in the language of international law blended with the moral high ground of Tibetan Buddhism. Every year the Dalai Lama participates in international or inter-faith dialogues for peace, and also gives spiritual teachings and public talks to massive audiences worldwide.

The Dalai Lama has managed to tap into the mood of the times and to universalize messages of non-violence, human rights and universal responsibility from the particularity of Tibetan Buddhism. Charles Taylor (1979) has theorized about those special people who are able to grasp contradictions in the spirit of the times. Whether intuitively or analytically, they are able to develop an antithesis to the brewing alienation in old paradigms, and to articulate a potential redefinition of norms that finds receptivity in society (pp. 95-100). This is what the Dalai Lama has done for his own community as well as for the community of communities.

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APPENDIX 1A: INTERVIEW PROTOCOL FOR CTA REPRESENTATIVES

I   Specialization of the third party intervener's role

1.1   How many conflicts have you tried to resolve as a third party in your community, in the past five years?

1.2   For how many years have you played a role in helping members of your community to resolve their disputes?

1.3   What other jobs, roles or functions do you have in your community?

1.4   How much time do you devote to your role as a third party in resolving conflicts?
-        number of hours per week, month or year
-        % of time compared to tasks in other roles

1.5   How many other persons play a role in conflict resolution within your community? How would you describe their participation compared to your own?

1.7   In what location do you hear grievances or deal with disputes? E.g.
-        One fixed location (home, office, other)?
-        Various locations (chosen to suit disputants or subject of dispute? Other factors?)

1.8   If fixed location, how convenient is this to the typical disputant (distance, ease and expense of transportation)?

1.9   If fixed location, what are the physical surroundings? (how formal, how open to public? How comfortable? A specific room for the purpose or a multipurpose room?) What are the usual sitting arrangements?

II   Economics of the third party intervener's role

2.1   If payment is involved, on what is it based? E.g.:
-        As fixed or variable amount (hourly/daily rate? flat fee? based on disputants' ability to pay? other?)
-        As salary from another source?

III   Qualifications for the third party intervener's role

3.1   What would you say are the two or three most important qualifications that you personally have for this role?

3.2   Have you received any specific training to enhance your capabilities as a third party intervener? (Justice Commission, mentor, Center for Conflict Resolution, other?)

3.3   Have you been able to apply the learning from this training?

3.4 Have you noticed any change in outcomes as a result of applying new approaches?

IV   Specialization of third party interveners as a group

4.1 How often do you communicate with others functioning as interveners in disputes?

4.2 Does the role itself confer status?

4.3 Do interveners as a group wear different clothing or markers, or behave differently from disputants (body language, vocabulary) as part of their role?

4.4 How do you generally become involved with disputes? E.g.:
- Self selection
- Invitation by disputants
- Election by community members
- Appointed by a superior
- A combination depending on context

4.5 To what extent is the dispute resolution role a career? E.g.:
- Possibility of advancement in the role?
- Secure tenure in the role
- Rules guiding role (oral/written, vague/precise, partial/complete)
- Powers circumscribed by higher authority and subject to supervision
- Actions recorded in writing

V   The third party intervener's process

5.1 Please describe a typical process? E.g.:
- Definition of issues (those presented, or underlying needs as well)?
- Meeting separately with disputants or together?
- Significance of prior decisions (jurisprudence, consistency)?

5.2 How would you characterize your <u>role in relation to outcomes</u>? E.g.:
- Proactive in problem solving and pushing for consensus
- Leaving substantive problem solving to disputants and overseeing process
- Recommending remedies based on past experience or community norms.

5.3 Could you describe a specific case or two that you have handled in the past five years?

VI   Conclusion: Changing patterns

6.1 Have you seen a change in the pattern of conflicts and their resolution over the period that you have acted in the role of third party intervener? E.g.:
- Type, intensity, frequency, complexity of conflicts
- Processes for resolution
- Types of remedies, finality of outcomes
- General norms influencing the process.

APPENDIX 1B: INTERVIEW PROTOCOL FOR CAMP LEADERS AND SETTLEMENT RESIDENTS

His Holiness has said that conflict is natural for human beings; what matters is how we deal with conflict. We are trying to understand how Tibetans work out their differences with each other and with Indian brothers.

1. What do you know about the Tibetan Supreme Justice Commission and Local Justice Commission? What is your understanding of its purpose?

2. How do you feel about it?
    -   can you imagine ever using it? If yes, for what kinds of circumstances?

3. Could you describe for us any dispute/quarrel that you or someone you know has had over land, family, business or other issues?
    -   If yes, can you describe in detail the problem, the process used to resolve it, the outcome and satisfaction with outcome s?
    -   If no, imagine that you have a problem, say with a business transaction… what do you think you would do?

