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Richard W. Whitecross  
*University of Edinburgh*

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## Separation of Religion and Law?: Buddhism, Secularism and the Constitution of Bhutan

RICHARD W. WHITECROSS†

As a legal anthropologist and a socio-legal researcher, I was particularly interested to hear His Holiness discuss the relationship between Buddhism and law. The study of law and Buddhism is in its infancy, and there are difficult questions to address. For example, we need to critically evaluate what Buddhist law might be and what we are attempting to achieve with the study of law and Buddhism. And a related issue, of course, is what we mean by “Buddhism.”

When I originally began to conceive my doctoral research on law in the Buddhist state of Bhutan in the mid-1990s, I wanted to examine the role of Buddhism in contemporary Bhutanese law. Bhutan is the last independent Himalayan Buddhist state. Its political history is separate from that of Tibet from the seventeenth century onwards. Zhabdrung Ngawang Namgyal, who unified Bhutan, implemented his personal vision of Bhutan as a religious state, with secular and temporal rule combined much more intimately than in the government of the Dalai Lamas. Although British missions passed through Bhutan to Tibet in the late eighteenth century and British colonial forces defeated the Bhutanese in the 1860s, Bhutan was never colonized and British influence was minimal. In theory, Bhutan was a theocracy until the early twentieth century, and the monarchy, established in 1907, is descended from a major fifteenth century Bhutanese Buddhist saint, Pema Lingpa.

During my fieldwork, I was fortunate to meet and interview several major reincarnates in Bhutan; however, they rarely discussed the relationship between law and Buddhism, except perhaps to stress the importance of

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† Honorary Fellow in Social Anthropology, University of Edinburgh. Associate Member CNRS (Paris) UMR 8047.

“discipline” and moral behavior. Among the laity, my main informants, the emphasis was on a vocabulary of moral conduct with their legal cases treated as removed directly from religious values. Yet, when I suggested to Bhutanese that Buddhism was not important to the emerging laws and legal system, this was vigorously denied and I was informed that Buddhism was at the core of the laws. Examining the emergence of the modern legal system and laws passed by the National Assembly established in 1953, it is clear that from the 1950s to 1980s as the state sought to develop the country, laws were mainly imported. In the following period, from approximately 1991 onwards, there has been a conscious engagement by the judiciary and the emerging cadre of legally educated lawyers to integrate the laws with a broader understanding of Bhutanese values. The core of these values, often referred to as “Bhutanese culture,” lie in Buddhism—or more specifically, in the teachings and rituals of the two main schools of Himalayan Buddhism that dominate Bhutan. These are in the west, the state sponsored Druk Kagyu, and in the central valleys and the east, the Nyingma. Therefore, any study of law and Buddhism has first to recognize that Buddhism is not comprised of a unified set of values, and often displays variations by locality; each area therefore has its local version of “Buddhism.”

In Bhutan, and elsewhere in the Buddhist regions of the Himalaya, there is a ritual drama performed annually at major festivals. Derived from one of the volumes comprising the *Liberation on Hearing in the Bardo*, commonly known in the West as the *Tibetan Book of the Dead*, it depicts a court presided over by Yama Dharmaraja, the Lord of the Dead.<sup>1</sup> Yama personifies the process of impartial judgment of a person’s deeds when he or she dies. He is accompanied by White God and Black Demon, and his minister of justice, Ox-Headed Raksha. As the drama unfolds a hunter and a householder are brought before Yama. Black Demon, referred to as the “bad conscience,” is the prosecutor, and White God, the “good conscience,” acts as the defense. The hunter’s misdeeds are recorded and he is condemned to the hell realms, while the virtuous actions

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1. For an excellent and accessible translation, see *THE TIBETAN BOOK OF THE DEAD* 320-41 (Graham Coleman & Thupten Jinpa eds., Gyurme Dorje trans., 2005).

of the housekeeper allow him to be lead to a pure realm. Watching this unfolding drama in the crowded courtyard of a *dzong* (fortress-monastery), I was struck how for many people this ritual drama is more than entertainment. Speaking to an elderly Bhutanese woman, she spoke of the judgment of Yama in relation to her own life and actions.

Generally, the administrative quarters of the *dzongs* in which the courts are located are free from decoration. French notes that in central Tibet, “on the whole, legal spaces were free of decoration, religious objects, altars or pictures. Tibetans stated upon entering they knew these rooms were not religious in nature. When empty of their actors, legal spaces looked like the interior of any administrative office.”<sup>2</sup> This was true in Bhutan as well until ten years ago. From the mid-1990s onward, the imagery of this ritual drama has been drawn upon by the Royal Court of Justice of Bhutan. Masks representing Yama, Black Demon and White God hang above the judge’s dais in courtrooms. Unlike the courtrooms described by French in Tibet, the courtrooms of the High Court of Justice in Thimphu, the capital of Bhutan, are elaborately decorated drawing heavily on Buddhist iconography and symbolism. A clue to these recent changes was provided in a statement by the Chief Justice. In an interview, the Chief Justice expressed his concern that ordinary Bhutanese did not respect laws which did not reflect wider social and cultural practices. Lyonpo Sonam Tobgye stated that “laws are always strong only when they have social sanction and religious sanctity.”<sup>3</sup> This recent move to incorporate a range of iconographical features taken from religious culture and architecture illustrates a conscious desire to secure the foundation of the contemporary Bhutanese legal system by a variety of means to Bhutanese Buddhist values.

