**Law and religion in historic Tibet**

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Buddhism provided legitimating ideas for political authority in Tibet from at least the eleventh century.[[1]](#endnote-1) The Ganden Potrang government of the Dalai Lamas, which administered central Tibet from the mid-seventeenth to the mid-twentieth centuries, explicitly promoted a concept of harmony between the religious and the political. But what place did law occupy within this ideological scheme, and what were the practical links between religious and legal practices? In a book on “the legal cosmology of Buddhist Tibet,” French (1995) suggests that “religion permeated the secular legal system in the form of Buddhist standards, logic, factoring, jurisprudential concepts, and reality shifts that moved argument into otherworldly reasoning” (1995, 345–46). Religion, in her account, dominated Tibetan attitudes to conflict, which they related to incorrect vision caused by one of the six root afflictions in Buddhist philosophy (1995, 73), leading them to interpret legal cases in terms of inner morality, afflicted mental views, and the true nature of reality (1995, 288).

This picture is not, however, supported by research into conflict resolution in Tibetan regions. Ethnographic studies from two different parts of the region have noted its pragmatic, rather than religious, orientation (Pirie 2006, 2008), while studies of historical documents recording the resolution of disputes in central Tibet indicate little or no appeal to Buddhist ideas (Schuh 1984). The question I address in this chapter is why religious ideas did not play a more explicit role within practices of conflict resolution, given the ideological links between religion, politics, and law. Reviewing historical legal texts, I suggest that the relationship between law and religion was, in fact, characterized by disjunctions and tension as much as by harmony and coherence. In Tibetan terms, the realm of *chos* (religion), heavily influenced by texts that originated in India, did not provide cosmological or jurisprudential foundations for the *khrims* (laws) or judicial practices. The result was that the administration of criminal punishments and practices of conflict resolution remained fragmented, decentralized, and unsystematic.

***Buddhist cosmology and legal practices***

In *The Golden Yoke* (1995), French suggests that “ordinary” Tibetans understood law “as a kaleidoscopic cosmology”: their “jurisprudential concepts” included “the absolute uniqueness of each circumstance, the absence of precedent, the importance of karmic sanctions, and the legal structure of the country as a pulsating mandala” (1995, 16). “Tibetans,” she states, “believed that their legal system was permeated with the moral requirements of the Buddha and that the self-regulation of each individual’s mind was the key to all social systems” (1995, 343). “Derived from the rich source of Buddhist philosophy,” she concludes, “Tibetan legal cosmology is based on assumptions about the world as simultaneously both wholly interconnected and completely particular” (1995, 346).

There have been cogent scholarly critiques of French’s work, in particular her use of historical texts (Huber 1998; van der Kuijp 1999) and her attribution of complex and esoteric Buddhist concepts to illiterate peasants and nomads (Frechette 1996; Huber 1998). An examination of the historic documents collected by Dieter Schuh from central Tibet, moreover, reveals that there was very little, if any, reference to Buddhist principles in agreements recording the resolution of conflicts or the creation and confirmation of legalistic relations concerning land and taxation, either under the Ganden Potrang government or during earlier periods (Schuh 1976, 1981, 1988; Schuh and Pukhang 1979). There were gestures toward legal authority, implicitly that of the Dalai Lama, who was invoked as the *khrims bdag* (the legal lord) in the preamble to many documents; and there were references to the ideals of peace and harmony, especially in documents recording the settlement of disputes. However, they do not otherwise refer to, or implicitly invoke, Buddhist cosmological ideas.

During ethnographic fieldwork in Ladakh, an agricultural area at the western end of the Tibetan plateau, moreover, I found a striking disjunction between the realms of village law and village religion. Neither the Buddhist deities and local spirits nor the ritual practitioners were regarded as being concerned with the issues of conflict and local social order; the philosophical principles of the Buddhist texts were considered to be matters of concern for the religious elite, not for the village meeting (Pirie 2006, 2007a). At the other end of the plateau, among the nomadic pastoralists of Amdo, I found that high-status monks and reincarnate *lama*s were called upon to mediate the most intractable and bloody feuds that arise among their tribes. However, the principles upon which they acted were those of revenge-based compensation, involving the payment of blood money and its equivalent for injuries (Pirie 2008). Fieldwork among “ordinary” Tibetans, then, indicates little overlap either between the cosmology and ideas of Buddhism and lay attitudes to conflict, or between the religious activities of the monks and the local practices developed to deal with disputes.

