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Buddhism and Law

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REBECCA REDWOOD FRENCH

The Cosmology of Law in Buddhist Tibet

In an effort to think anew about the relationship between secular law and Buddhist law, as well as the relationship between traditional and modern concepts of civic religion, this paper will present secular Tibetan law as it existed during the reign of the Dalai Lamas in Buddhist Tibet. My first goal will be to discuss briefly the organization and administration of the Tibetan secular legal system, the roles of officials and legal representatives, some jurisprudential concepts and the law codes.¹

A second focus will be to reorient our understanding of Buddhist law toward a more interpretive and actor-centered framework. I will begin by presenting a legal case, narrated by a Tibetan, which took place in Lhasa in the 1940s and will be presented in two parts. Each part will be followed by an exegesis of the questions I found myself asking as it was recounted, questions which came from my own presumptions and preconceptions as an American attorney with training in anthropology. Each of the answers to these questions builds part of the hemispheric cultural backdrop in which this Tibetan narrator operated as a legal actor — his use of myths, relations of power, concepts of time, space and personal identity, the legal rituals, history, religious principles, reasoning patterns, procedures, available roles, symbols—in short, a backdrop which I call the *Cosmology of Law*. It is my view that for each case at law, a participant draws from this *Cosmology of Law*, these particular shared categories, social practices and social concepts, and foregrounds them into presentations for a particular set of circumstances. It is possible for us to work back from these actual instantiations of particular cases to sketch out the cosmological

1. A version of this article was presented at the Numata Conference on Religion and Law at the University of Chicago in March, 1994. I would like to thank Pierre Schlag and Kristen Van Ausdall for their comments on this paper. This paper is dedicated to my daughter, Emilie Redwood Hess.

hemisphere from which elements are being drawn and this exercise in construction from the particular constitutes a new interpretive approach to Buddhist and secular law.

My third endeavour will be to question the ways in which we are constructing our categories of meaning in this inquiry, in particular the terms “religion,” “Buddhism,” “secular law,” and “religious law.” In an attempt to reconsider and unpack the modern connotations of these terms, I think that we will find layers of epistemological (indeed, even ontological) assumptions about the nature of our inquiry which will help us to reflect on, and perhaps introduce new questions into, our exegetical and theoretical enterprise.

I would like to begin with a story taken from the verbatim taped transcript of a Tibetan layman who worked as a *kha mchu len pa* or legal representative in the capital city of Lhasa in the 1940s. Kungo Tsewang Tamdin is a very knowledgeable man who handled cases in the Lhasa government courts for the state of Sakya as well as for private clients. The conversations between Kungola Tsewang Tamdin and I spanned several years in the mid 1980s. We met in his three room cement apartment in Dharamsala, India and talked over continuous cups of Tibetan tea proffered by his manservant. While I interviewed over two hundred Tibetans in depth during this period, Tsewang Tamdin remains fixed in my memory as particularly perceptive, capable of the most detailed renderings of the minute circumstances of cases in court in Lhasa. Here is a short excerpt from his story:

Every year in the same month, almost a thousand [*sa skya*] monks traveled west from their home monastery in *khams* [in eastern Tibet] to *ngor* monastery in central Tibet to receive teachings from the *sa skya* [high lamas]. When they came this long distance, they begged food and clothing along the way from the people in the districts.

One year I learned that a man and his friends had become very angry with [a large group of] monks [for their insistent begging] and after a fight, had killed two of them. This was a very terrible happening and became a well-known event in the entire area.

Now, the person who had killed the monks was a member of the Tibetan army and so the local community [where the incident occurred] sent a petition to the Tibetan Cabinet [in the government in Lhasa]. The case was sent by the Cabinet to the Office of the Army [in Lhasa]. So the man [who had

done the killing] was brought to that office in Lhasa and he was whipped with the "initial whip" by the guards of that office.

Then two women who had known the murdered *sa skya* monks well and were from their home village [in Khams in eastern Tibet] came to see me [at home] and asked that I would go into court for them. I said that I had nothing to appeal to the court for. They asked me to appeal to the court for the *stong* payment. For one ordinary monk, [they said] the payment is 9 *rdo tshad*, so for two monks it was 18 *rdo tshad*. [They said that] if the monks had robbed or fought [prior to the murders], then the amount of the *stong* payment would be reduced. So, in response to the request of these women, I said that I would petition to the court office for them.

So, I went to the office to the west of the city and found that there were two very important Tibetan officials acting as judges in this case. One was of the Cabinet Minister rank and the other was of the next lower rank. Instead of carrying a written petition with me, I just went to the office and made the request orally. After presenting the entire oral petition, the judges told me they would consider the claim of the women and said that I should return when [all of the issues of] the case [had been] decided.

