

OF TEXTS AND DRAMA: DELIVERING JUSTICE IN BHUTAN

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Abstract: This paper presents a short history of the development of legal texts in Bhutan with some analysis of how the later texts reflect the globalized language of the rule of law refracted through recent attempts to anchor and legitimize Bhutanese court process with cultural imagery. It then moves to a discussion of religious cultural imagery and its recent fascinating use in the legal system, a change that has occurred in just the last twenty years. This imagery in the form of huge masks in the courtrooms comes from a key drama enacted throughout Bhutan at the annual *tshechu* (religious festivals) depicting the judgement of the dead by Yama, Lord of the Dead. The paper argues that the role and meaning of religious belief and its presence in the judicial sphere needs to be examined and re-examined in each context for its presence and use. Building on Brown (2015) the paper argues that we need to consider the different worldviews expressed in different periods, as reflected in the texts examined, when we consider the complex interrelationship between Buddhism and law in Bhutan.

Keywords: Legal Codes; Civil and Criminal Procedure; Imagery; Legal Transplants.

1. Introduction

In June 2016, at a colloquium held in Paro, Bhutan to mark the birth year of Padmasambhava, an eighth century Indian Buddhist teacher, the retired Chief Justice of Bhutan, Lyonpo Sonam Tobgye, declared that

Padmasambhava was a law maker and law giver.¹ Padmasambhava, is highly revered in Bhutan and referred to as Guru Rinpoche (Precious Teacher). Various legends claim that he visited Bhutan to settle a dispute, to tame demons and in his manifestation as Dorje Drolo, meditated at Tiger's Nest, Paro. Yet was he a law giver? According to the former Chief Justice, Padmasambhava's role as a mediator "left behind a legal principle of mediation, which is a part of the legal system in the country."² In addition, "invoking the Constitutional principle, he [the former Chief Justice] said the separation of secular and temporal laws were derived through Guru Rinpoche's teachings transmitted in Tibet during the Tibetan king Trisong Detsen's era." Finally, referring to a well-known Tibetan biography of Padmasambhava, the *Padma Kathang*, Lyonpo Sonam Tobgye stated that it "classifies different types of laws, particularly the need for a mother law (Constitution) and other by-laws."³ Building on this contemporary reference to Padmasambhava, this paper considers how the later texts reflect the globalized language of the rule of law refracted through recent attempts to anchor and legitimize Bhutanese court process with cultural imagery.

The paper is set out in four parts. In the first section, four texts are considered and compared: the *Kathrim* (1729), the Law Code (1910), the *Thrimzhung Chenmo* (1950s) and the Civil and Criminal Code of Procedure 2001 (amended 2011).⁴ In addition to these texts, consideration is given to the work of the Royal Court of Justice Research Unit on developing a modern legal vocabulary drawn from Buddhist texts. The second section turns to consider another text, the *Bardo Thodrol*, which has influenced Bhutanese culture and, more recently, the design and iconography of contemporary Bhutanese courtrooms and judicial accounts

¹ I wish to thank the reviewers and editors for their comments and insights. Tshering Dorji, "Guru Rinpoche's Far Reaching Impact," *Kuensel*, June, 15, 2016, accessed September 9, 2016, <http://www.kuenselonline.com/guru-rinpoches-far-reaching-impact/>. For more on Padmasambhava in Bhutan see Michael Aris, *Bhutan: The Early History of a Himalayan Kingdom* (Warminster and New Delhi, 1979).

² Dorji, "Guru Rinpoche's Far Reaching Impact."

³ Dorji, "Guru Rinpoche's Far Reaching Impact."; Tibetan/Dzongkha: *Padma bka'thang*.

⁴ For those unfamiliar with Tibetan/Dzongkha the terms or names used in the main text are presented to enable the reader to say the words. The transliteration of each: *bka' khrim, khrim, gzhung chen mo*.

of “conducting justice.”⁵ The following section draws together the preceding two sections by asking the question, is Bhutanese law Buddhist law? It argues that the role and meaning of religious belief and its presence in the judicial sphere needs to be understood as unfolding and ever-changing rather than as monolithic. Brown (2015) encourages us to consider the different worldviews expressed in different periods and this, it is argued, is relevant to our understanding of how Bhutanese law has evolved and its contemporary interaction with other legal systems and the “rule of law” programme promoted by major donors. The paper ends by drawing the key arguments of the paper together and suggesting new avenues for study as part of the broader law and Buddhism project.

2. Law Codes and the Emergence of the Bhutanese State

At present we have no information on the laws practiced in Bhutan before the arrival of the Zhabdrung, Ngawang Namgyal in western Bhutan in 1616.⁶ Tibetan sources present Bhutan as either a *beyul*, a hidden land, free from the strife being experienced in central Tibet during the thirteenth and fourteenth centuries or as untamed.⁷ The Tibetan Kagyu monk Barawa states that “it is time to go to Bhutan, free from strife.”⁸ Yet in the *Kathrim*, Bhutan is described as lawless and uncivilized until the Zhabdrung “introduced laws where there had been no southern laws and

⁵ Tibetan/Dzongkha: *bar do thos grol*.

⁶ The Zhabdrung was a hierarch of the Druk Kagyu lineage. Following a dispute with the Tsang ruler he left his monastery at Ralung in southern Tibet for western Bhutan. Over the next 35 years he established his authority across western and central Bhutan.

⁷ See Aris, *Bhutan: The Early History*. See also two insightful articles by John Ardussi, “A 17th Century Stone Inscription from Ura Village,” *Journal of Bhutan Studies*, 11 (2005): 1–11 and John Ardussi, “Stone Inscriptions: An Early Written Medium in Bhutan,” in *Media and Public Culture: Proceedings of the Second International Seminar on Bhutan Studies*, ed. Sonam Kinga (Thimphu: Centre for Bhutan Studies, 2007), 4–18.

Tibetan/Dzongkha: *bas yul*.

⁸ ‘Ba’ ra nram mgur 112a. *lho mon gnod ‘tshé med sar ‘gro re ran*. Cited by Ardussi, “Stone Inscriptions, 5.

fixed handles where there had been no handles on pots.”⁹ It is with the Zhabdrung’s arrival in 1616 that law becomes central to the creation and establishment of a new system of government: the Dual System. As Schwieger observes a “kind of sacred kingship” emerged in the seventeenth century based on the concept of the “union of religion and politics” (*chosi zungdrel*) out of which the clerical elite developed the idea of the “Dual System” (*luknyi*). The “first successful effort” at establishing a theocratic state based on these principles was the foundation of Bhutan by the Zhabdrung. He was followed by the Fifth Dalai Lama, Ngawang Lozang Gyatso (1517–1582) in central Tibet.

From his biography, we know that the Zhabdrung moved around western Bhutan in order to establish his rule and the Portuguese monks, Cabral and Cacella who visited him in 1627 accompanied his retinue for several months providing some insights into the process of establishing his new system of government. One of the most significant texts of the period to survive is a law code carved on stone slate and set up outside Punakha *dzong*.¹⁰ There is no precise date for the text but it was probably carved between the foundation of the *dzong* in 1637 and the death of the Zhabdrung in 1651. It is believed that the text was dictated by the Zhabdrung for the text states “I, the Glorious Drukpa Rinpoche, the Dharma King, He who is Possessed of Magical Powers, Destroyer of Enemy Forces have erected this on my own intent.”¹¹ In the rest of this section, four law texts are critically examined and it concludes by considering the development of a new legal lexicon based on close readings of Buddhist texts by researchers appointed to the Royal Court of Justice Research Unit in the 1990s.

