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## **The Monastery Rules: Buddhist Monastic Organization in Pre-modern Tibet**

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## 8. JUSTICE AND THE JUDICIAL ROLE OF THE MONASTERY

### Introduction

*Beneficence [...] is less essential to the existence of society than justice. Society may subsist, though not in the most comfortable state, without beneficence: but the prevalence of injustice must utterly destroy it.*<sup>1192</sup>

The judicial position of the monastery in traditional Tibetan society is not well known. The numerous examples given in previous chapters suggest that indeed the monastic authorities had the power to discipline and punish their resident monks. It has furthermore been noted that ‘the monastic estate was a legal unit.’<sup>1193</sup> Unknown, however, is how this legal unit functioned. To what extent were monasteries autonomous in terms of jurisdiction? Speaking of Buddhist monasticism in general terms and without relation to a particular cultural setting, it has been suggested that ‘monks are under no authority but their own order’<sup>1194</sup> and that ‘[t]heoretically, the monk is no longer subject to the secular authority and answers only to the Buddhist code of discipline, the Vinaya.’<sup>1195</sup> However, there is historical evidence that monks in Tibet did occasionally get tried on the basis of state law.<sup>1196</sup> My informants, in answering the question as to how the bca’ yig relate to the secular law, are unanimous in their understanding that the monastic guidelines – and thus the behaviour of monks – need to be in accord with the law of the land. A scholar-monk from Kirti, Re mdo sengge, responded in the following way:

Generally speaking the bca’ yig falls under the state law (*rgyal khrims*): the contents of the monastic guidelines can never be in contradiction with the general law. In old Tibet there was never any such problem. Nowadays it is quite difficult, because we are focussed on education, our own system of education. China does not want the monks to study, they want them to stay put and just pray.<sup>1197</sup>

The issue that this scholar refers to is that of the minimum age set by the Chinese authorities to enter the monastery – it is currently higher than is customary or ideal in Tibetan monasteries and this policy is seen as a serious limitation to the education of monks. It presents a large number of monks in contemporary Tibet with an ethical problem, although taken on the whole, prioritizing is not difficult: the monastic customs are seen as more important than state policy.

If, in pre-modern Tibet, monastic estates were indeed legal units, could monasteries try and punish lay-people who committed crimes within their jurisdiction? And, for what ‘crimes’ would a monk be left to the secular authorities? How sharp was the distinction between secular and monastic law? These are crucial questions, the answers to which are important to determine the overall position of the monastery, and by extension, monastic Buddhism in Tibetan society.

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<sup>1192</sup> Smith, 2002 [1759] II. ii 3.3: 86.

<sup>1193</sup> French, 1995a: 169.

<sup>1194</sup> Carrasco, 1959: 121.

<sup>1195</sup> Vermeersch, 2008: 151.

<sup>1196</sup> French, 1995a: 47.

<sup>1197</sup> Personal communication with Re mdo sengge, Dharamsala, July 2012.

According to Ellingson, bca' yig were based on 'secular' law codes.<sup>1198</sup> A preliminary comparison of the bca' yig and the extant legal codes of Tibet indeed indicates that – in particular, terminologically and linguistically – there are striking similarities between the two genres.<sup>1199</sup> However, it appears more likely that these similarities are due to the fact that the authors of the two types of texts were often one and the same, and as indicated in the previous chapter, the educated few were almost always heavily influenced by monastic training, in one way or the other. There are even instances of law codes that were explicitly based on monastic guidelines, of which the code of conduct issued by the Bhutanese state (*sGrig lam rnam gzbag*) that is in current use is a case in point.<sup>1200</sup> The question as to how exactly monastic guidelines and legal documents are related requires further investigation,<sup>1201</sup> but in this chapter the focus lies on the way in which the bca' yig inform us about monastic legal policies and practices, and the Buddhist sensibilities that may be embedded within these.

Such a discussion belies larger issues, such as the relation between Buddhism and the execution of justice. According to French, the two are intimately related as she maintains that: 'Mind training and inner morality are also the center of the legal system for Tibetan Buddhists because it is the afflicted mind that creates the conflict and unhappiness that brings about legal disputes.'<sup>1202</sup> She argues in her anthropological study of the legal system in traditional Tibet that ultimately '[a]ll laws were understood as religious.'<sup>1203</sup> And following that, all punishment 'was meant to promote a return to inner morality.'<sup>1204</sup> This, whether it concerns the secular or the monastic legal policies, seems highly questionable.