This is the first half of this simple case. The ways in which actors fashion their own intersubjective meanings and narratives represents the heart of legal practice in this Buddhist society. And yet the meanings which Tsewang Tamdin fashions through this story are hidden from us as readers. As readers, much of what we understand about this case is through projections about our own legal system which may indeed be misunderstandings of his legal system. So in order to approximate what he is representing, we need to know a number of things about the Tibetan milieu as he perceived them, such as: how the monks and army officers were viewed in the society; when and how and for whom Tsewang Tamdin could intercede; the complexities of ritual and procedure he articulated; the meaning of the word *stong*; who signed a document and where; and what language codes were used in each particular setting.

We will investigate in the next section just what those meanings and understandings were for Tsewang Tamdin, and find perhaps that many of our presumptions were misdirected. This exegesis of the Legal Cosmology of this "Case of the Murdered Monks" will include the following sections: (1) The Nature of Reality and Illusion, Cosmos and Time; (2) The Mandala of the Law including Institutions, Space and Legal Units; (3) Moral Narratives and Myths; (4) Jurisprudence of

the Mind; (5) The Rituals of the Golden Yoke including Language and Roles; and (6) The Grammar of the Law.

The Nature of Reality and Illusion, the Cosmos and Time

Tsewang Tamdin commented to me several times in reference to this case, that because the Tibetan legal system acknowledged the Buddhist threefold nature of reality, he was prepared for arguments shifting the reality/illusion frame of this incident from the appearance level of reality, the parikalpita in Sanskrit (*kun brtags pa'i* in Tibetan), to the relative or paritantra level (*gshan gyi dbang*) or to the final, perfected level of reality, the parinispanna (*yons su grub pa*). When questioned as to what this meant, he responded that he was poised to find out that the facts as represented were not the real facts, that is, to find out that one or either of the monks were actually tulkus (*sprul sku*), reincarnations of their predecessors, or high level tantric masters which would have significantly changed their social value and the meaning of their acts. He would not have been surprised to have been told that the army officer was not what he appeared to be, i. e. that he had some other religious identity. Arguments might be made that this incident was a karmic necessity to burn off the bad seeds of the monks. It might be rationalized due to some previous karmic relation between the parties. He said that parties had argued that a death was not a death at all but a transmission of life to another being staged as a death. While doubting that these arguments would influence the judges in a murder case, Tibetan legal representatives had to be prepared for several possible reality shifts that foregrounded the Buddhist notion of the illusory nature of this worldly life and the ultimate reality of perfected vision.

The temporal dimensions of this case also markedly determined our narrator's approaches and responses. Fine distinctions made on the basis of the dates of particular statutory changes, so common in western law, are not strongly at issue here. We are not told in the story how long after the murder the case was reported or how long after that the defendant spent in confinement, or even which statute applied because of when it took place. There is a timelessness, a kind of atemporality, in this story and Tibetan law which is very distinctive and related to the everpresentness of different realities and cosmic realms.

*The Mandala of the Law
including Institutions, Space and Legal Units*

How did Tsewang Tamdin understand the relationship between the site of the case and the central city courts? What were the spatial and temporal components of these relations? Tsewang related these ideas to me, as many Tibetans had, using the root metaphor for the Tibetan cosmos, a *dkyil 'khor* or mandala pattern. The Tibetan mandala presents the entire universe and all realms within a single essential plan, representing at one and the same time the constancy of movement in/out, up/down, the cyclical nature of rebirth, reified social and spatial hierarchy, the universalized path of individual mental conscience and the ultimate union of the sacred and the secular in a single cosmic design. The mandala is also the root metaphor for the levels of the legal administration in ever decreasing circles, from the outerlying districts of the plateau, to the district headquarters, to the governors' offices, to the Cabinet in the capital city and, ultimately, to the central godhead of the Dalai Lama. This form was repeated in Lhasa, for the central administration building in the capital which contained the High Court was built around a core building which housed the Jowo, the most sacred statue of the Sakyamuni Buddha in Tibet. Thus, mapping the legal system of Tibet in mandala form both integrated law into this pervasive religious schema and legitimized it with a symbol of cosmic integration.