What French describes is not, however, fantasy. At some level, at least among her informants, there was a projection of religious ideas onto the socio-legal world. Those informants appear mainly to have been members of the former government in Lhasa, and it is perhaps not surprising that the official ideal of harmony between the religious and political realms should have led them to present their legal practices and codes to her as part of a single cosmological whole. As I describe in more detail in this chapter, there were legal codes, distributed widely in the region, which claimed to be based upon religious principles. There were also historical narratives about the ancient Tibetan empire that described the simultaneous adoption of Buddhism and creation of a legal system as foundational acts on the part of the great emperors. In other words, there was an impulse within literary and elite religious circles to present Tibetan law as founded upon Buddhist principles and as part of a historical legacy of the great Buddhist emperors.

Nevertheless, contrary to what French supposes, religious ideas did not permeate or generate an extensive legal system with relevance for local populations. In this chapter I consider some of the extant texts, legal codes, narratives, and private documents in order to ask why this may have been the case.

***The history of law in Tibet***

**The Tibetan Empire**

The imperial texts found in the Dunhuang caves, which constitute our primary source of knowledge about the Tibetan empire (c. 600–850 AD), indicate the existence of an imperial legal system. A few surviving fragments of legal texts (Thomas 1936; Richardson 1989, 1990, 1991) specify rules for compensation and punishment for theft, injury, and accidents. The levels of compensation were set according to rank and status; that is, such laws sought to establish social status as much as resolve conflicts. There is also evidence of the centralization and systematization of judicial practice within the empire. A text on divination and law, for example, contains a set of instructions given by the central government to local officials about which rules to apply, and how, in specific cases (Dotson 2007).

The *Dunhuang Annals* (Bacot et al. 1940; Stein 1986), a near-contemporaneous record of the events of each year, indicate that the idea of lawmaking as an imperial activity was important. In the *Annals* for the years 654 and 655—among references to the places where the emperor and his ministers resided, diplomatic relations, marriages, and building projects—are references to the making of a census (*rtsis mgo*) and laws (*bka’ grims kyi yi ge*).[[2]](#endnote-2) The importance of imperial lawmaking was confirmed by the *Old Tibetan Chronicle*, written some two centuries later (Bacot et al. 1940; Stein 1986). This text attributes lawmaking (*bka’ grims*)—along with the introduction of Buddhism and writing—to Songtsan Gampo, the first Tibetan emperor. In fact, Songtsan Gampo died in 649, so he is unlikely to have done most of the things attributed to him here. What is important is that the Tibetan emperors were, during this period, glorified as great administrators, as well as for their statecraft and rule making, their great customs, and their good, heroic kingdom. It was only later, as Dotson (2006) points out, that their activities came to be characterized as part of an essentially religious project. The time and nature of the first substantial influence of Buddhism in Tibet is a matter of considerable debate (Stein 1986), but it certainly post-dates the political and legal foundations of the empire.

**Post-imperial texts**

The disintegration of the empire in the ninth century led to a period of political fragmentation, during which no stable regime dominated until the rise of Sakyapa in the late thirteenth century.[[3]](#endnote-3) Religio-political dynasties, largely clans that had been important during the imperial period, now sought to re-establish power, relying both upon ancestral links with the empire and on their religious inheritance. Very often ruling families were allied to particular religious temples or communities, something that served as a marker of status. The concept of lineage became central to the authority of religious scholars and sects; they would (and still do) claim to have texts derived directly from India or to have received teachings transmitted in an unbroken line from one of the great historical religious figures.

In the narratives that appeared during this period and subsequent centuries, imperial history was presented as a Buddhist project, and it is here that we find the first clear expression of the idea that lawmaking had been based upon religious principles. The eleventh-century *Dba bzhed*, for example, a text described as “the royal narrative concerning the bringing of Buddhism to Tibet,” recounts that Songtsan Gampo made law (*bka’ khrims*) on the basis of the ten virtues (*dge ba bcu*) (Pasang Wangdu and Diemberger 2000). These “virtues” comprise a set of moral rules, rather like the ten commandments, which had already been mentioned in an eighth-century text. These references in the *Dba bzhed* were, therefore, an explicit attempt to link imperial lawmaking with the reception of religious morality in Tibet. In fact, the imperial laws that survive bear no obvious relation to these moral rules, nor was any such relation claimed in the *Annals*. Moreover, the *khrims* described in the *Dba bzhed* included payment of blood money, compensation for theft, mutilation punishments for sexual misbehavior and the use of oaths to prevent lying; in practice, they bear very little relation to the ten virtues. Nevertheless, the claim was that imperial lawmaking had been based upon religious principles.