The many punishments enumerated in the monastic guidelines suggest that the aim of such measures is only to a very limited extent to purify negative karma. Rather – comparable to legal systems all over the world – the goal of punitive measures and rules *an sich* is to keep the peace and maintain a balance. Authors of regulations were not so much concerned with the individual's karma, mind training, or morality, but with protecting the monastery, the Sangha, and thus the Dharma against the threat of lawlessness. The bca' yig then, when they note the importance of adhering to the rules, do entreat the monks to heed their vows, but at the same time in the practical application of the rules (or monastic laws), karma, mindfulness, and morality play a minor role.

### **The Judicial Position and Jurisdiction of Monks and Monasteries**

According to a narrative found in the *Mūlasarvāstivāda vinaya*, a separation of the secular and religious law is ideal: the king must acknowledge that lay law does not apply to the monks and, more obviously, monastic law does not apply to the laymen.<sup>1205</sup> In the Tibetan case however, it is obvious that this strict division was seen as neither practical nor desirable. However, clear distinctions *were* made. Early on in

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<sup>1198</sup> Ellingson, 1990: 205.

<sup>1199</sup> A brief overview of their similarities was given in Chapter 2.

<sup>1200</sup> Penjore, 2011: 23.

<sup>1201</sup> In terms of chronology, naturally 'Tibetan secular law preceded ecclesiastic law,' which only began with the first ordinations at Samye in the middle of the second half of the 8<sup>th</sup> century. See van der Kuijp, 1999: 289.

<sup>1202</sup> French, 1998: 519, n. 40.

<sup>1203</sup> French, 1995a: 345.

<sup>1204</sup> *ibid.*: 344.

<sup>1205</sup> Schopen, 1995b: 117.

the history of Tibetan monasticism, monks were granted a legal status distinct from that of lay-people. The *mKhas pa'i dga' ston*, citing the sKar chung edict which is purported to have been issued by the ruler Khri lde srong btsan (a.k.a. Sad na legs, r. c.800-815), records this position of privilege:

Those who have gone forth may not be given as slaves to others. They may not be suppressed [by tax]. Having placed them on the protection of householders, they are not subject to lawsuits (*gyod*).<sup>1206</sup>

The lCang bu Inscription, issued by Khri lde srong btsan's son, Khri gtsug lde btsan (r. 815-841), chronicles the foundation of the lCang bu Temple and displays similar sentiments. The edict states that the gifts given in perpetuity (*sku yon rgyun*) should not be lost and also that the great temple (*gtsug lag khang chen po*) and its subjects cannot be taxed or punished.<sup>1207</sup> This edict places the judicial authority, over both the Sangha and the laity, firmly in the hands of the monks residing there.

An early law code ascribed to Khri srong lde btsan, despite having been only poorly preserved in secondary sources, makes a distinction between monks and tantric practitioners (*sngags pa*). It stipulates that people are to venerate and bow to monks and suggests harsh punishments for those who insult or harm them.<sup>1208</sup> While monks clearly enjoyed a privileged position, it did not mean that they were above the law. In fact, legal regulations from Imperial times, as preserved in later historicographical records, show that punishments of crimes against the king were harsher than those committed against the *Triratna*, which of course included the monkhood.<sup>1209</sup> By contrast, the *mNga' ris rgyal rabs* states that in 988, the then-ruler over Western Tibet, Lha bla ma ye shes 'od issued a 'religious edict' (*chos rtsigs*), which prioritized religion over the 'secular'. The text reports that his whole entourage swore an oath to uphold this, calling upon the protector Pehar as a witness.<sup>1210</sup> The (legal) authority of the ruler with regard to the monasteries seems to have been greater in earlier times than later on.<sup>1211</sup>

It appears that the privileged legal status of Tibetan monks established in the beginning set the stage for centuries to come. Monasteries, together with their estates, seem to have been 'judicial islands': the monastic authorities had the power to try and punish whomever was seen to be in the wrong, be they monks or lay-people. Dargyay reports that, in the first half of the 20<sup>th</sup> century, monastic estates (*mchod gzhis*) even had two levels of (monastic) judicial authority: The lowest judicial court was headed by the steward of the monastery (*\*gzhis sdod pa*), the higher one by the manager (*gnyer pa*).<sup>1212</sup>

At the same time, the monks were supposed to keep to the secular state-laws as well as regional laws, which were often not more than customs. Many of these

<sup>1206</sup> As found in Tucci, 1950: 53; 102: *rab tu byung ba'i rnams gzhan gyi bran du mi sbyin/ nan gyis mi dbab/ khyim pa'i khrin la gtags te gyod la mi gdags shing /*

<sup>1207</sup> *khral myi dbab pa dang/ khwa dang chad ka myi bzhes pa*. Richardson, 1985: 94-9.