Why were the deaths of these two monks being handled not in ecclesiastical but in governmental courts? Monastic institutions and monastic landholdings were extensive in Tibet and sects such as the Sakya often held plots of land throughout the entire plateau in addition to their large central Vatican-like state within the domain of the central provinces. These sectarian holdings both divided the country into separate doctrinal groups and united it with constant exchanges and relationships between the farflung monastic units such as the annual pilgrimage by the monks in this case. Monastic institutions had their own court processes following the Vinaya. Appeal was available through the ecclesiastical administration to the High Ecclesiastical Office in the Potala and, ultimately, to the Dalai Lama. Murder and a few other serious offenses committed by monks resulted in their expulsion from the monastic community and their treatment in the secular courts. In Tibet, the occupation of the defendant in a murder case determined the venue of the trial. In this instance, the crime was committed by a member of the Army. The local people were respon-

sible for reporting the murder to the Cabinet in Lhasa which then assigned it to the Office of the Army. The new Army, organized in the twentieth century after prodding by the British, held an ambiguous position in Tibetan society with its traditional rejection of war. For this reason, the offices of the Army were located outside of the city and the central mandala of power. Tsewang Tamdin tells us that he “went to the office to the west of the city . . .”

How does the Tibetan secular court system with its multiple levels of court-offices and standardized process of appeal compare to the hierarchical layering of legal institutions in the west? There are few similarities between the two systems. For example, most cases in Tibet could be started at any level including the Cabinet and this was not true only for elite petitioners. At each level, there were several different types of procedures and a variety of forums for a plaintiff to approach. Petitioners had to reach consensus with the other party and with the adjudicators in that forum before a suit was joined, or taken up by the forum. Suits could travel up and down in the system, that is, they could go to the local headman, then to the Cabinet in official government procedure, then out to conciliation with a lama, then down to a steward in a regional estate for decision, then back to the Cabinet for closure. Even when the Cabinet accepted a case that the parties had agreed to, the suit did not go forward without their consent and one of the parties could then start proceedings elsewhere.

Added to this were several other ideas such as the concept of “non-decay” (that suits did not become old with the passage of time), the lack of exclusive jurisdiction for courts and the notion that courts were generally not legal level specific, legal procedure specific or legal subject matter specific. Thus a minor secular family dispute could be brought to the High Ecclesiastical Court in the Potala by a family member of one of the clerks just as it could be brought to that families’ neighborhood watchman in Lhasa. Flexibility, non-decay, overlapping jurisdiction, consensus to forums and procedures are among the many elements which make the Tibetan legal system dissimilar from our own and which made navigation through its channels so interesting. Crimes of murder, as in this case, were the exception; they were routinely sent up through official channels to the Cabinet in Lhasa and then referred out for trial at the appropriate upper level court, here the Office of the Army outside the city. However, even in murder cases, the forum could be contested and the court could not proceed without the appearance and participation of all parties to the

case. Tsewang Tamdin mentioned to me that, if they had refused to recognize his claim to the payments, he would have objected to the venue.

Why is it that two unrelated women from a village of the victims could intrude into this legal process? Tibetan legal units were conceptualized rather broadly. The category of persons who could make claims for payments for compensation or reharmonization in post-trial rituals was large in Tibet as was the group of persons who might be potentially responsible for such payments. An individual murderer was not protected from the process by his presence in a larger category of army personnel just as a member of a corporate business unit could not be shielded from individual liability. These aspects of the legal system connote very different concepts of social units, social responsibility and individual identity.

Moral Narratives and Myths

What did the narrator see as the relationship between Buddhism and a secular legal system? On the one hand, Tsewang Tamdin presented no clear division between the religious and political realms or between administration and law in his conversations. Indeed, he presented inviolable connections such as the fusion of the Buddha in the form of the Dalai Lama with the state and the Buddhist religion. The overarching picture is one of a unified cosmos represented by the mandalic form of a government centered in the Buddha. On the other hand, he clearly differentiated between *tshul khrims*, moral law from the Vinaya (which outlined the Buddha's rules and procedures for the monastery) and *rgyal khrims*, state law as described in the *khrims yig zhal lce* (the law codes of the secular government for use in the government courts). Thus, he saw them simultaneously as one and the same, and as entirely distinct.

When I asked Kungo Tamdin about the moral dimensions of this case, he responded in several ways. First, he said, murder was the most important of the Ten Non-Virtuous Acts and particularly consequential to one's karmic position when done in anger as here. Second, he stated that it was essential to make particular normative arguments in court. In this case, for example, he had to argue that the two female petitioners were aware of the need to beneficially influence the future lives of the dead monks by performing the correct religious rituals and that this was their purpose in obtaining the money. Third, it was presumed that the judge officiating was considering the future life of the

defendant when sanctioning. Indeed, in other cases like this one, the amputation of limbs or severing of tendons of the defendant was construed by the judges as the best punishment because it promoted prayer in this life by eliminating all occupations except that of a prayer-wheel spinning mendicant. Fourth, for Tsewang Tamdin and the other parties to this case, the Buddha stood as an ideal standard, a constant reference point for right ways of action in the court. So, though the *Case of the Murdered Monks* involved little moralizing as rendered, it was played out against a resonant moral background understood by all the participants.