Kathrim

The next major extant law code from Bhutan, the *Kathrim* dates from around 1729, almost eighty years after the death of the Zhabdrung,

⁹ Michael Aris, *Sources for the History of Bhutan* (Vienna: Arbeitskreis für Tibetische und Buddhistische Studien Universität Wien, 1986), 129. Tibetan/zongkha reads: *lho khrims med la khrims dang/rdza lung med la lungs btags nas/*

¹⁰ I am currently working on a translation and analysis of the *donak* (*rdo nag*) text.

¹¹ From a transcription of the *donak* provided by Lyonpo Sonam Tobgye during fieldwork Summer 2003. *Nged dpal ldan 'brug rin po che mthu chen chos kyi rgyal po bdud dpung 'joms pa 'I rdo rjer bsam bzhin du bzhnegs pa yin pasl.*

Ngawang Namgyal, in 1651. Described as a law code, the text sets out in the first part its claim to legitimate authority, the basis for the establishment of the dual system and importantly, of state law. The prologue states that the Desi (ruler), Mipham Wangpo ordered the preparation of the law code, which draws on, it is claimed:¹²

legal codes handed down from the royal lineage and the ancestral Dharmarajas to Zhabdrung Rinpoche...draft of the laws of Songtsen Gampo, Tri Songdetsen, Tri Ralpachen, Zhabdrung Rinpoche, the Depa Omzey and others just as they were discovered in the royal and religious histories.¹³

It is important to note that this prologue seeks to associate the text and its laws with those of the former Tibetan emperors who ruled in the seventh to ninth centuries, as well as to religious figures, notably the Zhabdrung. The importance of the Tibetan imperial past to the legitimacy of the laws demonstrates the wider prestige and arguably nostalgia for the former imperial power and prestige enjoyed by the Tibetan emperors at the height of the Tibetan empire.¹⁴ Significantly, the *Kathrim* written in the early eighteenth century, does not explicitly refer to the Ganden Phodrang and the Gelug system of government in Lhasa that emerged in the seventeenth century.¹⁵ The Tibetans attempted, unsuccessfully, to invade Bhutan on a number of occasions and remained a potential threat to the Drukpa state.¹⁶ However, the *Kathrim* explicitly refer to the “union of

¹² Aris, *Sources for the History of Bhutan*, 123.

¹³ Aris, *Sources for the History of Bhutan*, 123. The names have been modified for the reader. They appear in the text as: *Srong btsan sgampo*, *Tri Songdetsen*, *Tri Ralpachen*, *Khri srong lde btsan*, *Khri Ral pa can*, *sDe pa dBu mdzad*

¹⁴ Rebecca Redwood French, *The Golden Yoke: The Legal Cosmology of Buddhist Tibet* (Ithaca: Cornell University Press, 1995), particularly Chapter Two, “Reading Law Codes as Tibetan History” for a discussion of early Tibetan law codes.

¹⁵ It should however be noted that there is potential evidence that the author of the *Kathrim*, Tenzin Chosgyal, was influenced by a Tibetan text, *Guidelines for Government Officials* written in 1681 by the Ganden Phodrang Regent, Sangye Gyatso. In both the *Kathrim* and a second text, a history of Bhutan called the *Lho'i chos byung*, he uses the term “religious estate” (*mchod gzhis*). See Christoph Cüppers, “Bstan ‘dzin chos rgyal’s Bhutan Legal Code of 1729 in Comparison with Sde srid Sangs rgyas rgya mtsho’s Guideline for Government Officials,” in *Bhutan: Traditions and Changes*, eds. Françoise Pommaret and John Ardussi (Brill: Leiden, 2007), 45–52.

¹⁶ The Zhabdrung was a hierarch of the Drukpa Kagyu lineage. Accordingly, the system of government established by him in Bhutan is referred to as “Drukpa.”

religion and politics” (*chosi zungdrel*) and the concept of the “dual system” (*luknyi*).¹⁷

The first section of the code sets out, at length, the main underlying principles of the dual system (*luknyi*) established by the Zhabdrung. Importantly, the laws are described as being established by Buddha Shakyamuni, “it is the teachings of the Sakya king or the laws established by the same teacher [which hold sway].”¹⁸ Similarly, the Gelugpa explained the dual system as the “becoming one of government and (Buddha’s) teaching.”¹⁹ Law, both secular and religious, is presented as interlinked as the “great law of the dual system.”²⁰ Although the *Kathrim* does not set out legal procedures, we can find references that provide us with some glimpses into the practical, everyday concerns with law enforcement and dispute resolution that faced the rulers. Often these appear as admonishments. For example, “penalties and summary confiscations have been meted out for the sake of [acquiring] wealth by making false accusations against the innocent, beating and tying them with ropes and throwing them into dungeons.”²¹ This suggests that there were abuses of position that could undermine the state, or more precisely, the dharma. Accordingly, the Desi:

having investigated in detail what is what, the chief master of the laws [the Desi], should turn towards good legal usages that distinguish religion from irreligion. As it is said:

The Jina skilful in all things
Should consider well his servitors
With application to truth and religion

¹⁷ Tibetan/Dzongkha: *chos srid zung 'brel and lugs gnyis*.

¹⁸ Aris, *Sources for the History of Bhutan*, 125. The Tibetan/Dzongkha reads: *bye brag tu bdag cag lnga brgya pa rnams la bcom ldan 'das shakya'i rgyal po'i bstan pa'am/ston pa de nyid kyis bcas pa'i khrims yiu cing/*.

¹⁹ See Peter Schwieger, *The Dalai Lama and the Emperor of China: A Political History of Tibetan Reincarnation* (New York: Columbia University Press, 2015), 49.

²⁰ Aris, *Sources for the History of Bhutan*, 129. Tibetan/Dzongkha reads: *lugs gnyis kyi bka' khrims chen mo bca' ba nas brtsam/*.

²¹ Aris, *Sources for the History of Bhutan*, 131. Tibetan/Dzongkha reads: *nor phyir snyad med snyad btags kyis brdung thag bkyigs thag 'og khang la bcug pa sogs chad pa 'phral bkog byas nas/*.

He should always protect the provinces.²²

Responsibility rests with the Desi for the functioning of the laws and for the fairness of their application. This sense of the ruler as responsible for the effectiveness of the laws and legal system reflects a well-established, if not uniquely Buddhist, understanding of the role and duties of rulers.