<sup>1208</sup> Stein, 1972 [1962]: 143, 4. The text Stein used is recorded as *Bod kyi rgyal po khri srong lde'u bstan gyis chos khrims bsdams pa'i le'u*, and is found in the *Padma bka' thang*: 397-402.

<sup>1209</sup> Uebach, 1989: 829.

<sup>1210</sup> Vitali, 2003: 57.

<sup>1211</sup> Similarly, in Sri Lanka, the monasteries were at first under direct jurisdiction of the king, while from the 10<sup>th</sup> century onwards monasteries were allowed or perhaps even required to manage their own property. Gunawardana, 1979: 4.

<sup>1212</sup> Dargyay, 1982: 74.

customs were seen to be already included in the vows and rules that monks were committed to in the first place, such as not killing and not stealing.

The most basic and widespread ‘secular’ legal code is ‘The Sixteen Pronouncements’ (*Zhal lce bcu drug*). A number of variations and adaptations exist resulting in there being various numbers of pronouncements, but the text is traditionally attributed to Srong btsan sgam po. The colophon of one relatively early variation, ‘The Thirteen Pronouncements’ (*Zhal lce bcu gsum*), mentions king Ādarśamukha (*me long gdong*) as the one making the pronouncements. This king features in the Jātakas as a previous birth of the Buddha, who was known as a just king.<sup>1213</sup> The ascription to him maintains thus the secular nature of the code while granting it the authority of the Buddha. This textual genre had a mainly symbolic function, but nonetheless was deeply engrained in the ‘legal consciousness’ of the Tibetans.<sup>1214</sup> A relatively late set of monastic guidelines for ’O chu dgon from 1918 connects these sixteen rules with keeping monastic discipline and basic ethical behaviour:

Because the purity of the Sangha’s discipline, the foundation for the well-being of the region, and the practice of the ten virtues is dependent of the sixteen pure ‘human rules’ (*mi chos gtsang ma bcu drug*), monks and lay-people all need to be mindful and conscientious of not engaging in actions that go against these.<sup>1215</sup>

Equally, the guidelines for Mindröl ling note that monks had to adjust their behaviour according to the contemporary and contextual ‘human rules’ (*mi chos*).<sup>1216</sup>

When monks went against those by committing particularly heinous crimes, such as murder and treason, they tended to get tried under state law.<sup>1217</sup> Bell writes that a monk who committed a murder would first be flogged and expelled from the monastery and then tried according to secular law.<sup>1218</sup> A similar type of legal ideology is attributed to Emperor Xuanwu 宣武 (r. 500-516), who attempted to regulate the Chinese Sangha in an edict:

Since black and white [monk and lay] are two different things, the laws (法 *fa*) and Vinaya (律 *lu*) are also different [...] From this moment on, let all Buddhist monks who commit the crime of murder or worse be judged in accordance with secular laws. For all other crimes, let them be judged according to the Vinaya.<sup>1219</sup>

While in Tibetan society there occasionally was a rather strict theoretical divide between state and religious justice, in practice, the two were often intertwined. This,

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<sup>1213</sup> Schuh, 1984: 298.

<sup>1214</sup> Variations of this text were reproduced and circulated widely throughout Tibet, well into the 20<sup>th</sup> century. See Pirie, 2013: 239-41.

<sup>1215</sup> ’O chu dgon bca’ yig: 178: [...] yul khams bde skyid ’byung ba’i gzhi rtsa dge ’dun rnams kyi tshul khrims nam par dag pa dang dge bcu’i spangs blangs/ mi chos gtsang ma bcu drug la rag las pas ser skya tshang mas ’gal ba’i las la mi zhugs pa dran shes bag yod kyi zin pa byed dgos/

<sup>1216</sup> sMin sgrol gling bca’ yig: 312: dus skabs dang sbyar ba’i mi chos kyi gnad dang yang bstun/ Here *mi chos* is more likely to refer to local lay-sensibilities, customs or rules.

<sup>1217</sup> According to Goldstein, this was also the case for Drepung. See Goldstein, 1998: 19.

<sup>1218</sup> Bell, 1998 [1946]: 201. This is reiterated by French, 1995b: 103. This issue is discussed in further detail below.