4. In your view, do lamas and monasteries play a role in helping peaceful relations between Tibetans? If yes, please explain.

5. What values (religious or community values) do you think are important in solving problems or creating peaceful relationships?

We will not use your name or identify you in any way in this research but need a few personal details to understand things better. Please feel free to refuse any question.

-   When were you born? before 1959; 1960-1976; 1979-1987; 1987 to present
-   Occupation
-   Education level (none, completed primary, secondary, postsecondary)
-   Region of origin (Kham, Amdo, Ü-Tsang)
-   Religious sect (Geluk, Nyima, Kagyüpa, Sakya, Bön)
-   Family situation (marital status, relatives and whereabouts)

APPENDIX 2: LIST OF PERSONS INTERVIEWED

Category of informant	Code	#	Detail	Location	Language
Dalai Lama Private Office	A	1	Private Secretary	Dharamsala	English
Senior CTA Officials	B 1-7	1 1 1 1 1 1 1	• Secretary General, Tibetan Supreme Justice Commission • Supreme Justice Commissioner • Secretary, Department of Home • Additional Secretary, Department of Home • Local Justice Commissioner • Director, Dept. of Information & International Relations • Director, Library of Tibetan Works & Archives	Dharamsala Dharamsala Dharamsala Dharamsala Bylakuppe Dharamsala Dharamsala	English English English English English English English
Mid-level officials	C 1-7	1 1 1 1 1 1 1	• Legal spokesperson, Tib. Supreme Justice Commission • Editor, Tibetan Bulletin • Officer, Assembly of Tibetan People's Deputies • Elected Deputy, Assembly of Tibetan People's Deputies • Project Development Officer • Agricultural Extension Officer • Secretary, Cooperative Society for Dickyi Larsoe	Dharamsala Dharamsala Dharamsala Bylakuppe Bylakuppe Bylakuppe Bylakuppe	English English English English English English English
CTA Representatives	D 1-16	3 3 3 3	Kullu Manali; Phuntsokling Tibetan Settlement (Orissa); Sonamling Tibetan Settlement (Ladakh); Tibetan Industrial Rehabilitation Society; Bir Tibetan Society; Tibetan Khampa Industrial Society; Dharamsala Tibetan Welfare Office (former and current incumbents); Dickyiling Tibetan Settlement (Dehra Dun); Lugsung Samdupling Tibetan Settlement, Bylakuppe; Dickyi Larsoe Tibetan Settlement, Bylakuppe; Choepheling Tibetan Settlement (Miao, former official) ;	Dharamsala On site (Kangra Valley) Dharamsala Bylakuppe	Tibetan* English English English

		1	Chief Representative/South Zone Coordinator;	Dharamsala	English
		3	Tibetan Reception Center Director (Kathmandu, Nepal); Tashi Ling Handicraft Center (Pokhara, Nepal); Jawalakhel Handicraft Center (Kathmandu, Nepal).	Dharamsala	English
Camp leaders	E (1-5)	5	New and old settlements of Bylakuppe	Bylakuppe	Tibetan*
Monastic heads & administrators	F (1-5)	5	Sera Jey; Sera Mey; Tashi Lhunpo; Namdroling/Golden Temple; Kagyü monastery.	Bylakuppe	Tibetan* & English
NGOs	G (1-11)	1	TWA Centrex President	Dharamsala	English
		1	TWA Regional	Bylakuppe	English
		1	TYC Regional	Bylakuppe	English
		2	TCCR Director & trainer	Dharamsala	English
		1	NDPT	Dharamsala	English
		1	Gu Chu Sum President	Dharamsala	Tibetan*
		1	Voice of Tibet	Dharamsala	English
		1	Bo Gyalo, Editor	Delhi	English
		2	Indo-Tibetan Friendship Association.	Dharamsala & Bylakuppe	English
Tibetan Court users	H (1-2)	2	Plaintiff in one case, defendant in another.	Dharamsala	English
School officials	I (1-2)	2	Sera Jey Monastic School, Principal SOS Tibetan Children's Village, Headmaster.	Bylakuppe Bylakuppe	English English
Settlement residents & "man/woman on the street"	J (1-16)	16	Farming families (7), businessmen (2), petty traders (2), sweater sellers (3), and students (2).	Dharamsala, Mumbai & Bylakuppe	Tibetan* & English
Monks, nuns	K (1-10)	10	Nyingma (3) and Sera Mey monasteries (7);	Bylakuppe	Tibetan*
Indian informants	L (1-8)	8	Legal experts (2), Friends of Tibet (3), casual encounters with locals (3).	Bylakuppe, Mumbai, Dharamsala	English
TOTAL Interviews		**90**	*** Interviews conducted in Tibetan were with the assistance of an interpreter**.		