This is stated explicitly in the second section which sets out the duties of rulers and ministers. The Desi is the embodiment of the dual system and “the master of the practice of legal observances.”²³ To this end, the Desi and his ministers are required to be impartial when hearing a case. The text hints at the abuse of position to gain wealth, or to avoid taxation or *corvée* levy. “The ability to call the state laws to witness must be given prime importance” and to be free from being “influenced solely by what is said by master of the dzong (*dzongpon*) high officials ... and others.”²⁴ The text suggests that careful investigation is required in all cases. Otherwise, “before calling on the Triple Gem to act as one’s witness, if anyone at all, and whoever he might be, has shown partiality and discrimination in his judgements on litigation...then it is certain that he himself will meet the severe laws.”²⁵ Therefore, although the *Kathrim* lacks specific guidance on legal procedure, it emphasizes the importance of investigation for judges. Later in the same section, the text states that litigants are required to submit, “honest statements which do not contradict each other and which

²² Aris, *Sources for the History of Bhutan*, 131. Tibetan/Dzongkha reads: *gtso bo khrims kyi bdag pos/’di yin ’di min gyi rtsad gcod zhib mor btang nas/ chos dang chos min ’byed pa’i khrims kyi srol bzang po gtod dgos pa/ ji skad du/ rgyal ba kun la mkhas pa yis// bran g.yog legs par brtag par bya// bden dang chos la gzhol ba yis// rtag tu yul ’khor bskyang bya zhing//*. Here *rgyal ba* refers to the term “Victor” translated as *Jina* by Aris. This term usually refers to the Buddhas but could arguably be read here as referring to the Desi. This would underscore the sacral nature of the position of the Desi and the merging of religion and politics.

²³ Aris, *Sources for the History of Bhutan*, 135. Tibetan/Dzongkha: *khrims lugs ’phrin las kyi bdag po*.

²⁴ Aris, *Sources for the History of Bhutan*, 137. Tibetan/Dzongkha: *rdzong mgron spyi bla sogs nor yod ngo can ’ba’ zhig dang nye ’khor zhabs ’bring ba’i rang ’dod zhus dbang du mi btang bar rgyal khrims dpang thub gtso bor bton ngos/*.

²⁵ Aris, *Sources for the History of Bhutan*, 141. Tibetan/Dzongkha: *rang gzhan su thad nas kyang/drang gsum ’kha ba mdun btsugs dkon mchog dpang gsol ma gogs/kha mchu’i bslab don khral ’ul sogs la nye ring rgyab mdun byas ’dug na drag pa’i khrims la sbyar rgyu lthog chad yin zhing/*.

clearly distinguish truth from falsity” in support of their lawsuits.²⁶ However, not all cases are to be reported to the Desi and his ministers. Officials are advised that only “matters of great importance and significance” should be passed to the Desi and minister for their decisions. It is not clear what matters would be considered of “great importance and significance” but we are told that officials were cautioned that “since to submit many reports concerning evil crimes and unimportant matters of no significance would disturb the concentration of the [ruler] it is unfitting to do more than decide on these matters oneself.” In effect, delegating authority to the official to deal with most cases.²⁷

The final section of the *Kathrims* focuses on the behavior and conduct of government officials. Notably, this section describes the introduction of provincial judges, *thrimpon* by the Zhabdrung.²⁸

Just as one speaks of someone as ‘an appointed man,
a planted tree’ the reason for appointing a master of
the law [*thrimpon*] to each district is because
the various kinds of government representatives and
officers are vital for the welfare of sentient beings in present times.²⁹

The “master of law” was part of the wider process of enforcing the law of the Drukpa state as it moved eastwards across Bhutan during the seventeenth century. It is probable that the “master of law” was, like many of the Bhutanese officials during this period, a lay man who took monastic vows while in government service. What is less clear is whether the *thrimpon*, the master of law, only heard those cases brought to the *dzong*, the main administrative centre of the district. This uncertainty arises from reference made slightly further on in the *Kathrim* to “government

²⁶ Aris, *Sources for the History of Bhutan*, 143. Tibetan/Dzongkha: *kha mchu'i skor phag tu nor sug dang kha drag shed yod kyi dbang du mi btang bar/ bden brdzun gsal por phye ba'i drang gtam lugs mthun snyan du 'bul/*

²⁷ Aris, *Sources for the History of Bhutan*, 144–145. Tibetan/Dzongkha: *gzhung don bya ba'i rigs su gyur par rang don dang khyad med kyi ru nga grub rtsol gang cher vyed dgos shing/ gal chen don yod kyi rigs rnams bslab ston ma zhus par rang nyid kyis blos bcaad mi byed/ nag po sdig las dang gal chung don med kyi rigs zhu zhu mang ba thugs dam gyi sad rgyur 'dug pas blot hag gcod pa las 'os med/*

²⁸ Tibetan/Dzongkha: *khirms dpon*.

²⁹ Aris, *Sources for the History of Bhutan*, 151. Tibetan/Dzongkha: *gang yang bkod pa'i mi dang 'dzugs pa'i shing du gleng ba ltar/lung pa re la khirms bdag re bkod pa'i rgyu mtshan des/*

representative” (*kutshab*) judging cases. It is possible that the government representatives heard cases during their visits to villages in the district and may have referred more serious cases for the *thrimpon* to hear at the *dzong*.³⁰ From other comments on the behavior of government representatives—notably that they were not to “rove around the villages on false pretexts” and could not “apart from trials held in the *dzong*, decide on them”—it does appear that the *kutshab* could hear cases but may have lacked authority to decide them. It has to be noted that the meaning of this section of the *Kathrim* is uncertain.

The Laws of Bhutan

J. Claude White provides a translation of “The Laws of Bhutan—A Brief Outline of the Laws and Rules laid down for the Government of Bhutan” in his book, *Sikkim and Bhutan: Twenty-One Years on the North-East Frontier 1887–1908*. Unfortunately, the original text on which the translation is based is not available. The translation is that of a British Colonial officer with Dzongkha titles and positions renamed using the terms familiar to him in British India. Reading the text suggests that it may have been a late nineteenth century text that drew on the *Kathrim* as its model and source of its phrasing.

The text briefly outlines the dual system and acknowledges its Tibetan origins. It emphasizes the importance of refraining from the ten non-virtuous acts and for children to show respect to their parents (*thadamtsi*).³¹ However, the text declares that the dual system has declined because of corruption. It accuses those in power of abusing their power and wrongfully beating and imprisoning people. And it goes further to suggest that village elders, to win favour, inform on villagers “render[ing] the clear fountain of justice muddy and foul”³² The rulers are admonished to keep “constant check” on their officials to ensure that they are not

³⁰ See Aris, *Sources for the History of Bhutan*, 153 (111b). Tibetan/Dzongkha: *sku tshab*.

³¹ *Tha dam tshig*: literally the “highest vow.” See Richard W. Whitecross, “‘Virtuous Beings’: The Concept of *Tha Damtshig* and Being a Moral Person in Contemporary Bhutanese Society,” *Himalaya, the Journal of the Association for Nepal and Himalayan Studies* 28, no. 1 & 2 (2010a): 71–82.

³² J. Claude White, *Sikkim and Bhutan: Twenty-One Years on the North-East Frontier 1887–1908* (London: Edward Arnold, 1910), 301.

abusing their position. Importantly, we learn that the “deputies who are sent to inquire into a case and the headman who reports, are the chief persons on whom the real burden of a fair trial lies.”³³ The *kutshab*, as before, is responsible for reporting all cases to the *dzong* and may not decide them himself.

