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Tibetan Buddhist Monastic Constitutional Law and Governmental Constitutional Law

Mutual Influences?

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6.1 INTRODUCTION

Did constitutional law exist in Tibet? According to one popular source, the *Encyclopedia Britannica*, constitutional law denotes “the body of rules, doctrines, and practices that govern the operation of political communities.” The entry continues: “In modern times, the most important political community has been the state.”¹ Lending a broad interpretation to the phrase “political communities,” I hypothesize that, in the context of pre-1950s Tibet, Buddhist monasteries could be constituted as communities that not only governed themselves but also exercised political and judicial power far beyond the monasteries’ boundary markers. The relative autonomy of the monasteries, their power, and unique legal status mean that a study of Tibet’s legal system would be incomplete without considering monastic “constitutional law.” Furthermore, there are a number of indications that monastic concepts of the law influenced the Tibetan state’s legal procedures.

This chapter explores a number of these influences. Regarding the so-called monastic ideologies of law, one has to be aware that these are hardly ever found explicitly in legal literature. This is significant since “despite the many remarkable achievements of Tibet’s religious leadership in areas of culture including literature and the arts, philosophy, and spiritual discipline, *sustained reflection on the basis of political organization itself was never part of traditional learning*” (Kapstein 2006, 138).² Similarly, Ruegg states: “The search for theoretical models and ancient Indian historical precedents which might have served Tibetan thinkers is, however, no straightforward matter, for our Tibetan sources are not as explicit on the subject as

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¹ *Encyclopedia Britannica*, available at www.britannica.com/topic/constitutional-law.

² Italics added.

we would wish” (2013 [1997], 220).³ More specifically, with regard to Tibetan law, Tucci writes: “There is no profane literature to speak of, because culture belonged entirely to the monks; even the laws which ruled Tibet for several centuries, although bearing the names of the kings who enforced them, were almost certainly written down by lamas” (1949, 94).

By extension, primary sources available today do not contain much reflection by Tibetan authors on how religion and the law were to be reconciled. To get a glimpse of Tibetan Buddhist legal thinking, one has to read between the lines of prescriptive legal texts as well as works that describe the juridical process.

In recent decades, a number of compilations of older Tibetan legal texts have been published in the Tibetan Autonomous Region as well as in China proper. Some of these volumes contain a classification of “religious” legal texts (*chos khrims*) and secular legal texts (*srid khrims*).⁴ The religious legal texts tend to be monastic guidelines (*bca' yig*), a genre of texts that deals with the rules within monastic institutions (see Jansen 2015, 2016, and 2018). This distinction between Tibetan religious rules and secular rules is by no means a modern one; it is not uncommon that monastic guidelines written between the twelfth century and the 1950s refer to the secular law, and that secular law books from similar periods refer to monastic guidelines. My interest lies in the connections between these so-called religious and secular legal texts, between laws for monks and laws for lay people. Aside from contents and vocabulary use, authorship connects these two types of legal texts. This is obvious when the legal texts are written by – for example – the fifth Dalai Lama (1617–82), but less clear when the author is unknown. By reading these works closely and noting the quotations drawn from other types of literature contained in them, we get a better understanding of the ways in which the author was educated and inspired.

6.2 TIBET'S LEGAL CODES

Generally speaking, in the Indian classical model, the relationship between the king and Buddhist monastics is modeled on that of the advice-giving monk – the *kalyāṇamitra*, if you will – and the well-meaning king, who is occasionally prone to violence. This relationship between ruler and “spiritual friend,” between “donor” and “priest,” which is particularly prevalent in the Mahāyāna tradition, has been extensively studied and commented upon by scholars of Buddhism (most notably by Ruegg 1991; 2013 [1997], but also see Deeg 2016). While there are instances in which

³ See also Ruegg 1991.

⁴ e.g., *Bod kyi khrims srol skor gyi lo rgyus yig tshags phyogs sgrig zhal lce phyogs sgrig* 2016; *Snga rabs bod kyi srid khrims gsal ba'i me long* 2014; *Gzhung dga' ldan pho brang skabs kyi khrims srol bca' chings bdams bsgrigs*. 2008; *Snga rabs bod kyi srid khrims* 2004; *Bod kyi snga rabs khrims srol yig cha bdams bsgrigs* 1989; *Zhal lce phyogs bsduḥ: Bod kyi dus rabs rims byung gi khrims yig phyogs bsduḥ dwangs byed ke ta ka zhe bya ba bzhus so* 1987.

this Buddhist relationship between religion and politics became a historical reality, it appears that more often than not, the two domains – secular rule and the Dharma – were not easily distinguishable categories. This is to say that the lines between them were often blurry, if they existed at all.

The presence of a prosperous and powerful sangha meant that there was less need for the sponsorship and protection of a secular ruler. In premodern Tibet, where monks and monasteries were, at times, particularly influential, the harmonious merging of the “secular” and the religious domains even became an explicit desideratum (Tib. *Chos srid zung ’brel*). Even so, the monks in their monasteries were meant to keep to their own “constitutional” laws – “the body of rules, doctrines, and practices” that governed their communities – while lay Tibetans were expected to abide by local “secular” laws. The former consisted of *praṭimokṣa* vows, the *vinaya* more generally, other religious vows, more universal Buddhist ethics, and last but not least, the more localized and often highly pragmatic “monastic guidelines” (*bca’ yig*). These guidelines were often written by religious figures of high standing. A fair number of surviving sets of guidelines were authored by monks who also had significant political power.⁵ Therefore, the same monks who wrote the texts that regulated monasteries were also responsible for issuing official decrees, judicial decisions, and possibly legal codes. One would thus expect there to be considerable similarities between these genres of literature, something upon which I will further elaborate below.

That monks had their own “laws” meant that they were – again in theory – not subject to the laws of the local ruler. In serious cases such as murder, however, this also meant that monastics could get punished twice. First the monk would be beaten, forcibly disrobed, and expelled. Next, he would be tried as a lay person in a secular court (Jansen 2018, 171). Minor legal cases that involved both monks and lay people were often solved through mediation or through adjudication at the monastery in whose territory the case had taken place. Among historians of Tibet there is a general consensus that in such cases, the monks had a greater advantage.