While never mentioned, ancient Tibetan myths and stories played a key subtextual role in this case influencing the decision of the judges and the roles of the parties. It mattered greatly, our narrator related, that the monks were from the land of *ge sar*. Now what does this mean? Eastern Tibet in general was reknowned as the land of *ge sar* of *gling*, the epic king turned warrior god of Tibetan mythology. The *khams pa*, the term for people from a large area in eastern Tibet, have *pon* or chiefs who claim descent from *ge sar*'s half-brother. Lhasa residents consider them to be extraordinary horsemen and swaggerers with rough and crude manners who pick fights that result in physical violence. These characteristics are both mocked and admired by the central Tibetans for they represent the haughty freedom of the nomadic pastoralists as well as the tribal lives of the revered original Tibetan kings who were only modestly pacified by Buddhism. Thus it becomes important that the monks who were killed in the story were *khams pa*, reknowned for their bellicose personalities and that they were killed by a member of the new Army, formed recently and hardly considered an effective fighting force in the country.

Given the moral pollution of murdering two monks, why were very religious lay people, such as the narrator and two women, involving themselves in this case? While the relationship of the lay population to the monastic population in Tibet is a thoroughly Buddhist division between spiritual supporters and spiritual seekers, the monastic population was so large that it often, especially on pilgrimage as in this case, presented the local population with an excessive burden of voluntary provisioning. Thus, while this incident was infamous, it was not surprising to Tibetans and did not cause our narrator to refuse the case, nor the women to refuse the payments.

The Jurisprudence of the Mind

When I asked Tsewang Tamdin about the repertoire of concepts he used to frame his arguments in court that first day, he began with the caveat that Tibet had no legal concepts per se, only concepts from the Buddha. That said, he moved on in the course of our interviews to a variety of jurisprudential concepts pertinent in this case such as the process of *factoring* by which all acts including murder were assessed with respect to—the object, the motivation, the act and the completion of the act. A *mental conscience*, particularly one that recognized right conduct and moral self-regulation (*rang khrims*) was viewed as the foundation of a moral society. Mental conscience was an essential characteristic to be established for any witness or party. Persons with moral self-regulation were not, in the words of the law codes, “acting for their own benefit”; they spoke honestly, they worked to reharmonize themselves and the community and they acted responsibly considering their household or community.

A third point in this case was that *citation to precedent* carried absolutely no weight in Tibetan courts, *stare decisis* (the doctrine that a court will stick with precedent) as well as *res judicata* (the doctrine that a final decision by a court is a bar to subsequent action) did not pertain. Most cases in Tibet, Tsewang Tamdin explained, could be continually reopened, a feature he and others lauded. Individuals and circumstances were presumed to be radically unique, that is, not comparable to other persons or circumstances regardless of how apparently similar they were. Therefore, as a legal representative, he went into court without recourse to layers of previous interpretations. References at trial were made primarily to standards in the law codes and to factoring of the circumstances on the basis of the Buddhist principles. Many other jurisprudential notions such as proof, and root and immediate causation, while they are not highlighted in this case, were also part of this narrator’s legal conceptual repertoire.

Feeling rather more situated within the Tibetan context, we return to the *Case of the Murdered Monks* to listen once again to Tsewang Tamdin, from the beginning to the conclusion of his story:

Every year in the same month, almost a thousand [*sa skya*] monks traveled west from their home monastery in *khams* [in eastern Tibet] to *ngor* monastery in central Tibet to receive teachings from the *sa skya* [high

lamas]. When they came this long distance, they begged food and clothing along the way from the people in the districts.

One year I learned that a man and his friends had become very angry with [a large group of] monks [for their insistent begging] and after a fight, had killed two of them. This was a very terrible happening and became a well-known event in the entire area.

Now, the person who had killed the monks was a member of the Tibetan army and so the local community [where the incident occurred] sent a petition to the Tibetan Cabinet [in the government in Lhasa]. The case was sent by the Cabinet to the Office of the Army [in Lhasa]. So the man [who had done the killing] was brought to that office in Lhasa and he was whipped with the "initial whip" by the guards of that office.