White’s translation adds some new details that are not present in the 1729 code. The 1910 text includes reference to village elders and headmen, as well as, importantly in the context of Bhutan, to village mandalas among the Nepali settlers in the southern districts (*dzongkhag*). However, there is little guidance, as in the *Kathrim*, on how to conduct investigations in to cases referred by village headmen. Both texts are noticeably silent on the role of mediation. Perhaps neither text considered the use of mediation as important since it was based on local customs and practices and dealt with local matters, rather than being of concern to the *dzong* or the Desi. Neither of these two pre-monarchy texts are concerned with local practices and provide no clues into how disputes were resolved among the ordinary people. However, this was to change in the wake of major reforms introduced by the Third King, Jigme Dorji Wangchuck in the mid-twentieth century.

Thrimzhung Chenmo—The Supreme Law Code

During the 1930s and 1940s, the Second King, Jigme Wangchuck, established closer ties with the British colonial authorities in India. Although the monarchy had been established with British support in 1907, there remained potential opponents to it. The Second King focused on consolidating royal authority by strengthening the flow of tax revenues. However, shortly before his death, the British granted India independence in 1948 and Tibet was occupied by Communist China in 1950. The Third King, Jigme Dorji Wangchuck, recognized that Bhutan was potentially vulnerable and began a series of reforms to strengthen state law.

The new law code was less a codification of existing Bhutanese laws than an entirely new law code drawn mainly from India. The extent to which the officials responsible for drafting the new law code worked with Indian lawyers and legal academics is unknown. However, several chapters of the original text, if not the full code, was first written in Hindi,

³³ White, *Sikkim and Bhutan*, 302–303.

then translated into English and Dzongkha.³⁴ The National Assembly approved the *Thrimzhung Chenmo*, also referred to as the Supreme Law Code, in sections during the late 1950s.³⁵ The official text, in Dzongkha, presents the new law code based on traditional customs and practices, which were accepted after consulting with village elders. The Foreword and the Postscript are elaborately written sections that present the Supreme Law Code as a gift from a bodhisattva, the Third King, and are replete with Buddhist imagery. Yet, the eighteen core chapters set out an approach to law and to the conduct of disputes not previously seen in the extant law codes discussed above.

The Supreme Law Code remains the foundational text for contemporary Bhutanese law. Although it has been superseded by subsequent legislation and the 2008 Constitution, the Supreme Law Code was central to the modernisation programme introduced by Jigme Dorji Wangchuck. Unlike the earlier law codes, the Supreme Law Code was the primary source of law. Divided into seventeen chapters, it addressed civil matters (chapters 1–11 covering land, marriage, inheritance, and the sale of goods) and criminal offences (chapter 12–17, covering theft, murder, fraud, and desecration of holy sites). It represents the first clear codification of law in Bhutan by setting out the state law on matters which previously were subject to local customs and practices, for example, inheritance and marriage. Significantly, we have the first explicit outline of court procedure in Chapter 11.

In the 1970s, the rules and regulations dealing with court process were augmented by the *Kaydon* of 1972 and 1976. The *Kaydon*, composed of several *kasho* (royal commands), can be described as “royal ordinances” and were an expression of the direct power of the king. During the 1980s and 1990s, further sources of legal procedure appeared notably in the Police Act in 1980 and the National Security Act in 1992. These different sources of court procedure were pulled together in one document by the High Court in the 1997 *Civil and Criminal Court Procedure*.

³⁴ The official language of Bhutan.

³⁵ Tibetan/Dzongkha: *khrims gzhung chennmo*. There are conflicting dates on its introduction between 1957 and 1959. See Richard W. Whitecross, “The Zhabdrung’s Legacy: Law, State and Social Values in Contemporary Bhutan” (PhD diss., University of Edinburgh, 2002).

The High Court compilation of the relevant chapters and procedural rules is a remarkable compendium. It provides insights into the development of the procedural aspects of Bhutanese law, notably the blending of Bhutanese practice with legal principles from other jurisdictions. The 1997 *Civil and Criminal Court Procedure* begins by stating that all Bhutanese enjoy “equality under the law.”³⁶ The importance of the *Kaydon*, the collection of royal commands, is underscored by its prominence as the main source for rules and procedure that supplement Chapter 11 of the Supreme Law Code. However, on close reading it becomes apparent that the more detailed procedural provisions set out in the 1997 Code were drawn neither from Chapter 11 nor the *Kaydon*. It is essential to recognize that the 1997 Code is seeking to legitimate the new procedures in respect of an internal, Bhutanese audience while addressing concerns expressed by external international bodies such as the International Red Cross. By emphasising two key Bhutanese sources, the crown and the Supreme Law the 1997 Code was suggesting that these procedural provisions already existed in Bhutan. Yet, Sections 27–30, dealing with Miscellaneous Hearings and Pleadings, no sources are cited or provided. A clue to this apparent omission and, significantly to potential non-Bhutanese sources, can be found elsewhere in the 1997 Code.

Section 34, *Production before Court* presents the source simply as [*Recommendation 7*].³⁷ No further information beyond this simply bracketed term is provided. Of course, this could be a formatting error. However, given the *bricolage* approach used in the creation of the 1997 *Civil and Criminal Court Procedure* it is not unreasonable to assume that it is a recommendation proposed by international legal experts. Amnesty International and the International Committee of the Red Cross complained about the weaknesses of the Bhutanese legal system after large forced migrations in the early 1990s of Nepalis living in southern Bhutan. In response to the sharp criticism and scrutiny of the Bhutanese judicial system a decade of major legal and judicial reforms began. Therefore, this can be read as a clue to an alternative source for some of the more detailed provisions set out in the 1997 Code. The heading suggests that the new rule on *Production before Court* was one of several Recommendations probably suggested by an international body or expert. The encounter

³⁶ *Civil and Criminal Code* 1997, 1.

³⁷ The square brackets appear around the title in the text.

between the Bhutanese state, its developing laws and legal system in the 1990s with international law and legal norms, particularly the globalising discourse on human rights was a catalyst for major reforms of to the Bhutanese legal system overseen by the former Chief Justice, Lyonpon Sonam Tobgye.

Developing a Legal Vocabulary and Court Etiquette

In 1994 after the appointment of Sonam Tobgye as Chief Justice, the Royal Court of Justice established the Research and Training Bureau. Based in small government-owned building in the capital, the Bureau conducted research on law and legal matters for the Royal Court of Justice, specifically at the direction of the Chief Justice. In a short publication by the Royal Court of Justice published in 2001, the Bureau was described as having conducted research “on sources of Bhutanese laws, Court etiquette and manners, formal address and titles, legal terminology and Bhutanese architecture.”³⁸

One of the Bureau’s main researchers, Dasho Khadro, prepared and published a detailed guide to *driglam namzha* through the Royal Court of Justice in 1997. While a text on formal etiquette may seem irrelevant to the consideration of law and legal development, it reveals the range of work being carried out by the Research Unit, especially on law and legal principles in Buddhist texts.³⁹ Chapters two to four focus respectively on the proper form of conduct for body, speech and mind. In the discussion of the correct attitude of mind (humble and respectful), chapter four opens with two quotations from the sutras and one from a *Vinaya* text as it sets out a discussion of cause and effect (*lejumdre*).⁴⁰

Among the researchers appointed to the Bureau was a *lopon*, or monk-scholar. During the mid-to-late 1990s as part of the Bureau’s work on the sources of Bhutanese law and legal terminology, the researchers drew on Buddhist canon law to develop a Bhutanese legal vocabulary. It

³⁸ Royal Court of Justice, *Introduction to the Bhutanese Legal System* (Thimphu: Royal Court of Justice, 2001), 14.