Lawmaking was mentioned in several twelfth-century histories (Stein 1986). The *Ma ni bka’ ’bum* of around 1200, for example, depicted Tibet as having been a non-Buddhist country civilized by the force of Buddhism (Dreyfus 1994, 208). As part of this project, it was said, Songtsan Gampo made laws (*bka’ khrims*) based on the ten virtues and the *mi chos* (another set of moral precepts), and that these laws replaced capital punishment with blood money. Royal law (*rgyal khrims*), the text explained, was sinful before it was allied with religious law(*chos khrim*s) and based on the ten virtues.

Although there is no consistent narrative among these texts, they almost invariably refer to either Songtsan Gampo or Tri Song Detsen, the most famous of the Tibetan emperors, as the originators of Tibetan law­­­; they describe the kings’ laws as having superseded an earlier system of punishments, replacing capital punishment, in particular, with the payment of blood money; and there is a general differentiation between the *rgyal khrims* and the *chos khrims* (royal and religious law). Imperial law, which had been essentially secular, was now being reconstrued as a religious project, something that had replaced, and remained distinct from, an earlier (sinful) system of secular laws and punishments. At the level of historiography, that is, there was an attempt to portray the contemporary Tibetan polities as successors to the legacy of the great Tibetan emperors, whose foundational acts, including lawmaking, had been guided by the principles of Buddhism.

**The Mongol period**

In the early thirteenth century the Mongols conquered Tibet.[[4]](#endnote-4) The reaction of Tibet’s religious leaders was to convert the Mongols to Buddhism, leading to what has been described as a patron-client relationship between their respective leaders: the secular (Mongol) ruler or *khan* was the patron and also the disciple of the religious (Tibetan) teacher or *lama*. It is a relationship that essentially continued into the era of the Dalai Lamas, and from around 1260—with the rise of the Sakya regime under Mongol patronage—it was described as a relationship between two systems (*lugs gnyis*). During this period the Mongol khans patronized a number of religious leaders associated with different religious sects, ultimately choosing to support the Dalai Lamas’ Gelukpa sect, which led to the foundation of the Ganden Potrang government in the 1640s.

For a brief time in the fourteenth and fifteenth centuries, however, as the Mongols’ Yuän dynasty in China weakened, their power also waned on the Tibetan plateau. This gave the opportunity for the Tibetan Pagmodru religious order, under Changchub Gyaltsan, to rise to power (Kapstein 2006, 117–18). Having wrested power from the Sakyapa, Changchub Gyaltsan styled himself “desi” (*sde srid*), an imperial term for regent. He is said to have modeled his regime upon that of the early emperors, claiming to be restoring “the ancient kings’ monarchic ideal” by reviving national laws and customs (Tucci 1949, 23; Snellgrove and Richardson 1968, 153; Dreyfus 1994, 210). This included the formulation of a law code that implicitly evoked the laws of the imperial period. This code has become known as the *khrims yig zhal lce bcu gsum*/*bcu drug* (the book of 13/16 laws), or the *zhal lce*.[[5]](#endnote-5)

The code is a curious mixture of poetic and metaphorical phrases and exhortations, along with rules for the conduct of officials, general statements about punishments, more specific rules about compensation, and rules for legal procedures. For example:[[6]](#endnote-6)

By the thousand illuminating rays of light of the officers let every subject be prosperous, and happy, like the garden of the lotus flower. Therefore you, the officers, whom I the king have appointed should forsake all self-interest and consider the duty of the government as of foremost importance; perform ceremonies for the state, follow the footsteps of the former kings and support the religion of Buddha. . . . During the festival of the fifth month hold grand prayers in every district. . . . In the case of old debts if interest and part of the principal is paid, arrangements for the payment of the balance should be made without settling final accounts. . . .

Burn the malicious (prickly) thorn in the fire of law and by the rain of the cloud of law let the earth be turned into a fertile one. . . . Arrest them that quarrel with their unequals. Bind the wicked in a terrifying manner. Seal it (the binding ) by putting him in the stock. . . .

