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**The Zhabdrung's Legacy: State Transformation, Law and Social Values  
in contemporary Bhutan.**

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Dedicated to the memory of Dr Michael Aris (1946 – 1999)

With admiration for his scholarship and gratitude for his support and encouragement.

## **Abstract.**

Based on ethnographic research in Bhutan and among Bhutanese living in Nepal, this thesis examines the reach of law in everyday life in contemporary Bhutan. Drawing on inter-linked themes of social values drawn from Buddhist teachings and the importance of morality, power and legitimacy, I examine popular discourse of and about law.

It contributes to current arguments in socio-legal studies and anthropology concerning the reach of law in contemporary societies and its significance in everyday life. Furthermore, my thesis represents the first ethnographic account of law and society in Bhutan. It makes a valuable contribution not only to our understanding of Bhutan, but also provides an ideal opportunity to examine everyday conceptions of law as the Bhutanese State promotes legal change that draw on non-indigenous models. The thesis considers the impact of the creation of a modern, independent judiciary and recent changes in legal education and the increasing amount of legislation and secondary regulations.

However, the everyday construction of law, as well as the meanings and uses to which law are put, raises problems. Therefore, I turn to examine how ordinary people create and develop a sense of the law by focussing on the development of legal consciousness. To do this, I look less at the formal legal processes of the law than at the narratives about law from a number of Bhutanese. These narratives focus on the importance of community values and notions of morality and legitimacy, which simultaneously draw on a prevalent authoritative public discourse concerning social behaviour and individual re-interpretations and resistance within the broad framework of the discourse. I examine the interrelationship between these various features, which evoke, on an individual level, a sense of “legal consciousness” and I develop how this informs daily life. This interrelationship highlights the dynamism of the process and the fluidity of ideas and adaptability to changing needs and relationships of power. This approach allows for an examination of law situated within, rather than separate from, everyday life in order to analyse the fragmentary and often inconsistent use made by individuals of the legal orders and forums available to them.

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## **A Note on Language and Terminology.**

I recall my own confusion when I first began reading works on Bhutan and a glossary of the terms used in this thesis is provided at the end. It includes in brackets, where ever possible, the classical Tibetan spelling. Generally, I use Dzongkha – the language spoken in the western region of Bhutan and the official national language of Bhutan. There are at least 18 other languages spoken in Bhutan, including Nepali. The majority of my informants were from Eastern Bhutan and spoke Sharchopkha, or Kurtopkha. Others spoke Khengkha or one of the variations of Bumthapkha. Occasionally, terms used in these languages arose in interviews and are glossed in English. Dzongkha terms are glossed in the text when they as they are introduced.

I have retained many words either because they are terms used, especially administrative units (*dzongkhag*, *gewog*) or officials (*lyonpo*, *chimi*, *gup*), or simply because no English word is able to gloss a Dzongkha term e.g *dzong*, which historically were fortress monasteries combining secular and religious functions. The *dzong* remain in use as the seat of district administration, as well as serving as the retaining their function as monasteries.

Personal names in Dzongkha are confusing, especially due to the limited number of names in circulation (about 50). I have changed names slightly to differentiate between individuals. A few names are exclusively female, e.g. Chodron, Deki, Wangmo, Dolkar. Many are used by both men and women, e.g. Sonam, Pema, Ogyen. The main characters of the ethnography are introduced in Chapter One, and I hope this assists the reader.

I was assisted in the translation of the verse by Longchen Rabjam (p165) from Classical Tibetan by Khenpo Gendun Rinchen, but to make it flow in English I have inserted words not in the text, but implied. The translation from Dzongkha to English on p142 is my own and again I have not followed the text word for word – it would provide an odd and more stilted translation. Rather, I have sought to convey what it says without changing the meaning. Where necessary, I provide a transliterated version of the text in the footnote below.

## Introduction

The afternoon rains started as we ran from the car to the restaurant. A friend had arrived, late, at the airport to take me to Thimphu. Before heading for the capital, we dropped off medicine for a young monk and decided to eat lunch. Ordering rice, chillies and cheese, my companion in response to my enquiries about his family began talking about a court case raised against his mother-in-law, Am Kesang, his wife and himself. The case was raised by Am Kesang's estranged husband and my companion had been late to meet me because there had been a court hearing that morning in Thimphu. After finishing lunch and explaining the background of the case, we set off.

The rain had eased slightly and as we drove down the valley, we saw an old woman squatting beside the road whilst a young woman held an umbrella over her. "Ah, my friend, Choyang's mother!" he informed me as he pulled the car into the side of the road. "Am, where 're you going?" The young woman smiling at my friend replied, "Aue Karma, ama is going to my sister's house at Babesa." "I can take her", he said. Collecting the old woman's bundle and a large woven bag filled with chillies, my friend helped her into the back seat of the car. "Does your friend like dried cheese?" she asked as she settled herself into the back seat and pulled out a handful of air dried cheese. "Yes, la", I replied to her amusement and surprise. The conversation revolved around her family, the problems one of her four sons was experiencing with his lorry business, and her daughter with an alcoholic husband. My friend tutted and shook his head. After awhile, she lost interest in talking and soon the click of rosary beads replaced conversation as she sat quietly reciting prayers.

These events occurred on the day I arrived in Bhutan in May 2001. I intended to carry out research on law in everyday life, and found myself, without prompting, hearing about a case involving people I knew very well. As I had listened to the tale, I noted the implied moral judgements and how the case was presented in terms of a breakdown in terms of familial relations. Offering to help the mother of his friend served to re-acquaint me with the everyday aspect of *thadamtshi* (respect) and *bey zha* (conduct, manners).

As an ethnographic study, this thesis is about the relationship between social values and the development of the legal system as part of the wider process of state-transformation in Bhutan. It is based on fieldwork carried out between 1999 and 2001 in two urban locations: one near Kathmandu in Nepal, and the other, Thimphu, the capital of Bhutan. The ethnographic data has been supplemented by educational and legal texts acquired in Bhutan, religious texts and recent works in Dzongkha (the official language of Bhutan), as well as newspaper reports from the national newspaper, Kuensel. In addition, this data has been augmented by comparative material from contemporary research on law and society, and anthropological/legal work on South and Southeast Asia. The ethnography, which follows, does not concentrate on detailed analysis of the laws surrounding land, inheritance and so forth. Instead I focus on three broad, but interrelated themes: the relationship between political and social reforms, the development of the modern formal legal system in Bhutan and social values which are described by my informants as underpinning Bhutanese society.

The changes in Bhutan can perhaps be illustrated with an example. The older couples interviewed are mainly from the same village, occasionally from a neighbouring village. Most had worked on their land all their lives, only choosing to leave when their children assumed responsibility for the family property, or to live with children living in the capital. Occasionally, parents still seek to arrange marriages between their unwed children and suitable candidates from their home villages. Patterns of residence and inheritance remained the same for the grandparents and parents of many of my informants. None of the elderly couples interviewed possessed a marriage certificate, a small but significant detail. Nowadays, as a result of wider education and mobility, there are more marriages across ethnic and linguistic groups. The development of urban settings, not only Thimphu, but the appearance of larger towns near the administrative centres of the districts has created an urban element previously not found in Bhutan. Young couples are now required to undergo a civil ceremony formalising the marriage (Marriage Act 1980) and registering it with the State. However, there remains a common discourse of social values, which serve to retain links between the urban-rural, the past

and the present. The official rhetoric of the Bhutanese State draws on this discourse in its vision of national unity.

In this Introduction, I briefly outline comments on the State, before turning to introduce Bhutan and key aspects of its history to the reader. This is followed by an overview of the literature of Himalayan anthropology, especially on law in the region and Bhutan. In order to place my own research in the wider literature of legal anthropology, I provide a short account of the concept of legal pluralism. Finally, I describe the methodology and sources used during research, before providing an outline of the following chapters.

## **Locating the State: hegemony, history and vernacular constructions of the state**

An underlying theme of the thesis concerns the interconnections between the Bhutanese State and the development of the legal system. On the cover of a major document outlining administrative changes issued in 1999 to coincide with the twenty fifth anniversary of King Jigme Singye Wangchuk's coronation is the phrase "Accountability, Efficiency and Transparency" as part of a policy promoting "good governance" (Planning Committee, RGOB 1999). These ideas have been promoted by a range of international development agencies and adopted as part of the official language of the Bhutanese State. In part, they seek to underscore a distancing of the current government from previous more conservative governments as well as the political changes instigated by the Fourth King in 1998, notably the transfer of royal powers to an elected Cabinet of Ministers. There is a third dimension which should not be overlooked – the desire by the Bhutanese authorities to overcome the negative image created in the late 1980s and early 1990s as a result of the crisis in the southern *dzongkhags* (districts). The crisis and the subsequent criticisms of the Bhutanese State and the modern, formal legal system are not the focus of this thesis. Rather, I focus on the structural changes and their impact on ordinary Bhutanese' perceptions of the State, the legal system and their own status. This perspective draws on Abrams' important article (1988), which deconstructs the State in theoretical terms.

Abrams suggests that we should “abandon the state as a material object of study …while continuing to take the idea of the state extremely seriously” (1988:75). Underlying his arguments about the study of the state is the suggestion that we study the State in two ways. The first “the state idea” (*ibid*: 79), based on ideological power which is derived from the “state system”. This second element draws on various processes of legitimisation and he notes that “the agencies in question, especially administrative, judicial and educational agencies, are made into state agencies as part of some quite historically specific process” (*ibid*: 76). His stress on the historical contextualisation is reflected in the collection of articles on law and legal change edited by Starr and Collier (1989) and by many contemporary writers (see Benda-Beckmann, 1989; Fitzpatrick 1984, 1992a 1992b; A Griffiths 1997; Merry 1988, 2000; Moore 1986).

Mitchell (1991) notes how the setting up of a wide variety of “modern social practices – passports, immigration laws, inspections…” (*ibid*: 94) which had not existed until recently “helped manufacture an almost transcendental entity, the nation state”. He then uses law as an analogy, “one could analyse how the mundane details of the legal process, all of which are particular social practices, are so arranged as to produce the effect that ‘law’ exists as a sort of abstract, formal framework, superimposed above social practice” (*ibid*: 94). Although, as I will develop in chapter three, I have reservations about the ontological distancing of law from everyday life, his comments are important. The “myth of the state” and arguably, “the myth of law” (see Fitzpatrick 1992a) together with the legitimacy and coherence they supply to established authority all depend on this apparent separation from society (Abrams 1988, Mitchell 1990, 1991).

Yet, for all the apparent separation of state and law from society, the state does appear to have infiltrated everyday life in Bhutan, as elsewhere, with the proliferation of documentation and the recording and regulation of a multitude of mundane events, births, marriages sanctioned by state authority and death. Without the correct papers, one is at a disadvantage. The various registers of data collection and regulation developed by the new cadres of bureaucrats draw on non-indigenous categories (see Gluck 1985 and 1998; Mitchell 1988; Vlastos (ed.) 1998). As with Egypt, Thailand and Japan, the desire to

modernise Bhutan came from within as a response to external events and internal threats. The recent changes in political structure and move towards a written constitution are part of the process of constructing a modern nation-state. The introduction of the vocabulary of social equality in the 1950s has only now reached a wider audience prepared, if hesitantly, to assert their rights against those perceived to be socially higher. The older hierarchical features based on personal ties and social networks are gradually being replaced, yet there is an underlying tension between the desire to “modernise” and the concerns of losing or distorting the social values which are viewed as central to Bhutanese society. This move marks the transition of local understandings and perceptions based on a renewed vision of the state as a guarantor of rights.

Any discussion of the state cannot ignore the influence in theoretical terms of the work of Foucault and Gramsci. Gramsci’s idea of hegemony comprises “not only the conscious system of ideas and beliefs but the whole lived social processes as practically organised by specific dominant meanings and values” (Williams 1977:109). In essence, it upholds and legitimates a given social order. However, hegemony is not static. For Gramsci, hegemony is directly linked to civil society and accordingly hegemony has to be “to be won, secured, constantly defended” as part of the state’s claim to moral leadership. On the other hand, Foucault’s concerns with the development of new forms of knowledge practices and surveillance encapsulated in the term “governmentality” have influenced a number of anthropological works on the state – notably, Mitchell’s work on nineteenth century Egypt (1988). Although Foucault was not interested in the moral basis of the state his interest in the various styles of governmentality and discourses is highly relevant to the examination of state transformation and law in Bhutan. As Hansen and Spettutat note the state is not a universal construct and possesses “widely different histories, internal logics, and practices which need to be understood and studied” (2001:37). Therefore, this thesis draws on local understandings and discourses concerning the state, law and social values in everyday life in Bhutan.

## **Locating Bhutan**

Lying in the eastern Himalayas between China to the north and India to the south, Bhutan covers approximately 46,500 square kilometres and has a population of about 657,550 (CSO 2001:3).<sup>1</sup> Bhutan ranges from at its lowest point, 150 m above sea level on the Indian border, through dense forest and subtropical climates, then temperate zones to the snow capped mountains, the highest of which, Gangkar Punsum stands at 7,497 m (see Maps 1). Adding to the topographical differences are the ravines created by seven large and powerful rivers flowing north to south. The physical barriers caused by the terrain explain limits on developing greater movement within the country, and the sense of isolation and remoteness associated with Bhutan.

The image of isolation remains a powerful one, and a common feature of travel writing on Bhutan. Yet, the isolation of Bhutan is a misleading image. Various authors have indicated strong affinities in language, myth and ritual, as well as clothing, between the people of central Bhutan and those of Merak Sakteng (eastern Bhutan) and Tawang in Arunachal Pradesh (Aris 1979, Pommaret 1994b). Even the emergence of the new religious and political institutions in Tibet and Bhutan in the seventeenth century and the delineation of a border between the two in 1680 did not isolate Bhutan. Economic, religious and linguistic connections remained and the image of an isolated, autochthonic state has to be strongly resisted in order to locate Bhutan in the wider region. Bhutanese pilgrims travelled far across the Himalayas to Ladakh and further still to Mount Kailash. The Bhutanese State held various estates in Ladakh, Mustang and Dolpo, as well as, administered various religious sites distant from Bhutan for example Swayambhunath in the Kathmandu valley (Aris 1979). Therefore, Bhutan cannot be treated as isolated economically, politically or culturally (see Myers and Pommaret 1994a).

We can gain some sense of the variety of influences that have contributed to create contemporary Bhutan by looking at the wide range of ethnic populations who comprise

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<sup>1</sup> This figure is based on a data gathered in 1996. Generally, the population is now believed to be about 700,000.

## The Zhabdrung: the emergence of the Drukpa State

The arrival of the Zhabdrung, Ngawang Namgyal, in 1616 marks the beginning of the process of state construction and unification. Fleeing political strife over his recognition as head of the Drukpa Kagyu, Ngawang Namgyal (fig.no.1) arrived in western Bhutan. He soon began building up his religious and political authority in the region and under his direction a series of *dzongs* were built, for example Simtokha *dzong* near Thimphu. Although he was clearly a charismatic and capable figure, he faced opposition from the other schools of Buddhism, with the exception of the Sakyapas, in western Bhutan. After defeating an assault by his opponents on Simtokha *dzong* in 1629, his opponents, rival lamas, aligned themselves with the Tibetans and a series of battles took place between the Zhabdrung's forces and the Tibetans.<sup>3</sup> After several defeats, the Tibetans sued for peace and the resistance of the lamas was broken. However, peace with Tibet was short lived and the Tibetans made a series of further assaults in 1644, and again in 1648 and 1649. With each successful defeat of the Tibetans, the prestige and authority of the Zhabdrung was enhanced.<sup>4</sup>

The Zhabdrung in seeking to consolidate his authority chose to create a distinctive character for Bhutan (Rigdzin Dorji 2000). From his arrival in Bhutan, the Zhabdrung began the process of unifying the Drukpa families whilst dealing with the internal opposition and the external threats from Tibet. In a passage from the Humrel chronicle, the process of unification and voluntary submission to the Zhabdrung's rule is revealed in a speech made by him at Paro:

‘til now the South feuds have swept along, and these have included civil strife and internecine troubles on account of the different philosophical systems...From today onwards all this has been cleansed and purified’ Saying this, he blessed them all as a single family and established them on the path of maturation and release (Aris 1994:29).

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<sup>3</sup> The rivals are referred to as the “the five groups of lamas” (*lama khag nga*).

<sup>4</sup> He is credited with using magical means to defeat his enemies.



fig.1 Zhabdrung Ngawang Namgyal.

The construction of *dzongs* in each of the valleys in western Bhutan enabled him to establish a firm control over the region. Unlike the administrative fortresses of Tibet, the *dzongs* of Bhutan were simultaneously administrative centres and monasteries and, for a long period of time, it was the monks who were the administrators of the Drukpa State (Aris 1979; Pommaret 1997a).

The organisation of the Drukpa administration appears to have taken its definitive form by the late 1640s shortly before the Zhabdrung's death in 1651. The Zhabdrung enjoyed both religious and secular authority as Father Cacella, a Portuguese priest seeking to introduce Christianity, wrote, "He was the King and at the same time the Chief Lama" (Aris 1986:173; see also Baille 1999). The monk body was under the authority of a head abbot, the Je Khenpo, and organised on the model of Cho dra monastery at Ralung in Tibet.<sup>5</sup> Political administration was placed under the authority of the *Desi*, or secular ruler. From this arose the Dual System, a term still used in contemporary Bhutan referring to the "religious and secular" branches of the State.<sup>6</sup> The country was itself divided into three large regions – Paro, Daganna and Trongsar. Each of the regions was placed under a "universal lama" who was also the governor (*ponlop*). Where the jurisdiction of the *ponlop* was too wide, a deputy was appointed to serve on his behalf in certain areas. In addition, were the administrative posts of *dzongpon* or chief of the *dzong*, below who at the local level were the elders (*gup*) who represented several villages and relayed orders from the *dzongpon* to the local populace. This system of government was to remain until the establishment of the monarchy in 1907. The Dual System functioned reasonably well until the early eighteenth century when the rivalry between the *dzongpons* vying for the post of *Desi* and as rival candidates as reincarnations of the Zhabdrung emerged (Aris 1979, Imaeda 1987, Pommaret 1997a). The weakened central government eventually lost its authority to the Trongsar *ponlop*, Jigme Namgyel in the mid-nineteenth century.

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<sup>5</sup> Cho dra (*co grwa*) is specifically mentioned in the recent Dzongkha biography of the Zhabdrung (DDC1999:171-172)

<sup>6</sup> The term Dual System is not Bhutanese, rather it is found in Tibetan and Tibetan sources.

## **Encounters with the British: the eighteenth and nineteenth centuries**

This period of internal strife was the period during which the Bhutanese came into contact with the British in India. 1772 marks the official opening of British – Bhutan relations. In December 1772, following the capture of the king of Cooch Bihar by the Bhutanese, the East India Company had sent (at the request of the regent of Cooch Bihar) four companies of soldiers who defeated the Bhutanese and liberated the king. Shortly thereafter, the British sent a goodwill mission to Thimphu headed by George Bogle. This first mission appears to have been successful, and in 1776, Dr Hamilton, who had accompanied Bogle in 1774, returned to strengthen links with the Bhutanese and to investigate Bhutanese claims over Ambari Fallacota and Jaipelsh. Although Dr Hamilton recommended the return of the districts to the Bhutanese and Governor General Warren Hastings approved this, problems arose when Cooch Bihar refused to recognise the 1774 treaty and refused to return the territories. A further mission was sent under Captain Samuel Turner, which consolidated relations between the British, and the Bhutanese but did not progress them (Collister 1987; Pommaret 1997b).

British relations with Bhutan were to turn sour in the nineteenth century. Following the occupation by the British of Assam in 1828 a long common border was created with Bhutan. The Bhutanese had occupied areas in the seven Assam Duars and had paid land tax and tribute to the Assamese. Tensions soon arose and following an incident at the Buriguma Duar a new mission was sent in 1838 under Colonel Pemberton. He was received by the 36<sup>th</sup> *Desi* at Punakha and presented an agreement to be signed between Bhutan and the British covering a range of issues notably the free circulation between the two countries, the extradition of criminals and the payment of tribute arrears. However, it appears that the *Desi* and Zhabdrung Jigme Norbu, the secular and religious rulers, were prevented from signing by the Trongsa and Paro *ponlops*.

Unlike Bogle and Hamilton, Pemberton was less well disposed to the Bhutanese in his reports. The tensions continued and a further mission sent in 1864 under Ashley Eden. This mission was unsuccessful and war broke out between the British and Bhutan in 1864. The Duar War although eventually lost by the Bhutanese did surprise the British

military who suffered a series of defeats. A treaty was agreed and signed in November 1865. Under the treaty, Bhutan surrendered all the Bengal and Assam Duars, plus other areas to the British. In addition, Bhutan would refer any dispute with Sikkim and Cooch Bihar to the British and goods imported into each country would be duty free. In return, the British agreed to pay as compensation 25,000 rs to the Bhutanese for the first year on the fulfilment of the terms of the treaty increasing annually thereafter up to 50,000rs. The Sinchula Treaty was to form the basis of the 1910 Treaty of Punakha and the Indo-Bhutan Treaty of 1949 (Aris 1982, Collister 1987, Pommaret 1989, 1997b).

Although defeated by the British, Bhutan had retained its independence. However, unlike Thailand, which began to modernise its bureaucracy from the mid-nineteenth century, the lack of a strong central government inhibited political change in Bhutan. However, one figure did emerge as a powerful force in Bhutan, the Trongsar *ponlop*, Jigme Namgyal. He had been a major figure in the Duar War, and prior to his death in 1881, was able to defeat various rivals, notably the Paro *ponlop*. Following on from the successes of his father, Ugyen Wangchuk consolidated his authority and developed closer ties with the British. With the death of the Zhabdrung, Jigme Chogyel in 1904, and the retirement of the 56<sup>th</sup> *Desi*, Yeshe Ngodrup in 1905, a political vacuum appeared in Bhutan. The absence of both a religious and secular head of state threatened the stability of the country, and provided the basis for the creation of the monarchy.

### **The Contract of Monarchy: the State re-emerges**

A petition submitted to the State Council proposed Ugyen Wangchuk be made King of Bhutan. The petition was duly considered and it was unanimously decided to elect him King. Furthermore, it was agreed that the position should be hereditary. The coronation was held at Punakha on 17<sup>th</sup> December 1907, and a British mission under John Claude White, the British political officer for Sikkim and Darjeeling attended. Relations with the British which had been steadily improving resulted in the Punakha Treaty of 1910. Under this new treaty the compensation paid to Bhutan for the lost Duars was increased to 100,000rs annually, whilst Bhutan was to be guided in its external affairs by the British

government in India. However, no political officer would be stationed in Bhutan and the British would not interfere in internal matters. The King died in 1926 and was succeeded by his son, Jigme Wangchuk (Aris 1996).

In about 1908–1909, the sixth reincarnation of the Zhabdrung Thugtrul lineage was identified in Arunachal Pradesh, his parents having migrated there from Bhutan (Ashi Dorji Wangmo Wangchuck 1998).<sup>7</sup> The young reincarnate, Jigme Dorji returned eventually to Bhutan. However, after the death of the First King, moves by his supporters to recover the temporal powers of the Zhabdrung lead to conflict between the second King and the Zhabdrung. Matters reached a head in 1931 when the brothers of the Zhabdrung sought political support from Gandhi. Shortly afterwards, the Zhabdrung was murdered at Talo, near Punakha.

From the 1930s onwards, the Second King, Jigme Wangchuk concentrated his efforts on reforming and centralising the administrative system. The structure of Dual System established by the Zhabdrung Ngawang Namgyal had remained in place, however it was recognised that the strife of the nineteenth century was due to the lack of effective control. Therefore, the Second King created a central cabinet to assist him; the state minister, the chief of protocol, the chamberlain and depending on the season, the Thimphu or Punakha *dzongpon*. In part, the reforms sought to limit the opportunities for insurrection in Bhutan, but also sought to create a more accountable administrative cadre and less the burden of taxation on the population. (Ura 1994). The reforms undertaken by the Second King mirror the cautious reforms of Mongkut in Thailand, which created the foundation for the wider bureaucratic and economic reforms of Chulalongkorn (Tarling 2001; Wyatt 1982).

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<sup>7</sup> Several lineage's, representing the Body, Speech and Mind of the Zhabdrung emerged in Bhutan after his death in 1651 was eventually announced in 1705. The Thugtrul refers to the Mind lineage. (see Aris 1979:258 – 62 for a discussion of the concept of multiple reincarnation).

## **Development and modernisation**

The reigns of the first two Kings arguably saw the consolidation of royal authority and control in Bhutan. The transition from the Dual System to the monarchy perpetuated the structures of the Zhabdrung's government, and as Aris comments "the state is still today presented as the church triumphant under the motto 'the Glorious Drukpa Victorious in All Directions'" (1994:24). The second king was concerned with the need to regularise the various forms of taxes, which were unevenly spread across the populace, and to redefine the administrative organisation of the kingdom. However, it is with the ascension of the Third King, Jigme Dorji Wangchuk in 1952 that the pace of change and development became pronounced. In part, his reforms represent a recognition that the political initiative had to be taken, notably after the formation of the Bhutan Congress Party and the Chinese occupation of Tibet (Rose 1977). From the royal edict creating the National Assembly in 1953, a series of wide ranging social, economic and political reforms were introduced.

We now enter the period that most concerns us for the process of state transformation and the relationship between state and justice in the second part of the twentieth century. The third king, probably as a result of experiences abroad and the geo-political situation in the early 1950s, embarked on a major series of reforms and a restructuring not only of the Bhutanese administrative and political system but also of the social and economic structures. Among the first acts were the creation of a National Assembly and the abolition of various categories of serf and slaves in Bhutan. This was carried out in tandem with a policy of land reallocation to the newly freed serfs and slaves and a re-evaluation of the land holding system.<sup>8</sup> The broader reforms over the next two decades focussed on the construction of infrastructure with the assistance and aid of the Indian government. A major development was the creation of the first motorable road across the

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<sup>8</sup> The percentage of the population who fell into these categories is unclear, Wangchuk suggests the figure of 10% of the population (2000:59). I use the terms serf and slave with reluctance for they carry certain Western associations which make them less appropriate to the Bhutanese context. As with other parts of South Asia, South-east Asia and Tibet, it is perhaps better to conceive of them as expressions of hierarchical relationships with reciprocal obligations, rather like the patron-client relationship which lay at the heart of the Bhutanese society.

lateral length of the country. Other forms of transportation are impractical due to the terrain, and at present there is one airport providing airfreight to and from Bhutan. The road, which has a few spurs heading north and south, although it does not provide vehicular access to all the villages, the road system has increased mobility.

Education in Bhutan had until the development of the education system from the 1960s onward been limited to religious education and restricted to males. The move towards developing an education system began in the late 1920s, when a group of Bhutanese boys were sent to Kalimpong to study. Although the move towards education was met with suspicion by many there was a perceived need to create an educated cadre to facilitate the development of the country. Literacy levels have consistently risen and there are now adult education programmes to provide basic reading and writing skills to adults who either dropped out or simply did not receive an education, especially women. Of course, education is linked to aspects of “nation-building” and as an agency for development, which I discuss in Chapter Two. An interesting feature of fieldwork was the large percentage of informants, who either had been, were or whose fathers had been in the Royal Bhutan Army or in the Royal Body Guard. Most had entered the armed forces in the late 1960s and 1970s with limited education and the armed forces provided the most attractive career and opportunities to them. Yet, recently the Royal Bhutan Police Force has had to lower the educational requirements in order to attract recruits. There also remains especially for the more prosperous Bhutanese a preference to send their children for secondary education out of Bhutan to boarding schools in northern India.

The Third King refined the changes made to the central bureaucracy, which oversaw the wider structural changes in government. New ministries and governmental departments were created and a regular centralised bureaucracy emerged which offered places for the emerging formally educated Bhutanese. The personal, charismatic aspects of the former system remained in evidence, but with the separation of the judiciary under the High Court in 1968, the district officers relinquished their roles as dispensers of justice. Local government continued to draw on pre-existing forms, however the villages were re-organised into *gewog* under the supervision of a *gup* (village headman) and eventually,

once membership of the National Assembly was re-organised in the 1960s, the *gewog* were represented by *chimi* (representative). I talk more about the local level organisation in Chapter Four. Similar local level restructuring occurred in the 1890s in Thailand, whilst in Nepal, at about the same time as the reforms in Bhutan, the *panchayat* system was reintroduced by the absolute monarchy (Burghart 1996; Gellner 1997).

A major dimension of this period was the move to break Bhutan's isolation from the international political scene. Bhutan began to cultivate relations in the South Asia region and joined the Colombo Plan in 1962. However, the acceptance to join the United Nations in 1971 was perhaps the most significant achievement in terms of marking its independence and sovereignty. The sudden death of the Third King in 1972 lead to the ascension of his son, the current King, Jigme Sengye Wangchuk. The main emphasis of government policies continued the drive towards developing the infrastructure of Bhutan.

The series of Five Year Plans, which commenced in 1961, continued with each plan emphasising various goals and policies and which until the late 1980s can be characterised as secular and outward looking. The Sixth Five Year Plan issued in 1987 saw a shift in emphasis declaring that:

The well being and security of the country depends on the strength of its culture, traditions and value systems. Therefore, every effort must be made to foster the unfailing faith, love and respect for the country's traditional values and institutions that have provided the basis and ensured the security and sovereignty of the nation while giving it a distinct national identity. (National Assembly 65<sup>th</sup> Session, June 1987, Resolution No.18).

The development of Bhutan, especially the increased need for migrant labour had encouraged large numbers of migrant workers from northern India and Nepal to settle in Bhutan, especially in the southern districts. Existing tensions between the authorities and the Nepali – Bhutanese population following the Citizenship Act 1985 were exacerbated by a *kasho* (royal decree), in 1989. The royal decree stressed the importance of a shared culture uniting the Bhutanese, irrespective of religion or ethnic group. The decree is discussed in Chapter Two. At this point, relations between the government and the political leaders of the Nepali communities deteriorated. In the late 1940s and the 1950s,

several Nepali-Bhutanese political parties had emerged but had soon faded. The move towards Bhutanisation, a term found in official documents (e.g. Planning Commission 1999), mirrors similar policies by the Nepalese government towards its minority populations (Allen 1997; Pfaff-Czarnecka 1997; Whelpton 1997). The Thai State itself has promoted a similar homogenous vision of the modern Thai State (Tarling 2001). The implementation of the policies and the new Citizenship Act provoked violence on both sides, and to the exodus of approximately 100,000 Bhutanese.

The late 1980s and early 1990s was a troubled period for Bhutan and forms the background for many of the political and institutional changes that are discussed in the thesis. The widely reported exodus of approximately 100,000 Nepali from primarily southern Bhutan to refugee camps in eastern Nepal, brought Bhutan under close scrutiny from a range of international organisations, notably Amnesty International, International Committee of the Red Cross (ICRC) and the UNHCR. A great deal of unfavourable media coverage, both in South Asia and in the West initially appears to have taken the Bhutanese government by surprise.<sup>9</sup>

In order to address the criticisms made by these organisations, the royal government began a series of reforms. Concerns over the treatment of political prisoners and suspected terrorists (*ngolop*), and other abuses of human rights led to a series of high profile investigative delegations from ICRC and other humanitarian organisations.<sup>10</sup> These brought the existing criminal justice system and the absence of legal representation to the foreground. The reforms of the legal system instigated under the supervision of the Chief Justice, for example the training of judges and the improvement of the criminal justice system, have been among the most significant and are discussed in Chapter Four. Danida, one of the main foreign aid donors has played an important part in promoting the computerisation of the court system, including funding the computerisation of the

<sup>9</sup> A recent example is a profile of Bhutan in *New Internationalist* (Nov 2001). The data used was inaccurate, and the emphasis on the refugee situation ignored equally important issues facing Bhutan – notably ULFA/Bodo insurgents disrupting the lives of Bhutanese in the southern, and eastern districts.

<sup>10</sup> It is interesting to note that Chapter Seventeen of the *Thrimzhung Chenmo* (the Supreme Law Code) of 1957 specifically deals with treason and threats to national security, maintaining links with earlier law

criminal charge sheet to speed up the processing of cases.<sup>11</sup> A prominent feature of the reforms of the 1990s was the emphasis given to legal education, also with funding from Danida.<sup>12</sup> Further political reforms were to come in 1998 with the transfer of power from the king to an elected Cabinet, and in December 2001 a committee was established to prepare a draft constitution. Throughout the 1990s as the Bhutanese government attempt to resolve the refugee issue a new threat to the stability and integrity of Bhutan emerged – the ULFA/Bodo guerrillas who set up training camps in the south and eastern parts of Bhutan.<sup>13</sup>

### **Disciplining Bhutan: the ethnography of the Himalayas**

Contemporary Himalayan life is situated in the political-economic and aesthetic-cultural interests of larger polities. China dominates in the area that forms the historical Tibet. India and Nepal control the other culturally Tibetan areas. Nepal controls significant areas of ethnographic study, notably the Solu-Khumbu valleys, Dolpo and Lower Mustang. In India there is a large, though dispersed Tibetan refugee community. Ladakh is located in the problem area of Kashmir, with smaller enclaves in Lahul, Spiti and Kinnaur on the Indian/Chinese (Tibetan) border. Sikkim, a former semi-independent Himalayan state was absorbed by India in 1975, and restrictions on access are still in place. Bhutan caught between India and China, is the last remaining Himalayan Buddhist polity. It is against this background that anthropologists have investigated Tibetan cultures since the 1950s. In this section, I briefly survey the main themes of Himalayan anthropology and discuss the emerging anthropological study of Bhutan.

As an area of ethnographic study, the Himalayas have provided many anthropologists with the possibility of examining “Tibetan culture”. Starting in the 1950s anthropologists began carrying out research among the culturally Tibetan populations of Nepal. The

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codes which focus on state interests and penal matters than detail regulation of more intimate details of daily life.

<sup>11</sup>See for example Kuensel “Effective judicial process” 29/04/1999:6, “New charge sheet system expected to curb crime” 27/05/2000:5

<sup>12</sup> Kuensel “Danida to fund international law seminar” 13/11/1999: 3.

occupation of Tibet and the flight in 1959 of the Dalai Lama to India, led to many religious figures joining him in exile. Lopez argues that in dealing with the Tibetan material, especially after the events of 1959 and the diaspora, Tibetan studies for anthropology and Tibetology alike assumed the character of “salvage ethnography” (1995:271). A great deal of the literature on the region draws heavily on religious texts and historiographic material. In part the early emphasis on religious doctrine reflects the place of Himalayan studies with the Departments of Asian Religions, and the high percentage of scholars who were at one stage ordained monks (e.g. J Cabezon, G Dreyfus, J Hopkins, and R Thurman). Now research on the Himalayas flourishes in Europe, North America, Japan and Australia, as well as in India and Nepal. Access to Tibet has become possible, though controlled by vigilant Chinese authorities.

### Nepal and Ladakh

It does not take long to realise how important research in Nepal and latterly, Ladakh has been to the development of Himalayan anthropology.<sup>14</sup> Tibet was for the most part, a closed country even before the invasion by China, and although there are accounts available from mountaineers, botanists and political representatives of the British government in Lhasa (e.g. Harrer 1955; Migot 1957; Richardson 1998). These accounts provide important material but were not written as ethnographies. The work of Hugh Richardson forms an important corner stone for the development of Tibetan Studies in the late twentieth century, especially for research on early Tibetan history. However, it is from research in Nepal that the first major ethnographical works appear.

Culturally Tibetan populations referred to as “Bhotias” occupy almost the entire length of northern Nepal. These small, Tibetan –speaking communities were until recently remote from both the Nepalese authorities in Kathmandu and the authorities of central Tibet. The Sherpas, more than any other ethnic group in Nepal, have been extensively studied. In a

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<sup>13</sup> I have been unable to locate any academic work on the ULFA/Bodo guerrillas and have relied on reports in Kuensel and a variety of Indian newspapers.

<sup>14</sup> I use the term to avoid the implications of “Tibetan” anthropology. However, I do not discuss anthropological work on the Newars and the Hindu cultures of Nepal.

recent work examining the impact of the anthropological gaze on the Sherpa communities, Adams describes the Sherpas as, “the slate on which westerners could write their own desires in the language of need and lack (1996:14). Anthropologists such as Funke (1969), Oppitz (1974) and McDonald (1980) have studied the Sherpas relying on Buddhist texts found in Sherpa communities. Furer-Haimendorf creates a functionalist image of the Sherpa as a bounded whole, while Oppitz and McDonald challenge this image of the Sherpa as a functionally integrated group.

By contrast, Ortner has avoided relying on texts and focuses her analysis and presentation of Sherpa culture on economic and political issues. In *High Religion* (1989), she draws on Bourdieu’s *Outline of a Theory of Practice* (1977) where culture is equated with practice and the founding of the monasteries with the resolution of conflicts. Although dealing with monasteries and religion, her presentation of the religious and spiritual dimensions is superficial, and she has been criticised for being more concerned with theory than presenting a balanced ethnography (Allen 1992). Paul, adopting a Freudian approach to the analysis of Himalayan Buddhism highlights the paradoxes, which arise between religious ideal and social reality (1977, 1979). Neither Ortner nor Paul breaks free from the focus on religion and religious institutions to present the lay perspective.

Beyond the Sherpa communities, progressing west along the northern mountains and valleys, either preliminary research has been carried out, as in Tsum (Aris 1975), or detailed ethnographic studies prepared such as Ramble (1983, 1985, 1999) for the Bonpo community of Lubra. Mumford (1989) provides an excellent account of the uneasy encounter between Tibetan lamas and Gurung shamans developing his analysis with an interesting use of Bakhtin’s concept of dialogism. Jest (1974) and Snellgrove (1961) carried out research in Dolpo. These are merely a few of the ethnographic works written about the culturally Tibetan populations of Nepal (see also Ramble 1997). With the exception of Mustang (Lo) which was a small kingdom, the others were small self-governing communities, and therefore the theme of the “state” as a focus on research is absent except with reference to the distant centres of power, or the process of Nepalisation.

The opening up of Ladakh in the 1970s and 1980s allowed access to an older “Tibetan” culture than that of the Sherpa. As an independent Buddhist kingdom until the mid-nineteenth century, it maintained strong links with Tibet (Marks 1977a; Petech 1977; Snellgrove and Skorupski 1979, 1980). Arguably anthropologists, with the exception of the Sherpa, have more intensively studied Ladakh and adjacent Zanskar than any other group in the culturally Tibetan areas of the Himalayas.

Perhaps because anthropological study of Ladakh began later than elsewhere, wider ranges of issues and topics have been investigated. Day (1989) in her examination of Himalayan Buddhism in Ladakh focuses less on the formal monastic features of Buddhism than on folk beliefs. Day highlights the gaps in the literature through her study of village oracles in Ladakh and their role in village life. There is an interest shift in emphasis away from the formal religion and its institutions, which is very well exemplified by the research of Phylactou (1989). Phylactou examines the organisation of Ladakhi households with a specific focus on marriage. In a finely nuanced ethnography, she balances the pervasive influence of Himalayan Buddhism with the practicalities of everyday life. Mills (1997) provides an interesting account of the authority of monastic religious figures in local life, and contemporary research on the “hermeneutics of dispute resolution” (Pirie 2002) examines the strategies of dispute resolution in Zanskar.

### Tibet and Sikkim

Goldstein a prolific writer on Tibetan history and anthropologist carried out research among pastoralists on the Changtang plain in Tibet. Following the increased research on remoter communities of western Nepal, which focussed less on “high religion”, so to has there been a move away from the earlier emphasis on Buddhism and its institutions. Anthropologists, notably Per Kvaerne began investigating the Bon religion and its communities and interest in Bon is now widespread (e.g. Ramble 1997, 1999). The work of the native Tibetan scholar, Samten Karmay (1998) has been influential in developing the anthropological study of Bon.

Anthropologists working in Tibet have widened the range of topics investigated as reflected in the increasing number of panels at the International Association of Tibetan Scholars Conferences. In one publication from the 1995 IATS conference, the focus is on development, social change among Tibetan pastoralists and economic policies (GE Clarke (ed.) 1998).

Returning to the theme of religion, important work has been carried out in Tibet and on its periphery on pilgrimage (e.g. Buffterille 1993, 1996, 1999; Huber 1997, 1999). This work has included historical research on the wider geo-political nature of pilgrimage and access to remote areas of the Himalayan plateau (McKay (ed.) 1998). Samuel (1993) made a major contribution to the study of Tibet and the wider Himalayan region. His work provides an excellent, detailed overview of the various polities in the region serving as an important reminder that the government of central Tibet, the Ganden Phodrang of the Dalai Lamas, was only one of the Tibetan states. In effect, he is responding to various calls for a “sociology” for the Tibetan speaking areas (Snellgrove 1966; Aziz 1987). Those areas, which form part of the cultural milieu of which Tibet was the largest political and cultural member, share a certain definable set of religious practices. However, he argues that this unity is not based in a single adherence to a certain structure of economic, religious and social organisation, but in varying “syntheses” of “familiar and universal elements” ( Samuel 1993:335). There is a need to recognise the disparity as well as the similarities throughout the region. Anthropologists need to be cautious of assuming that data from one part, especially on the peripheries of the region can be used elsewhere in the region. Researchers are now using this understanding to work in collaboration, looking behind the apparently shared features at the subtle local level divergences in meaning (this is particularly evident in the research papers edited by A M Blondeau (1998) and with E Steinkellner (1996)).

## Silken Knot, Golden Yoke: law and anthropology

The study of law in the Himalayan region, especially in the Tibetan context has been primarily historical. Various writers, notably Uray (1960,1974) and Richardson (1952, 1989, 1990, see also 1998), have produced important work on the earlier period of Tibetan history and we can begin to construct a picture of the laws of the Tibetan empire prior to the collapse of the Tibetan monarchy in the early ninth century. Richardson's work reveals the degree to which during this period, while Chinese influence was significant in Tibetan royal ceremonial, and other cultural forms, the law codes were however "purely Tibetan in character"(1990:20). As French notes, there are at least three different types of rules promulgated during this early period. First, "the Four Fundamental Laws prohibiting murder, thievery, lechery and the bearing of false witness" (1995:41). Next, the Ten Non-Virtuous Actions, and finally the Sixteen Moral Principles. These rules, from the early laws of Tibet have been transformed into the basis of the social values espoused in Bhutan. I will discuss these in more detail in Chapter Two.

Tucci (1949) writing on the emergence of the Sakya pa sect as the main political force in Tibet, backed by the Mongolians suggests that this may have lead to the introduction of Mongolian laws. This claim is unverifiable at present (French 1995). The overthrow of the Sakya pa theocracy in 1354, ushered in a period of secular rule for the following three hundred years. In the early fifteenth century, the first extant law code for this period was composed and has been described as "preserving the links to the past and looks ahead to the more modern and functional styles of later eras" (French 1996a:446). Although this work marks a change in style and sophistication of finely tuned legal distinctions, it appears to draw on either rules developed over the centuries or on borrowings from other non-indigenous sources of law. The next extant code, the Tsang Code, provided the basis for the texts prepared under the Dalai Lamas (French 1995, 1996a).

French provides the only anthropological account of law in Tibet prior to the Chinese occupation. In her work, *The Golden Yoke: the legal cosmology of Buddhist Tibet* (1995),

she reconstructs the main feature of the legal system of the central government of Tibet based on interviews with former officials, judges and other Tibetans in exile. Unlike other works on Tibetan legal texts, especially from the early period of Tibetan history, she provides an interesting account of the interrelationship between legal norms and religious beliefs. There are aspects of this work, which parallel my own research, for example the shared Buddhist culture. However, whereas she was concentrating on reconstructing a defunct legal system, my work focuses on the on-going changes within an existing and vibrant culture.

### Bhutan

The amount of ethnographic material on Bhutan is gradually increasing. This reflects the problems of access to the country, rather than an absence of interest. The principal works on Bhutan available tend to be historical rather than anthropological (Ardussi 1979 1999a, 1999b, 2000; Aris 1979, 1986, 1994, Frey 1983; Imaeda 1987; Marks 1977b; Karan 1967). Pommaret (1989) has provided one of the few ethnographic works on Bhutan. In it she investigates the Himalayan Buddhist category of '*das log* (revenant), and her own encounters in eastern Bhutan with living '*das log*'. Pommaret (2000c) examines the social significance and ritual of sharing *doma* (a quid made from areca nut and betel leaf). A predominant theme of her on-going research based on fieldwork in central and eastern Bhutan are the categories of local deities (e.g. *yul lha*) as part of a wider collaboration with colleagues in Austria and France working on this topic for the Himalayan region (1994, 1996, 1999). Schicklgruber (1997) and more recently by Ura (2000) have also studied this feature of Bhutanese religious beliefs.

A collection of essays on Bhutan was prepared to accompany an international exhibition on Bhutanese culture edited by Pommaret and Schicklgruber (1997) provides a major contribution to the ethnography of Bhutan. An earlier exhibition on Bhutanese textiles was similarly accompanied by a collection of essays on the material culture of Bhutan by Aris, Bean, Meyers and Pommaret (1994b). The essays combine historical research with contemporary fieldwork and examine the importance of textile traditions in Bhutan.

These works serve to counter-balance the larger volume of work on Bhutanese history, especially on the seventeenth and eighteenth century.

Brauen (1994) carried out further anthropological research in a village in the central district of Bumthang, which discusses among other things the place of women in Bhutanese society. Dujardin (1994,1997, 2000) an architect, who subsequently studied anthropology, has written about the relationship between landscape and architecture in Bhutan. Wikan as part of a UNICEF/World Food Programme mission, then with Norconsult/UNDP has written several articles on social issues, aid development in Bhutan (1993, 1994,1996). Her focus is primarily developmental and reflects wider Development Agency interests in issues relating to children (1993), women and medical provision (n.d). In her article (1996) on narrative, she draws from the life story of an old Bhutanese woman and the hardships she experienced – raped by an official, abandoned by her first husband, the death of her second, and finally the confiscation of her land by the government to build a volleyball court. Wikan approaches the narrative from the perspective of subaltern studies and locates it with contemporary theoretical writings on the use of narrative to address broader issues concerned with the production of anthropological knowledge

There are a number of emerging anthropologists in Bhutan. Two female researchers marked the emergence of Bhutanese conducting fieldwork in various locations in the country. Sonam Wangmo (1990) wrote an important piece on the nomadic Brokpa and Sonam Chhoki (1994) on popular village level religious practices. Ogyen Pelgen (1999) and Tandin Dorji (1999) have produced several accounts of local beliefs and rituals in eastern Bhutan and the Shar (Wangdiphodrang) region. Researchers at the Centre for Bhutan Studies are beginning to undertake independent research on a range of contemporary issues, as well as historical research, for example sustainable tourism (Dorji 2001), the effects of the mass media (Rapten 2001), and the emergence of civil society (Galay 2001). This trend reflects an important change in attitude by the Bhutanese authorities towards the study of anthropology. It is interesting to note that the emphasis

among the Bhutanese writers is on local religious beliefs, including Bon, reflecting the wider move away from an “exclusively text-oriented Tibetology” (Kvaerne 2001:59).<sup>15</sup>

On the subject of law, Aris (1986) provides an important translation of an eighteenth century law text, and he tackles the historical role of mediation in his essay on dispute resolution (1994). Mathou (1998,1999, 2000) provides astute comments on the development of the Bhutanese polity, especially on its international relations and recent political changes. Recent collaborative work by Pain and Pema (2000) draws on historical and anthropological approaches in their examination of disputes concerning land. Hainzl (1997) provides the first descriptive overview of the modern legal system, whilst young Bhutanese lawyers have written short articles for presentation at the SAARC Judges Conference in Thimphu in June 2000 (e.g. Dubgyur 2000; Wangchuk, T 2000).

The Tibetologist/anthropologist, Corneille Jest (2000) offers an overview of laws regulating irrigation in Bhutan. This is based primarily on the relevant sections of the Land Act 1979, and stresses the importance of pre-existing customs governing irrigation canals and the allocation of water. It should be noted that this aspect could have been placed in relief by noting that it is one of the few sections of the Act which does retain the pre-existing rules (Wangchuk S 2001). This thesis focuses on law as it is perceived in contemporary urban settings, and addresses gaps in the existing literature on law and legal issues in Bhutan which tends to either focus on rural settings, or on the role of mediation (and its historical precedents). In addition, although other writers have emphasised the role of mediation, they have not fully connected the rules and laws with wider social values which are continue to play an important part in Bhutanese society, or the interrelationship between the development of the modern Bhutanese legal system and the political and social transformation of Bhutan.

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<sup>15</sup>This is not to say that texts and indeed Buddhism have ceased to be important areas of research. Huber and Pedersen comment that Buddhism is the ““newly erected central pillar of Tibetan nationalism” (1997:578).

## **Legal Pluralism: the blurred boundaries of social and legal regulation**

...Law and its consistent implementation is the most powerful governance response to perceived social problems, strengthening the rule of law is key. (UNDP 2000:7).

“Rule of law” and “equality before the law” are part of the authoritative language used by the Bhutanese State to promote and enhance legitimacy. Yet, whose vision of law is to be promoted – a Bhutanese one or one based on that of the experts who give advice? In the discourse concerning the creation of the Supreme Laws in 1957 and subsequently, a balancing of claims to “tradition” and the selective use of non-indigenous models has been promoted (Ura 1994, 1997, RGOB 1999, RHCJ nd). At the beginning of this research, it appeared that I would be encountering a system, which combined centralised, formal state law with a variety of local-based customs and practices (*lugs srol*). Local customs and practices are important in the rural areas – for example governing the allocation of irrigation water, or the use of communal forests. My own research focuses on urban settings which have only recently developed in which customary laws, in the sense of “traditional, local practices” are not present. Their absence in Boudhanath is unsurprising for there are many ethnic groups from throughout Nepal, as well as a small community of Bhutanese. In Thimphu, the arrival of Bhutanese from across Bhutan with varying customary practices has prevented any one group imposing its customs on the others, nor have the local practices of the Thimphu valley be accepted by the incomers. The situation is further complicated by the increasing marriage not only with partners from different villages, also from different regions of the country. However, what does exist in both sites is a level of discourse, which draws on individual, and community based conceptions of the law (in a broad sense) informed by shared social values. As A Griffiths notes “the administrative and theoretical separation of legal terms does not extend to people’s uses of the law in arranging their own lives”(1997:2).

It is therefore appropriate at this point to consider the current debates over legal pluralism. I do not propose to present a comprehensive overview of legal pluralism and

the various arguments and permutations found in the ever-increasing literature on the subject.<sup>16</sup> Rather, I locate my own work within this field and stress the importance of legal pluralism in the examination of power. The term, legal pluralism is itself of recent origin and generally attributed to Gilissen's work entitled *Le Pluralisme Juridique* (1971). However, J Griffiths essay "What is Legal Pluralism?" (1986) arguably brought the concept to the fore in his consideration of the two different approaches to legal pluralism characterised as "weak", "juristic" or "classic" pluralism associated with lawyers, and the other, "strong" "new" or "deep" legal pluralism associated with a social science understanding and inquiry into law. According to J.Griffiths, legal pluralism refers to "that state of affairs for any social field, in which behaviour pursuant to more than one legal order occurs" (1986:2).

#### Colonial rule, legal administration, and the lawyers' construction of legal pluralism.

Closely linked to the development both of the nation-state in Europe and European colonialism, as well as the development of anthropology as a discipline, a great deal of the early literature in comparative law focused on the distinction between "European" or Western models of law and indigenous laws. Law was seen in terms of human and social development as marking the transition from irrational to rational. The development of kinship studies during the late nineteenth century was marked by a concern about law and can be traced to Maine's evolutionist *Ancient Law* (1861). Two of the most influential theorists, Durkheim (1962, 1984) and Weber (1978) wrote on law. Durkheim's contribution to the study of law stressed the importance of law as a symbol of social solidarity, whilst Weber developed a sociological approach to law. In the colonies, law was perceived as an important tool by which to control and regulate the lives of colonial subjects. As Channock observes "law was the cutting edge of colonialism" (Channock 1985:4). Yet, not all Western laws were appropriate in all cases, and provision was made to allow local, customary or indigenous law to apply. A separation was created between

<sup>16</sup> For a more comprehensive overview and discussion A Allott and G Woodman 1985; , F von Benda Beckmann 1988; C J Fuller (1994), C Greenhouse 1998: C Greenhouse and F Strijbosch (eds.) 1993; A.Griffiths 1997, n.d.; J. Griffiths 1986; S E Merry 1988; N Rouland 1994; L Sheleff (2000).

these local, customary or indigenous laws and the “state” laws based on Western models. By allowing these laws to regulate for example family life, the colonial state demarcated the sphere of influence of the legal systems.

However, such a model of legal pluralism has been rejected by scholars as placing too much emphasis on the state. Among the main criticisms is the apparent uniformity it presents of the law and its apparent separation from social life. Amongst others, Gluckman (1955, 1965, 1973), Bohannon (1957), Gulliver (1963,1969) and Pospisil (1958,1963) stressed a shift in attention to the study of disputes thereby moving beyond the sources and institutions associated with the centralist model. This change in emphasis combined with the development of a more ethnographically based methodology with intensive fieldwork allowed for greater emphasis on actor-oriented perspectives and the complex issues of access to power and resources. Above all, by stressing state law as the only law, this model of legal pluralism asserted the integrity, coherence and uniformity of law which was often “not internally self-consistent, logical systems and ...not clearly bounded and distinct from other social normative order” (Woodman 1998:51).

Critics of this model of legal pluralism though do not ignore the role of the nation state. Woodman makes an important contribution by reminding us that state laws are part of the social world (1998). Therefore, rather than maintaining an artificial separation between state and non-state laws, there is a blurring which itself raises questions about the relationship between state and non-state laws, and “between non-state laws and other elements of social ordering” (A Griffiths n.d:9).

### Recognising normative universes – the alternative approach to legal pluralism

In this alternative model, it is recognised that there are multiple forms of ordering available to people without necessarily depending on the state for recognition and legitimacy. Merry describes this new legal pluralism having expanded “from a concept that refers to the relations between colonised and coloniser to relations between dominant groups and subordinate groups...and unofficial forms of ordering located in social

networks or institutions" (1988:872). S F Moore's concept of the "semi-autonomous social field" provided an important framework for investigating this form of pluralism. She defined the semi-autonomous social field as that which:

can generate rules and customs and symbols internally, but that...is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance: but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (Moore 1978:55 – 56).

This has counteracted seeing legal ordering as exclusively rooted in state law. Above all, it highlights the mediation between state law and everyday practice as state laws are themselves subject to other forms of normative ordering. Moore's model provided an important model with which to develop "strong legal pluralism" which acknowledges that "different legal spaces" are "superimposed, interpenetrated and mixed in our minds, as much as in our actions" (Santos 1987:302). Lying behind this shift, are the ideas of Ehrlich's "living law" (1913), and Gurvitch's "social law" (1947), and a deeper appreciation also of the normative ordering of non-colonised states (Merry 1988:881 – 882).

Merry (1988) describes the various ways in which the study of legal pluralism moved away from legal centralism to stressing the importance of a historical understanding, which incorporate an examination of the cultural and ideological nature of law and legal systems. This shift in focus has encouraged closer consideration of the dynamic relationship between law and everyday resistance to it, and the relationship between competing normative orders. Fitzpatrick (19) argues that law should be examined as constitutive of social life. In effect, that both state law and "the semi-autonomous social field" are themselves constituted by their interrelationship with each other (1983:159). Hirsch (1998) in her detailed examination of marital disputes in the *kadhi*'s court amongst

the Muslim community in Kenya, illustrates the various ways in which customary, religious and western laws and social norms intersect. Anne Griffiths (1997) in her examination of marital disputes in Botswana draws on life histories to analyses how the gendered world of men and women affects the ability of women to access law, and accordingly empowering them or silencing them depending on the context. French (1996) in her examination of the former Tibetan legal system emphasises the religious doctrines, which shaped Tibetan legal cosmology.

Of course, there are those who are deeply critical of this “strong” legal pluralism. How does one define or delineate “law”? This is far from simple – especially when one is dealing with non-state law. “Customary”, “local”, “folk” or “popular” have all been suggested, yet there is no consistent characterisation. Some writers argue that the move towards strong legal pluralism has blurred the distinction between different normative orders, sweeping all of them under the idea of the “rule of law”. Tamanaha (1993, 2002) argues that by not distinguishing between normative systems, the term “legal pluralism” ceases to be a useful concept and he has recently argued for a non-essentialist definition of legal pluralism. Teubner, amongst others, has described the trend among law and society scholars to describe social and legal terms as mutually “constitutive” as confusing and ambiguous. However, it has been countered that attempts to define legal pluralism have proved unsuccessful (Woodman 1985), whilst Tamanaha’s desire to separate state law from other social norms has failed to appreciate the social science perspective on law. F von Benda-Beckmann (2001) argues that the term legal pluralism should be viewed as an analytical concept. By examining the normative order’s ideologies, it should be possible to examine claims to legitimacy as empirical phenomena. This point has been further developed by K von Benda-Beckmann’s observation that it is not only state law that claims exclusive validity, but so too do local and religious laws.

It should come as no surprise that this thesis follows the strong legal pluralism model. The importance of social norms and notions of moral conduct and legitimacy are central to the presentation of the ethnography. In locating law as embedded in and constitutive of social life, I reject the model of weak legal pluralism that treats legal rules as invested with

greater power and authority than social rules. In this rejection of legal centralism I am in agreement with other writers (Abel 1973; Allott and Woodman 1985; Benda-Beckmann 1989; Collier and Starr 1989; Comaroff and Roberts 1981; Ewing and Silbey 1998; Fitzpatrick 1984, 1985, 1991, 1992; A Griffiths 1986, 1988a, 1988b, 1989, 1997; J Griffiths 1986; Hirsch 1998; Lazarus-Black and Hirsch 1994; Moore 1986; Merry 1988, 2001; Santos 1987) whose work contests the legal centralist model.

The preceding overview of the literature on legal pluralism is necessary for two reasons. First, it enables me to locate my own research interests and concerns within the existing discourse, and secondly, because I want to make it clear that I do consider the formal legal system. My own fieldwork and research was undertaken in two urban sites – Boudhanath, a small town on the edge of Kathmandu, Nepal and the other, Thimphu the capital of Bhutan. I will discuss the choice of these sites in the following section. The choice of sites is significant. In my original plans for fieldwork, I had intended to carryout fieldwork in a rural setting – a village in one of the central districts. Instead, I found myself carrying out research in urban settings, which proved invaluable.

Unlike the village setting where the local rules and practices are still used, unless the state law supersedes them, in the urban setting no such customs have emerged. However, there is an interesting contrast between the two settings. Although the Bhutanese in Boudhanath have only been settled there for less than twenty years, those I came to know are either related, or come from the same district in eastern Bhutan. This allows for a certain coherency in the community, which is small and tightly knit. In Thimphu, this coherency is less evident. The influx of people from throughout Bhutan and the rapid growth of the city have prevented the same coherency to develop. Arriving from disparate districts, with a variety of practices – some complimentary others conflicting, those living in the city are also generally educated and less oriented towards the values of their home villages.

In Boudhanath, the role of social values and norms was important in maintaining social cohesion and harmony. When the mother of a close friend was brutally assaulted, the community provided money for medical treatment and arranged for her care until she was

well enough to travel back to Bhutan. At no point were the authorities involved. Later, in Thimphu, the role of these values and how they shape and give meaning to legal consciousness was noticeable, for I had become acquainted with the social values in the absence of the immediate presence of the Bhutanese formal legal system. Once in Bhutan, even in the urban setting of Thimphu, this helped to cast popular understandings of the law and the legal system into relief.

### **Multiple sites, Two Settings**

As the reader will now be aware, research was primarily conducted in Nepal and Bhutan. The actual sites varied from a large monastery, private apartments, and roadside stalls, trekking up hillsides to visit relatives as well as offices, shops and places of work. Further interviews and discussions were carried out in Edinburgh with Bhutanese students studying at the university, which supplemented material gathered during fieldwork. Below I describe the research process and focus on five main aspects: the application for research permission and the difficulties encountered, a brief discussion of the two main settings in which fieldwork was conducted (a fuller description of each is provided in Chapter One), then brief comments on interviews, the collection of life histories, and written materials used to augment the fieldwork data.

#### **Research Permission**

“Persistent” was the term used by the Chief Justice to describe me during a meeting in his office. Soon after arriving in Boudhanath, I was introduced to two American anthropologists who both raised their eyebrows when I said I wanted to do fieldwork in Bhutan. In my naivety, when I began formulating my research proposal, I did not appreciate the obstacles to gaining access to Bhutan. In 1996, Dr Aris who encouraged me to develop my research ideas cautioned me that I would need to obtain permission from the Bhutanese government. I wrote several times to the Home Ministry with no success.

On the advice of Dr Pommaret, I wrote a detailed letter to the Bhutanese ambassador to the United Nations in Geneva. In November 1998, I was asked to meet with Dr Pommaret to discuss in more detail my research proposal. A second interview was arranged in Guildford with Mr Michael Rutland, the former tutor to the Fourth King and founder of the UK Bhutan Society. Throughout, I have chosen to be as frank and as open as possible. By the autumn of 1998, I was aware of the sensitive nature of my research and indeed the reasons for the Bhutanese authorities caution. However, the Ambassador sent a favourable report.

The timing was, in retrospect, not ideal. The King had issued a royal decree, which had significantly altered the structure of the Bhutanese government. The changes were still rippling through the various government departments and considering the application from a doctoral candidate was not a pressing issue. On the other hand, it was an issue for me. My funding had started and was for three years only. The continued delay was therefore deeply frustrating.

Therefore, in June 1999, I began fieldwork in Boudhanath, Nepal. Initially, I intended to travel to Kalimpong, which has historic connections with Bhutan and a sizeable Bhutanese community. However, Dr Pommaret suggested that I consider Kathmandu. Following her advice, I arranged accommodation in the guesthouse of Shechen monastery, which has a high percentage of Bhutanese monks. In May 2000, a fax confirming an invitation to Bhutan was sent to the monastery and I spend ten days in Bhutan arranging permission for a longer period.

In the Spring of 2001, I received permission to travel to Bhutan to “study Dzongkha” and travel to the central district of Bumthang. Prior to arriving in Bhutan, I was politely requested to be discrete about my research interests. My visa was extended and I was able to remain in Bhutan until late June 2001. Without formal permission, or at least an invitation to Bhutan, the fieldwork undertaken in Thimphu would not have been possible. Foreigners require to possess a Visa Clearance Number before being permitted to board the plane. Entry over land is likewise tightly monitored. Moreover, entry as a tourist is

prohibitively expensive with a government rate set at about \$180 - 250 per day.<sup>17</sup> Unlike countries where one can obtain a tourist visa for five months or longer, or gain access through affiliation to a university or research unit (both of these apply to Nepal), I had to wait for formal clearance before entering Bhutan.

### Field sites

A multi-locale approach was always my intention. However, as a result of delays and a desire to begin fieldwork, rather than a rural site in Bhutan, an urban site in Nepal was to provide the contrast with later research in Thimphu. This dislocation from my “field” from the geographical Bhutan initially caused me deep concerns. How would I pursue my interest in law in contemporary Bhutan in a different country? Yet this decentering of the “field” allowed me to focus on the social characteristics of the Bhutanese community in Boudhanath. The small community of six households that I frequented provided me with my first prolonged experience of Bhutanese families and their interaction. Social values that I had not come across in the literature were explained to me partly by answering my questions, but generally through observation and the conversations in the households.

On reflection, my fieldwork in Boudhanath provided intimate access to Bhutanese households. Through my friendships and contacts in Boudhanath I was given introductions to their families and friends in Thimphu. More importantly, it helped me to locate my approach to the study of law in a wider social context, informed by the social values I was learning about. Later, in Thimphu building on my contacts from Boudhanath, I recognised the importance to my anthropological studies of looking beyond participant observation and to gathering written data, and noting the different emphasises among my Thimphu informants. The prominence of religious practice, which characterised the Boudhanath households, was less prominent in Thimphu. Formal education and employment, often in a government department, were also major differentiating features. Yet, the social values and concerns expressed by informants in Boudhanath were equally prominent in Thimphu. The move between Boudhanath and

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<sup>17</sup> The rate varies depending on the season.

Thimphu, the shifting of locations, rather than of bounded fields especially the move away from households and the monastery to the wider urban setting of the capital city develops what Haraway (1988) describes as “the web-like interconnections” between law, social values and the transformation of the Bhutanese State.

## Interviews

Arriving in Boudhanath I had been very concerned about accessing the local Bhutanese community. A fortuitous meeting with a young Bhutanese monk as I arrived at the guesthouse proved invaluable for the introductions he later made. In Boudhanath, I was keen to start interviewing early on. However, I chose to wait until I had developed a sense of what topics I should ask about. Several informants agreed to be interviewed in my own room and these interviews were informative for they clarified terms I was unsure of, and allowed me to learn more about the individuals interviewed. As I came to know more people, and their tendency to visit when they were passing the guesthouse (which was at least twice a day), it became harder to agree a time which would be free from interruption.

Yet, although this became frustrating I found that there would be several people talking in my room, or that I would be included in larger groups of Bhutanese, usually a mix of young monks and lay people. These settings allowed me to listen and observe their interactions, the allocation of space and the issues, which concerned them in their daily lives. If I looked bemused or puzzled (a quite frequent expression I suspect), they would ask what I had not understood and quickly explain. As I became more comfortable, I would visit people I knew well, so that after three months I was able to start semi-structured interviews. “What happens when...?”, “Where did you learn...?”, asking questions and replying to those about myself, and my family provided an excellent way to feel my way towards learning to ask increasingly more complex questions about issues that I heard or observed “What happens if a man leaves his wife?” “What is *thadamtshi*?”. Of course, the answers were not always especially full or meaningful to me. “It’s the alphabet of being Bhutanese” was the reply to my naïve “What is *thadamtshi*?”. Pursuing

clarification of that simply, yet obscure reply proved important to my whole understanding of Bhutanese social values.

In Thimphu, I was able to interview a range of people, including the Chief Justice and members of the judiciary. I had access to members of the Armed Forces and the Royal Bhutan Police who talked about their lives and their experiences. In addition, I mixed with the families of friends who occupied a range of low-level administrative posts or ran small private businesses. Unlike Boudhanath, where I had daily contact with monks and senior monastic officials in addition to the lay community, I seldom met religious figures unless I arranged to visit a monastery or temple. This made Thimphu feel more secular, even though I would hear occasionally the sounds of ritual music from houses as I walked to and from the homes of friends. My interviews were mainly semi-structured and developed issues or comments made by the informants. Or, I would ask specific questions about on-going situations to learn about any new developments, e.g. progress in a court case (Chapter Five), or in the purchase of land (Chapter Six).