³⁹ Richard W. Whitecross, “Law, ‘Tradition’ and Legitimacy: Contesting *Driglam namzha*,” in *Development Challenges in Bhutan*, ed. Johannes D. Schmidt (Cham: Springer, 2017), 115–134.

⁴⁰ *Las rgyu ‘bras*, literally, “action and fruit.” See Whitecross, “‘Virtuous Beings’ for a detailed discussion of this concept in Bhutan.

was evident that there was a strong desire to ground the changing legal system and emerging new procedures in what was considered to be Bhutanese cultural roots, traditions, and *choskey*, “the language of the dharma.”⁴¹ A close reading of the Punakha *donak* and the *Kathrim* does not provide us with a discussion of the legal theories of natural law or positive law. However, the Research and Training Bureau provided terms for both, *rang bzhin gyi khrims* and *phyi gyi khrims* claiming that both are from the Buddhist canon, admittedly without providing the canonical sources of the terms or the context of their use.

The Research Unit served another purpose—it supported the creation of the first Bhutanese law degree. There was no formal legal education in Bhutan until the introduction of the National Legal Course in 1995. This absence meant that judges were not trained in law or legal decision making. Until this period, judges were typically educated in mission schools in Darjeeling and Sikkim before entering the civil service. The Head of the Royal Civil Commission at that time, DASHO KHANDU WANGCHUK, described the opening of the National Legal Course as “an event of historical proportions” before noting that Bhutan was “free from the evils of complex legal procedures.”⁴² Established to ensure the “professionalism in legal affairs,” the Chief Justice emphasized that “it drew deeply from the traditional Bhutanese legal system.”⁴³ Apparently flowing from the research of the Buddhist canon, the National Legal Course drew heavily on the traditional subjects taught in monasteries. The Research Unit also set out a *Civil and Criminal Code of Procedure* in 1997. This latter work subsequently formed the basis for the new Civil and Criminal Code of Procedure passed by the National Assembly in 2001 and a new Penal Act in 2004.

3. A Drama of Justice: Judge, Prosecutor and Defence

Teachings in Vajrayana Buddhism state that during the period following death and before rebirth, the intermediate state or *bardo*, buddhas appear in

⁴¹ Tibetan/Dzongkha: *chos skad*.

⁴² “First Formal Legal Course Inaugurated in Thimphu,” *Kuensel*, February 11, 1995, 1.

⁴³ “First Formal Legal Course Inaugurated in Thimphu,” *Kuensel*, 1.

peaceful and wrathful forms to greet the deceased. However, those with little faith in the dharma fail to recognize the peaceful buddhas and instead come before wrathful Yama, the Lord of the Dead, King of the Dharma, Shingje Chogyal.⁴⁴ Bhutanese are very familiar with Shingje Chogyal, who appears in wall paintings, in portable religious paintings (*thangka*), and as a central figure in religious dances (*'cham*) where he is depicted as a large puppet holding a mirror. During the *tshechu* (annual religious festivals lasting three or four days) the dance of the *Raksha* typically is performed on the third day.⁴⁵

It is believed that the dance is derived from a *terma* text (a treasure text that has been found) entitled *Self Liberation of the Bardo of Becoming: Instructions on “The Presentation of the Natural Form of Virtue and Vice in the Bardo of Becoming.”*⁴⁶ This text is traditionally associated with the fourteenth century treasure finder (*terton*) Karma Lingpa and is one of the volumes comprising the *Bardo Thodrol*, or *Liberation on Hearing in the Bardo*, commonly known in the west as the *Tibetan Book of the Dead*.⁴⁷ This text lies at the heart of a Bhutanese dance entitled *Raksha mang 'cham* or the Dance of the *Raksha* performed annually at the *tshechu*.⁴⁸ Similar accounts appear in other popular tales, notably those of *'das log*: individuals who have “died” and visited the *bardo* with a guide who leads them through the underworld where they

⁴⁴ Tibetan/Dzongkha *shing rje chos kyi rgyal po*.

⁴⁵ Tibetan/Dzongkha *tshe chu*—means 10th Day. *Rak sha* are assistants to Yama, Lord of Death. In Thimphu and Paro, the *raksha mar mang 'cham* is performed on the third day, though it may vary throughout Bhutan. One Bhutanese suggested that the dance is performed on the second day (K Wangcuk, private communication).

⁴⁶ *Srid pa bar do'i dge sdig rang gzungs bstan pa'i gdams pa srid pa bar do rang grol*. Vol Ma. 18ff. See Bryan J. Cuevas, *The Hidden History of the Tibetan Book of the Dead* (Oxford: Oxford University Press, 2003), 94–95 and also Cuevas, *Travels in the Netherworld: Buddhist Popular Narratives of Death and the Afterlife in Tibet* (Oxford: Oxford University Press, 2008), 45–48.

⁴⁷ See Cuevas, *The Hidden History*, 94–100. See also Donald S. Lopez, *The Tibetan Book of the Dead* (Princeton: Princeton University Press, 2011) for an excellent discussion of the rise to prominence in the West of (so called) *Tibetan Book of the Dead*.

⁴⁸ Françoise Pommaret, *Les Revenants de l'au-delà dans le monde tibétain: Sources littéraires et tradition vivante* (Paris: Editions du Centre National de la Recherche Scientifique, 1989).

witness the judgment of the dead, often of identifiable sinners who are condemned to the hell realms to expiate their sins.⁴⁹

Tshechu religious festivals meaning “Tenth day”⁵⁰ were introduced in Bhutan by the Zhabdrung, Ngawang Namgyal. It would appear from the biography of the fourth Druk Desi, Tenzin Rabgye, that he together with the Zhabdrung and his retinue were initiated into the *Lama Gongdue* cycle of treasure teachings, in particular the meditations and rituals that underpin the *tshechu* performance.⁵¹ Originally a monastic event, the first full performance was not held until 1690 at Tashicho *dzong* in Thimphu. Usually the *tshechu* are performed in the courtyards of the large monastery/fortresses, *dzongs*, which are a major feature of the Bhutanese landscape.⁵²

The performance begins with the entrance of the *raksha*—male dancers wearing *raksha* masks—who perform a dance allowing the audience crowded around the performance space time to identify them—snake, monkey, dragon and so forth. Children sitting in the laps of grandparents and parents listen, watching each dancer. Then the Lord of Death, Shingje Chogyal, makes his entrance, towering over the other performers, his large red face, tangled black locks and holding a mirror in his right hand. He is accompanied by White God (*lha kap*), Black Demon (*'dre nag*) and his minister of justice, Bull-headed *Raksha*.⁵³ The Lord of Death is escorted to a seat and his attendants, the *raksha*, take up their places seated in two rows directly in front of him. The Court of Justice of the Lord of Death is now in session. Black Demon and the main attendants perform a short dance before the first trial begins.