Then two women who had known the murdered *sa skya* monks well and were from their home village [in Khams in eastern Tibet] came to see me [at home] and asked that I would go into court for them. I said that I had nothing to appeal to the court for. They asked me to appeal to the court for the *stong* payment. For one ordinary monk, [they said] the payment is 9 *rdo tshad*, so for two monks it was 18 *rdo tshad*. [They said that] if the monks had robbed or fought [prior to the murders], then the amount of the *stong* payment would be reduced. So, in response to the request of these women, I said that I would petition to the court office for them.

So, I went to the office to the west of the city and found that there were two very important Tibetan officials acting as judges in this case. One was of the Cabinet Minister rank and the other was of the next lower rank. Instead of carrying a written petition with me, I just went to the office and made the request orally. After presenting the entire oral petition, the judges told me they would consider the claim of the women and said that I should return when [all of the issues of] the case [had been] decided.

Then sometime later I was called to the court. The secretary brought the final decision document outside and read it in front of the court waiting room [to all of the participants]. I was then given a notice to come back the day after tomorrow.

On that day, the secretary of the court again read the decision and explained the court costs section and the payment of the *stong* and all the many other payments required. Then the secretary asked all sides of the dispute to sign the decision document, including the army man-murderer and myself. So, at the bottom of the document, the murderer and I both signed and sealed the document. Then the secretary turned to the murderer and asked him for the *stong* payment.

He offered it and the secretary took the *stong* payment from the murderer. From this payment of 18 *rdo tshad*, the [Head] secretary then subtracted the court costs and the ink fees for the [drafting] secretaries and handed the rest to me. There were three copies made of the document and I received one.

After that I left, so that I did not find out about the other punishments given to the murderer.

Then I went to see the two women who had asked me to represent them. I gave them all of the remaining money and later they used it all for the funeral rites and for other religious rituals for the future lives of the monks. I then took an account from these women of what they had spent and the offerings that they made and sent the receipts for this to their home district. Usually, the *stong* payment goes to the relatives but this time, the only people who knew the monks and claimed the payments were these two women, so it went to them. That was the end [of it].

Once again, I think, we find that more information in the case throws us into confusion. Why is the murderer signing the decision document? What is the *stong* and why are all of these payments calculated from it? Is this all the punishment that the murderer gets? Here again, our assumptions about the nature of the enterprise continue to fill up and shape our mental space. Returning to the device of exegetical questions, our assumptions can be replaced by an understanding of the Tibetan legal practices as Tsewang knew them.

The Rituals of the Golden Yoke including Language and Roles

What kinds of ritual processes were available in a case like this? There were at least four distinct types of ritualized legal processes in Tibet:

1. visiting an official at home,
2. an official court procedure which had over forty-four intricate steps,
3. conciliation which was a distinct area of procedure with its own history and vocabulary, and
4. other less formal rituals such as rolling dice, plunging a hand in hot oil or water, visiting an oracle and swearing before a diety.

When the two women first visited our narrator, they used the first form of these ritual procedures and saw him at home. The actual trial before the Army court was an official court process (the second form mentioned above) which Tsewang described in only brief detail in this case. All of the territories throughout the plateau had officials or headmen who knew how to carry out these procedures and could communicate with the central government in proper legal style. These ritualized procedures and documentary practices were the basic unifying element of the Tibetan legal system. They were the core of the system

and yet, they were not contained in the law codes and were never written down as rules.

And what were the roles in the secular legal system and to whom were they available? And what did legal representatives have to know to be skilled at their jobs? The courtroom personnel for an official trial like this consisted of at least two (usually three or more) judges on raised mattresses in front of low tables, several clerks, usually seated against a side wall, a caretaker to announce the case, and often, several helpers to bring the parties in, find evidence and carry messages. Most offices in Tibet were staffed by at least one monk official and one lay official; in courts, these two officials were the judges. The lay official positions were filled by sons of nobles, sons of clerks of the larger families and sons of private land owners who encouraged their children to get an education. Monk official positions were filled with sons from the elite noble class and non-elite trainees of all social levels who had entered the monastery early and had proven to be particularly smart and skilled. The role of the conciliator was available to any individual with religious devotion, good administration skills or wealth. Other less formal rituals—rolling dice, visiting an oracle and swearing before a diety—were arranged by a variety of specialized practitioners.

Tsewang Tamdin outlined some of the necessary characteristics and knowledge for a legal representative, an official or a conciliator: ability in speaking, skill at drafting and writing both petitions and decisions, ability in calculating court costs and other payments, knowledge of the appropriateness of various forums and customary types of sanctions, ability in creating a legal file, knowledge of the law codes and familiarity with the standard procedure for all official and non-official legal processes.