I mentioned above the conditions under which I was permitted to do research in Thimphu. I should add that those I socialised with and interviewed all were aware of my research interests, even if at times they seemed to forget this aspect. On arriving in Boudhanath, I chose make it clear to those I met that I was a researcher and the nature of my research. Since I had been introduced to many of those I knew in Thimphu through family members, I was told that they were aware of my interests. There were occasions when I was asked to not mention a family dispute or other incident, not because they contravened the law, but because they would feel “shame”. I was relieved that they knew my role as a researcher, and that I did not have to breach the conditions of my research. I would have found it not only difficult to pursue topics, but would have felt ethically constrained.

## Life Histories

Early into fieldwork, I began gathered life histories from those informants I saw on a regular basis to help illustrate how economic, social, political and ideological factors criss-cross and come together to have material effects on individual lives. Comparing the differences, which emerge, in experiences and the varying sets of options and constraints in individual lives allows for a nuanced understanding of how individuals envision their “life world”. They help to mark the varying conditions in which individuals live and the roles both assigned and available to them. Das comments that life histories can provide “a description of these critical events...to form an ethnography which makes an incision upon all these institutions together, so that their mutual implications in the events are foregrounded during the analysis” (1995:6).

Although many were keen to tell me about their lives, there were those who were less willing to talk. An elderly couple to whom I became close over the months, expressed a reluctance to talk about the past. They knew I was interested to hear about their lives in Lhunshi and in Bhutan during the 1950s and 1960s. They did gradually reveal more about their lives as presented in the narratives told me. Listening to them and to other informants, one realises that life histories are not linear, and should not be treated as a natural unfolding of past homogenous experiences. Each life history took time to complete as different events or issues were individually described and others elided over. Narratives are central in constructing a sense of the self, of self-characterisation, in the face of traditions that have or are crumbling and human hopes and desires that risk being forgotten (Arendt 1951, 1977). Of course, the narratives do not provide access to their experiences, I cannot say what was selected or left out (Strauss and Quinn 1994; Wikan 1995). However, the narratives allowed me to consider the broader dimensions of how my informants interpret the contemporary world and make sense of events in the changing world around them. The elderly couples’ shared concern at the decline in “respect” and the young school leaver determined to work in the city provide interesting perspectives from which to consider the process of social change.

## Written Sources

A major text, which was given me by Dr Aris in 1998, is the *Thrimzhung Chenmo*, “Supreme Law Code” of Bhutan. The copy provided was undated and a poor photocopy of a photocopy. A second copy of the text was made for me in Bhutan in 2001. I will describe the text in more detail in Chapter Four. Although now superseded by subsequent amending legislation, it is an important text for reflecting the existing *mentalitie* of the period it was first promulgated in the late 1950s. During fieldwork in Thimphu, I was able to acquire copies of the original Land Act 1979, Inheritance Act 1980, Marriage Act 1980, and recent commercial legislation, notably the Moveable and Immovable Property Act 1999. A foreign legal adviser made a copy of the Civil and Criminal Procedure Code available. These materials supplemented the older, extant law code, the Ka Thrim (Aris 1986).

A wide range of materials in Dzongkha supplemented the legal materials. In particular, three recent publications on *Driglam namzha*, a biography of the Zhabdrung (1999) and various folk tales and stories published by small printing houses in Bhutan (Gyaltshon 2000; Thaye 1993). I was able to purchase several Dzongkha language school textbooks (DDC and Ministry of Education [1972] 2000; 1991) which I discuss in Chapter Two in connection with the “transmission of values” (Wangyal 2001). The national newspaper, Kuensel was available in Boudhanath and from the first week of fieldwork I was able to buy the paper. The news items provided starting points for conversations with my Bhutanese informants and drew my attention to certain themes expressed in the articles and incidents in Bhutan (notably the attacks on sacred sites). In Thimphu, I was able to develop this source further and compare the English and Dzongkha versions of the papers with a noticeably larger section devoted to religious items, and even a weekly serialisation of a work on *driglam namzha* by the Royal Chamberlain in the latter.

As will be apparent from my earlier comments on the anthropological literature on Bhutan, there is still relatively new field of study. Dr Aris and Dr Pommaret each provided useful references and copies of their more recent work. The recently established Centre for Bhutan Studies, Thimphu has been an invaluable source of

material. To access the wider literature on Tibet and Himalayan ethnography, I spent four weeks gathering materials at the School of Oriental and African Studies, London between 1997 and 2001. Other scholars and researchers have kindly forwarded articles to me on Bhutan or on matters related to my own research.

### **The Organisation of the Thesis: a brief outline**

The thesis is divided into two sections. The first section sets out the main themes of the thesis, which are developed in the ethnography. Chapter One describes and introduces the reader to the two main fieldwork sites. Boudhanath where a small Bhutanese community of artisans and their families has settled in close proximity to the monasteries and temples built since the 1970s by exiled Tibetan religious figures. The second site, Thimphu rapidly grew during the 1990s. As the capital city and seat of government, it attracts rural migrants in search of work, as well as until recently, providing white-collar posts for the growing numbers of school leavers. Then I introduce some of the principal informants who feature in the ethnography.

The second chapter focuses on the social and religious values and concepts, which proved to be essential reference points during my research. Based on conversations and watching events unfold around me as families argued, laughed and chatted, I came to realise the importance of *thadamtshi* and the formal, practical aspect *driglam namzha* as operational features of Bhutanese society.<sup>18</sup> The following chapter elaborates the main theoretical arguments about the presence and role of law, and the concept of legal consciousness, which reflects popular perceptions of the State, the formal legal system, social values and experience. These form the main themes for the second part of the thesis.

Part Two turns to investigate the presence of law in the routine events of daily life as experienced and described by my informants. Chapter Four examines the development of the formal legal system, its relationship with the informal, pre-existing features of

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<sup>18</sup> These concepts and terms are explained in detail in Chapter Two. Here, I will simply gloss them as “respect, loyalty” and “code of conduct” respectively.

Bhutanese village life, and the consequences of creating a new, Western-influenced legal class. The relationship between the creation of new formal laws and the process of development is considered, including the influence of International Agencies.

The following chapter, Chapter 5, considers the presence of State law and regulation as it is manifested in and around Thimphu. I consider the “official graffiti” of the State and its institutions, which is present, and the experiences of a Bhutanese businesswoman dealing with various Departments and their regulations. Finally, I consider various incidents involving the courts and the narratives retold by my informants.

Chapter Six recounts various narratives about the acquisition of land: the urban scramble for property, petitioning the King for land and simply to assist with stretched family finances. This develops the relationship between formal and informal systems and draws out the continuing importance and role of personal bonds and social networks.

Finally, in Chapter Seven, I return to a theme that originally highlighted the concept of *thadamtshi*. In this chapter, I examine the narratives and responses of informants to the increasing incidence of violence towards sacred sites and the interrelationship between the concerns of my informants, the debates surrounding the issue in the National Assembly and the role of the courts.

The Conclusion reviews the themes and concentrates on the relationship between the process of State transformation, the role of the formal legal system and its laws, as part of the broader process of modernisation and the social values which shape everyday life in Bhutan.

## **Chapter One**

### **Becoming acquainted: perceiving signifying practices and moral meanings**

Approaching Thimphu is to slowly catch glimpses of the city as the road snakes its way along the hillside. The approach is more visibly characterised by the checkpoint at Simtokha, as the road turns sharply on itself and splits into two roads – one leading to Thimphu and the other east across Bhutan. Entering Lungtenphug, a high wall blocks any view of the valley below, and you cannot avoid the military presence. Located on the immediate outskirts of the city itself is a second army camp with soldiers chatting amongst themselves and with locals, off duty soldiers playing volleyball. Crossing the river over the “Bridge of the Prophecy” a further walled enclosure dominates the landscape – the Magmi khang or Police Headquarters. Throughout Thimphu and Thimphu valley army camps and police are common sights (f/n 21/05/2000).

By starting with this view of Thimphu, I want to highlight the importance of listening to my informants. When I arrived there although I could “see”, I was seeing through the prism of my own experiences and background. Meeting Bhutanese in Bhutan, who I had met during fieldwork in Nepal, brought home to me in a very direct way, that although we had talked about law and life in Bhutan, I had not appreciated the synthesis between practice and the reproduction of moral meaning. To meet men and women dressed in national dress, interacting with relatives I had heard about, and observe them, underscored the connections, which I had started tentatively to make in Nepal between what people do and their relationship to the world around them. This is not to say that they suddenly behaved differently, rather those nuances that had escaped me in Nepal became more evident in Bhutan. As I discuss in Chapters Two and Three the linkage between moral personhood and law, as experienced and encountered in everyday life, I will simply state here that this realisation provided the necessary understanding, that I needed to pay attention to the wider value system and its articulation in everyday life. I had to learn to see from their perspective, and in this process various Bhutanese played a major role in “acquainting” me with how they perceive their cultural world. Without this acquaintance, then, to attempt to understand the meanings and uses of social values and

law in Bhutan would be rendered superficial and limited to interpreting responses to formal legal processes.

In this chapter, I offer glimpses of the locales in which fieldwork was carried out in Nepal and Bhutan. Certain incidents in the ethnography occurred outside the locales described (notably Chapters Six and Seven), and in those cases I provide the necessary details. The glimpses seek to introduce the reader to the fieldwork sites, and those dimensions that are important for the construction of the everyday signifying practices, which embody moral and legal meanings. The themes, developed in the ethnography which follow, examine the interrelationship between the transformation of the Bhutanese State, the emergence of the contemporary legal system and the legitimacy provided to both by the invocation of social values and shared moral concepts. After this discussion of the landscapes against which the fieldwork was undertaken, I conclude the chapter with a series of short descriptions of key informants. These are typically the families and individuals with whom I spend a considerable amount of my time. Several were/are my adopted family, from whom I learned a great deal about Bhutanese values and their embodiment. For the most part, it is through these people and their families, that I became acquainted with their life-worlds and with some of their ways of seeing and interpreting the world(s) around them.

### **Boudhanath: in the shadow of the Great Stupa**

Boudhanath is one of the principal pilgrimage sites in the Kathmandu valley (see Maps 2 and 3). The Great Stupa (fig.2) which dominates the skyline, has been designated a World Heritage Site by UNESCO, because it represents a unique example of the stupa, or *chorten*. Until the mid-1970s the area around the stupa was still primarily agricultural land and a few examples of local brick-built Newari architecture can be found amongst the newer concrete apartment blocks. As a pilgrimage site, Boudhanath has attracted Tamangs, Gurungs and Sherpa, as well as Tibetans from Tibet and the culturally Tibetan areas of northern Nepal. Pilgrims from as far as Ladakh and Bhutan have also made the journey. However, from the late 1970s onwards, as tourism promoted Nepal to a wider

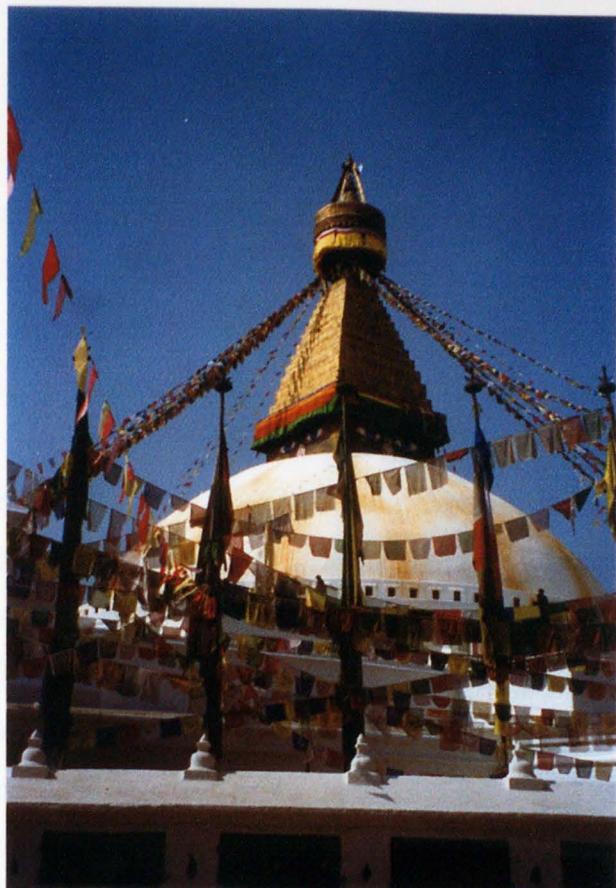


fig. 02

Boudhanath - the Great Stupa.

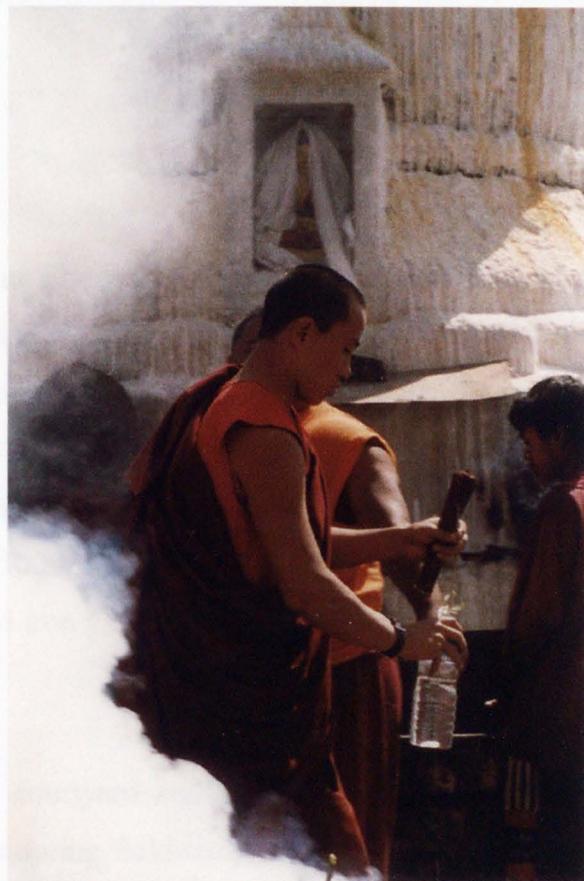


fig. 03

*Riwo sangchod* - Nagarjun Mountain, Kathmandu Valley.

market, sightseers and spiritual tourists began to arrive. Tibetan religious leaders in exile were founding small monasteries and temples, which soon became additional attractions. During this period, various ethnic groups arrived in Boudhanath to take advantage of the increasing economic opportunities presented by the development of tourism.

Mirroring the development of tourism and the growth of monasteries around the Great Stupa was the rapid growth taking place in the dry land and rice fields. Carpet factories of varying sizes appeared. Among those interviewed during the first two months of fieldwork was a Tibetan woman married to a Sherpa. They had moved to Boudhanath in 1984 with their two eldest children. Dawa worked in a carpet factory and her husband, Tenzin, had worked as a *surdar* (guide) organising treks throughout Nepal. Muhlich (1994) comments on the Sherpas arriving in two waves during the 1980s. Certainly, as a result of the increasing demand for labour and the development of smaller businesses, restaurants and schools, Boudhanath has continued, like other satellite villages of Kathmandu to attract immigrants. It is the growth of the monasteries in and around Boudhanath, and Swayambunath on the opposite side of the city, that attracted many of the Bhutanese.

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Most tourists visiting Boudhanath arrive at the entrance gate on the road leading from Kathmandu to Jorpati. Policemen gesticulate at the stopping taxis and buses and shrill whistles blown. To reach Shechen Tennyi Dargyeling, or the "Bhutanese *gon pa*" (monastery) as it is referred to locally, an alternative route up a muddy, pot-holed road past small shacks and a simple Hindu *mandir* eventually brings you to a small arrow and sign, which reads "Rabsel Guest House 100m". Turning down a narrow alley of high walls and corrugated iron gates the road twists and turns till it reaches a small gate set in a long high wall.

Located in a small courtyard and within the monastery compound, the Rabsel Guest House was my base during fieldwork in Nepal. From its flat roof, one could look south

across the town to the Great Stupa, the Jarung Khashor (fig.2), and north to the mountains behind Kathmandu.<sup>19</sup> To the west, lay Kathmandu and on a clear day one could see the stupa at Swayambhunath. Immediately around the guesthouse, were carpet factories and a variety of apartment blocks made out of brick and concrete. On the other side of the road immediately behind the guesthouse were several new houses and apartment blocks, and latterly a small hospital built by the monastery to serve the local community. The organic nature of building and the lack of strict control in Boudhanath, even though it is a World Heritage Site has meant that many of the rice fields have been built on. However, just outside the monastery some fields remain, which are used by locals for grazing goats, playing football, and by the local Bhutanese men for archery and *kuru* (darts). Very occasionally, monks from the nearby monasteries join in these events, but always under the apprehension of being seen by one of the discipline masters.

The monastery, Shechen Tennyi Dargyeling, to which the guesthouse is attached, is built within a large walled compound (fig.4). The main temple is located in a wide courtyard with monastic cells forming a square around it. In small parterres in front of the ground floor cells are small grassed areas with flower borders maintained by a group of Nepali gardeners. To the rear of the main temple are two smaller temples, dedicated to Guru Rinpoche and Tara. Outside the main buildings is a small, smoke-darkened kitchen. Beside this, the Tshering Art School houses an archive, the tailor's workshop and incense making rooms, and on the ground floor a primary school for the youngest monks. Here the young novice monks send, from Bhutan and from the Tibetan refugee community, live in a dormitory and have classes in purpose build classrooms. Running down the eastern edge of the compound is a broad band of grass used by the monks for exercise and the monastery office. At the small pedestrian entrance is a small one-room house occupied by the security guard. Within the compound there is a sense of space, of peace away from the noise of the alleys leading down to the stupa. The head abbot's house is set apart within a high walled garden and to the rear of it, forming the western boundary, a new concrete residency, for the senior monks studying in the monastery *shedra*.

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<sup>19</sup> I have chosen to use Stupa, rather than *chorten* here simply because that was the term commonly used. When I discuss stupas in Bhutan I refer to them as *chorten*.

(philosophy college) is located. Decorated by painters from Bhutan, the *shedra* is reached through a tall gateway decorated with dragon heads and, in the space between the gate and the building, are more flower beds and a raised, brick platform based on a design from Nalanda in India.

To the left side of the gate leading to the *shedra* is a low one storey building, and one, which was to play a pivotal role in my fieldwork. The building houses three large prayer wheels, turned with great effort by pulling a rope attached to each wheel. Part of the building, however, was a two room house occupied by an elderly Bhutanese couple. During my first few weeks, although I saw them each day, I felt invisible even as I sought, awkwardly, to practice my rudimentary Tibetan.

When I arrived and began trying to find out about the Bhutanese living in Boudhanath, a well-respected Tibetan language teacher had shaken his head and said that there were not many Bhutanese living in Boudhanath. However, based on my own experience and knowledge there are approximately fifteen Bhutanese families living in the proximity of the monastery.<sup>20</sup> This figure can be split into two groups – those drawn to Boudhanath to work for monasteries and requested to do so by major religious figures, and the second group, who came to Boudhanath as a result of events in Bhutan. The second group I did not interview. The first group of nine families with close ties linking them to each other is almost exclusively artisans – sculptors, painters, and tailors. With the exception of one family, they all came originally from Tashigang *dzongkhag* (district) and “blood and bone” related four of the households

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<sup>20</sup> I cannot give a precise figure in part due to the lack of contact with part of the Bhutanese community in Boudhanath and the tendency for the families to move between Swayambhunath and Boudhanath as work demanded. There are at least three Bhutanese households located near the start of the steep path leading up

## **Early encounters: meeting Bhutanese**

The problem for my research, as I waited for permission to enter Bhutan was how to meet Bhutanese. Arriving in Kathmandu, my initial concerns were that finding Bhutanese would be difficult. How should I approach this basic issue? Two encounters opened up this possibility. On my arrival at the guesthouse one grey monsoon-soaked day, a young Bhutanese monk, Jigme Sherab, assisted me. It was an important encounter. Through Jigme, who was related to three of the Bhutanese households, I made my initial forays into the local Bhutanese community. My second encounter was with Ngawang Thinlas, a Bhutanese doctor. The close contact, that was to develop between his family and myself, marked the first of many “points of entry”, or levels of inclusion, that I became aware of during and after fieldwork. These two encounters were central to my fieldwork in Boudhanath. Ngawang and his family helped to validate my presence and, through them and Jigme, I gained entry into the small lay community of Bhutanese. This social contact soon lead me to visit houses located in the apartment blocks nearby and to develop a new sense of life in Boudhanath. Yet, whilst contacts were developed, barriers were also created to prevent me talking with those who were seen as being “anti-nationals” (*ngolop*), Bhutanese who had in various ways opposed the government.

The anti-nationals were more conspicuous, than the “loyal” Bhutanese in Boudhanath. This group, based on what I was told, were mainly disgruntled Bhutanese, mainly Sharchop, who had supported, or at least were alleged to have supported, the Druk National Congress party and its leader, Rangtong Kuenley. Several were former monks, who had disrobed after criticising the Royal Government. The majority worked as tailors in small workshops lining the path from the monastery to the Great Stupa. One family owned a small stall selling Bhutanese textiles, incense and handicrafts to tourists. Each day walking to and from the centre of Boudhanath, the path took me past three tailor’s shops and I became aware of a group of about 10 men, ranging from mid-teens to probably late forties and early fifties, who congregated at one of the larger shops in the

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to the Stupa. I visited these households with Bhutanese pilgrims attending religious events at the stupa in Swayambhunath – notably the display of a bone relic.

evening. Walking with Ngawang or other members of the various households I visited, this group would watch as we passed by. Located immediately between a small store operated by a Tamang family and a larger vegetable store, the two groups of Bhutanese were in daily proximity to each other, as they shopped for food in the late afternoon and early evening. Often, as I helped pack the purchases from the street side counter, I would be aware of my companions tensing as they heard or saw the “*ngolop*”. A polite distance was maintained, although social pleasantries were exchanged and occasionally jokes shared, there was a sense of unease from the side of the “loyal” Bhutanese. Later, when explaining to me what I had come to see and feel, various of the Bhutanese, notably Ngawang and his brother Gendun, described a number of the men as being “violent” with “bad hearts,” which made them uneasy to be near them for too long. I was made to promise not to speak with this group, but I suspect from their own wariness towards me, that it would not have been possible.

Jigme Sherab was my initial contact, and through him I developed a close relationship with his relatives. However, Ngawang Thinlas and his uncle and aunt formed the household with which I had the most daily interaction. Their home consisted of two rooms, which were rarely empty. The larger first room was simply furnished with a bed with the blankets neatly folded and which served as bolsters when sitting on the bed. Two low chairs were pushed against the wall beside the entrance and opposite, a metal frame created a raised cooking space with the gas cylinders below. On the floor an assortment of plastic and pewter bowls served for cleaning the dishes and wash hand basin. Plastic drums of water, drawn from an external tap sat on a low bench. The walls, marked from water ingress during the monsoon season, were stained with the steam from the pots bubbling on the little gas stove. Passing through and under a door curtain, the inner room served as workroom, bedroom and shrine room. Immediately to the left on entering was a small fridge – the main luxury in the house. On top, a cluster of butter lamps waiting to be polished, and the wicks inserted and prepared for offering. Between the fridge and the corner of the room stood the family shrine (*chosham*), which rested on top of a low glass fronted display cabinet with the family crockery and other household items. This was not

an elaborate wooden shrine, painted in traditional colours but a metal frame bolted together with shelves forming the various tiers of the shrine.

Facing the shrine, and set below the two windows of the room, was a bed piled with blankets. A pedal powered sewing machine filled the space, below the window facing the door and the corner. From hooks on the walls hung clothing, bags containing items not used each day and ritual drums. Above the door, a laminated picture of King Jigme Singye Wangchuk, the current King of Bhutan, looked down. Around the top of the walls, a series of sixteen *thangkas* (religious paintings) in silk frames, framed by Uncle Sengge, looked down – wrathful and peaceful deities, images of deceased lamas watching over the family. Eventually, I would be asked to carry several of the largest *thangkas* to Thimphu.

I have described the house at length for it was not only a space where I spend a lot of time, but also because it was typical of many of the other Bhutanese homes I visited in both Boudhanath and in Thimphu. These rooms did not only act as sites for fieldwork. They came to represent and be “home”. This was an interesting dimension for it allowed Uncle Sengge, his wife, and Ngawang to start re-creating me, refining my gauche movements and to alert me to the values, by which they interpret and interact with the everyday world around them. This began with learning how to eat and how to sit. Visiting in time other households, and practising what I had learned both by direct explanation and observation, I began to become more aware of the subtleties that characterised social interaction and grounded everyday understandings. Through Chodron and her husband, Sangye, I encountered several young lay Bhutanese, whose outlook on life differed, though not as radically as one may have assumed, from that of monks of a similar age. It was with this group that I attended archery games on Saturday afternoons, when Sangye was in town (fig.5). Unlike archery games in Thimphu, where hi-tech modern bows are used, the sculptors and painters used bamboo bows. The games were relaxed affairs, even when arrows fell close by, taunts were exchanged and as in rural Bhutan, wives would bring lunch and sing. However, the participants beyond a muttered oath rarely observed the formalities, which surround archery tournaments in



fig. 04

View of Shechen monastery.



fig. 05

"Kare yosa, kare wai!" : Bhutanese playing archery beside the monastery.

Thimphu, no dances or prayers as an opponent's arrow failed to reach the target. Occasionally, members of the other Bhutanese community would walk past, or stop to watch. Awkward greetings would be made and depending on the sobriety of the archers, bottles of beer or *ara* (distilled alcohol), offered to the observers. Later, several friends noted, "They were stupid and easily fooled. We can't hate them, but we have to be careful. We aren't *ngolop*."

### **Thimphu: State capital and modern City**

Looking at Thimphu from the east bank of the Thimphu Chu (river) overlooking the Sunday market, one quickly realises how narrow the valley is (Maps 4 and 5). The deepest section of town stretches from the west bank of the river gradually up hill towards Motithang, with the town becoming narrower to the south and north. Located at 2,320m Thimphu is the urban heart of contemporary Bhutan.

Thimphu was, until very recently, a rural landscape of paddy fields and small hamlets. Boggle described Thimphu in 1774 as "covered with rice fields and well peopled with villages scattered on the brow of the hills" (cited by Choden 1997:255). After the destruction of the existing *dzong* by fire in 1962, the Third King decided to rebuild it and develop the area. At the time, a small village of six houses and two ruins stood at the location of the current city centre.<sup>21</sup> In 1984, the population of the city was about 14,000. By 1996, it had risen to between 30 – 35,000 and the urban population accounted for 14.5% of the total population (RGOB 1996). According to recent figures, the urban population has now risen to 21% (RGOB 2000).<sup>22</sup> In discussing the growth in the urban population, most Thimphu residents suggest the urban population to be significantly higher than indicated by the official figures. The largest building, Tashicho *Dzong* is located at the north end of the city and nearby, the High Court is discretely located. A small cottage formerly occupied by the Third King occupies part of the riverbank

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<sup>21</sup> Chodren 1997.

<sup>22</sup> This does not represent only the population of Thimphu. Phuntsholing on the Bhutan –India border is the second largest town in Bhutan, with a third major urban settlement located in eastern Bhutan, Samdrup Jongkhar.

between the *dzong* and the river. Across the river from the *dzong* is the National Assembly building.

\* \* \* \*

Although rice fields can still be seen in Thimphu valley, within the city itself the areas of open land are disappearing. To the south, large areas of land have been acquired for the creation of a new express way leading to the heart of Thimphu. Farmers have been compensated for the loss of their lands, and the price of land for private construction has increased significantly. The creation of the municipality of Thimphu placed the responsibility for its development with the City Corporation of Thimphu and the supervision of a mayor. Regulations concerning rubbish disposal, street lighting, property dues owed to the City are among the details of urban life regulated by the City Corporation. Recently, the City Corporation has introduced a new planning concept – land pooling – that has divided opinion. I return to consider landownership and State control in Chapter Six.

Plans have been made to demolish many of the older shops in the centre of Thimphu (fig.6 and 7). They will be replaced with concrete multi-level shop and office blocks, which will alter the appearance of Thimphu. The existing wooden shops are welcoming, unlike the newer blocks which smell of damp concrete, are under-occupied, and whose stairwells are stained red with betel nut juice and the acrid smell of urine. Externally, the architecture attempts to conform to “traditional” architectural requirements, yet it is hard to disguise a concrete building. Walking with a friend one evening, he commented on the compromises, which have been made. There is a need for new buildings, but to build in a traditional manner takes time and is labour intensive and much more expensive. I was staying in a modern, concrete hotel in the centre of Thimphu. Directly below my window, itinerant labourers had established a small makeshift camp and worked each day on the site of a recently demolished building. Pieces of plaster, still bearing the painted image of a lotus or a garuda head, indicated that the building had once been quite ornate, and the salvaged wooden window frames confirmed that it had been “traditional” in construction, as well as, appearance.



fig. 06

View over the city centre, Thimphu.

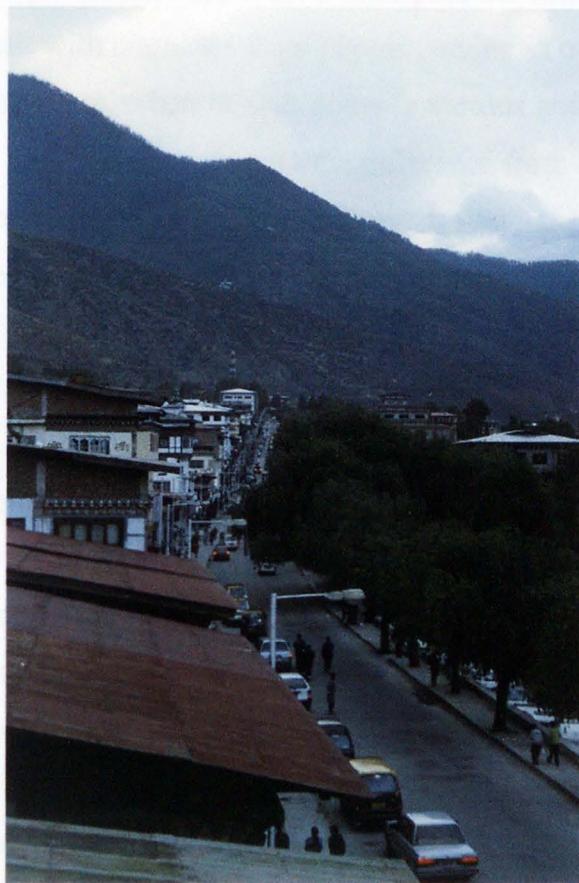


fig. 07 Norzin Lam, the main thoroughfare in Thimphu. Note the illuminated parking lights and the police patrol.

The apartments of several of my informants were about fifteen minutes walk from the centre of Thimphu. Several lived in an area of government owned accommodation, which had been recently transferred to the Pension Board. Others lived in private apartments rented from landlords and subject to the landlord's whims. Only one of the families I interviewed owned their own home. However several were in the process of buying land and constructing their own houses. The general layout of many of the apartments was a main room, two or three rooms off of which were used as bedrooms and a shrine room, a small toilet with water tap, and a small kitchen. Generally, only the parents did not share their bedroom, though this varied from house to house. The majority of houses had relatives, especially younger siblings of either husband or wife, staying with them permanently and attending a local school.

Unlike Boudhanath, where I was able to sit and talk as people worked, cooked or did laundry, in Thimphu everybody, with the exception of a few housewives, worked during the day. I was able to call on one informant at his workplace and came to know his colleagues. On the days he was absent from Thimphu, his colleagues would insist I stay and chat, as they dealt with enquiries from people coming in off the street. Occasionally, I joined the same informant, when he was going to various government offices and as he interviewed people. Yet, each day, despite the difference from Boudhanath, I was able to join people as they ran errands, or sought advice. A casual meeting would often lead to an invitation to accompany them which they all soon realised I would never turn down!

### **Changing households: the absence of a hearth**

Having been accustomed to watching Ngawang and his family sitting around the stove in Boudhanath as they prepared their meals, I noticed early on how the kitchens were separated from the main living areas in Thimphu homes. When visiting Jigme Sherab's family home – a simple one storey wooden shack with a standpipe outside, the kitchen was in a separate room entered from outside the main house. The absence of the hearth or a central point only struck me when I was outside Thimphu, and visited some older houses where the hearth was in the main room. Here, I watched the wives and mothers of

friends cooking as they chatted to those around. There was a direct intimacy and yet commonplace feeling to these scenes, which I did not see or experience in Thimphu. Food appeared from the kitchens prepared by the wife or her helpers, but the social interaction seen in the countryside was absent. Palden Lhamo, the elder sister of a friend and a very good cook, would break off from her preparations to sit with her family and guests, chatting for a few minutes before returning to the kitchen.

When I raised the separation of the kitchen with some friends, they turned and looked at me. “Do you know how dirty they are? It’s not clean and hygienic. The smoke burns your eyes and you could not have the hearth in the middle of an apartment!” laughed Tshering. Yet, as they talked, especially with reference to their sister’s house near Kasadrapchu, it was clear that they did feel an absence. Kesang, when describing the house she and her husband are going to build specifically, described it as both looking like a traditional home and being “modern”. Enquiring about the kitchen, she admitted she would have a modern separate kitchen. “Things change, Richard”. And it is the tension between change and understandings of tradition, which inform the ethnography that follows.

### **Visiting the *dzong*: celebrating Buddha’s Enlightenment**

On a bright sunny morning, I was waiting dressed in my *gho* and carrying my *kabne* (ceremonial scarf worn by men), chatting to a tour guide I knew, who had arrived to escort a party of Americans around Thimphu. It was a holiday, and families were wandering around Norzin Lam wearing their best *gho* and *kira*. I was struck by the appearance of coral and turquoise necklaces, and watched as friends and relatives greeted each other. I was nervous, for I had been invited to join Dorji and his family and visit Tashicho *dzong*. I had been careful in putting on my *gho* and tried to remember all the advice on how to dress, given me by Uncle Sengge. On an earlier occasion, I had rushed from a meeting with the Chief Justice wearing my *gho* to join friends. Tshering Dolkar and her friends sat smiling at me for several minutes, before collapsing in gales of laughter. My *gho* was too far down my legs – I looked like a *gomchen* (lay religious practitioner).

After joining Dorji and his family, we drove to the car park near the *dzong*. A young policeman and a friend of Dorji directed us to a vacant space. Standing beside the car, Thuji tugged her youngest daughter's dress and then re-arranged her own. Placing a silk *rachu* (ceremonial scarf worn by women) over her shoulder, she turned her attention to me. As other Thimphuites passed grinning at me, she helped me put on my *kabne*. Once she and Dorji were satisfied, we joined the throng heading for the entrance to the *dzong*. On the steps, two policemen and two policewomen stood frisking each person. I asked if they needed to keep my passport, but I was waived on and into the melee of bodies climbing the flight of steps leading upto the courtyard. Dorji was carrying his baby son, and his daughter, Tshering clambered on to my shoulders.

Gradually, a queue was formed from the crush of bodies and we steadily made our way forward. A group of Western officials and Aid Workers were being entertained in a low building. In the centre of the courtyard an awning had been erected, providing shade to the monks reciting prayers, which blared from loudspeakers. Hanging from the roof of a building was a large, embroidered silk *thondrel* (appliqué picture), depicting Buddha Shakyamuni and other religious figures. Under the awning and facing the *thondrel* were two thrones, one for the King and the other for the Je Khenpo. To be "helpful", I began naming the figures for Tshering – who placed a finger over my mouth and said, "We should pray". Suitably chastised, I dropped my money in a bowl offered to me as Tshering and I bowed our heads before the relic displayed on the shrine erected below the *thondrel*.

Waiting for her parents to join us, I encountered various friends and stood chatting. They were excited and were wondering when the King and the Je Khenpo would appear. As I left, a friend's aunt, patted my arm and said she liked me wearing the *gho*. As I rejoined Dorji and his family, we entered the main *utse* (tower) and climbed steep staircases to slowly make our way through the shrine rooms. Parents and grandparents offered prostrations to the deities and the children copied them. One father swung his infant son between his legs three times before one shrine – a simple way of gaining merit for the child. By the time Dorji and I finally reached the protector shrine in the roof space of the

*utse*, only permissible for males, I had become more proficient at prostrating myself holding the ends of my *kabne*.

The visit to the dzong was a rare occasion. I had been accustomed from my fieldwork in Boudhanath to more ritual activity, and to households in which daily offerings were carefully made. In Thimphu, with the exception of one household, many admitted not being very diligent at making offerings or leaving them to the children to do. Rituals that should be done on a regular basis were not performed, because people lacked the time or the resources to hold them. A picnic and a trip followed the visit to the *dzong* to a historic monastery. The absence of ritual activity is less important, than the attitude towards religious practice and beliefs in general. Many, who admitted to neglecting their household shrines, were equally concerned by the decline in religious knowledge and understanding. The social values, which form a central theme of this thesis, are inextricably intertwined with notions of *karma* (cause and effect), and “returning kindness”. The visit to the *dzong* placed me in the centre of activity. I was not merely an observer; I was expected to participate – to learn through this how to behave. Yet, it also raised issues about religious beliefs and their transmission, about the State use of ritual activity and the role of the Monk Body.

### **Who's who in the Ethnography: family, friends and acquaintances**

In the ethnography, various people appear on a regular basis. Although, a wider range of people were encountered and interviewed during the course of fieldwork, those mentioned below became my main informants, advisers, teachers and interpreters of what I was seeing, hearing and generally experiencing. In order, to give a sense of their characters and my own relationship to them short portraits of the main figures are given. For the most part, whether in Boudhanath or Thimphu, they represent the people with whom I spend the majority of my time. They cover a range of backgrounds, ages and education.

### **Ngawang Thinlas: son, brother, doctor**

In my first week, I had passed Ngawang sitting on the veranda of the Mani Lhakhang. During the second week, walking past Ngawang and an elderly man, a Bhutanese monk, informed me that Ngawang and the elderly man were Bhutanese. Returning to my room in the guesthouse, I noticed they were washing potatoes in a basin of water. I decided to introduce myself. After a few minutes of hesitant conversation, the older man indicated I should enter the small house attached to the Mani Lhakhang. Slipping off my shoes, I entered and was ushered into the rear room. Tea was offered and Ngawang began chatting to me. Aged 24, he had recently graduated from the Chakpori Tibetan Medical College in Darjeeling. He was staying with his aunt and uncle waiting for the return of the Abbot of the monastery. The Abbot had invited him through his older brother, Gendun, a senior teacher in the monastery. He was small and of stocky build. Frequently joking and laughing, I found myself spending a great deal of time with Ngawang.

During the summer, Ngawang assisted with copying Tibetan texts on to the computer. I would visit the computer room and watch as he copied lines of Tibetan text, and chat to the monks. When he was not busy copying text, he attended a senior class on tantra. The principal teacher had granted him permission to sit in on the class, and each day, he would discuss the section of the text taught with me. As a doctor in the Tibetan system, he had memorised various medical texts. Early on during fieldwork, Ngawang was called to attend a very ill Bhutanese girl. Her mother had come searching for him and found Ngawang and I walking around the Stupa, practising my Dzongkha. Over the next week, Ngawang and his family were preoccupied with caring for the ill girl and helping her mother look after her four siblings.

My days and evenings afterwards revolved around meals and joining Ngawang on errands. His elder brother, Lopon Gendun, was introduced to me, and in time, I came to know and value Lopon Gendun's friendship. Lopon Gendun was similar to his younger brother in build, and was aged 30. His accommodation was initial part of the *shedra* (Philosophy College) library with metal boxes of texts piled around the walls and a small sleeping pallet pushed into a corner of the room. Later, he moved to a bright, room in the

new *shedra* building completed in 2000. When Ngawang left for Bhutan to arrange his papers to leave to work in Croatia, Lopon Gendun took over my care, and to my surprise and delight my social ties developed further.

### Uncle Sengge and Auntie Wangmo: the tailor and his wife

I had seen Ngawang's aunt a number of times as I passed the Mani Lhakhang at the monastery. I recall watching her carefully remove ants from the steps. The evening Ngawang and his uncle invited me into their home; she sat on a wooden chair and watched me speaking in the inner room. The click of her rosary and the almost inaudible murmur as she recited mantras made me feel awkward – I felt I had intruded on her prayers. I soon realised that whenever she had time, Auntie Wangmo, aged 53, would often recite mantras and that I was not disturbing her.

Uncle Sengge was older – I later came to learn he thought he had been born in 1937. A former monk, he had been trained as a tailor and taught to read and write in a monastery near his home village in Lhuntshi, northeastern Bhutan. He had left the monastery after meeting Auntie, and after a decade working as a tailor in Bhutan had been invited to work at Shechen monastery by its founder, Dilgo Khyentse Rinpoche. During the early years of their married life, Auntie had miscarried and later a son died during infancy. A daughter was born just before leaving for Nepal, where she was educated in a Tibetan school before being sent back to Bhutan to study.

Auntie Wangmo would not allow me to pass the house without stopping to chat, even for a few minutes. Was I well? Where was I going? Did I go to see Rinpoche? Why had I not come for supper the previous evening? When Ngawang left, she had said nothing but expected that my visits would stop. After all, why would I be interested in an old couple? I continued to visit and to eat with them when it was possible – Ngawang had normally prepared the family meals due to Auntie's arthritis. However, she did not use chillies noting, "my husband doesn't like chillies. He cannot be Drukpa (Bhutanese)!" Uncle Sengge and she were popular members of the small Bhutanese community – I rarely visited without either encountering another visitor or one arriving. When Ngawang's

mother arrived to stay for several months to “collect” one hundred thousand mandala offerings, she moved out complaining about the constant interruptions. Often, entire families would arrive especially after school to chat, check on Auntie’s health and collect clothing made by Uncle. Child monks would come to lean on the windowsill and talk to her, and frequently I found her peeling fruit and handing pieces to them. More senior monks also visited to enquire after her health and drink sweet tea. Both she and uncle had been living at the monastery since its founding and knew all the monks, and Uncle had taught many of them how to read and write, hence the respectful title *lopon* (teacher) used by Jigme Sherab when speaking with him. During the day, uncle worked in a small office preparing elaborate silk frames for religious paintings, wall and ceiling hangings for Shechen and for monasteries in the west. In the evenings, he would sit at the pedal sewing machine, preparing smaller items of clothing for friends and monks. I would visit his workroom and chat, and in the evening, practice reciting texts to him as he nodded his head or laughed when I made a mistake. The recitation practice was put to use when I joined monks performing a smoke offering for the relatives of a monk from Mongar in eastern Bhutan (fig.3).

#### Jigme Sherab, Chodron and Sangye: monk, householder and sculptor

When I first arrived at Shechen, Jigme Sherab stopped and lifted my rucksack as I attempted to deal with my taxi driver. The monsoon rains had arrived a week earlier and I had arrived just as the first squall of the day began. He and his friend helped me to my room and disappeared but not before I asked his name. During the first few days, as I tried to get my bearings and felt confused I did not see him. Then he appeared one evening at my door. Gradually, we came to see each other when he had some free time, for his timetable allowed for very little free time during the week.

Aged 24 and the eldest of five children, his parents are from a remote village in Tashigang. Jigme had pleaded with his parents to send him to become a monk when he was very young. His father, a sergeant in the Royal Body Guard had refused. But after repeated requests agreed, when Jigme was about 11 years old. His father, Phuntsho brought Jigme to Shechen and placed him in the care of Dilgo Khyentse Rinpoche. Jigme

has attended the monastery school, then the ritual college (*dratshang*) before being passing the examinations to join the Philosophy College (*shedra*). He had repeated a year and hoped to complete his studies in 2004. Like other monks, he liked to play football and cricket at the weekend in some fields distant from the monastery and the keen eyes of the discipline masters.

Through Jigme, I came to know his “sister” and her husband. Jigme and his sister are not directly related. I was constantly puzzled by references to “sisters,” who appeared unaccounted for in earlier descriptions of his and other families. Chodron is related to him through his mother’s family and had been charged with looking after him. A deep attachment between “sister” and brother was very clear. For her and her husband, Jigme and other young male relatives are the sons they have never had. Chodron, aged about 35, and her husband, Sangye, aged about 39 presently have four daughters following the tragic death of the youngest daughter in November 1999. I meet Chodron socially during the first few months of fieldwork, and helped look after the two youngest children during a show at the monastery. Ngawang and his family were very close to Chodron and her family, and it was through meeting her at Uncle and Auntie’s house, often with Jigme Sherab, that I came to know them. It was her daughter, who had been treated by Ngawang, shortly after I arrived in Boudhanath. Uncle Sengge would often walk Chodron or her daughters back from the monastery to their house because of its reputation for thieves.

Sangye is a well-known sculptor. After the death of his youngest daughter, he moved his family to an apartment immediate adjacent to the monastery. The front room was made into a workroom with shelving around two sides. Clay statutes for a commission of lineage holders sat in various states of completion on my first visit. At a separate table, apprentices, distant relatives from Tashigang, sat working on smaller pieces. In the evenings, the apprentices helped his children with homework, played with the youngest daughter and respectfully served Sangye. The apartment was rarely silent – distant relatives or pilgrims from their home village would arrive and stay for several days or even weeks. Sangye’s sister and her family lived in an apartment on the other side of the

monastery and Chodron and her sister-in-law would often shop together, sharing news and listening to each others' concerns, as I discovered one day when I joined them.

### Karma, Tashi Drukpa, and Shacha: monks

My room in the monastery guesthouse looked across a small courtyard at the monastery. Each morning, I would be awoken by the sound of a gong struck to summon the *dratshang* monks to morning prayers. The sound of ritual music was a feature that I came to find reassuring, and on the rare occasions in Bhutan that I heard it, it evoked the monastery. Through my sleepy attendance at prayers, it was gradually becoming known that I was interested in Bhutan, and I began to meet Bhutanese monks. A large percentage of the monks at Shechen are from Bhutan. One figure given to me was 80 – 85%. I think the correct figure would be 80%, with the remaining 20% comprised of Tibetan refugees and monks from among the culturally Tibetan groups of northern Nepal.

Among the monks I came to know, Karma, Tashi and Shacha were important informants. Karma, aged 19 had arrived in the monastery a few months before I began fieldwork. His family is originally from Thrimshing, a village in Tashigang district. Like Jigme, Karma had asked to be allowed to become a monk, but his parents had refused. During his final year at school, he met a girl who he had fallen in love with, and had rejected a girl from his parents homevillage that his mother had proposed he marry. His elder brother, a teacher was living in Kurtoe, and his sister was training to be a nurse. Karma had from an early age been devoted to his father and prepared all the family meals and cleaned the house. When his parents reconsidered their refusal, he had felt duty bound to become a monk even though his own desires had changed. During his free time, Karma became my teacher and elaborated on his understanding of many of the values discussed in this thesis.

Tashi Drukpa, aged 21 was educated at Punakha High School and had entered the teacher-training programme in Paro. After a few months, Tashi had decided that he did not want to be a teacher, even though the salary is good. When I first encountered him, he had newly arrived to be admitted to the monastery and was sharing a room with two

senior monks. Unlike Karma, Tashi did not feel the same affection for his father, a former soldier in the Royal Bhutan Army and now a carpenter in Paro. As the eldest child, his decision to join the monastery had been difficult for he worried about his siblings. His father's drinking had made life intolerable for Tashi and he feared for their well being and his father's ability to provide for them. Alcoholism was a common theme, and several informants commented sadly on parents who drank large quantities of home made *ara* (spirits).

Shacha, the youngest at 17, was a distant relative of Karma, and had arrived from Paro in the winter of 2000. He had approached the Abbot of the monastery and been allowed to stay at the Abbot's small retreat centre to the north of Paro. Shacha's family lived south of Paro at Shaba, and he had spent the last year of his education at Punakha High School. He had been deeply unhappy at school and various events happened, which had made him very depressed. Karma, in whose room he stayed when he arrived, later told me that his younger brother had been severely scalded by an overturned pot of boiling water and died. Shacha had never been able to forget his brother's accident and death. Shacha's father was in the army, and it soon became clear that their parents were part of the first generation of Bhutanese to experience new opportunities and carriers, as well as the chance to move around Bhutan and settle away from their home villages. However, the ties to the home village were strong for Shacha, as they were for Karma, and he had made a trip with his father and brothers to Kangpara before leaving Bhutan. He had photographs of his family and relations dancing a *lebey* (a dance that marks the beginning and end of celebrations that everybody participates in), during the impromptu reunion. Each afternoon, Shacha would come and remove my thermos flask and return with it filled with butter tea, sit and work on my computer and talk about his life in Bhutan.

### Dorje, Thuji and the children: a professional family

Early on my first weekend in Thimphu, a succession of people came to see me. Most to receive letters and small presents send back to Thimphu from monks in Shechen. One of my visitors was Dorji, the uncle of a close Bhutanese friend. Tea was brought from Dorji

and several of my other guests and they began the process of working out who was related to whom, where they lived, and why they were all having tea with a foreigner.

In his mid thirties, Dorji, an employee of the Royal Insurance Company of Bhutan (RICB), deals with motor insurance and accident claims. Originally from Nabji, he had moved to Trongsar to help look after his eldest sister's son, Karma. His sister enrolled him in the school and encouraged him to study. After completing his secondary education, he began working for Customs and Excise in Phuntsholing, where he met Thuji. Just before he was to leave to start college, they discovered that Thuji was pregnant and he decided to stay and work. He delights in his children and only occasionally suggested that he might have been better placed if he had not stayed in Customs and Excise but gone to Sherubtse College. However, after eleven years in Customs and Excise, he transferred to the RICB and 1998 moved to work in the Thimphu office. His mother, now widowed, lives with her sister in Gelephu, on land granted by the government in the mid-1990s. One of his brothers lives near to his mother. Another brother, a sculptor moves around and appears when in need of money.

Dorji's household currently consists of himself, his wife, Thuji, three children aged between 12 and 4, and a baby aged six months. The two eldest children slept in the shrine room and the two youngest with their parents. In addition, there are two "maids", one a distant cousin of Thuji, who lived with them whilst attending secondary school in Thimphu. The other, Drolma, came originally from Nabji, has been with the family since the birth of their first son, and was treated as part of the family. It was never explained fully but I understood her to be related to Dorji's father's family. On the occasions I called at the house when Dorji or Thuji were absent, Drolma would insist I have tea and not just leave.

At home, Thuji is in charge. Slightly younger than her husband and from a "good family" with land in Chuuka, Thuji worked in a government office so the youngest child, Karma Lekjor is left with the maid. At various times, it appeared to matter that she had property and came from a "good" family when Dorji came from a poor rural family. However,

Dorji had saved money and taken a mortgage from his employer to buy a plot of land in south Thimphu, and was very excited about building his own home. As with many of the smaller households, Thuji made everyday items notably woven baskets, which she both used and sold as the occasion arose.

### KT and Tshering: the entrepreneur and the landowner

Lopon Gendun Rinchen, Ngawang's older half brother, introduced KT and his family. KT is aged 40 and worked as a computer programmer and technician for various government departments. Originally from Zhemgang district, his father had died when KT was in primary school and his mother remarried. His relations with his stepfather were difficult, and aged 14 he left home. Settling in Chuuka, he was befriended by a Nepali businesswoman. She had several sons, but was "good hearted" and in return for working part-time for her, she supported him at school. Later, she insisted he attend a good secondary school. KT describes her travelling with him, meeting the school principal, and then arranging with a small "hotel" to supply KT with meals. Her kindness to him was he felt the key that stopped him falling into bad company. The benefactress, who he openly refers to as "mother", now lives in Kathmandu. During the course of his employment he has been send on a number of training courses in Thailand, Philippines and India. Bored and restless in his post, he decided to set up his own business and resigned from the civil service. His second wife, Tshering, related to Ngawang and Gendun, runs a small business. Aged in her early thirties, she originally grew up with her mother and father near Lhuntshi. Following her father's death, her mother remarried and recently moved to Thimphu due to ill health. Tshering's stepfather, Pasang over the last three years had been granted land in Gelephu and had set up a haulage business.

KT and Tshering had lost several children and in 1998 decided to adopt two orphans. The boy, Tenzin, aged 9 and the girl, Lemo aged 2 were orphaned, when their mother died suddenly. Rather than face future health problems, they decided it was better to adopt and so they duly adopted Lemo and her brother. KT has two teenage boys, both at secondary school in Punakha, from his previous marriage. Tshering had found it hard to control them, when they were living at home and they were constantly getting into trouble. The

final straw was when they took household items and sold them for pocket money. So KT had to try to arrange boarding for them at a high school in the hope that they would settle down. The adopted son, Tenzin was soon after being adopted taken to Shechen monastery, where he was placed in the primary school, and under the care of Uncle Sengge and Lopon Gendun Rinchen.

### Karma and Deki: a growing family

Karma and Deki are a prosperous young couple with an apartment in Motithang. Deki is in her early thirties and has five children, the eldest boy from a previous husband. Karma and she have been married for ten years and early on in the marriage, he assumed responsibility for Deki's younger brothers, who came to live with them in Thimphu. Her mother and father had been living in Kurtoe and recently were granted *kidu* (compensation) land in Gelephu. However, they were seen as too old to care for and support the younger children and Karma, as he said to create his own family, raised the two youngest sons as his own.

Karma, aged about 34 is originally from the western *dzongkhag* of Haa and has a tough, no nonsense demeanour that takes time to get past. He rarely speaks in company, preferring to sit and chew *doma* (acrea nut and betel leave quid). Later, during lunch I commented on his silence and he said he had found it better from experience to keep his own counsel. His work takes him on a regular basis to India and Thailand, and on occasion to Germany and Switzerland. Yet, he hates being away. "I miss my kids too much. Deki laughs at me for I get so unhappy when I am away too long from them". Their home was always busy, with children coming and going and a variety of family members staying on visits from the east, or residing with them whilst attending school. On many occasions, when visiting, ceremonies were being performed by lay practitioners (*gomchen*) related to Deki. Ngawang's mother and her brother were often called upon by Karma and KT to perform rituals, and during some ceremonies their respective houses were full of relatives preparing food and chatting, whilst in the shrine room the rituals were carried out.

Like Dorji, Karma and Deki presently rent their apartment from a landlord who lives above them. They planned to buy a plot of land and build their own house. Deki's own business was a small shop, which she rented on the ground floor of an apartment block near Changangkha lhakhang. She and Karma would argue over her extending credit to her friends and neighbours and then not asking for payment. Karma and Deki were a welcoming couple. On one hand they stressed the importance of family, on the other they liked consumer goods, and both enjoyed Thai food. Although not wealthy, Karma and Deki are representative of the emerging middle class – aware of different possibilities, yet, the values Karma considers important are those, which are described as "Bhutanese values", examined in the next chapter. A sense of the individual approach can be found in a minor detail – most houses in Thimphu and all the homes I visited in Boudhanath had a portrait of King Jigme Sengye Wangchuk, the current monarch. Typically, it was a poster, which was circulated in 1999 to celebrate the King's Silver Jubilee. Karma and Deki had a large photograph of the King, Royal Princes and important lamas circumambulating the Changangkha lhakhang. A small detail, I admit, but it reflected how Karma and Deki tried to balance their knowledge and experience of life beyond Bhutan, with their own sense of identity as Bhutanese. Being with them highlighted the complex mixture of outlooks on life and interpretations of social values now encountered in Bhutan.

### Tshering Dolkar: guidance counsellor

Her elder sister, Major Kesang Chodron, introduced Ms Tshering Dolkar, aged 30 to me. I had met the Major at a formal dinner in London with HH Dasho Jigme Gesar Wangchuk, the Crown Prince of Bhutan. She and her colleague, Major Ogyen Pem were studying human rights at the University of Essex, and over the weekend I spoke with her often. Later, before leaving the UK, the Majors visited Edinburgh to see the Bhutanese students studying here. Major Kesang had jokingly made enquiries about my marital status, and decided I would be a suitable husband for her younger sister, Tshering. It was against this background that we were introduced.

Tshering was graduated from Sherubtse College and then qualified as a teacher. She taught in Drukgyel High School and was selected for further training in Canada. For her dissertation she carried out research on why students “dropped out” of school in Bhutan. This shared interest in education and social research, as well as a shared sense of humour allowed us to develop a pleasant friendship. Now working as a guidance officer in Thimphu, she is frequently required to travel around Bhutan and give lectures and assist with training seminars. Apart from providing an important friendship, she was able to clarify my understanding of various things I saw, heard or had been told. Her dissertation, a very important piece of research, raised many of the same issues that I had encountered with young Bhutanese who had recently left school. Through Tshering, I was able to meet a number of her young female friends and to gain some insight into the steady progress of educated women in a variety of professions. Her own sister, Major Kesang was along with Major Ogyen Pem, the first female police officers in Bhutan. Tshering and her sister provided an important sounding board, and gave me a great deal of assistance throughout my last trip to Thimpu. Their characters combined with their education made them articulate and very engaging to be with whether it was running errands or collecting children from school, I always learned something new.

### **An End Note: one viewpoint among many.**

This chapter has sought to broadly provide one impression of everyday life among the Bhutanese. Others renditions can be made. Nor do I want it to be assumed that all see or behave in the same way. As the ethnography, which follows, will demonstrate individuals relate to the world around them and its demands and opportunities in a variety of ways. However, at the core remains a shared collection of values and moral meanings, of social relations and obligations, of political and economic understandings. The “traditional values” and core moral meanings and practices discussed in the following chapter provide a cultural centre, which informs and affects virtually all Bhutanese. Yet, it does not and cannot permit only one viewpoint. These values, which directly and indirectly influence everyday understanding of law, far from being static allow ordinary people to create their own versions.

## **Part One**

### **Establishing the Context: Social Values and Law**

## Chapter Two

### “Virtuous beings”: *driglam namzha* and *thadamtshi* and being a moral person in contemporary Bhutanese society

So, in accord with the compassionate  
Buddha’s words,  
Reject as you would reject poison the ten  
Negative deeds:  
Killing, stealing, sexual misconduct,  
Lying, slander, gossip and harsh words,  
Covetousness, ill will and wrong views.

Practice instead the ten immaculate virtues:  
Safeguard living things, be generous,  
Keep your vows, speak truthfully,  
Reconcile conflicts, speak gently,  
Extol the virtues of others, be content  
Be kind to all beings,  
And develop conviction in karma, the law of cause and effect.

Shabkar 1997:327.

In this chapter, I examine two key concepts, *driglam namzha* and *thadamtshi*, and their role in the creation of a sense of moral identity among contemporary Bhutanese. Introduced to Bhutan in the early seventeenth century by the Zhabdrung Ngawang Namgyal, *driglam namzha* refers to a code of formal behaviour and etiquette governing matters from appropriate dress, to greeting officials, gift-giving and a range of ceremonial occasions.<sup>23</sup> It is derived from monastic codes of conduct and originally was applied to officials, both monastic and lay, of the Drukpa State. Since the mid-1980s, it has been re-emphasised by the Bhutanese government. In 1989 a royal decree (*kasho*) was promulgated in which *driglam namzha* formed part of the official theme of the Sixth Five Year Plan, “One Nation, One People” promoting a distinct national identity. I will develop these comments and examine the iconic nature of *driglam namzha* later in this chapter.

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<sup>23</sup> This list is not comprehensive – three recent publications on *driglam namzha* include making daily offerings to the household shrine, prayers to be recited on auspicious occasions and so forth (Dasho Khadro 1997; Dorje Gyaltshan 1999; NL 1999).

The concept of *thadamtshi* is, in my opinion, central to Bhutanese social values. Kinga describes it as a “commitment and obligation of love, honour and loyalty in one’s relationship with other people”(2001:156). Unlike the introduction of *driglam namzha* by the Zhabdrung, the social values of *thadamtshi* probably pre-dates the unification of Bhutan in the seventeenth century for it is, as I will describe in more detail below, based on Buddhist teachings. There are two further concepts, *lejumdre* and *bey zha*, which I want to mention.

During fieldwork, especially among the Bhutanese families in Boudanath, *driglam namzha* was less important. Rather, as I was “taught” how to sit, accept food and so forth these daily actions were explained as *bey zha*. Literally, it means, “to keep in mind how to do.” This is the more day-to-day way of being which is itself “empty” or lacking in value without *thadamtshi*. Yet, once in Thimphu few of my informants mentioned *bey zha*, nor do Bhutanese authors in recent articles on “Bhutanese values” specifically discuss it (see Wangyal 2001; Kinga 2001, 2002). However, when I mentioned *bey zha* to informants and suggested it was actually more relevant to daily life than *driglam namzha*, they all agreed. In part, I think this reflects the everyday presence of *bey zha* in the sense that it is less visible, except when an individual does something inappropriate – such as touching the crown of a person’s head, stepping over their legs, inadvertently pointing their feet towards religious images or displaying anger. A second factor, in my opinion, is that the past decade has seen a greater emphasis on, as well as, discussion of *driglam namzha* focusing attention on the more formal, rather than the informal modes of conduct and social behaviour, and its links with creating a “distinct national identity”. The families in Boudanath, as mentioned in the previous chapter, have been resident in Boudanath from the mid/late 1980s and less directly influenced by the political re-emphasis of *driglam namzha*. Of course, it must also be stressed that the gap between the formal and informal modes of conduct is not that great, each drawing on the values implicit in the concepts of *thadamtshi* and *lejumdre*.

The concept of *lejumdre* encapsulates Buddhist ideas of karmic cause and effect – “the individual’s present actions will determine the future outcome” (Wangyal 2001:112).

This is an essential feature of *thadamtshi*, as well as, being implicit to the underlying function and meaning of both *bey zha* and *driglam namzha*. The doctrinal basis of *thadamtshi*, *lejumdre* and, by extension, *bey zha* and *driglam namzha* is set out in more detail below, before moving on to consider *driglam namzha* and *thadamtshi* in greater detail.

The relevance of the notions of *driglam namzha* and *thadamtshi* to the examination of law in everyday life, may at first seem remote. However, I argue that in order to gain any insight into how law is perceived and utilised by Bhutanese, it is necessary to locate law within the broader social and moral framework of Bhutanese everyday life. The re-emphasis of *driglam namzha* in 1989 by the Royal Government, and the role of the courts in upholding the formal requirements, highlight the complex interrelationship between notions of social behaviour, “traditional values”, morality and the various levels of state involvement in promoting and maintaining “Bhutanese” values. The responses to events experienced in everyday situations arise from this underlying background of socialised practices filtered through the experiences and desires of the individual.

As a wider range of options and possibilities emerge for the younger generations of Bhutanese, as well as disappointments and frustration, the extent to which the values discussed below remain potent will be of major significance to Bhutan and Bhutanese identity. The apparent hegemonic dimension of the Bhutanese State in the promotion of *driglam namzha* (notably after the 1989 decree) as part of the process of strengthening Bhutanese identity, irrespective of ethnic origin, shapes and redefines how many Bhutanese now discuss the State, *driglam namzha* and their own place within the nation-state. The legitimisation of State policies by reference to the past cannot ignore the heteroglossic relationship between official statements and policies, individual experiences and understandings and the changing expectations of those to whom the policies are addressed. The role and involvement of the legal institutions remind us that central to the process of transformation outlined in the Introduction is the creation of a modern legal order, in which a sense of national unity and purpose is both inscribed and enforced in state laws and practices. Yet, the diversity of individuals is counterposed by

an underlying unity – the lives they lead, the social encounters and realities they experience as well as the selves they imagine and seek to project all “reflect or refract pervasive religious and moral values” (Parish 1994:4). Accordingly, in this chapter I describe the “pervasive religious and moral values” and their significance for providing a moral framework and vocabulary which permeates everyday life.

## **Tradition and Morality**

Tradition can be described as having two overlapping and at times contradictory senses. First, tradition designates a temporal framework without a clear beginning and serves to mark off the past from the present, “tradition” from “modernity” (Herzfeld 2001:80-89). Used in this way tradition aggregates and homogenises pre-modern culture and suggests a historical past, against which the modern can be measured. For example, Giddens, drawing on such a view of tradition, contrasts what he describes as the pervasive condition of “radical doubt” institutionalised by modernity with the “ontological security” and “moral bindingness” of life in traditional society, where religious beliefs, customs and kinship produce a shared sense of belonging (Giddens 1991:3). In effect, the past and present are distanced, if not, actually separated. This approach is deeply flawed, not only because of the rupture it suggests between past and present, but for its assumption that the contemporary, or the modern are the products of such a rupture.

A second approach to tradition can be found characterised in the work of Shils (1981). For Shils, tradition is “far more than the statistically frequent reoccurrence over a succession of generations of similar beliefs, practices, institutions and works”(1981:24). As Shils states, “it is this normative transmission which links the generations of the dead with the generations of the living” (1981:24). So, tradition is not left behind in the transition to modernity, instead tradition is what modernity requires to prevent society falling apart. In effect, tradition serves to reproduce patterns of culture. This second approach to tradition reflects the writings of Bhutanese scholars and lay people alike, as they discuss the process of social transformation in Bhutan (cf. Ura 1994, 1995, 1997;

RGOB 1999). Neither of these approaches is satisfactory, since each conceives of tradition as ahistorical.

Yet, one cannot leave the terms “tradition” and “traditional values” unchallenged. Like Anderson’s (1984) “imagined communities”, Hobsbawm and Ranger’s “invention of tradition” is now a ubiquitous concept. In the introduction to *The Invention of Tradition* (1984), Hobsbawm distinguishes “invented tradition”, which he identifies with super-structural institutions and elites, from “custom”, which he conceives as popular and capable of being mobilised at society’s base. As Hobsbawm’s argument develops, tradition is seen as process of “formalization and ritualization, characterized by reference to the past” (1983:4), while custom is flexible, capable of accommodating a certain amount of innovation “up to a point”, while still providing the sanction of “precedent, social continuity and natural law” (Hobsbawm 1983:2). However, there are limits to the utility of this concept. First, is the frequent criticism that all traditions are socially constructed, and therefore in some sense invented. Secondly, is the unresolved dichotomy Hobsbawm creates, but does not resolve, between tradition and custom. There is a disjunction between the rhetorical aspect of tradition represented in the claim to invariance, and the continually shifting subjective aspect, which is institutionalised in practices and texts, which are reorganised and reformulated without apparent loss of authority. Hobsbawm’s emphasis on the elite/popular dichotomy stresses the role of the elite in the formulation of tradition. However, it does not take into account that those can then transform the practice and ideas, authorised from below. “Traditions, like customs, are embedded in larger social structures that are constantly reshaped by the forces of change.... they aim to arrest” (Vlastos 1998:4).