⁴⁹ For an extensive study of *'das log* both as a genre of Bhutanese and Tibetan literature and as living phenomenon in modern Bhutan see Pommaret, *Les Revenants de l'au-delà dans le monde tibétain* and Cuevas, *The Hidden History* and Cuevas, *Travels in the Netherworld*.

⁵⁰ Tibetan/Dzongkha: *tshes bcu*.

⁵¹ John Ardussi, “Gyalse Tenzin Rabgye and the celebration of Tshechu in Bhutan,” in *Written Treasures of Bhutan: Mirror of the Past and Bridge to the Future*, eds. John Ardussi and Sonam Tobgay, (Thimphu: National Library of Bhutan, 2008), 12.

⁵² This is not to say that *tsechu* are only exclusively performed in *dzongs*—some *tshechu* are performed at small, but important monasteries, such as Nyimalung. Satoru Tabuchi, Mynak R. Tulku, Yoshiro Imaeda and Karma Ura, *Festival and Faith at Nyimalung* (Tokyo: Hirakawa Shuppan Ltd., 2003).

⁵³ Tibetan/Dzongkha *khrims kyi drang gam zhu mi bka' blon chen po raksha glang mgo*.

The Hunter and the Householder

The first trial opens with the arrival of a figure dressed in black and wearing a red hat, the sinner, Nyelbul, who is brought before the Lord of Death.⁵⁴ Trembling with fear, Nyelbul attempts to flee only to be caught each time by the court attendants. From his basket, a freshly severed cow's head is pulled out implying that he is responsible for killing the animal. Assisted by the boar-headed assistant, and the monkey-headed *raksha* holding the scales, the Lord of Death begins to assess the accused's virtuous and sinful actions. The White God steps forward and, singing, tells the Lord of Death of the merits of the man.

However, the Black Demon follows White God and declaims the sins of the man. The snake-headed attendant holds up the Mirror of Karma in which all the previous actions of the man can be seen without exception. Consulting the Mirror of Karma, the Lord of Death weighs the man's actions on the scales held up by the monkey-headed attendant, who drops white and black pebbles on either side. Judging the man to be a sinner, the Lord of Death pronounces his verdict—the condemned man is to be escorted to the hell realms to expiate his negativity. A strip of black cloth spread on the ground symbolizes the path to the lower realms along which the condemned man is escorted.

After a further short dance, all resume their places for the second trial. This time the figure is dressed in white and carries a prayer flag and a ceremonial scarf. The color indicates that he is virtuous and pious. Once again, the judgment begins. Looking intently into the Mirror of Karma, the Lord of Death finds the man, called the householder Pelkyi, to be virtuous and judges that he should be escorted to the heavenly realms.⁵⁵ A white strip of cloth signifying the path to the celestial realms is spread on the ground and as he is being escorted away, the Black Demon, furious at losing a being, attempts to snatch the householder. However, White God intervenes and prevents Black Demon from snatching him.

The anthropologist Françoise Pommaret notes that, although the text of the *Bardo thodrol* from which the dance is believed to be derived explains the significance of the deities, “it is the dance which makes it

⁵⁴ Tibetan/Dzongkha *sdig can dmyal 'bul*.

⁵⁵ Tibetan/Dzongkha *khyim bdag dpal bskyed*.

possible for the ordinary persons to have access to this teaching.”⁵⁶ Just as the presentation of the law text on the *Punakha donak* requires other forms of communication, Pommaret reminds us that the text of the *Bardo thodrol* is not easily accessed by the laity or those without an informed understanding of the text, which was the majority of the society. Instead, this ritual dance, the *Raksha Mang ‘Cham* fulfils an important task of communicating and educating the wider population about key Buddhist teachings on karma and the resulting fruit of one’s actions.

The Uses of Iconography

The imagery of the *Raksha Mang ‘Cham* can now be found in small and large carved masks sold to tourists and others in certain craft shops across Bhutan. Postcards depicting Black Demon, Shingje Chogyal and the *raksha* often adorn the walls of household shrine rooms. More importantly, the visual imagery of the *Raksha Mang ‘Cham* has been introduced into the decoration and iconography of contemporary court rooms, including masks depicting the Lord of Death, Black Demon and White God. It is not clear when these items appeared in the courtrooms, however based on interviews, they appear to be very recent additions.⁵⁷ Remarking on the symbolism of the courtroom in a recent interview, the Chief Justice expressed his concern that ordinary Bhutanese would not respect laws that do not reflect wider social and cultural practices. Likewise, in a newspaper article, the former Chief Justice, Lyonpo Sonam Tobgye stated that “laws are always strong only when they have social sanction and religious sanctity.”⁵⁸ The importance of religion is also cited as central in an article by a judge, Dasho Lungten Dubgyur, on court procedure and the roles of the judge, prosecution and defence with reference to the “*Bardo Theodrol*—the Judgment of the Dead” and the *Raksha Mang ‘Cham*.⁵⁹

⁵⁶ Françoise Pommaret, “Dances in Bhutan,” in *Media and Public Culture: Proceedings of the Second International Seminar on Bhutan Studies*, ed. Sonam Kinga, (Thimphu: Centre for Bhutan Studies, 2007), 35.

⁵⁷ Traditionally, court rooms located in the secular part of the dzongs were simply furnished and decorated, based on anecdotal evidence, with thangkas depicting the Zhabdrung.

⁵⁸ Sonam Tobgye, “The Sources of Bhutanese Law.” *Kuensel* June 12, 2003, 6.

⁵⁹ Lungten Dubgyur, *The Parasol of Silken Knot* (Thimphu: Royal Court of Justice, 2005), 1.

Dubgyur described the *Bardo Thodrol* as a “legal and historical source on which the most modern Criminal Procedure of Bhutan is based by the enactment of our historic Civil and Criminal Procedure Code 2001.”⁶⁰ He further claims that the *Bardo Thodrol* is the basis for the ‘*cham* in which “almost all principles of fair trial procedure is [are] enshrined in accordance with the principles of natural justice.”⁶¹

Dubgyur’s account poses a crucial question: does he believe that there is a theory of natural law set out in Buddhist texts or Bhutanese law or is he interpreting texts and the drama through his own understanding of western theories of natural justice? The author identifies nine aspects of the criminal court process or legal principles derived from Karma Lingpa’s *terma* text:

- the right of *habeus corpus*;
- the right to an open trial;
- the right to counsel;
- charges;
- the right to an uninterrupted hearing and to plead guilty or not guilty to the charges;
- the role of prosecutor and defence;
- the importance of evidence and expert opinion and finally,
- the reasoned decision (judgment).

While the author anchors his paper by citing sections of the *Bardo Thodrol*, he primarily refers to the ritual performance of the ‘*cham* when explaining each element. Throughout the article, he gives legal terms in either Pāli or Classical Tibetan equivalents. For example, he equates due process in a footnote to “*nati*, Vinaya Text Vol. 17, Part II, pp 330–335.”⁶² Likewise, a submission made to the “court” is “*bshad rgyu chi ‘dra yod dam*.”⁶³ Yet, he also cites other sources or references ranging from Blackstone’s Commentaries on the Laws of England to US case law. The paper demonstrates a clear desire to present aspects of Bhutanese “criminal procedure” as “pre-dat[ing] their Western equivalents.”⁶⁴ This is a telling

⁶⁰ Dubgyur, *The Parasol of Silken Knot*, 1.