While the Tibetan tradition claims that law emerged on the basis of Buddhist notions, in fact when Buddhism was first adopted as the royal religion in the eighth century, legal works preserved in Dunhuang roughly datable to that time did not directly reflect Buddhist sentiments. It seems that a juridical system was already in place during the height of the Tibetan empire (Pirie 2017, 409–10).⁶ According to Uray, the introduction of Buddhism did indeed promote the development (and possible adaptation) of (new) legal codes, which suggests that the imperial legal codes from the seventh and eighth centuries reflected the new religion’s influence (Uray 1972, 11–68; also see Jansen 2020a). In those codes, four fundamental laws are

⁵ e.g., the fifth, seventh and thirteenth Dalai Lamas; various Panchen lamas; the crown-prince of Sikkim. On the latter see Jansen 2014.

⁶ Also see van der Kuijp 1999. For an exploration of those laws see Dotson 2006.

given, prohibiting murder, thievery, lechery, and the bearing of false witness. These works also refer to the ten non-virtuous acts (*mi dge ba bcu*), which appear to be an obvious reference to the basic Buddhist ethical framework. In other words, “Buddhism contributed to the substance of Tibetan laws, as well as providing their formal framework” (Dreyfus 1995, 120).

There is no universal agreement on these points, however. Schuh claims that the legal texts that were subsequently produced (the *Zhal lce*) were *not* based on these non-virtuous acts, nor on the sixteen pure human rules (*mi chos gtsang ma bcu drug*).⁷ Schuh argues that the influence of Buddhism was a “retrospective, purely fictitious, ideological construct” (1984, 299–300). Van der Kuijp has also noted “the total absence of anything that might remotely be construed as Buddhist, except for their propagandistic introductions written for the purposes of legitimation and authority” (1999, 288).⁸ My contention is that while the legal codes in their earliest beginnings, for example, those dateable to the early seventh century, may not have been Buddhist, they most certainly came to integrate Buddhist values as time passed and as legal texts were further edited, elaborated, and “modernized” to accommodate the sentiments of the day. As a result, Tibetan legal codes contain a mix of notions, ideas, and vocabulary – often difficult to understand even for highly educated readers of Tibetan.

Perhaps the most well-known and widespread Tibetan legal code is “The Sixteen Pronouncements” (*Zhal lce bcu drug*). Although nothing of the contents suggests as much, the origin of this code is traditionally attributed to King Songtsen Gampo (Srong btsan sgam po, seventh century CE), who is credited with igniting the flame of Buddhism in Tibet (see Chapter 5, this volume). Some see the genre of *zhal lce* texts as being Tibet’s constitution, and indeed at certain times in the history of Tibet certain *zhal lce* codes did actually function as something referred to as an authoritative “body of rules” used to govern the operation of political communities. At the same time, we also know that informal socio-legal practices formed, and still form, a large part of the social reality in Tibetan regions (see Pirie 2006). The fact remains that Tibet’s literary and oral tradition – now and in the past – points to these texts as foundational when discussing Tibetan law.⁹

We have always assumed that the various *zhal lce* works are individual and distinct texts, which borrow heavily from each other. Upon closer examination, it appears that any given *zhal lce* text bases itself on previous works, ultimately referring back to the presumed original version by the *dhammarāja* Songtsen Gampo. This is reminiscent of the Buddhist genre of commentarial literature (e.g., *śāstras*) that try to clarify, apprise, and make relevant the authoritative source, namely the words of the

⁷ While these sets are nowadays seen as unproblematically Buddhist, it appears that they were closer to being codes of morality, containing considerable overlap with Chinese Confucian principles. See Uray 1972; Yamaguchi 1987; Roesler 2015.

⁸ Also see Pirie 2013a, 170.

⁹ For an overview of these texts as a genre see French 1996.

Buddha, the sutras. In a similar way, the deified ruler Songtsen Gampo's legal visions – whatever those may have been – have not been and can never be changed or contradicted.¹⁰ However, they can be *adapted* to certain times and circumstances. A number of variations and adaptations exist, resulting in not only various numbers of pronouncements but also different contents among the recensions.¹¹ While the relatively early legal code (fourteenth century CE) studied by Pirie maintains the framework of a list of a set number of laws, “[i]t seems as if the writer has carried out, or commissioned, a survey of contemporary customs and recorded different practices” (Pirie 2020, 605). Not coincidentally, this is similar to how the monastery's rulebooks were – and are still – composed (Jansen 2018, 21–22).

Confusingly, legal codes (*zhal lce*) that look like different editions of the same work (as they both have the same number of articles) may also be distinct works altogether. It is therefore better to speak of a genre of *zhal lce* texts, rather than of textual variations, which suggests that there was one *Ur*-text on which all others are based (despite what the Tibetan tradition itself may claim). To improve our understanding of this genre then, scholars should stop viewing and treating individual *zhal lce* texts as existing independently and start looking at the works as *a corpus*. In this way, we can see how the legal texts interact with each other. This philological approach to legal texts has been a desideratum for decades now.¹² Obviously, the format of the *zhal lce* genre is more or less fixed: there are to be a number (twelve, thirteen, fifteen, or sixteen) of “laws” on which the author then comments. Frequently, the works have long introductions, sometimes relating the “history” or origins of law in Tibet (see Jansen 2020a).

It appears that these pronouncements had a mainly symbolic function, nonetheless they were deeply engrained in what has been called the “legal consciousness” of the Tibetans (see Pirie 2013b, 239–41). The purpose of the main Tibetan legal codes, the *zhal lce* – in particular after the Ganden Phodrang government (headed by the fifth Dalai Lama) was established in 1642 – is seen by some to be pro forma, mere symbolic representations of juridical power (Pirie 2016, 241; Cassinelli and Ekvall 1969, 153). As Pirie has rightly remarked, “there is little evidence that the provisions of rules and agreements . . . were applied in any detail” (Pirie 2016, 232). Still, I have found that the different *zhal lce* texts draw upon each other: they cite, rework, and

¹⁰ This is perhaps similar to how the Christian Ten Commandments are not subject to appeal or amendment on account of their sacred nature. See Chapter 18 by Helmholz in this volume.

¹¹ These texts were reproduced and circulated widely throughout Tibet, well into the twentieth century.