In serious cases, such as murder by a gang, rioting between people and monks, fighting on account of enmity and other evil acts which are much against the law, in such cases impose a fine from 15 to 80 ounces of gold in pieces, according to the circumstances of a case. In smaller offences such as death due to accident, robbery due to hunger, in such cases impose a fine from 3 to 5 ounces of gold in dust, according to the crime. . . . In general, one ounce of gold dust is equivalent to 96 bushels (of barley) . . .. If the value is converted into goods, one *chapob* [probably four bricks of tea] is equal to one ounce of gold dust, yaks of two or three years old are equal to one ounce. . . .

[A]ccording to former law, pay three *sho* for one drop of blood of a high class person, two *sho* for a drop of blood of a middle class person, and one *sho* for a drop of blood of the lowest class. Give a horse for breaking teeth, give a sheep for pulling hair, but if a priest is hurt for violating the rules, if a subject is hurt by the ruler for violating the king’s law, and if parents hurt their child in those cases no penalty is imposed.

Like the imperial laws, many of these provisions are as concerned with social status as they are with conflict resolution, and although there are no obvious links with surviving texts, they may have drawn upon then-extant precedents . We do not have any direct evidence about how and why the code was created and used. However, it appears to reflect the administrative and political concerns of its time; it is what we might expect from a rising political power, concerned with warfare, establishing a system of law and order, and formalizing judicial procedures. The earliest extant copy (probably from the sixteenth century) asserts that the code replaced the Mongols’ laws (*hor khrims*) with a set of Tibetan laws (*bod khrims*). In fact, there is no evidence that the Mongols in Tibet created and applied a set of written laws, but it is quite possible that they were administering justice, in various ways, or that the Sakyapa had adopted Mongol procedures. Changchub Gyaltsan clearly wanted to assert control over this area of governmental administration at a time when Mongol power was waning. Given the importance of the imperial legacy in contemporary historical narratives, it seems only natural that he should have done this by modeling himself on the great Tibetan emperors, whose activities included the making of laws.

Parallels can be drawn with the lawmaking activities of the Germanic kings of early medieval Europe. As Wormald describes (1999, 27–30), law codes represented an aspect of imperial dignity, as legislation had been, par excellence, a function of the Roman emperors. Of course, we do not know how, if at all, the *zhal lce* were used, either by the Pagmodru or subsequent rulers. However, the existence of copies from more than one and two centuries later, and into the Dalai Lamas’ period, indicates that they came to acquire symbolic as well as practical significance. As Wormald points out, the Germanic codes were unlikely to have been practical instruments of justice, containing unsystematic or even illogical provisions and being written at a time when literacy was rare. So, he says, we should think in terms of their aspirational significance: legislation “projected an image of society which corresponded with the ideological aspirations . . . of its articulate classes” (1999, 34). A comparison with Changchub Gyaltsan’s lawmaking seems apposite.

The secular and law-like nature of this code contrasts sharply with the historic narratives from the same period. Its claim to religious provenance and authority was limited to the assertion that the laws were derived from formulations by Songtsan Gampo, based upon religious precepts (Meisezahl 1973, 225). In reality, the pragmatic concerns of a political administration dominated.

Copies of the *zhal lce* dating from 1583 and 1636 indicate that the code continued to be significant for Tibetans after the Mongols re-established power in the fifteenth century. However, in a parallel tradition the historical narratives, with their images of a synthesized political, legal, and religious realm, were further elaborated and expanded.[[7]](#endnote-7) The *Padma bka’ thang*, for example, is a revised biography of Padmasambhava, the Indian teacher invited by Tri Song Detsen to spread Buddhism in Tibet, dated to around 1412 (Toussaint 1933). This explicitly distinguishes two systems, *rgyal khrims* (king’s law) and *chos khrims* (religious law). Tri Song Detsen, it relates, supplemented the royal law, which was like a golden yoke or a heavy ingot, with religious law, which was like a silken knot, soft and sacred, and which he had brought from India. What the text lists as laws are not very law-like, however. What are, presumably, meant to represent the *chos khrims* comprise a list of moral exhortations: “Let whoever writes, enunciates, preaches, or expounds the dharma instruct children usefully; let the sick be treated with the help of nurses and ceremonies; let those who blush in shame not ally themselves with the shameless; let there be no stealing” (Toussaint 1933, 269). This is more like a vision for an ideal society than a set of rules. It forms a complete contrast to the *zhal lce*’s hard-nosed rules and lists of punishments. Equally, what is presumably meant to represent royal laws is a list of unspecific punishments: “Let the murderer pay the blood price; let the thief repay; let straightforwardness distinguish the decrees of justice; let the liar be banished to the frontiers; let all be forced to obey” (Toussaint 1933, 271). This is a general vision for what a good judicial system ought to achieve. This part of the text seems to be, among other things, an ideological attempt to reconcile (contemporary) practices of punishment with Buddhist principles. In the text any details of legal substance―specific rules, distinctions between statuses, crimes, punishments, and rules for compensation―have disappeared. What are described as *khrims* have become statements of general moral principle or exhortations for the organization of a good legal system.