It is crucial to stress the “social and historical roles and statuses” of those discussing and embodying what are described as traditional values, for these are central elements to the narratives they produce. Their lives, and therefore the narratives they use to explain their daily lives, are deeply and firmly located within those of their communities, from which they derive their sense of being Bhutanese. As a result, each has a specific past that is present, when they are engaged in narrating their views. Each person is a “bearer of a

tradition" (MacIntyre 1981: 221). These traditional practices or values provide each individual with a moral identity, a base point from which the individual is able to develop his or her own moral particularity. This process of necessity must draw on ideas and values surrounding the individual, but because it is an on-going process these values should not be treated as static. A Bhutanese saying touches on the transformations experienced throughout life and recognises that nothing is unchanging:

There are nine transformations in a man's life. If it is not nine, it's eighteen  
(Van Driem 1998:436)

The concepts of *thadamtshi* and *driglam namzha*, which are discussed at length below, are important. However, several people stressed the importance of thinking about what they mean, and not simply accepting something because one's parents or teacher tells you to. This raises two major issues. The first concerns the impact of education and an increasing questioning of the status quo by young Bhutanese.<sup>24</sup> Education has been central to the process of development in Bhutan since the 1960s. As in Nepal, the school curriculum has sought to promote government policies. The foreword to one senior school text states that, "The Education Division is making all endeavours in fulfilling the directives issued by the Royal Government to make education meaningful to our children and outline the roles they are expected to play as future citizens of the country" (CAPSS 1997:iii). This is echoed in *Bhutan Civics*, a text book written for Class IX-X, which describes civic duties and responsibilities as meaning that "each individual citizen has a moral responsibility to assist the government in implementing national policies and in maintaining peace and prosperity in the country" (CAPSS 1999:6). Yet, a crisis has occurred, with an increasing number of school leavers unable to find profitable employment, a drift from the rural to the urban areas in search of work, and an increased competition for the places at the only college in Bhutan, Sherubtse College located, in eastern Bhutan. The desire to provide for their children's education has increased pressure on the emerging middle class to send them to boarding schools in India. Although not a new feature, it does appear to be increasing (according to interviews

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<sup>24</sup> Reports of various presentations to the students at Sherubtse College in eastern Bhutan have commented on the direct questions posed to visiting officials and dignitaries which would rarely have occurred in the past. (oral communication C Franklin f/n 13/05/00).

carried out during fieldwork), and is closely allied to a concern about the future employment situation in the country.

The second issue relates to the broader theme of the development of the nation-state, during the second half of the twentieth century. The role of education in creating an image of a modern, united nation-state is salient for the role of the schools as sites for promoting development and a particular vision of the Bhutanese nation. The Bhutanese, I talked to who had completed their schooling at Class IX or X, described how they perceived Bhutan and its institutions. Most spoke in general terms about social development and the provision of health care, of environmental conservation and of preserving their “national” identity. A few commented in terms of their duties to the nation. However, there was a sense of resentment over the authority of the teachers, which they could not challenge for fear of being punished or removed from the school. Often, they commented on being given a “C” grade on their Certificate of Good Character. This grade was interpreted as meaning that they lacked a “good character”. Implicitly, these students felt that their role as good citizens was already in doubt. This often translated in to a wider view of officials and people in positions of authority abusing their positions. This is especially relevant for it keeps in view the tensions, which exist between tradition and change. Perhaps this is best described as a tension between a sense of cultural vulnerability and a sense of vitality.

The issues of education and visions of the nation state are intimately linked with the discuss of *driglam namzhag* and the duties and responsibilities of the contemporary Bhutanese. This leads to the next element – the role of morality. What do I mean by being a “moral” person? Based on the material presented, I have chosen to delineate the term “moral” to refer to notions of good and bad, of appropriate and inappropriate conduct, of respect and humility versus disrespectful actions. Furthermore, as the comments on the Certificates of Good Character indicate, there are notions of civic responsibility and loyalty to the nation-state. Kaviraj comments that “concepts are implicit in social practices” and “though not always verbalized, either in everyday or intellectual forms, these ideas are nevertheless social concepts” (1997:83). The concepts

and ideas presented in this thesis are at times verbalised, but typically are part of the daily repetitiveness of everyday life, when people are engaged “in their everyday interpretation of the world – to describe what they see and evaluate what they approve or deplore” (Kaviraj 1997:83). In essence, I am seeking to delineate notions of “moral sense”, as reflected and embedded in the practices, social interactions and narratives of the Bhutanese.

The emphasis on the performative aspect of morality is crucial. Rather than treating morality and moral states as restricted to highly marked decisive events, it is important to focus our attention on the practical routines of everyday life. Here, the links between ideas of legal consciousness (which will be elucidated in the following chapter) and ideas of morality are intertwined in the personal choices and actions engaged in on an individual level during the course of everyday life. As I go on to discuss in this chapter, a sense of the moral, or rather the virtuous, can be found in the continuous acts engaged in by people. However, whilst the communicative aspect of action and practice encompasses the moral domain, two other significant factors require to be considered: personal agency, on the one hand, and on the other, moral reasoning. Without wishing to become side-tracked by a discussion of ideas of moral philosophy, both of these factors form part of the weaving together of a personal sense of virtue, of moral conduct with an emerging, if not always articulated, legal consciousness. Legal consciousness emerges as part of the process, not merely of socialisation and embodiment, but of the development of a sense of self-representation.

In addition, I wish to add that although I have used the singular “morality”, I should be speaking of “moralities”. This better recognises the diversity of moralities expressed by individuals. More importantly, as I have come to think about the connection between morality and law, it is important not to see morality as a coherent imposed system. Therefore, rather than treating morality as an unequivocal code, it is more relevant and fruitful to treat morality as the “form and acts by which commitments are engaged and virtue accomplished” (Lambek 2000:316). Throughout this chapter, I stress the strong links between morality and practice. However, I do not want to reduce morality and its

practice to mere actions. Whilst I argue that morality is a learned practice, one embodied by the actor or agent, it is not reduced to mere habit. Indeed, morality requires personal agency and moral reasoning, for these are the basis from which people choose to act in a particular way – virtuously or non-virtuously. As MacIntyre notes “the exercise of the virtues is a necessary and central part of the [good] life, not merely a preparatory exercise to secure such a life” (1981:149). The relationship between moral values, of moralities in the plural, and practices is a dynamic one: “Values are continuously changing and adapting through actual choices and practices, while, at the same time, they continue to inform and shape choices and practices” (Howell 1997:4).

Above all, the process involves not only acquiring an understanding of social values, but of the process by which the individual develops both a personal and a social identity. Drawing on Merleau-Ponty, we can understand that *driglam namzha* and *thadamtshi* are inseparably linked to an emergent awareness of self through embodied practice. To Merleau-Ponty it is our embodied memories which give us, individually, a sense of continuity (1962). However, this sense of self is not sufficient to account for either the emergence of a moral self nor for the emergence of legal consciousness. Rather, it is the acquisition of a sense of personal identity, which is capable of reflection and arises from the active interplay with the social environment that permits this emergence. For values to become meaningful, implies in turn a commitment on the part of the individual to those values. Yet, as the ethnography will show, as changes occur and new opportunities arise, unless the values are flexible enough to adapt and change, a gap can emerge. The embodiment or personification of these values may change from performative expression to mere performance devoid of personal meaning (Archer 2000).

An important dimension is the relationship between traditional values, notions of being a moral person, and the connection with law as experienced in everyday life. In a general discussion of the underlying philosophical principles of Bhutanese law, references are made to “natural law” and “positive law” (RHCJ 1999). Various legal theorists writing on “natural law” (e.g. Finnis 1980; Rommen 1974) have argued the connection of law and morality as inescapable. A rule, doctrine or procedure is legally defective in their opinion,

when it fails to serve the ends of justice. From a Bhutanese perspective the concepts of *driglam namzha* and *thadamtshi* seek not only to promote social harmony, but also to establish and maintain social justice. This perspective is reminiscent of the concept of *wa* in Japan (Kimio 1998) and *li* in China (Perenboom 1993).<sup>25</sup> Positive law, in the sense of treating law as the product of an accepted procedure such as a legislative act, or a judicial decision, suggests that the moral worth of the procedure is open to question. This view of law does not treat law and morality as intrinsically linked (Hart 1961; Raz 1979; MacCormick 1978). However, I disagree with such separation of law and social values. Although Durkheim's (1975) work on law is problematic for a variety of reasons, notably its lack of attention to law in contemporary societies as an expression of governmental power, it does highlight the importance of moral content in law and regulation. Therefore, I turn to examine Buddhist philosophy, which I separate into two categories, doctrine and discipline, and the principle doctrinal features which shape *driglam namzha* and *thadamtshi*. Thereafter, I turn to consider the state, education and contemporary attitudes.

### ***'Dul wa* and *Tshulkrims*: “taming” the unruly**

Underlying the concepts of *driglam namzha* and *thadamtshi* are notions of Buddhist discipline and karma (Tib/Dz: *las*). Buddhist teachings on morality and conduct form the basis for these concepts. In this section, I focus on those elements, which directly influence *driglam namzha* and the concept of *thadamtshi*. These concepts revolve around developing a moral life based on social interaction on the one hand, and the cultivation of mental awareness on the other. As described above, there is a strong intertwining thread between the development of a sense of moral understanding, spiritual development and daily life.

The arrival of Buddhist teachings in Bhutan is accredited to the religious figure Padmasambhava. A tantric adept, he is described as arriving in Bhutan on the back of a

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<sup>25</sup> *wa no seishin* – spirit of peace and harmony (Vlastos (ed.) 1998:300). *Li* means “principle” in the sense of underlying “source of natural order” (Perenboom 1993:47).

flying tigress at the site of Taktsang in Paro valley. However, of more significance is the story of Padmasambhava being summoned by a local king in Bumthang to help cure him of an illness caused by a local deity. Padmasambhava was able to recover the king's life-force from the local deity, Shel dkar, and to "tame" the deity.<sup>26</sup> The taming of the local deity is followed by Pamdasambahva acting as a mediator between the king and an Indian king. Both kings and their ministers swore an oath at Nabji, thereby settling the dispute. These stories, available in various forms, ranging from old texts to modern school books and oral tales told to entertain, are significant, not least for the images of the past and the arrival of Buddhism, but for the theme of "taming" or "controlling" (Tib: '*dul wa.*)

'*Dul wa* means literally "to subdue, tame, overcome" and refers primarily to the *vinaya* section of the Kangyur (Buddhist commentaries) relating to monastic rules of conduct.<sup>27</sup> We can see on one hand the importance of Buddhist doctrine and on the other, the rules of discipline contained in the *vinaya*. In Shechen monastery, '*dul wa* is used to refer to the various levels of vows, therefore the discipline to be adhered to by the lay householder, the novice monks and those holding full monastic ordination.<sup>28</sup> However, the term '*dul wa* is important for it carries beyond the monastic community, and is central to any understanding of *driglam namzha* and *thadamtshi*. Day in her work on Ladakh (1986) has, like other authors, highlighted the civilising process of the introduction of Buddhist teachings (*chos*). The teachings subdue, or rather tame, the region, not only the unruly, harmful local deities, but the human population as well (see also Ekvall 1968). To engage in *driglam namzha* is to train or tame one's natural wild impulses into a way of behaving, that accords with Buddhist teachings which emphasises the link between the actions of body, speech and mind.

The moral dimension of the teachings are distilled for lay people and claim a legitimacy based on the belief that the 16 principles for harmonious living originate with the Tibetan

<sup>26</sup> Aris (1979) has a detailed account of the complex early history of Bhutan. The emphasis on Padmasambhava appears to be as a result of local traditions recounted by Longchenpa during his exile in Bumthang and then the later works of Padmaling pa in the fifteenth century.

<sup>27</sup> See also Samuel (1994) especially p 66 – 69, Aziz (1981) and Levine (1981)

king, Songsten Gampo. The sixteen principles can be found in the *Mani 'bka bum* and are set out in a Class IX - X school text entitled *Bhutan Civics* as:

Michoe Tsangma Chudrug<sup>29</sup>

Not to:

- 1: kill, commit theft or robbery
- 2: have wrong faith
- 3: go against the wishes of parents
- 4: be disrespectful to elders, learned men and leaders
- 5: foster evil thoughts towards family and friends
- 6: refrain from helping your neighbours
- 7: be dishonest
- 8: follow bad examples
- 9: be greedy and selfish
- 10: foster evil thoughts in others
- 11: be late in refunding(repaying) your debts
- 12: cheat
- 13: segregate human beings into rich and poor, high and low
- 14: listen to wrong (evil) advice
- 15: be deceitful: and
- 16: lose patience or be short-tempered.

(Education Division, Ministry of Health and Education, RBG 1999:51).

These principles were referred to by many informants during interviews on *thadmatshi* and *driglam namzha* (even if they were unable to recite all of them). They form “the basis for leading a good life” according to Ngawang. Later, they were described as “the alphabet” – the fundamental moral basis of conduct. As we shall see in Chapter Seven, the individuals responsible for the desecration of religious sites were described as “forgetting the alphabet”.

Underlying the sixteen principles are the ten virtues and their corresponding non-virtues. The frequency with which informants used ideas of virtuous and non-virtuous actions, or rather as it was described sinful ones (*sdig pa / lasip*), depended on their age and general level of education. However, even amongst those Bhutanese most scornful of the

<sup>28</sup> Lay householders may hold five vows – to refrain from killing, stealing, lying, sexual misconduct, and taking intoxicants (*sdomba Inga*). Above these basic vows, are the vows of novice and fully ordained monks.

<sup>29</sup> *Mi chos tsang ma bcu drug* – literally means “the sixteen principles of pure human conduct”. It is worth noting that the English translation does not adhere to the Dzongkha text which appears beside it. For more on the *Mani bka' bum* and the dating of this body of literature see M Kapstein (1992).

monastic community and critical of Buddhism, the notion of virtue and non-virtue permeated and informed their perspective on their own and other's actions. The virtues refer to the basic teachings on karma. The ten virtues (*dge ba bcu*), are similarly set out in the school text referred to above. Rather than a simple litany of "do not kill, steal and so forth" they are set out in a little more detail:

#### The Ten Pious Acts

- 1: to love and be gentle to all living creatures;
- 2: to take things only with the permission of the owner;
- 3: refrain from committing adultery;
- 4: not to tell lies;
- 5: not to create problems among friends;
- 6: not to be rude or hurt the feelings of others;
- 7: not to be jealous or talk wantonly;
- 8: not to be greedy, or want the belongings of others;
- 9: not to wish ill luck on others;
- 10: to have faith in religion.

(Education Division, Ministry of Health and Education RBG 1999:52)

The school text describes the Zhabdrung as formulating the "first set of laws in our country...codification of laws were completed in 1652....These laws were deeply influenced by the teachings of Buddhism. According to these laws people were required to practice *Michoe Tsangma Chudrug* (sixteen virtuous acts) and *Lhachoe Gyewa Chu* (the ten pious acts)" (1999:50). It is worth noting that there is an implicit sense of the taming of Bhutan by the Zhabdrung, rather like the earlier tales of Padmasambhava.

The ten virtues appear in a different, but striking presentation, in a second school text. In Textbook Eight (*slob deb brgyad pa*) (Education Department RBG 1991), the second chapter is devoted to explaining the ten virtues and ten non-virtues at length.<sup>30</sup> The chapter ends with a series of questions, which re-emphasise the three virtues and non-virtues of the body, the four virtues and non-virtues of speech and the final three associated with the mind. These final three are important for without control over one's mind, there can be no control over the actions of body and speech. Continually, the mental aspect of self-discipline and control appear in the teachings and commentaries of religious teachers. The teachings on karma and karmic effect stress the importance of

<sup>30</sup> The textbook is written in Dzongkha.

mental intention. Jigme Lingpa (1730-98) advises that “the mere failure to commit the ten negative actions, without having a conscious spirit of restraint, is considered indeterminate. Positive behaviour is defined as the mind’s conscious intention to reject negative practices and to adopt their opposites” (*Yontan rgya tsho zla ba'i 'od ser* vol:1 283 cited by Kangyur Rinpoche 2001:354). To control oneself and to engage in the ten virtuous actions is “said in the Ratnavali …to deliver beings from birth in the hells and the realms of pretas and animals” (Kangyur Rinpoche 2001: 61).

Beyond the doctrinal aspect, the importance of the “sixteen principles for harmonious living” and the “ten virtues and non-virtues” lies in the major focus they place on social relations. Whereas monks and religious practitioners are encouraged to distance themselves from society, in general for the laity the “social aspects of life are given a more important place” (Rajavaramuni 1990:49). Listening to Uncle Sengge, the importance of these values in shaping and defining everyday social relations became clearer. Embodying a succinct synthesis of the complex Buddhist doctrines, and legitimated by their associated legends of origin, for example their formulation by Songsten Gampo, or the Zhabdrung, the concept of *thadamtshi*, and the way of conducting oneself (*bey zha* and the formal *driglam namzha*) underpin Bhutanese notions of morality and social obligations. “Cultural etiquette such as showing respect, and being obedient, disciplined, loyal, and dedicated are a large part of the sacred Bhutanese tradition”, argues Tshering Dolkar (2000:87). The phrase “returning kindness” was used by Uncle Sengge and other informants when explaining *thadamtshi* stressing, as I understood, the importance of mutual support and reliance based on good social relations.

There is an important, if not overt, relationship between the *vinaya*, *driglam namzha*, and law in contemporary Bhutan. During discussions in Thimphu, a senior lawyer stated that the modern laws of Bhutan are not based on the *vinaya*. In part, this is probably a fair assessment of the laws developed in Bhutan, since the introduction and promulgation of the *Thrimzhung Chenmo* in 1957. However, I believe that the situation is far less clear cut. The influences, which help to shape and create legal meaning and understanding, lie beyond the scope of the control of the legislator. More specifically, the High Court has

sought to incorporate Buddhist principles in the legislation and processes which have been created, notably since the early 1990s (RHCJ 1999). Rather, unlike the *vinaya* rules for the monk which are fixed, the *vinaya* rules for lay people can be seen as providing basic principles for those responsible for the temporal regulation of society. Therefore, it is of major significance for our understanding of the meanings and uses of law in everyday life, that ordinary people refer to these underlying principles.

During a conversation with Karma Ura, a contemporary Bhutanese scholar, the role of the tantric lama and the relationship between lama and disciple was mentioned as forming an important model of the social relationship between lay people. The lama, as the embodiment of the teachings is respected and followed faithfully by his disciple. Even if the lama appears to behave in an inappropriate manner, the faith of the disciple should not be shaken, for the lama may be acting in a certain way for a higher spiritual purpose (e.g. the Buddhist saint, Drukpa Kunley who behaved in an unorthodox manner see Dowman and Paljor 1980). This sense of devotion and respect is reflected in the concept of *thadamtshi*. However, it is the role of the lama as the person who tames or rather teaches the disciple how to control their nature in order to follow the teachings, that is most significant for our understanding of *driglam namzha* and *thadamtshi*. To follow the “way of conscious order” is to fulfil one’s undertaking to one’s superior or elder, which is in effect to learn to be self-disciplined and fulfil the “ultimate vow”. However, in terms of religious practice the local deities are constantly being tamed and subdued. Stories of lamas having to re-subdue local deities, who have become unruly and causing harm, are common in Bhutan (indeed throughout the Himalayan region see: Mumford 1989; Dujardin 1997). In the human realm, this implies that the process of taming is similarly an on-going one.

These stories have an important corollary with the human dimension. The fluidity of the Bhutanese notions of respect and reputation recognise that the process of taming or controlling one’s own nature is an on-going process. At times individuals may fail, in part because they have no good role model or exemplar to follow – as with a religious disciple losing his or her lama. In part, this also highlights the dual processes involved in *driglam*

*namzha* and *thadamtshi* – although embodied by an individual, for them to be meaningful they must be developed, cultivated through a close relationship with a person that the individual respects. The current debates over the formalisation of *driglam namzha* have emphasised the importance of teachers acting as role models, but more importantly, for parents and grandparents to take responsibility for teaching their children *driglam namzha* and *thadamtshi*. The transmission of “traditional Bhutanese values” remains a matter for ongoing debate in contemporary urban and rural Bhutan.

This brings us to an important consideration. The relationship between lama and disciple, on which the lay model is based, emphasises the importance of devotion and respect towards the lama. However, there is a reciprocal obligation on the part of the lama. As several informants emphasised, the lama, as the moral superior, is responsible for uplifting his disciple and helping release the individual from *samsara*. Therefore, the lama has a major responsibility to fulfil. The disciple can do, so it is claimed, anything except break his or her trust in the lama. This would represent an unredeemable stain of their *damtshi*, or vows. This relationship of lama and disciple was described as representing “the fundamental order which must be maintained” (Karma Ura f/n 12/06/01). There is an obligation on the part of all those to whom respect is given to help those below. The metaphor of a waterfall was used on one occasion to describe how this social obligation cascades down from the king, to his ministers, the government officials, down to grandparents and parents and siblings. Yet, for many informants this represents an abstract ideal. Although certain individuals would be commented on as being “good” exemplars of possessing *thadamtshi* and practising *driglam namzha*, few could identify exemplars that all would recognise. The king, a person who is generally highly regarded, was described as too distant to be a practical exemplar. His actions and concern for the wellbeing of the country are praised, but the majority of Bhutanese tend to look closer to their own surroundings and communities for examples of how to behave and also of how not to behave. Yet, one can still detect in the presentation of the king and his role, the ongoing image of the *chakravattin* king.

However, as various writers have noted (Aziz 1981, Levine 1981, Ardussi and Epstein 1978, Epstein and Lichter 1983, Mumford 1989, Samuel 1990, 1993), the belief in karma, with its emphasis on virtue, co-exists with concerns which emphasise this-world. Attending a day long ritual on Nagarjun Mountain to the west of Kathmandu with a group of 16 monks, Pema Namgyel explained the purpose of the ritual as being conducted for the general well-being, health and prosperity of his adopted father and mother. The raising of long strings, bedecked with prayer flags and the accompanying rituals, focused on securing protection from misfortune and the creation of good fortune for the family. Later, the household rituals I attended in Thimphu and Kabsea mirrored the same concerns with the removal of obstacles, as well as, creating merit. Epstein and Lichter note that the belief among Tibetans in karma coexists with concerns about their own good fortune. Thus, they attempt to achieve worldly success, while maintaining a “slightly ironic detachment” from it due to its impermanent nature (Epstein and Lichter 1983:257). Therefore, we need to recognise that in daily life the higher principles of Buddhist doctrine may be of less relevance than the social values and day-to-day concerns that inform daily interactions within the community. A tension, therefore, can be sensed between the admonitions of the religious teachings and social practice. This was evidenced not only by the contradictions I encountered during fieldwork, but also by the popularity of various trickster figures, and widespread retelling of bawdy stories and jokes. As Levine notes;

on the one hand, one can point to a set of unvarying moral precepts, fixed in Buddhist textual tradition to which all ...overtly subscribe. On the other hand, there are also implicit values which are manifested in actual patterns of behaviour...The various cultural messages encountered – from given moral precepts, implicit societal values, inner impulses and public valuation of conduct – may well prove contradictory (1981:122 – 123).

## ***Driglam namzha : the code of conduct and being "Bhutanese"***

Ever mindful of the small size of Druk Yul and the hostile and hegemonic attitude of the rulers of Tibet, the Zhabdrung found it necessary to promote a distinct cultural identity for Bhutan.... He, therefore, developed distinct Bhutanese characteristics in religious ceremonies and rituals as well as in the dress and customs of the people. He also introduced a code of conduct and etiquette known as *Driglam namzha* to further project a distinct identity for the Bhutanese people and to instil in them an abiding sense of love and pride in their custom and way of life (*Dasho Rigdzin Dorji* 2000:17)

The introduction of the code of conduct and etiquette in the seventeenth century by the Zhabdrung, Ngawang Namgyal, has had a profound impact on how people perceive and more significantly, embody being “Bhutanese”. In recent years, the code of conduct and etiquette has been subject to a great deal of debate, notably in relation to the “southern problem”. I will briefly touch on this issue below for one cannot discuss *driglam namzha* in since the late 1980s without considering its impact on relations between the government and sections of the Lhotshampa (Nepali-Bhutanese) community. The presentation of the code in western reports and travel books typically overlooks the historical origins of the code and tends to represent it as either completely new or as the re-introduction of something which had fallen in to desuetude (see Gregson 2000; Gupta 1999; Parmanand 1992). Neither of these viewpoints, in my opinion, are correct. In part, this misunderstanding of *driglam namzha* is due to the general description of it as a “code of conduct and etiquette”. Although, this is a reasonably accurate description, it does not convey the deeper, central dimension, namely the underlying values associated with “good behaviour” (NL 1999: xl).

It is evident when talking with Bhutanese of all ages that *driglam namzha* forms part of their shared experiences. Uncle Sengge, originally from Kurtoe in north-eastern Bhutan, born in about 1937, describes *driglam namzha* as a more disciplined “natural way to be”, a reference to *bey zha*, whilst his nephew, Ngawang, in his mid-twenties, chose to emphasise particular aspects, notably the underlying moral principles, and play down those, which he views as distorting the meaning of *driglam namzha*, specifically the

requirement to wear the *gho*. In part, Ngawang's response emphasised the everyday dimension of conduct and behaviour *bey zha*, rather than the more formal *driglam namzha*. For Sengge and Ngawang, *driglam namzha* informs, as well as shapes their life worlds. The distinctions made by Ngawang did not reject *driglam namzha*, rather they revealed an awareness and personal response, indeed an ambivalence, to the official discourse re-emphasising *driglam namzha* as a key part of "Bhutanese" identity. The following sections focus on the role of *driglam namzha* in the last half of the twentieth century, and in particular, its role and function in contemporary Bhutanese society.

### ***Driglam namzha: harmony and identity***

*Driglam namzha* literally means "the way of conscious order" or "the way of conscious harmony"(Ura 1997:247). It is also described as "the means to maintain harmonious behaviour" and as "a set of social norms aimed at fostering in a person the proper mode of conduct and social values" (NL 1999:xxxvii). This emphasis on "order" or "harmony" (*srig*) is a core aspect of Bhutanese society. A Bhutanese monk dancer commented, as we discussed his understanding of *driglam namzha*, that it was similar to the need for him as a dancer to "harmonise [his] steps" with those of his co-performers.<sup>31</sup> The use of the reference to '*cham* (religious dance) was significant. One sense in which dance seemed to serve as a way of seeing *driglam namzha*, was the interaction between those who already knew how to perform the dances and those learning them (fig.8). Individual monks, respected for their abilities to perform '*cham*, would be sought out to give instruction to those learning. In their rooms or the courtyard, small groups of friends would "dance" in front of their friends and together they would learn the correct sequence of steps, position of the body, hands and feet. From elder to junior and amongst peers, they learn through instruction, observation and practice to "harmonise their steps". This is reflected in the comment that the best way to learn *driglam namzha* is "with teachers at school, lopons of monasteries, in the office where you work, at home with parents, friends and relatives. The basic principle is to foster respect for fellow beings" (NL 1999:xl).

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<sup>31</sup> Jigme Sherab, (f/n 13/03/2000).

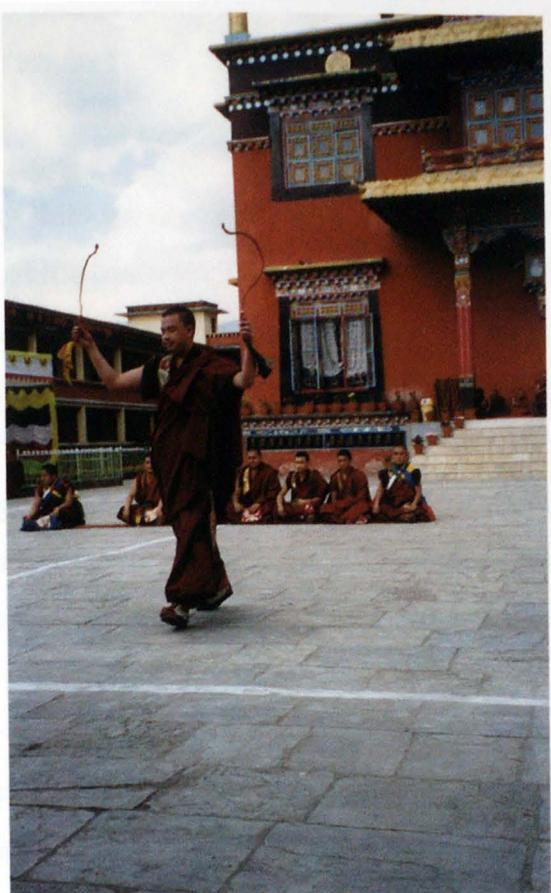


fig. 08

Jigme Sherab, rehearsing '*cham* (role of Nyima Ozer).



fig. 09

Students near Simtokha dzong wearing *gho*.

*'Cham* is a good way of thinking about *driglam namzha* for it combines religious purpose and meaning with a specific sequence of steps and postures, which are to be internalised by the performer. *Driglam namzha* is for many people about rules of physical comportment - how to stand, sit, speak, eat. In addition, to the rules governing physical conduct there are rules on external appearances governing dress code (notably the wearing of the *gho* (fig.9) and *kira*, and the importance of wearing a *kabne* or *rachu* when entering public buildings and temples).<sup>32</sup> However, underpinning these rules of physical conduct and appearance are moral values and sensibilities which reflect Buddhist teachings.

In an article published in 1987, Dasho Rigzin Dorji described *driglam namzha* as being not only “the backbone of our national identity, but it is also in consonance with the 16 lay ethical principles and the 10 precepts of Buddhism”.<sup>33</sup> During the Seventy-seventh National Assembly debate on *driglam namzha*, the Samtse Dzongda argued that *driglam namzha* was not “merely ...a rule to wear the national dress and speak Dzongkha”.<sup>34</sup> Developing his comments on *driglam namzha*, he stressed the importance of body, speech and mind, especially mind, in the practice of *driglam namzha*. “It must be *self cultivated* within a person without the need for it to be enforced” (*ibid*: my italics). A Dzongkha proverb states that “the abode of the mind is the body, mastery over one’s body is a good habit” and as with the reference to ‘*cham*, the importance of the inner mental attitude which is reflected in a person’s movements and behaviour is central to *driglam namzha*.<sup>35</sup> A strong sense of physical awareness and self-control, which is developed to the extent that it appears natural, reflects the idea of taming or subduing the wild and untamed – a process of cultivating good qualities. This reflects an ever present view of the arrival of Buddhism as a taming and civilising force, and I return to this theme later in the chapter.

<sup>32</sup> *Gho* refers to the national dress worn by men, and *kira* that worn by women. *Kabne* - is a long scarf worn by men over their left shoulder when entering public offices, monasteries as required by *driglam namzha*. *Rachu* is a smaller piece of material worn by women over their left shoulders as required by *driglam namzha*.

<sup>33</sup> Kuensel 14/03/1987:7 “*Driglam namzha*; backbone of national identity”.

<sup>34</sup> Kuensel 10/07/1999:5 “A unanimous agreement on the importance of *driglam namzha*”. Also see “The deeper values – editorial” 10.07/1999:2.

<sup>35</sup> Dz: *sems kyi gnas sa lus yid pas: lus bdag 'dzin yod na spyod ain*. My translation.

Recently, three books have been published in Thimphu on *driglam namzha*.<sup>36</sup> The first written by the Royal Chamberlain, the Gyalpo Zimpon, Dorje Gyaltshan (1999) draws on his experiences of serving at the court. This serves to remind us of the origins of *driglam namzha*, as the code of etiquette surrounding the court of the Zhabdrung and the monastic body. The National Library produced a second work in both Dzongkha and English. Both works sought to put into writing that “which has been handed down for posterity by way of oral tradition” (NL 1999:245). Pommaret comments that “These books, which are intended to teach modern Bhutanese the traditional and proper code of conduct in all circumstances of life, are in fact invaluable ethnographical testimonies on this aspect of Bhutanese culture, the recording of which had previously remained oral” (2000: 144). A third book simply entitled *Driglam namzha* is a detailed work prepared by *Dasho Khadro*, a former researcher with the High Court, and published by the Royal Court of Justice in 1997. The work seems to have gone unnoticed by most people, but was awarded a prize by the Dzongkha Development Committee who viewed it as the best recent work to appear in Dzongkha.<sup>37</sup>

The work by the Royal Chamberlain has been serialised in the Dzongkha edition of Kuensel. Over supper one evening, Ogyen, a professional and well educated woman in her late thirties spoke about her eldest son being favourably commented on by his headmaster for a piece he had written on *driglam namzha*. Her son, aged 14, attends one of the High Schools in Thimphu and had been requested to write a piece to be read out during Assembly. He dreaded the task, but Ogyen said that all her offers to help were politely but firmly ignored. Her son had collected back issues of the Dzongkha edition of Kuensel from his parents, grandfather and their friends and had sat preparing his talk in Dzongkha. The evening before he was due to give his talk, Ogyen and her husband were asked to listen to him practice. Ogyen beaming with pride declared that they had both felt stunned by how well he had written the talk. Not only was his Dzongkha good, better than their own she added ruefully, but it had been really an inspired piece on the

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<sup>36</sup>The titles are : *sGrig lam rnam gzhag gi deb ther nor bu'i 'phreng ba* (1999) by *mNga' bdag rgyal po'i gzim dpon*, and *sGrig lam rnam gzhag lag len 'thab thangs* (1999) compiled by *dRag Krar Karma dBang 'dus*. The third book, *sGrig lam rnam gzhag* (1997) *Dasho mKha'gro*.

<sup>37</sup>Kuensel “Former High Court Official received best writer award”.02/06/2001:20

importance of *driglam namzha*. Her friend, Kesang asked if she could read it and Ogyen called to her son to let Auntie Kesang read his talk. The Royal Chamberlain's work had to Ogyen's surprise caught her son's imagination, and rather than talking about wearing *gho* and *kira* and the rules of the ceremonies, he had chosen to talk about the origins of *driglam namzha*, which lie in the teachings of Buddha. The first section of the Royal Chamberlain's book outlines the doctrinal sources and the importance of the underlying moral values of *thadamtshi* and *lejumdre*.<sup>38</sup> Although, these are touched on by *Dasho* Khadro, and to a lesser extent in the other National Library publication, it is in the first of the three works that we can find the most substantial exposition on the underlying importance of *driglam namzha*.

We can begin to discern that *driglam namzha* is more than simply a code of conduct and etiquette - for the Bhutanese it represents the way to be "Bhutanese". As described by Karma Ura, *Driglam namzha* is a "system of rules of physical conduct and external forms, applied on an individual basis to forge a sense of nationhood" (1997:247). Yet, as mentioned above *Driglam namzha* is not merely about physical conduct and deportment. The code of conduct and etiquette govern not only dress and manners, but architectural styles, official etiquette, even the correct way to prepare gifts. More importantly, as stressed by the majority of Bhutanese interviewed, it embodies a sense of moral being which is valued. To embody *driglam namzha* is to show respect, and more importantly, it is a means to avoid engaging in harmful actions of body, speech and mind, and thereby "reap the fruit" of positive karma (NL.1999:xl). *Driglam namzha* is intertwined with the concepts of *thadamtshi* and *lejumdre*, and it was often in these terms that people discuss and describe their understanding of *driglam namzha*. Ogyen's pride in her son was not only for his competence in Dzongkha or for the favourable comments from the Headmaster, but also for his own understanding and appreciation for these "Bhutanese" values.

It is debatable whether the code was originally for all to conform to, or if it was primarily directed at those in the service of the Drukpa state as instituted by the Zhabdrung.

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<sup>38</sup> Discussed earlier in this chapter..

*Driglam namzha* is undoubtedly monastic in origin, and may have applied only to the behaviour of government officials and members of the public when they were at the royal court or in the *dzongs*.<sup>39</sup> A small everyday reminder of the monastic origins is the requirement of greeting a superior by lowering one's *kabne*.<sup>40</sup> The phrase *zen gyur babs* refers to the monastic custom of paying respects by removing their outer shawl and bowing.<sup>41</sup> Although claims of *driglam namzha* evolving in Bhutan in the seventh century (NL 1999:xxxvii) are difficult to support based on documentary evidence, it is clear that the Zhabdrung did promulgate the code in his "Supreme Constitution" (*bca' yig chenmo*). An abbreviated version of the Supreme Constitution is read out annually by the Je Khenpo, the spiritual head of Bhutan, on his return to Thimphu after spending the winter in Punakha, and forms a link between social conduct and written law codes.<sup>42</sup> *bCa' yig* can be translated to mean "constitution, legal document or charter" (Goldstein 2001:340) or "guidance for public regulation" (Das 1902:391). Ellingson describes *bca' yig* as documents "outlining the basic principles, institutions, roles and rules governing the organisation and operation of a Tibetan monastic community" (1990:205). The Zhabdrung's "Supreme Constitution" can be seen carved on slate and erected outside the entrance to Punakha dzong. This physical, public statement of the Zhabdrung's vision of Bhutan and its peoples is therefore more than a mere code of polite behaviour. It draws on existing practices and similar codes or regulations extant in Tibet, which in turn draw on the *vinaya* codes of Indian Buddhism (see Ellingson 1990 and Cech 1988).

There is a resonance between the description of *driglam namzha* "as harmonising my steps" provided by Jigme and statements found in the *bca' yig* described by Ellingson, that the monks sing together "with one voice and one melody" (1990:212). Under the Zhabdrung's vision of the Drukpa state, these admonitions and regulations appear over

<sup>39</sup> In a biography of the Zhabdrung we read of him organising the monks at Cheri monastery, in Thimphu valley. ( Dorje Gyaltshan 1999b). See also Aris 1986:167, note 35.

<sup>40</sup> The details are set out in the three works mentioned above with comments on the ranks to whom one bows, and also how to bow without a *kabne/rachu* by offering *chaglen* (phyag lan). *Chaglen* is done by bowing deeply with ones hands turned so that the palms face out towards the person being shown respect.

<sup>41</sup> This parallel only struck me recently reading through my notes. Speaking to officials in *dzongs* and government offices where *kabne* are worn they all described meeting their bosses and bowing properly on their first encounter of the day, but not thereafter. The Tibetan phrase reads "gzan skyur 'bebs" (Goldstein 2001:966).

<sup>42</sup> Oral communication Lyonpo Sonam Tobgaye ( 18<sup>th</sup> June 2001).

time to have become increasingly applied to, not only monks and those in the service of the state but to the whole populace. As Ellingson comments the “beautiful path of practice” cited in the *bca' yig* and shared with other Buddhist traditions has “provided an unusual ...example of one way in which a soteriological concept (the religious community as an object of refuge and field of merit) can give rise to a normative concept (“beautiful” practice as a source of religious inspiration), which in turn generates a set of specific laws governing many practical aspects of daily life in the monastic community” (ibid:213). In Bhutan, this has extended over time beyond the confines of the monasteries and *dzongs*.

Those entering government employment attend an orientation course, which includes classes on *driglam namzha*.<sup>43</sup> This is supposedly an “optional” course, however, they require a certificate stating they have attended an orientation course prior to being able to assume their posts, so they all attend.<sup>44</sup> There is no requirement though for those working outside the government to attend such courses, although the historical significance of *driglam namzha* for government officials and employees remains present in contemporary Bhutan (see Myers and Pommaret 1994b:77).

Yet, in practical terms *driglam namzha* is not restricted to those in government service. Rather, it is a code to be engaged in by all Bhutanese, irrespective of their ethnic identity. When I asked elderly Bhutanese about their understanding of *driglam namzha*, they confirmed that it was important. Those who had been able to receive a monastic education in the late 1940s and 1950s, commented on being beaten when they forgot the correct way to do something, but also stressed that they knew more about *driglam namzha* than their families. Sengge, with whom I spent a great deal of time, retold a humorous story he had heard. Once, people living in a remote village hearing that a *dasho* (senior official) would visit were deeply worried at offending the *dasho*. They approached an old man who knew *driglam namzha*. He told them not to worry and to follow everything he did. When the *dasho* arrived, the old man bowed and from the

<sup>43</sup> Kuensel reports indicate a renewed emphasis on training government officials at all levels in *driglam namzha* starting in the mid – 1980s (e.g. Kuensel “*Driglam Namzha* training for dzongda” 08/08/1987:1).

<sup>44</sup> Oral communication. Karma Wangchuk 30 June 2001.

pouch of his *gho*, his cup fell and rolled down the hill. Taking this as a sign, the villagers removed their cups and rolled them past the *dasho* and down the hill. Sengge grinned and laughed. He then advised “Ogyen, don’t just copy people, learn to do it yourself”.<sup>45</sup>

*Driglam namzha* therefore has ceased to be restricted to the administrative cadres. As the underlying practice and values of the Bhutanese Nation-State, as developed from the period of the Zhabdrung, *driglam namzha* has been central to the formulation and presentation of Bhutanese identity. Applied throughout the country among the various ethnic and linguistic groups, it is promoted as part of the “unique heritage” of Bhutan. In the next section, I turn to consider the role of *driglam namzha* and the competing visions of the Bhutanese Nation-State.

### ***Driglam namzha and the processes of change: 1950 to 2000***

Until the accession of the Third King, Jigme Dorji Wangchuk (1952 – 1972), Bhutan had changed little since the death of the Zhabdrung. The only significant change was the final break in 1907 with the Dual System originally established by the Zhabdrung in 1651, when the present monarchy was established.<sup>46</sup> However, under the Third King, Bhutan experienced a major period of social, political and economic changes. The creation of the National Assembly in 1953 and alterations to the system of government, marked the beginning of the on-going transformation of Bhutan. In 1959 the Third King, Jigme Dorji Wangchuk abolished various categories of serfs, which still existed in Bhutan, and a process of land reallocation to the landless began. A new legal system emerged gradually over this period and the High Court located in Thimphu was established in 1968. (This is further explored in Chapter Four). The focus was on the creation of basic infrastructure, with the first roads linking the capital to the Indian border, and in time stretching laterally across the length of Bhutan, allowing for greater access and mobility. Healthcare and education were, and still are, key areas of government policy. The emphasis was less on preservation than on change.

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<sup>45</sup> Ogyen – this refers to me. I was “given” several names before eventually Ogyen Jamyang was settled on.

<sup>46</sup> As outlined in the introduction, the Dual System refers to the political system created by the Zhabdrung with religious and secular power separated.

Following the death of the third king, his policies have been furthered by the Fourth King, Jigme Sengye Wangchuk and his government. Throughout this period, the focus has been on the further development of the economy and the creation of much needed infrastructure. Certain aspects of the government modernisation programme were viewed with distrust, and Ura notes that, even in the 1970s, few chose to continue their studies believing the “future would be like the past” (Ura 1998:228). During the 1960s and 1970s, *driglam namzha* was not part of government strategies, nor of its rhetoric. Various people, when asked about the role of *driglam namzha* during this period of economic and social change, commented that it was simply something taken for granted: it was part of their understanding of how to behave and of the values of their society. Though, as I have commented on earlier, these responses may reflect a more recent elision between *bey zha* and *driglam namzha* as the result of official discourse during the late 1980s and 1990s. Although in the 1970s, *driglam namzha* was not officially promoted, it was discussed at the National Assembly level. In 1973, a resolution was passed requiring that all Bhutanese citizens wear national dress, with a penalty of one month imprisonment for non-compliance. However, this does not appear to have been legally enforced. Five years later, in 1978 a further resolution was passed requiring Assembly members to observe *driglam namzha* during the Assembly. This provoked some protests from the Lhotshampa representatives, who argued that it discriminated against them (Shaw 1994:101). In 1980, the Assembly passed a resolution to respect all cultures in Bhutan: “To foster unity among people of different regions with different languages, customs and traditions, dress and food habits” (NBA 1980 Res.10).

The impact of the social and economic changes began to be evident by the late 1970s and the early 1980s. Thimphu, the capital appeared to reflect not only the positive aspects of the development of Bhutan, but also the negative ones. Increasingly, a division within Bhutanese society appeared to be developing, characterised for many by the wearing of western style dress. As increasing numbers of urban residents, especially younger people, began to wear jeans and T-shirts, concerns began to be more vocalised about the implications for traditional values and customs. Pasang, a civil servant in his early thirties recalled:

I came to Thimphu in 1985 for the first time. Instead of returning to my village for the school vacation, I chose to visit my elder brother. At the time, he was working here in one of the ministries. When I arrived at his office, he looked at me. I was dressed in my *gho*. He and his friends laughed when they saw me dressed like a farmer. I felt such shame for he and his friends were dressed in pants and shirt. They looked smart. Afterwards, he bought me my first pants and shirt and I felt so smart. (f/n 12/05/01).

Dress became a key issue around which national identity and pride were not only embodied but manifested. At some point during the 1980s, concern for the preservation of a distinct Bhutanese identity does appear to have gained strength. The Sixth Five Year Plan (1987–1992), under the theme “One Nation, One People”, set out as one of the nine policy objectives the “preservation and promotion of national identity”. This policy went beyond simply maintaining traditions, stating that “every effort must be made to foster the unfailing faith, love and respect for the country’s traditional values and institutions” (NBA 1988:Res.18). Following a process of consultation in the *dzongkhags* conducted by the DYT (district development committees), local level support for a formal policy on *driglam namzha* became evident. The king, prior to making the 1989 royal decree, himself toured the country to verify the reports of the DYTs. On January 16th 1989, the royal decree was issued proclaiming the need to promote *driglam namzha*, national dress and Dzongkha as the national language “to strengthen Bhutan’s unique national identity” (K Dorji 1994:86).

At this point, I should explain, briefly, the contents of the 1989 royal decree and the existing tensions between the government and sections of the Lhotshampa population. The Lhotshampa are Bhutanese of Nepalese origin and originally began to settle in southern Bhutan in the late nineteenth and early twentieth centuries. However, there appears to have been an increase in the number of immigrants in the mid-twentieth century as development aid began to flow into Bhutan (notably in the late 1960s and 1970s) (Shaw 1994). The immigrants initially settled in the western and southern regions, with others eventually moving eastwards, and even settling in Meghalaya and Assam. As part of the reforms introduced by the Third King was the 1958 Citizenship Act. Under this Act, citizenship was generally granted to those settlers who had been domiciled in

Bhutan for ten years. In 1977 the qualifying period was extended to fifteen years (for those working for the government) or twenty years (for those not employed by the government). Official concerns over the suspected presence of a large number of illegal immigrants in the mid-1980s led to a new Citizenship Act in 1985. As part of the process of implementing the new Act, a census was carried out in 1988. The minor tensions, which existed up to this date, were increased as officials requested a range of documentation to establish residency.

The 1989 royal decree issued following consultation in the districts, in essence stressed the importance of *driglam namzha*, together with the development of Dzongkha as the principal language and national dress, to preserve and promote national identity. The police and local officials were responsible for the enforcement of *driglam namzha*, which included the levying of a 100Nu fine, half of which could be kept by the police as an incentive. Often referred to by critics as “Bhutanisation” (Straw 1994), the emphasis on what was seen as “northern” Bhutanese customs and practices, became a feature of the dispute over citizenship and landownership which reached a new intensity in 1990 – 1991 (see Hutt 1994). The Bhutanese government has admitted that the application of the royal decree was, especially in the southern dzongkhags which have the highest Lhotshampa populations, “implemented by overzealous functionaries...in a provocative manner” (Lyonpo Jigmi Y Thinley 1994:60).

The apparent imposition of *gho* and *kira*, and promotion of Dzongkha over Nepali became politicised aspects of a wider dispute over citizenship and landownership rights. A wave of violent incidents broke out between 1990 and 1991, and approximately 100,000 Lhotshampa left Bhutan and eventually settled in refugee camps in eastern Nepal. In time, those Lhotshampas who left Bhutan have themselves chosen to wear *gho* and *kira* to underline their desire to be identified as Bhutanese. In Bhutan, those Lhotshampa who have remained, are part of Bhutanese society. As such, *driglam namzha* is part of their national identity, which transcends their identity as Nepalese, or more specifically as Tamang, Gurung and so forth. The Lhotshampa I spoke with in Bhutan emphasised their loyalty to Bhutan, and I was struck by the impact of the bloody events

of the early 1990s on how Bhutanese, irrespective of ethnic origin, have become sensitised to the political implications of *driglam namzha* and national identity. Or at least, that is how it is presented. How far wearing a *gho* or *kira* promotes a sense of loyalty and devotion to the Bhutanese nation in general, and in those from ethnic groups from beyond Bhutan in particular, is questionable.

The recently opened Textile Museum in Thimphu has a fascinating collection of textiles from throughout Bhutan. Two displays in particular are noteworthy. One depicted a Doya boy in the style of dress formerly worn by the Lhops, a small group living in south-west Bhutan. The other was on the Laya nomads in northern Bhutan. On the display panel it commented that during a recent research trip among the Laya, it was found that most now wear as everyday dress *gho* and *kira* instead of the “traditional” black yak hair costumes. In part, this reflects a degree of increased prosperity, as much as the influence of the more dominant culture. This example is interesting for, in promoting the *gho* and *kira*, especially with cheaper textiles from India, the traditions of two ethnic groups have been significantly transformed. The impact of the 1989 royal decree appears to have reified certain aspects of *driglam namzha*, which previously were not so strongly emphasised. Although, the eastern populations appear to have adopted the *gho* and *kira* by the early nineteenth century, the nomads and other groups appear to have retained their own distinctive costumes until very recently.<sup>47</sup>

The issue of clothing and the politicisation of *driglam namzha* in the late 1980s remind us that clothing rarely “carries messages that permit unequivocal interpretation” (Hoffman 1984:7). Clothing, and the way in which ordinary Bhutanese dress and present themselves in public, has overshadowed, in the opinion of a large number of the Bhutanese interviewed, the true meaning and purpose of *driglam namzha*. Echoing Hoffman’s comments that “clothing expresses who he or she is, what he or she wants to be, or pretends to be” (1984:10), several male informants said they felt on one hand proud to wear their *gho*, and thus to demonstrate that they were Bhutanese, but at times it was not convenient or especially comfortable to do so. In Karma Tenzin’s opinion “In the

<sup>47</sup> Textile Museum, Thimphu: June 2001.

past, they all wore it. But now we have more choice.” Karma Tenzin’s reference to the past was intriguing. What did he mean, I asked. “My grandparents and the older people only had the *gho* and *kira* to wear. The material was made at home. Now, my mother buys clothes from India and Bangladesh”. Certainly, this is accurate, but it did raise the question if the range of possible styles and clothing created a tension with the promotion of national dress. A casual walk around Thimphu after school quickly shows the preference of the young boys to change from their school uniforms, a *gho* in the approved school colours, for jogging bottoms and trainers. Yet to wear the *gho* and *kira* “defines identity and group adherence in a social context; in this way it gives self assurance and emotional stability. The demonstration of one’s favourite mode of dress is the most successful compromise between self image and the role everyday life expects us to play”(Hoffman 1984:10). Karma Wangchuk, a young Bhutanese studying outside Bhutan, laughingly recollects dressing in his *gho* in his bedroom because it gave him a reassurance of who he is and his place in the world. Though, he also added he was unwilling to wear it outside his room in case he encountered any hostility. In effect, Karma wore his *gho* because it “self-consciously” defines and presents an image of both how he perceives himself and how he wishes to be perceived (see Tarlo 1996:8).

*Driglam namzha* has become part of the debate over Bhutanese identity. However, the 1989 *kasho* is not universally seen as having worked. The police responsible for enforcing *driglam namzha*, especially the dress code, were increasingly resented for their actions and the fines imposed on those found to have breached *driglam namzha*. For many Bhutanese, the quasi-criminalisation of breaches of dress code and penalties imposed were resented. The apparent inconsistencies in the enforcement of the dress code placed the police and the courts in an increasingly awkward position. Recently, there has been a move away from penalties and referral of breaches to the district courts have, I am told by various sources, ceased. Rather than allowing the flexibility and adaptability of *driglam namzha* when it remained part of the Bhutanese way of “being”, providing a valuable moral sense of identity, some feel that formalising it, and its uneven, at times, heavy handed, implementation will have serious long term consequences. The Samtse dzongda as cited earlier stressed the importance of self cultivation “without the need for it

to be enforced” implicitly question the enforcing of the dress code and *driglam namzha* in general.<sup>48</sup> Doubts have been expressed about being able to create a policy to make people respect and cherish the values of *driglam namzha*. More specifically, there is a concern that it focused too much on dress and the external display of *driglam namzha*.

Ogyen’s son drew his material for his talk on *driglam namzha* from the newspaper, Kuensel. It is interesting to consider the role of the media – especially since the legalization of television and satellite in 1999. The weekly editorials in Kuensel consistently provide a talking point – whether discussing the introduction of income tax, the increasing levels of HIV infection, or challenges facing Bhutanese society as a result of the transformations currently underway – rendering concrete the concerns of Bhutanese as well as many of the competing ideas Bhutanese hold. *Driglam namzha* and its role in Bhutan is often discussed. Yet, one wonders to whom the Dzongkha version of the paper is addressed – for it contains several pages devoted to religious teachings, news of religious events and a column on *driglam namzha*. These are by and large absent from the English version of the newspaper. This disjuncture between the two versions was never explained – few had noticed the differences when asked, and dismissed the material as being unimportant. The television programmes produced in Thimphu are mainly news related items and educational in content. It was rare to find any children watching them, or indeed parents when they could watch MTV and sports channels.

The role of the local community in the moral development of the individual was often underscored by informants. The rules of *driglam namzha* and *thadamtshi* are deeply social. Descriptions of the problems and difficulties experienced when returning to remote home villages, especially with young children raised in Thimphu, point to the setting in which people are socialised as fundamentally part of the process of embodying *thadamtshi* and *driglam namzha*. Parents in their late twenties and early thirties commented on their embarrassment when visiting relatives as their children misbehaved in front of their grandparents and rural relatives. One father ruefully remarked that he did not think he would take his children back to his home village in Pemagatshel dzongkhag

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<sup>48</sup> Kuensel 1999:5. “An unanimous agreement on the importance of *driglam namzha*”.

because they caused him so many problems. Yet, as evidenced by Ogyen's son, and by other informants (and implicit in Pommaret (2002)), there remains as yet an ability for educated youth still to recognise and embrace these values.

This tension between the claims of tradition and the novelty of the new was captured one morning in Wangdiphodrang. Arriving unannounced to visit the family of a friend, I sat with the father chatting about his son, a monk at Shechen. Opposite in the middle of the wall facing us sat a television set. A flickering picture crackled. After I had been shown the family shrine room, and seeing the baby he and his wife have just adopted, there was a loud knock on the window behind us. A young man shouted through, and Sonam's daughter began shouting to the young man as he checked the cable connection outside the window. Finally, the picture became clear and the daughter and baby settled down to watch a Hindi film channel. Control over the images, and influences from the wide range of media becoming available in Bhutan, is no longer possible by the Bhutanese government. In this context, the pressures on *driglam namzha* and its values will increase.

### ***Driglam namzha* and education: discipline and transmission**

During a visit to the National Museum of Bhutan, located in a former lookout tower above the impressive Paro Rinpung *Dzong*, one room caught my attention. In a moderately large circular room in the centre of the museum, located below a shrine room, is an exhibition on seventeenth-century Bhutan. In one cabinet were various sections of cloth in white, blue, red, orange and yellow. The exhibit represented the various colours of *kabne*, or scarves, which are worn by men when visiting public buildings or temples. The colours represent the rank of the individual. Most men wear white scarves, as for example my friend Tamdin, a farmer when he went on business to the local *dzongkhag* office. Village *gups* (headman) wear a white scarf with two broad vertical red borders (*kha dmar*), whilst representatives to the Royal Advisory Council wear blue scarves. Red is reserved for *Dashos* - and represent awards to senior officials. Orange is reserved for Ministers and Deputy Ministers. Only two individuals may wear saffron yellow - the Je Khenpo, and the King as the spiritual and secular heads of Bhutan. In the centre of the

exhibition was a further display cabinet set out with various containers filled with rice, betel nut, oranges and other ritual offerings. The information panel explained that they were for use in a “traditional” *shugdrel* ceremony, and listed the offerings and the order in which they should be made.<sup>49</sup>

The National Museum contains a wide range of artefacts and the temporary exhibitions seek to introduce not only visitors to Bhutan, but also Bhutanese, especially schoolchildren, to Bhutanese history and culture.<sup>50</sup> In the same room, is a copy of the Zhabdrung’s seal, “The Sixteen ‘I’s”. Children visiting the exhibition were able to understand the colours of the *kabnes* and the *shugdrel* display; these were still part of their living culture. In effect, the room linked seventeenth century and contemporary Bhutan, underscoring the sense of continuity in cultural traditions between the past and present.

Each morning, as I watched the school children dressed in *gho* and *kira* stream past my window on their way to school, I was struck by two things. The first, based on observations in various parts of western and central Bhutan, was the sheer number of school children. The second was the number of older boys, in their mid-teens, carrying *kabne*. Later, speaking with a group of teachers, I asked why they would be carrying *kabne* to school. It was explained that either they were to visit an official building, or receive a visiting official to the school, or they were going to have a lesson on *driglam namzha* at school. Lessons on *driglam namzha* appear to have been introduced in the late 1980s, and several school-leavers described how school discipline drew on the principles of *driglam namzha*. The emphasis on social harmony and respect was a repeated feature of school discipline.

Tshering, an Education Guidance officer, described her time as a boarder as very happy, even though she was separated from her family at quite a young age. She liked the

<sup>49</sup> A *shugdrel* ceremony is described as “ a ceremony ...performed when monks, civil servants, and members of the armed forces receive promotion and also as a prelude to all important functions” (NL 1999:153).

structure the school code of conduct gave to her life, and appreciated the parameters it placed on what was permitted and what was not permitted. Yet, she also recalled friends from school, who were miserable because the rules created a barrier between the staff and the pupils. She notes in her Master's research thesis that discipline is a "major factor in running the school smoothly...going against the rules and regulations of the school is seen as a major offence" (Dolkar 2000:28 – 29). The disciplinary systems in Bhutanese schools she adds, "are based on values such as *ley jumdrey, tha damtshig*," which in turn characterise the relationship between staff and pupils (Dolkar 2000:87).

Later, investigating the reasons for leaving school early Tshering found that the barrier created prevented many pupils who had difficulties from being able to gain advice and support from the staff when worried about family matters. Rather, they became viewed as disruptive and gradually the relationship between the pupil and the school deteriorated to such an extent that either the pupil was expelled, or simply chose to leave. The impact of *driglam namzha* as a framework for school discipline and the relationship between staff and pupils cannot be underestimated. For Tshering and others, there is a link between the school rules and the code of conduct. As a result of the emphasis on discipline and respect towards authority, "feelings and thoughts are not expressed openly between elders and youth, and much remains unsaid within the individual" (Dolkar 2000:88). Certainly, these observations parallel comments made by young Bhutanese I spoke with, notably a young monk who agreed to become a monk at his parents' request even though he had fallen in love and dreamt of raising a family.

There is an interesting tension brought out by comments made to Tshering and myself by different informants. The importance of "repaying kindness" (*drile jelni*) can lead young people to leave school early in order to support parents who have fallen ill, or younger siblings. As a result they leave school with minimum qualifications, which can limit their employment opportunities. Shacha, a young monk had decided to leave school, partly because he was not doing as well as he hoped and because his parents were struggling

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<sup>50</sup> This point was stressed by the Director of the Museum in a broadcast on BBS following the opening of a new historical exhibition (BBS 24 May 2001).

financially. Education is free in Bhutan; however, his parents had to borrow money to buy his books and to give him some money for food at his boarding school. Leaving school, he found he was only being offered menial jobs, which prompted his decision to join a monastery. Another, Dorji left after Class X (which is quite advanced) because his father had died and he wanted to take care of his mother, “She cared for me, so I need to care for her and my brothers and sisters.”

However, although many described school discipline as tough, many commented on the sense of community and belonging they felt at school. Part of the school regime involves social activities connecting the pupils to the local area. In Phuntsholing, a class of senior pupils spent a weekend clearing up rubbish in the local area, whilst it is a common sight to see school children on a Saturday morning carrying axes, hoes and other tools to and from school, so that they can do gardening or other work. Driving past a small girl carrying a pickaxe on the road to Taba, Dorji nodded approvingly and said it was important that they learn to give something to their community at a young age.

This remark underscored the idea of “repaying kindness” by giving to the local community through doing practical projects. The intertwining of modern education and *driglam namzha* is significant for the continued role of *driglam namzha* in Bhutan. The role of teachers in developing their pupils’ understanding and appreciation of *driglam namzha* is often discussed. Yet, there appears to be a barrier created by the hierarchical nature of the school system, and the apparent distance created between teacher and pupil, which hinders, rather than helps, some pupils, which needs to be addressed (see further Dolkar 2000). Wangyal in his assessment of the role of education to transmit social values points out that the materials used to convey these values are written in Dzongkha. At present, Dzongkha does not have a prominent place in the overall school curriculum, and certainly, among the young Bhutanese that I interviewed few indicated any interest in reading or writing Dzongkha (Wangyal 2001). It is worth remembering that the re-emphasises of *driglam namzha* was linked explicitly to the development of Dzongkha as the principal national language. This raises the question of how successfully the

education system can assist, as is the government's intention, to promote and transmit *driglam namzha* and an appreciation of *thadamtshi*.

Earlier the issue of Certificates of Good Character were mentioned. I raised the issue with several Bhutanese teachers, including one headmistress of a Junior High School in Thimphu. There was a general agreement that there was a problem, for many teachers simply did not know enough about each of their students to be able to make an accurate assessment. Again, there appears to be a barrier between the teachers and their students which raised doubts about the ability of the teachers to convey a deeper appreciation of *driglam namzha* and *thadamtshi*.

### **Contemporary attitudes and understanding: the relevance of *Driglam namzha***

We all approach our own circumstances as bearers of a particular social identity...As such I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations...What I am, therefore, is in key part what I inherit, a specific past that is present to some degree in my present. I find myself part of a history and that is generally to say...whether I recognise it or not, one of the bearers of a tradition (MacIntyre 1984: 220 – 221)

"I believe *Driglam namzha* is more than what you wear and how you speak" commented Tshering Dolkar. "*Driglam namzha* is about understanding, valuing, preserving, instilling and being proud of our rich, old tradition and culture....it disciplines and shapes our lives [turning us] into a better person and providing satisfaction".<sup>51</sup> Her comments reflect the opinions other young Bhutanese expressed in Thimphu. Yet, just as Ngawang's view of *driglam namzha* was subtly different from that of his uncle, as a result of the politicisation of it during the 1990s, behind the apparent homogenised understanding and acceptance of *driglam namzha* can be found a range of attitudes and understandings some of which counter the official position.

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<sup>51</sup> Personal communication, 5<sup>th</sup> August 2001.

There appears on the surface to be more conscious discussion of *driglam namzha* in Thimphu than in the villages. For many of the urban Bhutanese, the villages remain, or rather have become, places which remain unchanged. As upholders of “traditional Bhutanese values”, these places are iconic of the importance of *driglam namzha* in the shaping of a national culture and system of values. The school textbooks typically show children in such rural settings, which is not unreasonable for only about a quarter of the population live in urban settings. Yet, there is, arguably, through the association between the texts and the images an attempt to reify images of Bhutan, as a community united by themes of shared values and social co-operation.<sup>52</sup> However, Tenzin, a well-educated man in his mid –thirties living in Bumthang, commented that he never really understood why it was necessary to wear a *gho*. Developing his comments further, he agreed that the underlying principles of *driglam namzha* were important, but he questioned the apparent “backward looking” control over dress, and the hierarchical view of society it engendered. “Look around, old men wear imported T-shirts, my brother a leather jacket and jeans. They are still Bhutanese.” The apparent reduction of *driglam namzha* to rules, unevenly enforced, unsettled many I spoke to, who echoed Tenzin’s views. Karma, Goembo and Ogyen when passing around school photographs pointed to those they liked of themselves, invariably posed in jeans and T-shirts, dark glasses, and brooding looks like a Bollywood movie star.

Similarly, several of their counterparts in Thimphu described it in terms of a “game” between the police and themselves, as they walked around Thimphu at the weekend in tracksuits or jeans. If stopped by the police for not wearing *gho* they would explain that they were on their way to play basketball or football: a minor challenge to authority, yet symbolic of a deeper questioning of the 1989 royal decree. Flicking through a number of photograph albums, I came across a black and white photograph taken in about 1978. My host, a senior army officer was playing basketball with the King. The teams all wore shorts and T-shirts, except for the king. The king was wearing *gho*. My host nodded and commented that the king always wore *gho* rather than trousers. Commenting on the

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<sup>52</sup> Here I have in mind various school texts in Dzongkha – slob deb, and a bilingual text, Kelzang and Wangmo (1980).

attitudes of his own sons, the officer said that they associated the *gho* with school and always rushed into the house and changed into tracksuits before heading off to play with their friends. During fieldwork, I was presented with seemingly contradictory statements and practices not only within the community, but in the household and on an individual level. Comments and opinions on *driglam namzha* and the issue of national dress often reflected and adapted to the context in which they were raised.

Even in private households of people who respect what they described as “traditional values”, the outward aspect of the dress code is not adhered to. *Driglam namzha* in the formal rules of etiquette is not necessary in the home, as a private space, unless of course there are celebrations, or guests who need to be respected are present. Rather, these individuals stress the underlying values of *driglam namzha* and the more commonplace *bey zha*. Pointing at their children watching Zee TV and other satellite channels, most parents complained about their lack of interest in BBS programmes and Bhutanese culture. I was told by Am Kesang, a middle aged professional woman that few Bhutanese living in Thimphu express an interest in traditional dances and songs, except during religious festivals.

The desire for entertainment among the young and middle aged appears indeed to confirm her comments. “I get so bored of hearing religious songs! My wife plays them in the car! I like more lively music” Namgay, a married man in his late twenties and a tour guide, said fumbling to find a cassette of music which he could listen to as he set off to the Saturday market (see also Pommaret 2002). Sitting with a friend’s youngest brother, Tintin, and his teenage friends in an internet shop near the Clock Tower, in the heart of Thimphu, their conversation was about Indian and western musicians. Downloading from the internet the lyrics by Shaggy (an American rap artist), Tintin in response to an enquiry if he liked traditional Bhutanese songs, shrugged his shoulders indifferently. The impression conveyed by him and his friends was Shaggy is “cool”, and traditional Bhutanese songs are not.<sup>53</sup> In general, for many Bhutanese, what is important at a

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<sup>53</sup> Sonam Kinga comments that traditional folk songs “are being increasingly overtaken in popularity by rigsar songs particularly by the youth....The development and spread of rigsar songs therefore, greatly

quotidian level is the moral particularity, which derives from the values embedded within *driglam namzha*. The range of opinions and the varied ways in which *driglam namzha* is understood and embodied, do not seek to challenge tradition, but to allow a space in which deeply held values can be adapted to changing needs and circumstances.

### ***Thadamtshi: respect and reciprocity***

I...in the name of the Triple Gem and the guardian deities of the Kingdom of Bhutan do solemnly swear and affirm that I will faithfully perform the duties of my office without fear or favour, affection or ill-will and will to the best of my ability, preserve, protect and defend *Tsa Wa Sum* with *Tha damsti* and *Ley Jumdrye*. (RCJ 2000:5).