¹² i.e., Schuh 1984, 297: “Ohne eine Edition der inzwischen bekannt gewordenen Gesetzbücher und ohne eine erfolgreiche Suche nach weiteren Rechtsbüchern des tibetischen Mittelalters werden viele Fragen zur Rechtsgeschichte in Tibet nur hypothetisch oder überhaupt nicht beantwortet bleiben.”; Cüppers, 201b: “Obwohl in neuerer Zeit Wissenschaftler sich mit dem traditionellen Recht in Tibet beschäftigen, gibt es jedoch bisher keine philologische Bearbeitung dieser Werke.” (www.tibet-encyclopaedia.de/gesetzbuecher.html) This philological groundwork is part of an ongoing research project in which I am involved.

reinterpret earlier versions. Much like the way in which a Tibetan scholar would attempt to make an old Buddhist text from India fit the sensibilities of a much later audience, there appear to be instances in which authors seem to “update” and maintain the relevance of the previously existing *zhal lee* by explaining them in the terms of that day. While this is not evidence that they were applied in a court of law, the regular updating of these texts does suggest they were far from obsolete to those who dealt with legal matters.

6.3 MONASTIC CONSTITUTIONAL LAW?

I have mentioned that monks and monasteries generally were not subject to “secular” laws. Stein argues that this is one of the reasons why monasteries should be seen as “independent overlords,” since “monasteries are exempt from tax and services, they can be regarded as independent overlords, for they own land and serfs yielding them taxes and services, and discharge all the functions of authority (justice, etc.)” (Stein 1972 [1962], 141). What is unknown, however, is exactly how this legal unit functioned. The question also arises: To what extent were monasteries autonomous in terms of jurisdiction? When considering Buddhist monasticism as an Asian phenomenon, in general terms and without relation to a particular cultural setting, some scholars have suggested that monks are only ever answerable to themselves (Carrasco 1959, 121): in other words, by taking his ordination vows, the monk is no longer subject to the secular authority and answers only to the Buddhist code of discipline, the *vinaya* (e.g., Vermeersch 2008, 151). The monastic legal code, the *Mūlasarvāstivādinaya*, that Tibetan monks adhere to makes it clear that the king must acknowledge that lay law does not apply to the monks and monastic law does not apply to the laymen (Schopen 1995, 117). Buddhist sutras, such as the *Ākāśagarbha Sūtra*, also reflect this notion. In this particular sutra the Buddha names five transgressions for a member of the *kṣatriya* caste who is due to become a ruler. One of these transgressions is the forcibly disrobing or punishing of Buddhist monks – regardless of whether they are innocent of their crimes and transgressions:

Taking by force the saffron robes of those who have shaved their heads and beards for my sake and donned the saffron robes – whether they uphold the precepts or not, whether they observe the discipline or not – thus making them householders; inflicting corporal punishment on them, imprisoning, or killing them: all of these constitute the third root transgression.¹³

¹³ This translation is by the Sakya Pandita Translation Group (International Buddhist Academy Division) on behalf of 84000: Translating the Words of the Buddha (<https://read.84000.co/translation/UT22084-066-018.html>). D66, 273a: *gang yang nga'i phyir skra dang kha spu bregs nas | gos ngur smrig bgos pa bslab pa 'dzin kyang rung | bslab pa mi 'dzin kyang rung | tshul khrims 'chal kyang rung | tshul khrims dang ldan yang rung ste de'i gos ngur smrig dag 'phrog cing khyim par byed dam | lus la chad pas gcod par byed dam | btson rar 'jug par byed | srog dang 'bral bar byed pa 'di ni ltung ba'i rtsa ba gsum pa'o*].

Later on, this sutra prophesizes that monks will, in a future time, resort to plundering and stealing (even from temples) in order to pay the fines the ruler has imposed on them (D66, 277b), displaying an awareness of what a ruler's strong juridical hold on monastics could lead to. From this, and other historically better attested instances, we can gather that the notion of the legally independent renunciant represents a mere ideal – one that in and of itself has value – but which is thoroughly ahistorical.

The very fact that various Indic Buddhist normative sources emphasize the Sangha's legal autonomy is exactly because it was regularly being challenged. Throughout history, mass forced disrobements of monks, or “sangha purifications,” initiated by secular rulers were a regular occurrence in countries such as China, Mongolia, Burma, Thailand, and Sri Lanka. Naturally, this was more often than not a pretext for political gain and not necessarily done out of concern for the purity of the monkhood. It is perhaps significant that for the case of Tibet, the only time that Tibetan sources attest to such a thing happening is during the reign of Glang Dar ma (r. ?838 to ?841), an “anti-Buddhist” king who, as Tibetan historiographers report, forced monks out of their monasteries and made them wear lay clothes. Later historians suppose that the Glang Dar ma was not the villain he was made out to be and that he even restored Buddhist monuments during his lifetime (e.g., Kamay 2003; Yamaguchi 1996). The decline in monastic Buddhism in Central Tibet that followed Glang Dar ma's reign was more likely due to the economic drain posed by the still relatively new phenomena of monks and monasteries during a time when the region was hit by multiple natural disasters. Clear parallels can be drawn with the large-scale laicization of monks under Emperor Wuzong (武宗 814–46; r. 840–46) in Tang dynasty China that took place around the same time (Gernet 1995, 14–25; Weinstein 1987). Perhaps the more pertinent question is how monks saw themselves, and the vows and monastic rules that they were bound to, in relation to secular laws, rules, and rulers. To put this in more abstract terms: What is the relationship between religious ideals and the secular space?