Bhutan has traditionally viewed itself as a Buddhist country, indeed as a *beyul* or “hidden land” preserving the *buddhadharma*. Yet, the constitutional drafting committee, chaired by the Chief Justice, chose not to make Buddhism the official religion of Bhutan. In a move quite unlike that of the drafters of the Sri Lankan constitution of 1971, who

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2. REBECCA REDWOOD FRENCH, *THE GOLDEN YOKE: THE LEGAL COSMOLOGY OF BUDDHIST TIBET* 150 (1995).

3. *The Influence of Buddhism on the Bhutanese Trial System*, KUENSEL, Dec. 6, 2003.

made Buddhism the state religion of Sri Lanka, Buddhism was described as the “spiritual heritage” of Bhutan.<sup>4</sup> At the start of the public consultation process in 2005, concern was expressed by ordinary Bhutanese who felt that Buddhism should be declared the official religion of the country. However, the Chief Justice firmly said that there was no need for Buddhism to be declared the state religion and that it was important that religion be kept separate from secular matters. The draft constitution removes the state-sponsored Central Monk Body from any formal role in the new legislature.<sup>5</sup> At present, the Central Monk Body has representation in the National Assembly and on the Royal Advisory Council. In February 2007, it was announced that all monks, nuns, and *gomchen* (lay practitioners) who receive state support will not be permitted to vote in the elections on the grounds that religion and politics should be separated.<sup>6</sup>

The approach apparently being adopted by the Bhutanese authorities appears to reflect the Dalai Lama’s comments at this conference, and his emphasis on the separation of religion and politics. Both during the discussion and on rereading the transcript, I am aware of a series of as yet unanswered questions. The discussion of secularism was especially puzzling because I wanted to ask, to clarify, what His Holiness understood “secularism” to mean. I had encountered similar problems during fieldwork and I want to flag the importance of not merely accepting familiar terms at face value. Similarly, the Bhutanese constitution refers to Bhutan as a secular state—in what sense? Secularism does not have the same meaning in South Asia, especially in India, as it does in the West.

In Bhutan, the state-produced educational materials for history, civic studies, and Dzongkha (the national language) are filled with stories of Buddhist saints and religious figures. Illustrations depict monks performing ceremonies

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4. DRAFT CONSTITUTION OF BHUTAN art. 3(1) (second version, August 2005), available at [www.constitution.bt](http://www.constitution.bt).

5. Article 3(3) of the draft constitution sets out the relationship between the state and the Central Monk Body. Further references throughout the draft constitution stresses the separation of state and religion. For further details, see *The Constitution of the Kingdom of Bhutan*, [www.constitution.bt](http://www.constitution.bt) (last visited June 2, 2007).

6. *Lay monks can vote*, BHUTAN OBSERVER, Feb. 2, 2007.

in private houses, while the texts describe the establishment of the Druk Kagyu in Bhutan and the unification of Bhutan by the Zhabdrung Ngawang Namgyal in the seventeenth century. The intertwining of religion and state, of religion and daily life, is inescapable. Of course, it is true that the Central Monk Body never sought to control the royal government, and one could argue, as some educated Bhutanese do, that the Bhutanese state can be described as secular even prior to the establishment of the monarchy.<sup>7</sup> However, the separation of secular and temporal authority was historically blurred by the nature of the polity established by the Zhabdrung. Even in the twenty-first century, there have been moves towards the sacralization of the monarch, who is specifically described in the draft constitution as “Buddhist” and the embodiment of the Dual System.<sup>8</sup>

The role of law, especially as a tool of governance, and to varying extents as a tool of modernization and development, in countries such as Bhutan, is significantly different from the seventeenth or even early twentieth century. As the study of law and Buddhism develops, comparisons will make for ever richer lines of inquiry and I was personally encouraged by the enthusiasm for the project displayed by His Holiness, the Dalai Lama. An important, indeed essential task will be engaging religious teachers and developing the dialogue started in Buffalo further.

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7. Based on private discussions with Bhutanese.

8. See DRAFT CONSTITUTION OF BHUTAN art. 2(2) (second version, August 2005), available at [www.constitution.bt](http://www.constitution.bt).