Language played a vital role in the structuring, processing and winning of law suits in Tibet. Forensic skill was thought by Tibetans to be intimately related to Tibetan Buddhist monastic debate and particularly Buddhist reasoning styles. Many of the important legal representatives in Lhasa were either monks or individuals with some religious training. Because he was not monastically trained, Twewang Tamdin emphasized another important legal repertoire—knowledge of the law codes and the use of ancient proverbs and phrases from the law codes. These phrases conveyed in clever encapsulated packets the essence of a legal position.

Why was the murderer signing a final judicial document and proffering money in court? The concept of consent was also applied in Tibet to the actual decision made in a case. Tsewang Tamdin stated that as the representative of the community of the victims, he, the murderer and the other parties had to first listen to and then read the complete statement of the facts and the decision of the court. At that point, they were expected to state any objections to the decision which they might have. Then, given their consent and consensus, the parties, even parties to a murder trial, were expected to sign the document to indicate their agreement to the final decision.

Our narrator saw this process as natural and not requiring an explanation, so I will offer a few possible reasons for this practice: first, it insured the penetration of the individual mental conscience of a party, which was the true center of all decision-making and social control in Tibet. Second, for a society with very little sanctioning power, it provided some contractual (rather than penal) assurance that the decision would be followed. Third, it impressed upon the criminal the nature of her or his crime and the punishments which she or he would have to accept. The "initial whip" given by the guards when the defendant arrived at the beginning of the story was thought by Tibetans to be a punishment which impressed upon the criminal the severity of his or her acts and insured the mindfulness necessary to prevent repetition.

The Grammar of the Law.

What does this story tell us about the Tibetan law codes? During other interviews, Tsewang Tamdin read and discussed sections of the Tibetan law codes with me as did other officials. However, most of my information for this response comes from collecting, compiling, translating and annotating these texts myself with a former Tibetan monk official, Kungo Thubten Sangye.

Given the texts currently available to us, there appear to be four periods of law code drafting in Tibet:

1. the rules and proclamations of the kings during the empire period which have been translated and discussed in detail by the late Gesa Uray;
2. the *sne'u gdong* law code composed in the first half of the fifteenth century;
3. the *gtsang* code composed sometime between 1623 and 1642; and

4. the Dalai Lama or *dga' ldan pho brang* codes of 1650 and 1679.²

These law codes are filled with proverbs and phrases, bits of Buddhist reasoning, codified social patterns, bartering equivalents and factoring techniques for assessing cases. Their language is sixteenth and seventeenth century bureaucratized, archaic, poetic in spots and precatory.

Two other points about the law codes are important to mention at this juncture: they did not contain any legal rules in the strong, formal, command-prescriptive sense that we use that term.³ It strikes me that it is quite possible that the Tibetan use of “weak rules,” if I may call it that, will be revelatory of how rules, particularly legal rules, work in general. A second point is that their law codes do not contain any detailed rendering of the four types of ritual legal procedure outlined above, arguably the most important aspect of Tibetan law. This is an astonishing finding considering our western notions of the centrality and power of legal procedures and law codes. Legal procedure in Tibet was practiced, not written down and could only be collected through individual stories and case studies.

One final question: how is it that the two women from the monks' village, laypeople from an outerlying area without a formal education, not only knew about the *stong* victim compensation payments listed in the law codes but knew *how* much they should be, *who* should receive them and how one should go about *petitioning* for them during a trial. The *stong* system, one of the most distinguishing features of the Tibetan law codes, was a nine-part ranking system, by social and economic status, of all of the individuals in Tibetan society from the Dalai Lama who ranked above the highest of the high to hermaphrodites and beggars who ranked below the lowest of the low. Once the amount of the *stong* was determined from the victim's social level, it became the central figure from which other payments could be calculated, such as the degree of physical injury from a wound. *The Case of the Murdered Monks* demonstrates both the layperson's knowledge of the *stong* ranking and its actual operation and yet we are left with the question, how is it that the average illiterate layperson had such a detailed knowledge of information contained in the law

2. I have given a full description of these codes in an article entitled, “Tibetan Legal Literature: the Law Codes of the *dga' ldan pho brang*” in a forthcoming volume entitled *Tibetan Literature* from Snow lion Press, Ithaca.

3. It might be more accurate to say that Tibetans did not understand rules in this strong sense.

codes? Tsewang Tamdin's answer was that much of the law codes were generally known because they were compilations of Tibetan customs.

This concludes the exegesis of the Cosmology of Law of this case.

A third goal of this paper was to question the ways in which we construct our categories of meaning in legal inquiries. I would like to shift to a brief consideration of some of the concepts which I have been using to question the epistemological and other assumptions upon which these constructed categories of meaning are based.