According to Ellingson, who was the first Western scholar to investigate the genre, monastic guidelines were based on “secular” law codes (Ellingson 1990, 205). A preliminary comparison of the *bca' yig* and the extant legal codes of Tibet indeed indicates that – in particular, terminologically and linguistically – there are striking similarities between the two genres. One of the possible reasons for these similarities is the fact that the authors of the two types of texts were often one and the same. This is because the educated few were almost always heavily influenced by monastic training, in one way or the other. As mentioned above, there are even instances of law codes that were *explicitly* based on monastic guidelines, of which the code of conduct issued by the Bhutanese state (*Sgrig lam mam gzhas*), which is in current use, is a case in point (Penjore 2011, 23).¹⁴ While the question as to

¹⁴ For the constitutions of Bhutan see Aris 1979; Whitecross 2014.

how exactly monastic guidelines and legal documents are related requires further investigation,¹⁵ my research suggests that the one genre was not necessarily based on the other but that they were still strongly related and made use of each other. Answering this question involves a more in-depth philological study of legal texts and their “Buddhist and monastic” heritage, details of which are beyond the scope of this chapter.¹⁶

My research into legal texts from the mid-seventeenth century and later has so far revealed that the judicial independence enjoyed by many monasteries was not simply asserted by the monastic authorities themselves but was also deliberately awarded to them by the government or local ruler (or the authors of these texts). This notion is indeed clearly stated in many sets of monastic guidelines, as well as in legal texts. Both of these subsets of legal constitutional literature refer to each other. The monastic guidelines tend to stress that monks’ behavior should be in accordance with the “royal laws” (*rgyal khrims*), while legal texts issued by rulers emphasize that monastics are to live by their own rules. My research has shown that the latter works often display an acute awareness of the internal contents of the monastic guidelines, suggesting that the authors either were informed by monastic agents, or had a monastic background themselves. A legal edict issued in 1643 – possibly one of the very first to have been issued by the young Ganden Phodrang government – addresses all Tibetans, of high or low status, monk or layperson. Its authorship is contested, but there are indications that the fifth Dalai Lama was involved in composing it. The edict addresses the monk community separately, while at the same time also exerting authority over the monasteries (and other religious institutions) by stating the following:

People who have committed grave offenses such as murder may not be given refuge in the religious institutions. From now on, one is to be wise and successful [by] remaining in accordance with the Dharma, without disregarding the instructions established by the general monkhood (*spyi mchod*)¹⁷ who are [to behave] in accordance with their own monastic guidelines (*bca’ yig*). Whether one is high or low, no one is to go carelessly into the financial accounts¹⁸ of what is definitely the general monkhood’s.¹⁹

¹⁵ In terms of chronology, naturally “Tibetan secular law preceded ecclesiastic law,” which only began with the first ordinations at Samye in the middle of the second half of the eighth century. See Van der Kuijp 1999, 289.

¹⁶ This is part of my current research project.

¹⁷ This gloss is suggested by Cüppers (2011, 172). It can also refer to specific kinds of festivals or other religious ceremonies.

¹⁸ *mtho khongs* or *mtho khong* (version C) is here read as *tho khungs*, which means (bank-) account.

¹⁹ *mi bsad sogs khrims ’gal nyes byas che ba byas pa’i rigs mams chos sde khag mams su rten skyabs ma byed / de phyin rang rang gi bca’ yig dang mthun pa’i / spyi mchod tshugs kha ma bor ba’i chos mthun gzhus mkhas byas rjes / drag zhan sus kyang spyi mchod yin nges kyi mtho khongs nang la rtsis med du ’gro ba ma byed/*. See Jansen 2023.

On the one hand, the decree forbids monasteries from taking in wanted criminals;²⁰ on the other it simply reminds the monks that they have their own laws to abide to. It is furthermore interesting that the language used in the text is very similar to monastic guidelines written around the same time.²¹

Another legal text, apparently written during the Tsangpa (Gtsang pa) dynasty (1565–1642), similarly views the monastery as a separate legal entity: it states how people guilty of thieving should be punished (by, for example, chopping off of the hand), but it also describes how monasteries generally dealt with their own monk-thieves: they were to be expelled under the sound of the *ganḍi* and be treated in accordance with the monastery's own set of guidelines.²² It thus appears that monastic legal independence was not just condoned but also encouraged by the legal codes. If the periodization of the aforementioned legal text is indeed correct, this interdependence of monastic and secular law was not necessarily a result of the “unification of Church and State” that took place under the fifth Dalai Lama but existed prior to it. In other legal texts, the genre of *bca' yig*, and by extension monastic law, are referred to numerous times. My previous research on this genre did not properly touch upon the political usage of the genre of monastic guidelines, but here we find that lawmakers read them, referred to them, and invoked their (religious) authority.

6.4 CONSTITUTIONAL LAW AND THE SANGHA

The liberties that monasteries and monks were meant to have had clearly existed in theory, as evidenced by Tibetan legal texts. By extension then, one would presume that monks and monasteries were not expected to pay taxes. A number of edicts, issued by various rulers, reinforce the exemptions monastics tended to enjoy. An edict issued by the fifth Dalai Lama in 1648 for the holy place La stod (also spelled Las stod) that forbids hunting in the region along with hindering monks from collecting alms, also explicitly warns that monastics living in the region were not to be harassed.²³ Another edict written for the abbot of Bsam grub dgon in 'Bar rta (situated in Ldan ma, Kham, currently part of Sichuan province) on behalf of the seventh Dalai Lama in 1748, similarly reminds the local rulers and inhabitants to

²⁰ That this in fact happened is attested by Duncan's eyewitness account of eastern Tibet before 1959: “The monastery is the haven of refuge for the criminal. A hundred feet from the Batang Monastery is a place called Jaoo-Gyatse-Pung ‘the life hell of a hundred steps’ which once reached by the breaker of a law secures for him the protection of the lamas until his case is settled by mediators of the parties involved. As wealth can settle for any deed, even murder, this right of refuge is more valuable for the rich than the poor.” (Duncan 1998, 172).

²¹ For an examination, critical edition, and annotated translation of this work see Jansen 2022.

²² *Gtsang stod rgyal blon gyi mdzad pa zhal lce bcu drug pa*: 198–9: *dge 'dun nang khul nas rkun ma byas tshe* (198) *'gan dung btang ba'i gnas nas dbyung ba sogs so so'i bca' yig dang mthun ba gyis/*. This exact procedure of casting out monastic criminals is described in various *bca' yig*, see Jansen 2018, 168.