So reads the oath and written pledge to be administered on the appointment of a new member of the judiciary. Here the terms *thadamtshi* and *lejumdre* are heightened in their significance by being linked to the concept of *Tsa Wa Sum* (“the three foundations”) – king, people and nation.<sup>54</sup> The use of traditional concepts of behaviour, respect and duty by the Bhutanese state merits its own consideration. In this section, I turn instead to examine how ordinary people understand these terms and their implications in everyday life. Of course, the official rhetoric and use of these terms does alter their everyday meaning and uses – in the sense that comments such as “he has no respect!” (*kho lu thadamtshi mindu*) contained not only a sharp criticism of the individual referred to, but also hinted at being a less than dutiful, obedient citizen. By focusing on how these concepts and terms are drawn on in everyday life, and in their use create a moral sense of personhood and legal consciousness, we can discern the interplay between state policies and aims, the role of the judiciary as a part of the framework of the political system, and popular, ground-level interpretation of statements, policies and legislation. There is one

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challenge the values and sustainability of traditional songs and music and, *consequently, of traditional Bhutanese values*” (emphasis added: 2001:161). Rigsar refers to a modern form of popular music.

final aspect which we cannot overlook – Bhutanese watch closely how those in office embody these concepts. The everyday understanding and practice is therefore an ever evolving process as a result of both an internal and external dialogue.

Ngawang scowled and exclaimed “*thadamtshi mindu*”(no *thadamtshi*) as he described a recent attack on a small temple. During the first three months of fieldwork, the term *thadamtshi* had been used in my hearing by a number of people and I had smiled uncertain as to its actual meaning. Literally, the term means “the highest promise” or “ultimate vow” from the word *damtshi* referring to the Buddhist samaya or vows. Among my monk informants, it was used to refer to their monastic vows and obligations and to the monthly ceremony of when the entire monk body would gather and confess breaches of their vows. The term *damtshi* also refers to vows taken as part of a tantric commitment (Dudjom Rinpoche 1996). Yet, sitting in the kitchen of Uncle Sengge’s house with Ngawang and his friends, the term did not refer to monastic vows. Gradually, the importance of *thadamtshi* and its meaning for lay Bhutanese began to emerge.

Uncle Sengge and I sat amidst bolts of silks and brocades. With amazing speed and accuracy, he cut the materials and began to lay out the fabric frame for a thangka depicting Guru Rinpoche. Haltingly, I asked him about *thadamtshi*. “I don’t know how to explain it. It is *thadamtshi*.” Ngawang intervened. As he spoke, a general sense of *thadamtshi* emerged. Referring to Sengge, his mother’s younger sister’s husband Ngawang called him *azha*. This is the Dzongkha term used for the mother’s brother, and strictly speaking the more appropriate term would be *akhu*.<sup>55</sup> He explained that due to Sengge’s age, his knowledge, and his kindness to Ngawang he was to be honoured and respected. It was at this point that the idea of “repaying kindness” mentioned earlier, was first discussed by informants. Ngawang’s own father had separated from his mother when Ngawang was still an infant and it was Uncle Sengge who became cared for Ngawang,

<sup>54</sup> Dzongkha Rabsel Lamzang (1990:198) gives a different, yet significant, definition for *tsa wa gsum* as being “the king, the government and the kingdom”. The Dzongkha reads “‘brug gi rtsa ba gsum zer mi ‘di ‘brug rgyal po ‘brug gzhung ‘brug rgyal khab gsum lu slab ain’”.

<sup>55</sup> Ngawang preferred the term *azha/azhang* to described Uncle Sengge rather than *akhu* which he used to described other uncles by marriage living in Thimphu and Kurtoe.

encouraging him in his studies of Tibetan medicine at the Chakpori Institute in Darjeeling.

Shortly afterwards, I observed Ngawang greeting various men at a social gathering: he politely greeted the most senior men before turning to greet the younger men with whom he watched football and generally spent time when not working. Depending on their age, and the degree to which he knew each man, he altered his demeanour to mark the distinction between peer group friends, and those to whom a more formal display of respect was due. Yet his friends, mainly apprentice sculptors or school students a few years younger than Ngawang, would address him formally as *drungtsho* (doctor) with broad smiles. Although he was accepted as part of their group, they all at various times commented on his intelligence and knowledge, as demonstrated by his completion of his medical studies. Ngawang could, and often did play the part of the mischief maker, the joker, and this was expected of him. However, this did not detract from the respect offered to him. Even the older men to whom he demonstrated respect through his body language, the tone and phrasing he used when speaking, returned the respect to Ngawang. It was equally revealing to watch how he interacted with his elder brother, a junior abbot in the monastery. Although, Ngawang would laugh and even repeat quite bawdy stories in his elder brother's presence, Gendun was always treated with the respect due to his rank – small details of everyday contact reflected this – the serving of food, the seating arrangements and the tendency to use more “honorific” language.

*Thadamtshi* is not an easily defined concept. Rather, it is simultaneously a concept, an ideal to be striven for, and an embodied practice demanding full awareness of one's social status, and the actions of body, speech and mind. It overlaps with *driglam namzha*, while remaining separate. In his discussion of *thadamtshi* the Royal Chamberlain, whose book on *driglam namzha* was mentioned earlier, refers to the importance of showing “faith and respect” as well as “repaying kindness” to a range of people. In part this is based on their rank – king, the queens, ministers and officials, as well as teachers (1999:32). However, it also emphasises showing respect to one's parents and elders. He illustrates his comments with a reference to a popular folk story, “The Four Friends” (Dz:

*spun bzhi*). This story is derived from the Tittira Jataka, though in the original only three animals are mentioned. In the Bhutanese version, as in the Tibetan one, four friends, a bird, a rabbit, a monkey and an elephant, live below a banyan tree. There had been a decline in their mutual respect for each other ,and in order to decide which amongst them is the most senior, they begin to discuss the age of the tree. The elephant recalls that, when he was a baby, the tree was as small as a bush. The monkey recalls it was a mere shrub when he was young. The rabbit describes the tree as having been a leafless sapling. Finally, the bird comments that he had swallowed the seed, and that the tree had grown from his droppings. Thereby, the bird was honoured as the eldest, senior in rank to the rabbit, the monkey and the elephant. This restored harmony to the animal kingdom. Accordingly, it is said that the Buddha used this story to decree that age would confer priority in the *sangha* (religious community). The image of the four friends can be found painted on buildings, in small wood carvings and on calendars. Occasionally, the image shows the four friends standing on each other's backs, in order to pick the fruit of the banyan tree. Here the image refers to the equally important moral of co-operation. The circulation of this and other such tales was revealed when walking from a popular picnic area overlooking Thimphu with the three eldest children of a close friend. This second version of the story was retold by the youngest child, Kesang, as the group tried to reach pine cones in the branches overhanging the side of the path.

To show respect and indeed devotion to one's elders, and especially parents and grandparents, was the most frequent way in which Bhutanese explained *thadamtshi*.<sup>56</sup> Yet, this devotion can be difficult. As his life story gradually unfolded, Karma repeatedly stressed how much he owed not to his father but to his maternal uncle (Dz. *azhang*), Dorji. After Karma's mother's death, when he was about ten years old, Dorji ,who had been able to attend school while living with Karma's parents in Trongsar, decided that he should look after Karma. Although only nineteen years older, Dorji felt that it was his duty to care for Karma. Karma's father is a small farmer, and more significantly a heavy drinker, and could not provide as easily for Karma,. When he was brought from his home

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<sup>56</sup> This is encapsulated in phrases such as “*pha dang bu gzhi gi tha damtshig*” – the reciprocal duties and obligations of parents and children.

village of Nabji, Dorji recalls playing with young monks in Trongsar *dzong* and leaving Karma aged two on the roof of the *dzong*. Only when he heard Karma's father bellowing across from the town and pointing to the roof did he remember and rescue Karma. "I always feel bad when I think of what could have happened to my Karma". The frequent use of "my Karma", and the plans to buy a plot of land for him near Dorji's own land in Thimphu, emphasises the bond between them. For Karma, respect and devotion to his uncle is absolute. Yet, although Karma sends money to his father in Gelephug, he seldom mentions or discusses his father. Respect and devotion are not so simple to command. Karma does the minimum he is required to do to be seen to respect his father, but his heartfelt emotional tie is to his maternal uncle. His bond to his uncle is also reflected in his devotion to his grandmother. These bonds, however, go beyond the outward requirement to show respect. They draw on deeper ties of affection, in which respect is only one dimension.

Seniority and age may be held up as requiring respect and honour. Yet, on an everyday level among peers, there appears to be a levelling out. Here ranking tends to be less important than the idea of co-operation and mutual assistance. Drinking tea with Uncle Sengge and his wife, it was common for neighbours to arrive and often for either Sengge or his wife to leave to provide whatever assistance was required. Often, due to Sengge's background as a monk and his knowledge of rituals, he would be called upon to assist with household rituals, or his wife would help, when members of a house fell ill, by cooking meals and caring for children. The frequency with which people called on one another for assistance, and the apparent lack of resentment at the disruption these demands created, prompted me to raise the importance of co-operation. Although, this is examined in more detail in Chapters Five and Six, it is relevant here because several informants, notably Ngawang and his uncle, explained it in terms of *thadamtshi*. *Thadamtshi* is not only due to one's elders or one's family, nor to those of high social rank, but also to one's community. This was demonstrated by Ngawang spending three days and nights with a family whose daughter was seriously ill. He took her pulse, checked her urine, and prepared medicines for her, as well as assisting Uncle Sengge in performing rituals in front of the family shrine.

The hierarchical features of *thadamtshi* cannot be overlooked. It is implicit in the formalised way to approach an official and a recognition of each other's rank. Several informants commented on having to bow and to watch the language they used in front of their bosses – the language used in private was, when they felt relaxed, less respectful. Yet, each acknowledged the importance, as they understood it, of the use of the polite forms of speech and displays of respect to smooth over any tensions. Many informants however, felt to focus on the hierarchical aspects of *driglam namzha* and *thadamtshi* is misleading. Among the younger informants, especially the men, there were those who found it hard to display respect, when they felt no respect for the person they were approaching. Yet, as older informants commented they themselves had felt the same way, but as their own status changed they came to appreciate the practices and expected to be treated with respect. However, a distinction was made, at least in private, between respect and reputation. The distinction works in a variety of ways and allows for a range of actions to be accommodated. Listening to the description of an official as a drunk and womaniser, it would have been easy to read this as a condemnation of the official. Rather, although these actions were not ideal, they made him less distant and more recognisable as an individual. Also, the same official has a reputation of being a good person to approach for help and advice. His consideration towards others, irrespective of their social status, was for the group discussing him the key feature. The official, thus, had a good reputation and was accordingly respected, irrespective of his acknowledged shortcomings.

This dimension of *thadamtshi* was rarely articulated. In conversations and discussions about the community, well known figures, and also about members of the family, the Bhutanese allow a certain fluidity in their accommodation of each other. Good character is valued and respected. However, an individual who has breached the trust of others may be viewed with an element of distrust and disappointment, but can still regain the trust of his or her family and community, if he or she is felt to have changed their ways. The rehabilitation of an individual is a constant feature of this fluid and flexible attitude. Rather than a strict and regimented outlook created by a hierarchical display of respect, there is a fluid accommodation of a recognition of human fallibility and the possibility of

change. The tales which the Bhutanese enjoy and repeat often challenge notions of conventional behaviour, notably the life of Drukpa Kunley and also the recent collection of bawdy tales, '*Jig rten rgas pa'i spro gtam* (2000).

### **Practices of the body, practices of the spirit**

The significance of *driglam namzha* and *thadamtshi* as underlying organisational values in Bhutanese society is more than a mere “nationalist ideology,” as it has been described by opponents of the Bhutanese government. The role of *driglam namzha* certainly is to create and maintain a shared identity as Bhutanese, but the values and ideals of *driglam namzha* are interpreted in terms of their function in a particular form of discourse, rather than as timeless truths. Everyday usage continues to reflect ordinary discourse, rather than the dominant discourse of the state. As demonstrated by the various discourses discussed above, the values are negotiable depending on the context. As Herzfeld suggests “the use of moral-value terms represent social diagnoses of where the boundaries lie” (1996:45). Although the Bhutanese interviewed may claim to share the same values and a common understanding of what *driglam namzha* and *thadamtshi* mean, it is clear that there is a degree of slippage in the usage of these terms and values.

The idea of loss of tradition and the perceived threats to traditional values is not restricted to older members of the Bhutanese community or to official rhetoric. Many of the young people I spoke with commented on the problems facing Bhutan and what they perceive as the underlying values of Bhutanese society. Although there are complaints and grumbles about aspects of *driglam namzha*, which are voiced, when pressed it becomes clear that a sense of value is placed on various aspects of *driglam namzha* which do provide the basis for individual and collective identity. This is in part probably a reaction to the increasing fear of a loss of identity in face of increasing outside pressures and images appearing through satellite and other media. In a series of letters to the editor of the national newspaper, Kuensel the writers expressed concerns about the effect cable and satellite TV was having on the young, who were more interested in the love lives of Indian film

stars and singers than in internal affairs.<sup>57</sup> However, the main emphasis was on the effect watching violence and other forms of antisocial behaviour would have on children. The writer complained about returning home each day to find his young son of 5 leaping on him and insisting that he be a *goonda* (Hindi – villain, gangster). The underlying concern being - if the TV provides such role models, how are young Bhutanese going to learn the proper way to behave?

The process of the internalisation of traditional values, of *thadamtshi* and the code of conduct, begins in childhood and, in general, most Bhutanese agree that children should start being taught them from infancy. The period from infancy until their entry into primary school has been stressed as a vital period to teach children the “traditional values”.<sup>58</sup> However, it is clear that the patterns of family life, especially close contact between children and grandparents in Thimphu, are changing. Children raised in Thimphu are experiencing closer peer group contact and more leisure time. Grandparents may reside in distant parts of the country and rarely visit Thimphu. The emphasis in many of the descriptions of *driglam namzha* and *thadamtshi* I heard, or have read, is on the creation and maintenance of social harmony. As described above, social harmony is central to the Bhutanese perception of society and community. By internalising the values of *driglam namzha* and *thadamtshi*, a person learns how to negotiate his or her way through life and to lead a socially fulfilling life. Where the harmony is disrupted by disagreement or other difficulty, it is important that the matter is resolved and that social harmony is restored.

In an article discussing a debate on *driglam namzha* held during the 77th National Assembly in the summer of 1999, the Home Minister, Lyonpo Thinlay Gyamtsho commented that “education, awareness and people’s own convictions were as important as enforcing laws, rules and regulations to preserve and promote culture” (Kuensel

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<sup>57</sup> Kuensel “TV will reinforce Bhutanese culture and tradition: an optimistic hypothesis” 03/07/1999:2, “Whose culture will TV reinforce?” 24/07/1999:2, and “Television versus learning” 28/08/ 1999:2.

<sup>58</sup> Kuensel “An unanimous agreement on the importance of *driglam namzha*” 10/07/1999:5

10/07/1999:5).<sup>59</sup> There is recognition of the reality that no matter how far the government may stress *driglam namzha* and the preservation of traditional values, these are under assault from changes occurring in Bhutanese society. So, rather than promoting a rigid and static view of *driglam namzha*, stress should be given to new ways, which promote the traditional values. Part of this process has involved the Education Ministry starting many new activities “including the scout movement, to teach students the right priorities and values in life.” Lyonpo Sangay Ngedup commenting on the impossibility of teachers to assume the responsibility for educating all the school children in traditional values insisted that “therefore, [it is] of vital importance that parents made a greater effort to imbibe in their children the true Bhutanese value system”(ibid.). He furthered stressed that *driglam namzha* would be meaningless unless it was actively “embraced” by the Bhutanese people.

### **Conclusion: moral values in a changing world**

In this chapter, I have set out the principle features of the moral landscape of the Bhutanese. Bourdieu comments that:

It is not easy to evoke the subjective experience associated with this world of the realised ought to be, in which things that could scarcely be otherwise nonetheless are what they are only because they are what they ought to be, in which an agent can have at one and the same time the feeling that there is nothing to do except what he is doing and that he is doing only what he ought (1977:166).

In trying to express an understanding of the moral basis of Bhutanese society, one is faced with the task of trying to grasp hold of something, which for many appears to be fading away. Parish comments “Events, actions, practices acquire moral force because people live in an actual world, but partly in terms of a possible world – dreamed of in the moral imagination” (1994:287). Beyond the imagined moral unity of the Bhutanese State there are different “possible worlds” emerging. The values discussed go beyond respect and an acceptance of the status quo – they convey ideas concerning morality, justice, duty and obligation, relatedness and affection. To these ideas newer forms of expression

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<sup>59</sup>R Dorji wrote two articles entitled “How Buddhist parents can raise children” which made the same points (Kuensel 11 and 18 /07/1987:7).

and nuances are being introduced – notions of citizenship and participation, of human rights and enterprise. In his discussion of the transmission of “traditional values” Wangyal argues that they can be interpreted “from the point of view of social justice”(2001:112). Similarly, the Royal Court of Justice emphasises the correspondence between Buddhist principles and contemporary socio-legal concerns, notably on human rights. Throughout the following chapters the nuances of understanding and the competition between “unrealised ought to be”, and that which simply “is” will be developed.

The role of moral values in the examination of law in everyday life is, as I came to realise during the research, an essential element. Moral values and the meanings they construct are active features of social life. The discussions and concerns of my informants, whether concerning the purchase of land, the breakdown of a marriage, or accusations of witchcraft, cannot be separated easily from the meanings created by cultural practice, informed by the available discourse of moral values. Yet, this discourse drawing on various visions of the past, of national identity and the tensions between the transformation of Bhutan and increasing external influences, is far from homogenous. In seeking to create a sense of national identity and unity in the face of the apparent onslaught of non-Bhutanese ideas and values, *driglam namzha* in particular has been politicised. This in turn has held aspects of Bhutanese “tradition” up to scrutiny not only by those who have claimed it as discriminatory, but more significantly by contemporary educated Bhutanese.<sup>60</sup> The courts and the State laws have themselves been made part of the process of promoting and maintaining a shared moral viewpoint and a particular vision of Bhutanese unity and identity.

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<sup>60</sup> A letter posted on Kuenselonline “To wear or not to wear?” 09/04/2002 attracted a great deal of attention. The writer and the respondents do not reject the wearing of *gho* and *kira*. Rather, the inconsistency in the enforcement of the rules, and the potential abuse by the police are noted. One notes that the police asked for a fine when he was eating lunch for not wearing a *gho* – he points out that as an engineer it is not appropriate working apparel.

## **Chapter Three**

### **Law's Power: the social presence of law**

#### **Prologue: the Foundling**

Below the town of Wangdiphodrang, lies the village of Bajo. Schoolchildren walk each day down the hill from the town and its adjacent army training camp to attend school here. Karma Tenzin attended Bajo High School until he was seventeen and left to join Shechen monastery. During his first visit home since entering the monastery, Karma had enjoyed seeing his school friends, and especially, touring the valley on his father's new scooter accompanied by his older cousin from the family home village in Tashigang. On his return to Wangdiphodrang, Karma had been surprised to meet his sister's husband and to learn that she was pregnant. Relations between Karma and his sister, Choki, were difficult when he lived at home. Choki's marriage and pregnancy served to ease the tension between them and he enjoyed seeing her with her husband.

A few months after returning to the monastery, Karma received a letter from his father. Sadly, Choki gave birth prematurely and her two daughters died a few days after birth. Karma sponsored prayers to be said for her and her dead daughters. When I arrived two months later at the family house in Wangdiphodrang, I was surprised to see an infant wrapped in a shawl. Confused, I asked Choki if she was looking after a neighbour's child. She shook her head and carried the infant out of the room. Karma's father leant towards me and touched my arm. "No, our new daughter." Had Karma overlooked to tell me that his mother was pregnant?

Sonam and his wife, Rinchen began to explain. A month earlier, not long after Choki's daughters died, an infant was found abandoned near Bajo. A woman had found the child naked under a bush as she had walked to work in her fields. Unsure what to do, the woman had called for assistance and carried the child with a neighbour to the Army Hospital. A doctor examined the infant, a newly born girl. It was fortunate that the woman had found her for she was dehydrated and weak. Sonam, who works as a medical orderly in the hospital, took an interest in the child. Later, at home he talked with his

wife about perhaps adopting her. His wife had been moved by the story and was concerned about who would care for the infant. They both agreed that it might be a good solution for their daughter would be able to raise the infant. "She's now our daughter. We don't know who her parents are, where they are from, not even if they are Sharchop (eastern Bhutanese). That's not important. She is now Sharchop, and part of our family." Sonam's wife, Rinchen described how she could not understand how a mother could abandon her baby, especially to leave it exposed. The family suspected that the mother was a young girl who had managed to conceal her pregnancy. "With all the army recruits here, this happens. There should be no shame in it, but some feel it is shameful," noted Sonam. This reminded me of comments made by a friend aged in his early thirties whose mother was unmarried when he was born. "People said things about her being wild. She was really angry towards the people in her village and left. Eventually, she placed me in a monastery when her marriage to my brother's father came to an end." Other young Bhutanese spoke of the "shame" they would feel if their lovers became pregnant, even though there are few remaining prejudices against illegitimacy. Returning with the infant, Choki held her close. Choki confided that she felt that events, although painful for her and her husband, had lead to a good outcome. The infant, still unnamed, was now part of Sonam's family. Carrying her into the family shrine room, as he me the indent in the floor where he had performed over a quarter of a million prostrations, Sonam bent forward and touched the infants forehead gently to the front of the shrine cabinet.

Later, as I was preparing to leave Thimphu, I encountered Choki and her husband. They had arrived in Thimphu to seek advice from the High Court on how Sonam should formalise the adoption. A friend had sought the advice of a junior judge in Wangdiphodrang who had advised that all adoption cases must be sanctioned by the High Court. In the circumstances, there should be no problem in completing the adoption. The formal adoption process was not a prominent aspect of Sonam's description of the events. Rather, the state law was part of the taken-for-granted; it formalises and defines the relationship without its presence being viewed as noteworthy. As a narrative, it reveals a great deal about how Sonam and his family interpreted the abandonment of the child, their own concerns based on their particular understanding of social norms and the action

taken. Implicit is a sense of how they interpret events in their daily lives based on their understanding of law, even when not specifically invoked, in its broadest sense. I will return to consider this story in more detail later in the chapter.

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Tracing the role of law and the interrelationship between social values and the transformation of the Bhutanese State, I have chosen to focus on the quotidian routines of urban life. The challenge for my research has been to develop an alternative account of law and the presence of law in everyday life in contemporary Bhutan which does not privilege the formal institutions of law. This approach was, in part, dictated by the conditions of fieldwork and the limitations placed on me described in the Introduction. However, this approach allows us to investigate the plurality of normative systems, which exist, and especially the complex interrelationship between the social norms and values discussed in the previous chapter and the impact of the modern legal system.

Sonam's narrative illustrates this point very well for one can trace the overlapping normative systems that inform his understanding and rendition of the events. His focus on recent family events, his belief in the reciprocal duties of parents to children and the importance of caring for the less fortunate draw on his own sense of moral values. The legal dimensions were absent from the narrative, not because he was unaware of them, but simply because they were less important. The decision of the court confirming his adoption of the infant was a mere technicality, since from his perspective, the child was already his daughter. This case serves to highlight the presence of law in situations that do not involve disputes, nor challenges to the State. Yet, it does show the pervasive presence of law, even in the private regulation of the family unit and the desire for the State to sanction its constitution.

There are few areas of everyday life untouched, even in Bhutan, by the norms of State law, its texts and the formal legal system. Yet in everyday situations, people do not refer exclusively to the state law as a source of social norms. By drawing from the stories and

accounts of my informants, I focus on the presence of law. I include local practices, shared social values, as well as the state laws, which constitute and shape daily life. There is an invisibility, a taken-for-grantedness, about law whereby its moral, political and cultural values become conventional. In effect, law in the broadest sense is intimately involved in the construction and reproduction of social relations and practices, and is embedded in them rather than separate. It is significant that the first major text on *driglam namzha* was compiled by a former legal researcher and published under the auspices of the Royal Court of Justice. Therefore, in this chapter, I outline the main features of my approach to law in routine life and the underlying connection between particular visions of social order, justice, and identity.

It is clear from my fieldwork in Boudhanath and Thimphu, that to understand law in everyday life, we must look beyond the legal centralist model to the social sources and contexts in which it is both conceived and used. This became especially evident when examining parallel actions in the two locales. The absence of the Bhutanese State in Boudhanath neither reduced nor negated the importance of shared meanings and understandings. And yet, even in Boudhanath it would be wrong to deny that the Bhutanese State did still have a remarkable level of influence over the Bhutanese living and working there. Social and familial obligations, as well as duties as Bhutanese citizens, shaped discourse in Boudhanath as in Thimphu. Therefore, I focus on those cultural practices, which mediate between the social and legal domains and the mechanisms of transmission and inscription (Comaroff and Comaroff 1991; Foucault 1982; De Certeau 1984; A Griffiths 1997; Merry 1992, 2000; Moore 1986; Santos 1987; Sieder 2001).

As I have already argued in the previous chapter, to understand law in everyday life we need to locate its everyday meanings and understandings in the embodied practices of ordinary people. As MacIntyre comments “at the foundation of moral thinking lie beliefs in statements for the truth of which no further reason can be given” (2000:59). We can develop this idea to describe Bhutanese society as having a world view “reproduced essentially by the same cultural productions” such as *driglam namzha* and *thadamtshi*

“over several generations, and the social life follows rhythms informed by that traditional world view”. In turn, this creates a sense of the morality or ethos as “unquestioned common sense” (Keyes 1990:170). The transformation of the Bhutanese State during the second half of the twentieth century and the system of modern laws influenced by non-indigenous laws have stressed continuities with the past. By drawing on indigenous Bhutanese notions of morality, the developing legal system drew on pre-existing values, which shaped people’s legal consciousness. This legal consciousness based on deference and a fear of arbitrary official decisions is now changing and I will elaborate further on this dimension below.

These social practices reflect not only socially conditioned modes of behaviour, but also an understanding of the presence of law in daily life. Nevertheless, as with Keyes’ research on village life in northern Thailand, my own research among Bhutanese questions the “givenness” of such traditional values in a rapidly transforming society. The social and economic transformations of Bhutan and the major political and legal developments of the past ten years, have altered the framework of the moral world of understanding (see Pommaret 2001, Ura 1997, 2001). Bhutanese, especially urban educated Bhutanese, now have to deal with a broader range of day-to-day concerns and requirements that demand a more conscious interaction beyond the household or village level. Central to this analysis are the networks of social relations based on kinship and community, and the access these networks provide to material, as well as symbolic, resources of power and influence. Conversely, the lack of social network can limit or prevent access to these important resources thereby silencing and dis-empowering individuals, families and communities (Engel 1991,1995; Galanter 1974; A Griffiths 1997; Minow 1990).

### **Law and routine life: lived experience and social theory**

In seeking to examine law in everyday life, it is crucial to understand that the formal practices of courts, legal officials and agencies do not provide a full account of the operation of law in everyday life. Legal institutions do not necessarily have the monopoly

on concepts and procedures that may be viewed as “legal”. Rather, it is important to consider other aspects of society that are not directly linked to the formal, institutionalised view of law. Instead, we need to consider those meanings, sources of authority, and cultural practices referred to by ordinary people regardless of whom and how they are invoked (Ewick and Silbey 1998; French 1996; A Griffiths 1997, 1999; Messick 1994; Moore 1979; Passavant 2002; Sarat 1990, 1993). Whereas the legal centralist approach described in the Introduction, would treat other sources of rules such as religious and moral rules, as not part of the “legal domain”, I believe that these social rules are essential. To simply focus on the formal legal rules and institutions would not be sufficient to examine the role of law and how it is understood in contemporary Bhutan. I set out in detail how and why my approach to the study of law in Bhutan focuses on the social processes which are central to shaping my informants’ everyday lives and concerns (see also Greenhouse 1986; Greenhouse, Yngvesson and Engel 1994; A Griffiths 1997; Hirsch 1998).

De Certeau argues that in everyday life “each individual is a locus in which an incoherent (and often contradictory) plurality of ...relational determinations interact” (1984:xi). Although the “everyday” or the quotidian are often invoked, to attempt to pinpoint, or construct a definition of what these terms mean provokes a sensation of something half perceived on the horizon, both familiar and strange. Blanchot comments that “everyday has this essential trait: it allows no hold” (1987:14). It is this sense of the taken-for-granted, that which passes beyond our recognition because we simultaneously live with it and embody it, which makes the idea of the everyday a particularly important way of thinking about mutually constitutive legal and social domains.

The everyday is not a solid, static object. Rather, as suggested by Bakhtin (1981, 1993), Blanchot (1987), De Certeau (1984), Heller (1984, 1986), and from among the anthropologists, Geertz (1983), the everyday can be seen as a domain in which ordinary people engage in a variety of actions, as well as daily events, a process of production and consumption, and transformation. Bakhtin highlights that the values and meanings, which most directly shape our daily lives, emerge from the existential demands of daily living

and our own immediate interpersonal relationships. Accordingly, the “everyday” constitutes the central ground on which daily judgements and actions, especially those of a moral or normative character are played out (1993). The everyday forms, in effect, the domain in which if we look closely we can see the uses to which the “official” representations of a society and the modes of behaviour deemed appropriate are played out and transformed. It enables us to look behind the apparently dominant representations which circulate in a given society, such as Bhutan, which otherwise tell us very little about what they mean and how they are used by the Bhutanese themselves.

### **Law's presence and the social domain**

As the formal State law develops and insinuates its presence in ever-wider areas of daily life in Bhutan, it arguably tries to define and grasp hold of the everyday.<sup>61</sup> It is dynamic, and law is unable, as a result of this dynamism to fully regulate everyday life. This inability to control, to capture the wide range of occurrences in the course of everyday life, is masked by the primacy and power officially given to the formal State law. So where or how does law operate in the everyday? Law is produced out of the routine concerns and difficulties encountered in daily life, and the desire to address these concerns. Or at least that is the official view. The creation and promulgation of new acts and regulations in Bhutan at times appears less driven by the immediate concerns of ordinary Bhutanese, than by the agendas of foreign development agencies, the Bhutanese State and commercial considerations. A contrast commented on by informants was the drafting and enactment of the Copyright Act 2001, but no legislation to regulate landlords and provide a degree of legal protection for tenants. However, law is not merely produced, it is also reproduced in everyday situations and encounters. Law “articulates conflicts and alternately legitimises, displaces or controls the superior force...It provides symbolic balances, contracts of compatibility and compromise, all more or less temporary” (De Certeau 1984:xvii). In effect, the ordinary Bhutanese make of the

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<sup>61</sup> As I indicated in the introduction, I am referring to formal, State laws and those regulations and codes issued from State authorised bodies and organisations, which seek to control and govern the conduct of daily life.

“representations and laws imposed on them something quite different from what their...(drafters) had in mind” (1984:xiii).

An example of this is the Inheritance Act 1980. The Act provides for a uniform, homogenous system of inheritance throughout Bhutan. Drafted by State officials and enacted after deliberation in the National Assembly, the Act is the product of the legislative branch of government. Theoretically, the terms of the Act require little or no additional contextual knowledge or interpretation in order to be applied to individual cases. In reality, local customary practices and rules of inheritance have not been superseded. Sitting by the hearth of a traditional mud-brick house in Bumthang, a friend’s mother spoke about her four children. Her three sons are working and no longer stay in the village. Only her daughter, Ogyen, remains and now lives in the family house with her husband and young daughter. When asked about the age of the house, she explained that she had inherited it from her mother and that Ogyen would inherit it from her. Only when an inheritance is disputed are the formal legal rules of the Inheritance Act 1980 applied by the courts.

I do not seek to deny that modern legal doctrines are an expression of the power of the Bhutanese State channelled through “complex hierarchies of jurisdiction” (Cotterell 1995:305). Bhutanese legal regulation is structured and co-ordinated by centralised legislative and executive bodies. Law is (re) produced by and through “the technicality of the legal process” from the law-making bodies to its application in the courts and the informal settings in which it is also invoked (Hansen and Stepputat 2001:17). Legal ideas are formed, interpreted, implemented and enforced in a wide variety of social sites and settings. So law cannot be treated as a unified whole, rather as complex, intertwined and overlapping patterns of regulation. Therefore, law’s meaning and significance is not definitively given by the policy makers or by the officially sanctioned legal interpretations of the judges or other decision-makers. Instead, as we shall see, the meanings and significance of law in everyday life are shaped, transformed, transmitted and embodied in accordance with the different social contexts and basis of

interpretation.<sup>62</sup> In effect, we should view law as a “social phenomenon pluralistically, as regulation of many kinds existing in a variety of relationships, some of them quite tenuous, with the primary legal institutions of the centralised state” (Cotterell 1995: 306)

Law can and does construct new practices and ideas. Rather than focusing on sanctions and effectiveness, it is important to recognise how everyday understandings, conventions and assumptions (e.g. religious beliefs, notions of morality) structure legal thinking and practice. Moreover, those same understandings, conventions and assumptions are themselves produced and shaped by legal rules and practices. In effect, law is already and always inseparably a part of the everyday. Its efficacy does not lie in what law can get people to do or not to do, but rather in what people think and do unselfconsciously. An example is the ability of individuals to conceive of themselves as legal subjects. This is exemplified by the farmers from Chang and Kawang, who have raised a class action against the City Corporation of Thimphu discussed in Chapter Six and by the more mundane agreements and compromises of daily life, for example the decision by an estranged husband to accept a private settlement when he realised a civil case raised by him looked uncertain (discussed in Chapter Five). In effect, law permeates the social domain. Sarat and Kearns comment that by focussing on the everyday we are better able to “bring into view, if not give primacy to, the lively normative resources of the everyday. These, no doubt, are resources powerfully shaped by law, but they are resources on which law itself deeply depends” (1993:56). The social values described in Chapter Two influence and shape the interpretation and application of state and customary laws, drawing on the modern legal system on the pre-existing Bhutanese system of social norms and values. Yet, a theme of this thesis is the transformation of not only the formal legal system but of the underlying social system and values.

The mutual inter-penetration of law and society reflect the constitutive dimension of law – it both maintains social values and influences changes to the existing moral ordering of society. This hegemonic role, expressed in a growing literature (Scott 1985, Abu-Lughod

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<sup>62</sup> Brown (1996) presents a similar argument in his work on the relationship between legal change and the interpretation of *sunna* in Egypt and Pakistan.

1990, Comaroff and Comaroff 1991, Lazarus-Black and Hirsch 1994) has sought to neither over-privilege law, or its hegemonic force, by demonstrating the counter-hegemonic resistance to law and the social order it constitutes. In the previous chapter, I commented on the resentment of urban Bhutanese towards the requirement to wear national dress and the fines levied by the police. Small acts of resistance were engaged in daily, wearing jogging bottoms when doing errands or simply lying if stopped by the police. The rhetoric of the formal legal system and the Bhutanese State suggest a strong presence and strict control. Yet, State laws are ignored, orders from district governors evaded and the intrusion of the State resisted (Pommaret 2001).<sup>63</sup> The tension at the heart of the constitutive approach between law and everyday normative orderings “demonstrates that law and legal practices are constitutive of a variety of powers – political, economic, symbolic – and that, cross-culturally, the power of law is at once hegemonic and oppositional” (Lazarus-Black and Hirsch 1994:20).

Before detailing the main features of my approach to law in everyday life, a few additional comments are required. De Certeau suggests that we should view everyday life as a form of cultural production by those who are without power and who are essentially “consumers” rather than producers of the cultural forms imposed on them. Accordingly, everyday life is constituted by the tactics of resistance through which ordinary people attempt to “re-appropriate the space organised by techniques of sociocultural production” (1984:xiv). However, the implications of De Certeau’s theory of everyday life appears to treat law as one of the instruments of “sociocultural” production that emanate outwards from the centre of power and, in this view, everyday life is to be understood as a form of resistance against legal domination. The apparent reification of law assumes a clear boundary between law and everyday life, similar to that of the centralist model, which is false. We should not ignore the underlying fact that law depends on everyday life to give meaning and substance to its main concepts and forms. Law does not, indeed cannot, exist apart from or in opposition to everyday life.

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<sup>63</sup> Describing her experiences taking students to a village to do fieldwork, Pommaret noted the suspicion of the villagers towards the students and their concern that the students were reporting back details of income and so forth. This resistance, often passive and not vocalised, was equally evident in the urban households I visited.

Nor does De Certeau adequately explain why everyday life should be seen as resistant to law. Law is not a “bounded” entity that belongs exclusively to the Bhutanese State or the centre of power. “Bhutan has met considerable success in building a society and state based on the rule of law” (Ura 1994:35): such a statement privileges law as central to the state and its control over social life in contemporary Bhutan. The same author however, when interviewed spoke at length about other normative orders, e.g. the role of local deities in the rural areas, the concept of *thadamtshi* and its ancillary values, which countered this notion of law in Bhutan as the bounded preserve of the Bhutanese State. There we need to recognise that law represents a wide range of normative orders ranging from the powerful socially constructed notions of conduct and propriety, to local practices regulating the family, property ownership and succession through to constitutional issues, definitions of citizenship and the administration of State sanctioned “justice”. The local level practices which continue to govern inheritances, the opening and closing of irrigation canals, and use of communal forests in rural Bhutan are examples of non-State laws. There is a growing literature (e.g.; Ewick and Silbey 1998; Gabel and Feinman 1982; Merry1990, 2000; Yngvesson 1988) highlighting the fact that everyday life is pervaded by norms and procedures whose origins are to be found both in the rules of ordinary human interaction and in the more formal pronouncements issued from the more distant centres of “socio-cultural production”. Norms originating in diverse ways from a wide range of sources, of greater and lesser formality and official legitimacy, continually merge, clash, overlap, and constitute one another. Engel, I believe, correctly encapsulates this when he writes “Everyday life constitutes law and is constituted by it” (1995:126). The norms which are implicit in Sonam’s narrative cited at the beginning of this chapter were social norms which are closely intertwined with religious beliefs and considerations, with his actions being formally ratified by the State through the endorsement of the High Court.

In effect, the social domain is an arena in which people’s day-to-day interactions necessitate the creation of a common language of ideas about the individual and the wider social group, about time and place, about rights and wrongs. This does not assume that all the meanings are shared or uncontested, rather the social field recognises both conflict

and solidarity. However, it is this very process of developing a way of talking about common issues that arguably gives rise to people's sense of belonging to a distinctive social arena. Being in this arena requires them to cope with a particular version of common sense that pertains here but not necessarily elsewhere. How are these meanings produced? Which meanings are shared within society and by which groups? What counter-meanings are to be found circulating in contemporary Bhutanese society? What meanings are contested? And finally, how does the struggle between different sets of meaning reflect the play of power and the resistance to power in society (Scott 1989). These issues are developed through out the subsequent chapters.

Various writers have argued that we need to be careful with the social field. Engel cautions against viewing the social field as a given for "it is not an easily identifiable site with clearly marked boundaries" (1995:126). Nor can we merely "go there" to conduct research. Rather, I focus on the role that law and common sense play in creating "a texture of everyday experience that has its own feel, its own images and vocabulary, and is distinguishable from experiences involving other people or activities in other social locales" (Engel 1995:128).

There are five interrelated aspects around which I investigate law in everyday life. The first concerns the individuals who occupy the social domain. Arising out of the first, is the community and communities created in the social domain, and the social values and norms which regulate social interaction. Notions of space and time, which are further developed by changing patterns of textual authority, form the fourth aspect. Finally, to these underlying features, I add one additional dimension, the notion of "legal consciousness", which is developed below.

Turning to the first aspect mentioned, the individual is an actor in the stories and narratives they create. I have drawn on the narratives and stories told to me during fieldwork for these form the basis from which one can consider law as it is conceived in the course of daily life. Returning to Sonam's narrative, we can note the progressive stages as he narrated the events surrounding the discovery of the infant in the field. The

tone and language changed when he began describing looking after her in the hospital and his personal response to the events. He drew on his own experiences as a father and could not contemplate abandoning a child. In the process, Sonam's identity was transformed from medical orderly to concerned onlooker and eventually, a caring father. A similar process is outlined in Chapter Five. Am Kesang is at first the defender in a civil action raised by her estranged husband, and then becomes the abandoned wife seeking divorce on the grounds of adultery.

Firmly located in the social domain, individuals both shape and are shaped by it. As Brunner notes, "it can never be the case there is a self independent of one's cultural-historical existence" (1986:67). Their role and status define their identity. Yet, these identities are not fixed and permanent, rather they alter during the course of events. Issues of identity are contested and determined within the context of particular social fields, along with the "hierarchies of personal attributes and the principles of inclusion and exclusion" (Engel 1995:128). Law is equally fluid and dynamic; therefore its relationship with the process of identity construction has important consequences for individuals in the various "social fields" of their daily lives.

The image of a unified, Bhutanese nation found in schoolbooks, official publications and tourist information promote a reified vision of the national community. This community is described as bound by shared values and cultural understandings, as embodied by wearing national dress, as following *driglam namzha*. Yet, as I have already described in the previous chapter, below this official version of the Bhutanese nation, other values are stressed – notably, *bey zha* and *thadamtshi* which serve to emphasise the local importance of community values and communal relations. Instead of physical markers or boundaries, these values differentiate between those who act in accordance with them and those who do not. In Chapter Seven, I discuss the reactions of informants to crimes committed towards sacred sites, and how those whose values and conduct depart from what is deemed acceptable are stigmatised and excluded from the community. This appears to a lesser extent in popular discussion of increased drug use, the spread of sexually transmitted diseases (especially HIV) and its association with prostitution, and to elders

commenting on the interests and behaviour of young Bhutanese, especially the urban youth.

As part of the transformation of the Bhutanese State, the *Thrimzhung Chenmo* (the Supreme Laws) promulgated in 1957 begins with a clear expression of equality before the law. I will discuss this further in Chapter Four. At this point, I want to draw attention to how state law, as well as local practices and customs, seek to define and shape the concept of community. The State laws and the formal legal system seek to promote a sense of a nation-wide community and recently redefined the role of local communities and their representatives in the policy development process.

Yet, local customs and practices, as well as the continued importance of out of court mediation and negotiation (sanctioned and encouraged by the formal legal system) remain important at the local level, especially in the rural communities. The *gup* (village headman) and his assistants, as well as the village elders are all-important figures who mediate between everyday concepts of community and practice, and the formal state law. Based on their local knowledge and understanding of the social order and prevailing values, and their greater understanding of local customs and state laws, they are important players in constructing and promoting a certain vision of community. The courses by the Royal Court of Justice in each district in Bhutan held between late 2001 and the summer of 2002 focused on these local level officials underscoring their pivotal role in interpreting and conveying legal knowledge to the village level. Of course, this does not guarantee that the meanings are uniform, or that only one vision of community exists. Each generation will shape and redefine its own interpretation and construct its own vision. Today, the possibilities of employment, education and greater mobility are significantly greater than for previous generations. Yet, there remains a sense of shared values transmitted, perhaps rather randomly in the urban areas, as indicated in Chapter Two.

The social values and norms, which govern everyday life in Bhutan and shape and define the life-world of the individual overlap, compliment and, at times, conflict with the norms

of the formal legal system and the values of the State. The contemporary formal legal system and its laws are underpinned by an indigenous system of social morality and conduct. From the late 1950s until the early 1990s, this relationship continued to define and control access and recourse to legal process. The traditional forms of recourse to justice remained based on pre-existing notions of authority, and personal ties and connections remained, at least in the imagination of the Bhutanese important. Yet, as I discuss in the later chapters, this relationship is changing as new understandings emerge and as the deeply personalised aspect of justice is countered by strong measures within the judiciary of Bhutan to demonstrate its impartiality. On the other hand, the formal legal system has maintained and continues to encourage the resolution of disagreements out of court, thereby maintaining at a local, private level the importance of status and access to resources.

The development of the formal system of law and its association with state techniques of governance and information gathering is intimately linked to construction of space and time. Deadlines for submission of forms, of appearances before officials during census and the setting of court dates are official, authorised points on a linear chart defining time. Yet, there are various ways in which the spatial and temporary frameworks are conceived, used and altered. The delaying tactics of litigants postponing a hearing is just one example I encountered.

The conception of space, especially the ways in which both State and customary law, construct and re-configure space is a major aspect of the social domain. Chapter Six deals with issues surrounding land and Chapter Seven touches on the desecration of sacred space. In each instance, it is interesting to note that there are numerous social and cultural, as well as legal landscapes created out of the same object. The *chorten* represents the presence of Buddhist doctrine controlling unseen and potentially harmful forces, and on a mundane level acts as a topographical feature. Private or local resources are invested in the construction of the *chorten* and its desecration not only damages the physical structure but the harmony between human realm of existence and that of the deities. The theft of its “treasures” and desecration involve not only the local community,

or family if on private property, but the State authorities from the village level up to the district governor's office. The incidents raise important questions of control and responsibility, of the exercise of authority and pre-existing conceptions of the State as responsible for the apprehension and punishment of criminals. This final aspect draws on the role of the State before the reforms, and its perceived orientation towards State interests and penal matters (figs.10 and 11).

Equally, the search for wet land to grow rice in a sharecropping arrangement can be seen from various perspectives. For Dorji, the land is both an investment, and a potential source of income. For the farmer selling the land, it is a source of cash, and during the period of the agreement he would continue to receive half the crop. From the viewpoint of the local officials, the sale will be examined and reported to the central Land Register, where the central title will be amended, before the title is finally transferred.

This final aspect, the creation of a new land title identifying the new owner and registered in the central Land Register illustrates an important dimension – the use of text. The creation of a cadastral system and the official, state survey and recording of landholdings, together with a centralised Land Register reveal a particular aspect of the State laws and process of information gathering. Various writers have discussed the effects of changing patterns of textual authority (Bowen 1999; Merry 2000; Messick 1992). Ewing and Silbey note that “spatialization of legal relationships through textualization contributes to the experience of a reified – thing like legality”(1998:99). Space is never neutral. Rather, it is composed of and permeated by varying power relations, including unseen deities and spirits. The spatial environment in which Bhutanese move in their homes (with a sense of hierarchical social placing), work places, streets, shops, neighbourhoods, and the fields are all in some form inscribed in texts – leases, official signs, land titles, which reflect and reproduce social relationships of power. That these spaces are typically taken-for-granted make them all the more important. Law and legal practices can and do structure social spaces, erecting and dissolving boundaries (though not necessarily in accordance with the official interpretation or practice) (Blomley 1998; Engel 1990; Santos 1995).

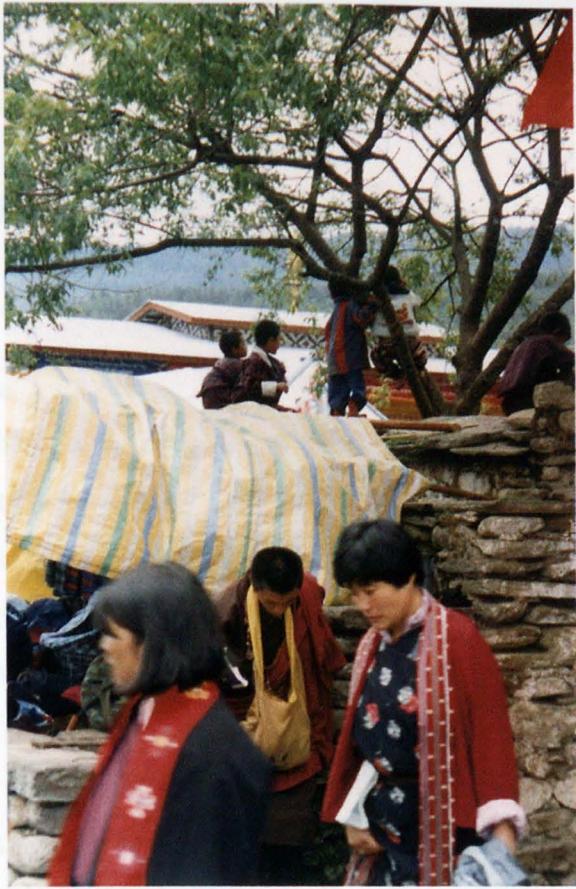


fig. 10

Jampay Lha Khang - monk collecting for new temple.

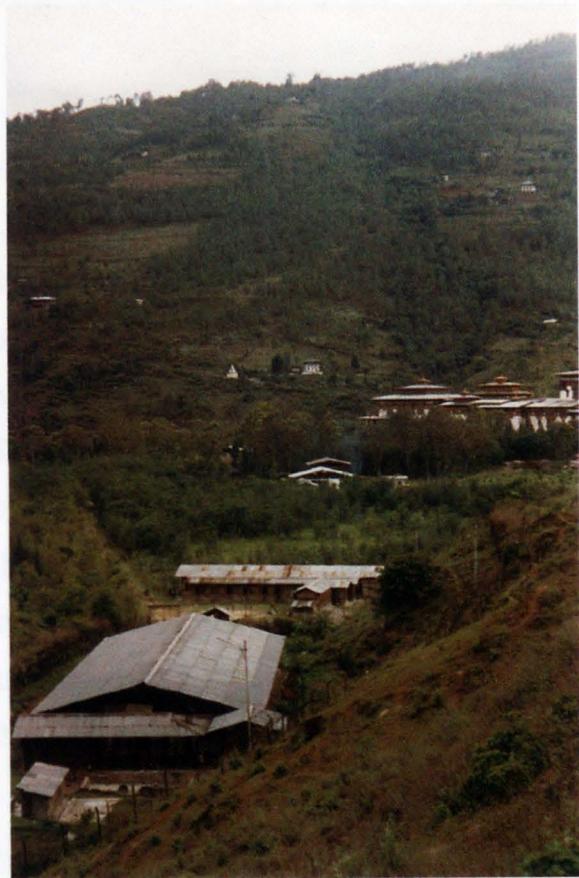


fig. 11

View of prison near Punakha.

## **Consciousness of Law: changing perceptions**

The notion of legal consciousness represents a major attempt to break free from an emphasis on the formal, empirical approach to the study of law in society. Stressing the role of cultural schemas and resources which operate to define and pattern social life, various writers have argued that law “is constituted through everyday actions and practices” (Ewick and Silbey 1998:43). Merry describes legal consciousness as “the way people conceive of the ‘natural’ and normal way of doing things, their habitual patterns of talk and action, and their common sense understanding of the world...it is not only the realm of deliberate, intentional action but also that of habitual action and practice” (1990:5). Building upon this idea of law as a structural feature of society, legal consciousness refers to the everyday participation by individuals, separately and with others, in the process of constructing legality. “It seeks to capture people’s sense of purposes, stakes and constraints within a broad ethnographic domain...every time a person interprets some event in terms of legal concepts or terminology – whether to applaud or to criticise, whether to appropriate or to resist – legality is produced” (1998:45).

Therefore, legal consciousness draws not only on states of mind, but is produced by what people say and do. Of significance are the underlying historical contexts and encounters, which permit possible variations of legal consciousness to emerge. For although an individual may express his or her opinion in terms of personal desires and will, consciousness is never entirely individual nor subjective. As MacIntyre points out the individual is part of a wider community from which the individual derives an identity (1982). So legal consciousness is a collective construction that expresses, uses and creates publicly exchanged understandings. This allows room for the subtle differences between the collective and the individual meanings and interpretations and reflects the nature of legal consciousness, rather like notions of morality, as emergent, complex and moving (Silbey 1992:46).

This approach also requires us to move beyond an ontological construction of law as a separate reified entity. My informants tended to describe law or the courts as possessing a separate reality removed from their own social world. This attitude seems to be increasing in Bhutan with the development of the formal legal system and the increase in bureaucracy and regulation of ever-wider aspects of social life. References to the court, the police or to ministries and the National Assembly construct a separation from the lived world of experience. Although manifested through various social practices, law acquires a separate identity. As Ewick and Silbey describe it, law “appears most “thing-like” in its most bureaucratised qualities: those that are suprahuman, impartial, rational, objective” (1998:82). There is a dichotomy between structure and agency evident when Bhutanese speak of “the law”, “the courts” as being external. This reification of law, law as a tool of social engineering, is an image one can even find pervading contemporary Bhutanese writings, for example “Bhutan has met considerable success in building a society and state based on the rule of law” (see Ura 1994).

The interrelationship between social values and legal consciousness is crucial to our understanding of the operation and perception of law and legality in everyday life in Bhutan. It is evident that any investigation of everyday conceptions of law must draw on the cultural practices that help create a fuller account of how law is conceived of and “written” on to the individual. “There is no law that is not inscribed on bodies...From birth to mourning after death, law ‘takes hold of’ bodies in order to make them into text. Through all sorts of initiations (in rituals, school etc, it transforms them into tables of the law, into living tableaux of rules and customs, into actors in the drama organised by the social order” (De Certeau 1984:139). This is clearly important when considering the re-emphasis of *driglam namzha* and the increasingly open debate over the enforcement of dress codes, which in the opinion of some distort the function, and meaning of *driglam namzha*. Sonam’s adoption of the child could not remain a casual matter based on pre-existing practice, just as marriages and divorces are now governed by State laws.

Central to this is the impact of the State and its authority. Drawing on the language of government introduced by the Zhabdrung and the discourse of modernisation and

supranational agencies, the deployment of images of the past and visions of the future combine to influence the meaning and understanding of the individual Bhutanese in the modern nation state of Bhutan. Legal consciousness reflects not only an awareness of State laws and the multiple sources of regulation but also the ability to conceive of oneself in terms of the State and the discourses circulating in and around Bhutan. The presence of the State, especially in light of the current emphasis on decentralisation and the distancing of it through the delegation of regulatory authority to a range of institutions and organisations are an important feature.

The concepts of *driglam namzha* and *thadamtshi*, which form the underlying basis for notions of virtue and a socially constructive life, are therefore fundamental aspects underlying notions of legality in contemporary Bhutan. These principles or concepts provide the basis for ideas of a moral sense (Yngvesson 1993). By moral sense, I mean how Bhutanese define or refer to their position often by contrasting it with that of others, and use this contrast to reflect their own moral sense, that they are the “virtuous keepers of community values” (1993:5). As many of the narratives I draw from reveal, it is often through commenting on others’ behaviour that a moral sense appears to be created, emerge, or be refined.<sup>64</sup> The civil case described in Chapter Five concerning a lorry I soon realised as I listened to the family really about a husband abandoning his wife, and absence of *thadamtshi*. The lorry diverted attention, but everybody traced the case back to his failure to provide for her when she was ill, and to taking a mistress.

Often, this moral sense is revealed less through actions or restraining from actions, than by the telling of stories – the recollection of an incident. The recollection itself reveals the moral sense of the narrator through the position he or she takes in the telling of the tale. In Chapter Five, Karma’s unsuccessful court case against his stepmother illustrates how through retelling his version of events, past experiences of the law and legal action shaped his legal consciousness. Or as MacIntyre writes “the telling of tales has a key part in educating us into the virtues” (198:216). Yet, it is equally important to recognise that

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<sup>64</sup> For more on legal narratives in general see Brooks and Gewirtz 1996; Ewick and Silbey 1998; Griffiths 1997.

the tales may alter depending on the context of their production, and may equally function as the means of social control by instructing what is expected and what will not be tolerated. The tales do not simply reflect the experiences of the teller, but may convey a message, even if not consciously, to the listener. To end, legal consciousness affects not only how people think about invoking the law or even, the general utility of law. It refers equally, to how people interpret the events of their everyday lives.

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### **Epilogue: legitimacy and textuality**

Jampay *Lha khang* is located in the Chos 'khor valley in Bumthang. Set within a small walled compound, Jampay *Lha khang* is an important, despite its apparently humble appearance, religious site.<sup>65</sup> In Jakar, the main town and the surrounding area, pilgrims had arrived from across Bhutan to attend the *Monlam Chenmo*, or prayer festival which was being lead by Sungtuel and Thugsey Rinpoches and Petsaling trulku.<sup>66</sup> The *Monlam* was being held to seek world peace and the removal of obstacles. More significantly, the *Monlam Chenmo* was being held a month before the 79<sup>th</sup> National Assembly was due to be convened in Thimphu and a major item on the agenda was the continued presence in south-eastern Bhutan of ULFA/Bodo guerrillas. Since the mid 1990s armed guerrillas from Assam and other parts of the Northeast Frontier Provinces of India have sought shelter from the Indian Army in the mountainous terrain of south east Bhutan. Pressure from the Indian authorities and more recently attacks by the guerrillas on Bhutanese civilians has heightened tensions between the two sides. Conversations, especially with the National Assembly approaching, often referred to the ULFA/Bodo and many of my eastern informants, especially from Pemagatshel, Samdrup Jhongkar, and Zhemgang *dzongkhags* – the most affected areas - expressed serious concerns for the welfare of family members unable and unwilling to leave their villages. The National Assembly was to debate the situation and there was a general sense of resignation that only by military

<sup>65</sup> For a discussion of the history of the temple see Aris 1979 Chapter 1.

<sup>66</sup> gSung sprul, Thugs sras, and Pad tshal ling sprul sku.

action would the armed guerrillas leave. However, all recognised the potential cost to Bhutan in terms of human life and limited economic resources.

Along the road leading to the temple from Jakar, villagers walked slowly through the drizzle to attend the ceremonies and receive the blessings of the lamas leading ponies carrying panniers of fresh meat, sacks of rice and butter. Families arrived from distant parts of Bhutan during the week, many seeking to be there for the final day of the ceremonies. A businessman and his wife arrived with their youngest son from Zhemgang. His wife had been very ill and wanted to attend the ceremony to create merit and to seek the blessings of the lamas. Their son, ambling among the crowds, was enjoying a break from his work and chatting to the groups of young women drinking tea and young men that he knew from secondary school.

Outside the compound, ponies were tethered to fences and large black crows strutted cawing as they scavenged for food. Small stalls selling homemade goods, woven baskets, *yatra* cloth, as well as goods imported from Thailand and Bangladesh, had been set up under makeshift awnings of plastic tarpaulins. The stall owners sat chatting with friends and relatives, exchanging gossip and passing the time waiting for a potential customer to appear from amongst the milling crowds of pilgrims. Bluish clouds of incense smoke wafted across the impromptu market place from the braziers in the temple compound, accompanied by the drone of the monks' chants echoing from loudspeakers set up to allow the crowds to hear the lamas' teachings and the ceremonies being performed by the various groups of monks seated in the compound.

Pushing through the crowds, Tandin squeezed past a group of elderly villagers turning the prayer wheels in the entrance. Inside a small courtyard, Tandin walked past a small-enclosed structure in which butter lamps flickered. A small group of boys swinging from a balustrade were giggling and watching him. He held out a piece of paper bearing the seal of the Special Commission for Cultural Affairs. Generally, tourists may only visit a small number of temples and monasteries in Bhutan. Permission can be obtained to visit specified temples and *dzongs* from the Commission in Thimphu. I had supplied a list of

important sites in Bumthang I wanted to visit to a lawyer at the High Court who had arranged the necessary individual permits. (I will discuss the events surrounding the restrictions on tourists in more detail in Chapter Seven). “Where’s the caretaker?” he asked one of the boys. Wiping his mouth, the boy indicated with his head a door at the far end of the veranda. Tandin set off; leaving the boys jostling each other as they peered at the tourist who had accompanied Tandin. Eventually, Tandin returned with a monk. “We can go in quickly.” Pushing past the boys, Tandin lead his charge into a small room. Monks sat rocking back and forth as they chanted. Women carrying offerings were prostrating towards an alcove, using the small space in the doorway to perform their obeisance. Walking carefully between the seated monks, Tandin guided the tourist to an alcove. In the press of bodies, they stood and gazed on a large statue of Maitreya, the Future Buddha. Murmuring a quick prayer, Tandin held a folded 5 *ngultrim* note to his forehead before placing it on an offering bowl in front of the image. The monk caretaker kept the permit for his records. This was the first, and only time a caretaker had chosen to retain my permit. Pointing at it and at the crowds of Bhutanese outside, he explained that he had to keep a record of those *chilip* (foreigners) who had visited the temple.

After walking three times around the temple and the courtyard, Tandin indicated that it was time to leave for he wanted to buy *doma* (acrea nut quid) from one of the stalls beside the entrance. On the way out of the main gate, a young monk stood with a rubber bucket (fig.on.10). As he approached Tandin, he walked slowly with an awkward gait. Each movement appeared to cause him pain and to demand a great physical effort on his part. Holding up a booklet of tickets, the young monk began to explain that he was collecting money for a new temple being constructed near Tashigang, in eastern Bhutan. On the ticket stubs was a small grainy black and white image of the new temple. Tandin read the details on the stub and pulled out a 5 *ngultrim* note from the pouch (*hemchu*) of his *gho*. Fumbling in the pouch of my own *gho*, I handed over 10 *ngultirm*. As we began to walk away, the young monk called out, “I have to give you this.” He bent down and, pressing the booklet of receipts to his thigh began writing on it. He handed two receipts

to Tandin, who peered at the receipt and stuffed it into the pouch of his *gho*.<sup>67</sup> Turning to me, he held out the second receipt out and said, “It explains what the money is for.”

This almost unremarkable incident can be interpreted in terms of gift giving and the implications of giving money to religious bodies (Mauss 1954 (2002)). The monetisation of Bhutan is relatively recent. Although coins were in circulation, and there are references to coins in seventeenth century accounts, and to taxes being paid in coins (see Rhodes 1999 and 2000, Ardussi 2000), generally payment and offerings to temples and other religious establishments were not monetary. Rather, the offerings would be of food, labour or clothe (Myers 1994, Aris 1994, Pommaret 1994 and 1997, Rhodes 2000). So, in part, the collection of money by the monk reflects the wider circulation of cash in Bhutanese society. This allows for more people from beyond the local area of the new temple to participate in its construction, while simultaneously creating merit, as well as reflecting a sense of national identity beyond any localised identity.

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<sup>67</sup> The receipt reads:

2249 (rubber stamp mark)

In order to prevent the decline of Buddha's teachings, but to promote their growth and the long life of the King, his officials and subjects, and to pacify the external enemies of the kingdom a new temple has been erected near Tashigang at 'Udza rong Geng Khar gomdey (meditation centre). It is almost finished but in order to complete the temple, nangten (body support) of the three manifestations of Dorje Drolod, gsungten (scripture) copy of the Kangyur, and thugten (mind support) Martial Victory stupa and the exterior and interior of the temple are to be completed to fulfil the command of His Majesty's Home Minister Ga [6] 24/2000/10640. Therefore, we request the faithful to give generously[ ] from the unimaginable offering of old treasure to material assistance [10 nu ]. Little will be wasted of the donations made and the Ku Sung Thukten will be completed as a result of the profound aspiration and merit of the donation. Year Month Day

Tshewang Rigdzin  
Gomdey Finance Clerk.

The Dzongkha reads in transliteration:

2249

*spyir sangs rgyas kyi bstan pa mi nyams gong 'phel dang rgyal blon 'bangs 'khor sku tshe zhabs pad brtan cing rgyal khab la phyi'i sdang dgra zhi phyir bkris sgang 'u dza rong 'gengs mkhar sgom sde'i lha khang gsar zhig phyi ha lam bsgrubs zin gyi nang rten chos longs sprul gsum rdo rje gro lod gsung rten bka' 'gyur thugs rten g.yul rgyal mchod rten lha khang phyi nang gi lha 'bris bcas bsrgub don mi rje nang srid blon po'i bka shog ang Ga [6] 24/2000/10640 can ma ltar ltar gtong phod dad sbyin [ ] mchog nas rnying po nor la ma bsam pardngos rdzas [10 ] bcas gnang 'byor byung ba de nyid chud zos ma btang bar sku gsung thugs rten bsgrub pa'i bsngo smon gang zab zhu bcas*

*gnam lo zla tshe la*

*Tshe dbang rig 'dzin  
sgom sde'i gtso dzin.*

In addition to providing a glimpse of the economic changes in Bhutan, and the shift in the nature of gifts and offerings made by Bhutanese, I specifically want to link this incident with the earlier discussion of law's presence in the social domain and the plurality of normative systems. Partly, I want to move away from the particularity of Sonam's narrative to illustrate the more general presence of law in daily life. The language of the receipt is important. It draws on religious imagery and a particular vision of the Buddhist character of Bhutan. The implied threat to Buddhist teachings, "decline of Buddha's teachings" and to "external enemies" is strongly reminiscent of phrases used in earlier texts, for example in the Foreword to the *Thrimzhung Chenmo* (1957). The hierarchical aspect of the Bhutanese State and society is another interesting feature. The work is being done at the order of the Home Minister, and there is a clear reference to a vision of the country with the King at the apex, his government below, then finally the general population. A vertically oriented society based on the authority and legitimacy of the monarchy. Yet, this image of the political and social structure is at odds with the general trend of recent legislation and policy directives, for example the Act redefining the role of the *gewog* level officials and their involvement in decision-making.

The image of the Bhutanese polity presented reminds us of the continuing strength and relevancy to the Bhutanese of a certain vision of the State: secular and religious. The ability of the State and its representatives to "order" demonstrates that the pre-modern patterns of authority remain (fig.10). However, there is a second dimension. Although receipts (*desho*) were given before, I understand that these were for large sums than being offered at Jampay.<sup>68</sup> Rather, the receipt appears to be subtly establishing the moral basis for the request, and stressing the legitimacy and social purpose to which the donations collected will be put. This only struck me afterwards, during a supper in which yet again the topic of corruption arose. The gomdey finance clerk, whose name appears on the receipt, is establishing his accountability with those who give to the temple fund. Since at least 1999, the Bhutanese authorities have stressed "Accountability, Efficiency and Transparency" as part of the wider practice of "good governance" (RGOB 1999). Leaving aside for one moment the influence of Western NGOs who have developed these

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<sup>68</sup> Dz 'bri shog (?)

terms, it is interesting to see similar concerns reflected in the receipt. This is not law in capital letters, but it is law as it manifests itself inscribed in our daily lives.

The receipt is a nexus on which overlapping, complimenting and conflicting normative systems can be imposed. In contrast to my permit to visit the temple which detailed the duration of the permit, and the conditions of admission (for example, I was not allowed to take photographs inside the temples), in other words, explicitly controlled my actions, the receipt merely implies the various levels of responsibility. The language used draws on an imagined shared understanding which develops the official rhetoric stressing the importance of national-unity and a sense of national identity. It reminds us that law is not separate from political visions of the State, socially constructed meanings or indeed, religion.

### **Concluding Remarks**

In this chapter, I have set out the main theoretical considerations, which form the basis for my interpretation of law in everyday life in Bhutan. Due to the nature of the ethnographic research carried out in Bhutan and Nepal, I draw individual narratives and observations to build up as detailed a picture as possible. The interrelationship between the values discussed in the preceding chapter and elaborated in more detail in the ethnography and the articulation of legal consciousness highlight the various ideological forces at work in contemporary Bhutanese society. This articulation of competing value systems and ideologies underscores the variety of discourses upon which people can and do draw. In turn, we see a less regulated and even field and become aware that the terrain of legal hegemony is not an uncontested field of experience (Griffiths 1997, Griffiths 2001, Sieder 2001,). Rather, we find that it is a dynamic system in which the value systems and varying ideologies “operate in a state of disorder...competing, clashing, affecting, drowning, silencing one another” (Hunt 1985: 16).