⁶¹ Dubgyur, *The Parasol of Silken Knot*, 3.

⁶² Dubgyur, *The Parasol of Silken Knot*, 2. Dubgyur probably means *ñatti* (Pāli) or *jñapti* (Sanskrit) which is the designation of the motion of a legal procedure.

⁶³ Dubgyur, *The Parasol of Silken Knot*, 6.

⁶⁴ Dubgyur, *The Parasol of Silken Knot*, 1.

claim for it suggests that the criticisms of the Bhutanese legal system by external (Western) bodies challenge its own perception of itself.

The decision to adopt the imagery of the *Raksha Mang 'Cham* suggests an intention to naturalize the judicial process by presenting it in cultural terms that the ordinary Bhutanese is familiar with and will understand. Based on interviews I conducted with ordinary Bhutanese, this appears to be a new association. Certainly, they understand the parallels, but the drama of the *Raksha Mang 'Cham* for the ordinary Bhutanese is not about justice and the law, but the moral quality of the individual and the life they have led.

4. Bhutanese Law, Buddhist Law?

The development of a centralized legal system in Bhutan since its creation as a unified polity in the seventeenth century cannot be separated from the interrelationship between the religious and secular. The Zhabdrung and his heirs established a centralized system based on the religious law texts of Tibet and the perspective of the Dual Government. Nevertheless, the most exemplary product of this effort, the Supreme Law Code, permitted local customary law to reign on small matters unless it contravened the Supreme Law Code. Unfortunately, we know little about these local customary practices, which governed the daily lives of most ordinary Bhutanese. However, as legislation proliferated during the second half of the twentieth century, amending and ultimately replacing the Supreme Law Code, the state extended law across all aspects of life.

In his analysis of a range of early Christian texts, the historian Peter Brown argues that we need to consider the different worldviews expressed in different periods. Brown's argument is important for in this article I have sought to consider a range of Bhutanese texts as a means of exploring the complex interrelationship between Buddhism and law in Bhutan.⁶⁵ The *Kathrim*, based on earlier Tibetan law codes, is the most explicit in drawing on Buddhist texts, notably in the first section of the text, and its use of religious imagery. The juxtaposition of discussion of rules for monks and officials highlight the close relationship between the secular

⁶⁵ Peter Brown, *The Ransom of the Soul: Afterlife and Wealth in Early Western Christianity* (Cambridge: Harvard University Press, 2015.)

and religious spheres. The law code provided by White presents a slightly modified yet similar perspective on the relationship between the monks and the officials. It is only with the Supreme Law Code that a major shift can be seen in the language and presentation of the law. Apart from the foreword and the epilogue, which are replete with religious imagery and language, the Supreme Law Code essentially reflects its main source—the laws of India.

The political tensions of the late 1980s and early 1990s were the catalyst for a decade of major reforms to the judiciary and the embryonic Bhutanese legal system. As hinted at in the *Civil and Criminal Procedure 1997*, the recommendations of non-Bhutanese legal advisors appear to have been core to the procedural reforms undertaken between 1997 and 2004. While it has not yet been a major topic of commentary, these advisors—many of whom were from India, Australia, Singapore, Canada, the USA and the United Kingdom—injecting the influence of common law traditions on Bhutan during the recent procedural reforms. Legal experts from the civil law tradition have also been involved, notably in the implementation of practical reforms in the administration of justice, for example, DANIDA and SNV provided assistance in creating a new court building and case management systems. With these recent developments in mind, can we say Bhutanese law is Buddhist law as suggested by Dubgyur?⁶⁶

Coming from a small legal jurisdiction that is invariably referred to as “English,” a Scottish lawyer or legal academic can understand Dubgyur’s statement, if not some of the claims he seeks to make, about Bhutanese law. In Scotland, a historically separate legal jurisdiction from England with close ties to the civil law traditions of northern Europe, lawyers and parliamentary drafters refer to “putting a kilt on” to adapt or to reflect Scottish law and legal principles. Does the dressing up of a piece of law make it Scottish? For the most part it is accepted as, at the minimum, making it workable even if the origins of the law lie in Westminster or in the European Union. It is, of course, one thing to make secular law fit the legal culture, can the same be said when considering the highly elusive aspect of law based on Buddhism? Over the last twenty years, my own views have oscillated on this issue. Focusing only on the recent changes,

⁶⁶ DANIDA is the Danish Government Development department, while SNV is its Dutch equivalent.

as outlined in this paper, would suggest that Buddhism and its cultural manifestations in Bhutan are a gloss, or a “glamour,” to disguise legal transplants. However, when we consider the longer history and development of law texts and the practices of law, we should recognize that the Supreme Law Code, the *Kaydon*, the Civil and Criminal Procedure 1997 and then the new Civil and Criminal Procedural Code 2001 form part of a continuity of legal adaptation.

The work of the Research Unit was not undertaken cynically to create a false sense of the lineage of Bhutanese laws based not only on the early laws of Imperial Tibet but on the teachings of Buddha, Guru Rinpoche and the Zhabdrung. The introduction of the iconography of the *Raksha Mang Cham*, as well as, building a legal vocabulary based on Buddhist texts were a response to the potentially destabilising effect of rapid change, not just in Bhutanese society, but in the legal system as well. It began in a period when concerns over the loss of a distinctive cultural identity dominated political discourse. Dubgyur notes in his chapter that foreign lawyers always ask if the Bhutanese court process is “adversarial or inquisitorial.” Another common question is “Bhutanese law is Buddhist, isn’t it?” There is no simple answer. The focus above has been on state codes and sources of law. The Bhutanese state until 2008 was effectively still operating a modified version of the dual system introduced in the 1630s and 40s. The Central Monk Body was represented in the former National Assembly and it was only with the 2008 Constitution that a break between the secular state and the Monk Body was achieved.⁶⁷

5. Conclusion

Exiting the District Court at Phuentsholing, the court user can see painted above the entrance: *Let Truth Be Supported by Justice*. In large letters and written in English this statement is surmounted by, in smaller ‘*ucen*’ (Tibetan script) characters, its translation into Dzongkha.⁶⁸ When I asked

⁶⁷ The historical and current role and influence of the monk body on the laws of Bhutan is unclear and is an important area for further research. Equally, research is required on local customary laws and their role in local life in the twenty-first century.

⁶⁸ The ‘*ucen*’ (*dbu can*) text reads: *bden pa'i rgyab skyor drang khrims dpung bsgrigs shog*.

about the source of the aphorism, it was simply ascribed to Buddha. This paper presents a preliminary investigation into the role of law texts in Bhutan and subtle role in shaping the legal culture and supporting the process of political and social change. It illustrates how these law texts cultivate a particular image of the Bhutanese state, either under the theocracy and the monarchy. Although echoes of the *Kathrim* in the Supreme Law Code remain, these are mainly confined to the framing of the new law code. The earlier focus on the legitimacy and exercise of power by the ruler, his ministers and officials was replaced by a new focus on the ordinary “subject.” This shift reflected the wider social and economic concerns of the third king.