²³ See Schuh 1981, vol. 5, document XXXIII: 316–22.

allow monks of said monastery to move around freely; not to rob them; not to hinder their access to water and grass; and for the guardians of the roads, paths, and bridges not to harass them. The audience of the edict is furthermore reminded that the monastery should not be taxed in any way.²⁴ A much earlier but similar legal text written in 1267 by the famous Sakya (Sa skya) monk Phakpa (’Phags pa 1235–80) for all those “people included among the Sakyapa, big or small” requests them to exempt the monks of Chos sding monastery from military duty, taxes, and labor (*dmag khral las gsum*); from land and commercial taxes (*sho dam kha*);²⁵ and from giving foods and corvée labor (*za ma ’u lag*). Significantly, Phakpa writes this at the behest of the king (*rgyal po lung gis*) – presumably Kublai Khan.²⁶ It appears that since this legal note mostly concerns religious matters – that is to say, the sangha’s concerns – the authority lay with the “preceptor” rather than with the “donor,” in other words with the religious leader and not with the king.²⁷

These documents, of which there are many more, confirm the notion that monks and monasteries had their own legal systems, but also that they were perhaps better protected than their lay fellow countrymen by the laws that were upheld outside of their monastic boundaries. Scholars should, however, be cautious in how they interpret such texts. If indeed all monks and monasteries were and had always been “untaxable” and not to be harassed in any way, why would there be a need to confirm this in multiple legal documents? The presence of these prohibitions suggests that monasteries and their inhabitants were indeed occasionally subjected to taxes levied by local rulers – be it legally or illegally. This is further attested by the famous Mahāsiddha Tangtong Gyalpo (Thang stong rgyal po ?1361–1485), who in his biography, written by his disciple Mönpo Dewa Zangpo (Mon pa Bde ba bzang po, fifteenth century), is recorded to have addressed and criticized all the leaders of Tibet for their poor leadership, since kings in this “degenerate age”:

... monger for war, disallowing *tantrikas* and monastics to practice the Dharma
 They pursue monasteries for inflated²⁸ taxes and corvée labor
 They take delight in sinners and cheaters, saying they are “tough guys”
 They accuse those who are innocent of breaking the law
 When they are not eloquent enough²⁹

²⁴ See Schuh 1981, vol. 5, document XXXV: 329–30.

²⁵ According to Schuh *sho* is a loanword from “sino-mongolian” indicating land taxes (Schuh 1981, vol. 5: 343).

²⁶ See Schuh 1981 vol. 5, document XXXVII: 341–5.

²⁷ cf. Ruegg 2013 [1997], 220: “Moreover, in view of the many demands doubtless made on their time and energy and of their numberless practical day-to-day concerns and responsibilities, it is likely that neither Pakpa in his relation with Qubilai Khaghan nor his uncle Sakya Paṇḍita in his relation with Prince Köden was ever in a position to compose a full theoretical treatise on the ‘constitutional’ relation between the two orders represented by the officiant/spiritual preceptor and the donor-ruler.”

²⁸ Tib: *’gol*, this translation is tentative.

²⁹ Mon pa bde ba bzang po: 460: *sngags btsun mams chos byed mi ’jug par dmag la ’deg | dgon pa mams la khral’gol’u lag’ded | sdig can g.yo rgyu can la pho rgod po zer bya dga’ byed | khog skyon med kyang gnam lab ma mkhas na | khrims la’gel zer |*.

The protagonist of this biography is critical of local rulers of Tibet whom he calls self-centered. Clearly, Tangtong Gyalpo, who was *not* a monk, merely makes an appeal to the rulers' conscience, since he had not much political clout beyond his charisma and immense popularity among the people of Tibet (and beyond). Significant here is the notion that raising taxes among the monks is presented as morally abject – nonetheless it is implied that these taxes were indeed levied. The issue of taxes directly addresses the tension between monastic juridical independence and the concerns of local rulers seeking to control the monks, possibly by limiting their income.

Along with the liberties and exemptions that monastic institutions enjoyed also came responsibilities. For monasteries, to remain legal sub-units was contingent on them remaining diligent with respect to specific religious matters. A legal decree issued by the fifth Dalai Lama, for example, states that the monastery of Bsam gtan gling (in Skyid grong, in southwestern Tibet) was to be left alone by local rulers, to be allowed to make use of the fields in the surroundings, and to be exempt from taxation – but only for as long as the monks would continue to perform rituals for the living and the dead, uphold the *vinaya* [ritual] cycle, make offerings at the temples, and take responsibility for repairs and leaks (of the monastic compound) in a proper manner.³⁰ This same document also warns that no one can hunt on the monastic grounds.³¹ Elsewhere, I have demonstrated that monks were often also burdened with the responsibility of policing their own monastery's territory to prevent hunting and other untoward activities (Jansen 2018, 154–5). Indeed, when monasteries defaulted on their basic responsibilities, the local rulers or the government were allowed to intervene, which they did do not infrequently.³²

The monk-polymath 'Jam mgon Mi pham (1846–1912) confirms to the king of Derge that the secular ruler is entirely justified to put monks in their place, *despite the fact that Buddhist sutras advise against it*:

In like fashion,
 sutras such as the *Ākāśagarbha* and so forth,
 state that our teacher, the Buddha,
 prohibits the punishment of monks.
 They state that if the followers of the Buddha
 are subjected to legal punishments,
 the power of the kingdom's merit diminishes
 and becomes the reason for its destruction.

³⁰ See Schuh 1981, vol. 5, document XL: 369: *grwa ris | gson gshin dge rgyun | 'dul la lkhor las | gtsug lag khang la dkar bsnon mchod pa | zhig gsos thig cha[g] kyi las khur mams tshul ldan sgrub cing . . .*

³¹ For a fascinating study on hunting regulations in Tibet see Huber 2004.

³² A number of these occasions will be treated as case studies in my forthcoming monograph on Buddhism and Law in early modern Tibet.

However, in this degenerate age,
 there are many monks who are exceedingly unruly,
 When they cannot be disciplined
 through the sangha council's religious procedures,
 then the king needs to do this.

(trans. by Cabezón 2016, 192)

This advice to the king of Derge (Bde dge, in Kham, current-day Sichuan province), which is self-consciously modeled upon Indic *nītiśāstras* (Cabezón 2016, 247), continues with the procedure of how the king needs to relate himself to the sangha in those instances. The prerogative of the king to purge the sangha of unwanted elements – occurring often in other Buddhist countries – may have been justified by Buddhist monastic scholars, but in practice there are very few historical instances that a ruler (even when a monk himself) actually managed to bring about large-scale changes among the sangha in greater Tibet. This is something attempted by the thirteenth Dalai Lama (1876–1933), with limited success: many reforms aimed at the monkhood were reversed after his demise (Bell 1998 [1946]; Goldstein 1989).