Another text, known as the *Mkhas pa’i dga ston*, was written in the mid-sixteenth century. This new version of an older text includes a section known as the *Narrative of Law and State*, parts of which date back to the empire, with what are probably tenth- and eleventh-century additions of Buddhist motifs (Uray 1972; Dotson 2006). It also includes references to the *lugs gnyis*, the dual system of secular and religious institutions, and to a set of 16 *mi chos* (moral rules). The section is divided into a set of complicated, and not very logical, lists, encompassing six codes and 36 institutions, with numerous subdivisions and secondary lists. Among these are references to legal practices and complicated rules for the presentation and stages of a legal case, which probably date back to the empire. There is also a section containing legal provisions: 15 royal laws, 16 moral rules, and six great laws (one each against murder, theft, adultery, and falsehood; another prohibiting theft from royal tombs; and one concerning official proclamations) (Dotson 2006, 323). Many of these seem to be survivals from the empire, in particular those concerning the payment of blood money according to rank, the four great laws, the ten virtues, and some matters of legal procedure. But in this text the legal provisions have been transformed into a complex set of lists and cycles of institutions, ranks, principles, and rules.

This extreme formalism incorporates the *khrims* into a formulaic historical narrative, which presents an esoteric, cosmological, and historical view of the world associated with Buddhist ideology, mythologizing, and eulogies for the great emperors. It is clear that the document is part of a lineage of narratives that borrow passages and ideas from earlier texts, melding together provisions that probably date back to the empire with more recent ideas and formulations. What is clear, however, is that the section on lawmaking indicates a desire to present Tibetan law as part of the imperial legacy. Of course this is also what Changchub Gyaltsan was doing, but he created a code that looked like it might actually have been applied, and which may have reflected the pragmatic nature of contemporary legal practices and punishments.

In the meantime, there is no other evidence of secular lawmaking by subsequent Tibetan rulers.[[8]](#endnote-8) This was a turbulent time, with competition between dynasties, monasteries, and polities, in which the Mongols played an influential part (Snellgrove and Richardson 1968, 153–55; Kapstein 2006, ch. 5). The idea of reincarnation and its use as a political strategy became important, and eventually the Mongols supported the Gelukpa sect under its line of reincarnated lamas, known as the Dalai Lamas. The Ganden Potrang government was established in the mid-seventeenth century, at the time of the Fifth Dalai Lama, with its seat in Lhasa in the newly constructed Potala palace.

**The Ganden Potrang government**

By this point, then, the Tibetan intellectual world contained a practical, but not very new, legal code, the *zhal lce*, and copies from 1583 and 1636 indicate its continuing importance for Tibetan elites. It also contained a set of historical narratives which attributed lawmaking to the earliest Buddhist emperors.

Much has been written about the Fifth Dalai Lama, and I cannot analyze his role as an administrator here in any detail. He was a prolific writer, as well as a practical administrator, who traveled widely in Tibet and beyond (Snellgrove and Richardson 1968, 201; Kapstein 2006, 140–41). However, contrary to what French (1995, 46) implies, he did not create a substantially new legal code. Rather, he reproduced, and tacitly adopted, the *zhal lce* (Schuh 1984). In 1643, in the early days of the Ganden Potrang government, 13 of the *zhal lce* were listed in a text that also contains a historical narrative discussing the relationship between the Dalai Lamas and the Mongol rulers (Ishihama 1993, 39). The Fifth Dalai Lama’s historical chronicle lists 15 of the rules, attributing them to Changchub Gyaltsan, and claiming that he had based them upon the ten virtues of Songtsan Gampo (Ahmad 1995, 141–42). In this way he was reproducing the legal/religious ideology of the historical narratives. The *zhal lce* were subsequently reproduced and distributed around Tibet: we have copies from the nineteenth and twenthieth centuries (Meisezahl 1973), and references to their being in the possession of district officials (Macdonald 1932), including in Sakya, which had remained semi-independent into the twentieth century (Dawa Norbu 1974), and Sikkim, an independent kingdom from the mid-seventeenth century (White 1894). At the highest levels of government, therefore, neither the Fifth nor any of the subsequent Dalai Lamas or their regents engaged in any foundational acts of lawmaking. Rather, they presented as Tibetan law a code created by Changchub Gyaltsan, on the grounds that it was part of a lineage descended from Songtsan Gampo.