Any discussion of legal consciousness and everyday normative understandings requires us to examine in detail the processes by which these features are themselves articulated.

A third dimension, which is discussed, is the role of the evolving legal ideology of Bhutan. The construction and presentation of the legal system and the underlying aims in its growth and changes, especially over the last ten years, are crucial aspects of the process by which legal consciousness is itself developed and articulated. I examine the development of the Bhutanese legal system in the next chapter. At this point, I want to emphasise that for ordinary Bhutanese to function in an increasingly bureaucratised society, they must come to terms with the changes, which have already occurred, and those that are still underway. In effect, the new becomes part of the taken for granted dimension of everyday life and ceases, for the most part, to be either visible or consciously invoked.

The everyday normative understandings of ordinary Bhutanese engaged in “getting on with their lives” underscore not only the mutually constructive fields of everyday life and law, but that they, as individuals, or as a family or business partnership, tend to make choices in which the balance between moral and practical risks depend on the definition and re-definition of their normative positions. This reminds us that we need to be aware of the element of contingency which permeates everyday life (Jettinghoff 2001). Through the narratives and the various discourses drawn on and invoked, we can see a wide variety of values, perspectives and interests being articulated in a dynamic flux. Yet, that flux appears to operate within a given spectrum of options perceived as valid and acceptable, though not necessarily legal. Indeed, it appears that the only durable solutions to the problem of co-existing morals of legitimacy are negotiated solutions and accommodations (Pardo 1999). Moreover, it is clear from the ethnography that the apparent hegemonic force of law is challenged as ordinary people resist and transform everyday norms (see also A.Griffiths 1997). Drawing on values and practices from within the family, the local community, schooling and official discourses each individual engages in a process, simultaneously active and passive, of negotiating for themselves the meanings of being a moral person, and their identity in relation to the surrounding cultural and legal norms.

## **Part Two**

### **Local Issues, Local Practices**

## **Chapter Four**

### **Text, Authority and Change: the processes of legal transformation in Bhutan**

OM With the exception of His Majesty, the Druk Gyalpo, all other citizens of Bhutan, irrespective of their rank, social status or official position are equal under the *Thrimzhung Chenmo* (*Thrimzhung Chenmo* nd: 5)

With these opening words the *Thrimzhung Chenmo*, the Supreme Laws of Bhutan, outlines the vision of the modern Bhutanese nation-state. The political and social developments begun by the Third King, Jigme Dorji Wangchuk relied on the creation of a new series of laws and legal institutions as part of the overall modernisation and development of Bhutan. This chapter examines the development of contemporary legal institutions and texts, which form the basis for new ways of imagining the role of the Bhutanese nation state and its citizens. “Equal justice under law” and the “rule of law” underpin the official vision of the role of law and legal institutions, and it is the role of the official legal institutions, and especially the importance of the Supreme Laws promulgated in the late 1950s, which form the core of this chapter. From these I turn to consider more recent developments, notably the introduction of formal legal education and the development for the first time of professional lawyers. I then consider the impact of development agencies and the engagement of Bhutan with other legal traditions and legal systems. These all have important consequences on how law is perceived and utilised by ordinary Bhutanese. The chapter enables us to see how law, in the sense of the official state law, is an important site of on-going contestation caused by the tensions implicit in trying to balance “tradition” with “change”.

Situated between the two powerful states of China to the north and India to the south, Bhutan has been careful to preserve its political independence. As noted in the introduction, Bhutan has been remarkable to date for never having been occupied by any of its neighbours (Aris 1996; Collister 1987). Yet, it is also conscious of its precarious existence. The occupation of Tibet by Chinese forces in 1950 was in part at least, a major catalyst for change and a gradual process of opening up. Remaining outside foreign

control, Bhutan avoided the impact of colonial regimes on its internal social and political structure. Therefore in discussing the development of the Bhutanese legal system the role of law as part of the colonial administration's "tool box" to control local populations and as part of the "civilising process" is not directly applicable. However, this is not to deny the influence of India in Bhutan during the late twentieth century (Basu 1996; Gupta 1999; Parmanand 1992), nor the impact of opening Bhutan up to the outside world, both in terms of tourism and as the recipient of foreign aid (Chodeon 1997; Ura 1997).

Nor indeed can we ignore the less direct influence of "legal advisors", "drafters" and the various NGOs who have been, and are, actively involved in the development of Bhutan. As with Thailand and the legal reforms instigated in the late nineteenth century under Chulalongkorn (Engel 1978), Bhutan sought to effect legal reforms to protect its independence and to tackle political pressures both from within, notably the appearance in 1952 of the Bhutan State Congress, an association of Nepali Bhutanese, and externally with the Chinese occupation to the north.<sup>69</sup> Indeed, just as Engel argues that the legal transformation of Thailand was crucial to the success of political, economic and educational reforms, the same applies to Bhutan. As with the Thai elite, and as noted by Mathou (1998:185) the Third King wanted to control the political initiative. This involved the conscious construction of new systems of knowledge drawn from western models, but still based on pre-existing structures and traditions.

The preservation and promotion of the values discussed in the previous chapter coalesce around the emergence of the official trinity of *Tsa Wa Sum*. This new official trinity appears for the first time in the *Thrimzhung Chenmo* (1957) directly linking the formation

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<sup>69</sup> Various writers have considered the development of law in those countries which were not subject to direct colonial rule – Kelly (1985), Ooma (1996), Henderson (1991) amongst others on Japan, Engel (1978), Huxley (1990 and 1996) on Thailand. There are interesting parallels between Thai and Bhutanese legal transformation and the relationship with the process of modernisation and re-imagining the nation-state.

The Bhutan State Congress appears to have disintegrated soon after its emergence. In the 1960s, the Bhutan National Congress party was created and located just outside Bhutan at Jalpaiguri and again it seemed to disintegrate shortly after its appearance (Parmanand 1992). Subsequently, during the late 1980s and 1990s various political groups emerged among the Nepali-Bhutanese, for example, the Bhutan People Party (1990), Student Union of Bhutan (1990?) and the Bhutan National Democratic Party (1992). In addition, the Druk Congress Party which has been associated with dissatisfaction towards the central government among the eastern dzongkhags. (Mathou 1998).

of a new national community with the legal and political transformation of Bhutan. *Tsa Wa Sum* possesses a number of levels of meaning. It refers in simple terms to the King, the Nation and the People, united by a shared identity. The tripartite nature of this concept itself mirrors the Buddhist trinity, the Buddha, the Dharma and the Sangha in which the Buddhist takes “refuge” and, by extension it represents the ultimate form of devotion, respect and loyalty.<sup>70</sup> As outlined in the introduction, the twentieth century history of Bhutan can be divided into two general periods: a move from a clerical state to a secular state following the instigation of the hereditary monarchy in 1907 (Aris 1994); the second phase starting in the early 1950s has been described as a transition from “medieval” to “modern” (Ura 1994).<sup>71</sup> A third phase can be identified with the government reforms of 1998 and the subsequent political changes that are still unfolding in Bhutan. I focus primarily on the period from 1950 but do where necessary draw on earlier practices and texts to highlight specific points.

### **Law, State and Power: the presence of the Zhabdrung**

Under the Zhabdrung, Ngawang Namgyal the first law code that we are aware of for Bhutan was promulgated in 1651 (Planning Commission, RGOB 1999:81).<sup>72</sup> In 1729 Tenzin Chogyel prepared the *ka thrims* on the order of the 9<sup>th</sup> Desi, Mipham Wangpo who instructed, “You must at all costs prepare a record of the legal customs which were maintained intact by the Umze and others [and which were based on] legal codes transmitted from the royal lineages and the Chogyels until the Zhabdrung Rinpoche” (Aris 1989:122 – 123). Further in the text it refers to the situation in Bhutan prior to the arrival of the Zhabdrung, stating that the Zhabdrung “introduced laws where there had been no southern laws and fixed handles where there had been no handles on pots” (Aris 1986:129).<sup>73</sup> This statement describes Bhutan as lacking law and uncivilised until the

<sup>70</sup> I am not aware of any detailed consideration of *Tsa Wa Sum*, yet the parallels with the Indonesian concept of *pancha sila* are striking.

<sup>71</sup> The use of the term “medieval” has been questioned by a number of writers on Bhutan. As with various European terms such as “feudal”, “medieval” carries various implications which are problematic.

<sup>72</sup> Bhutanese sources are inconsistent on the date of the promulgation of the code of laws. In *Bhutan 2020* (Planning Commission RGOB 1999) the date provided is 1651, but in *Bhutan Civics* the date is given as 1652 (CAPPS 1999:50).

<sup>73</sup> The expression “southern lands” refers to Bhutan.

arrival of the Zhabdrung. Of course such statements have to be treated with caution because of the political role they played in confirming the supremacy of the Drukpa State administration established by the Zhabdrung.

The *ka thrim*s written by Tenzin Chogyel has been described succinctly as “[organising] along Buddhist lines the relationship between the Drukpa Kagyu monastic community, representing the state and lay patrons (*jinda*) and subjects in the judicial and economic fields” (Pommaret 1997:199). The relationship between the monastic and lay communities revolved around the material support of the monastic community in return for teachings, initiations and other rituals performed for the well being of the lay community. This relationship was characterised by a variety of taxes payable by the lay community, including *ula* or compulsory labour for the government for a range of purposes – road and bridge building, the construction and repair of *dzongs* and monasteries. Other taxes involved the provision of meat, butter, and clothes and in western Bhutan, a monk tax instigated by the 4th Desi, Gyalse Tenzin Rabgye (see Kinga 2002).<sup>74</sup> The complexity of the tax system as it existed in Bhutan in the 1930s and 1940s is revealed in a detailed discussion in the biography of Dasho Shingkarlam (Ura 1994). Beyond the tax provisions and rules for officials, the code covers all aspects of social life, notably inheritance, trade, crime and punishment and even the use of tobacco.

The administration of law and justice was the responsibility of the local *dzongpon* (governor) and appears to have relied on the character of those in power. Local variations in custom and practices created a patchwork of laws, which probably remained oral. More work remains to be done to uncover a sense of what happened in the various regions and away from the administrative centres of power. Yet, it is highly probable given the breakdown in the Dual System in the mid-eighteenth century, that law codes were less important than the ability of local lords to exercise *de facto* control and authority. The emergence of the monarchy in the early twentieth century saw the creation of a powerful move towards centralisation under the authority of the monarch. It is

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<sup>74</sup> The monk tax (*btsun khral*) refers to former requirement to send one male from each household to the Druk State monasteries instigated by the 4<sup>th</sup> Desi, Gyalse Tenzin Rabgye (reign 1680 – 1694).

against this background that I turn to consider the development of the Bhutanese legal system from the early 1950s.

### **The *Thrimzhung Chenmo*: State reconstruction and legitimacy**

The creation and adoption of the *Thrimzhung Chenmo* (Supreme Laws) was a conscious move instigated by the Third King, Jigme Dorji Wangchuk (1952 –1972) soon after ascending the throne. According to Dasho Shingkarlam, a retired official, one of his duties when he was appointed secretary to the queen was to “[jot] down ideas concerning criminal and civil laws, which … came through to His Majesty. There were already three such notebooks when I took over…It seemed His Majesty incubated the ideas… I was to draft the ideas found in these notebooks in some coherent structure and form” (Ura 1995:227). It is less clear to what extent this image of the King’s role as lawmaker is accurate. Several informants suggested that the late King was most directly responsible for the sections on hunting and fishing, leaving the remaining sections to be drafted by other officials. The role of the King in the drafting process may be unclear, yet the majority of Bhutanese describe the law code as the work of the late King. By this association with a deeply venerated monarch, the *Thrimzhung Chenmo* gains an important foundation legitimating its authority over all Bhutanese. A second important thread of understanding is intertwined with the role of the King as lawmaker, namely that the *Thrimzhung Chenmo* was in effect a codification of the traditional laws of Bhutan. This apparent continuity with the past is significant for the legitimacy it provided the law code and its acceptance by the Bhutanese. Yet, when discussing the major reforms of the 1950s with several senior Bhutanese officials, this image was questioned. The laws contained in the draft code were not, they said, all based on traditional practices. Rather, the drafters prepared new laws drawing on a range of sources, notably beyond Bhutan in India. Kinga notes, “legislation streamlined and formalised many social institutions and practices such as marriage, inheritance, local resource management which were governed by customary laws and regulations” (2002:61).

The members of the newly formed National Assembly were responsible for scrutinising the draft *Thrimzhung Chenmo*. This delegation of responsibility was a key feature of the changes underway in Bhutan. The process of consideration of the draft *Thrimzhung Chenmo* lasted from 1953, when the draft was first placed before the National Assembly, until 1958, when the text was finally ratified and brought into force. Throughout this period, the draft *Thrimzhung Chenmo* was subject to a significant number of revisions based on the discussions held in the National Assembly. The King, according to Dasho Shingkarlam (1995), left the matter to the National Assembly for the most part though he did give advice on difficult issues which arose during the process. The fact that the draft *Thrimzhung Chenmo* was subject to major revisions and provoked sufficient interest and comment from the members of the National Assembly does suggest a recognition of the importance of establishing a solid legal foundation “on which to base the integrity of the country … and the mighty and the humble…both made equal before the law” (1995:322). There is a reciprocal process of legitimisation in the process of ratification by the National Assembly. As a newly constituted body, the National Assembly as an institution was still establishing its position and legitimacy. Together with the *Thrimzhung Chenmo*, the National Assembly established the break with the past monarchical government and the beginning of a gradual shift in political power away from the throne.

The importance of the *Thrimzhung Chenmo* is reflected in the title. The full title reads *The Great Law Code of the Southern Heavenly Fields Arrayed with Sandalwood*.<sup>75</sup> The title is made up of *thrim* which means law and *zhung* can be used to mean both “government” and “treatise or text book” (Goldstein (ed.) 2001:944). *Chenmo* means “great, supreme”. The reference to the “Southern Heavenly Fields Arrayed with Sandalwood” draws on pre-seventeenth century epithets for the country (Pommaret 1997a). The translation of the title commonly used in Bhutan is simply “Supreme Laws”.<sup>76</sup> The status of the document as the foundational basis for the Bhutanese legal system and as the source of both civil and criminal laws covering all aspects of daily life

<sup>75</sup> *Lho tsan dan bkod pa'i zhing gi khrims gzhung chen po*.

<sup>76</sup> A paper written by the Royal High Court of Justice about the legal system of Bhutan refers to the *Thrimzhung Chenmo* as the “Supreme Laws”. In *Bhutan Civics* (1999:52) it is called “the Supreme Law Book”, and as the “General Law Book” (UN Core Doc 1999:3).

in Bhutan is simultaneously underscored. A second title given at the end of the foreword to the *Thrimzhung Chenmo* is “The Mirror that illuminates All Desires”.<sup>77</sup> It reflects the aspirations and hopes of those involved in its composition and promulgation that it will cover all situations. Interestingly, this secondary title suggests or hints at the perception of laws as important in negotiating competing interests and aspirations. Another interpretation suggested is that it reflects the desire for clarity of the laws and for peace and social harmony.

We can gain some insight into the recognition of the importance of the *Thrimzhung Chenmo* in the Foreword to the code. Acknowledging earlier texts and law codes, the Foreword comments that it was felt appropriate that the existing “religious and secular laws” be considered. Based on this review, it was decided what should be kept or discarded in the opinion of those consulted. Existing customary laws (*lugs srol*, *lugs lam*) were considered, and whilst aspects were to be maintained, where they did not match or accommodate the main laws being proposed then they were to be abandoned. It appears that little customary law was incorporated in the law code. Whilst it is difficult to comment on how extensive the consultation process was beyond the National Assembly, one can detect a subtle awareness that the *Thrimzhung Chenmo* was a major document which would play an important part in the reforms and changes instigated by the Third King. A further aspect, which remains unclear, is whether or not it was recognised that through the process of consultation and debate, a law code was being created to harmonise differences between practices throughout Bhutan, as well as creating the basis for a more formal, structured and centralised legal system. However, the law code can be seen not as a marker in the transition from traditional to legal domination, but rather as part of the transition from charismatic to “traditional domination”. The King in his determination to carry out the reforms to protect and develop his country had to rely on his personal authority. The charismatic aspect has remained strong in Bhutan and even as the Bhutanese state seeks to develop its constitution and legal institutions, we are able to discern all three forms of “legitimate domination”, reminding us that Weber consistently stressed the mixed foundation for all political systems (Weber 1974).

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<sup>77</sup> ‘dod don kun gsal me long. (TC n.d.: 2)

The apparent contradiction this raises is not as problematic as it may at first seem. The broad reforms of the Third King were in part possible because of his personal position and charisma. The abolition of the categories of serf and slave (1959) and the process of land reallocation required the authority and power of the monarch in order to be achieved. By preparing a law text that claimed, even though it appears to not have drawn as heavily as suggested, on traditional practices and relying on the reputation of the King and involving the National Assembly we see the creation of “traditional” law.<sup>78</sup> Now Bhutan is experiencing the gradual, though for a significant part of the population, further transformation from traditional to legal domination. This transformation is embodied in the new Constitutional Committee, under the Chairmanship of the Chief Justice, which has been made responsible for creating a written Constitution for Bhutan.

As the opening quote declares, the new law code established equality before the law. From this flowed the need to establish the formal structures required to implement the new laws and the development of the modern Bhutanese nation-state to which these were inherently and implicitly linked. In 1960 the first *Thrimpon* (judge) were appointed over a few of the district courts located in the *dzongkhags*. Following the creation of the High Court in 1968, *thrimpons* were appointed in all the *dzongkhags*. Certainly, cases had been heard locally by officials (*drangpon*) previously, but for the first time a division in responsibilities and authority separated the legal decision-making process from administration. Once again, we can discern the importance of the emerging legal system as part of the general process of restructuring the administration of Bhutan. However, it took considerable time for the institutional structures to be put into place; therefore the transformation and, more importantly, the dissemination of the new status of all Bhutanese as equal, and the separation of powers, is still effectively happening.

The language of the *Thrimzhung Chenmo* is significant. For the most part it draws on Classical Tibetan, *choke*, and the link with pre-existing literary forms is important. Rather than creating a rupture with the past and earlier, extant law texts, the *Thrimzhung*

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<sup>78</sup> The main areas which do draw on customary practices are irrigation/water use, land use (to a degree), and hunting, whilst the *Thrimzhung Chenmo* homogenises inheritance, marriage practices and other aspects were always defined by the State, for example treason and murder (Jest 2000; S Wangchuk 2001).

*Chenmo* maintains the connection with the past, notably to the earlier laws introduced by the Zhabdrung who founded Bhutan as a unified country in the early seventeenth century (Aris 1986). As the national language has developed over the past forty years, subsequent legislation has been drafted and promulgated in Dzongkha, rather than the more classical language first used in the *Thrimzhung Chenmo*. At present, draft legislation is prepared and circulated in English and translated into Dzongkha. The ratified legislation is disseminated in both English and Dzongkha versions, and in the event of a conflict of interpretation between the two versions, the Dzongkha version is treated by the courts as the definitive version.

The role of Dzongkha as the official language, drawing as it does on its roots in classical, and therefore religious, language reminds us of the intricate intertwining of the promotion of Dzongkha as the principal national language and the development of a more uniform Bhutanese national identity since the 1950s. The choice of language is significant for it allows for a sense of textual continuity, whilst at the same time mirroring wider shifts in state emphasis from religious to secular (cf Aris 1994, 1995; Pommaret 1997a, 1997b; Ura 1994, 1997). The language of the *Thrimzhung Chenmo* exerted an authority and authenticity which was central to its wider acceptance and its role as the legal, thereby legitimate, basis for the socio-political changes introduced. Furthermore, for one of the most important authoritative texts issued from the political centre, the choice of language emphasised how the Bhutanese government conceived or imagined the Bhutanese state which despite the egalitarian vision drew on pre-existing images of Bhutan, especially images of national unity established by the Zhabdrung.

However, although Dzongkha has been promoted as the official language, and there has been a recent requirement for all inter-office and ministry communications to be written in Dzongkha, English is the most prevalent working language. Furthermore, in an attempt to develop legal terminology, the Royal Court of Justice has drawn on senior monastic Buddhist scholars, notably from the Nyingma monastery and University of Penor Rinpoche in southern India. Drawing from their knowledge of Buddhist texts and Buddhist concepts and principles, the Royal Court of Justice has sought to develop

appropriate language for new ideas and procedures based on Buddhist terminology. This dimension is not publicly recognised in Bhutan and was brought to my attention by a number of lawyers and judges. Yet, the process of translation between the English draft version and the Dzongkha acts as a reminder of the problem of translating not only new legal terminology but the changing needs and issues facing contemporary Bhutanese society and government. A report in Kuensel comments that “translation, especially of technical and legal terminology, will remain a major hurdle. Assembly members then face the task of interpreting them and conveying their important messages to the people”.<sup>79</sup> The problem of translating English terms into Dzongkha was brought home when I was asked how I would translate “justice” into Dzongkha. This work was causing the team translating the Civil and Criminal Procedure Bill, a major piece of draft legislation, considerable concern. Amid a desk cluttered with reference books and dictionaries the lawyers sat debating the appropriate term to be used that conveyed the English meaning – hard enough to define – without distorting it in the Dzongkha. Eventually, the term *drang pon* was settled on as the most appropriate. The choice of this term has been the subject of an exchange of comments by readers of Kuenselonline. The majority appears to favour the term *thrimpon*, which had previously been used. Reading the exchange, one can sense a feeling that the majority of respondents felt that the judiciary was ignoring more important matters.<sup>80</sup> At the heart of the discussion though remains a tension over the use of Dzongkha and its promotion within Bhutan.<sup>81</sup>

### **Legal structures: a modern tradition?**

The structure of the Bhutanese judiciary has undergone significant changes over the last decade, notably in 2000 and 2001. The creation of the Department of Legal Affairs was the most significant structural development since the creation of the High Court in 1968. There are plans to establish a Supreme Court, which may now occur sooner than

<sup>79</sup> Kuensel “Editorial – Need for Legislation” 06/05//2000:2.

<sup>80</sup> Kuenselonline “Drangpon” 04/04/02.

<sup>81</sup> In a submission to Kueselonline, “*Thrimpon* – lopon of judgement or punishment” (19/07/02) one writer asks about the meaning of *thrimpon* which revealed a fundamental misunderstanding of both the meaning and orthography of the term – he thought “pon” came from the term *lopon* – teacher, rather than the word “dpon” for official, lord. A small, but telling example of the problems facing the government in the promotion of Dzongkha.

originally thought with the current preparation of a written Constitution in Bhutan. Although the legal texts prepared and disseminated are central to the judiciary and legal thought in Bhutan, the institutions of the judiciary play a crucial role in the development of legal consciousness and understanding among ordinary Bhutanese. Therefore, in this section I discuss these formal institutions. My fieldwork, as I indicated earlier, focussed on how people perceive law and create meanings outside the context of the formal institutions – no court cases are discussed as they unfolded in the official arenas of the law rather they are examined in terms of individual perceptions of the events which unfolded before the officials. I should add that I would have attended court cases in Thimphu if it had been permitted. However, at present court hearings are not open to the public. This practice is increasingly being questioned by Bhutanese and there may be a move to allow public access to the court hearings in the not too distant future.

The formal structure of the modern Bhutanese judiciary is essentially two-tiered. At the local level each *dzongkhag* has its own District Court. There have been created two sub-district courts, *dungthrim*, in two of the larger *dzongkhags* and each Sub-District Court possesses the same jurisdiction as a District Court. The District Courts exercise general jurisdiction over the *dzongkhag*. Certain categories of crimes, notably treason, are reserved to the High Court in Thimphu and the High Court must confirm the decision of the District Court in murder cases. Beyond these limitations, the district courts hear all cases, civil and criminal, arising in their area. If there are disputes over the most appropriate court in which an action should be heard, the matter of jurisdiction will be decided by the High Court. At present, the district courts are typically located within the *dzongs*. In Punakha and Wangdiphodrang *dzongs*, for example, the court rooms are located in the outer courtyards near the entrance and are clearly signed posted. Small groups of people, men and women can be seen waiting on the veranda or peering at the court notices pinned to a board outside the court. In Thimphu, the District Court has outgrown the original rooms allocated to it in the District offices located near the Sunday Market, and plans to build a new, separate District Court have been drawn up. The removal of the District Courts from their current locations is a long term objective and will have interesting repercussions.

At present, the location of the District Courts in or beside the *dzongs* still links the courts and the legal system in the minds of many to the power and control of the *dzong*. Despite a strong attempt to make both an effective and perceived separation of judiciary and executive by the High Court, there remains as we will see later in the thesis a mistrust and apprehension of the courts. Early on during my research, the image of the *dzong* that pervaded descriptions of life in Bhutan in the late 1940s and 1950s was one of fear. It is hard to separate the impact of tales of warlords during the turbulent nineteenth century from the assertion of royal control in the early twentieth century associated with the *dzongs* as centres of royal authority. This sense of fear and awe was brought home by Am Kesang, an educated middle-aged woman, who as we waited with a large crowd of people for the arrival of the Je Khenpo at Tashicho *Dzong*, Thimphu, in response to my enquiry about Wangditse *dzong* which overlooks Thimphu. “There was a bad King there once, before the Zhabdrung arrived. He secretly killed and ate young monks until one day the local people turned on him. The cooking pot is still there!” A friend nodded her head in agreement and they both laughed. Yet, this image of the *dzong* is confusing for, as well as secular functions, the *dzongs* also function as monasteries.

Above the District Courts is the High Court (fig.12). Located in Thimphu and created in 1968, there are now eight High Court judges, including the Chief Justice. The High Court hears both criminal and civil matters, but has specific jurisdiction in matters of treason, and international treaties. In the event of a dispute between *dzongkhag* then the High Court has power to decide and it acts as a court of first instance for all cases of criminal charges against government officials. The current High Court is located close to Tashicho *Dzong* in Thimphu, but land has been acquired for a new High Court to be built above the present location.

The High Court represents a recent development in the Bhutanese judicial system. The District Courts located in the *dzong* reflect older practices of discipline and authority whereas the High Court represents a new tier of legal authority. Yet, it is worth noting that Michel Piessel comments on meeting the Trongsar *thrimpon* (judge) in 1968 that he “was not merely the representative of justice, order and the law; he was order, justice and

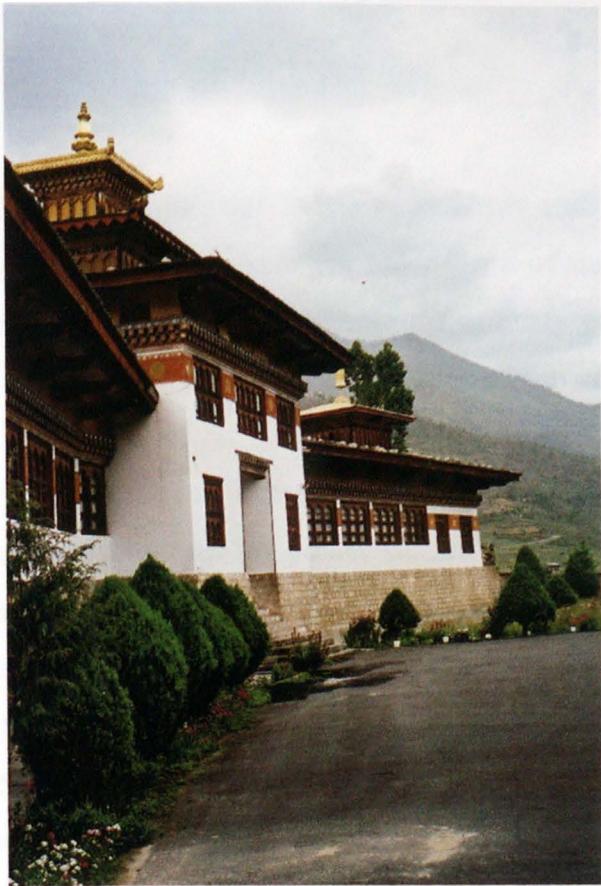


fig. 12

High Court of Justice, Thimphu.



fig. 13

City Legal Unit - a private law office 'Ogzin Lam, Thimphu.'

the law”(1988:159).<sup>82</sup> The personalised aspect of authority and the role this has played until recently has made the transition from the older forms of authority and influence, as well as the understanding and images these held for ordinary people, to a legal system seeking to establish and maintain a sense of equality for all difficult.

The creation of the High Court in Thimphu in 1968 marked another major shift. In the same year, the third King gave up his power of veto in the National Assembly. The separation of the judiciary from the executive was a major political move, and the importance of judicial independence was emphasised by the National Assembly in various resolutions passed during the Twelfth, Sixteenth and the Seventy Third Sessions. However, the process of gaining full judicial independence was less straightforward. It appears from the records that the Home Ministry did interfere with the High Court on a regular basis. Over the past decade, the High Court has asserted its independence, notably in the acquittal of five Nepalese suspected of being “anti-nationals” (terrorists) which was opposed by the Home Ministry but the High Court emphasised the “correctness” of the acquittals<sup>83</sup>.

In April 2000, a new Office of Legal Affairs was created. Outlined in a report issued in late 1999 to coincide with the Silver Jubilee of the Fourth King, the report comments:

As with any institution it [ the legal system ] has to evolve with the times and yet continue to reflect our rich tradition and culture....

With changing times, Bhutan had to deal with increasingly complex legal issues within the country. An appropriate legal body or an agency with strong documentation and a proper legal perspective within the socio-cultural milieu of our country, can strengthen the government’s position. Therefore, an Office of Legal Affairs will be created (RGB 1999:16)

The new office effectively acts on behalf of the state in civil and criminal matters. It assumed the role, which can be found in other jurisdictions, of acting as prosecutor on the one hand, and representing the state in matters in which the state is a party. In addition, there is a Legal Services Division, part of which will advise on human rights issues, and

<sup>82</sup> “ Le Thrimpon n’est pas seulement un représentant de la justice, de l’ordre et de la loi; il est l’ordre, la justice et la loi”.

<sup>83</sup> Shaw 1994: 149.

a separate unit drafting law, “rules, bye-laws …and reviewing acts/laws” (*ibid.* 1999:18). It is worth noting that the office of prosecution is described as being the forerunner of “the Attorney General’s office” and that in time the Office of Legal Affairs will be “upgraded in the future into the Ministry of Law” (1999:18). There is also a planned Supreme Court, which will be located in the current High Court buildings near Tashicho *Dzong*. The High Court is to move to a new building (still under construction – a ground breaking ceremony was held in July 1999) and continue its function as the main appeal court. The Supreme Court will deal with matters of policy and give advice on legal issues that arise to the government and by implication to the High Court.

The King remains, despite the recent transfer of power to the Cabinet of Ministers, the ultimate court of appeal, and all Bhutanese, as in the past, have the right to petition the King directly. Discussing their understanding of the right of appeal to the King, a group of young male Bhutanese stressed that, if the person making the appeal had not pursued the matter through all the appropriate channels before making the appeal, then that person would be in serious trouble. Although like many young Bhutanese, they were vague and based their comments on what they had overheard, they appear to have been correct. In the Civil and Criminal Procedure Code, it states that an appeal to the King can only be done once the judicial process was fully exhausted (RCJHC 2000:32). The King refers all appeals to the Royal Advisory Council, which has limited powers for further investigation (Hainzl 1998: 47- 48). The right of appeal to the King is separate from the right to petition the King and is discussed separately in Chapter Six.

Closely linked to these recent developments and planned creations has been the development of civil and criminal court procedures. A recent document produced by the Royal High Court states that “changes in the judiciary take place continuously”(n.d : 9). The current civil and criminal procedures have been reviewed and a new set of procedures drafted. It had been hoped that these would have been ratified by the National Assembly and implemented by late 2000. However, the process of ratification was delayed and, according to various informants, it would appear that there was considerable opposition to the new procedures. Finally in the summer of 2001, during the 79<sup>th</sup> National

Assembly, the draft was ratified after two days of debate, and the Chief Justice answering the concerns raised by the delegates.

The procedural changes in part are linked to the computerisation of the judiciary. The main court forms and styles have been harmonised and are available for court clerks and judges alike to access. Each case appearing on the computerised records indicates not only the parties to the action, and their location, but the place where the case initially was raised, and the decisions and court orders made throughout the process. During a meeting with the Chief Justice, it was fascinating, and indeed revealing, to see the information which is now available to court officials. In addition to providing details of the court hearing calendars, there are breakdowns of figures for cases settled, the nature of cases and the number pending at any given time. This data will be important in identifying areas, which may need to be considered for legislative action to be taken. The computerisation of court cases is described as providing “a uniform sentencing policy” and “information for analysis and develop[ment] strategies” (CAPSS 1999:61). Similar changes have been made to police procedures with the provision of computerised charge sheets sponsored by DANIDA.<sup>84</sup>

### **Local level practices: “*nang kha nang du lab pa*”**

Under sections Da 3 – 1 and 3 – 2 of the *Thrimzhung Chenmo*, direct provision was made for the private settlement of disputes (*nang kha nang du lab pa*). Following the ratification by the National Assembly of the Civil and Criminal Court Procedure Act 2001, section 145 states that:

145. At any stage of the proceedings, it shall be open to the parties to take the help of a *Chimi*, *Gup*, *Chipon*, *Mang-mi* or *Barmi* as mediators for mutual settlement of a civil case in accordance with the requirements of this Code (RCJ 2000:43).

The importance of negotiated settlements has been continually recognised by the judicial system. This is one feature of the *Thrimzhung Chenmo* which draws on pre-existing practices and customs (Aris 1994; Hainzl 1998; Kinga 2002). Based on local-level

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<sup>84</sup> Kuensel “New charge sheet system expected to curb crime” 27/05/2000.

mediation between the parties concerned by local men of influence (e.g. a village headman), the practice of arbitration and mediation has been strongly promoted by the judiciary in Bhutan (e.g. Dubgyur 2000; Wangchuk, T 2000). The fourteenth century Buddhist scholar, Longchen Rabjam describes acting as a mediator in reconciling differences as a “virtuous deed” (Longchen Rabjam n.d:verse 6). The chimi (National Assembly representative) and *gup* (village headman) each have some “judicial functions” at the local level (UN Core Doc. 1999:4). The role of local officials such as the *gup*, who acts as the head of the local village block (*gewog*), is seen as encouraging social harmony and allowing communities to maintain control over local matters. During one encounter in Punakha with a *gup*, he explained his role in terms of being a facilitator. To assist the *gup* are the *chipon* (village co-ordinator) and *mangi-ap* (village elders). Historically, the position of *gup* was hereditary and until the abolition of its hereditary dimension in 1963 by the National Assembly. Ngawang Thinlas made several passing comments to his mother’s family in Kurtoe and their previous status as “chiefs” which was later clarified as a reference to this hereditary position. The post of *chimi* is more recent in origin, and both are now based on local elections by the villagers and members of the *gewog*.

Following the process of decentralisation of government initiated with the creation of the District Development Committees at *dzongkhag* level, the early 1990s saw the development of *Gewog* Development Committees at village level. Both of these institutions have been given legal status by Acts (*chathrim*) passed by the National Assembly and, importantly, these Acts gave formal legal recognition to the role of the *mangi ap* and the *dzomdu* (village meeting). The roles of the local level GYT and the DYT have been further emphasised in the Ninth Five Year Plan and the recently SNV sponsored programme on decentralisation in Zhemgang district.<sup>85</sup> Therefore, the continuing emphasis on the resolution of civil matters at the local level mirrors broader governmental policies aimed at decentralisation. The importance of negotiation and its everyday use and application will be discussed in more depth in Chapters Five and Six.

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<sup>85</sup> SNV – a Dutch Development NGO. At the Eightieth Session of the National Assembly held June – July 2002, several new Acts dealing with the functions of the *gup* and the *Gewog* Development Committees were passed. The Acts strengthen the role of the *gup* and this will undoubtedly re-emphasise in the rural

The role of the *gup*, *mangi ap*, and *chipon* as mediator reinforce the emphasis on maintaining social harmony. As I have already outlined in Chapter Two, underlying the notions of *thadamtshi* and *bey zha* (the everyday aspect of *driglam namzha*), is an emphasis on the reciprocal nature of duties and obligations both within the family and household, and in the wider community. However, as Bhutanese society is transformed, especially with the growth of the urban centres this emphasis on social harmony will be and, indeed, is changing.

In addition to the local level officials, are *barmi*. These are local individuals who “are well versed in the law” (c.f. UN Core Doc.1999:4; Hainzl 1998). The term *barmi* literally means “middle person” and his role is to act as an impartial negotiator between disputing parties. During fieldwork, I met a number of individuals who acted as *barmi* in a range of situations ranging from family disputes to negotiating land transactions, and in the following chapters I examine their function in greater detail. In part, this reflects a broader desire for order and stability, as well as, the association of human discord with disturbing the balance with local spirits and deities (Dujardin 1997; Pommaret 1997; Schicklegruber 1997). Subtle social pressure appears to exist to encourage settlement of disagreements for the well-being of the wider community, and failure or apparent obstinacy can be interpreted as a lack of *thadamtshi* for the community.

Once a settlement is reached, an agreement in the correct legal format is drawn up and signed by the parties before witnesses. Two particular forms of document were mentioned – *Genja* which is a simply contract or agreement, and a ‘*Bah*. The ‘*Bah* is an interesting document for it specifies the penalties which the one party to the agreement will pay to the other in the event of failing to abided by the terms of the agreement. Here, the state intervenes and specific requirements are set out for the agreement and its’ registration with the local District Court. The emphasis on written documentation of the agreement is not especially new. The importance of writing is reflected in the written land titles, and decrees emanating from the monarch and other high officials. However,

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areas at least the role of *gup* and their assistants in settling local, civil disputes. Kuensel “GYT Chathrim 2002: the launch of a new era” 26/07/2002.

the process of registering the agreement, which is especially important for '*Bah*', with the court establishes and re-emphasises the authority and legitimacy of the courts – without registration with the court then, in the event of a breach of the agreement the other party cannot seek legal redress without first establishing his/her claim.. State control and supervisory authority is therefore maintained, indeed extended even over those areas which appear to be outwith the formal control of the judicial system.

The judicial functions of the *gup*, *chimi*, *mangi ap* and the *barmi* are restricted to civil cases – all criminal matters are handled by the police and passed to the District Court. At present, a legal profession is emerging in Bhutan as described later in this chapter, and legal representation is currently primarily done either by the individual, him/herself, or by a *jabmi*.<sup>86</sup> *Jabmi* are similar to *barmi* in that they possess a knowledge of the law, but their role is to appear on behalf of the individual during court cases. Until the early 1990s, the *jabmi* received no formal legal education. However, following criticisms from various Human Rights organisations over the perceived weakness of the *jabmi* system, formal training and licensing of *jabmi* were introduced. According to the most recent available figures, there are 166 licensed *jabmi* working in Bhutan (UN Core Doc. 1999:4). During my first visit to Thimphu, I came across a sign "City Legal Unit:" (fig.13), the first private law office opened in Bhutan, and established by a former *thrimrab*. A few other private law offices have opened in Thimphu and Phuntsholing. Provision for the use of *jabmi* during court cases is made in under Section 32 of the Civil and Criminal Procedure Code 2001.<sup>87</sup> At present, *jabmi* provide representation in civil and criminal cases, though as I go on to elaborate, as the number of professional lawyers increases, the role of the *jabmi* may be compromised.

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<sup>86</sup> During my last extended period of fieldwork, based in Thimphu, I attempted to arrange interviews with *jabmi*. A meeting with a *jabmi* based in Thimphu was arranged by a lawyer, but was later postponed. Attempts to re-schedule proved difficult and so I was unable to interview him.

<sup>87</sup> Section 32 states that an individual can plead or defend him/herself, or be represented by a *jabmi*. This right of legal representation can be waived if the individual is deemed mental competent, and finally that legal representation will be provided in such cases as deemed necessary in the interests of justice at no cost to the individual (Civil and Criminal Procedure Code 2001:10).

Before leaving the subject of mediation, I want to return to the theme of the tension between the concerns of “this world” and Buddhist doctrine. I mention above Longchen Rabjam, a renowned Tibetan saint-scholar who spent several years in Bhutan. The full verse reads:

By acting as a witness and mediator between disputing parties  
Though you consider reconciliation a virtuous deed that benefits others  
It will only lead to worldly pride.  
Instead, abandon worldly hopes and fears is my heart advice  
(Longchen Rabjam n.d: verse 6).<sup>88</sup>

The verse was brought to my attention by Uncle Sengge during a discussion about mediation, and serves as a reminder of the tension discussed in Chapter Two. In Thimphu, this “worldly” dimension of reputation was an important feature and is developed in the following chapters.

### **Transplanting practices: the processes of legal bricolage**

The everyday operation of law cannot be separated from the practices embedded in the local and national courts, police units, the processes of legal education and interactions with other officials who are involved in the implementation and interpretation of policy decisions and requirements. Beyond these official and semi-official actors are the general populace to whom the laws are applied. From the laws and rules applied to household property and private land, to the mundane regulations of weights and measures used in public markets and shops, the regulation of businesses and the duties and responsibilities owed by individuals to each other and the state are all conditioned by the background presence of the law and underlying social values embedded within it. Cultural meanings and understandings, in which the routine ways of doing things are not articulated, inform these practices (Huxley 1996; Merry 2000; Watson 1977).

During the processes of legal transformation in Bhutan, (as can be found in elsewhere, for example, Vietnam, Cambodia, Laos and Mongolia as well as Japan), foreign laws and

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<sup>88</sup> My translation. I should thank Lopon Gendun Rinchen for the reference and copy of the full text. The Tibetan text is entitled “Advice from the Heart in Thirty Verses” (*snying gtam sum cu pa*). *gnya’ dang*

pieces of legislation can be introduced without adopting the practices with which they are interpreted, administered and enforced in their original jurisdiction and legal system (Harding 2001).<sup>89</sup> Following the establishment of the *Thrimzhung Chenmo* as the basis for the Bhutanese legal system, and as the primary source of laws governing everyday life in Bhutan, we can note from the late 1970s a significant increase in subsequent legislation. In part, the legislation sought to clarify and develop sections of the *Thrimzhung Chenmo*; this is most notable with reference to the Land Act 1979, the Inheritance Act 1980 and the Marriage Act 1980.

However, recently a number of acts passed by the National Assembly have sought to address issues either not provided for, or inadequately, set out in the *Thrimzhung Chenmo*. The Moveable and Immoveable Property Act 1999 came into force following discussion of the terms of the Act in the 77th Session of the National Assembly. Discussing the reports of the Act with ordinary Bhutanese highlighted the problem of legal reception. The majority although they could read through the reports were unclear as to the purpose of the Act and what it would mean for them as individuals. For a western lawyer, the purpose, and indeed practical implications, were known quantities; it is not only legal knowledge but background social knowledge. Later, whilst in Thimphu, I was advised that the model was from the United States and that US legal advisers had drafted the Act. As a result of popular demand, there is currently a move to introduce for the first time a Landlord and Tenant Act to deal with perceived abuses by landlords (notably rent increases annually with little or no recognition of improvements carried out by tenants). This problem reflects the pressures of urbanisation in certain areas, especially in Thimphu where housing is in short supply and people are in a vulnerable position. A drafting committee has sought similar legislation from various jurisdictions for consideration.

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*dpang po zhal lce sogs kyis/ gzhān rt̄sod bsdum pa 'gro don yin snyam yang/ de la br̄ten pa'i zhe 'dod  
'byung ba'i rgyu/ re dogs med pa kho bos snying gtam yin.*

<sup>89</sup> Based on discussions with lawyers working in Vietnam, Mongolia, Laos, and contemporary writings on the development of the legal systems in Japan (e.g. Haley 1998).

Draft legislation has to date been drafted by individual Government Departments, the High Court and depending on the area being legislated for, foreign drafters may be called upon to assist in the drafting process. All drafts are circulated among the National Assembly members prior to each Session of the Assembly which recently has met once a year, though it can be called more often if required. The draft legislation is presented in both English and Dzongkha and debated in the Assembly with officials from the relevant Department present to answer questions raised by the Assembly. Based on the outcome of the debates, the draft legislation may be approved, approved subject to amendment, or passed back unapproved to the Department. When a draft is approved by the Assembly it is passed to the King to finalise its enactment.

Bhutanese officials stressed that they choose their agenda for reform. Yet, that agenda can at times reflect external pressures brought to bear on the country and its institutions. Laws relating to commercial contracts and the construction industry were introduced to satisfy demands and allay fears of primarily Indian investors. Kinga notes that the Acts concerned with trade and industry “have to comply with international standards” (2002:65). This was certainly how many ordinary Bhutanese interpreted acts relating to business. Likewise, the major reforms of the structure, nature and administration of the judiciary are in part a conscious attempt to counter criticisms of the Bhutanese judicial system raised by foreign and international organisations involved in investigations related to the “Southern problem” (see UN-CHR 1995, UN Working Group 1996).

The criticisms made prompted a major decade long review of the judicial system, its requirements in terms of educational qualifications, and its role in Bhutan. Speaking with members of the judiciary, it is hard to avoid a sense of bewilderment. However, the “Southern problem” brought more international attention to bear on Bhutan than ever before and the negative statements caught the government and judiciary by surprise. Reading a recent report by the UNDP on the rule of law in Bhutan, with a group of Bhutanese middle-ranking officials, it became clear that many considered there was a difference between what the UNDP meant by rule of law and what they as Bhutanese understood by it. This dissonance between interpretations and understanding will be

discussed later in the thesis. For the most part, beyond those areas most criticised by external agencies, and the drive to address the criticisms by the government and judiciary, the bulk of recent legislation sought to address major issues which have arisen, though not always those considered the most pressing by informants. This often raised questions about the efficiency of the law-making process and the failure to address issues which caused deep concern for many. This sense of frustration was evident in comments on a recent incident involving school children sniffing glue when the writer said that nothing could be done until the requisite “legal instrument was in place.”<sup>90</sup>

### **Legal scholarship: religious and secular**

French (1995) in her work on reconstructing the former Tibetan legal system, comments on extant law codes and manuals from Tibet. With the exception of the Neudong Code, which contains a sophisticated discussion of subtle points of law, there are no major works which parallel western legal debate and scholarship. In Bhutan, the earlier law codes set out the barest rules for officials, with little advice beyond exhorting the officials to do their duties and maintain the social order. Yet, it is worth pointing out the amount of available literature on the vinaya, the rules of monastic conduct. The vinaya was almost certainly the main source for the rules of *driglam namzha* and the organisation of the Bhutanese State introduced by the Zhabdrung in the early seventeenth century. Commenting on the development of the legal philosophy underpinning the modern Bhutanese legal system, the current Chief Justice stressed the importance of religious writers as sources of important legal concepts which combine Buddhist principles with the practicalities of dealing with everyday situations. However, the vinaya lacks certain elements which we tend to associate with modern legal systems – notably a final court of appeal to provide a definitive interpretation of a disputed point of law, and no law enforcement provision to enforce sanctions.

The *Thrimzhung Chenmo* in part represents a major departure in the style and format of earlier law codes (*khrims yig*). In comparison to one of the few surviving law codes extant in Bhutan, the *ka thrim* written in 1729, the *Thrimzhung Chenmo* is set out in

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<sup>90</sup> Kuenselonline. “Drug abuse: is it out of control?” 19/05/02.

seventeen explicitly titled sections which are broken into numbered paragraphs setting out separate points of law. In addition, there is a contents section setting out the individual chapter headings which permits ease of reference. This format has been reproduced in subsequent legislation. An interesting feature of the subsequent legislation are the Forewords which explain the background to each new Act and the process of consultation and debate in the National Assembly. These sections mirror the Foreword of the *Thrimzhung Chenmo*, drawing as they do on the former, more literary names of Bhutan (e.g. Medicinal Valleys arrayed with Sandalwood<sup>91</sup> (Marriage Act 1980)) and containing religious references to the teachings of Buddhas and invocations of the dharma protectors.<sup>92</sup> These references ground the legislation as part of the “Dual System” introduced by the Zhabdrung – the balancing of spiritual and secular law. For the most part, the laws of Bhutan are secular but draw on and present themselves as encompassing and putting into practice Buddhist principles. The role of the King, especially in the earlier legislation, is mentioned and the laws are described as flowing from him. The recent changes in Bhutan would appear to suggest a move to distance the monarch from such direct involvement in the legislative process, yet it is clear when talking to officials, civil servants and private individuals that the role of the monarch as the source of the direction of government policies and legislation remains central.

Arguably, the *Thrimzhung Chenmo* has become in many ways the ur-text for the subsequent legislation that has emerged over the last thirty to forty years. References to it are not uncommon, yet as the source of law the majority of its chapters have been effectively replaced by later legislation; a recent example is the Civil and Criminal Court Procedure Act 2001 which specifically repeals Chapters 11 and 12 of the *Thrimzhung Chenmo* 1959 (CCCP 2001:1). However, the term *Thrimzhung Chenmo* has recently been used to refer not only to the original text ratified in 1959, but also to the “codified and enacted laws of the National Assembly” (CAPSS 1999:57), which reflects, at least, the central government’s view of the importance of the original law code and its central role

<sup>91</sup> *sman ljongs tsan dan bkod pa'i rgyal khab* (*gyen 'brel gyi khriims yig* 1980:3)

<sup>92</sup> The language of the Forewords merits further consideration and I intend to do further work on the development of legal language and terminology in Bhutan.

as the legal basis for the transformation of Bhutanese society and government. In interviews with ordinary Bhutanese a similar view was frequently expressed, though few had ever seen a copy of the text or had read it.

There has been, at least since the late 1980s, a policy of carrying out research in the High Court, part of which focused on preparing advice for new draft legislation being proposed by various Ministries. Additional Research was carried out on the Buddhist canon (*Kangyur*) and commentaries (*Tengyur*) to assist with the development of legal vocabulary and with the express intention of drawing on Buddhist terminology and concepts. Part of this work influenced Dasho Khandro to research and publish through the Royal High Court of Justice his work on *driglam namzha* referred to in Chapter Two (Dasho Khandro 1997).

At present, the research materials of the Research Unit of the High Court are not made public. There is an increasing desire by younger, western-educated lawyers to start publishing more widely on legal matters to disseminate knowledge about law and to encourage wider debate on the issues now arising in Bhutan, especially those concerned with medico-legal issues which overlap with social values – notably abortion and organ donation. Part of the ongoing process of developing wider understanding of the judiciary will almost certainly involve encouraging debate and a means of reporting cases dealt with by the courts. To date, although there are annual judges conferences and internal seminars to discuss cases which have appeared in the courts for training purposes and to ensure consistency, many informants commented unfavourably on the lack of openness. As legal scholarship develops, many people, including within the judicial system, want to see cases reported openly. The current policy of not allowing the public to attend hearings and the lack of any information beyond the short reports in Kuensel has been seen as failing to create transparency in the judicial process. As one Bhutanese observed, “it would help if all written verdicts they deliberate are made public”.<sup>93</sup>

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<sup>93</sup> Kuensel online. “Judiciary sees major reform” 18/01/02.

## **Echoes of the past: contemporary legal education**

The introduction of a National Legal Course at the Royal Institute of Management in 1995 at Simtokha, not only aimed to provide trained personnel for the judiciary, but also establish the basis for legal education and scholarship within Bhutan. During the eighteen-month course, the students who are selected through a process of application and interviews are taught Dzongkha, grammar (*sum rtags*), poetry (*snyam dngags*), Buddhist philosophy (including logic (*tshad ma rig pa*) and madhyamika (*uma*)), history, Bhutanese and International law. The course in part mirrors traditional Buddhist education in the subjects studied. The students who attend this course are either en route to study for an LLB in India, or have already completed their LLB and have returned to Bhutan with the intention of entering the judicial service.

To date, the number of candidates being selected for legal studies in India, notably at Chandigarh, Delhi, Mumbai and Pune has steadily increased. In part, this reflects a move by various government departments and ministries to have their own in-house lawyers to assist with legal matters and to assist in drafting new legislation. With funding from a range of NGOs, notably Danida, a number of legally qualified Bhutanese have been selected and sent for postgraduate studies in law. Recently, two lawyers returned on completing their LLMs to judicial appointments, and currently a District Court judge is studying Human Rights in the USA. The increasing numbers of lawyers being send for tertiary education abroad combines a desire to increase the expertise of the judiciary, in part to counter criticisms from NGOs over the lack of formal legal education for the judiciary, and also because of a need to be able to understand the wider international law considerations of commerce, environment and human rights. Yet, beyond the international dimension is a strong desire to develop internal expertise to further the process of developing the Bhutanese legal system.

This move towards selecting and sending suitable candidates for legal education abroad is central to a move towards establishing a professional, trained judiciary in Bhutan. Of the existing body of judges, the Chief Justice is so far the only high-ranking member of the judiciary to have studied abroad. The increasing emphasis on legal training in part is a

response to criticisms made by international bodies of the Bhutanese legal system. Yet, implicit in those criticisms, according to a number of Bhutanese lawyers, was a lack of understanding by the critics of the process by which the members of the judiciary had advanced within the legal system and gained appointments to the District and High Court. Although, as it was pointed out to me, they may lack formal legal training, the judges have spent many years working in various capacities in the District and High Courts before being considered for judicial appointments in their own right. During this period of “apprenticeship”, they acquired not only a knowledge of the laws set out in the *Thrimzhung Chenmo* and subsequent legislation, but also of the practical issues which arise and how to handle them. This process of learning by experience and observation remains a part of the post-qualifying training process. Certainly, the descriptions of how they learnt and their experiences resemble the same learning process set out in French (1994). The recent emphasis on formal legal education, and the professionalisation of the judiciary, marks a break from the older system of learning. However, it should be stressed that the apprenticeship, and the importance of learning whilst working in the courts, remain key components of the education of the judiciary.

Implicit within the development of a legally trained body, is the move away from a traditional non-professional practitioner, or *jabmi* to a formally trained and licensed professional class. Training courses have been held since the mid 1990s for *jabmi*.<sup>94</sup> These courses organised by the High Court have sought to train *jabmi* as part of a move to encourage the use of *jabmi* by litigants and accused. This move was as the result of a UN Working Group on Arbitrary Detention (1996) which suggested that the *jabmi* system did not appear to be widely used throughout the country. Now, as the result of the move towards providing training for *jabmi*, *jabmis* must be licensed in order to appear before the High Court in Thimphu. The High Court grants licences to *jabmis* who have attended training courses for a period of three years. By 1997, there were 186 licensed *jabmi* in Bhutan, including former judges.<sup>95</sup> Unlicensed *jabmis* may continue to appear in the District Courts. Yet, it is not so hard to foresee a potential two-tier system emerging,

<sup>94</sup> See Kuensel “*Jabmis* complete training” 30/03/1996:1.

<sup>95</sup> There are conflicting figures – Hainzl 1998 states 186 *jabmi*, while the Bhutanese prepared UN Core Document (1999) gives the figure of 166.

with the licensed *jabmi* being better able to command higher fees. It is also worth noting that in a civic's course book used to teach Classes IX – X, these courses are described as “[enabling] *jabmis* to render professional legal service to the litigants” (CAPSS 1999:58). Indeed, by early 1998 three legal offices had opened in Thimphu (see photograph No.) and one in Phuntsholing. The move towards a professional class of *jabmi* appears to be well underway.

As the number of Bhutanese students studying law either in Delhi or Mumbai increases, and the teaching of law and legal studies in Bhutan itself is further developed, the question of equal access to legal representation arises. This will not only impact on the organisation of the legal system, but on the options available to ordinary Bhutanese. At present, legal representation is not provided by licensed lawyers in the sense of individuals holding Law Degrees. A choice between formally trained lawyers, and the licensed *jabmi* who have been a feature of Bhutanese legal practice since at least the seventeenth century, may soon appear in Thimphu and Phuntsholing. A potential tension could arise between those able to afford private representatives, and those who are not able to do so and therefore must call on the services of the licensed or unlicensed *jabmi*. There is a further problem in that if a case is raised in a district court and then transferred to the High Court, the parties will not be able to call on the services of an unlicensed *jabmi*. A second, equally important issue as yet unresolved is the potential loss of the knowledge and practical skills possessed by the *jabmi*. There are no guarantees that book learned lawyers will actually be any more efficient than the existing *jabmi*. Nor can the social role of the *jabmi*, especially in the rural communities be overlooked.

A formal legal education has been described as producing “enormous and sometimes wrenching changes in how an individual sees and understands the world around them” (Economides 1994:xxiii). The rapid changes, especially in legal education and the formal training of the both junior and senior members of the judiciary will have an impact not only on the provision of legal services, but on the way in which laws are formulated, interpreted and applied. Even within the judiciary and the police force, there has been an emphasis on training. National Judicial Conferences have been held since the 1976,

allowing for increased consistency with the interpretation and application of existing and new laws. Beyond the National Judicial Conference, as one can read in Kuensel, additional courses are organised to promote a greater understanding and “effective judicial process”. In a recent report, it discussed a course to promote co-ordination between the police and judiciary.<sup>96</sup> The participants included 8 judges, 15 lawyers and 10 police officers. Focusing for the main part on criminal procedure they were addressed by the Chief Justice on the registration of cases, the use of witnesses and preliminary hearings. A US criminal attorney outlined “fundamental rights of the accused, the defendants right to counsel, unreasonable search and seizure”.

During the autumn of 2001, a training course entitled “Training and Dissemination on Rule of Law and Judicial Process” was launched by the Royal Court of Justice in the *dzongkhags*.<sup>97</sup> Over three days, young trained lawyers under the supervision of members of the judiciary, including the Chief Justice, explained civil and court procedure to members of the District Development Committee (DYT). The first day focussed on detailing the “principles of judiciary, the independence of the Judiciary, Equal Justice under Law” (RCJHC 2001:1). It illustrates the importance of education and training within the judicial system stressing consistency. The recent course was described by senior lawyers, and other non-official informants, as necessary to develop a better understanding of the legal system. Yet, it was equally a conscious attempt enhance popular confidence in the formal legal process. The course was itself marked by two formal ceremonies, opening and closing the course, which drew on the formal aspects of *driglam namzha*. In addition, the presence of the lam neten, or principal religious figure for each *dzongkhag* appointed by the Je Khenpo, at each ceremony underscores the relationship between the State, the legal system and Buddhism.

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<sup>96</sup> Kuensel “Effective Judicial Process” 29/04/2000:6.

<sup>97</sup> The twenty *dzongkhags* were divided into three zones and a different High Court Judge attended the courses in each zone. The Chief Justice, personally supervised the courses in the eastern *dzongkhags*. The final presentation of this course in was held in Wangdiphodrang 5<sup>th</sup> – 7<sup>th</sup> August 2002 under the supervision of the Chief Justice, Lyonpo Sonam Tobgye. (Personal communication, Lungten Dubgyur). This was the final *dzongkhag* in which it was conducted.

The final three workshop was held in Wangdiphodrang in August 2002.<sup>98</sup> Just as *thadamtshi* and its formal aspect, *driglam namzha*, serve as guiding moral principles and form part of the process of imbuing and preserving the quality of “Bhutanese-ness” among Bhutanese, the linking of these concepts with the judicial system and State law emphasises the role of law in maintaining social harmony and in creating a sense of national unity based on the “Rule of Law”. It would appear that a shift has occurred. With legal training and education now firmly established, and the move towards a professional legal cadre underway, the focus appears to have shifted to develop a wider appreciation and understanding among the Bhutanese citizens.

### **Conclusion: “As the Earth is to living and non-living entities, law is to a human being”<sup>99</sup>**

Flowing from the *Thrimzhung Chenmo* and subsequent legislation, it is possible to discern how the law transforms through its texts, its performances and its violence (Cover 1986; Ewing and Silbey 1998; Merry 2000; Sarat and Kearns 1993). The law texts set out, (re)define and embody cultural conceptions of personhood, rights and specify relationships and actions as either legitimate or illegal. Law has been central and remains central to the creation, articulation and legitimisation of the relationship between the state and the individual. The transformation, and indeed effective replacement, of the *Thrimzhung Chenmo* highlights the nature of the social changes which have occurred in Bhutan, as well as the new challenges and requirements which now exist in Bhutanese society. We should not let discussions of balancing tradition with change distract us from the fact that contemporary Bhutan is quite different in terms of social aspirations and opportunities from that of the late 1950s. Fifty years of even “cautious” exposure to outside ideas and influences, and controlled development inevitably has had an impact, however subtle, on Bhutanese society. Nor can the outcome of even controlled development and planned policies be accurately assessed and predicted.

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<sup>98</sup> Kuenselonline “Nationa wide judiciary workshop wraps up in Wangdiphodrang” 07/08/2002.

<sup>99</sup> Quotation by Pelgoen Phagpa Lhuedrup, cited Royal High Court of Justice n.d. p2.

The introduction of the bulk of legislation governing Bhutanese life reflects a mainly, though not exclusively, retroactive process of introducing new laws in order to deal with situations and issues which have arisen as the result of wider social and economic changes in Bhutanese society. In turn, this has lead to the transplanting or reception of law texts drawn from other legal systems and traditions. Although there has been a strong degree of consultation, and a general appreciation by the Bhutanese officials concerned to tailor the new regulations and laws to conform to Bhutanese requirements, it is inevitable that subtle and not so subtle differences in cultural meaning and logic are bound to have arisen. For although it is possible for legal texts to be rewritten and amended in the process of reception, it is less certain that the practices of interpreting and administering them will undergo such an ease of transplantation. It is worth stressing that any laws will over time be adapted to local circumstances and local political agendas (Moore 1979; Merry 2000; Watson 1977). This may help reassure those who fear the importation of alien ideas, but there is always the problem of disseminating new ideas and requirements to the society at large.

Public reactions and comments on recent legislation are worth noting. Confidence in the authority and legitimacy of law in part relies equally on the state institutions that have the task of preparing it, as much as, on the formal institutions which implement it (Durkheim 1957, 1984). Both the Cabinet of Ministers, which prepares draft legislation, and the National Assembly, which must consider and amend such legislation, are gaining in popular enthusiasm. This reflects the popular reactions to the process of decentralisation started in the early 1990s. However, this has to be qualified by recognition of the widespread sadness felt after the King effectively handed over power to the government. Yet, the King retains a great deal of influence as is evident by the constitutional drafting process being undertaken following on from a royal decree by the King in December 2001.

Behind the *Thrimzhung Chenmo*, its institutions, and its principles of legal ordering lies a set of foundational norms and values related to the role of the law and the State in social ordering. It is worth emphasising that the move towards creating a unified legal system

in Bhutan grew out of ideas discussed and developed in Bhutan. The emphasis given to property in the first third of the *Thrimzhung Chenmo* suggests that these norms and values include the primacy of private law, exemplified by the new code and judicial process. With the later legislation and reception of Western models, which themselves incorporate values and un-stated premises defining law, the State and the relationship between individual and community, the adaptation of new rules, procedures, and institutions to their social environment remains an on-going process. This chapter has outlined the development of the legal system and the process of decentralisation. The emphasis on mediation at the ground level is an important feature of the contemporary Bhutanese legal system. Yet, there is a tension between the official promotion of the local level process and the increasing level of legal education and professionalism which is already having an impact on urban Bhutanese society. Education, the rule of law and the rise of the urban middle class, much decried in the National Assembly and private conversations, are key markers of the modern Bhutanese State.

In this chapter, I have sought to outline the processes of agency and consciousness directly in relation to the legal transformations which have and are indeed still taking place in Bhutan. Implicitly embedded in these processes of legal transformation was and is the desire to create a modern nation-state and secure a place for Bhutan in the wider geo-political arena. The Thrimzhung Chenmo and the legal transformation it introduced form part of this conscious process of transforming Bhutanese society. The abolition of the various categories of serf and slaves which had existed in Bhutan until 1959 is in direct correlation to the equalisation of legal standing before the law, with commoners and nobles transformed into modern, self disciplining subjects of the nation state.<sup>100</sup> It is against this backdrop of textual authority, legal institutional change and socio-economic

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<sup>100</sup> Although T Wangchuk estimates the percentage of population of serfs at the time of manumission was only 10%, I do not think one can underestimate the implications of the re-adjustment this caused throughout Bhutanese society, especially when combined with the emphasis on equalising social status for all (Wangchuk 1999:59). The article in which this figure is suggested is useful, but does suffer from a number of weaknesses not least of which is the failure to appreciate that even at “only 10% of the total population” the fact that there were serfs and slaves does indicate a particular view of ownership and authority. There is also a distaste among Bhutanese to talk about the various categories of *drap*, and *zasen*. This was made very clear to me when speaking with elderly Bhutanese, notably Uncle Sengge, and many of the comments made mirrored the abuse of authority Wangchuk himself cites in the case of Aum Thinley Bidha.

development that I turn now to look at how ordinary Bhutanese understand and utilise law in everyday life.

### **Excursus: The Inheritance Act 1980 and the Land Act 1979**

To provide some sense of the relationship between customary laws and the impact of legislation, I will provide a brief overview of the context and application of two important Acts, the Inheritance Act and the Land Act. Both came into effect in 1980, together with a new Marriage Act, effectively replacing the relevant sections of the *Thrimzhung Chenmo*.<sup>101</sup> Of the original chapters of the *Thrimzhung Chenmo*, these two sections were based more closely on customary laws than other sections of the text (for example, control over arms and munitions, obligations to report crimes to the District Court or government officials, and treason).<sup>102</sup>

The Inheritance Act 1980 is generally regarded by educated Bhutanese to be an example of excellent legal drafting, unlike the Land Act 1979. The Inheritance Act stresses the equal right of men and women to inherit property, and Act provides for the *inter vivos* distribution of property (for example, when parents are old and unable to maintain the property). Rights of inheritance even extend to those who have married into the family, provided they have been part of the family for a minimum of ten years. In practice however, the application of the Act is more varied. Am Kesang has transferred her property near Lhunshi to her daughter, Tshering, with whom she now lives in Thimphu. The transfer took place with the agreement of Tshering's siblings when Am Kesang moved to Thimphu to stay with Tshering. Am Kesang had inherited the property herself from her mother. Am Kesang shared the income as required with her three sisters, one of whom was older. When the inheritance was explained to me it became clear that it was

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<sup>101</sup> The Land Act 1979 effectively replaced Section Ka (12 chapters), and the Inheritance Act 1980, Section Ga (2 chapters). The same year, the Marriage Act was also passed effectively replacing Section Kha (6 chapters). I intend, in the future, to carryout analysis of the changes and the debates surrounding these three Acts. The section names, Ka, Kha, Ga etc are based on the Tibetan/Dzongkha alphabet – like A, B C.