By contrast, we see that the power relations among monks and their rulers in Mongolia, for example, were very different. There, the rulers, who of course also claimed to uphold the dual system of “Church and State” (*lugs gnyis*), regularly “defrocked” and punished monks for minor transgressions (Wallace 2010). A Mongolian post-Qing era law code (“Laws and Regulations to Actually Follow,” M. *Jinkhene Yavakh Dagaj Khuuly Dürem*), which covers monastic, criminal, and civil law, in place between 1913 and 1918, states that monks caught gambling were to be punished with up to a hundred strikes of the whip – not dissimilar from the proscribed punishment for laypeople (Wallace 2014, 331). The difference between the legal privileges of Mongolian and Tibetan monks here is remarkable, more so since all monastics involved historically follow Tibetan Buddhism, but it may well lie in the fact that many Buddhist monasteries in Tibetan areas, especially from the seventeenth century onwards, were both politically and economically powerful on a local and translocal level.

In Tibet, when monks and monasteries were subjected to government intervention, it was more often than not for political or sectarian reasons – no large-scale sangha-purifications ever took place.³³ One famous instance of this is the incident that occurred in 1921 when monk managers of Drepung Loseling (‘Bras spungs Blo sel gling), a monastic college of the largest monastery in central Tibet, tried to repossess certain estates by force. Drepung Loseling had previously invoked the thirteenth Dalai Lama’s ire by siding with the Chinese during their brief takeover of Lhasa in 1911–12. The monks involved were caught hiding in the mountains behind

³³ The thirteenth Dalai Lama did try—albeit unsuccessfully—to do exactly this, but it failed also because the large Dge lugs monasteries in Central Tibet opposed his attempts at modernization. See Bell 1998 [1946] and Goldstein 1989.

Drepung monastery (Goldstein 1989, 104–5); they were beaten, and then officially expelled. According to a Tibetan minister Charles Bell spoke with about the matter, the ringleaders were then “made over to different officials with iron fetters on their legs and cangues (square wooden boards, each side three feet long) round their necks.” They were subsequently set to work in the stables (Bell 1998 [1946], 332). The government’s harsh treatment of these men resulted in violent protests by the Drepung Loseling monks, who marched to the summer palace to purposefully disturb the Dalai Lama’s retreat. In the end, 3,000 Tibetan soldiers had to be deployed to restore calm in the Tibetan capital (Goldstein 1989, 106–7). The relatively powerful political position the thirteenth Dalai Lama found himself in at the time – evidenced by his triumph over thousands of rebellious monks – was, however, something of a historical anomaly: throughout the roughly 300 years of the Dalai Lamas being the official heads of state, only the fifth, the thirteenth, and the fourteenth Dalai Lama held any significant power.

The monastic antipathy toward government intervention has become even more distinct in the last seventy years, during which Tibetan monasteries have had to deal with the highly repressive People’s Republic of China. When, in the 1980s, monasteries were rebuilt and monastic education was reestablished, the tendency toward monastic (legal) autonomy was also rekindled. Many of the current-day protests initiated by monks and laity alike arise fundamentally from structural repression but are initially set off by the government’s interference in monastic affairs. An example of this is the large-scale protest that resulted from the attempts by the Chinese communist government to reinstate the Great Prayer Festival (*smon lam chen mo*) in Lhasa in 1986.

This age-old festival had been traditionally used by the Tibetan government to strengthen its bond with the Buddhist clergy. During this three-week period, monks from the three large Geluk monasteries in and near Lhasa would flock toward the city to conduct prayers for the success of the Tibetan government. Monks, refusing to pray on behalf of a repressive communist government, protested the mandate to attend, which resulted in large-scale arrests. Subsequent boycotts and further arrests eventually sparked the riots that took place on March 5, 1988. Attempts to quell the riots with violence resulted in an unknown number of deaths (for the historical context of this see Jansen 2020b). Similar protests, in many cases relating to religious self-determination, crop up time and again in Chinese-ruled Tibetan areas. Understanding the historical precedent for these protests to be based in the long tradition of monastic legal autonomy is helpful in comprehending the regularity and vehemence with which they occur.

6.5 CONCLUDING REMARKS

The very basic function of monastic law as understood by monastic authors themselves is rather similar, if not identical, to law outside of the Tibetan monastery.

Laws—and by extension justice—essentially serve to secure social order in both milieus. In Tibetan societies, where the government has traditionally been symbolically prominent yet functionally absent, the distinctions between law and custom (Ramble 2008, 41) – or for that matter law and morality – are less easily made. The same may be said for other Buddhist traditions in Asia.³⁴ Buddhist morality and secular law ultimately are both “normative social practices” and also “symbolic expressions of social values” (Wallace 2014, 332). Religion – and by extension Buddhism – is often viewed by scholars as providing a means of social control, which implies, to cite Gombrich, “a system of rewards and punishments, either internalized during socialization or externally supplied by institutions, or both” (1975, 218). The two kinds of legal codes thus existed symbiotically in order to support this social order.

What this chapter emphasizes is that monks – or to be more specific, monastic members of a monastery – had a special legal status that awarded them significantly more liberties than lay Tibetans. At the same time, monastic institutions were supposed to “pay” for those liberties by carrying out duties that were seen as essentially the responsibility of monks. When a monastery neglected these religious, ritual, and social duties, its special legal status was nullified, which could potentially have severe consequences. The bodies of rules that governed the monastery and its inhabitants, as well as those which governed the rest of the Tibetans, display an awareness and an acceptance of the status of the monastic institutions. These two sub-genres of legal works clearly influenced each other, not just because their authors were often one and the same but also because the inherently Buddhist value of putting the sangha first was shared among all legal actors.

REFERENCES

Tibetan Language Materials

- Ākāśagarbhasūtra* (Nam mkha' snying po'i mdo). *Degé Kangyur*, vol. 66 (mdo sde, za), folios 264.a–283.b.
- Bod kyi khrims srol skor gyi lo rgyus yig tshags phyogs sgrig zhal lee phyogs sgrig*. 2016. Rdo sbis Tshe ring rgyal & Rdo sbis Tshe ring rdo rje eds. Lhasa: Bod ljongs mi dmangs dpe skrun khang.
- Bod kyi snga rabs khrims srol yig cha bdams bsgrigs*. 1989. Lhasa: Bod ljongs mi dmangs dpe skrun khang.
- Gzhung dga' ldan pho brang skabs kyi khrims srol bca' chings bdams bsgrigs*. 2008. Nor bu bsam 'phel (ed.). Beijing: Mi rigs dpe skrun khang.
- Mon pa bDe ba bzang po. 1984–85. *Bla ma thang stong rgyal po'i rnam thar gsal ba'i sgron me*. In *Thang stong rgyal po gsung 'bum*, vol. 2. National Library of Bhutan, 3–591.
- Snga rabs bod kyi srid khrims*. 2004. Bsod nams tshe ring (ed.). Beijing: Mi rigs dpe skrun khang.