Meanwhile, the Ganden Potrang developed new bureaucratic structures. There are debates about the extent to which the Tibetan state could be called a rational bureaucracy in a Weberian sense, or if it is better characterized as a galactic polity with an exemplary ritual center, after Tambiah’s (1985) model (Michael 1982; Samuel 1993). But there is no doubt that it did have a substantial bureaucracy. For example, a document issued in 1681 by Desi Sangye Gyatso, minister of the Fifth Dalai Lama, contains 21 rules and a myriad of sub-rules supposed to govern the behavior and competence of government officials. It makes fine distinctions about grades of officials, salaries, qualities of food, and serving dishes (Cüppers 1997). Another document issued by the Fifth Dalai Lama contains seating rules for officials (Cüppers 1997). Versions of *zhal lce* from the seventeenth and nineteenth centuries form parts of documents containing other rules regarding legal costs, types of punishments, and lists of weights and measures (Meisezahl 1973, 1992). A considerable number of edicts and instructions was issued by the Ganden Potrang government to regional officials (French 1995, 233–35). It was not, therefore, that the government did not have the capacity or inclination to make decrees, regulations, and rules. Nevertheless, instead of issuing new laws—which might have been a means of unifying the entire polity—or attempting to systematize or codify legal practices to create a form of common law, the Fifth Dalai Lama and his advisers decided to adopt and distribute the *zhal lce* as Tibetan law. His successors did likewise, and nineteenth- and twentieth-century versions are copied, almost word for word, from the earliest extant versions. Indeed, the one attempt to update the laws, undertaken by Doring Taji in 1867, was limited to some rearrangement of the sections and updating of the language (Meisezahl 1973).

A law code created in the fourteenth century, containing provisions for specific punishments and levels of compensation in different cases, was, therefore, being distributed and described as Tibetan law into the twentieth century. Chandra Das, in his dictionary (1902, 1068), describes the *zhal lce* as “enactments in force in Tibet.” This code could hardly have been the practical basis for judicial practice six centuries after it was written, however. There were courts in the main political centers, at least in Lhasa and Sakya, in the nineteenth and twentieth centuries, but there is no evidence that the code was ever referred to in detail by the judges. Dawa Norbu (1974), for example, describes an ornately bound copy of the *zhal lce* in the Sakya courtroom, which was ceremoniously consulted on delicate points of procedure, but to which only the highest officers had access. There is no evidence that any of its laws were ever applied in detail (Cassinelli and Ekvall 1969, ch. 6).

What appears to be important about the *zhal lce* during this period was not their content but the fact that they were attributed to Songtsan Gampo. This is referred to in several accounts (Macdonald 1932; Richardson 1962, 16; Dawa Norbu 1974) as well as in copies of the texts themselves (White 1894), and it was obviously the way they were described at the time. In other words, they were more a symbol of the long history and religious origins of the government than practical judicial instruments. What seems to be an administrative document had come to represent the religio-political heritage of the Dalai Lamas’ regime.

**Legal practices**

What is, then, interesting about the Dalai Lamas’ regime, given its relatively complex and rational bureaucracy, is the lack of lawmaking. This is matched by a relatively unsystematized administration of justice. Apart from Lhasa, where some government officials were designated as judges, there were no Tibetan legal professionals (Kapstein 2006, 191). Indeed, in descriptions of legal practice and records of cases there is evidence of reluctance on the part of central government ministers to decide cases, preferring to send them back to the regions in which they had originated for decision by local officials (Cassinelli and Ekvall 1969, 92–93; Schuh 1984, 227; Pirie 2007, 165–66). Documents collected and translated by Schuh (1976, 1981, 1988; Schuh and Pukhang 1979) recording the outcome of legal cases indicate that they mostly took the form of mediation, and could only be concluded by an agreement between the parties.[[9]](#endnote-9) To the extent that they invoked any form of law, this was found in references to older documents that had concerned the same topic—ownership or use of a particular piece of land or monastic property, for example—and the authority of their authors. Moreover, there are few references to religion, either expressed or implied, save the invocation of the merits of peace and harmony in settlement agreements. These documents are, for the most part, pragmatic, concerned with such matters as the ownership and use of monastic property, taxation of land and transport, the control of serfs, and so on.