<sup>102</sup> These are to be found in Section Ja, Ma, and Tsa respectively. The sections on Hunting (Nya) and Fishing (Ta) were, I am told by a senior High Court official the two sections of the *Thrimzhung Chenmo* most directly drafted by the late Third King. The Hunting Section was amended by the Forest Act 1969.

not an automatic right of the eldest daughter to inherit. Rather, since the eldest daughter moved away from Lhuntshi, her mother felt that the property should go to Am Kesang who alone out of the four sisters had remained in Lhuntshi. Tshering would often leave for ten days to travel to Lhuntshi and deal with matters, which had arisen, including being present at a land survey being carried out. Tshering had suffered a series of miscarriages and in the absence of any children, the property would pass to a cousin. However, Tshering and her husband adopted in 1998 two orphans from the village – the boy aged nine they placed in a monastery under the supervision of Tshering's "cousin-brother", Gendun. The youngest, a girl aged twenty months remains with Tshering and will inherit the property.

Discreetly asking how this was viewed by Tshering's cousin, Deki who would have inherited, Deki merely shrugged "It's not unusual, and I still have the right to my mother's interest in the property". The transmission through the female line was made clear when I had encountered "Agge". An elderly man, in his early sixties, he had arrived at Uncle Sengge's house in Boudanath with Uncle's daughter, Pema. He was the elder brother of Uncle's wife and lived with his sisters following the death of his wife. Auntie had noticed my perplexed look as I tried to unscramble the kinship details, and the implications of the property division. Peeling a betel nut she explained, "We all look after him – that's what is right." As one informant noted, "There are different practices, region to region, even village to village. In my own village, Yurung (Pemagatshel *dzongkhag* in south-east Bhutan), only the men inherit land, and the women inherit their mother's property like coral necklaces and so forth."

In effect, the Inheritance Act 1980 presents a homogenised view of inheritance rules which on the ground, especially in the rural areas, are ignored in favour of local practices. However, as I was advised whilst people accept the on-going application of local practices and customs, in the event of a family dispute then the provisions of the Inheritance Act 1980 apply in any action raised before the *gup* or District Court. The decision to pursue such a claim therefore would be based on the intention of the disputing parties, and as it was made clear to me on several occasions, some would gain at the

expense of others by pursing the claim. There was a strong sense that to reject the local customs is in effect to show a lack of respect for the bonds of family and the traditions of the community – a lack of *thadamtshi*. What is striking is the acceptance of these informal, customary rules and their variation throughout the country by people.

However, the increasing migration to urban centres and the accompanying marriages between partners from different regions, will undoubtedly impact on the continuing role of local, customary rules of inheritance. Am Bidha, from Zhemgang district is married to Lobzang who is from a village in Thimphu valley. She made it clear that any inheritance from her and her husband would be shared equally between her daughters, as provided by the Inheritance Act 1980. She noted that unlike their parents generation, and certainly unlike their grandparents, young Bhutanese are more likely to move around the country and certainly to meet partners from other districts whilst at school or at work. In turn, this highlights the fact that the Inheritance Act 1980 will govern the transmission and division of property in the urban centres and although the local practices will continue in the rural areas it will be interesting to trace the subtle changes which will or indeed have taken place to these customary practices.

The question of inheritance is closely linked to the transmission and ownership of land. Landownership and control over land accounted for a third of the original *Thrimzhung Chenmo*. The Land Act 1979 developed and refined the original provisions of the *Thrimzhung Chenmo*. Under the Land Act, the procedure for registering ownership of land and property is outlined. In brief, if the land falls under the jurisdiction and administration of a *gup*, all transactions (sales, inheritance) including unresolved disputes are referred to the District Court. The details of all transaction affecting change in ownership are then passed to the Land Record Division of the Survey General Office (Ministry of Home Affairs) where they are registered. Following the amendment of the central records a new *thram* (land deed) will be issued. With the recent creation of City Corporations, notably the City Corporation of Thimphu, if the land in question falls under the jurisdiction of the municipality, then the transaction is registered by the City

Corporation. This is all I want to say at this juncture about land, Chapter Six provides a more detailed, ethnographic examination of land.

## **Chapter Five**

### **Official Signs, the Courts and the regulation of everyday life**

In this chapter, I examine the role of the State and some of the various organisations, which regulate everyday life as experienced in Thimphu. I do not examine the procedural aspects of these institutions; rather I focus attention on how they insinuate their presence into the mundane everyday life of my informants. I begin by illustrating how the presence of law and regulations form the everyday background. In part, this is to illustrate a subtle but significant move towards a legal system based on a new discursive framework in which governance is reconfigured and regulation appears from a distance. Following on from this I turn to examine how ordinary Bhutanese use and manage the growing web of regulation and various forums available to them.

In particular, I examine the various ways that people talked about everyday issues and the legal dimensions that arose from the issues in question. This section develops more fully both the sense of the permeation of law and legality in everyday life, and the various discursive frameworks in which it is located. A selection of attitudes and stances emerged during conversations with a wide range of people, and changes of opinion or attitude did arise. Therefore, it is essential to recognise that for the most part the statements and attitudes are often dependent on the surrounding circumstances, rather than perhaps reflecting fixed views. There is a fluidity of opinion and understanding which informs an underlying flexibility in not only notions of legality, but also the manner, in which people, as individuals, approach and perceive law, and its formal institutions and sources.

#### **“Do not urinate”: everyday “official” graffiti**

Driving in to Thimphu through Lungtenphug there is a large painted billboard promoting family planning. Not an especially noteworthy piece of “official” advice and yet when one looks more closely one begins to notice the widespread use of “official graffiti”.<sup>103</sup>

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<sup>103</sup> I draw this term from an article by J Hermer and A Hunt “Official Graffiti of the Everyday” (1996) *Law and Society Review*.

Hermer and Hunt note that “regulation is an inescapable part of everyday life” (1996:455). Road traffic signs are perhaps the most commonplace – the ubiquitous red circle with a diagonal line through it declaring “Stop!” I became aware of the signs in Bhutan early on, for the admonitions against public urination and defecation stuck me as oddly incongruous for being written in English and Dzongkha. More particularly was an instance when waiting at the bus depot below the Lungtenzampa bridge in Thimphu, a middle aged rural woman raised the skirt of her *kira*, crouched low on the grassy riverbank beside the bus park and presumably urinated. Immediately to her right was a large burgundy sign. In yellow letters it carried an admonishment in English and Dzongkha prohibiting the very act she was engaged in. To add to the scene, slightly further along the riverbank, and part of the bus depot, was a public toilet block. Few people seemed willing to use this modern facility. Sonam, a young monk who I was accompanying had returned from the side of the riverbank – he too had ignored the sign. As I indicated the public toilet he replied “Atsi, khamlosisi dug! It’s dirty!” Sitting on the concrete platform waiting for the bus, I told him he had “broken the law”. He looked puzzled and I explained the sign. A slow smile spread over his face – “I cannot read English!”

The juxtaposition of the image of the woman and Sonam both performing a natural bodily function and the “official” signage intrigued me. From my arrival in Bhutan, I was aware of not only the mix of advertisements and shop fascia, but also of the level of official signs. After the incident at the bus depot, I began looking at signs and notices with increasing interest for a wide array of regulatory functions and admonitions governing everyday actions suddenly sprang into sight. Yet, these signs are part of the taken for granted landscape against which, and in which, everyday routines are engaged in. “Official graffiti is an endemic feature of the present” (Hermer and Hunt 1996:456): so endemic and so much part of my own everyday life, that it took the immediacy of the incident in the bus park to draw my attention to this important dimension.

Graffiti in the sense of transgressive adornment or defacement of public sites can be found in Thimphu. The most striking example that I came across was at the Dochula pass

were one side of the large *chorten* bore the declaration “I love Kesang Deki March 2001” (fig.14) scratched into the whitewashed wall. Childlike doodles and numerous declarations of love and sexual prowess are the typical “graffiti” found crudely etched on walls away from the centre of Thimphu, (though it should be noted for the most part the public areas of the town are free from graffiti). Even in Nepal, at a pilgrimage site during a *puja* (fig.3) conducted by a reincarnate lama from Bumthang, the monks laughed as they read fresh graffiti by visiting Bhutanese pilgrims “Tashi Drukpa came here”, “Phuntsho from Tashigang Feb 2000” and the inevitable “I love...”.<sup>104</sup>

In comparison to this graffiti, the official graffiti, which proliferates in seeking to regulate everyday life, carries a sense of authority. The signs often carry at the top the details of the particular government ministry responsible for the message being conveyed. The family planning sign with its image of healthy parents and two children (a son and daughter) was by the Ministry of Health. Images of condoms and their application, together with the threat of sexually transmitted diseases, notably HIV, were contained in the surrounding vignettes. Although no sexual act is shown, there is an underlying discourse concerning health, sexual activity and notions of the appropriate size and composition of the family unit. The use of the images, rather than words and text is significant. Located on the main road to Thimphu, and adjacent to a large army camp it is clearly targeting the wider Bhutanese community who may lack the necessary literacy to understand written advice. A similar poster concerned with HIV/AIDS depicted a young couple, the man falling ill, and then the corpse of the man being carried away. Above all these scenes a dove carries a condom in its beak. From my perspective, both of these signs were loaded with meaning and various subtexts, which were brought out in later conversations with both married and unmarried men in Thimphu.

The instructional and rather admonitory nature of the billboard highlights the way in which official graffiti is an ambiguous form, as it elides advice, orders, warnings and

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<sup>104</sup> In a letter to Kuensel “Bad habits spoil chorten walls” (31/10/1987: 6) the writer complains about the graffiti on *chorten* (stupas) in and around Thimphu valley, “I saw writings either written with charcoal or scratched with stones. The painted walls of the Chorten housing sacred relics are spoiled by scratching with stones”.



fig. 14 "I love Kesang Deki" 10th March 2001 - graffiti on a *chorten* at Dochula Pass.



fig. 15

Lorry at a construction site, Thimphu.

instructions, each category merging with the other. The visual instructions on the use of condoms and the potential risk of sexual disease targets primarily the male audience and yet does not imply a passivity on the part of the female. A joint sense of responsibility is implied, not only for the prevention of disease, but also for unwanted pregnancy, allowing parents to focus on being responsible parents.

Yet, as mentioned above, official signs seeking to regulate behaviour can appear trivial. The unsuccessful sign at the bus depot prohibiting the very act performed by the woman underscores how unsuccessful such forms of regulation are in everyday life. The City Corporation of Thimphu has the authority granted to it under the Municipality Act 1999 to create urban regulations for the management of the capital city and its resources.<sup>105</sup> Identical signs prohibiting urination and defecation can be found in the centre of Thimphu – notably on Norzin Lam, the main street, and near the Sunday Market place. Other signs prohibit entry, or regulate the disposal of rubbish. Even outside the city, the use of official notices cannot be avoided – whether at the entrance to the Jigme Dorji National Park at the upper end of Thimphu valley or immediately outside a monastery entrance, signs advise on the appropriate conduct and rights of access.

Standing outside Tango monastery adjusting their *kabne* and *rachu*, groups of Bhutanese prepared to enter the precinct of the monastery.<sup>106</sup> A large burgundy board with gold lettering advised that admission to the monastery required the correct form of dress and that photography was forbidden. Few people paid any attention to the notice – after all who would consider entering a monastery improperly dressed? And why would you want to take a photograph inside the temples? It was unclear to whom these notices were addressed. Generally written in English, occasionally with a Dzongkha section, their presence sought to reinforce the government restrictions over the access by foreigners to the temples, rather than addressing the Bhutanese. Or at least that was how Bhutanese described it when asked. Yet, I remain unconvinced by this declaration. On a trip to a

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<sup>105</sup> The City Corporation of Thimphu and of Phuntsholing was established before the Municipality Act 1999. However, the Act was introduced “as a guide to tackle municipal issues” Sarpanch chimi (Kuensel, “Municipalities strengthened with legislation” 24/07/1999:4).

remote monastery to deliver a donation to an aged nun in Bumthang, I saw no such signs – no official inscriptions. The same signs appeared outside all official buildings, and it struck me that, even if the message was ignored, its presence reinforced a sense of the reach of the authority and power of the State, even in the remoter spaces away from the immediate purview of the State and its various institutions.

The presence and role of official graffiti reminds us that the presence and reach of law and regulation has greatly extended into ever increasing areas of everyday life in Bhutan, as it has done elsewhere. Wikan cites an elderly Bhutanese nun as declaring that “China occupied Tibet, India occupied Sikkim, and we are occupied by our own government” (1996:282). Entering offices belonging to various organisations, for example the Royal Insurance Company of Bhutan, there is a fading notice from the Home Ministry advising that all who enter the offices must be appropriately attired. Similar small notices and announcements can be found through out the city and also in the administrative buildings in the *dzongkhags*, a reminder of the official policy on *driglam namzha*, but also demonstrating that law and regulation effectively are “cultural code[s] of conduct” (Passavant 2002:727).

However, the presence of regulation and the State is more visible when travelling. Check points at various locations of the main road, for instance at the bridge below Wangdiphodrang or at Chudzom, near Paro, note the registration of all the vehicles passing to and fro and frequently the driver is asked the starting point of the journey and eventual destination. Other checkpoints are more erratically manned, with the barrier raised allowing traffic to move freely as for example at Hongtsho.<sup>107</sup> The presence of official signs of regulation does not, however, mean that the regulations are obeyed. One person commented on bringing a workman back to Thimphu, who had no papers but had been employed to do labouring work in Punakha valley on the basis that the only check point, the one at Hongtsho, was rarely manned. Unfortunately for my informant, it was manned on this occasion, and he was aware of being in a difficult position. However,

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<sup>106</sup> *Kabne* and *rachu* refer to the ceremonial scarves worn by men and women as part of *driglam namzha*. (See Chapter Two).

<sup>107</sup> I heard subsequently that a new person has been appointed at Hongtsho to replace a less effective guard.

matters were “negotiated” and no further action was taken against the driver. Everybody I interviewed admitted breaking minor regulations each day because they “are just a nuisance”. On several occasions in the evening having parked on the main street in Thimphu, I would turn to find my companion rushing back to the car, and turn on his hazard lights. “Have to put them on in the evening if we park here”, explained Dorji joining me, “But I always forget!” As if to reinforce the regulation, groups of policemen walk up and down reprimanding drivers returning to their vehicles for failing to leave their hazard lights on as required (fig.7).

The sense of regulation and the use of notices and signs has itself been taken up by non-official organisations. On the glass entrance door to a popular disco, Dzomza, in central Thimphu was a sign which stated in capital letters “NO KNIVES, NO GUNS ALLOWED”. I remarked on the sign to a friend, Tshering Dolkar, who admitted she had not noticed it and was surprised when she saw it herself a few days later. This sign had caught me by surprise for I had not considered the potential for people, mainly young men, to carry weapons. However, it is not unusual for people to carry knives of various sizes for practical uses in the rural areas, but one wonders why they would do so in Thimphu. The sign served as a reminder of the potential for violence and also for the expansion of regulation through signs from the public to the quasi-public space of the disco. The expansion of official signs and the increasing bureaucratic regulation of everyday life in Bhutan are related. It is striking how common place the official signs are and the depth of their penetration into everyday life. Beyond the signs of the main government ministries regulating a wide range of activities from procreation to livestock are a wide range of non-government agencies with the authority to regulate additional aspects of everyday life – the City Corporation of Thimphu is an obvious example. So too are the banks, insurance company and other bodies with regulatory powers.

Yet Tshering Dolkar’s own comment of “not seeing” the notice at Dzomdza is equally significant. It would be misleading to think that official signs, by their implicit links to State authority and legitimacy, are either recognised and adhered to or control and shape everyday life and behaviour. Signs, as I came to realise, can be and often are in the course

of simply “doing everyday life” ignored. There is an indifference to these markers of official authority and regulation – in part, I suspect, because many people do not read English or Dzongkha well enough, and for the simple reason that the signs become part of the background – taken for granted. Unofficial graffiti makes more of an impact – it can amuse, surprise or shock. Official graffiti associated with State pronouncements and governmental discourses and agendas, such as health education or encouraging “good behaviour”, lack the same immediacy by which to engage people. Unlike graffiti hastily written or drawn, a minor act of self-expression contrary to approved and acceptable norms of behaviour, the official signs are not spontaneous and lack a sense of irreverence and wit expressed daily in ordinary conversation. This is not to say that the norms of behaviour are rejected, but rather to balance this with a reminder that the Bhutanese enjoy mocking officials and officialdom, a subtle resistance to the otherwise potentially hegemonic presence of the State (see Aris 1987). These themes can be found in a variety of popular folk stories, some emphasise the foolishness of the official, others lament the suffering caused by “duty and obligations” (Kinga 2001: Ura 1996).

What is striking is the way in which, through its rather humdrum presence, official graffiti and its ancillary forms of notices, circulars and visual icons conveys regulatory commands. It draws on its official status to not only establish legal authority, but also to create a sense of standardisation and permanency. Implicit behind each official sign is the sense of the presence of legal authority and the threat of punishment for contravening the command expressed. Many informants complained of the level of regulations and the number of regulatory bodies now exercising control. The contravention of, and indifference to, many of the official signs and regulations was balanced with an understanding of the purpose of the regulation. There is no consistency in the approach adopted by people – the breach of a minor regulation is overlooked but at the same time, if they are inconvenienced or the breach of a regulation impinges on them there is often a call for the regulation to be imposed and even for tightening up of the enforcement procedures. An example of this mixed attitude was exemplified by the regulations over refuse collection issued by the City Corporation of Thimphu.

The media, notably the national newspaper, Kuensel, carry official notices and advice. In the centre pages in both the Dzongkha and English language versions of the paper, notices from various agencies and administrative bodies including the district courts are printed. Among the requests for tenders to supply building material, stationary and other miscellaneous services are important notices advising the general public at large, or specific named individuals. The City Corporation of Thimphu, the administrative body responsible for the regulating the infrastructure of the capital is one of the main contributors of notices.

One notice reads:

City Corporation  
Post Box: 215, Thimphu  
01/TCC/SWC/99-2000/4190

PUBLIC NOTIFICATION.

This is for general information to all shopkeepers, residents and public that hawkers (sale of vegetables, fruits, butter, cheese etc.) are not permitted within the urban area. Sunday market area is open seven days a week for such business. This is in line with the policy of keeping the city clean and to discourage hawkers so that the city looks well organised and beautiful. The shopkeepers should not allow hawkers to use the area in front of their shops. Henceforth, penalty will be imposed on shopkeepers if the area in front of their shops/restaurants is used by the hawkers.

All residents of Thimphu are earnestly requested to co-operate so that hawkers problem in the city could be eliminated before it becomes a big social problem.

Offtg. Thrompon  
(Kuensel 23/10/99:8).

The circulation of official notices in the newspaper and, on occasion, on the Bhutan Broadcasting Company, develops the possible range of sites from which the regulatory bodies can disseminate rules and create an image of the social requirements of the modern Bhutanese citizen. The pervasion of administrative regulation was a feature that many Bhutanese mentioned, often in passing remarks about where they had been or

would be going. Over lunch one afternoon in Boudhanath, Rinchen Zangmo, a former student at Yangchenphug High School in Thimphu, said that she had to return to Bhutan for registration purposes, whilst Shechen monastery made arrangements for its monks to be registered in Bhutan without the need to do so in person. In Bhutan, Tshering had to leave her home in Thimphu and make the journey to Lhuntshi because of a land survey being carried out. For many, the regulations were treated as part of the process of getting on with one's daily life. Yet, the level of bureaucratic regulation was on several occasions described as intrusive and inefficient. Although, inefficiency was one aspect of the complaints voiced, the main criticism was the sense of powerlessness when confronted with the bureaucracy.

This sense of powerlessness had arisen during a conversation with some school leavers. Several of the young men commented on their frustration and dissatisfaction with the character certificate issued by their teachers. Shacha Wangchuk admitted that he had struggled at school and had been slightly wild during his final year at Punakha Junior High School. However, he had worked hard at his studies and kept to the school discipline. At the end, his teacher had given him a "C" on his Character Certificate. The others had received the same grade – an indifferent grade which did not enhance their prospects of finding employment. Concern over employment and the difficulties facing even senior well-qualified students was a major theme in the conversations with young, educated Bhutanese. Competition for limited places in senior schools and at the only college in Bhutan was reflected, in my experience, by an increasing concern among parents eager to secure a good education for their children. However, examination results are not the only cause for concern. A litany of the papers required to apply for a job, even to rent a house, include the Character Certificate, Police Clearance from the Royal Bhutan Police, medical certificate and the National Identity Card. The apparent randomness of grading students by teachers was perceived or at least described in terms of favouritism and disinterest on the part of the teachers. Ngawang, prior to leaving Bhutan to take up a position as a doctor of Tibetan medicine in Croatia, spent two months in Bhutan organising his papers and applying for his passport. He had left Boudhanath in late

October and instead of arriving in Croatia two weeks later, found the bureaucracy slowed down his departure.

In the previous chapter, I discussed the importance of the development of textual authority as part of the process of creating the modern Nation-State. The “official” signage and authoritative notices issued by the Road Transport and Safety Committee, the Bank of Bhutan, the City Corporation of Thimphu, amongst others, as well as the *dzongkhag* administration, in effect represent processes by which contemporary Bhutanese are governed. Foucault (1991) draws our attention to the processes by which governments seek to control the conduct of their subject populations. Gupta refers to this process of “governmentality” as the “conduct of conduct” (2001:67) and notes that in addition to institutions and agencies, discourses and norms this includes “self-regulation, techniques for the disciplining and care of the self” (*ibid.*). In the Bhutanese context, the myriad of rules and regulations now circulating and the wider discourse of “good governance” and “gross national happiness” emphasise the focus of the state on “fostering prosperity and happiness” (Gupta 2001:67). Implicit in this aim is the collection, recording and inscription of the details of the everyday life of the population. Law has been central to the collection of this information for the regulation and documentation of everyday life and the ability to discipline and regulate the conduct of Bhutanese. The invocation of the “rule of law” and the interplay between societal norms and State policy seek to legitimate and validate these processes.

### **Doing Business: regulation, taxes and corruption**

In the late afternoon each day, Deki walks from her apartment to an apartment block below Changangkha *lha khang* in Motithang, a suburb of Thimphu. On the ground floor of the building are two shop units and she has the lease on one of the units. Shelves line three walls, items hang from the ceiling and typically she serves customers who stand at the open window. Friends and neighbours call in and between customers she sits chatting or playing cards. Outside the shop, on a bare patch of earth each evening, local men set up a carom board providing a ready market for soft drinks and beer. She had chosen to open the shop a few years earlier to help earn money to support her growing family.

Although her husband, Karma has a good post she wanted to ensure her own financial independence.

Deki and her husband are unusual for they each have a car. Karma bought his Toyota second-hand from a senior government official and his wife's car was a third-hand Maruti. They admitted that it stretched them financially but since Karma often took his car away on work, Deki needed transport to take the children to their respective schools. Unlike the majority of families I came to know in Thimphu, Deki and Karma are paying for their two youngest daughters to attend a private nursery school in Motithang, attended by the youngest children of the King. Karma stressed his belief in providing his children with the best education that he and his wife can afford. Karma's determination to ensure the best education for his children and his wife's younger brothers was striking for what it revealed about himself. His own education was disrupted when he was a teenager by the sudden death of his father and his problems with his stepmother, which I describe later in this chapter. The eldest son in the family, Tintin, is not Karma's son – Deki's first husband abandoned her soon after Tintin's birth. Although she knows where her former husband lives and could claim child support from him, Karma has expressed strong views against any such claim, less out of jealousy or pride, than out of his own deep distrust of the court system. Underlying Deki's decision to open the shop, one senses that the desire to be independent was also driven by a desire to ensure that her husband would not feel burdened financially by caring for Tintin, especially since Karma had taken on responsibility for her two youngest brothers following her parents sudden decline into ill health.<sup>108</sup>

Opening the shop had not been as easy as they had originally thought. Permission had to be obtained and a licence granted to Deki to operate as a shopkeeper. Previously, like other friends, Deki had made journeys to Bangladesh, India and even on occasion to Thailand, to buy goods. These she had sold for a small profit to friends and colleagues

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<sup>108</sup> Her brothers are half-brothers, her mother having separated from Deki's father, a Tibetan lama, and remarried a farmer from her own district. Her mother and stepfather now are resident in Gelephu following a grant of land by the Bhutanese government. A brother a few years younger than Deki, now divorced and

when she still worked as an office assistant. Eventually, after doing business in this informal and unlicensed way for several years, she had decided to obtain formal permission. She had heard that a shop unit not far from her house would be available. Beginning with asking her “cousin-brother”, a senior monk, to suggest a suitably auspicious name for her enterprise, she set about organising her business. Realising quite early on that she needed help, she persuaded a friend who already ran a shop on Norzin lam to assist her.

Accompanied by her friend, Chodron, Deki approached the Ministry of Trade and the City Corporation. Confused by the conflicting advice, she recalls walking from office to office and becoming more and more frustrated as she “passed paper from one monkey to another”. “I sat on so many floors waiting my turn. At times, you could see them [the officials] chatting or drinking tea ignore the people waiting.” After several months, Deki received the necessary permit and licence to open her shop. The complexities of obtaining the correct signatures and permissions, as well as concerns over the financial implications of customs duties and sales tax had surprised Deki. “I realised that I would have to declare any goods I bought when I return to Bhutan from Thailand. But not from India”.

Karma had been supportive of Deki’s business plans but commented ruefully that she was too willing to allow people credit and too shy to ask for payment. After trading for nearly three years, Deki wants to move the location of her shop to nearer the centre of the city. The current location is quiet during the day, which is why she only opens late in the afternoon. To move from her current location she will have to pay a much higher rent and renew her license. Despite the bureaucratic process, Deki has decided to develop her business. Her concerns were not with becoming rich, but earning enough to contribute to her family’s needs, and this includes providing for her parents, brothers and sisters. Her business therefore represents her own personal way of ensuring that she is able to “repay the kindness” of her parents, and as commented on by her younger brother who has

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looking for a new job is caring for them. Karma was concerned that his brother-in-law was neglecting his own daughter, and constantly argued with him to find employment to help his former wife raise their child.

entered the army as a junior officer, “She respects Karma. He has raised us, and cares for us. So, she works to share the burden”. To share the responsibility of earning money to support a large extended family has meant that Deki has had to learn to negotiate her way through the bureaucracy. To do this, she called on the support of friends and relatives, especially Chodron. When Karma chides her, as he does each evening she leaves for the shop, about the outstanding credit to neighbours, she shrugs and says, “They ‘ll pay. It’s not a good time to ask them”. Once, after Deki had left Karma smiled and said how he appreciated Deki for her “good heart”, a phrase I heard often, used to express how a person behaved towards others.

Deki’s experiences in obtaining her trading licence were reminders of the notices in Kuensel appointing new agents and revoking licenses that I had read in Nepal. One day travelling along Nordzin lam with Kesang Chodon, a senior police officer, I commented on taking a taxi from the taxi rank beside the stadium to the High Court. The fare demanded seemed high – 90 Nu.<sup>109</sup> She had laughed when I added that I understood the taxi drivers were supposed to use a meter, but the driver did not switch it on. “They should. One day, I decided to try it out and took a taxi to the market, then around and about, I only paid about 50Nu. He [the diver] saw you and thought ‘a rich chilip [foreigner]’. Next time, ask for the meter.” The level of regulation for commercial affairs is significant. Yet, one cannot help but wonder how much of it is either neither known nor understood or merely ignored. The taxi drivers are aware of the penalties for not using their meters, but few people in Thimphu would expect them to put the meter on. Many people mocked the regulations and commented on the level of corruption among officials.

The subject of corruption was one that I was hesitant to pursue, and yet one that time and time again arose in conversation. A young businessman involved in the construction industry in one of the *dzongkhags* remarked over supper that, although tenders were normally officially sought, it was the practice to reach an agreement with the official

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<sup>109</sup> Nu – abbreviation of Ngultrum (Bhutanese unit of currency). At the time of fieldwork, £1 (Sterling) was worth about 65 Ngultrum.

appointing the contractor to pay about 6% of the value to him. Waving a hand towards the houses being built opposite, he added, “ Think about how much construction is going on... and how many people have cars. They don’t pay for them from their government salaries.” The penalties for those found to be taking bribes or, as in a number of recent incidents, money from official budgets are severe. Whether or not corruption is as rampant as informants suggested I cannot comment on. What is clear, though, is that it does affect how people regard those in positions of authority. Accusations against members of the judiciary are also made, and we are faced with on the one hand, a generally respectful attitude towards the State, its authority and the status quo, and on the other, a widespread cynicism about the morality of State officials and its various institutions.

### **A family dispute: the missing lorry and the courts**

KT and his wife, Tshering, apologised for not being able to take me to Kabesa to see Anim Choni as previously arranged. They had to attend a preliminary hearing of a court action raised against them by Tshering’s stepfather, Pasang. A dispute had broken out between the stepfather and his wife and her family over the ownership of a lorry. Am Kesang, Tshering’s mother, had moved to Thimphu due to ill health a few years earlier from her house in Lhunshi. Her elder sister and daughter were in Thimphu and she had leased her land to a neighbour. Her husband, Pasang, had been granted as *kidu* by the government, a plot of land in Gelephu, a town in southern Bhutan, and had built a house (*kidu* is a form of compensation – not necessarily land and it is discussed more fully in the following chapter). After the onset of her illness, Pasang began to spend more time in Gelephu and had established a haulage business. Tshering, who had lived as a teenager with Pasang and her mother, was fond of him and worried about his protracted absences in the south. Her mother had become increasingly depressed at the lack of contact from her husband, and his apparent reluctance to send money to her. Relations between Pasang and his wife became increasingly strained.

To finance his haulage business, Pasang had borrowed, according to KT, a large sum of money from Tshering. Shortly afterwards, he had requested KT to give him an additional loan of 40,000Nu (about £615). Pasang then took a loan from the RICB and bought a new lorry (fig.15). During one of his rare visits, he informed Tshering that he had put the lorry into her name. The visits and news from Pasang diminished, and eventually Tshering decided to visit her stepfather. Arriving unexpectedly at his home, she soon realised that he was not keen for her to stay. A day after arriving, he informed her that she should return to Thimphu the following day on the lorry. Puzzled, she agreed to leave the following day. However, she had decided to check on rumours that had reached her that Pasang had a mistress in Gelephu. So, she made enquiries and soon she heard that indeed Pasang did have a mistress.

Sitting in the lorry, she found the log book and ownership papers with her name on them. On reaching Thimphu, she spoke with her mother and husband, and they decided that the lorry should remain in Thimphu. The driver refused to leave the keys until Tshering pointed to the vehicle documents. As a small shopkeeper, Tshering was confident in her manner and the driver eventually left to telephone Pasang. KT arranged for the lorry to be moved to another part of Thimphu. The next day, Pasang arrived at their house. Encountering his wife outside the apartment block as she returned from the market, he began accusing her of being a thief. Am Kesang did not reply. Tshering, hearing the shouting, had left her apartment and told Pasang to apologise to her mother. He refused. Pasang wanted his lorry, whilst Tshering wanted him to apologise to her mother and recognise his obligations towards her.

Pasang left shortly afterwards muttering to call the police. Tshering decided to act quickly. She advertised the lorry for sale and was able to sell it in a short period and transferred ownership from herself to the purchaser. When Pasang returned again to demand the return of the lorry, she calmly informed him that she had sold it and handed over to him the RICB loan papers which had been in the lorry. Furious, Pasang demanded the money paid to her for the lorry. Tshering reminded him of the loans she and KT had made to him and that she was technically the lawful owner of the lorry. A month later a

summons had arrived from the District Court in Lhuntshi. Am Kesang was deeply upset by the events. Both she and Tshering were named in the action and would have to travel to Lhuntshi. KT decided that Pasang had chosen to raise the action so far away to create problems for them. Taking advice from other members of his wife's family he approached the High Court with an application to transfer the case to Thimphu, citing Am Kesang's ill health. The application was duly granted and there began a series of claims and counter claims with Pasang adding KT's name to the action. At the first preliminary hearing in the High Court, the judge reminded the parties of their right at any point during the case to reach a private settlement.

Listening to the background to the civil action, it was apparent that Tshering and her mother had used the lorry as a way of retaliating for Pasang's neglect of Am Kesang. Certainly, Pasang owed in total 160,000 Nu to his stepdaughter and her husband and they were in need of the money.<sup>110</sup> Other relatives were privately critical of Tshering and her husband for selling the lorry and not trying to reach a private agreement with Pasang. "KT's acting like a 'big man'. He thinks it's a game – like his football. I am not interested in listening to him and his foolishness", was the reaction of Tshering's cousin's husband. "If they tell you they have been supporting Am Kesang, ask them about the support from Aku Tobgye and myself!"

The court case continued, with each side preparing detailed statements to be lodged with the clerk. One evening after a further court appearance, KT laughed as he described Pasang's unease in the courtroom. The judge read over the statements and made it clear that Pasang should reconsider his position based on the evidence submitted by KT, Tshering and Am Kesang. KT expected a settlement would be reached and that the case would be withdrawn. However, Pasang neither approached KT nor sent an intermediary. Am Kesang was becoming more ill with worry, and she admitted to her sister that she felt embarrassed by the case. Suddenly, after several weeks, a relative of Pasang contacted Tshering and asked to arrange a meeting. It was decided that KT should deal with the matter and he duly met Pasang's intermediary.

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<sup>110</sup> Approximately £2450.

Pasang was insisting that half of the money from the sale of the lorry be given to him. In return, he would withdraw the action. Tshering had given the excess money from the sale to her mother, who had deposited it in her bank account, opened with Tshering's assistance. After refusing this demand, KT discussed the situation with his wife and mother-in-law. Am Kesang expressed her desire to settle the matter. She proposed that half of the excess be given to Pasang to help him repay part of the outstanding RICB loan, and half should be kept to defray her expenses in Thimphu. KT was not happy at this suggestion, but Tshering privately said that she was concerned for her mother and the matter should be settled.

Pasang reluctantly accepted the proposal and an agreement was duly drawn up. Half the excess would be paid to Pasang and half retained by Am Kesang. The agreement was signed and presented to the judge who accepted it. The civil case was duly dismissed. Shortly after the settlement of the case, Am Kesang decided to raise a divorce action against Pasang based on his infidelity. The court application was raised shortly prior to my departure from Thimphu and the reactions of other family members expressed to me were mixed. Am Kesang's sisters were unhappy at the involvement of the court, whilst the younger relatives argued it was the best way to secure a fair settlement for Am Kesang. The original grievances of Am Kesang towards her husband and the original dispute over ownership of the lorry had escalated into a final breakdown in relations between husband and wife, stepfather and stepdaughter. Whereas Am Kesang found the process deeply distressing, KT enjoyed the opportunity to demonstrate his contacts and knowledge of the legal system. As a former civil servant, KT had used his social connections to gain advice about how to frame the responses to the summons. Pasang, in his late fifties lacked the same education, and more importantly did not have the same contacts in Thimphu.

In narrating this case at length, I want to go back and draw out key themes for the thesis as a whole, and for this and the next Chapter. I watched Am Kesang grow iller during the course of the dispute, and saw her two sisters quietly taking over responsibility for her care as Tshering juggled court appearances, looking after her daughter and travel back

and forth between Thimphu and Lhuntshi. KT appeared to view the dispute as a source of amusement, to the displeasure of Am Kesang's sisters. Am Choni on one occasion voiced her annoyance, which caught KT off guard and subdued his amusement. As I have already indicated, the case appeared to represent the breakdown in family relations – the collapse of Am Kesang's marriage to Pasang, and the break of the bond between Tshering and her stepfather.

Neither Am Kesang nor Tshering had intended to become involved in a court case, especially not a case in the High Court. Their actions, spontaneous and unplanned had simply sought to bring Pasang to Thimphu to discuss the wider issues of his neglect of his wife. Tshering indicated that she and KT had not intended, at that point, to ask for the money lend to Pasang be repaid. She sighed when I pressed her on the matter, and I caught a glimpse of the personal toll the case was having on her. Her concern for her mother and her own attachment to Pasang had, she explained, made her seize what she thought was an opportunity to arrange a meeting to re-establish relations between her mother and stepfather. Her actions instead had lead to Pasang turning away from her mother and herself, "adding to our worries". Pasang's lack of respect, and his rejection of Tshering as well as her mother, caused a great deal of emotional pain. As Gendun and Ngawang commented, "there must be *thadamtshi* between husband and wife." Pasang had failed in his conduct to demonstrate *thadamtshi* towards Am Kesang.

The choice of raising the action in Lhuntshi was interpreted as a direct attempt by Pasang to inconvenience the family, and possibly force them to a settlement in his favour. The material facts of the case could not disguise the more personal nature of the case – the marital breakdown and rejection of Am Kesang. Throughout the court case, Am Kesang left her daughter and son-in-law to deal with the submissions. She had become withdrawn and less able to care for her granddaughter. During a household ceremony in Deki's house, Am Kesang had sat with her sisters who tried to engage her in light hearted banter with little success. Her brother, a lay practitioner (*gomchen*) conducting the ceremonies had teased her by saying that if he as an old man could marry a younger wife, then she could find a younger husband. She did not join in her siblings raucous laughter which

followed this comment. On the days of the court hearings once the case was transferred to the High Court, she found attending court and being near her husband very difficult. Once, she had approached him and demanded an explanation of why he had abandoned her. No explanation was given as Tshering pulled her mother away from Pasang and his friends. All the parties recognised that underlying the claim and counterclaims for the lorry, was an undeclared private dispute. Pasang was using the legal forum to articulate one set of grievances against his wife and her family, for as it was noted, he was in no position to raise a divorce action. He had taken a mistress and committed adultery and the court would not look favourably on him, nor would his credibility be enhanced if the true nature of the dispute was revealed.

Pasang was conscious of his own vulnerability by raising the court action, and that by doing so he heightened tensions between himself and his wife. KT used this vulnerability when preparing his submissions to the High Court. The decision to negotiate a private settlement thwarted KT's desire to humiliate Pasang; however, it accorded with Am Kesang and Tshering's desire to end the dispute. Once the settlement had been reached through the use of Aku Tobgye and Karma as "*barmi*" for Am Kesang, Tshering and KT, Am Kesang's sisters advised her to divorce Pasang. Finally, a divorce action was raised on the grounds of abandonment and adultery with witnesses from Gelephu being cited. The divorce action was on going at the end of my fieldwork. Although the divorce has now been granted, I do not have many details of the action.

KT's attitude to the Court process was in marked contrast to many for whom the courts represent a loss of control of issues and events. On three separate occasions, strong critical opinions were expressed. On each occasion the individual had been involved in court actions which had left him or her feeling helpless and disinclined to resort to court actions in the future. When listening to the latest details of a relative's Court action in the local district court, Karma had turned to me. His nose wrinkled up as he spoke scornfully of his opinion of the courts.

His father had been a government official. Karma had been close to his father because he had no other siblings, his mother dying shortly after his birth. However, when Karma was about ten years old, his father decided to take a new wife. Karma tried his best to please his new mother, but she resented his presence and, after a half-sister was born, her hostility to Karma increased. Karma was sent to board at secondary school and rarely saw his father. Shortly after Karma became seventeen, his father developed cancer. Karma, as he described his father's illness, was clearly still saddened by the death of his father, who had died in his early forties. Karma's father had not been especially wealthy, but there was property, which Karma felt should have been his by right. Yet, living away from home he had no idea of what to do. He had never spoken to his father about an inheritance since he had always assumed that he would inherit the property on his father's death.

It became clear that Karma was uncertain of his inheritance rights, and had sought advice from a relative of his father's. Based on the advice he received, Karma decided to approach the local *gup*. When he spoke with the *gup* and some other elders in the village, he said he found that they would not recognise his claim. Although he knew these people could act on his behalf in negotiations with his stepmother, he found himself without any support. He felt that they were being unfair and in his opinion breaking faith with his father. After a year of trying to arrange a settlement – taking his time to try and explain his position and his request to the elders (*mangi ap*) and the *gup*, Karma became disillusioned. Recollecting his feelings at the time, he said he felt that the village had not been fair and had offered him no assistance. This made him question the reliability of the village elders as impartial and fair.

Karma decided that he had to try and recover part, if not all, of his father's inheritance.<sup>111</sup> Having had no success in pursing the village level mechanisms for settling differences, he decided to raise a court action. He decided to raise the action in the District Court in Haa. This was not too far to travel to from Paro and he felt that it would be easier to call on other villagers to support his claim. However, his stepmother was able to call on an uncle,

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<sup>111</sup> This case took place in the mid-1980s.

a respected and influential landowner from Paro, to argue the case for her, and eventually the decision was issued against Karma. Believing that if he appealed the case to the High Court, he might get a fairer hearing, he sought the help of some friends. This proved to be a frustrating experience. The High Court heard the case and upheld the decision of the District Court.

Throughout the narrative, Karma did not go into legal details of his claim. When asked to explain the processes from the village level, to the District Court and up to the High Court he ignored my questions. Nor could he recall the legal grounds on which he was claiming “his” inheritance. The legal details were not central to his narrative. He was more concerned about the injustice he felt at the decision made by the District Court and upheld by the High Court. Karma at the end of the narration, during which his wife sat quietly listening, exclaimed, “This is why I don’t trust the courts!”

A failure to achieve his desired result was the underlying cause of Karma’s disillusionment with the legal system. This case, raised in the late 1980s, prior to significant changes in the court procedures and training of legal personnel, has come to represent for Karma the pitfalls of relying on outside institutions and systems over which the individual has no control. Among his more detailed grievances were the length of time the case took, the procedural aspects and the application of rules without considering the details of his own situation. These were themes, which came up during other conversations. Of more significance, was his belief that the courts had given more weight to his stepmother’s claims than his own because she had a more influential person representing her. It is difficult to assess how accurate, or indeed what was distorted by time and recollection, in the narrative provided by Karma. Nor indeed, how far his story draws on similar complaints and forms of discourse, which question the impartiality of the courts. Certainly, court officials dismissed any suggestion of the judges in the case being swayed by the status of the representatives. However, it remains a common complaint, and one that the judiciary is working hard to overcome.

There was one dimension of the case which Karma did not elaborate on. The absence of any reference to support from his own family. I raised this with Deki, who replied, “They did not help him. He was, I think, very hurt by their neglect of him.” Karma and Deki had married several years after the court cases, so she was unable to cast more light on it. However, just as the dispute over the lorry was about the breakdown in marital bonds, I suspect that Karma’s cynicism about the legal system and processes stems from the failure of his father’s family to support him in his action against his stepmother. Karma’s support and attention to his children, Deki and even her own parents and siblings therefore may reflect his own, unspoken, desire to create and maintain a supportive family unit. His care for Deki’s two youngest brothers, Cheche who is now an officer cadet in the army, and Sonam a High School student, was noticeable.<sup>112</sup> Karma, himself described them as “like my own sons”, who in turn would care for him. By recognising the interrelationship between Karma’s experiences and his own understanding of wider social values, it becomes clear that engagement with legal processes (either informally at the local level, or more formally), must be understood in its social context. Underlying Karma’s story is a moral claim. The absence of “justice” and the apparent indifference of the courts to his claim are the most visible. Below, arising from the feeling of humiliation, and abandonment by his father’s relatives and embodied in his own care and attention to his wife’s family and his own children is a claim to moral superiority. Above all, it is a private claim, a deeply personal concern that has shaped his character and his worldview. When I realised this, my initial unease with his brusque manner and the long silences turned to one of respect. His cynicism was a shield, a performance, rather like his taste for Thai food and western clothes, yet underneath his values epitomised *thadamtshi*.

Those who were critical of the legal system, or at least expressed reservations, often commented on the sense of losing control of the situation. It seemed as though it was handed over to the court personnel and through the processes of the court, the case was decided on the issues which the judges held up as being the most significant, and not necessarily those most important to the litigant or defender. Commenting on this and the

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<sup>112</sup> The brothers joined their sister and Karma soon after the marriage. Aged 8 and 6 respectively, Karma appears to have been a strict, but devoted carer.

problems of raising a court action, one man, pointing at himself, said, "I'm educated. I have worked in the government. But even I find it hard to understand how the judges operate!"

Ngakcho, recalling a case involving his younger brother, described how he and his brother had become stranded in Phuntsholing when his car had broken down. They were due to attend a court hearing at the District Court the following day in Thimphu. So they had to hire a taxi to drive them the 240 km to Thimphu. They arrived in time for the hearing only to discover that the Clerk had failed to record their attendance at the court for a previous hearing. The hearing did not take place, but was to be rescheduled. At the previous hearing Ngakcho has asked to sign his name on the sheet in front of the clerk. He was keen to ensure that the clerk did not forget that they had been present at the court; however, the clerk refused to let him do so. Now, they found that the judge was unhappy at their apparent failure to attend. Ngakcho attempted to explain that they had been present at the previous hearing, and had in fact had to spend a great deal of money to ensure their presence at the court. The clerk denied having made a mistake and the judge decided that Ngakcho and his brother should pay a fine for failing to attend. Ngakcho said that it still annoyed him to think of how he and his brother were treated by the court, and declared a hope that the new court procedures would ensure that similar omissions by the clerks would not happen in the future.

The most revealing aspect of the story was that it was narrated in the presence of a police officer. Keeping silent, he had listened sympathetically to his friend's story, but refused to be drawn into criticism of the court or comment on the decision. Later, he commented that he personally felt that the courts were trying to open up and to simplify matters for people. However, he did recognise that individual members of the court system did make mistakes and not own up to them, allowing members of the general public to take the blame. The sense of powerlessness was an aspect that he knew existed, but in his opinion based on his experience, provided people had a justifiable case, they should not fear the courts. Court clerks were often the targets for criticism and allusions to bias and taking bribes. Irrespective of the veracity of these comments, one senses that there is a

widespread distrust of court officials, which is causing concern among the judiciary.

The family dispute over the lorry was, I suspect, more to do with the breakdown in relations than the principals would admit. When other family members discussed the case it was interesting to note the difference in reactions. The older members were uncertain about the implications of becoming involved in a court case; a fear based on a concern that the court would take over the case. The younger members viewed it as the correct course of action, especially the subsequent divorce proceedings raised by Am Kesang. The majority of informants, originally from small villages and now resident in Thimphu associated the shift in attitude with the difference between the urban and rural way of life. Ngawang argued that rural people preferred to rely on the *gup* to settle matters rather than approaching the District Court. Yet, I was aware that farmers were not adverse to litigation. Aris (1994) narrates a case over grazing rights in Bumthang that began over a hundred years ago and remains, so I am informed, unresolved. One feature, which does appear to have been important until recently is, access to influential people to support any claim. Wikan describes how a woman sought the support of a queen in pursuing her case against a man who had raped her (1996). Wangchuk in his article on land use describes a family dispute in which the courts had supported the claims of a distant relative to a house and property inherited by the only daughter of the household in Wang Simu. The woman's brother was held prisoner when she refused to leave the house and it was only through a direct appeal to her brother's former employer, the queen, that she was able to receive "a fair trial" (1999:68). This dimension of resorting to "*ngo chen*" ("big people"), a phrase often inverted by informants to describe themselves as "little people", suggests that just as KT draws on his social and family network for advice, social relationships and networks remain important.

This is at odds with the stress on equality before the law for all promulgated in the *Thrimzhung Chenmo*. If we look carefully, we can see that *ngo chen* continue to exert their influence in the negotiation of out-of-court settlements and agreements. Certainly, the courts have themselves been witnesses to cases raised against members of the royal family and other high officials by ordinary Bhutanese. The conviction of a nephew of the

King for the stabbing of a man was raised by several people as indicating that nobody was beyond the law. From another perspective these cases whilst apparently showing judicial impartiality actually serve to highlight the continuing, even if, diminishing influence that individuals, based on social status and social connections, can and do still exert. Therefore, just as the State seeks from a distance to regulate and shape the conduct of Bhutanese with the law and its officials enforcing and legitimating such regulations there remains a profane dimension marked by personality and social influence.

### **Concluding Remarks**

I have sought to demonstrate the presence of law and regulations in everyday life in Bhutan. The “official graffiti” which can be seen, and the regulation of ever widening areas of daily life, underscores the increasing reach of the modern Bhutanese State. As its responsibilities and objectives develop, so too do the areas of daily life, which fall under its purview. The regulations, which impact directly on individuals, are encountered in a variety of situations, not exclusively in the law courts or in government offices. Rather, they now permeate the course of daily life, especially in the urban areas. Deki’s experiences of opening her own small business and her frustration with the bureaucracy exemplify this dimension of the presence of law (in the guise of State regulations) in everyday life. The role of the courts and the changing attitudes of ordinary people towards them are reflected in the narrative of the family disputes and the uses made by the various parties of the official processes.

The dispute over the lorry and the failed inheritance claim act as reminders to look beyond the surface details of the claims. The lorry dispute was actually about the breakdown of a marriage, and the claim for a share of his father’s property a desire for recognition of Karma’s rights as a member of the family. The discourse surrounding these cases resonated with moral evaluations and meanings. The absence of respect due to a wife, and the failure to support a family member who was vulnerable both cast the other parties in a negative light. There is a sense that resorting to the formal legal system is not only to lose control over matters, but a failure or a rupture of the moral fabric, an

absence of harmony. At present, even among the new urban middle class, there remains a strong preference for private settlement of disputes, drawing on traditional models of mediation discussed in Chapter Four. This preference in part reflects the recent emergence of the formal court system and, more importantly, the continuing values of social harmony. The value placed on social harmony illustrates the desire for moral as opposed to legal norms to govern everyday life. As demonstrated by the ethnography in this chapter and indeed in the following chapter, each informant made decisions based on their immediate circumstances and this reminds us that there is a tension between the “ought to be” of moral value and the practical choices made. Pasang chose not to settle matters privately with Am Kesang for this very reason.

The role of “big people” and their influence over the outcome of disputes and so forth inhibits for many Bhutanese interviewed, a conviction in the impartiality of not only the judges and clerks of the formal legal system, but also of the *gups*, *mangi ap* and so forth at the local level. However, there are signs that as a result of the major formal institutional reforms of the 1990s and the emergence of a new cadre of professionally educated lawyer/judges that attitudes to the formal court system are changing. Garland notes that, “typically...institutions evolve slowly, over a long time, so that their present character is often shaped by history and tradition as much as by the contemporary functions which they perform” (1990:28). I agree with Garland to a point - the transformation need not be as slow as he suggests. The rate of institutional change has been very fast in Bhutan and we are beginning to see a shift among ordinary Bhutanese. As Bhutanese develop an understanding of the remedies available through the formal court system, such as Pasang or KT, then more will use it as a resource. It is important therefore to recognise the sense of contingency, which permeates the practical choices, made by people and how these in turn shape and alter their moral perspective.

## **Chapter Six**

### **Land, property and the emerging middle class**

Ka 1.1 Changes in the *Thram* (land title) such as transfer of ownership, cancellation of registration, new registration, etc. cannot be done without adhering to the following articles of this Act.

Ka 1.3 Transfer of ownership...etc required to be effected in the office of the *Dzongda/Dungpa* should be thoroughly investigated by the *Thrimkhang* (court). The *Thrimpon* (judge) will forward the application along with his endorsement to the Ministry of Home Affairs. After effecting necessary changes in the *Chazag Thram*, the Home Ministry will inform the relevant *Dzongkhag* for effecting the changes in the *Thram*. (Land Act 1979:38 - 39)

An acute housing shortage, high rents, and escalating land prices in Thimphu, were among common themes of conversation. Farmers in the once rural villages on the periphery of Thimphu find themselves able to make money by selling land to members of the emerging middle class. Just as the farmers are selling their lands, the middle classes are buying land for long term investment. New opportunities to take out bank loans (at 14% interest) for the purchase of land and the construction of a house with commercial units on the ground floor for lease have been seized on by many in the hope of securing a stronger economic future for themselves and their families. The value of urban property in terms of investment and social status is now a feature of urban life and changing social values. Kinga notes, “Bhutanese living in an urban area...form new urban communities, and develop new mechanisms of interaction” (2002:63).

The increase in mobility and new employment opportunities which developed from the reforms of the Third King have permitted people to marry beyond their villages, or locality. Settled in Thimphu, the local customs and practices of their parents and grandparents are no longer applicable, particularly in a non-agricultural setting. The local practices which co-exist with the formal State laws at the local, rural level are absent among the urban communities. However, as discussed in the previous chapter, although local customs and rules may not be applicable, urban Bhutanese continue to value and rely on a network of social relations. The role of the State itself is being transformed, as it

increasingly signals the need for people to be more self-sufficient economically and not to rely on the State for employment or the granting of kidu (aid/assistance). Located between the State and the landowners and “would be landowners” stands the City Corporation of Thimphu.

After a brief overview of the land ownership system and kidu, this chapter draws on various incidents that serve to illustrate a range of issues, which arise around access to, and control of land. Although being able to raise the finances to purchase land and to construct property is a major issue, the assistance of family and friends to negotiate, and give advice was a constant feature. These develop the themes set out in Chapter Five and develop the complex interrelationship between social values, patterns of relatedness, informal practices and the underlying formal regulatory framework. The role of local customary practices are discussed in passing. However, since my research was undertaken among urban Bhutanese, the ethnography focuses on the concerns and resources drawn on by them. This focus is important for two reasons. First, although three quarters of the Bhutanese are still engaged in agriculture, the urban population has increased rapidly over the last two decades. The young, educated Bhutanese have aspirations and expectations which were not available to their parents, and certainly not to their grandparents. The influence of the capital and Phuntsholing is not purely economic – social patterns have been altered in the process of urbanisation. This leads to the second feature, the urban as a site of cultural and social transformation.

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### **Landownership and *kidu***

The Land Act 1979 sets out the general laws for acquiring, transferring and selling land. A key component of the Act is the emphasis on a written land deed (*sa thram*) recorded in the central Land Record in Thimphu, and the Act sets out the procedures by which land may be transferred, sold or leased. The following chapters detail the need for consent for all transactions in which there is joint ownership of land, and for the allocation of free land by the government. The bulk of the Act deals with practical

matters relating to the use of various types of land (e.g. “dry” land for raising crops such as barley, “wet” land for growing rice, cash crops, fruit trees, vacant land and so forth), the duties and obligations owed by the landowner to neighbours when repairing or building new irrigation canals and sharecropping, as well as, damage to crops and encroachment on property. The final chapter deals with the donation of land to religious institutions.

The overwhelming agricultural concerns of the Land Act 1979 remind us that three quarters of the Bhutanese population still live in the countryside. Pain and Pema (2000) provide an interesting description of the complex relationship between the Forest Act 1969 and the Land Act 1979 which highlights the ability of villagers to contest and challenge decisions which reflect the “relative impotency of the state in settling [the] conflict” (Aris 1994:15). Sangay Wangchuk notes that the local figure of “forest fire watchman” (*meesup*) faded away after the Forest Act 1969 (2001). Rather than removing legal liability from the local communities for the damage caused by forest fires, a decision by the Forest Division and the district governors in 1983 placed the legal onus on the local community. The local community had to organise dealing with any fires which occurred and if the individual who started the fire was not detected, the community would pay a penalty. In 1995, during the debate on the Forest and Nature Conservation Act in the National Assembly, an amendment was passed removing the legal liability of local communities.

*Kidu* literally means “happiness and misery” and has several related meanings. Broadly, it refers to the right to seek assistance and relief in times of difficulty. *Kidu* may, for example, be sought by people affected by flooding or other forms of natural disaster, or as the result of other domestic problems. Previously, *kidu* could be awarded by the government through the office of Home Minister who bore the title “*Kidu Lyonpo*” until 1998. The granting of *kidu* is now restricted to the King who may grant *kidu* based on a petition from an individual or “*suo motto* in the cases of disaster, landlessness and death.”

<sup>113</sup> The majority of grants of *kidu* fall into this second category. There is one additional

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<sup>113</sup> Lungten Dubgyur, Thrimrab, High Court of Justice, Thimphu: Personal communication 29/07/2001.

sense in which *kidu* is used, as described by one informant – to refer to a local group which provides assistance and relief to its members. However, this sort of relationship which I saw especially among the Bhutanese community in Boudhanath was normally referred to as *nep*. A well known concept in the Tibetan cultural area, this describes a series of relationships which emphasise notions of fictive kinship and relatedness which can provide access to wider resources when required. This was, for example, demonstrated during the weeks Chodron's daughter was seriously ill and Uncle Sengge and his family assumed the responsibility of running the household, providing money for medical bills. They were again the main supports for Chodron when her youngest child died in an accident and her husband was working in the USA. In part, my own acceptance and the assistance offered me drew on this notion of fictive kinship which carries with it a sense of duty and obligation, as well as of rights. This relationship itself would be meaningless, or unworkable in the absence of *thadamtshi*.

### **The urban in the rural: negotiating the purchase of “wet land”**

Returning to Thimphu after a visit to Bumthang, I had met Dorji and his eldest daughter, Tshogyal. He advised me that he was going with his wife's cousin, Sangye, the following day to Punakha to negotiate the purchase of land and wanted to invite me to join them. Both were keen to jointly purchase “wet land” (*chu zhing*) for growing rice. Punakha lies approximately 40 miles west of Thimphu. Entering Punakha valley after crossing over the Dochula Pass, one is immediately struck by the noticeable humidity and higher temperature compared to Thimphu valley. Dorji, who originally came from Nabji, has a number of dependants and wants land to grow rice to feed his family. As he had previously explained to me, the cost of rice for his own family was increasing and he worries about being able to provide for all of their needs. Sangye, comes from Tashigang and is settled in Thimphu with his wife and young son. A second child is due, and so he wants to acquire land to help provide rice, which is a staple part of the diet.

Dorji had recently acquired a small plot of land a few kilometres outside Thimphu at Lungtenphug. Standing on the roadside overlooking the plot of ground he purchased from

his friend, Tandin, Dorji outlined his ideas for the property he will eventually build. The plot of land is not very large, but “enough for a two-storey house with two shop units below and an apartment for me and my family above”. At present, to augment their diet, Dorji has planted chilli plants and potatoes. In effect, he had recreated a larger version of the small kitchen garden he and his wife planted outside their apartment in Thimphu. The purchase of this land so close to the capital had been a major decision for Dorji. Although his wife owns property near Gedu in Chuka *dzongkhag*, the land is not productive and his own work keeps him in Thimphu. Dorji’s own parents owned land in Gelephug, which was originally part of a land resettlement programme. Since his father’s death at the age of 92, Dorji’s mother has mainly left the running of the farm to her sister and her husband whilst undertaking pilgrimages to sacred sites and monasteries. His family has retained their house and some land in Nabji, a remote but important historical site in Trongsar *dzongkhag*. According to Dorji, Nabji is “the most beautiful place. A very special place.” However, the property needs attention and Dorji and his two brothers have neither the time, nor the funds, to carry out the works required. When asked if he and his family would sell the property, he shook his head. “To me, it is too special...but anyway, who would buy it? It is not worth that much.”

Sangye, a government employee, is younger than Dorji by a few years. He had left school early but had been able to receive training in his post and this had even allowed him to spend time outside Bhutan studying. As a junior official his income is barely adequate for the cost of living in Thimphu. He lives with his wife and son in a small rented apartment in a traditional-style house, originally constructed in the late 1970s. The rent is high and takes almost half of his monthly income. Dorji and he have, after several discussions, decided that they each should buy some land for growing rice in Punakha valley.

Neither Dorji nor Sangye can afford to buy land individually, so in order to acquire land they have decided to combine resources. Sangye is related to Dorji’s wife and is viewed as both friend and a relative. They seek out each other’s advice and company whenever their work permits them. Yet, the acquisition of land and the construction of houses was a central theme in their conversations with each other and with other Bhutanese they

encountered. The following paragraphs describe a rather long day of negotiations and the concerns expressed by each party in an attempt to find suitable land and negotiate its purchase.

The importance of land as an asset, and as a source of revenue, was underscored daily in conversations amongst friends and relatives. In Thimphu, land prices had increased at a steady rate over the last twenty years. In a recent article in Kuensel “urban” Bhutan is described as being “gripped in a land buying frenzy”. <sup>114</sup> For those who had acquired land in and around Thimphu, either through purchase from the government or as *kidu* (grant), land was perceived as a good source of revenue in the future in the event that they ever want to sell. Alternatively, it will provide a significant inheritance to their children. A former *dzongdag* had commented during a private interview, how fortunate he had been to be able to acquire a small plot of land in Taba which was now worth about 1,000,000 Nu (approximately £15, 390).

The increase in land prices especially in Thimphu and Phuntsholing in part represents the emergence of a new middle class who are seeking to invest. Although incomes may, as suggested by the chief of research and statistics at the Royal Management Academy in Thimphu, reflect “more purchasing power” this is less straightforward. For people like Dorji and Sangye, to buy land requires them to borrow resources from other relatives or friends, or to take new loans being offered by the Royal Insurance Corporation of Bhutan, and banks. Yet, based on discussions in Thimphu the loans do not appear to be sufficient to both buy and construct a property. Dorji had decided to use his savings and some money from his family in order to buy land, which was being sold for a reasonable price. The site in Lungtenphug had cost him 90,000 Nu (approximately £1,800). Sangye, on the other hand, although only about five years junior to Dorji could not afford to buy land in Thimphu and openly admitted that he did not think he would ever be able to buy a plot in Thimphu and build a house for himself and his family. His father and mother had recently been resettled in Gelephu and he and his siblings had pooled their resources to construct a new house for their parents. The decision to buy land was influenced by

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<sup>114</sup> Kuenselonline “Soaring land prices: real or mere speculation?” 19/04/2002.

Dorji's recent purchase of a plot of land near Thimphu and the desire to invest in land for himself. He wanted to join with Dorji because Dorji, following the negotiations for his land at Lungtenphug, now had experience negotiating the purchase of land.

For Dorji as with other contemporaries, the land and the future construction represent their own investment for the future. With the creation of new sources of financial assistance to buy property and the general growth in understanding of the changing financial and legal framework, Dorji represents a shift in outlook, which underscores the broader transformation of Bhutanese society. Yet he, as with his fellow urbanites, represents only about a quarter of the total population of Bhutan. Commenting on the demand for land, the Kuensel article cites a housewife who feels that because of the impact of urbanisation and the lack of "a social safety net" people are turning to "buy land because it is the most reliable commodity".<sup>115</sup> The speculation in land and concerns for future financial provision are closely linked to recent discussions on income tax, the introduction of pensions and the development of a small stock market in Bhutan. With a rise in the urban population and the move away from home villages and agriculture, Dorji and others like him are aware of the need to make financial provision. A further incentive is the desire to generate an income, which may be required to pay for their children's education. Although the State provides free education, there are concerns about securing the best educational advantage for their children, which have been fuelled by increasing unemployment among school leavers.

Following a disappointing meeting with a prospective seller of land, Dorji and Sangye decided to collect a friend, Sonam. Sonam works in Punakha and knows the area well. He was already being discussed as an important player in any potential negotiations into which they might want to enter. On collecting Sonam, they asked his advice. A few weeks earlier, during a trip to Chimi *lhakhang*, Dorji had spoken with a farmer near Lobesa, who had already indicated he had land he wanted to sell. Sonam commented, "You spoke to that farmer when you all went to Chimi *lhakhang*. Talk to him again, but I still think that he is not offering enough land for the both of you to get enough rice."

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<sup>115</sup> Ibid.

Driving to Lobesa, the discussion in the car centred on the amount of land required to provide enough rice for two households and still have a surplus to sell. It was apparent that Sangye was struggling financially to support his family in Thimphu and fulfil his filial obligations towards his parents in Gelephu. Arriving in Lobesa (fig.16), we stopped to buy *doma* (betel nut) and beer. Leaning in the shop window, Sonam called to the shopkeeper, a middle aged woman whom he knew. "Aue, my friends are interested in buying land to grow rice. Heard of anybody wanting to sell?" Pausing to think, she turned to her friends and daughter. None of them could think of anybody locally wanting to sell. As the three friends stood drinking beer and preparing *doma*, a well-known businessman arrived. After introductions were made, Sonam explained to him why Dorji and Sangye were in Lobesa. Scratching his head, Tenzin pointed further up the valley towards a hillside. "I heard there might be land up there, but I don't know. Now, I bought some land over there" waving his right hand vaguely towards the other end of the village. "It only cost me 1,500 per decimal [tenth of an acre]. If you pay more than 2,000 then you're being ripped off." At the suggestion of lower prices than they had originally anticipated, Dorji and Sangye began asking Tenzin more detailed questions about the local land, the sizes of available plots and whom they should approach.

Pausing to ease himself down onto a rock below the shop window, Tenzin began to give his advice on what they should be doing. Enjoying the audience and aware of his own reputation as a shrewd businessman, he suggested that they consider looking closer to Punakha. "Beyond Punakha *dzong*, there is a foot bridge across the Pho chu. Over there, you should speak to some of the locals, especially if you can find the local *gup*. He'll know who wants to sell, and it is best to have him on your side when you come to negotiate the sale. He'll deal with any local objections. Don't expect to get a piece of land right by the road. All around people have been buying up land." Dorji and Sangye had decided to buy land in this area because Dorji's friend, Tandin had used part of his compensation from the City Corporation to buy several acres of wet land near Lobesa. The land was sufficient to produce enough rice for his family and leave a surplus which was sold to augment his income. After receiving further advice from Tenzin, Dorji and his companions set off for the farmer's house half a mile away.

A few weeks earlier, during a visit to Chimi *lhakhang*, Dorji had stopped to speak to a farmer who was winnowing barley. He had been twice before to look for land and had met the farmer on the previous visit. The farmer was offering 16 decimal of land, which would produce according to him about 700kg of rice per crop. This was not sufficient since the offer was that Dorji would, as did most other people not living in the area who owned land, buy the land and then the crop would be divided equally with the farmer who would do the work. At present, Dorji's family consumes, he estimated about 80 kg of rice per month and so for one year would require a minimum of 960 kg.

Arriving at the hamlet, Dorji and Sangye called over to the farmer's house. Rather than going over to the house, they beckoned him to join our small group gathered beside a small *chorten*. Ambling slowly around the field of chilli, onions and potatoes he joined them. His shirt stained with betel juice, the farmer focussed on the group. Dorji and Sangye introduced Sonam to the farmer. From this point, Sonam began to lead the conversation around to a discussion of the land which was being offered by the farmer. Spitting out betel juice as he punctuated his replies to Sonam's enquiries, the farmer slowly set out his position. Originally he had suggested 2,500 Nu per decimal, but he said he had reconsidered and felt that 3,000Nu was a fair price. Sonam rejected this price as being too much. "After splitting the harvest with you, there would not be enough rice left to keep Dorji's family." "We can grow two crops a year" the farmer replied. "Still then there would be nothing to sell. No profit." Slowly as each side set out it's position and requirements, the farmer casually commented that in addition to the sixteen decimals he was offering, he had an additional 22 decimal. Dorji and Sangye moved closer as he mentioned this additional land. They thought that they where now being offered 38 decimals of land. However, as they asked for details of this land they realised that it was located further down the valley.