APPENDIX 3: NOTE ON SPELLINGS OF TIBETAN TERMS AND NAMES

I have avoided Tibetan words as much as possible in this dissertation, in order to facilitate the task of readers coming from varied disciplines. Scholars in Tibetan Studies well know that phonetic spellings vary from author to author, while transcriptions according to the much used Wylie system can be unwieldy for the unpracticed eye. I have borrowed Kapstein's (2006) phonetics and transliteration to standardize the spelling of the following Tibetan words and names appearing in the thesis. Any omissions or errors are mine alone.

Kapstein's Phonetic	Wylie Transliteration
Amnyé Machen	a myes rma chen
Amdo (wa)	a mdo (ba)
Arak	a rag
Bardo	bardo
Barkor	bar skor
Bö	bod
Bön (po)	bon (po)
Chamdo	chab mdo
Chang	chang
Cholkasum	chol kha gsum
Chösi nyiden	chos srid gnyis ldan
Chung	chung
Chupon	bch dpon
Chuzhi Gangdruk	chu bzhi sgang drug
Dalai Lama	ta la'i bla ma
Shukden	shugs ldan
Drepung	'bras spungs
Gadong	dga' gdong
Ganden Podrang	dga'ldan pho brang
Gangchen Kyshong	gangs chen skyid gshong
Ganye	dgah nye
Geluk (pa)	dge lugs (pa)
Golok	mgo/'gl log
Gyantsé	rgyal rtse

|	
Gyapon	rgya dpon
Jé Tsongkhapa	rje tsong kha pa
Jokhang	jo khang
Kagyü (pa)	bka' brgyud (pa)
Kashak	bka' shags
Kalon Tripa	bka'blon khri pa
Katak	kha btags
Kham (pa)	khamspa
Kidu	skyid sdug
Kyeman	skye dman
Lama	bla ma
Lhasa	lha sa
Losar	lo sar
Mentsi Khang	sman rtsis khang
Mönlam chenmo	smon lam chen mo
Namdroling	rnam sdrol gling
Nechung Monastery	gnas chung dgon pa
Neudong	sne'u gdong
Nyingma (pa)	rnying ma (pa)
Potala Palace	po ta la, rtse pho brang
Rimé	ris med
Sakya (pa)	sa skya (pa)
Sera	se ra
Sherpang	sher bang
Surpang	zhur bang
Trashi Lhünpo	bkra shis lhun po
Tri Songdetsen	khri srong lde'u btsan
Trülku	sprul sku
Tsuklak khang	gtsug lag khang
Ü-Tsang	dbus gtsang
Yabzhi	yab gzhis
Yak	g.yag

APPENDIX 4:

BEHAVIOURAL RESEARCH ETHICS BOARD - CERTIFICATE OF APPROVAL

UBC

The University of British Columbia
Office of Research Services and Administration
Behavioural Research Ethics Board

Certificate of Approval

PRINCIPAL INVESTIGATOR	DEPARTMENT	NUMBER
Potter, P.B.	Asian Research	**B05-0882**

INSTITUTION(S) WHERE RESEARCH WILL BE CARRIED OUT

UBC Campus ,

CO-INVESTIGATORS:

Duska, Suzanne, Asian Research

SPONSORING AGENCIES

Medical Carbon Research Institute, LLC

TITLE :

Moral Legacy and Disputing Behavior in the Tibetan Diaspora

APPROVAL DATE	TERM (YEARS)	DOCUMENTS INCLUDED IN THIS APPROVAL:
OCT 2 7 2005	1	Sept. 26, 2005, Consent form / Questionnaires

CERTIFICATION:

The protocol describing the above-named project has been reviewed by the Committee and the experimental procedures were found to be acceptable on ethical grounds for research involving human subjects.
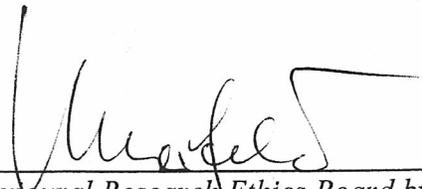
Approval of the Behavioural Research Ethics Board by one of the following:
Dr. Peter Suedfeld, Chair,
Dr. Susan Rowley, Associate Chair

This Certificate of Approval is valid for the above term provided there is no change in the experimental procedures