At the same time, criminals were being tried and punished (Schuh 1984). Despite claims from as early as the twelfth century that religious law had replaced barbaric punishments, there was a caste of executioners in early twentieth-century Lhasa (Goldstein 1989, 208). Such practices seem to have been an ongoing problem for higher-level officials, however, and French (1995, 324) describes an incident in which the local monks made a public plea for reduction in the severity of a mutilation penalty. Monks, especially from the dominant Gelukpa sect, occupied at least half of the government offices (Goldstein 1989, 8–10). Their reluctance to get involved in legal cases is highlighted by the case of Lungshar, an important official who was accused and convicted of treason during the political struggles of the early twentieth century. Severe penalties, in this case mutilation, were thought appropriate, and executioners were called upon to put his eyes out. However, the highest-level officials were unwilling to take responsibility for either verdict or sentence, and the regent would not sign orders for either on the basis that he was a monk (Goldstein 1989, 208).

Certain patterns and precedents appear in these documents and practices, but they lack any explicitly stated organizing or guiding principles or rules, whether based on religious principles or otherwise. It is not surprising that the practices I noted in both Ladakh and Amdo remained largely localized, or that they differed so markedly (Pirie 2007b). Although these are recent studies, I found no evidence that there had ever been more centralized or systematic practices in these areas.

***Conclusions***

Religious establishments and individuals were at the heart of most political developments on the Tibetan plateau from the end of the empire to the fall of the Dalai Lamas’ regime in the mid-twentieth century. The notion of a lineage of authority emerged during the early years as the basis on which clans, religious leaders, their establishments, and their texts sought to establish legitimacy; and the texts and narratives “discovered” at this time invoke the legacy of an essentially Buddhist empire. During the Mongol period the religious authority of the lamas gained new significance, and Tibetan Buddhism became firmly established as the legitimating notion for political authority, culminating in the principle of *chos srid zung ’brel* (harmony between religion and law).

As Kapstein (2006, 138) points out, however, “sustained reflection on the basis of political organisation itself was never part of traditional learning.” While the scholars developed an ideology of religious law― *chos khrims*―practical legal documents, including the *zhal lce*, did little more than pay lip service to Buddhist thought and concepts. Apparently a pragmatic document, the *zhal lce* later became important, not as the basis for the administration of justice, but as a symbol of the religio-historic lineage of the Dalai Lamas. As such, it might be compared with the legal codes created in imperial China. The Tang created a penal code in the seventh century, for example, which acquired such prestige that it was adopted, practically without modifications, during the subsequent Zhou and Song periods. Even after the reorganization undertaken by the Ming in the fourteenth century and the revision and expansion under the Qing (1644–1910), a substantial proportion of the code consisted of articles taken, unchanged, from the Tang code (Bodde and Morris 1967, 59–63; Johnson 1979).[[10]](#endnote-10) As MacCormack puts it, many aspects of the Chinese penal codes, and of their legal processes in general, stemmed from a concern for the preservation of the ancient moral traditions of humanity and from a great respect for the traditions of the ancestors (1996, xv, 32). So we should, perhaps, not be too surprised at the reverence for the old Tibetan law texts and a reluctance to engage in explicit acts of revision. In early seventeenth-century England, too, leading jurists attributed the qualities of the common law firmly to its antiquity and immemorial usage. As Pocock describes in his famous study (1957, 36, 50), the idea of custom convinced men that the law was ancient and that it had always been what it was now.

We can, then, see two contradictory impulses in the history of Tibetan law. Firstly there was a move to make law, that is, rules for the conduct and regulation of social life. This occurred within the legal system of the empire and during the time of Changchub Gyaltsan. A similar move can be seen in the preservation and distribution of the *zhal lce* under the Ganden Potrang government: the idea that the Tibetan government had its own laws was important. Secondly, there was a move to theorize about law, as about many other things, in historical and religious terms. This resulted in the attribution of lawmaking to ancient Tibetan emperors and their religious project, and to the influence of Buddhist moral codes.