Sonam continued to be the main participant in the discussion with the farmer. Impasses were averted with timely, though unconscious interruptions from Sonam's youngest child, Tshering demanding attention from his father, or dropping confectionery cigarettes on the ground. This gave the farmer a chance to consider what he was prepared to offer,

whilst allowing Dorji and Sangye to quickly indicate their own feelings and views to Sonam. As they wiped down the confectionery cigarettes to put back in Tshering's box, a low conversation was carried out. The farmer was busy with his fingers doing calculations of yields and prices, knowing that whilst he wanted a good price for the land, that he also needed the money. The conversation turned to the yield and current market price for rice. The farmer advised that the total land would yield 2,100 kg and that they could expect 25Nu per kilogram of rice sold in the market. Sangyo looked interested.

However, Dorji and Sonam realised that the amount of rice provided would not be sufficient for two households once divided with the farmer. Sangye began to become agitated and expressed concern that Dorji would buy the land without him, leaving him unable to buy on his own. Dorji reassured Sangye that he would not buy land without including him.

Slowly, through observing the process of the negotiation it became apparent that although the details of the size of the land, the quality and quantity of the rice it produces and the price per decimal were key points, an underlying, indeed unspoken part was establishing a relationship between the parties based on trust and mutual respect. Dorji had decided that the farmer had mislead him in the earlier meetings by not providing as much information as he could have. The increase in the asking price annoyed Dorji. Of course, the farmer had hinted at another anxious prospective purchaser, but neither Dorji or Sonam believed this to be true.

Sonam told Sangye to bring beer, a bottle of brandy, *doma* and butter from the car. Several tall bottles of Indian beer, were handed over with a flourish by Sonam and then Dorji and Sangye each presented smaller packages containing the brandy, *doma* and butter. This began a slow process of taking leave – the farmer realised that Dorji and Sangye had failed to accept his “offer.” More importantly, they had not asked to be shown the lands in question. He invited the party to move to the veranda of his farmhouse located less than thirty metres from the spot where they had stood discussing for almost an hour. Sonam and Dorji politely refused his invitation and said goodbye.



fig. 16

Paddy fields and farm house near Lobesa.



fig. 17

Babesa - a village to the south of Thimphu.

The casualness of the discussion belied the importance it's outcome represented to each of the main figures. The farmer, it was known, had recently had several family problems, which had nearly exhausted his savings. Dorji and Sangye were attempting to secure a supply of rice for their families and an additional small income to augment their salaries. Even for Sonam, the negotiations were of importance. He had a certain reputation to maintain as a "go between", and he wanted to help his friends. Dorji had recently assisted Sonam with an accident claim, and was a valuable friend.

Driving to Sonam's house, he pointed to a man walking along the roadside. Telling Dorji to slow down and stop when level with the man, Sonam leaned out of the window. The man in question was a *gup*, or local village headman, making his way back home after visiting Thimphu. Sonam and Dorji offered him a lift as far as Punakha. The *gup* enquired what they were all doing in Punakha. Sonam explained that Sangye was his nephew and Dorji a good friend from Thimphu and that they were looking for land to buy in the valley.

Sonam and Sangye sitting on either side of the *gup*, both began to ask him about land that may be available in either his own village or elsewhere in the valley. As a *gup* he knew the other local village heads and may have known from them of any land for sale. He shook his head. "None, in my village or up my end of the valley. But, I think I heard from another *gup* that there might be some land for sale across the Pho Chu up beyond the footbridge. You should go off up there. If I hear of any I will contact Sonam". The discussion continued with questions on the prices being paid recently, the price of rice in the market, and what size of land in his opinion should they try to buy to provide enough rice for their families and still leave sufficient to sell at profit, after paying labouring and transport costs. After giving his opinion on these matters, he stressed to them the importance of speaking with the local *gup* and even if possible the village elders. "You need to know there are no problems with the land – especially with rights to water, or any boundary disputes."

At Sonam's home as he prepared food, Dorji and Sangye sat with a calculator and paper working out land costs, yields and the potential surplus they may have to sell and the potential income from the sale of the surplus. As they talked between themselves, they began narrating what they had learned during the course of the morning. The need to involve the *gup* was they realised an important factor they had almost overlooked. Now they would need to rely even more on Sonam to use his influence and local contacts and knowledge to find land and to begin the negotiations with the farmer, and speak with the local *gup*. Provision would have to be made to entertain any *gup* whom they might need to call on for help and assistance. Above all, they needed to ensure a good relationship with the *gup* in case of any later dispute or problem over the land or the contract. In particular, in case any farmer who had agreed to sell and then work the land in return for half of the crop failed to honour his obligations. Without local support and a good relationship, it would be easy for the farmer to neglect their land and for them to suffer a loss.

Following lunch, both Dorji and Sangye were anxious to set out for the walk to a side valley recommended by the *gup* whom they encountered prior to lunch. We walked up past the *dzong* to a bridge across the Mo Chu, then passed the local crematorium. The path leading to the suspension bridge lay beyond the crematorium and passed Punakha Prison. Reaching the bridge, we waited while a small herd of goats were driven across from the other side. Crossing the bridge, Sonam called to the occupant of a small hut and he and his friends came out. Sonam began enquiring about land for sale. Some newcomers, who had just walked down from the surrounding valleys joined in the conversation.

Looking up at the village nearby, the owner of the hut pointed to a field immediately adjacent to the bridge. "That's four acres worth of land. You want more or less than that?" Dorji and Sonam agreed, but Sangye sat apart from the discussion staring over the river and up the side valley. He had lost heart in the process. The amounts being discussed were greater than Dorji and he had originally anticipated. He simply could not afford it. On the way to the village and as we crossed the bridge he voiced his concerns

about the time it would take to locate land, to begin the negotiations, to seek *gup* approval and prepare the contract. It all seemed to become too complicated. Sonam laughed and pointed out that if he really wanted it, he had to act now before prices increased further. Yet, amongst some of the quieter conversation before lunch was a subtle questioning by Sangye and Dorji of whether or not Sonam could be relied on. True, he was good fun and sociable. However, would he do the necessary work for them in Punakha? Following an incident involving some labourers who were to work Sonam's own fields, both Sangye and Dorji had been upset at Sonam's harsh tone. Bragging as he dismissed the main labourer, "They know they have to do as I say, or I'll make trouble for them." Dorji replied "Don't do like that. It is bad. You're not a *dzongdag*." This unresolved question hung in the air all afternoon.

Due to the late hour, and the change in the weather, it was decided following the conversation with the men at the bridge not to press on up the valley. "There is some land, further up there, which they think may be for sale" said Dorji pointing up the side valley down which the Pho Chu flows. As he explained the location described to him by the villagers, it became clear that it was several hours walk from the bridge. This would be another important consideration. Even if it were good land, with good productivity levels, Dorji and Sangye would need to hire help to porter the rice down and across the river in order to transport it to Thimphu for sale and to keep for themselves. Although, both come from rural communities and know what is involved in the preparation and production of rice, they recognise their own separation now from such work and the new pressures and demands of their urban lives and responsibilities.

Watching the negotiations and various discussions, the striking feature was once again the importance placed on using social contacts and family. Sonam was reciprocating assistance to Dorji. Sonam occupied an important position in the *dzongkhag* administration which brought him into close contact with a wide range of local level officials – the *chimis*, *gups* and *mangi ap*. Through his position and his contacts, Dorji and Sangye hoped to be able to negotiate the purchase. Sonam, partly to maintain his status in the eyes of his relative and his friend, was keen to be seen to be helpful. He

himself had commented on the assistance and support he had received from Dorji during the previous year. Each stressed the importance of being reliable and returning kindness received from others, emphasising as they did so the importance of social values embodied in the concepts of *thadamtshi*.

The advice from the *gup* and Tenzin had reminded them of the formal processes which would have to be entered into once a deal was struck. Yet, these were secondary considerations compared with the practical concerns about cost, crop yield and accessibility. Again, Dorji and Sangye were relying on Sonam to use his influence to negotiate a contract and ensure that the witnesses were of good standing. The focus continually turned not to the formalities but to the informal processes by which the transaction would be negotiated and finalised. By involving the *gup* or other local officials, they hoped that they would be able to ensure that any sharecropping agreement would be upheld by the local officials without recourse to the district court. A related issue was the irrigation of the paddy fields – this would have to be supervised by the farmer according to the local practice of opening and closing the irrigation canals. Unlike Tandin who was able to travel as required to check on his land near Lobesa, neither Dorji nor Sangye could be certain of being able to do so and would have to rely on the seller or any party to a sharecropping agreement to fulfil his or her obligation.

### **Thimphu: the urban land market**

As I sat having lunch in a small café in downtown Thimphu, a group of young Bhutanese men entered. After peering at the selection of cakes, sweetbreads and sandwiches on offer, ordering bottles of Coca Cola, or cups of coffee, they then waited for their order at a small table beside the stove. The sound of the conversation carried over to me and I was soon paying attention as they began discussing their shared dilemma - to keep renting or to try and build a house in Thimphu. As each described their individual problems of too little space, poor facilities, and ever increasing rent demands from landlords who knew they had the upper hand, they all nodded as one friend added yet another reason to try and buy land. The increasing scarcity of land for new housing in Thimphu and the increasing

pressure on available housing stocks was a prominent feature of much conversation with informants.

The majority of people I encountered and interviewed in Thimphu rent their accommodation from a range of landlords. Some like Dorji and his family live in property provided as part of their employment and often reflected their grade and level within their department or organisation. Others rented from private landlords who owned the building in which they lived; some even lived in the same building as their landlords. Many of the apartments I visited were very simple in design and layout. The older buildings, in more traditional design, were darker with distempered walls. The more recently constructed buildings varied slightly in the number of rooms and general layout but still tended to have one main room with several smaller rooms, used as bedrooms, and a small kitchen and toilet. One friend, living in a traditional-style house a short distance from the main road, commented on the lack of maintenance by his landlord. Another commented that his landlord had failed, despite repeated requests, to repaint the walls in the flat he occupied. The new properties were generally supplied with various services, notably running water and toilets. In properties on the urban-rural periphery of the city, water was often supplied from a communal tap and no toilets. Am Choni's small wooden house lacked running water and electricity. Though a nearby monastery had been provided with electricity the village remains without.

One evening over supper with Karma and Deki, Karma's brother in law, a former government employee, enquired about Karma's negotiations for a plot of land in Motithang. The land, located near the Jigme Namgyel Wangchuk Junior High School was being offered privately by its owner. Karma and Deki had discussed buying land the previous year, however this had been postponed until after the birth of their fourth child. Their household had increased to five children between the ages of nine months and twelve years, Deki's youngest brother, and during leave from his army training, her other brother, Cheche. In addition, members of Deki's extended family would often stay for a month or longer including her brother Geleg who had separated from his wife. Two girls from Deki's village who attended Yangchenphug High School increased the household

further during the school terms. In return for board and lodging, they helped Deki look after the younger children and shared household chores. Karma and Deki were happy to provide accommodation for their relatives, but had decided that their apartment was too small. The landlord lived above them and complained about the noise made by the children playing which irritated Karma. Over the years, Karma and Deki had steadily saved money and they were afraid that if land prices continued to escalate they would be unable to afford to buy land.

Karma and Deki had asked various relatives for assistance to buy a reasonably large area of land on which to construct a two-storey house. By chance they had heard through Aku Tobgye, the husband of Deki's aunt, Am Tshogyel, of a plot of land which might be for sale in Motithang. Karma had asked Aku Tobgye to make enquiries on his behalf. Aku Tobgye had been involved previously in negotiating the purchase of a large plot of land near Jangshina, to the north of Thimphu for KT and his wife. As adviser, representative and middle man, Aku Tobgye served an important function in the extended family. He and his wife provided accommodation to several relatives, assisting with the care of nephews and nieces attending school in Thimphu for several of Am Tshogyel's siblings. Uncle Sengge and Aunt Wangmo's own daughter, Pema lived with them during vacations from Sherubtse College.

In reply to the question about the land, Karma snorted, "They are asking eight lakhs!" The amount was high for the amount of land being offered; however as Deki noted it was not so unusual for Motithang. Motithang is a prosperous suburb of Thimphu where several government ministers and members of the Royal Family live. She and Karma wanted to buy land in Motithang because they currently live in the area. At present, Deki has a shop nearby, and the children attend primary and nursery schools in the area. However, they were prepared to consider other areas in the Thimphu valley. Karma continued, "There is some land near Dechenphodrang, which Aku says may be more reasonably priced. The owner is a lama, but he's out of the country at the moment. Aku will speak to the lama's wife." Karma was determined to find some land. He had already

expressed his intention to buy as soon as possible, even if he could not afford to build on the land for several years.

The subject of the land negotiations dominated family discussions over the following months. The land near Dechenphodrang to the north of Thimphu was available. The land was registered in the name of the lama currently teaching Buddhism in the USA. Aku Tobgye had visited the lama's wife on several occasions to walk around the plot and discuss the price. In turn, she had faxed her husband the details of the offer being proposed by Aku Tobgye. The purchase price would be based on the square footage of the plot multiplied by the agreed price per square foot. Karma had requested that he be allowed to have the land independently surveyed so that the price paid was accurate. This request had been denied. Karma was concerned that the amount of land would vary significantly from the amount being described as for sale. Deki's brother-in-law had bought land from a farmer, and after the purchase had arranged for it to be measured. He was delighted to find it was larger than the seller had stated, and accordingly worth more than he had paid. Eventually, Aku Tobgye had managed to arrange for the land to be surveyed and the amount was only slightly less than the lama's wife had originally stated.

After progressing the negotiations, Aku Tobgye informed Karma of a serious complication. Although the lama had authorised his wife to find a purchaser for the land near Dechenphodrang, because she was not the person named on the *thram* (land document) she could not legally sign the sale documents. Aku Tobgye and Karma decided to seek legal advice and approached a lawyer working in the District Court in Thimphu. After receiving his advice, they realised that they needed to find a way to obtain the lama's signature on any agreement prepared concerning the sale. A few days later, Karma spoke with an official at the City Corporation of Thimphu. Although the Land Record Division is the main central body for all property registrations, in Thimphu all land transactions fall under the authority of the City Corporation. He was advised that unless the owner of the land signed the deed, the City Corporation would not recognise the transfer as valid. The official stressed that under the provisions of the Land Act 1979, only the person whose name appears on the land deed can legally sign a sale agreement

and start the process of altering the official records and land deed. Since the lama and his wife wanted transfer of the purchase price at the time of signing this would add the potential risk of the transaction becoming complicated by legal “technicalities”, as Karma described it. First, they would need to prepare the document again and arranging for its signature, what if the lama refused? In the event of the lama not co-operating then Karma would have to recover the purchase price from him. Karma had no desire to have to raise court proceedings having previously been involved in an inheritance dispute with his stepmother. The earlier action had left him unwilling to engage with the formal court system and he stressed his distrust and apprehension of the formal legal system. “It doesn’t work”. Karma advised Aku Tobgye to make it clear to the lama and his wife that the purchase price would only be paid when the transfer was completed.

Karma had sat with Deki, Aku Tobgye and other family members the previous evening discussing their options. Deki had set her sights on the piece of land and was determined that no matter what obstacles arose they would buy it. Karma and Aku Tobgye discussed the possibility of engaging the assistance of a former government official, a distant relative of Aku Tobgye to act as an intermediary (*barmi*). The lama’s wife had proved to be a skilled businesswoman, but was now being represented by a relative. Karma teased Deki that she should ask for lessons in business from her. The lama had responded to Aku Tobgye’s concerns over the validity of his wife signing any sale documents by faxing a letter authorising his wife to act on his behalf. Initially, all the parties thought the authorities would accept this. However, on enquiring further, they were told that it was insufficient. Neither Karma nor Aku Tobgye felt that it would be a good basis on which to enter into a contract, especially when the lama was insisting on half the purchase price to be delivered prior to the transfer of the land. Karma was adamant in his refusal to enter into such an agreement. “I will pay it in full. But only on completion of the transfer, not before.”

The events narrated above took place over several months. They mirror similar stories retold by many informants. Aku Tobgye and his counterparts acting on behalf of relatives and friends, make use of a social network which provides not only information about land

for sale, but of contacts who can assist in negotiating the transaction. Providing advice and assistance was, I came to realise, important in establishing, or maintaining existing relationships. As one young Bhutanese man explained, “In the future, perhaps that person can offer help. So, why not take time to offer assistance?” In many instances, family and friends who are viewed as “family,” provided assistance and advice. At various times during the negotiations each side called on the assistance of increasingly influential figures. Part of the explanation for Aku Tobgye’s influence with his wife’s family arose from being uncle to a highly important reincarnate lama, whose residence is one of the principal historic monasteries in Thimphu. Although he had limited access to “Rinpoche”, his association was sufficient to augment the respect Deki and her family felt towards him.<sup>116</sup> Even in Boudhanath, Aku Tobgye was referred to in tones of admiration for the care and support he gave people. Similarly, the lama’s wife called on equally influential friends and relatives to persuade Aku Tobgye that the price and agreement were satisfactory and that it all should proceed.

After many discussions and a great deal of effort to negotiate an agreement acceptable to all sides, Karma decided to resume his search for land. He had grown frustrated by the negotiations. Aku Tobgye informed the lama’s wife that Karma was no longer interested in buying the plot near Dechenphodrang. Deki, who had originally been very determined to buy the land had lost interest and had already looked at a plot of land near Simtokha. Although not convenient for the schools or her business, the land was slightly cheaper and the plot was also larger. The process of negotiation began once again. A friend had informed Karma and Deki about a man who was described as a “land broker”. Aku Tobgye was unimpressed. The land brokers, as described to me, identify potential purchasers or sellers and negotiate the transactions. Aku Tobgye was suspicious about how reliable and honest these individuals would. Karma expressed his own reservations, preferring to rely on Aku Tobgye, whose concern was with the family not personal profit.

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<sup>116</sup> The term Rinpoche means “Precious one” and refers to the reincarnation of an important religious figure. Often the term may be used without design the full name of the person – as in the case of Aku Tobgye’s family who referred to “Rinpoche” often leaving me confused until I was told about the connection to the particular religious figure.

## **Grant of *kidu*: “being connected” to the land**

The desire for land and escalating land prices have meant that many residents of Thimphu are unable to afford to buy land, let alone buy and construct a house. Speaking with a close friend, Aum Bidha spoke of the long process by which she and her family had acquired five acres of land near to Thimphu. She invited me to travel out of the city to visit the site of the land granted to her husband by the King. In the car, she talked about her desire to build a traditional house, yet to incorporate modern features – a bathroom, a large kitchen and separate bedrooms. To build the house, they hired labourers to make mud bricks for the walls, and planned to borrow money from a bank to pay for the construction work. She admitted she was uncomfortable about having a “mortgage” and that she was concerned about how they will manage financially.

Driving up a new road near Babesa in the southern part of Thimphu valley we reached a clearing in a forest (fig.17). Below the level of the road was a fence with a wooden stile providing access to a large, gently sloping area of cleared woodland. Standing looking down at the cleared land, Aum Bidha described their plans for developing the site. They had acquired the land two years previously, after beginning the process of applying for *kidu* in 1990. The area below us had formerly been forest. With the help of family and friends, they spent every weekend for several months clearing away the undergrowth and cutting down trees. Her daughters had prepared the meals for those helping to clear the site. The logs had been used, in part, to create a fence around the property. However, Aum Bidha added wryly, “a lot of the wood was stolen. We know who took it, but we didn’t say anything. They will be our neighbours and anyway before we got the land it was open to everybody locally.”

From our vantagepoint, she pointed out a group of pines, which had been left, to the right side of the property. Beside these, forming a slightly ragged square, were prayer flags placed to mark the proposed location of the house she and her husband are intending to construct over the coming year. A ceremony had been held to mark the breaking of the ground and purification of the site. Beyond the pine trees and prayer flags two small

springs had been found and small fences built around them. The springs will provide the water for the household. Tall prayer flags on wooden poles fluttered in the breeze as we walked around the site. Below a small knoll, blue tarpaulins covered two piles of mud bricks. Bare raw earth indicated the source of the material being used to fashion the bricks. Living in temporary wooden accommodation the labourers and their families were washing clothes and preparing a meal. Aum Bidha called down “Wai, Tandin na sho! (Hey, Tandin come here!)” and a young man in his early twenties ran up the slope to where she was standing. She began enquiring about their progress in preparing the mud bricks, which will be used, for the core of the house walls. Walking over to look at the quality of the bricks under the tarpaulins, the labourer calculated that she had about eleven thousand, and required an additional nine thousand bricks.

Aum Bidha’s husband, Lobzang had originally belonged to the village immediately below the site. His father’s family had lived there for several generations, whilst his mother had originally come from the east. During the 1960s and 1970s as Thimphu developed, the government had compulsorily purchased land. Compensation had been made, and Lobzang’s mother still occupied, with her daughter and her family, a smaller piece of land granted to them by the government. Following their marriage, Lobzang and Aum Bidha had moved around Bhutan as a result of his postings. Lobzang’s family home was going to pass to his sister. Aum Bidha’s family has some land in Kheng but this was not viewed as valuable, and an elder sister had inherited a property near Khasadrapchu, a village between Paro and Timphu. As a result, neither Lobzang nor his wife owned any property. Both were anxious to secure a small inheritance for their two daughters. Often, as Aum Bidha spoke about the house they intend to build, it was with reference to the future and the needs of their daughters. So, began the long process of seeking *kidu*.

In 1990, Lobzang decided to petition the King for *kidu*. He approached several senior relatives for advice on how to petition the King for *kidu*. The application was duly lodged with the King’s office. After sometime, they were advised that the King would think about it, but it was not the right time. Their petition had not been rejected, nor had it been accepted. Later the following year, Aum Bidha and Lobzang decided during a visit to

Darjeeling to ask an important lama from Tibet whether or not their petition would be successful. Performing a *mo* (divination), the lama advised that their petition would eventually be successful. However, he also advised that the petition might take up to ten years to be granted. Aum Bidha admitted to feeling disappointed at the answer. Her husband, on the other hand, felt that even if it took them ten years it would be worth the effort.

Laughing, Aum Bidha recalled her husband's obstinacy. Normally, she said in the case of a petition that had neither been rejected nor accepted the matter should be allowed to rest "without pushing". "However, my husband decided to keep trying. In the end, it was presented five times to the King. Lobzang would not give up. Even though it is really unusual to persist so, he refused to let go." In Bhutan, several people commented on the importance of understanding when not to be too insistent. Lobzang had in many ways not conformed to this self-regulation. Describing the process of presenting the petition directly to the King, Aum Bidha spoke of her husband practising the correct way to bow before the King, and the correct way to present the petition. A relative, who worked closely with the King and his staff, helped Lobzang. Although he followed *driglam namzha* during the presentation of his petition for *kidu*, Lobzang was, as he himself admitted, risking incurring the displeasure of the King with his persistence. For him the cause was just and important to his family.

Eight years after beginning the process, the fifth attempt was successful. The King had made enquiries about Lobzang's petition and sought verification of the claim. Lobzang and Aum Bidha had heard that the King commented on Lobzang's actions, however this was interpreted favourably as concern for his family, not disrespect towards the King. The petition for land was granted, subject to the approval of the village elders. Although the King possessed the authority to grant *kidu* without the approval of the village elders, this was never done. The approval of the proposed grant of *kidu* is referred to the local *gup* and *mangi ap* for their consideration. If any problem or concerns are raised, they are taken into account before the grant is finally authorised by the King. Serious concerns

accordingly may lead to approval being withheld by the village elders. In those cases, the King would not grant *kidu* and an alternative site would have to be found.

The land being sought by Lobzang had formerly been used by the local community for grazing and was, admitted Aum Bidha, in a good desirable area. Other people sought to acquire the same plot of land, but the village elders had refused their applications. The main barrier was that they were from outside the village and had no connection to the local community. Lobzang's mother still lived nearby with his sister, and some of the village elders remembered his late father. More importantly, Lobzang had an uncle living in the village.

During the discussions with the village elders, Lobzang's uncle, who owned a large traditional farmhouse and land in the village, was to play an important role in obtaining agreement to the grant of *kidu*. Discussing his nephew's claim to the land, Lobzang's uncle had reminded the elders of Lobzang's connection to the village through his father and mother, who continued to live with her daughter in the village. Stressing that the family had lost land, he argued that it was only fitting that Lobzang be able to reacquire land in the village. In part, Lobzang's uncle is an influential local figure to whom people show respect. Lobzang was fully aware of how important his uncle's support would be in securing village approval. Furthermore, Lobzang was personally known to and respected by the other village elders. He was not a stranger and this was undoubtedly an important factor in the decision to approve the grant of *kidu*. This was also highlighted when Aum Bidha spoke about the loss of wood to local people.

There was a strong desire by Lobzang and Aum Bidha to be accepted and to present themselves as part of the community, rather than setting themselves apart from it by making accusations over the theft of wood from "their" land – land which they had only managed to get as a result of the willingness of the community to give final approval to the King's grant. In contrast to Dorji and Sangye's search for wet land where they would not themselves be living and working the land, Lobzang and Aum Bidha will be part of an existing rural community. Yet, as they and others remarked, the area would soon fall

under the jurisdiction of the City Corporation of Thimphu, perhaps altering the current social ties and connections.

A similar case arose with Dorji's friend Tandin. Tandin had been a farmer with land in the southern part of Thimphu valley below Lungtenphug. Dorji had met him when he had started to look for land on which to build a house for his family. As a result of the negotiation process and the mutual respect they developed for each other they had become friends. At the core of their relationship was a sense that the transaction had been mutually fair. Each had demonstrated their honesty and Dorji remarked on his appreciation of Tandin's open, straightforward nature. Soon afterwards, the City Corporation of Thimphu had acquired Tandin's lands and he was given financial compensation about which Dorji teased him "Mr Tandin's a rich man now!" However, Tandin was deeply worried about the future of his young family since he was in his own words "a simple farmer" without any formal education. Commenting on the adverts for employment, Tandin said "Now even for a syce, you need to have completed Class X!"<sup>117</sup> In other words, the lack of available employment has increased competition even for menial posts for which formal education would not once have been a requirement. The compensation was not sufficient to secure the future of his family. So he had decided to seek "*kidu*". However, in order to make the application Tandin required the help of Dorji. Through Dorji, Tandin began the process of applying for *kidu* from the King. The application remains ongoing.

### **Land Pooling: The City Corporation, Municipal Powers and Planning**

During the last decade, Thimphu has increased significantly in size. Recognising the need to control development in the urban centres of Thimphu and Phuentsholing, two City Corporations were established. In 1999 a Municipality Act established the legal basis and authority of this new tier of local government. The City Corporation has a wide range of responsibilities – the maintenance of the fabric of the city, the provision of city services; notably waste disposal, sewage, and the regulation of construction work in the

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<sup>117</sup> The Dzongkha term *a drung* is translated as syce, meaning a servant, person who does menial tasks.

municipal area. The City Corporation has met with a marked degree of resistance. The area of the City Corporation of Thimphu has steadily increased as smaller semi-rural villages have been incorporated into Thimphu City. During fieldwork, two such areas, Chang and Kawang were often mentioned. These two areas have been designated for "land pooling" by the City Corporation.

"Land pooling" is an urban planning technique for providing a unified servicing and subdivision of separate landholdings for planned urban development (Archer,R W 1983). A similar technique, called plot reconstitution is used in some cities in India. The aim of land pooling is to tackle the problems, which arise from poor subdivision of land, inconsistencies in the use of land, and its development. The associated problems of providing public utilities and roads, land shortages, excessive land speculation and high land prices are key issues that land pooling projects seek to address. Tandin, a farmer from near Lungtenphug whose farmland had been acquired by the City Corporation for the construction of the new expressway had mentioned several small landowners that he knew in the areas demarcated for land pooling in Chang and Kawang *gewog*.

Underlying the land pooling scheme is the need for the City Corporation to maximise the use of the limited land available in Thimphu. This requires balancing commercial requirements with the provision of land for new housing development to cope with the shortage of accommodation in the city. No one denied the need for more housing, developing the water and sewage systems and generally improving the quality of life in Thimphu as its population steadily increases. Yet, for many there appeared to be arbitrariness over the exercise of the municipality's powers, even though, as one informant pointed out, the City Corporation was acting in accordance with its legal authority. Newspaper articles and editorials in Kuensel echo the deep concerns over the process of land pooling and the role of the City Corporation. The development of reader's comments and the views expressed in letters reveal both a deep interest, as well as the confusion, felt by many urban Bhutanese in the planning policies and their implications for control over private land. Aum Bidha, for example, commented on her determination to hasten the construction of her house at Babesa so that she could utilise various

allowances for rural development, which would cease when Babesa is incorporated under the municipality of Thimphu.

A case has recently been raised by farmers from Chang and Kawang. The action against the City Corporation of Thimphu was described as the “first public interest action” in Bhutan. This would imply a direct challenge to the authority and legitimacy of the City Corporation. However, on closer consideration of the case it is clear that the case represents a “class action” seeking greater compensation for the farmlands acquired compulsorily by the City Corporation. Although the report was misleading, it provides an interesting example of the subtle transformation of not only public discourse of rights. Moreover, it reflects a shift in how Bhutanese conceive of themselves in relation to the State and its institutions. Uncle Sengge was, he admitted, afraid of approaching officials and recalled the apparent capriciousness of government officials. Others had commented on their apprehension on approaching dzongs. While there is still an element of apprehension and cautiousness, the Bhutanese do not passively accept State authority. The social and political reforms commenced in the 1950s, and undoubtedly as a result of the critical scrutiny of international agencies in the 1990s, have gradually altered how rights and duties are conceived and understood, especially among the educated and young Bhutanese. The development of this discourse is not consistent and uniform. It is, however, another aspect of the shift in recent government policy to engaging people directly in the decision-making process and to encourage less dependency on the State. This returns to the theme of legal education and the dissemination of legal knowledge (discussed in Chapter Four) which has until recently remained limited.

In a letter to the readers of Kuenselonline, Kawang Dorji, in measured tones set out his understanding of the rationale for “land pooling” adding, “The general landowners do not contest the concept of “guided urban development”...[however] with the introduction of land pooling in Bhutan, it has put huge losses to landowners without any cash compensation or grant of substitute land (kidu).”<sup>118</sup> He cites, at length, sections from the Land Act 1979 which state that in cases where land must be acquired then compensation

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<sup>118</sup> Kuenselonline “From the Readers ‘Convenience or Rule of Law’ Yarab (Kawang Dorji). 14/05/2002.

based on the applicable current regulations will be made, or preferably, replacement land awarded (Land Act 1979 Ka 6.9 and Ka 6.9 (b)). Under the Municipality Act 1999, provisions are made for the acquisition of land by municipal corporations “for the planned development of the municipality” (1999 Part V, Sub part 3, Art.76). However, the Act states that compensation must be made. Kawang Dorji’s meticulous detailing of the legal provisions seek to demonstrate that the City Corporation in the land pooling arrangements published “are in breach of the provisions laid down” in the legislation. Unlike many Bhutanese interviewed who generally are vague about their understanding of their legal rights under the legislation, Kawang Dorji is assertive and uses the provisions of the legislation to establish his case. His main concern is the loss of part of his own land and the apparent need to “buy back the land at Nu 50 per square foot to be allowed to carry out any construction.”<sup>119</sup> Again, we can see that lying at the core of an individual or a groups ability to challenge decisions by regulatory bodies, or those in a higher position, depends on being able to access the necessary information and knowledge to present their case.

The class action by the farmers from Chang and Kawang, and the letter by Kawang Dorji, together with the conversations with informants, reveal a shift in how people perceive their relationship with the state. Recent statements about the need to develop the private sector and the need to break free from a “kidu mentality” from official sources is being reflected by members of the educated, emergent middle class. Land has become a contested site as people identify land with economic security. Dorji and Sangye’s plans to buy land for growing rice, the search and protracted negotiations for land in Thimphu by Karma, and the request for kidu all manifest a strong trend which dominates the conversation of urban Bhutanese. There is a tension between the aspirations of those buying land and constructing property, and how they perceive the various institutions involved. The controls of the City Corporation and the cost of accessing sewage and water supplies were points of contention. Calls for a Landlord and Tenant Act were being made by those who themselves wanted to become landlords. The contradictions between demands for increased regulation and new legislation, and the desire for less official

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<sup>119</sup> Ibid.

involvement, reflect the increasing competition between aspirations and expectations. The development of the State bureaucracy and the creation of newer regulatory authorities are transforming the relationship between the emerging urban middle class and the State.

### **Concluding Remarks**

The capital has its order, the village its customs.  
(Javanese proverb. Cited Scott 1998:33)

The City Corporation of Thimphu represents a major institutional development in Bhutan. Until the 1960s, when the development of Thimphu as the capital began, there were no large towns in the country. Now, the urban population accounts for about one quarter of the total population. The scramble for land, as illustrated by the ethnography, is not restricted to the middle classes. Grants of *kidu* are being made of vacant land in the southern *dzongkhags* to applicants willing to move south. Looking at land from the perspective of my urban informants, what is interesting is the way in which they adopt and use various strategies. Unlike Karma and Deki, whose search for affordable land was unsuccessful, Dorji had been able to buy land near the capital through developing a friendship with the landowner. His plan to buy wet land with Sangye reflected a shared need to economise. To build the house he would need to save money before applying for a loan. Discussing the events of the trip to Lobesa, Dorji commented on his realisation that he needed to establish ties with the local *gups*, as well as develop a good relationship with any farmer from whom he purchases land. Living in Phuntsholing, then Thimphu for over twenty years, he had forgotten the importance of personal ties at the rural level.

Dorji's experience and reminder of the importance of personal ties, is equally relevant in the case of Aum Bidha and her husband, Lobzang. The decision to apply for *kidu* from the King was a major decision. Lobzang's obstinacy and determination to be granted the land in Babesa was unusual. Aum Bidha commented on the potential offence that could have been caused by presenting the application several times to the King. Yet, from listening to her it is clear that she, like her husband, believed their application was fair and that they had a moral right. The choice of applying for *kidu* was based on not only

their own lack of financial resources, but Lobzang's family connection with the village. By invoking a practice dating back to the seventeenth century, they were consciously making use of their connections to the land to secure the approval of the local elders.

The raising of the class action by the farmers of Chang and Kawang, as well as Kawang Dorji's own arguments suggest that rather than being marginalised by State law, these individuals are relying on it to advance powerful claims about entitlements – both on an individual and collective basis. Throughout, we can trace a movement between informal (the negotiations for land) and formal practices (registering agreements and transfers of title) and a fluidity, which draws on personal ties and social networks, nep, and an ability to switch between invoking either historical rights and practices or draw on the modern formal legal system to seek compensation as a right. As Sarat and Kearns argue, "Law plays a constitutive role in the world of the everyday, yet it also available as a tool to people as they seek to maintain or alter their daily lives" (1995:61).

### **Excursus: Rights, Human Rights and Legal Change**

"Most Bhutanese, even the young educated elite, were still the products of a traditional social system with a well-defined set of values and a particularistic world-view" (Rose 1977:38). This statement retains a certain validity for contemporary Bhutan. Three-quarters of the population live in the countryside and continue to make a living from agriculture. Although the senior members of government, "the young educated elite" referred to above retained close rural connections, a younger generation of educated Bhutanese has appeared who lack the same contact with the rural communities. A young professional friend commented on the problems of returning to his home village with his children, "It's too difficult. They don't play with the village children; they don't want to wear *gho*. When people come to see me, and this is always happening when I go home, they behave badly." The process of urbanisation and the social changes, which have accompanied economic and educational reforms, is reflected in a gradual shift in the conceptualisation of individual rights and obligations.

The former patterns of authority emphasised obligations between those in authority and the general population. Officials of the Drukpa State were admonished to not place an undue burden on the population by making unnecessary demands on them (Aris 1986). The emphasis on obligations owed to the State, even the presence of serfs and slaves until the late 1950s should be viewed in the context of the broader patron-client relationship which mirrors the relationship between religious teacher – disciple. As found elsewhere in Asia, the sense of hierarchy that characterised pre-modern Bhutanese society was accompanied by a sense of mutual obligation (Kelly 1998, Reid 1983, Tarling 2001). The Bhutanese State historically drew on, as well as was also challenged by, a sense of hierarchic but mutual obligations (Aris 1994). This sense of a vertical relationship, embodied in the concept of *thadamtshi*, is evident even in speech patterns and the choice of honourific language. Reid argues that lying behind the choice of speech pattern lies the assumption that, “society is naturally hierarchic, like a family, so that comfort and intimacy are best achieved when one can address the other party as an older or younger brother or sister, or as father, grandfather, uncle, boss or lord” (1983:6).

The application by Aum Bidha and her husband for a grant of *kidu* from the King illustrate the continuing role of this hierarchical conceptualisation of social relations. The claim for *kidu* continues “a tradition and exercise of right that can be traced back to the civil rules (Desi) that predate the monarch” (Pain and Pema 2000:232). This raises an interesting question about the nature of authority in contemporary Bhutan. The monarch remains at the centre of the Bhutanese State, and although the King transferred power to an elected Cabinet in 1998, it is interesting to note that he assumed the sole right to grant *kidu* in the same year. The image of the monarch combines the authority of a traditional “ruler” upholding traditional values and protecting Buddhism. On the other hand, he is a “enlightened King” seeking to transform the nation.

As discussed in Chapter Two, the transmission of Bhutanese values is linked not only to promoting social cohesion, but also as part of a wider political emphasis on national identity. Kran comments, “Bhutan balances the interests of the individual and society in favour of placing greater importance on...societal values” (1999:93). The idea of

obligations and duties central to *thadamtshi* form the basis on which a particular vision of Bhutan is constructed. These obligations, which are not unidirectional, create the basis for what can be described as a rights-based morality (Kelly 1998). The mutual obligations of the individual, community and the State owed by and to each other have continued to be transmitted through the generations whilst Bhutan remained essentially rural in character.

Contemporary debates over the enforcement of *driglam namzha*, and Yarab's concern over the actions of the City Corporation of Thimphu reveal a change in the language of rights. There is awareness, especially as educated Bhutanese have the opportunities to travel widely and are educated abroad, of alternative values and powerful, non-indigenous discourses. To be told in apologetic tones, "Bhutan is not a democracy" by a friend illustrated the penetration of newer discourses and a subtle re-configuration of the idea of rights. The presence of NGOs and the emphasis on the rule of law in Bhutan is altering indigenous concepts of rights. This is not to say that rights will become akin to what may be described as "individual rights" in a Western discourse. Rather, that the processes of legal change in Bhutan and greater access to and engagement with wider discourses is altering the framework in which rights are conceived.

Following the crisis in the southern *dzongkhags*, the claims of the refugees were presented to the international community in the language of human rights and "democracy". Coincidentally, the southern crisis arose at about the same time as the overthrow of the absolute monarchy in Nepal and the increase in political activity in Nepal. In 1994, the UN High Commissioner for Human Rights visited Bhutan. A working group focussing on arbitrary arrest carried out research in late 1994 and made a series of recommendations to the Bhutanese authorities, notably time limits for charging individuals and bringing them to trial, improved records of cases, access to legal representation (*jabmi*). Steps were taken by the Bhutanese authorities to implement the recommendations.

As a result of the UNHCHR reports, an agreement was entered into between the UN Centre for Human Rights Project and the government of Bhutan in 1996. Bhutan has ratified the *UN Convention on the Elimination of All Forms of Discrimination Against Women* 1979 and the *UN Convention of the Rights of the Child*. In addition, it has signed the *Convention of the Elimination of All Forms of Racial Discrimination*. To date, training courses on human rights have been aimed primarily at the police force and members of the judiciary. While members of the police force and the judiciary have been sent for formal training in human rights to Western universities, and there is a growing awareness of human rights at the official level, little is done to convey the meaning to the population at large. Those who are aware of human rights are primarily urban and educated.

At present, the traditional approach to rights and obligations is the predominant discourse. However, it will be interesting to observe the impact of the Constitution once it has been drafted and enacted. In Nepal, the Constitution of 1990 encouraged a range of ethnic groups to seek protection from the wider Nepalisation policies of the Nepali government (Gellner 2001). There is no use in assuming that in Bhutan the events of the late 1980s and early 1990s, together with the introduction of mass media and a growing awareness of the outside world, have not created the basis for groups or communities to transform themselves based on the discourse of human rights. The challenge lies in the practice, not the rhetoric. At the level of practice, both rights as traditionally defined and human rights, will compete in the legal sphere as people shift between discourses.

## **Chapter Seven**

### **Signs of the Degenerate Age: the desecration of chorten and Iha khang in Bhutan**

In accordance with these words, one must cut off at its roots the karmic effect of deeds while forever striving in virtuous actions. Evil criminals should not be regarded with compassion but retributions [should be visited upon their] bodies and souls [in order that] the future practice [of such deeds] be eliminated. If, however, on account of shame and pity they are allowed to continue, malevolent people will multiply. (Aris 1986:143)

#### **Prologue: Pangsho *gon pa*, May 11th 1999**

“Let me tell you about one recent *gon pa* (meditation centre) robbery which I know about” said Ngawang refilling our empty cups with thick butter tea. “Pangsho *gon pa* near Wangdiphodrang. Here is one I know directly from the mouth of a survivor. His friend, the caretaker was not so fortunate.” Settling once more on his cushion beside the gas stove, Ngawang sipped his tea and began.

“My friend was assisting the caretaker earlier this year at Pangsho *gon pa*. A small *gon pa* below a monastery, which is set higher, up the hillside. My friend had accompanied the caretaker to the *gon pa* the previous evening and they were about to set out to work in the forest. Like many caretakers, the caretaker only stayed in the *gon pa* during the night and worked elsewhere during the day.”

“As they were closing the door of the *gon pa* three men appeared. Now this was very early in the morning but my friend and the caretaker did not think anything was strange. Two of the men were young and the third was older. They recognised my friend and said “Ah! Ap Sonam so you are here just now!” My friend nodded and greeted them. “Can we have some water. We have been walking and are now thirsty” they said to the caretaker. These were men who knew that the spring was behind the *gon pa* up the hill so why they asked at the *gon pa* was odd. However, my friend, Ap Sonam bent down to unlock the padlock at the foot of the *gon pa* door to go in for water for the three men.

"At that moment, one of the three men drew a sword out from his belt and struck Ap Sonam across his face and neck.<sup>120</sup> My friend fell to the ground and lay there for several minutes as if dead. He was aware of shouting and of a great deal of noise. When he tried to raise himself he was unable to do so, but did see his friend the caretaker running into the forest pursued by two of the men. He told me that he did not understand at first what was happening. But slowly, he realised that the men were robbing the *gon pa*. The men who had chased his friend into the forest returned and fearing for his life he lay still and acted dead. Once he heard the men leaving he knew that he had to move in case they returned. Dragging himself slowly through the *gon pa* door he was able to lock the door from within. He was very afraid that the robbers would return and break in to the *gon pa* and kill him. He managed to drag himself further into the *gon pa* and reached the caretaker's little room where he lay bleeding on the floor."

"The robbers did not come back. Or if they did, they failed to break into the *gon pa*. The following day some monks from the monastery retreat centre above the *gon pa* were passing on their way to buy food. Seeing the blood they began calling out "Caretaker, Caretaker". My friend heard them and was only able to call out once "I am here". The monks sent for help from the retreat centre and broke their way into the *gon pa* through a high window. Once inside, they found my friend, Ap Sonam, lying on the floor. The blanket he had pulled around him stuck with dried blood to his body. He was very weak from the loss of blood.

"Where is the caretaker? Apa -la, where is the caretaker?" they asked him. Ap Sonam was only able to say he last saw his friend running into the forest. Once the police arrived they searched the forest and found the caretaker's body in a stream not far from the *gon pa*. His head had been cut off in an attempt to disguise whose body it was. These evil men damaged several statutes and a *chorten* (stupa). I cannot remember what else they took, but I think they took *zung* (sacred relics) from the statutes and *chorten* and some *gzi* (semi-precious stones) and precious coral".

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<sup>120</sup> The reference to a sword (*patang*) is to the common practice of carrying large knives used for a variety of purposes.

"Speaking with my friend in hospital at Wangdiphodrang, I was saddened to hear of the violence that some men are willing to use in order to rob from the *lha khang* (temple). Ap Sonam had told the police that he could identify the men. But local villagers had noticed a taxi parked on the road not far from the *gon pa*. Word was passed to the police who traced the car to an elderly Tibetan man. Ap Sonam identified him and the other two younger men were also caught. During interrogation, the Tibetan confessed to destroying ten *chorten* and four or five *lha khang*. He had no shame! They would kill anyone who might stop them, rather than be caught. This is why they attacked the caretaker and my friend, Ap Sonam. This makes me so sad. They destroy the *kusunghukten* (representation of Buddha's Body, Speech and Mind), they destroy human life. Truly, we live in a degenerate age!"<sup>121</sup>

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According to official figures published in July 1999, 136 *lha khang* (temples) and 1,132 *chorten* (Skt: stupa) have been subject to theft, arson, desecration and their caretakers attacked and murdered.<sup>122</sup> The thefts and the desecrations during fieldwork were a recurrent topic which fuelled discussion, and at times, disagreement. Arguably, they serve as a metaphor for the changes and problems facing contemporary Bhutanese. The attempt in December 2000 to steal the Karsapani, a very important relic brought to Bhutan by Zhabdrung Ngawang Namgyel when he fled Tibet dramatically highlights this problem. As if to reinforce the significance of the *chorten* and *lha khang* in contemporary Bhutan, there have been several *chorten* erected and consecrated. In late December 1999, the Khamsum Yuelly Namgyel *chorten* was formally consecrated in Punakha valley. Its purpose, to "help remove negative forces and promote peace, stability and harmony in a changing world".<sup>123</sup> More recently in November 2001 the Je Khenpo, the spiritual head of Bhutan, consecrated a new *chorten* at Sorchen. The *chorten* is a "memorial for all the labourers who lost their lives restoring the heavily landslide-prone Sorchen stretch on the

<sup>121</sup> *Kusunghukten* – representations of the body (*sku*), speech (*gsung*) and mind (*thugs*) of a Buddha. Typically, statues, texts and *chorten* representing each aspect respectively.

<sup>122</sup> Kuensel, "Assembly will not implement capital punishment for desecration of Kusunghuktens" 10/07/1999:18.

Thimphu – Phuntsholing highway.” The *chorten* is more than a memorial. Following its consecration by the Je Khenpo, it became a “*khanoen* (spiritual deterrent) against future causalities.”<sup>124</sup>

Ngawang’s narrative of the attack on Pangsho *gon pa* provides an ideal point from which to consider the various competing discourses about the seriousness of these crimes, the wider implications for the role of law and the State, and the interrelationship between popular understandings of law and religion. Geertz comments that law “rather than a mere technical add-on to a morally (or immorally) finished society is, along with a whole range of other cultural realities...an active part of it” (1983:218). An important theme throughout this thesis has been the underlying beliefs which shape and give form to how Bhutanese make sense of the world around them and the role of law. Trubeck writes:

Social order depends in a nontrivial way on a society’s shared “world view”. Those world views are basic notions about human and social relations that give meaning to the lives of society’s members. Ideals about the law – what it is, what it does, why it exists – are part of the world views of any complex society...Law, like other aspects of belief systems, helps define the role of an individual in society and the relations with others that make sense. At the same time that law is a system of belief, it is also a basis of organisation, a part of the structure in which action is embedded (1984:604).

The events described above and the subsequent frequency of their reports and discussion serve, as suggested by Trubeck, to illustrate “ideals about the law – what it is, what it does, why it exists.” In the earlier chapters, I focussed on issues of immediate concern to my informants’ everyday lives – the purchase or acquisition of land, the settlement of a dispute and earning a living in the city. These have combined a variety of approaches and a choice of forum, drawing on personal relationships and negotiation rather than solely the formal legal processes. As demonstrated in Chapter Five, the courts are used strategically, indirectly supplementing positions of influence and social relationships. The presence and authority of the courts was for many something to avoid, or attempt to

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<sup>123</sup> Kuensel, “Khamsum Yuelly Namgyel *chorten* inaugurated” 02/01/2000: 1

<sup>124</sup> Kuensel online “*Chorten* build at Sorchen to avert casualties” 14/11/2001.

control. However, in the narratives and views expressed, when discussing events such as the attack at Pangsho, informants looked to the State, as represented by the Royal Bhutan Police and the courts, to restore order – both physical and spiritual. Therefore in this chapter, I draw on the narratives to consider the interrelationship between religious belief, the roles of the National Assembly, courts and the local communities. Underlying all the narratives are attitudes towards punishment, redemption and competing images of being a “good citizen.”

The attacks on the *chorten* and *lha khang* were the first issues around which the vocabulary of *thadamtshi* and notions of morality emerged during fieldwork. However, although these events are not necessarily commonplace, the reactions and statements made by informants are not so unusual. Reactions to a report of a murder near Thimphu of a wife by her husband mirrored those made to me when discussing the robberies.<sup>125</sup> A similar tension can be seen between those who want the perpetrator to be punished, indeed executed (*zhung thrims*), and those who argue for compassion and allowing him time to regret his action whilst serving life imprisonment. When I first wrote about these events I could not see their wider relevance. Only with hindsight, and returning to the same issue in a later period of fieldwork did I realise how informative and important the stories and reactions to them actually are for revealing the relationship between different discursive registers within Bhutanese society.

The narratives reveal an understanding that can be described as “folk knowledge” (Steiner, Bowers, and Sarat 1999), in the sense that law, as I have been discussing it, is part of the framework of everyday life. The Bhutanese engaged in the quotidian are not merely reacting to laws and regulations imposed from outside themselves. Through their own experiences and daily concerns, they are actively involved in creating law, not in the formal sense of the law emanating from the State or other institutions and agencies, nor the interpretations of the legal forums. Rather, through the dictates of a shared (in a broad sense) morality or common sense which, as I have commented on before, may stand at a point from which the State law and its institutions and officials are critiqued, resisted or

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<sup>125</sup> Kuenselonline. “Woman bludgeoned to death by husband” 26/04/2002.

even reformulated. Commenting on law in the United States, Brigham notes that “laws sometimes infuse American social life with elements that seem not quite natural. The due process guarantees that the criminal goes free if the constable blunders is one” (1996:20). Bhutanese who at times failed to understand or accept the decisions of the courts voiced similar concerns. The High Court adopted sentencing guidelines for those convicted of attacks on *chorten* and *lha khang*, which serves as an excellent focus for consideration of the role of the formal legal system. This role seeks to promote a sense of national unity, uphold shared values and reinforce the legitimacy of the State in local, national and more recently, international forums.

In addition, it allows us to examine the darker aspects of everyday life. Although incidents of physical assault were reported and discussed by informants, together with reports of suicides and murders, the desecration of sacred sites was a subject about which each informant had an opinion. For many informants, as I will discuss, these events represent a degeneration not only of the teachings of Buddha, but of the moral values which underpin Bhutanese society. This chapter traces the interconnections between the everyday, taken-for-granted beliefs that shape Bhutanese perceptions, actions and reactions to the world around them. The incidents described also remind us of the other dimensions of belief prevalent in Bhutan. In particular, the events and reactions to them described in this chapter allow us to see the interaction between the micro and macro level discourses. Developing from the narratives of thefts and violent attacks on temples, I consider the debate in the National Assembly in 1999, popular reactions to the debate and the role of the judiciary.

### ***Lha khang and Chorten : their significance.***

Before turning to accounts of the robberies, a brief discussion of *lha khang* and *chorten*. In Bhutan, these structures are either in private ownership or may be under the control of the government. However, it should be noted that a significant proportion are privately owned and maintained, often in remote areas.

*Chorten* represents the earliest form of the image of Buddha built to commemorate his life and the various sacred places associated with him. In Bhutan, *chorten* exist in a variety of forms. Dujardin has suggested that the Bhutanese *chorten* can be divided into three main types. The first is a square stone structure topped by a “gently sloping pyramidal roof of stone slabs” (1997:72) (figs.16 and 19). The second type of *chorten* is called *khangteg chorten* and often has a wooden roof similar to those of farmhouses. The third type is modelled on the *chorten* at the pilgrimage sites in the Kathmandu valley, Boudhanath (fig.2).and Sawyambhunath. This form with the painted eyes is the least common, though it is the basis for the *Chorten Kora* in eastern Bhutan and Chendebji (fig.20) in central Bhutan

Each *chorten* is given life by inserting a *srog shing* (the life pillar) in its central axis accompanied by other sacred objects, notably texts and other precious items. These items are referred to as *zung*. Following the construction and the placing of the *zung*, a series of rituals consecrate the *chorten* and imbue it with spiritual energy.<sup>126</sup> Similar rituals are involved in the consecration of *lha khang*.<sup>127</sup>

The imagery of the *chorten* is important for it represents the Body, Speech and Mind of the Buddha. Similarly, *lha khang* contain representations of the Body, normally statues, Speech (texts) and smaller *chorten* to represent the third aspect, the Buddha Mind.<sup>128</sup> They serve as concrete manifestations of the presence of the Buddhadharma. Although their main function is commemorative, they are constructed for other auspicious reasons. As markers of the *dharma* they are held to subdue and propitiate the local deities and spirits making the local area safe. As stabilisers, as indicated from the stories of Songtsen Gampo and Padmasambhava, they act to bring “peace to strife-torn lands, longevity to the local inhabitants, and a sense of harmony to the whole environment” (Beer

<sup>126</sup> The ceremonies to consecrate the new Khamsum Yulley Namgyel *chorten* in Punakha valley, Bhutan lasted for three days (Kuensel 02/01/2000).

<sup>127</sup> For more details see Chogay Trichen Rinpoche (1979) “The Gateway to the Temple: manual of Tibetan monastic customs, art, building and celebration” translated D Jackson.

<sup>128</sup> In Shechen, there is a row of *chorten* around which the faithfully can circumambulate. In the temples, smaller *chorten* can be seen, even as part of elaborate stucco landscapes with Buddhist saints floating. In a private chapel, a highly decorated *chorten* commemorating the founder of the monastery.

1999:128).<sup>129</sup> A Bhutanese senior school text describes *chorten* as “built in the memory of eminent lamas or to pin down evil spirits. They are also built to protect a region against evil spirits at places which are potentially dangerous such as crossroads and passes as well as landslides and accident prone areas” (1997:107). This sense of “taming” and maintaining social harmony between the human and non-human realm draws on the discussion in Chapter Two of the idea of ‘*dul wa* and discipline. The *chorten* and *lha khang* are therefore very important physical representations of harmony and stability as material embodiment of the control of the *dharma* over the forces of chaos. The temple donation discussed in Chapter Three, specifically refers to the spiritual role of the temple in defending the *dharma* and with this purpose in mind, the protection of the country as a whole. There is a close connection in the minds of my informants between the attacks on sacred sites and threats to the well being and peace of the country. As one informant remarked, rather dismissively, that “the Monk Body (the Central Monk Body maintained by the Government) blow on their horns and conduct interminable rituals all for one purpose – to protect the kingdom.”

### **Forgetting the Alphabet: murder, thefts and “treason”**

Two incidents in the last ten years have shocked many Bhutanese. First, in 1993 was the murder of a lama and his two novices at Chimi *lha khang* (fig.18)by a gang of five young men. They arrived at the *lha khang* and were given food and drink by the elderly lama. When they attacked, they slit the throat of the lama and used axes to smash the skulls of his two novices. However, they were interrupted in the process by screams from below the *lha khang* and fled. The violence of this attack and the ruthlessness of the young men who carried it out was significant. Not only did they accept the hospitality of the lama and his novices, but they were willing to take human life in order to steal the few relics owned by the lama.

The second incident occurred in November 2000 at Punakha *dzong* when one of the most precious relics in Bhutan was found to be missing. The Rangjung Karsapani, “the

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<sup>129</sup> A seventh century Tibetan king.



fig. 18

Chimi *lha khang*.



fig. 19

A damaged *chorten*, Thimphu.

principal state treasure” is a bone relic kept within a temple in Punakha *dzong* (Aris 1994:27). The Je Khenpo on returning to Punakha for the winter discovered the theft. A few days later the relic was found left outside the temple. The police subsequently arrested and charged a local man, Tsip Sangchung with its theft. It was later revealed that he had attempted to sell the relic to a collector.

Both of these incidents were highly publicised and evoked passionate expressions of opinion. However, less violent or spectacular cases occur on a frequent basis. Ngawang and his brother, Lopon Gendun showed me boxes of texts they had gathered to take to their mother’s house in Thimphu valley. They described how a row of small *chorten*, reputedly erected by a Buddhist saint, had been robbed of their relics. Their mother was determined to replace the relics and restore the spiritual power and blessings of the chorten. They had been helping her collect the necessary items and hoped to be able to begin the work in a few years time. Walking up a quiet lane in Thimphu, I noticed a neglected chorten (fig.19). It was a simple chorten, yet it reminded me of the row of elaborate chorten leading to Uncle Sengge’s house in the monastery. Stopping to take a photograph, I moved around it looking for the best angle. Looking more closely, I noticed a large hole in upper part of the chorten where the relics would have been placed. Initially thinking it was simply in a state of neglect I decided to look more closely – I was wrong. It had been vandalised.

Most people described the robbers as “poor, ignorant farmers”, “young, bored and greedy men” and “those who do not respect the dharma or the gods”. Tashi Wangyal notes:

many young people resort to petty crime, substance abuse...yet others who are more ambitious resort to desecration of sacred *chortens* and monasteries to profit from the sale of religious artefacts and antiques. This represents human greed at its most depraved form draining away the spirituality that has helped shape traditional Bhutanese values in the people (2001:117).

There is no consistency or agreement as to whether they believe those engaging in such actions are primarily from the rural villages or the poorer elements of the developing towns of Thimphu, Phuntsholing and Samdrup Jongkhar. Neither is there agreement

about their ages – it is not simply a question of juvenile delinquency. During discussions of these incidents and those known of by individual informants there was one consistent theme – “enemies of the dharma” (*bstan pa'i rudra*). Uncle Sengge had shaken his head when asked if he could recall such incidents when he was growing up or living in Kurtoe. ‘No. People had *thadamtshi* and understood *lejumdre*. How could they do these things? Now, people want more...they don't think of the future, only the present.’”

Access to the relics, especially in *lha khangs* is a key issue. Ngawang commented that in his opinion many of the thefts were carried out by caretakers who used their position to remove valuable items. Caretakers are usually drawn from the local community and serve for a period of time as caretaker. There have been a number of robberies from *lha khang* where jewels and precious *gzi* and other items have been found to be missing, often replaced with counterfeit pieces. In a recent case, two men from Isu *gewog* in Haa were both charged with the theft of six *gzi* from the *goenkhang* (protector shrine) of Paro Rinpung *Dzong*. One of the men, Wangdi aged 33 was the caretaker of the *goenkhang* at the time that a complaint was made to the police by the Paro Rinpung *dratshang* about the loss of one *gzi*. On investigation a further five *gzi* were found to be missing. Twelve former caretakers covering a period stretching as far back as 1979 were then taken in by the police to be questioned.<sup>130</sup> Tales of caretakers making replicas of the objects they intend to steal circulate widely, placing caretakers under suspicion. In turn, as several informants noted, few villagers want to assume the responsibilities of caretaker for fear of being accused of theft. This mistrust of caretakers was evident in Ngawang's comment that, “the government needs to check these people. Many are good people, but there are always those who are willing to break the trust given them.”

When I attempted to establish when attitudes towards sacred sites and objects began to deteriorate Uncle Sengge suggested the late 1970s. Other older informants generally agreed with him. It appears, at least to my informants, that the incidence of attacks on the *lha khang* and *chorten* started in the late 1970s as a result of the development of tourism in Bhutan. The numbers of thefts, they claim, escalated and I was told by various people

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<sup>130</sup> Kuensel “Two men being tried for dzi theft”03/071999: 6.

about “tourists” taking photographs of objects and arranging for them to be stolen. Certainly, many religious buildings have been closed to tourists since January 1988, and access to sacred sites tightly controlled.<sup>131</sup> The official reason given is that tourists disturb the monks living in the *lha khang* and *gon pa*.

However, it should be noted that access to monasteries and temples can be arranged through the Special Commission for Cultural Affairs in Thimphu. Separate permits are issued to be presented to the caretaker or other representative at the site specified on the permit. Generally, the permit is returned once the caretaker is satisfied that the permit is in order as a souvenir. On occasion, especially at the important sites such as Jampey lhakhang mentioned in Chapter Three, they are retained for the monastery records. Caretakers are not permit to allow tourists to enter without the appropriate permission from the Special Commission. Where permission is granted, photography is strictly prohibited. These measures seek to limit access and thereby the potential for any of the religious artefacts being stolen on demand.

In recent newspaper reports, the Royal Government has commented on the problem of the burgeoning trade in Himalayan art and the growing demand among western and Far Eastern collectors. One newspaper article stated, perhaps unwisely, that a rare nine eye gzi was worth up to one million Ngultrum (approximately £13,500)<sup>132</sup>. There can be no doubt that the thefts, and by implication the violence, have been encouraged by an illegal market in cultural artefacts. In the summer of 1999, a well known and wealthy Tibetan living in Kathmandu was arrested in Tibet by the Chinese authorities for trafficking in antiquities from Tibet.

It is difficult to discern whether the western tourists are the threat they are perceived to be, or if the reports in Kuensel have created a perception of tourists as posing a serious risk to the art works contained in the monasteries and temples scattered across the Bhutanese landscape. This is of less consequence than the frequency with which ordinary

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<sup>131</sup> Dr Pommaret, personal communication January 2000.

<sup>132</sup> Kuensel “Chendebji thieves sentenced” 31/07/1999:3 (based on current rate £1 – 74Nu).

people consider tourists as having, at least initially, started the trend of desecrations and thefts. The effects of tourism are now becoming evident in Bhutan. The tight control over access to the country and the daily rate of \$250 in the peak season has kept tourist numbers low in an attempt to limit the impact on the country. A small example of the impact of tourism, and one that was commented on by several friends in Thimphu, was the request for money I received from three children returning home along a forest path from school in Tang valley, central Bumthang. "It's bad when they are doing that. Even here in Thimphu, you can see it. People have no shame. No respect" Dorji informed me. As I tried to suggest that the onus lies with the tourist to be sensible, Dorji stopped me, "I agree. But, if we Bhutanese start to think we simply have to ask, then how can we have any pride. There is too much *kidu* mentality".

Dorji's comments mirrored Ngawang's description of a decree charging the local communities with the protection of local *lha khang* and *chorten*. In describing the decree, Ngawang moved beyond a simple commentary on the attacks and robbery to develop his own understanding of the process of decentralisation. He admitted he did not know the details of the decree or the policies, however based on what he had heard and read, he felt that it was important for people, rural and urban, to take a more active role in organising their communities. The decree placing the security of religious sites in the hands of local communities had not, in Ngawang's opinion, been properly understood by the people. As he developed this point, he argued that although local officials, the *gup* and his assistants, knew and may have understood the decree, they had failed to help transform the attitude of their communities. The over dependence on the State was seen as a major obstacle to developing a keener sense of local responsibility. Ngawang's argument resonates with others who are concerned about how well the current process of decentralisation will work, and underscores the complex relationship between apparently random incidents of violence and theft, popular constructions of the role of the State, and the on-going process of State transformation.

"These people who are thieving from the *lha khang* and *chorten* are not religious" Tshering declared vehemently. "They do not know the alphabet of the Bhutanese people.

They are not remembering *gyewa cu* (the ten virtuous and non-virtuous actions of body, speech and mind described in Chapter Two). Instead, they kill, they steal, Why, because they are greedy and hold wrong views.” For Tshering, as with many of the people I spoke with, the underlying basis of their daily lives is governed by Buddhist teachings<sup>133</sup>. As “enemies of the dharma”, those engaged in the desecration and theft of the *kusunghukten* are forgetting that the heaviest of the ten non-virtues is the denial of karma. The representative for the Central Monk Body described them during the 77<sup>th</sup> National Assembly as “people who have neither faith nor the ability to discriminate between good and evil”<sup>134</sup>.

Ngawang often remarked on the absence of any understanding among his own age group (early twenties) of the importance of religion and *thadamtshi*. One evening during a power cut, he suddenly declared “I must speak truthfully. Many people, especially the young, no longer understand the importance of the teachings of Buddha”. As he developed this comment, he stressed that as life changes in Bhutan new expectations have arisen and possibilities. Whilst he stressed the importance of change and the improvement of the general living conditions of the rural people, his remarks contained a running theme of the problems caused by change and the negative impact it is having on the young. Ngawang’s comments are important for a significant percentage of the Bhutanese population is under 25 years of age. When he described *thadamtshi*, he explained that it incorporated respect for one’s elders, for the community and for the local deities. Strongly linked with the notion of respect, is a sense of loyalty to one’s family, community and by extension to the country. Ngawang attributed the decline to a lack of understanding of *thadamtshi* by teachers, the failure of parents to educate their children and the need for more religious education. Similar concerns were expressed by other informants and many commented on the general lack of Buddhist education available in Bhutan outside the monasteries.

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<sup>133</sup> However, the knowledge of Buddhist teachings is varied and this was commented on openly by many of the people with whom I spoke.

<sup>134</sup> Kuensel, 77<sup>th</sup> National Assembly Supplement, September 17<sup>th</sup> 1999:15.

Other people spoke less directly about what they felt or perceived as a threat to respect for one's elders, for one's community and family. This was not simply revealed in everyday interaction, but rather spoke about the increasing disrespect shown to the local deities and the decline in religious values which are seen as underpinning everyday life in Bhutan. Naturally, one would expect an emphasis on religious values from the monks with whom I spoke, but the lay Bhutanese interviewed all expressed similar concerns. These individuals were skilled artisans, doctors and government employees visiting the Shechen monastery or encountered in Thimphu and Bumthang. Several spoke about the inability to read *choke*, or the language of Tibetan religious writings. In the past this was taught at school but the majority of students and recent school-leavers denied being able to read or understand religious language. Although the vast majority identified themselves as being Buddhists, a large proportion admitted to not engaging in regular offerings or recitation of prayers. A fear that the Buddhist faith is being undermined inside the country through a growing distance between religious and secular values was often expressed without any clear ideas on how to address these concerns.

Many of these themes and concerns were incorporated in a Bhutanese film entitled "Karma's Chair". The film is set in rural Bhutan and follows the life of a young man who after seeing a "chair" wants to become a chair maker. Despite his father's desire for him to lead a religious life he is, eventually, permitted to leave for Thimphu. In Thimphu, Karma experiences the impact of the "modern" and returns to the village to present his father with a chair. However, his father prefers his cushion and the chair is subsequently rejected by other villagers in turn. In the end, it is used by the only person with a sewing machine. "Karma's Chair" highlights the tensions between rural and urban life and the problem of rural-urban migration. More significant is the sense of the erosion of religious values, partly demonstrated by a *chorten* robbery, and partly by the desire of the main character to follow a secular life away from the village.<sup>135</sup>

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<sup>135</sup> "Karma's Chair" 1998. "Phorpa" 1999( The Cup) by Dzongsar Jamyang Khyentse Rinpoche in a more light-hearted way also touches on the pressures facing even monasteries as external, secular events impact on the monks and the life and discipline of the monastery. During my stay at the monastery, I was aware of the conflicting aspirations and desires of young monks torn between a monastic life and its discipline and the "possibilities" of a lay life as represented in the Hollywood and Bollywood movies watched and their encounters with western tourists.