Talal Asad in his latest book, *Genealogies of Religion*, posits that terms such as "religion," "ritual," and "secular" as they are currently employed in the literature have become culture-specific, modern constructs. The liberal humanist principles of the Enlightenment changed the meaning of these constructs by positing a mobile, creative human actor who could actively engage in building a modern secular nation state. Thus, the modern understanding of these terms compresses and encodes several (foundational) assumptions such as the idea of self-constitution and self-choice, the strict division between the religious and secular spheres, autonomy, personal consciousness, agency, teleological narratives, progressive time and modern historicity. Given these encoded assumptions, the contemporary Christian understanding of religious ritual is ritual as a symbolic repetitive act by an autonomous actor. The pre-modern Christian religious ritual, Asad argues, was based on a different ontology and epistemology. Religious ritual was understood as a prescribed set of practices or performances which depended on individual discipline and ability to guide the initiate to the virtuous moral self. Asad's insights are clearly relevant to Buddhist religious ritual. Hence, Buddhist religion in premodern times such as the period of the *Case of the Murdered Monks* must be analyzed without the modern assumptions of protean transformation of self, the fractured world, decentered communities and the creative, individuated, autonomous actor.

A similar concern can be expressed about the modern use of the word "law," which covers a wide panoply of characteristics from generalized social control mechanisms in society, justice, forms of reasoning, fairness and rules to bureaucratic institutions, professional decision-makers, courts and sanctions. Modern models of legal systems such as Luhmann and Tüebner's autopoietic theory which depicts law as a detached system of authoritative regulation with an "essentially self-referential system of communication that is cognitively open and

normatively closed,” are part of our own modern mythic constructs about the nature of institutions in complex societies. While these models may be of some value to sociologists and scholars of modern legal systems, they provide very little guidance as to the nature of legal practice in pre-modern Buddhist countries.

How then should we go about unpacking what we mean when we ask questions about the movement of “Buddhist law” across South Asia or the reception or development of “secular law” within a Buddhist country like Tibet? How can we avoid using terms that are already loaded with modern meaning? One approach is to begin with cases, circumstances which are temporally and socially contextualized. For example, in response to the question about “secular law” in Buddhist Tibet, it is possible to say that in the 1930s and 1940s among individuals such as Tsewang Tamdin, the legal system was not separate or in any way in opposition to the worldview of the Buddha except perhaps to the extent that a judge appeared to violate a Buddhist value. Instead there was the realm of society, wholly interpenetrated by and with the religion of the Buddha, and within that realm were a set of social institutions and practices demarcated as *rgyal khrims*, state laws. This area was in consonance with the Buddhist canon in that it was viewed as being based entirely on the Vinaya and included Buddhist means of factoring and Buddhist forms of reasoning. But the state laws were definitely not “Buddhist law” in that they were not for monks, but for lay people; they had a different historical development and basis in the ancient kings and they were rooted in a document that was not considered part of the Tibetan religious canon. So, in the capital city of Lhasa, there was no real secular legal sphere, as the terms “secular” and “legal” are understood in modern, western societies.

We have come then, full circle, back to the cement room in Dharamsala, India with its pastel painted walls and low table with two cups of Tibetan tea. Tsewang Tamdin’s story and explanations are the key to the construction of a commensurate picture of the legal framework of Tibetan Buddhist society in the 1940s. Through the lens of one legal case, we are presented with a picture of the institutions, the legal concepts and the practices through which they are employed and interrelated.

Many different legal stories and cases can then be combined into a Tibetan Cosmology of Law. It is important to set out some of the key premises for such an investigation:

First, this approach locates both Buddhism and law in a specific local culture, deeply influenced by that particular context, its time and place, its history, ecology, economy, and power relations. With rich contextualization may come the knowledge of strong differences which may make comparative enterprises initially difficult but ultimately more enriching.

Second, both Buddhism and law are understood as social practices constituted by the actions of individuals. While this step appears to radically reorient our perspective from the meta-historical and state level to an actor-oriented, bottom-up perspective, many of the actors operated within the fields of legal institutions of the state. Charles Taylor has called the social practices derived from the intersubjective meanings of actors "essentially modes of social relations, of mutual action."⁴ This is what we are looking for here.

Third, composite contextual pictures are constructed from cases, narratives, life histories, commentaries, perhaps even observations of current populations. Similarly, the presentation of the material from multiple perspectives and in multiple forms—as in the form of case histories, stories and summations—provides a deeply-layered, rich, legal cosmological picture.