These two tendencies pulled in different directions, however, and an ideological tension between the religious and the secular ran, and still runs, through Tibetan history and historiography. In the twelfth century it was claimed that rules for blood money replaced physical punishments, but the punishments continued, both as a matter of record and of practice. Under the Ganden Potrang government legal cases were not something that officials were keen to get involved in, unlike in the imperial period when emperors were glorified for their statecraft and lawmaking. For a monk to be involved in the business of secular law was not ideologically desirable.

If we read back the evidence from the twentieth century, as seems reasonable, we can assume that there was a myriad of localized, disparate, more or less effective systems for the resolution of conflict throughout the history of Tibet. Not only was there no apparent inclination to harmonize them, but neither was there a ready conceptual framework into which such practices could be fitted.

French is right that there was a Tibetan Buddhist vision of a good and moral life. She is also right that there was an impulse to construe legal and political documents and practices in terms of historic Buddhist authority. However, this only occurred at the most elite and abstract levels, and she is wrong to suggest that it led to the development of a Buddhist legal system or, indeed, to any systematized form of legal practices. There is no evidence that Buddhist concepts permeated actual practices of conflict resolution. What is notable about Tibet is, rather, the lack of law, particularly within the Ganden Potrang government. Religion remained a legitimating factor at the level of ideology, as expressed in the ideal of harmony between the political and the religious, but it did not provide a practical set of moral or other ideas for the foundation of a legal system. Meanwhile, practices of conflict resolution remained fragmented, localized, heterogeneous, and, as far as the available evidence suggests, essentially non-religious.

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1. I use the term “Tibet” to refer to the large area encompassing parts of China, India, Nepal, and Bhutan in which the populations are ethnically Tibetan. [↑](#endnote-ref-1)
2. I transcribe Tibetan terms according to the Wylie system (1959), adding a phonetic transcription only for the most common phrases. *Khrims*, also spelled *grims* in these early documents, is the general Tibetan term for law or rules, sometimes also for custom. [↑](#endnote-ref-2)
3. The historical details in this section have been largely drawn from Kapstein 2006, 100–09. The Sakyapa are a monastic order, which effectively ruled central Tibet from the mid-thirteenth to the mid-fourteenth centuries from their monastery and base in Sakya. [↑](#endnote-ref-3)
4. The historical details in this section are largely drawn from Kapstein 2006, 110–23. [↑](#endnote-ref-4)
5. There are no surviving copies from the Pagmodru period, but references are found in the biography of Changchub Gyaltsan, and there is a copy that Meisezahl dates to 1583 (Schuh 1984; Meisezahl 1992). [↑](#endnote-ref-5)
6. I quote here from a twentieth-century translation prepared for Charles Bell, the British representative in Tibet, which is now in the British Library, and which I have very slightly amended for grammatical sense. As Meisezahl points out, the provisions of the early code were repeated, substantially unchanged, in numerous later versions, but the language is difficult and the code has never been properly translated. [↑](#endnote-ref-6)
7. A fourteenth-century version of the *Ma ni bka’ ’bum*, for example, records an oration on the part of Songtsan Gampo in which he expounds on the necessity of legislation and proclaims both the four fundamental laws (against murder, theft, adultery, and false witness) and the 16 moral rules (*mi chos*) (Stein 1986). [↑](#endnote-ref-7)
8. French (1995, 43–46) asserts that the Tsang kings made law codes, but her references are obscure and this seems to be an attribution of the *zhal lce* to the Tsang. [↑](#endnote-ref-8)
9. Dieter Schuh has translated and analyzed, in these publications, a considerable number of legal documents, and much more work is needed to consider their significance for the analysis of the Tibetan legal realm. Here I simply rely upon a few of his most important conclusions and patterns that recur throughout the texts. [↑](#endnote-ref-9)
10. The laws of Hammurabi, who ruled Babylon from 1792–1750 BC, were also copied and recopied over the following millennium (Bottéro 1987, 196), while the Irish codes created in the seventh and eighth centuries were copied, with glosses and commentaries, until the collapse of the Gaelic order in the seventeenth century (Kelly 1988, 225–31, 250–63). [↑](#endnote-ref-10)