When discussing the *chorten* and *lha khang* robberies, and desecration caused of sacred sites, a frequent aspect of the concern voiced by the Bhutanese was specifically about the implications of angering the local protective deities. Ngawang explained :

If there is *kusunghukten*<sup>136</sup>, especially when made by a special lama, this is very important. The lama has pacified the local spirits and turned them to dharma. The *kusunghukten* brings them peace. It creates harmony amongst these beings. If this is destroyed then the spirits will not be at peace and will bring harm to humans. Many people, especially young people do not understand the importance of *kusunghukten*. The Protectors do get angry. More important is the fact that they may leave. This is very worrying. If we show no respect (*thadamtshi*) then they may leave us. This is a very degenerate age - many problems, especially new illness which we can not cure arising as we turn away from our custom (*lugs srol*).

Whilst Ngawang expressed a fear that these deities, if angered, may chose to leave typically, they are believed to display their displeasure by causing disease or the death of livestock. The importance of the local deities cannot be underestimated. It is a prominent feature of daily life in the rural villages. The local deities are “geared towards solving the daily problems of a person or community” (Pommaret 1996:53). To anger them, even through the actions of a criminal, is taken seriously. As one *chimi* commented, the desecrations “will affect the good fortune of the communities in the concerned areas”.<sup>137</sup> Indeed, it was stated by a number of informants that the thieves would never take from their own village *lha khang* or *chorten*, rather they would travel to other villages and districts to carry out their thefts. However, as one case illustrates, Wangchuk, 29 and Sonam Dendup, 25, were arrested for vandalising a chorten in “their village in Geykar, Jurmey gewog” thieves are prepared to rob from sacred sites in their own community.

Perhaps, the belief that thieves are unwilling to incur the wrath of the local deity by travelling beyond their own community reflects an unspoken hope that these individuals are not so devoid of social consciousness that they are willing to avoid bringing unnecessary hardship to their community. The more prosaic answer may simply be that

<sup>136</sup> *Kusunghukten* refers to the body (*sku*), speech (*gsung*) and mind (*thugs*) support (*rten*) of a Buddha.

<sup>137</sup> Kuensel, 77<sup>th</sup> National Assembly Supplement, September 17<sup>th</sup> 1999:14.

thieves are trying to avoid recognition, rather than any social concern for their own community. Nor, can it be overlooked that “some of these criminals are local inhabitants who are knowledgeable about the *nangtens* in the *lha khang* and *goendey*s”.<sup>138</sup>

### **The *Thrimzhung Chenmo* and the National Assembly: the debate over capital punishment**

Under Section Tha 1 of the *Thrimzhung Chenmo*, which deals with the construction and maintenance of *lha khang* and other religious buildings in Bhutan it states:

Tha 1 – 9 Any person/persons committing an act of theft/robbery of kusung-thukten from a private or a government owned lhakhang or goenkhang shall be sentenced to life imprisonment.

Tha 1 – 11 Any person/persons breaking open a *chorten* or an image and removing the Zung shall be sentenced to life imprisonment.

Tha 1 – 12 A person who has already been convicted once for committing theft of a *lhakhang* or a *chorten* and repeats the crime again shall be punished with capital punishment.

These provisions in the *Thrimzhung Chenmo* set out the position of the formal laws to guide judges when passing sentence on those convicted of robbing sacred sites in Bhutan.

The seriousness of these crimes was subtly, though indirectly, reflected in the recent amnesty granted by the King in December 1999. Political figures were granted amnesty, but those convicted of *lha khang* or *chorten* robberies and murder were excluded. And yet, whilst it would appear that the law code is unambiguous about the punishments which are to be imposed on those found guilty of such acts, the practice differs from the formal statement of the law. Typically, those convicted are subject to life imprisonment. In recent years, there have been fierce debates during the National Assembly over the application of section Tha 1 – 12, the clause setting down the death penalty for those who have robbed more than once from a *lha khang* or *chorten*. The material drawn on for this

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<sup>138</sup> Ibid - remarks made by the Home Minister.

chapter is based on the reports of the 77<sup>th</sup> National Assembly held in Thimphu in July/August 1999.

In the case of the recent attempt to rob the Chendebji *chorten*, Trongsa Dzongkhag Court sentenced the three men accused of the attempted robbery to life imprisonment. It is not reported whether those convicted, Som Bahadur Tamang, Dawa Tamang and Chimmi had previously committed a similar offence. In the absence of a prior conviction, the life sentences passed by the court are in keeping with the provisions of Tha 1 – 9. However, in the case of Goembo, a 40 year old man from near Paro in western Bhutan, the court did not follow the provisions of Tha1 – 12. Although, he had several prior convictions involving the desecration and theft of at least three *lha khang* and several *chorten*, on passing judgement on him in October 1998 Goembo was sentenced to life imprisonment. This judgement was issued jointly by the courts in Paro and Thimphu shortly after the 76<sup>th</sup> National Assembly during which there were calls “for capital punishment to be awarded for criminals who repeated the offence”.<sup>139</sup>

During the 77<sup>th</sup> National Assembly, the issue of capital punishment was once more raised for discussion. In one of the longest debates of the National Assembly, the representatives (*chimi*) expressed a wide range of views. The representative from the capital, Thimphu, argued that Bhutan’s sacred sites and temples were being “regularly desecrated and robbed by anti-dharma elements within the country and ngolops from outside”.<sup>140</sup> He argued that “the anti-dharma elements are exploiting a society firmly entrenched in Buddhist values...to deter these criminals and for the overall security of the country those who are caught must be imprisoned for life, and for the more serious cases, capital punishment must be imposed.”<sup>141</sup>

Other representatives supported the call for the implementation of Tha 1 – 12. In words reminiscent to those found in the eighteenth century law code, the *bka’ khrims* (Aris

<sup>139</sup> Kuensel, Editorial, 10/10/ 1998: 2

<sup>140</sup> Kuensel, “Assembly will not implement capital punishment for the desecration of *Kusungthuktens*”, 10/07/ 1999:18.

<sup>141</sup> Ibid.

1986:143, epigraph at beginning of this chapter), the representative for Chukha argued that the increase in the number of robberies was a direct result of the leniency in enforcing the law. Developing this idea the *chimi* stated “Life imprisonment involves a long legal wrangle by the end of which the criminal might even escape. Capital punishment will send the right message and put an end to the desecration of monasteries and *chorten*”.<sup>142</sup> The representative for Haa took up the problems of imprisonment arguing that those convicted do not “undergo rigorous imprisonment. They enjoy many facilities and have an easy life in prison”.<sup>143</sup>

The difficulty facing the National Assembly was recognised by the Dujeygang representative who stressed the spiritual damage caused to the country. “As Buddhists, it hurts us to propose the death penalty. But the alternative is the loss of the very essence of our spiritual well being”.<sup>144</sup> Here we find echoes of many of my informants concerns. The damage to the spiritual well being and by extension the material happiness of the country is at stake. The Punakha representative took up this idea when he stated “if evil is not suppressed, good will not prosper”.<sup>145</sup> And yet, for all the strength of feeling displayed in these statements there were many who argued against the enforcement of Tha 1- 12.

Several representatives stressed that as a Buddhist nation it would be more appropriate to take steps to prevent further robberies and acts of sacrilege than to take the lives of those convicted. Emphasising the wider dimensions of the debate on capital punishment various representatives pointed out that Bhutan was a member of the United Nations and was seeking to uphold human rights. To impose capital punishment would therefore be a counterproductive measure.<sup>146</sup> The representative from Wangdiphodrang, near Pangsho *gon pa* mentioned earlier, argued that often the most vulnerable sites were remote, privately owned rather than those under government care with caretakers. Therefore, as

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<sup>142</sup> ibid.

<sup>143</sup> ibid.

<sup>144</sup> ibid.

<sup>145</sup> ibid.

<sup>146</sup> Kuensel, 77<sup>th</sup> National Assembly Supplement, 17/09/1999:15.

suggested by the Trongsa representative more monk caretakers should be appointed to safeguard the *lha khang*.

The representatives from Trashiyangtse and Tobesa both argued that capital punishment was unthinkable in a Buddhist nation. Rather, it was up to the people to “help protect the country’s heritage. In this era of deteriorating values, every citizen must come forward to help guard the country’s priceless possessions”.<sup>147</sup> This stress on the collective responsibility for the safety and maintenance of the *lha khang* and *chorten* was raised by several of my informants who felt that it was an issue, which must be tackled by local communities. Many felt that local communities had failed to respond fully to a Kasho issued by the king in 1993 which entrusted the care of *lha khangs*, *chortens* and so forth to the local communities.

At the end of the debate the Speaker of the National Assembly, Lyonpo Kinzang Dorji, noted, “members were satisfied with the existing laws of the land although some felt it was not adequately implemented”.<sup>148</sup> In addition, he noted that although no change was being suggested to the existing laws that “representatives of the government, dratshang and the people suggested that it should be enforced more strictly”. The Assembly resolved that the judiciary should “strictly enforce Tha 1- 9” of the *Thrimzhung Chenmo* and “not show any leniency to those found guilty of desecrating *lha khangs* and *chortens* and robbery of kusung thuktens”.<sup>149</sup> Furthermore, “the Royal Bhutan Police must not keep such criminals in the same prison with other convicts”. Instead those convicted under Tha 1 – 9 “must be kept in strict confinement”.<sup>150</sup> It is unclear quite what was meant by this admonition – solitary confinement or simple segregation from other convicted prisoners.

The debate over the death penalty continues to resurface during the National Assembly. During the 79<sup>th</sup> National Assembly in 2001 it was unsurprising after the theft of the

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<sup>147</sup> ibid.

<sup>148</sup> ibid.

<sup>149</sup> ibid.

<sup>150</sup> ibid.

Rangjung Karsapani that there should be renewed, and more insistent calls for “the most harsh punishment for these desecrators”.<sup>151</sup> The recovery of the relic brought to Bhutan by the Zhabdrung, Ngawang Namgyal was less a success for the Royal Bhutan Police, than the fear of capture and a possible flash of conscience by the thief, Tsip Sanchung, who on failing to meet the potential buyer for the relic in Phuntsholing returned to his home near Punakha. On hearing that the theft had been discovered and after being questioned by police he returned the relic under cover of night, leaving it outside the temple. The debate in the National Assembly was preceded by a request from the Assembly members to the government “to protect national treasures”. The Home Minister, Lyonpo Thinley Gyamtsho, commented that a series of preventative measures were underway to protect religious objects, but also added that the government could not “ensure the total safety of relics unless the people themselves shared the responsibility.”<sup>152</sup> The Home Minister’s final words echo Ngawang’s comments on the need for local communities to develop a more active attitude mentioned earlier.

The judiciary faced with the task of maintaining and applying the laws has come under heavy criticism. One informant, when asked about the possible use of capital punishment in case of *lha khang* and *chorten* robberies, declared:

They should be executed. What use is it if these people are allowed to live? Where is the message to others that may plan to do the same? They are put in prison but manage to escape. No. The judges should sentence these people to death. It may be harsh. But, if we don’t act now when will these despicable acts stop?

Informants often remarked upon the apparent failure or impotence of the law to curb the increase in the occurrence of these thefts and the violence associated with them. Yet, it was also illustrative of the difference of opinion to be found among ordinary people. It was interesting to note during conversations how they chose to present the role of the courts, of the state and the law. In comparison to the reluctance and ambivalence discussed earlier, on matters of security and crime those with whom I spoke with invoked

<sup>151</sup> Kuenselonline “Assembly members express concern over the safety of sacred *nangtens*” 07/07/2001.

<sup>152</sup> Ibid.

the need for stricter laws, more regulation and a greater involvement by the State, either through the Royal Bhutan Police or the courts. These attitudes are reflected in more recent reactions to a number of newspaper reports on drug use, murders, and other “anti-social” activities, including a report on an increase in HIV infection which can be characterised as calling for more legislation, more policing and wider powers to the enforcement agencies. As one respondent notes “enforcement wing must necessarily [be] backed by law that is suited to our social conditions and also in keeping with standards [of] practice elsewhere”.<sup>153</sup>

Whilst the informant mentioned above had no doubts about the necessity of the death penalty, others were less certain that it was either justifiable or beneficial. Those opposing the implementation of capital punishment in these cases commented on the ignorance of those involved in these crimes and the problems caused by developing material expectations and unemployment. As mentioned above, many felt that the thieves were “dupes” in a game in which they were the losers. Nor was it lost on my informants that the level of *chorten* and *lha khang* robberies has risen since the late 1970s. Although not articulated, there was a strong sense from at least three-quarters of the informants that the increase mirrors the difficulties facing Bhutan in its attempt to accommodate tradition and change.

In explaining the life sentence passed on Goembo by the courts in Thimphu and Paro, a judiciary official stressed that the “law [does] not exist merely to impart penalties. The judiciary aim[s] to correct and rehabilitate wayward individuals as [a] means to human and social development”<sup>154</sup>. By asserting its independence from the executive, the judiciary has sought to take a less rigid view of the need to strictly apply the provisions of Section 1 – 12. This is not the place for a discussion of the role of “imprisonment” and the significance of removing an individual’s personal liberty, but the role of the judiciary as an active, social institution which draws on everyday ideas and sensitivities is significant. It contradicts the image of a rigid, formal institution and reflects the fluidity

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<sup>153</sup> Kuenselonline “Drug abuse:is it out of control?” Comment by Vugpa. 19/05/02.

<sup>154</sup> Kuensel, “Chorten robber sentenced” 10/10/1998.

to be encountered in everyday life as it negotiates its position within the complex interrelationship between formal institutions and the social, mundane world of the individual subject.

The courts have displayed sensitivity towards the moral outrage caused by these crimes and the impact they have had on the country as a whole. These crimes and the reactions to them in many ways reflect a sense of vulnerability and a withering of a common sense of communal cohesion. Yet, behind this apparent decline is a strong emphasis by the judiciary on rehabilitation and reform of those convicted. A life sentence may be commuted for those who show regret and recognise the harm they have caused. So we can detect even in these extreme situations a continued emphasis on restorative justice. A young lawyer described the importance of being strict in sentencing, but also to recognising the possibility for the reform of behaviour. The courts have mediated between the range of publicly expressed views and sought to provide a stern punishment, in lieu of capital punishment, and simultaneously acknowledge the underlying values of Bhutanese Buddhist belief. Implicitly, the courts are attempting to maintain shared values whilst being seen to act in a manner generally approved by the people and endorsed by the National Assembly in Bhutan. Furthermore, although not specifically discussed is the role of the courts and of the State legal system as simultaneously a site, which attracts external scrutiny and a marker of national identity. The High Court has been conscious of trying to operate within acceptable standards as conceived by international bodies such as Amnesty International and the IRC.

### **Creating meaning: moral sense and law in society**

What can we learn from the issues arising out of the discussion of the *chorten* and *lha khang* robberies? Do the stories and accounts cast a different light upon these events? By the same token, do these acts of violence serve to cast light on the values, which are the foundation for both the informal and formal aspects of the legal system of Bhutan? As I have just indicated the robberies and attacks are important less for their individual facts than for what they reveal. Standing back from the particularities of the court cases, the

debates and the narratives what is revealed is law as a social practice. The interplay of societal norms and values, notions of identity and the sense of unease and vulnerability created by the breach of those apparently shared values draw on various popular methods of imagining and invoking law.

In *The Division of Labour* Durkheim (1984) presents a theory of punishment which treats punishment as a matter of morality and social solidarity. Beginning his discussion of “crimes” he points out, rightly, those crimes are neither “given” nor “natural” categories. Rather, they represent, in his opinion, those acts which seriously violate a society’s collective conscience. As he develops this idea, Durkheim links the violation of the sacred norms of the collective conscience with a punitive reaction. The function of the “State” as guardian of the collective conscience is “to create respect for the beliefs, traditions and collective practices: that is, to defend the common conscience against all enemies within and without” (Durkheim 1984:73). The sanctions set out in the *Thrimzhung Chenmo* therefore represent, for Durkheim at least, not simple conventions or regulations but sacred prohibitions which command wide social assent. Or as he wrote “what gives penal law its peculiar character is the ...extraordinary authority of the rules which it sanctions” (1984:141). As reflected in the reactions of my Bhutanese informants, there is a strong sense of a shared perception of the social and moral order, even among those not directly involved, which informs their discussion of the *chorten* and *lha khang* robberies. These reactions “caused by the criminal’s desecration of sacred things” are the basis for the authority and importance of Section Tha. This sense of outrage, Durkheim argues, creates a passionate desire for the criminal to be punished. “Passion... is the soul of punishment” (Durkheim 1984:86).

The strength of outrage conveyed by those I spoke with, and which can be seen in the National Assembly debates appears to follow Durkheim’s analysis of “punishment”. Yet, if we accept that the State, or in this case the judiciary, is to act as the guardian of tradition and social values, how then do we interpret the decision not to implement Section Tha 1 – 12, and the reaction to this decision? The judiciary has sought, arguably, to highlight and indeed respond to changing perceptions of “punishment” in Bhutan.

Since the promulgation of the *Thrimzhung Chenmo* no individual has been executed for this offence.<sup>155</sup> The National Assembly has consistently endorsed the judiciary's strict application of Section Tha 1 – 9, rather than capital punishment for repeat or multiple offences. In effect, the judiciary has responded to the most important aspect underlying punishment “to maintain social cohesion intact, while maintaining all its vitality in the common conscience” (Durkheim 1984:108). In turn, this is intertwined with statements emphasising Bhutan as a “Buddhist nation.”<sup>156</sup>

Although, a number of those whom I spoke with did voice their disagreement with the National Assembly decision; the majority felt that capital punishment was not an acceptable punishment. Of course, I cannot claim that they represent the Bhutanese as a whole, but they do represent a cross section of contemporary Bhutan. The judiciary, as the formal aspect of the “outraged” society, is charged with expressing public feeling and carrying out the punishment of those who have been found guilty. However, it draws its force and authority from the collective conscience and must be flexible in order to reflect, as well as perhaps, lead changes in public feeling. It is worth noting that those who expressed dissatisfaction over the non-implementation were typically older people, whilst those who believed that life imprisonment was more appropriate were generally under 35 years of age. This is important. There is an assumption of shared values, which to an extent is broadly acceptable. However, with the transformation of the Bhutanese State, what is required is not an authoritative expression of shared values, but a need to demonstrate the rule of law. The consistent application of Section Tha 1 – 9 arguably reflects subtle political and social changes. The outcome of judicial decisions in cases which are so intimately linked to deeply held beliefs and notions of moral behaviour form patterns that, intended or not, both reflect and define political and social trends in Bhutan.

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<sup>155</sup> Parmanand (1992:86) wrongly asserts that capital punishment was abolished by the Third King. Capital Punishment remains, at least technically, a possible sentence in certain instances – namely, treason and *chorten* robbery. The only case, of which i am aware, occurred in the 1960s when an army officer was executed for treason. Yet, the image of capital punishment and the power of the State over the bodies of its subjects remains a powerful one.

<sup>156</sup> It is important of course, to be cautious when dealing with what people understand or believe (for example, M Spiro 1970 *Buddhism and Society: a great tradition and its Burmese Vicissitudes*). I do not want to suggest that all Bhutanese share the same understandings, or depth of knowledge. However, there is a level at which those I spoke to among the lay community view themselves as Buddhist and present a “Buddhist” perspective.

There is a belief that those engaged in these acts have broken their moral attachment to their communities, and to the nation. However, although provoking strong reactions, there is agreement that the courts, thereby the State, should not apply the death penalty. Often presented in terms of Buddhist compassion, there is as well an underlying awareness of external perceptions of Bhutan (e.g. Amnesty International, ICRC).

This aspect is alluded to in the National Assembly debates and in responses from some of my informants. It is interesting therefore to see the judiciary developing as the upholder, even embodiment of a national morality. As mentioned in Chapter Two, the first work on *driglam namzha* was published by the High Court of Justice in 1997, and in Chapter Four, recent legal research has stressed the underlying principles of Buddhism which the judiciary seeks to promote (Planning Commission 1999; RHCJ n.d). Underlying Durkheim's work on law and morality, there is a sense that law does not merely impose duties, or moral discipline. Law can serve to facilitate social cohesion. However, as of Bhutanese society changes, the nature of the moral attachment experienced by Bhutanese, especially the young, educated Bhutanese, will change. Those who attack sacred sites are those whose attachment to the wider social values and even to their immediate community have been, in the opinion of informants, broken. The response of the judiciary has stressed the social opprobrium towards those found guilty, whilst tempering the judgement from the death penalty to one of life imprisonment. This move in part also seeks to provide the offender with a possibility of regaining his moral identity by acknowledging his offences. As Ngawang noted, "Mila (a Buddhist saint) used black magic and killed people, but overcame his negativity and became a great practitioner and teacher."<sup>157</sup>

## Concluding Remarks

The issues and reactions to the increasing incidence of *chorten* and *lha khang* thefts provide an interesting opportunity to consider an aspect of "legality". Punishment is an

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<sup>157</sup> An illustrated cartoon version of Milarepa's life story was a popular book among the monks and lay people alike, who even if they could not read the English dialogue were able to follow the story which is widely known.

aspect of all societies, which is directly implicated in the way in which daily life is organised. As people deal negotiate the countless encounters and experiences of everyday life and the multiple levels which texture the mundane the institutions of criminal law, of punishment and censure, play an important, if overlooked, role. Implicit throughout the debates and discussions on the desecration of *chorten* and *lha khang* is the concept of karma (*las*).<sup>158</sup> The immense negativity associated with these crimes was treated, as so awful, that many felt that it was not necessary to execute these criminals. Rather, it would be better for them and for society, to try to rehabilitate them.<sup>159</sup> Of course, rehabilitation for repeat offenders was also recognised as perhaps impossible, so strict confinement was all that could be done to manage those individuals. Several commented on the importance of allowing these individuals time to regret their actions, and indeed felt it was important for society, as represented by the courts, to show compassion to these people.

The *chorten* and *lha khang* desecrations serve to illuminate the links between traditional values, notably *thadamtshi*, and law. Although the decision to endorse the courts' policy of life imprisonment helps to validate the policy, it does not and cannot interfere directly with the separation of powers. Passavant describes law as "a cultural code of conduct"(2002:727). The issues discussed in this chapter demonstrate the various aspects of social life, which intersect and merge.

The relevance of the discussions, and indeed the significance of these events, demonstrate their importance for enabling people to examine, contemplate and articulate their own interpretation not only of the violence implicit, in real and symbolic terms, in the robberies and murders, but also for formulating their own interaction and use of the legal, whether formal or informal to negotiate their daily lives. As expressed by people like Ngawang, Pema and other informants, legal consciousness can be described as a process. By their words and deeds they construct "legal" meanings, actions, practices and

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<sup>158</sup> One aspect I have had to leave out of the discussion in this paper is the inclusion of *chorten* robbery and desecration as one of the five nearly boundless actions (*mtshams med pa dang nye ba lnga*).

<sup>159</sup> The importance of rehabilitation of offenders can be seen with the opening of a Juvenile Offenders Rehabilitation Centre in 1997. Although, the young offenders are there due to petty crimes, it reflects a desire to provide help to reintegrate offenders into society. One story told to me emphasised that people can change once they see the damage they have caused and develop regret.

institutions. As they express or enact this “legal” consciousness, through such statements as “the *gyewa cu* are important”, and the restoration of vandalised *chorten*, the Bhutanese draw upon and develop the everyday aspect of law by emphasising underlying social values. Law, in both its formal sense and its folk sense draws on, upholds and reflects these values. In turn, these form part of the various discursive registers, which express and embody notions of rights, duties and obligation as well as political and social legitimacy. Goodrich comments that we should not ignore “precisely that dimension of the text and its context which performs the labour of signification and so gives the text its effect” (1991:252). Here, we cannot ignore the choice to move beyond the details of the law code and the wider adjustments this has necessitated on ordinary perceptions of the law, regulation and the State.

## Conclusion

### The Zhabdrung's Legacy: morality, authority and state legitimacy

Constrained by means of religious law which is like a silken knot and pressing down with the weight of secular law which is like that of a golden yoke, he introduced the good legal system relating to the religious and secular affairs and so it must be known that it is due solely to the compassion of the lama [Zhabdrung] Ngawang Namgyal that up to the present an enjoyable condition of glorious happiness has arisen in this very kingdom of the Southern Lands [Bhutan] (Aris 1976: 630-631).

These lines are from a text recited annually at Punakha *dzong* marking the New Year. It is interesting to note the specific references to the Zhabdrung, Ngawang Namgyal, and introducing law to Bhutan. Elsewhere in the text, the same theme is repeated, “he introduced laws where there had been no southern laws... established the custom of the ten virtuous actions and sixteen pure observances” (Aris 1976:628).<sup>1</sup> The imagery of the silken knot and golden yoke appears in the seal of the Royal Courts of Justice, serving to remind Bhutanese of the close intertwining of religious belief and secular law. Secular law seeks to discipline the individual in the same manner as a yoke controls an ox. The same text refers to the conduct of those to whom it was originally addressed, admonishing to “keep in mind that if you are ignorant of your proper behaviour, then for whatever actions you commit which contravene your duties... fierce penalties will be imposed” (ibid.: 632). The above quotations encapsulate the themes of this thesis. First the role of law and its relationship to the Bhutanese State. Secondly, the importance of religious beliefs in defining the character of Bhutanese law and the shared social values of *thadamtshi* and *bey zha*. Thirdly, the role of discipline, both in the formal sense of *driglam namzha*, and also in the everyday concerns of Bhutanese about the behaviour of officials.

At the beginning of the 1950s, the structures of authority and power were primarily those put into place by the Zhabdrung in the mid-seventeenth century. The Dual System may have collapsed, yet secular and spiritual authority continues to be shared between the monarch and the Je Khenpo. The legacy of the Zhabdrung cannot be underestimated. The *dzongs* remain the seats of state power and authority whilst state

links with the Druk Kagyupa continue to be maintained. The Je Khenpo appoints *lam neten* (a representative of the Central Monk Body) to each *dzongkhag* and the state sponsors the official Monk Body. Even the titles and roles of officials draw on the past, as highlighted by the recent change in the terms used for judge from *thrimpon* to *drangpon* (Chapter Four). Implicitly, the presence of the Zhabdrung continues to inform the official vision of the Bhutanese State. Powerful cultural practices, codified and promoted by the Zhabdrung, continue to influence how the Bhutanese State is symbolically represented and perceived by many Bhutanese. And yet, there is a tension in the relationship between the Zhabdrung and the present-day state. Bhutan has been transformed socially and politically from a Church state, dominated by the Drukpa Kagyu, to a secular state, which stresses the economic and social welfare of its population (Aris 1994, Ura 1994).

The establishment of the monarchy in 1907, based on a contract signed by the leading figures of the period, drew on and developed notions of authority and legitimacy, recognised within the Bhutanese system. The Third King was able to use his position and authority to introduce major social, economic and political reforms. More recently, the Fourth King has used his authority to legitimise a profound change in the political structure of the Bhutanese State. The 1998 *Kasho* transformed the Bhutanese polity with the power of the monarchy passed to an elected Cabinet of Minister and further changes pending the ratification of the draft Constitution. However, in the redistribution of power, the moral authority of the monarch has been emphasised. As Mathou notes, “the current evolution will enhance the King’s sacred dimension” (1999a:130).

### **Maintaining the moral fabric: embodied practices and the moral community**

In Chapter Two, I have described the moral framework and shared social values that are viewed as underpinning Bhutanese society, before then discussing the presence of law, broadly conceived, in everyday life. Chapter Four provided an overview of the process of legal change in Bhutan since the 1950s. In particular, the institutional

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<sup>1</sup> See Chapter Two for more on the Ten Virtuous Actions and Sixteen Pure Observances.

development and the move towards a professional legal class are described at length. In a recent address to members of the judiciary, King Jigme Sengye Wangchuk “commended the general performance of the judicial system, especially the progress over the past decade”.<sup>2</sup> Following on from Gupta (1995), in Chapters Five and Six, I have focused on the lower levels of the state encountered in daily life. This is the level at which most contact between the state and the majority of Bhutanese occurs for “this is where many of their images of the state are forged” (1995:376). Finally, in Chapter Seven, I have discussed popular concern over attacks on sacred sites and the debates over the application of the death penalty. Throughout, I have illustrated the contradictory nature of people’s attitudes towards the Bhutanese State. On the one hand, there is a desire for the State to guarantee social services and employment, and to offer protection and security. On the other, there is a strong desire for the State not to intrude too much in people’s daily lives and private affairs (see also Wikan 1996). In part, the continued emphasis on mediation emphasises the strong desire to retain control over events, and as illustrated in Chapters Five and Six, there is a delicate balance sought by individuals to retain their own autonomy, and to limit their involvement with bureaucracy. Yet, the reactions and concerns voiced in Chapter Seven emphasise the desire for the State to act swiftly.

Subtle and not so subtle evasions of “*dasho dzongdag’s*” orders and calls to perform service are often encountered, even if not openly discussed. Below the apparent tight hierarchy and control, people in their daily lives are able to resist and even ignore officials and their demands. Various omissions, occur which provided they cause no problems for others, are accepted as part of the alternative moral order. Only if the omission or behaviour impinges on others or causes disharmony in the community, will it be viewed negatively. In the urban areas, such evasions occur as well. It would be unrealistic to assume that people obey orders, regulations and laws consistently and constantly. Alternative practices based on a shared sense of morality remains the main source of guidance in daily life. *Thadamtshi* and *bey zhag* are the foundations for personal conduct towards one’s relatives and community. The breakdown in social relations and the abuse of those who deserve care are viewed with apprehension. For example, stories of the cruel stepparent circulate either as songs, films or even school

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<sup>2</sup> Kuenselonline “His Majesty emphasises the important role of the judiciary” 31/08/2002.



fig. 20 Chendebji - main *chorten* is a copy of the Boudhanath stupa.

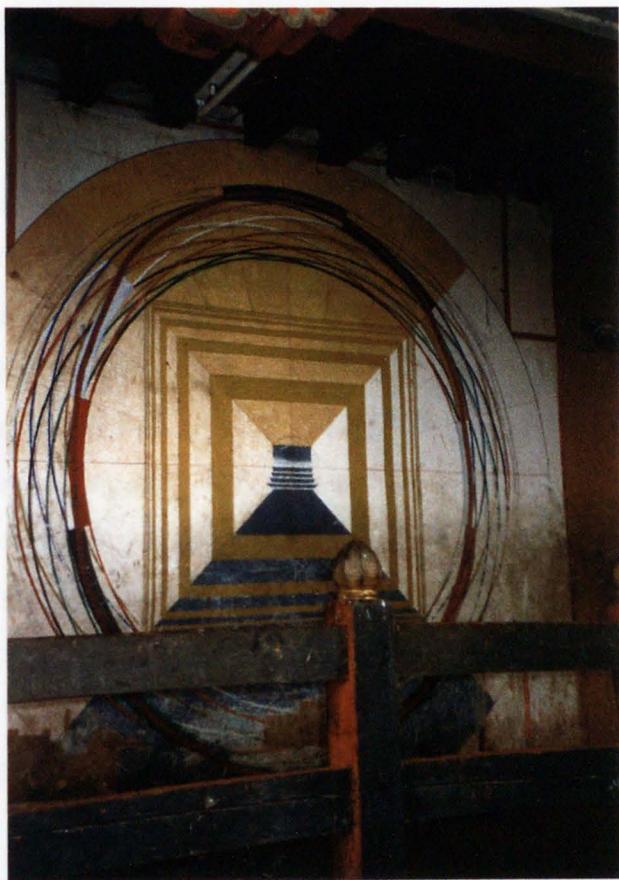


fig. 21 Mandala - Simtokha dzong.

dramas, for they represent the absence of *thadamtshi*, not only by the cruel step parent but also the “weak” parent who does nothing to shield their child from the unhappiness caused. In real life, Tshering tried hard as stepmother to accommodate her husband’s two sons but could not accept them “stealing” and selling household items. She did not want them to be reported to the police and expressed concern over their behaviour, so KT arranged for their admission to a boarding school in the hope that they would calm down and learn discipline.

The social values and norms discussed in this thesis govern, both in popular and official discourse, the behaviour associated with them. It is generally held that they are transmitted from generation to generation through communal processes, and yet, as the Bhutanese seek to balance tradition with change, these communal processes are themselves being changed. Of course, listening to my informants, these social norms and values are often heeded, because they are viewed as “how things are done here” (f/n 02/06/01). However, all noted that “how things are done” do change – commenting on their parents or grandparents, the differences between the generations is apparent. Older informants stressed the virtues of family ties and emphasised a specific cultural idiom. The use of the same idiom among younger Bhutanese cannot be assumed to be wholly the same. The re-emphasis on *driglam namzha* in 1989 has on the one hand reminded Bhutanese of the practice, as well as attempted to create a hegemonic form of public discourse that validates its moral authority. The references to *thadamtshi*, and *bey zha* are significant for revealing that everyday life, even in urban settings, is dominated by these considerations. Where there is a perceived absence of *thadamtshi*, it reveals a breakdown in moral order and distances the individual or group from the community. At a time when many referred to this period as a dark age or a period of degeneration, of chaos and moral crisis, to uphold *thadamtshi*, in part represents the supremacy of Buddhist morality even over the laws of the Bhutanese state.

Throughout this thesis, I have argued that law is a key part of the process of the transformation not only of the Bhutanese State, but also of everyday life. Although originally, it was my intention to example the interrelationship between informal and formal state laws, the discourse concerning social values and their interrelationship with the transformation of Bhutan provides an important vantage point from which to

examine law in everyday life among urban Bhutanese. I argue that the development of the legal system and the role of the National Assembly trace the political development of Bhutan during a period of its history when it began to increasingly engage with outside pressures and concepts. The equality of status promised by the original *Thrimzhung Chenmo* is now beginning to be felt, as attitudes to hierarchical authority alter. Nor, can the role of Bhutanese law, as it has been created and shaped over the last twenty years, be ignored for its part in the process of defining the nation.<sup>3</sup> As Fitzpatrick notes “the nation’s law is one of the key components of a unifying nationalism” (1992:115).

The Zhabdrung’s political and legal frameworks have been transformed. Yet, from the period of unification in the early seventeenth century onwards there have been sustained attempts to create a national culture with a universally accepted set of values. I have sought through the ethnography to give a sense of how these values appear in everyday life. Nader notes that “cultural values underlying disputing processes change over time and circumstances and are profoundly political” (1993: 443). These same values are now under pressure from the impact of urbanisation and the emergence of new demands and desires by an educated middle class. Lying behind the rhetoric of “tradition” is an attempt to create a collective identity for the “seeming fixity with respect to a reality in flux is one characteristic that an image of community must possess” (Urban 1996:149). As the contemporary legal system has developed, it has been closely interlinked with the development of the modern nation-state. Its eventual independence from the direct political influence of the Home Ministry was an important, indeed essential step. The role of the courts to apply the resolutions of the National Assembly has been reiterated<sup>4</sup>, and the courts have sought to promote respect for *driglam namzha*.

Beyond the courts, legislation and regulation have increasingly been used by the state to regulate everyday life. In a process started by the Second King (Ura 1995) and continued and refined under the Third King and present King, the Bhutanese State has introduced among other reforms, a cadastral survey of the country, a uniform

<sup>3</sup> Arguably one could say the past forty five years, but I feel that the since the bulk of legislation was passed since 1980 that the lower period is correct.

<sup>4</sup> See Kuenselonline “Assembly reprimands judicial lapses” July 16<sup>th</sup> 2002.

property register, and national census with obligations on the part of all to attend, and developed a uniform legal code. These all form part of what can be termed the “state project of legibility” (Scott, J 1998, Scott, Tehranian & Mathias 2002). However, it would be a mistake to think that by these processes, through the collection of data and statistical information, that state regulation is homogenous. The criticisms voiced by informants and the continuing importance of ties of mutual trust and informal social relationships serve to counterbalance the expanding presence of the state.

The everyday concerns narrated in this thesis reveal and underscore for many, including the educated and urban classes, that rather than a detailed concern with the laws and regulations of the state, the main concerns are about constructing, presenting and evaluating moral narratives. Narratives, which connect the individual to family, to friends and to a network of social relations, are central to the (re) creation and presentation of self in everyday life. The formal State laws and regulations which form the backdrop are not unimportant, but they only gain meaning in relation to what is revealed about the social relationships that really matter to the Bhutanese. *Thadamtshi* and *bey zha*, more than *driglam namzha* in my opinion, are key dimensions that shape how people present the most persuasive moral story about how people should act – and that does not always mean that it complies with the state regulations. Yet, we should not underestimate the role of the state or the courts in the interpretation and embodiment of these social values. I have sought to pay attention to the state/locality context of the narratives and events described, to underscore that in the process of transformation and adaptation, the social values of the everyday influence as well as are influenced by the wider socio-political changes. In the background, the influence of the Zhabdrung and of Buddhism can still be discerned – providing a comforting sense of continuity and shared meanings. “Establish a justice free from bias or partiality” was the admonition of the Zhabdrung in the seventeenth century. The transformations of the past fifty years have created the basis for this, whilst maintaining Bhutan’s identity.

## Glossary

A few comments need to be made about the spellings of Dzongkha (Tibetan) words used in the thesis and set out in this glossary. I am aware of the problems non-Bhutanese readers may have when faced with Dzongkha or Tibetan names and terminology. I have chosen to keep as close as possible to the Bhutanese pronunciation which is given in italics. Proper names appear in roman type. Where the Dzongkha or Tibetan spelling is provided it is given in brackets in roman type, following the Wylie system of transliteration (Wylie 1959).

*ani, anim* (a ni, ani mo) female religious practitioner, nun.

*Ap Genyen* (ap dge bsnyen, dge bsnyen ja pa me len) protective deity of upper Thimphu valley, and of Bhutan, temple at Dechenphu (bde chen phug).

*akhu* (a khu, a ku) paternal uncle; step-father. Corollary – *azhang* – maternal uncle.

*ashi* (a lce, a zhe) honorific term for women of the royal family.

Avalokiteshvara (Skt) (spyan ras gzigs) the Bodhisattva of Compassion.

*bah* ('ba') legal agreement with penalty clauses.

*bangchung* (bang chung) double basket made from bamboo used to carry food.

*barmi* ('bar mi) intermediary between parties in a dispute or to an agreement.

*beyul* (sbas yul) "hidden country"; areas or regions believed hidden by Guru Rinpoche (see below) to be rediscovered at a later date.

*bey zha* (byed bzhag) the everyday, less formal rules of etiquette and manners (see also *driglam nam zha*).

Bodhisattva (Skt.) an enlightened being. *Changcub sempa* (byang chub sems dpa').

Bodo – tribal people in the North East Frontier region of India seeking to create an independent state. Political party, amongst others, the National Democratic Front for Bodoland (NDFB), also Bodo Liberation Tigers. See ULFA.

*cha' thrim* (bca' khrims) Act,

*cham* ('cham) religious dance.

*chim* (khyim) house. Also *chim sa* (khyim sa) compound around a house.

*chimi* (spyi mi), elected member of the Bhutanese National Assembly.

*chipon, chupon* (spyi dpon, bcu dpon) a liaison between a village section and the *gup*  
Based on the second version “leader of ten households”, lowest village level functionary.

*cho* (chos; Skt. dharma) religion, Buddhist teachings.

*choje* (chos rje) head of a religious lineage.

*choke* (chos skad) literally “the language of religion”, classical Tibetan.

*chorten* (mchod rten. Skt. stupa) Buddhist commemorative monument.

*chosham* (mchod bshams) altar, shrine room.

*chosi* (chos srid) religious and secular rule, the Dual System.

*Chundu* (khyung bdud) protective deity of Haa valley, western Bhutan.

*chusup* (chu srung pa) village person responsible for overseeing distribution of water to irrigate chuzhing and provision of drinking water.

*chuzhing* (chu zhing) paddy land (wet land).

*damchen* (dam can) “oath bound” protective deities, e.g Shelging Karpo.

*dasho* (drag shos) non-hereditary senior official; honorific title given by king in recognition of services; honorific title used by male members of royal family.

Desi (sDe srid) title of Bhutan’s temporal ruler. Called Deb Raja by British.

*dikpa* (sdig pa) sin; pollution; defilement.

Dom Tshangs (sdom tshangs) protective deity of lower Thimphu valley, temple at Cangkhangkha (lcang sgang kha), Thimphu.

*doma* (rdo ma) quid made from areca nut, betel leaves and lime.

*dorje* (rdo rje) thunderbolt, ritual implement, symbol of male element and compassion.

*dra lha* (dgra lha) protective deity, wrathful.

*drangpon* (drang dpon) judge. See also *thrimpon*.

*drap* (grvap ) serf.

*dratshang lhentshog* (grwa tshang lhan tshogs), Council for Ecclesiastical Affairs, Monastic Body under the Je Khenpo; Drukpa Kagyupa.

*driglam namzha* (sgrig lam rnam bzhag) “basic rules of disciplined behaviour”; official etiquette (see also *bey zha*).

*drile jelni* (drin len ‘jal ni) literally “returning kindness”, “repaying kindness”. It conveys the idea of reciprocity and is instrumental in understanding the concept of *thadamtshi* (see below).

Druk Yul (‘brug yul) Land of the Thunder Dragon, Land of the Drukpas: Bhutanese name for Bhutan.

Drukpa (‘brug pa bka’ rgyud) school of Tibetan Buddhism, offshoot of the Kagyu tradition; also a term used for Bhutanese.

*drungpa* (drung pa) deputy of *dzongdag*; sub-district officer.

*dungthrim* (dung khrims) sub-district court.

*dzongkhag yargye tshogchung* (rdzong khag yar rgyas tshogs chung) abbreviated to DYT, district development committee.

*dzong* (rdzong) fortress – monastery housing the civil administration of the *dzongkhag* (see below) and the Drukpa religious body.

*dzongdag* (rdzong bdag) district head, officer.

Dzongkha (rdzong kha) literally “the language of the fortress (dzong)”; language spoken in the western districts of Bhutan; national language of Bhutan.

*dzongkhag thrimkhang* (rdzong khag khrims khang) district court.

*dzongpon* (rdzong dpon) “lord of the dzong”; former term for dzongdag.

*dzongsey ula* (rdzong ‘u lag / ur la), corvee for the maintenance of the dzong.

*‘dzomdu* (‘dzoms ‘du) village meeting, assembly.

*‘dzom pang* (‘dzoms dpang) witness.

*geko* (dge skos) discipline master of monastery or college.

*genja* (‘gan rgya) agreement, contract.

*gerday* (sger sde) private sector, private enterprise.

*gewog, geog* (rged ‘og) “block”; administrative division of several villages within a district (typically between seven and ten).

*gewog yargye tshogchung* (rged ‘og yar rgyas tshogs chung) usually abbreviated to GYT, block development committee.

*gewog dzomdu* (rged ‘og ‘dzom ‘du) village meeting.

*gho,go* (gos/bgo) man’s form of dress in Bhutan.

*goendey* (dgon sde) monastic retreat centre.

*goenkhang* (mgon khang) protector deity shrine, restricted access.

*gomchen* (sgom chen) male lay religious practitioner, sometimes married.

*gompa* (dgon pa) meditation centre, monastery.

*gongzim* (gong gzym) chief chamberlain.

*gung chim* (gung khyim) family house.

*gunga ula* (gung grang ‘u lag /’ur la) a former of labour service/tax discontinued in 1995.

*gup* (rgad pa, rgap) “elder”; head of a block or gewog; local representative.

*gyelpo* (rgyal po) king

*gyeltshab* (rgyal tshab) representative.

*gyewa cu* (dge ba chu) ten virtuous actions.

*jabmi* (rgyab mi) a licensed legal representative, formerly unlicensed individuals who acted on behalf of litigants in a dispute.

*je khenpo* (rje mkhan po) chief abbot of Bhutan, Drukpa Kagyu head in Bhutan.

*jinda, jindak* (sbyin bdag) benefactor, sponsor, lay patron.

*kabne* (bkab ni) white (generally – though various ranks of officials may wear a *kabne* indicating their rank e.g dashos' wear a red *kabne*) scarf worn over the left shoulder by men when entering official and religious buildings. Mirrors outer monastic shawls (*gzan*) normally only worn during religious ceremonies which leave the right shoulder uncovered. Women wear a narrow embroidered piece of material called a *rachu* (below) over their left shoulder.

*kadon* (bka' don) royal command, order.

*kamzhing* (skam zhing) land were crops not requiring irrigation are grown.

*kasho* (bka' shog) order, command of the king or senior official, minister.

*ka thrim* (bka' khrims) code of laws, charter, order from king. (see also *kadon*)

*kera* (sked rags) belt.

*kidu* (skyid sdug), literally “pleasure and suffering”, a term used to refer to local mutual aid or assistance groups, as well as official grants of compensation, land by the government (Kidu Lyonpo –former title of Home Minister), or the King. Since 1998, restricted to grants by the King.

*kira* (dkyi ra /dkyis ras) woman's form of dress.

*konchog sum* (kun mchog gsum) refers to the Buddhist refuge trinity of Buddha, Dharma and Sangha.

*kora* (skor ba) circumabulation of sacred objects (chorten, statues, temples).

Kuensel (Kun gsel), national newspaper of Bhutan printed in Dzongkha, English and Nepali.

*kusungthukten* (sku gzungs thugs rten) the representation of the body, speech and mind of the Buddhas; statues, scripture and chorten.

*kyelha* (skyes lha) birth god.

*lama* (bla ma, Skt. guru) religious master, teacher; completed three year retreat; can be married.

*langdo* (blang dor) share of land retained by mother; a unit of land measurement (approximately one quarter of an acre) (see Land Act 1979:169).

*lasip* (las si) sin, wrong deed.

*lebey, legbey* (legs pas, legs phab?) dancing and signing to mark a celebration, to conclude celebrations with auspicious prayers.

*lejumdre* (las rgyu ‘bras) karmic actions of cause and effect, literally “actions, cause, fruit)

*lha* (lha) refers to a wide variety of deities, spirits such as *dralha, kyelha, pholha, yulha*.

*lha khang* (lha khang) Buddhist temple.

*lhengay shungtsog* (lhan rgyas gzhung tshogs), Cabinet of Ministers.

*lho* (lho) south; appears in ancient names for Bhutan.

Lhotshampa (lho mtshams pa) “people of the southern border”, usually refers to those of Nepalese descent.

*lodey tshogdhey* (blo gros tshogs sde) Royal Advisory Council.

*lopen, lopon* (slob dpon) teacher (originally monastic/religious in meaning, now applied to school teachers).

*lu* (klu, Skt, naga) subterranean or serpentine deity.

*lu khang* (klu khang) dwelling place of lu.

*lugs srol* custom, customary practices.

*lyonpo* (blon po) minister; Cabinet Minister.

*mangi ap* (mang gi ap) “father of the community”, assistant to gup.

*meesup* (me srung pa) forest fire guard.

*mi ser, misay* (mi ser) general term for the population, people

*monlam chenmo* (smon lam chen mo) great prayer festival.

*nangten* (nang rten), religious statues.

*nang drig* (nang ‘grigs) private agreement, compromise, conciliation.

*nep* (gnas po) literally means “host or innkeeper”, refers to an association or social network. Local deity.

Ngalong (sna slong) a term used for the people of the five valleys in western Bhutan.

*ngolop* (ngo lop) anti-national, traitor, terrorist.

*ngultrum* (dngul tram) Bhutanese currency. £1 = 74 Nu (2002) (approximately).

Padmasambhava (Skt) ((Tib/Dz) padma ‘byung gnas) Tantric figure who introduced Buddhism to Bhutan in the eighth century. Guru Rinpoche (Precious Teacher).

*phada bu gi damtshig* (pha dang bu gi dam tshig) familial bond between father and son. Also appears in the feminine. See also *drinle jelni*.

*pholha* (pho lha) god of the male lineage.

*ponlop* (dpon slob); historical title of the regional governors of Paro, Daganna, and Trongsar.

*rabjam (ramjam)* (rab ‘byams) deputy.

*rachu* (rags chu) slender scarf worn by women over left shoulder as part of *driglam namzha*.

*ri wo sang cho* (ri bo bsang mchod) smoke offering ritual written by HH Dudjom Rinpoche.

*rig* (rigs) family lineage.

*rinpoche* (rin po che) “precious one”, term used to address a reincarnate lama.

*sa chog* (sa chog/mchod) “offerings to the land”, rituals to prepare ground for building.

*sa dak* (sa bdag) “owner of the land”, local deity.

Samsara (Skt) cyclic existence.

*sang* (bsangs) incense offering for local deities, often with juniper, sandalwood.

*sathram* (sa khram) land register, land record, or deed.

*ser khyem* (gser khyem) libation made as an offering.

Sharchopa (shar phyogs pa) “easterners”, inhabitants of eastern Bhutan who speak Sharchopkha.

*shedra shaydra* (bshad grwa) monastic college.

*shing dre dumra* (shing ‘bras ldum ra) fruit garden.

*si don lam lugs* (srid don lam lugs) system of government.

*sogshing* (srog shing), “life wood” which lies at the centre of a statue or chorten.

*sokshing* (sog shing) land under government control for collection of leafs, fallen branches etc.

*sur* (gsur) a smoke ritual practised to appease various classes of spirits, depending on the contents of the offering the sur is classified as red or white.

*thabsang* (thab tshang) kitchen.

*thab lha* (thab lha) hearth deity.

*thadamtshi* (mtha' dam tshig) respect, loyalty, honouring one's elders, teachers and community, modesty, humility.

*thangka* (thang ka) a religious scroll painting.

*thrimkhang* (khrims khang) law court.

*thrimkhang Gongma* (khrims khang gong ma) High Court.

*thrimpon* (khrims dpon) judge. Recently, the term *drangpon* (drang dpon) has been reintroduced.

*Thrimzhung Chenmo* (khrims gzhung chenmo) the law code originally promulgated in 1957; the Supreme Laws, ur-text for subsequent legislation and legal regulations.

*thrim yig* (khrims yig) regulations.

*throngde ledzin* (grong sde las ‘dzin) City Corporation.

*throm* (khrom) market, town.

*thrompon* (khrom dpon) mayor.

*trel pa* (khral pa) tax payer.

*trulku* (sprul sku) a reincarnate lama.

*tsa wa sum* (rtsa ba gsum) the “three foundations” of country, people and king. Political term which is first found in the Thrimzhung Chenmo.

*tsa yig* (tsa yig) code, constitution, law text.

*tseri* (rtse ri) shifting cultivation.

*tshechu* (tshe bcu) “tenth day”; festival in honour of Guru Rinpoche.

*tshogdu* (tshogs ‘du) National Assembly.

*tsuntrel* (btsan khral) monk tax.

*ula* (‘u lag. ur la) labour service or tax.

ULFA acronym for the United Liberation Front of Assam. Longstanding conflict with the Indian government and forces. Very recently joined by KLO (Kamptapur Liberation Organisation). Have formed training camps in the mountainous forests of the south-eastern *dzongkhag* causing problems for the local Bhutanese population. Cause of major concern to government and populace alike. See Bodo/NDFB.

*umdzé* (dbu mdzad) choir master, important figure in monastic hierarchy.

*yathra, yatra* (ya khra) woollen cloth with supplementary weft-patterning from Bumthang, central Bhutan.

*zab, zaden* (bza' pa, bza'p, za bran) serf.

Zangtopelri (zangs mdog dpal ri) Copper Coloured Mountain, the celestial heaven of Padmasambhava, name of a small lhakhang in central Thimphu.

*zee* (gzi) highly prized agate stone with white markings. Often used to adorn images and placed inside sacred objects as *zung*.

*zhabdrung* (zhabs drung) “at whose feet one prostrates”; title of the unifier of Bhutan and used for his reincarnations.

*zhaptolemi* (zhabs togs las mi) work undertaken by households on village projects for the state.

*zimpon, gepo'i zimpon* (gzim dpon, rgyal po'i gsim dpon) chamberlain, royal chamberlain.

*zhu thig* (zhu tshig) application.

*zhung* (gzhung) government, state.

*zhung thrim* (gzhung khrims) death penalty, capital punishment.

*zung* (gzungs) rolls of prayers and precious objects inserted into a statue or *chorten* which serve to “bring it to life”.

## **Maps**

Map 1. Bhutan and its region.

Map 2. Kathmandu Valley – Boudhanath is to the north-east of the capital.

Map 3. Boudhanath.

Map 4. Thimphu Valley.

Map 5. Thimphu City Centre.

# Map of Bhutan

*International boundaries are derived from available sources and should not be taken as authoritative.*

I N D I A

A S S A M

0 50 100 Km

M. Verity

WEST  
BENGAL

Sakteng •  
TASHIY GUMDETING  
Kholongchu  
Lhuntshi •  
Khoma •  
Lhuntshi •  
Kurichu  
Hunthang  
Jakar •  
Ura •  
Bumthangchu  
Tongsa  
TONGSA  
Shemgang  
KHENG  
SEMGANG  
Manaschu  
Deothang  
Samdrup Jongkhar

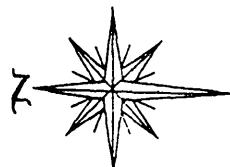
Mongar •  
MONGAR  
PEMAGATSHEL  
JONCKHAR

Rukubji  
Pele La  
3400m  
Phobjikha  
Tshimseng La  
3900m

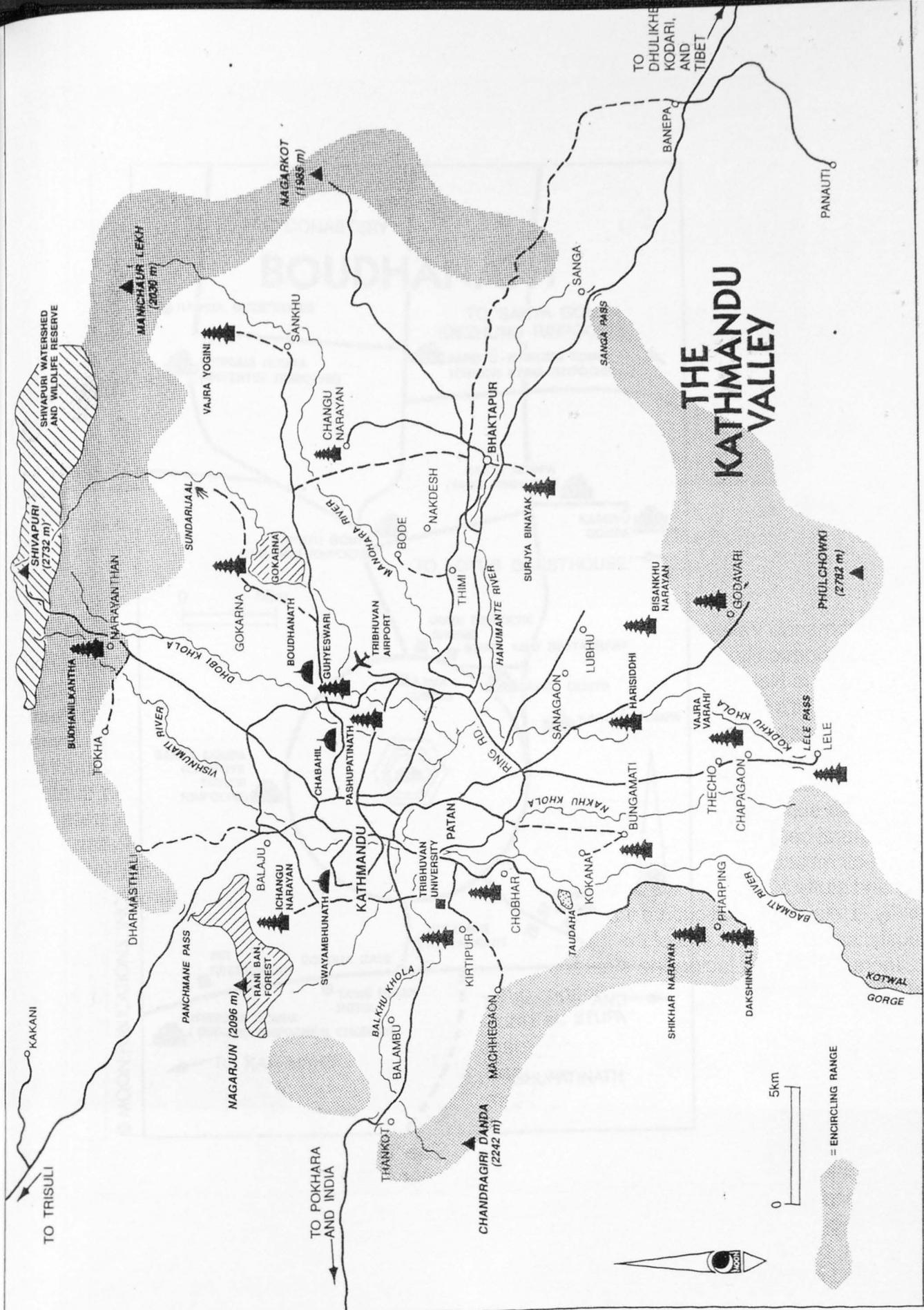
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Phochu  
Gangkarpusum  
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Masangang  
7200m  
Laya  
Mochu  
Lingzhi  
Jomolhari  
7316m  
GASA  
WANGDI  
PHODRANG  
PUNAKHA  
Punakha  
Wangdi  
Phodrang  
Phobjikha  
Sintokha  
Sintokha  
Wang  
Sisima  
DAGA  
CHUKHA  
Chukha  
Phuntsholing  
SAMTSE  
Dorokha  
Amochu  
Haa  
Haa  
THIMPHU  
Paro  
Drukgyel  
Paro  
SÖ  
PARO

(C H I N A)

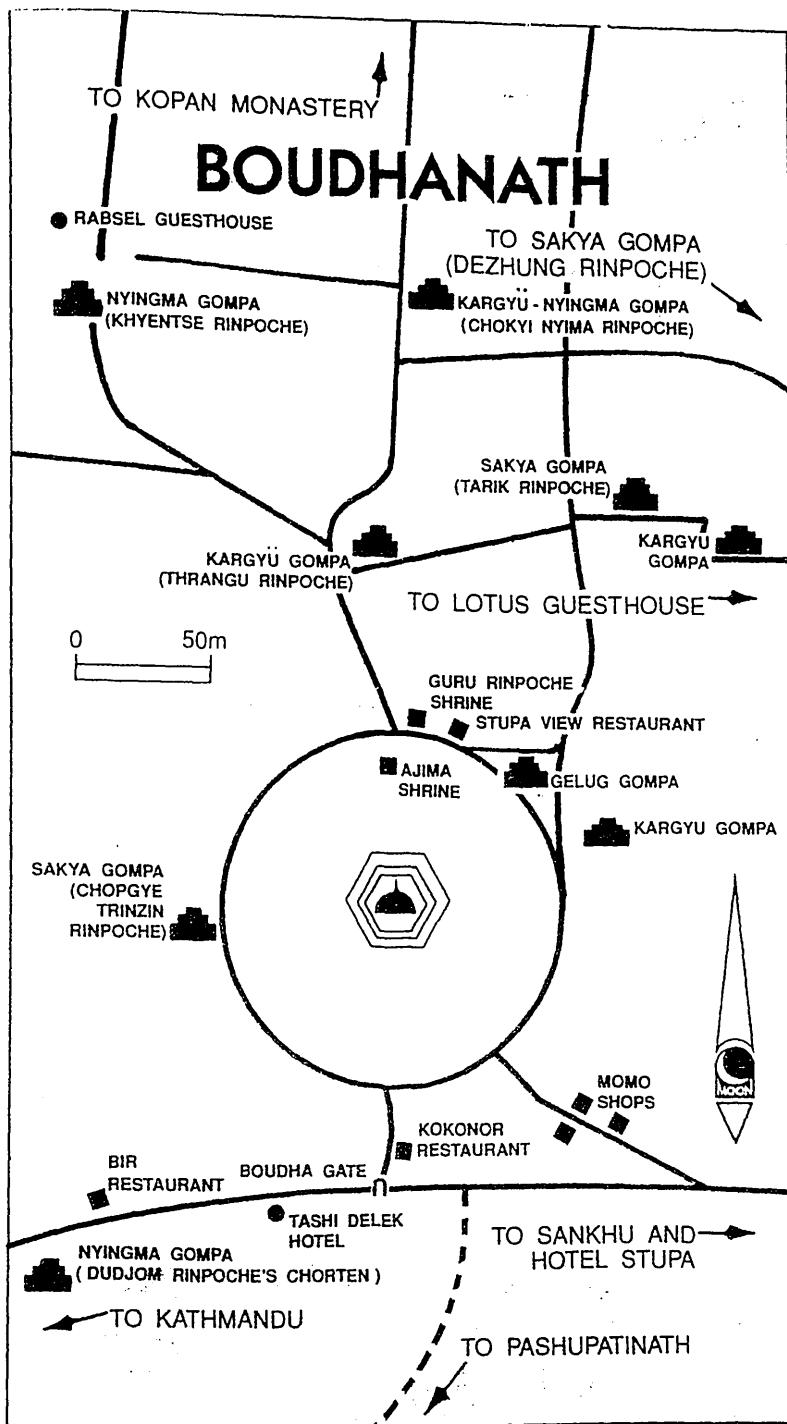
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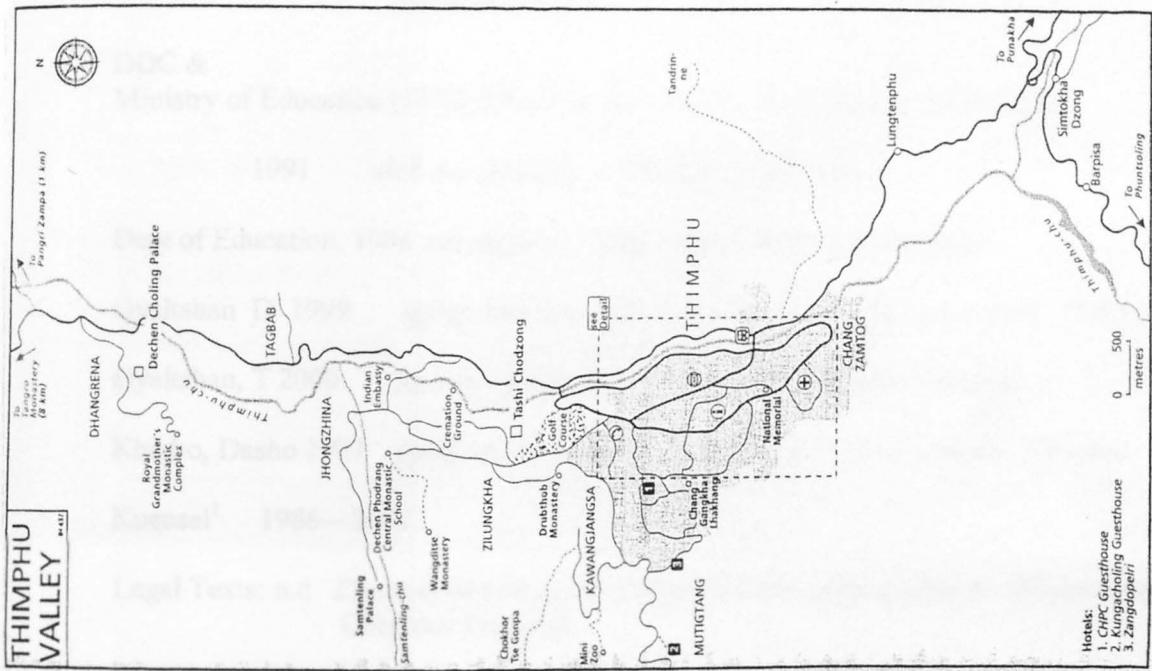
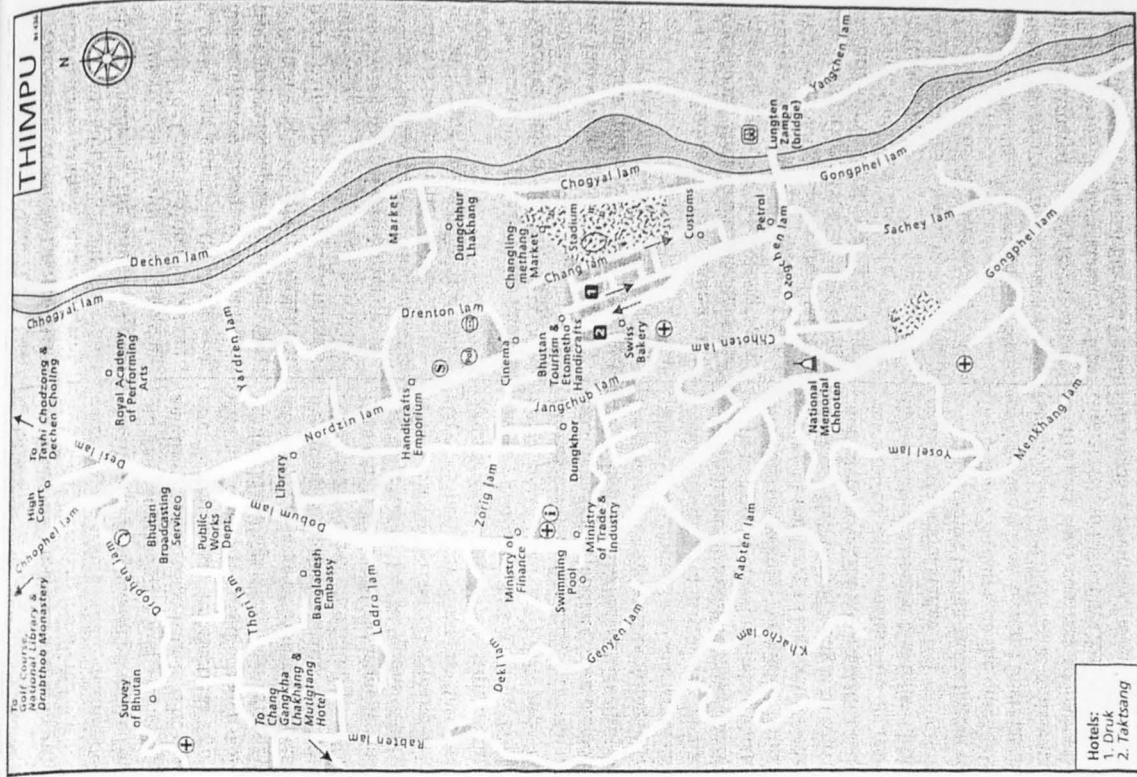
Map 1. Bhutan and its region. (c. Serindia Publications).



Map 2. Kathmandu Valley – Boudhanath is to the north-east of the capital (c. Moon Publications, Inc. 1996)



Map 3. Boudhanath – Shechen monastery is referred to as Nyingma Gonpa (Khyentse Rinpoche) to the north-west of the Great Stupa (c.Moon Publications Inc 1996).



Maps 4 and 5. Thimphu Valley and Thimphu city centre. (c. Trade & Travel Publications 1996).

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