³⁴ A similar remark can be made with regard to Burma, for example. See Huxley 1995, 81.

- Snga rabs bod kyi srid khirms gsal ba'i me long*. 2014. Bsod nams tshe ring (ed.). Beijing: Mi rigs, dpe skrun khang.
- Zhal lce phyogs bsodus: Bod kyi dus rabs rims byung gi khirms yig phyogs bsodus dwangs byed ka ta ka zhe bya ba bzhugs so*. 1987. Tshe ring bde skyid (ed.). Xinhua: Bod ljongs mi dmangs dpe skrun khang.

Other Sources

- Aris, Michael. 1979. *Bhutan: The Early History of a Himalayan Kingdom*. Warminster: Aris & Phillips.
- Bell, Charles. 1998 [1946]. *Portrait of a Dalai Lama: The Life and Times of the Great Thirteenth*. Delhi: Book Faith India.
- Carrasco, Pedro. 1959. *Land and Polity in Tibet*. Seattle: University of Washington Press.
- Cassinelli, Charles William, and Ekvall, Robert B. 1969. *A Tibetan Principality: The Political System of Sakya*. Ithaca: Cornell University Press.
- Cüppers, Christoph. 2011a. "Ein Erlaß des Königs Gushri Khan aus dem Jahr 1643." *Zentralasiatische Studien des Seminars für Sprach und Kulturwissenschaft Zentralasiens* 40: 164–77.
- 2011b. www.tibet-encyclopaedia.de/gesetzbaeuecher.html. Accessed on November 15, 2021.
- Deeg, Max. 2016. "The Order of the dharma and the order of rulership: On the relationship between monastic community and worldly power in the history of Buddhism." *Fruehmittelalterliche Studien - Jahrbuch des Instituts für Fruehmittelalterforschung der Universität Münster* 50 (1): 297–314.
- Dotson, Brandon. 2006. *Administration and Law in the Tibetan Empire: The Section on Law and State and its Old Tibetan Antecedents*. DPhil dissertation, Oxford University.
- Dreyfus, Georges. 1995. "Law, State and Political Ideology in Tibet." *Journal of International Association of Buddhist Studies* 18 (1): 117–38.
- Duncan, Marion H. 1998 [1964]. *Customs and Superstitions of Tibet*. Delhi: Book Faith India.
- Ellingson, Ter. 1990. "Tibetan Monastic Constitutions: The bCa' yig." In *Reflections on Tibetan Culture: Essays in Memory of Turrell V. Wylie*, edited by Lawrence Epstein and Richard F. Sherburne, 205–29. Lewiston: Edward Mellen Press.
- French, Rebecca Redwood. 1996. "Tibetan Legal Literature: The Law Codes of the Dga' Ldan Pho Brang." In *Tibetan Literature: Studies in Genre*, edited by Sopa Lhundup, José I. Cabezón and Roger R. Jackson, 438–57. Ithaca: Snow Lion.
- Gemet, Jacques. 1995. *Buddhism in Chinese Society: An Economic History from the Fifth to the Tenth Centuries*, trans. Franciscus Verellen. New York: Columbia University Press.
- Goldstein, Melvyn C. 1989. *A History of Modern Tibet, 1913–1951: The Demise of the Lamaist State*. Berkeley: University of California Press.
- Gombrich, Richard F. 1975. "Buddhist Karma and Social Control." *Comparative Studies in Society and History* 17 (2): 212–20.
- Huber, Toni. 2004. "Territorial Control by 'Sealing': A Religio-Political Practice in Tibet." *Zentralasiatischen Studien* 33: 127–52.
- Huxley, Andrew. 1995. "Studying Theravāda Legal Literature." *Journal of the International Association of Buddhist Studies* 20 (1): 63–91.
- Jansen, Berthe. 2014. "The Monastic Guidelines (bCa' yig) by Sidkeong Tulku: Monasteries, Sex and Reform in Sikkim." *Journal of the Royal Asiatic Society* 24 (4): 597–622.
2015. "Monastic Organizational Guidelines." In *Brill's Encyclopedia of Buddhism*, vol. 1, edited by Jonathan Silk et al., 442–49. Leiden: Brill.