In the 1990s Bhutan found itself facing a serious challenge when presented with an unfavourable image in the “mirror” of late twentieth century international legal norms and procedures and began to draw upon a wider range of legal sources to transform the delivery of justice. The emphasis on the Bhutanese and Buddhist origins of key features of the legal system, and the presentation of court process as replicating nationally shared cultural practices, underlines the importance of promoting an image of a legitimate, benevolent (if strict) legal order. We should remind ourselves that the *Kathrim* focused on the rulers and officials. It outlined their behavior and their duties to enforce and maintain order. The same is equally true in the recently democratized Bhutan. The judiciary and the judicial process play a key role in maintaining a particular form of order. The development of court procedure and a gradual development of a Bhutanese legal identity owes a great deal to the process of professionalisation of the judiciary. From the introduction of legal education and judicial training in the 1990s, the externally funded projects to improve court process and efficiency to the visible, cultural transformation of the courtrooms, contemporary Bhutanese judges embody a significant transformation. As Loughlin notes “the special task of the judge lies at the sharp end of the process.”⁶⁹ In this position, explicit and repeated assertions of the religious sources of contemporary law and legal practices are important and, following the increased public criticism of the judiciary, a necessary shield.

⁶⁹ Martin Loughlin, *Sword and Scales: An Examination of the Relationship Between Law and Politics*. (Oxford: Hart Publishing, 2000), 62.

References

Primary Literature in Dzongkha

- Dzongkha Development Committee. *dPal 'brug pa rin po che Zhabs drung Ngag dbang rnam rgyal gyi rnam thar*. Thimphu: DDC, 1999.
- Khadro, Dasho *sGrig lam rnam gzhag*. Royal High Court of Justice: Thimphu, 1997.
- Legal Texts: *Lho tsan dan bkod pa'i zhing gi khrims gzhung chen po*. (Thrimzhung Chenmo) Thimphu, n.d.
- Nado, Lopon *'Brug dkar po*. Tharpaling, 1986.

Secondary Literature and Translations

- Ardussi, John. "Gyalse Tenzin Rabgye and the celebration of Tshechu in Bhutan." In *Written Treasures of Bhutan: Mirror of the Past and Bridge to the Future*, edited by John Ardussi and Sonam Tobgay, 1–24. Thimphu: National Library of Bhutan, 2008.
- . "Stone Inscriptions: An Early Written Medium in Bhutan." In *Media and Public Culture: Proceedings of the Second International Seminar on Bhutan Studies*, edited by Sonam Kinga, 4–18. Thimphu: Centre for Bhutan Studies, 2007.
- . "A 17th Century Stone Inscription from Ura Village." *Journal of Bhutan Studies* 11 (2005): 1–11.
- . "Formation of the State in Bhutan ('Brug gzhung) in the 17th century and its Tibetan Antecedents." In *The Relationship Between Religion and State (chos srid zung 'brel) in Traditional Tibet*, edited by Christoph Cüppers, 33–48, Lumbini: Lumbini International Research Institute, 2004.
- Aris, Michael. *Sources for the History of Bhutan*. Vienna: Arbeitskreis für Tibetische und Buddhistische Studien Universität Wien, 1986.
- . *Bhutan: The Early History of a Himalayan Kingdom*. Warminster and New Delhi, 1979.
- Brandon, S. G. J. *The Judgement of the Dead: An Historical and Comparative Study of Post-Mortem Judgement in the Major Religions*. London: Weidenfeld and Nicolson, 1967.
- Brown, Peter. *The Ransom of the Soul: Afterlife and Wealth in Early Western Christianity*. Cambridge: Harvard University Press, 2015.

- Cüppers, Christoph. “Bstan ‘dzin chos rgyal’s Bhutan Legal Code of 1729 in Comparison with Sde srid Sangs rgyas rgya mtsho’s Guideline for Government Officials.” In *Bhutan: Traditions and Changes*, edited by Françoise Pommaret and John Ardussi, 45–52. Brill: Leiden, 2007.
- Cuevas, Bryan J. *Travels in the Netherworld: Buddhist Popular Narratives of Death and the Afterlife in Tibet*. Oxford: Oxford University Press, 2008.
- . *The Hidden History of the Tibetan Book of the Dead*. Oxford: Oxford University Press, 2003.
- Dorji, Tshering. “Guru Rinpoche’s Far Reaching Impact.” *Kuensel*, June, 15, 2016. Accessed September 9, 2016, <http://www.kuenselonline.com/guru-rinpoches-far-reaching-impact/>
- Dubgyur, Lungten. *The Parasol of Silken Knot*. Thimphu: Royal Court of Justice, 2005.
- French, Rebecca Redwood. *The Golden Yoke: The Legal Cosmology of Buddhist Tibet*. Ithaca: Cornell University Press, 1995.
- Kuensel “First Formal Legal Course Inaugurated in Thimphu,” *Kuensel*, February 11, 1995, 1.
- Lopez, Donald S. *The Tibetan Book of the Dead*. Princeton: Princeton University Press, 2011.
- Loughlin, Martin. *Sword and Scales: An Examination of the Relationship Between Law and Politics*. Oxford: Hart Publishing, 2000.
- Pommaret, Françoise. “Dances in Bhutan.” In *Media and Public Culture: Proceedings of the Second International Seminar on Bhutan Studies*, edited by Sonam Kinga, 31–39, Thimphu: Centre for Bhutan Studies, 2007.
- . *Les Revenants de l’au-delà dans le monde tibétain: Sources littéraires et tradition vivante*. Paris: Editions du Centre National de la Recherche Scientifique, 1989.
- Royal Court of Justice. *Introduction to the Bhutanese Legal System*. Thimphu: Royal Court of Justice, 2001.
- Schwieger, Peter. *The Dalai Lama and the Emperor of China: A Political History of Tibetan Reincarnation*. New York: Columbia University Press, 2015.
- Simoni, Alessandro and Richard Whitecross. 2007 “‘Gross National Happiness’ and the ‘Heavenly Stream of Justice:’ Modernisation and Dispute Resolution in the Kingdom of Bhutan,” *American Journal of Comparative Law*, 55, no. 1 (2007): 165–195.

- Tabuchi, Satoru, Mynak R. Tulku, Yoshiro Imaeda and Karma Ura. *Festival and Faith at Nyimalung*. Tokyo: Hirakawa Shuppan Ltd., 2003.
- Tobgye, Sonam. "The Sources of Bhutanese Laws." *Kuensel*, June 21, 2003, 6.
- White, J. Claude. *Sikkim and Bhutan: Twenty-One Years on the North-East Frontier 1887–1908*. London: Edward Arnold, 1910.
- Whitecross, Richard W. "Law, 'Tradition' and Legitimacy: Contesting *Driglam namzha*." In *Development Challenges in Bhutan*, edited by Johannes D. Schmidt, 115–134, Cham: Springer, 2017.
- . "'Virtuous Beings': The Concept of *Tha Damtshig* and Being a Moral Person in Contemporary Bhutanese Society." *Himalaya, the Journal of the Association for Nepal and Himalayan Studies*. 28, no. 1 & 2 (2010a): 71–82.
- . "The Zhabdrung's Legacy: Law, State and Social Values in Contemporary Bhutan." PhD diss., University of Edinburgh, 2002.