Fourth, most of the concepts within the field of law must be understood as capable of multiple, even contradictory and ambiguous, interpretations. To describe a particular concept therefore is to describe its range of possible interpretations and uses including its ambiguities, movements, and contradictions. Actors negotiate their own meanings from these concepts which they then employ within the legal process. It is the web of concepts as utilized in social practices which produces a legal field and thus caution must be taken in a comparative effort against extracting concepts which appear similar but are actually differentially embedded in their legal fields.

Fifth, the ritual of law is a meaningful social practice that has at least three aspects: the transformation of circumstances into the legal field, the ritual, and the reallocation of prestige, power, knowledge,

4. From Charles Taylor, "Interpretation and the Sciences of Man," *The Review of Metaphysics* 25 .1.

conceptual boundaries and perhaps even meaning as a result. Legal social practices are thus transformative and protean in nature.

Sixth, although the elements of a legal cosmology may vary from culture to culture and from time to time, there are six major elements to the construction of such a picture of social practices in Lhasa, Tibet in the 1940's which will, perhaps, give us some guidance. They are as follows:

First, the Nature of Reality, Illusion, the Cosmos and Time: Tsewang Tamdin explained for us in his opening discussion that the Tibetan Buddhist notions of reality and illusion shifts and the threefold nature of reality, the everpresentness of realms, karma and atemporality, all influenced the way in which he prepared for this *Case of the Murdered Monks*. Here it is interesting to see which particular aspects of Buddhist theory are incorporated into the legal cosmology, which are avoided and why.

Second, the Mandala of the Law: The root metaphor for the Tibetan cosmos, the mandala, stood as a central symbolic structure for the entire legal system. Emblematic of both the secular outside and the sacred Buddhist core and non-dualistic oneness, it was understood to map directly on the levels of legal administration from the periphery to the core culminating in the central administration. Tsewang Tamdin guided us through these layered institutions, roles and offices and demonstrated many of their key aspects such as their lack of exclusive jurisdiction, open forums, consensus required to start a suit, etc.

Third, Moral Narrative and Myths: It mattered enormously in court that the monks were *kham pa*, likely to explode into a quarrel at any moment and that the alleged murderer was from the newly formed, pacifist army. The factoring of the aspects of the murder, Tsewang told us, came from the Buddhist factors related to the Ten Non-Virtuous Actions and the Buddha stood throughout as a constant referential backdrop, in the form of a series of lifetales, for the right ways of action.

Fourth, the Jurisprudence of the Mind: While presenting the case in court for the two women, Tsewang Tamdin worked within a wide range of concepts, some from Buddhism and some not, which directed his arguments. He told us that the core of each individual was the innate ability to be enlightened and mental conscience was the center of the legal system. The mind was the entity capable of reaching con-

sensus, producing conflict, showing *rang khrims* or moral self-regulation. Other aspects of jurisprudence included notions of causation, proof, power over and appropriateness.

Fifth, the Rituals, Language and Roles: Our narrator also told us about the close relationship between monastic debate and legal debate and his mastery of another important linguistic repertoire, the law codes and the ancient proverbs and phrases. We find out from him that the four legal procedure rituals of Tibet, the heart of legal administration of the country, is acquired through oral knowledge and not in the law codes. And finally,

Sixth, the Grammar of the Law: When we come to a consideration of the law codes and their structure, we find no strong rules, so important to the entire understanding of law in the West. Without precedent, did rule-like thinking even exist in the Tibetan legal system? We know that they had elaborate ritualized procedures to follow, a strict documentary practice and calculation of court costs according to the *stong*. Perhaps there was little need for rulemaking with a system of "radically particularized" individuals, codified customary practice, and Buddhist style factoring without western notions of equality.

The Tibetan Cosmology of Law has been presented in this paper through the *Case of the Murdered Monks*, who met their demise at the hand of a member of the Tibetan Army in the 1940s. The case has been used as device to explicate some aspects of the Tibetan Buddhist legal system under the Dalai Lamas. We have also learned a bit about what an interpretive, actor-centered, insider perspective of the Tibetan legal system will provide us with, how it contrasts with the picture provided in the law codes of this period and how it might help us to avoid some of the traps of modern terminology.

Legal cosmology also constitutes a basis for making comparisons with other Buddhist societies. The legal cosmology of law in pre-modern Tibet might first be compared to constructed cosmologies of law in other pre-modern Buddhist societies, then to other legal systems. Contrasting richly contextualized pictures, an exercise in comparative positionality, if you will, allows for a thicker representation of the material that we wish to compare. It also presents a possible compromise for the deconstructionist project which tends to relativize and delegitimize these larger, comparative questions. We are, then, at one and the same time, firmly seated on a mattress, drinking tea with

Tsewang Tamdin and stretching across continents to sit at tables and inside courts in other lands of the Buddha.

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