2016. "Monastic Guidelines (*bCa' yig*): Tibetan Social History from a Buddhist Studies Perspective." In *Social Regulation: Case Studies from Tibetan History* (Proceedings of the International Association of Tibetan Studies Conference, Ulan Baatar, 2013), edited by Jeannine Bischoff and Saul Mullard, 64–98. Leiden: Brill.
2018. *The Monastery Rules: Buddhist Monastic Organization in Pre-modern Tibet*. Oakland: University of California Press.
- 2020a. "The Origins of Tibetan Law: Some Notes on Intertextuality and the Reception History of Tibetan Legal Texts." *Revue d'Etudes Tibétaines* 55: 221–44.
- 2020b. "Law and Order during the Lhasa Great Prayer Festival." In *On a Day of a Month of the Fire Bird Year: Festschrift for Peter Schwieger on the Occasion of His 65th Birthday*, edited by Jeannine Bischoff, Petra Maurer, and Charles Ramble, 415–35. Lumbini: Lumbini International Research Institute.
2022. "Visualising Tibetan Social History through Philology: A Case-Study of a Legal Decree in Eight Versions." CRCAO.
- Kapstein, Matthew. 2006. *The Tibetans*. Oxford: Blackwell.
- Karmay, Samten. 2003. "King Langdarma and His Rule." In *Tibet and Her Neighbors*, edited by Alex McKay, 57–68. London: Edition Hansjörg.
- Mipham, Jamgön and José I. Cabezón (trans.) 2017. *The Just King: The Tibetan Buddhist Classic on Leading an Ethical Life*. Boulder: Shambhala Publications.
- Penjore, Dorji. 2011. "Rows of Auspicious Seats: The Role of *bzhugs gral phun sum tshogs pa'i rten 'brel* Ritual in the Founding of the First Bhutanese State in the 17th Century." *Journal of Bhutan Studies* 24: 1–42.
- Pirie, Fernanda. 2006. "Secular Morality, Village Law, and Buddhism in Tibetan Societies." *Journal of the Royal Anthropological Institute* 12 (1): 173–90.
- 2013a. "Who Were the Tibetan lawmakers?" In *Tibetans Who Escaped the Historian's Net: Studies in the Social History of Tibetan Societies*, edited by Charles Ramble, Peter Schwieger and Alice Travers, 161–78. Kathmandu: Vajra Publications.
- 2013b. "Law and Religion in Historic Tibet." In *Religion in Disputes: Pervasiveness of Religious Normativity in Disputing Processes*, edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, Martin Ramstedt and Bertram Turner, 231–47. New York: Palgrave Macmillan.
2016. "State, Law, and Morality in Traditional Tibet." In *Social Regulation: Case Studies from Tibetan History*, edited by Jeannine Bischoff and Saul Mullard, 231–49. Leiden: Brill.
2017. "Buddhist Law in Early Tibet: The Emergence of an Ideology." *Journal of Law and Religion* 32 (3): 406–22.
2020. "The Making of Tibetan Law: The *Khrims gnyis lta ba'i me long*." In *On a Day of a Month of a Fire Bird Year: Festschrift for Peter Schwieger*, edited by Jeanine Bisschoff, Petra Maurer and Charles Ramble, 599–618. Lumbini: Lumbini International Research Institute.
- Ramble, Charles. 2008. *The Navel of the Demons: Tibetan Buddhism and Civil Religion in Highland Nepal*. New York: Oxford University Press.
- Roesler, Ulrike. 2015. "'16 Human Norms' (mi chos bcu drug) – Indian, Chinese, and Tibetan." In *The Illuminating Mirror: Tibetan Studies in Honour of Per K. Sørensen on the Occasion of his 65th Birthday*, edited by Olaf Czaja and Guntram Hazod, 389–409. Wiesbaden: Dr. Ludwig Reichert Verlag.
- Ruegg, D. Seyfort. 1991. "*Mchod yon / yon mchod* and *mchod gnas / yon gnas*: On the Historiography and Semantics of a Tibetan Religio-Social and Religio-Political Concept." In *Tibetan History and Language: Studies Dedicated to Uray Geza on His*

- Seventieth Birthday*, edited by Ernst Steinkellner, 441–53. Vienna: Arbeitskreis für tibetische und buddhistische Studien.
- 2013 [1997]. “The Preceptor-Donor Relation in Thirteenth Century Tibetan Society and Polity: Its Inner Asian Precursors and Indian Models.” In *The Tibet History Reader*, edited by Gray Tuttle and Kurtis Schaeffer, 211–32. New York: Columbia University Press.
- Schopen, Gregory. 1995. “Monastic Law Meets the Real World: A Monk’s Continuing Right to Inherit Family Property in Classical India.” *History of Religions* 35 (2): 101–23.
- Schuh, Dieter. 1981. *Grundlagen tibetischer Siegelkunde: Eine Untersuchung über tibetische Siegelaufrschriften in ‘Phags-pa-Schrift*. Monumenta Tibetica Historica, vol. 5. Sankt Augustin: VGH Wissenschaftsverlag.
1984. “Recht und Gesetz in Tibet.” In *Tibetan and Buddhist Studies: Commemorating the 200th Anniversary of Alexander Csoma de Kőrös*, edited by Louis Ligeti, 291–311. Budapest: Akadémiai kiadó.
- Schwieger, Peter. 2021. *Conflict in a Buddhist Society: Tibet under the Dalai Lamas*. Honolulu: University of Hawai‘i Press.
- Stein, Rolf A. [1962] 1972. *Tibetan Civilization*. Stanford: Stanford University Press.
- Tucci, Giuseppe. 1949. *Tibetan Painted Scrolls*, vol. 1. Rome: Libreria dello Stato.
- Uray, Geza. 1972. “The Narrative of the Legislation and Organization of the Mkhas pa’i dga’ ston: The Origins of the Traditions Concerning Sron-brcan Sgam-po as the First Legislator and Organizer of Tibet.” *Acta Orientalia Academiae Scientiarum Hungaricae* 26: 11–68.
- Van der Kuijp, Leonard. 1999. “The Yoke Is on the Reader: A Recent Study of Tibetan Jurisprudence.” *Central Asiatic Journal* 43: 266–92.
- Vermeersch, Sem. 2008. *The Power of the Buddhas: The Politics of Buddhism during the Koryō Dynasty (918–1392)*. Cambridge: Harvard University Press.
- Wallace, Vesna. 2014. “Buddhist Laws in Mongolia.” In *Buddhism and Law: An Introduction*, edited by Rebecca Redwood French and Mark A. Nathan, 319–33. New York: Cambridge University Press.
2010. “Legalized Violence: Punitive Measures of Buddhist Khans in Mongolia.” In *Buddhist Warfare*, edited by Michael Jerryson and Mark Juergensmeyer, 91–103. Oxford: Oxford University Press.
- Weinstein, Stanley. 1987. *Buddhism under the Tang*. Cambridge: Cambridge University Press.
- Whitecross, Richard W. 2014. “Buddhism and Constitutions in Bhutan.” In *Buddhism and Law: An Introduction*, edited by Rebecca Redwood French and Mark A. Nathan, 350–67. New York: Cambridge University Press.
- Yamaguchi, Zuihō. 1987. *Chibetto*, vol. 1. Tokyo: Tokyo daigaku shuppankai.
- 1996 “The Fiction of King Dar ma’s Persecution of Buddhism.” In *Du Dunhuang au Japon: études chinoises et bouddhiques offertes à Michel Soymié*, edited by Jean-Pierre Drège, 231–58. Geneva: Droz.

Websites

www.britannica.com/topic/constitutional-law. Accessed on November 15, 2021.

<https://read.84000.co/translation/UT22084-066-018.html>. Accessed on July 26, 2022.