<sup>1219</sup> Heirman, 2006: 73.

of course is also related to the fact that politics and religion were combined (*chos srid zung 'brel*), the most notable expression of this being the office of the Dalai Lama. Bell mentions that the Thirteenth Dalai Lama would occasionally try legal cases when he was a novice (probably *śrāmaṇera*) but that he stopped this practice later on,<sup>1220</sup> likely when – or because – he became a *bhikṣu* (*dge slong*). Within existing Buddhist ideologies, there are many justifications for why a ruler should bring a wrongdoer to justice.<sup>1221</sup> In the *bca' yig*, the implementation of rules is often portrayed as being crucial to the (social) order. This sentiment is found in the set of monastic guidelines for Sera monastery from 1820:

For the teachers and the disciplinarians and the like not to implement the rules is to undo the Teachings from their base. Therefore, from now on, being biased and not upholding of the rules, be they big or small, without being concerned with the consequences, which is irresponsible, need to be vigorously and continuously suppressed.<sup>1222</sup>

### Golden Yokes: Religious Laws and Secular Laws

The secular and religious ‘law-systems’ are regularly described as ‘the golden yoke’ and ‘the silken knot’ respectively. In post-dynastic sources the terms were used to describe the government of Khri srong lde btsan and Khri gtsug lde btsan. Nyang ral nyi ma 'od zer (1124-1192), in his description of the Era of Fragmentation (*sil bu'i dus*), notes that during this time ‘the silken knot of the rule of the Dharma unravelled and the golden yoke of the rule of the king broke.’<sup>1223</sup> The most common descriptions attached to this imagery convey that the golden yoke of secular law is heavy and that the silken knot of the religious law is tight,<sup>1224</sup> implying that both are tied around and resting upon the necks of citizens.

Interestingly, at least two sets of monastic guidelines have ‘golden yoke’ (*gser gyi gnya' shing*) in their title. The set of guidelines written by the Seventh Dalai Lama for Namgyel is called: ‘The Golden Yoke: the Monastic Guidelines Written for Namgyel Monastery.’<sup>1225</sup> The *bca' yig* for Tashi Lhunpo from 1876 also carries this phrase in its title and ‘explains’ it in verse:

This magnificent golden vajra-yoke  
That evokes joy among many intelligent ones,  
Clamps down on foolish people who behave badly,  
While it strengthens the two good traditions<sup>1226</sup> and spreads joy.<sup>1227</sup>

<sup>1220</sup> Bell, 1998 [1946]: 157.

<sup>1221</sup> Arguments found in various canonical sources are given in Zimmerman, 2006.

<sup>1222</sup> *Se ra theg chen gling rtsa tshig*: 183: *bla ma dge skos sogs nas sgrig lam ma mnan na bstan pa 'go nas bshigs pa yin pas da nas bzung phyogs lhungs dang/ rgyu la ma bltas par sgrig lam che phra tshang mar 'khur med ma byas par tsha nan rgyun chags su dgos rgyu yin/*

<sup>1223</sup> *Chos 'byung me tog snying po sbrang rtsi'i bcud*: 446: *chos khrims dar gyi mdud pa dra ba grol/ rgyal khrims gser gyi gnya' shing chag*. Also see Davidson, 2005: 71 and Wangdu and Diemberger, 2000: 91, n. 349.

<sup>1224</sup> This imagery is also found in Aris, 1976: 623: *chos khrims dar gyi mdud pa bzhin du bsdams/ rgyal khrims gser gyi gnya' shing lta bu'i ljid kyis gnon te/*. In the Bhutanese governmental decree that Aris treats in this article the two are said to make up ‘the good legal system’ of the country, which is presented as a prerequisite for happiness in the land.

<sup>1225</sup> *rNam rgyal grwa tshang bca' yig*: 64: *rNam rgyal grwa tshang la btsal ba'i bca' yig gser gyi gnya' shing* [...]

<sup>1226</sup> i.e. religious (*chos lugs*) and worldly traditions (*rjig rten gyi lugs*).

Here the phrase ‘golden vajra-yoke’ appears to suggest that both the Dharma and secular authority (the two orders) were represented by this text, and indeed by its author, the Eighth Panchen Lama, whose political position had to be asserted and reasserted so as to prevent the Lhasa government from overpowering the monastery and its significant domains and assets.<sup>1228</sup> In other cases, however, the golden yoke only refers to the internal rules of the Sangha, such as in a *bca’ yig* written by the Thirteenth Dalai Lama in 1927:

The internal rules of the Sangha, which are in accord with place and time and which are in fact an abbreviated form of skillful means, are clean like the stem of a lotus and suitable to carry<sup>1229</sup> like a golden yoke.<sup>1230</sup>

For the Fifth Dalai Lama, the golden yoke belongs to religious imagery, though this does not necessarily exclude a possible secular affiliation. The closing verses of his monastic guidelines for Drepung convey that he sees the combination of the two traditions as leading to the happiness of all, with the Dharma (here: *bka’ khrims*) being the primary factor:

By means of the extremely heavy golden yoke  
Of the Buddhist law [upheld] at the palace that possesses the two traditions  
That rules every single beautiful area of the golden ones (?),  
May beings be led towards glorious happiness.<sup>1231</sup>

The combination of secular and religious traditions was seen by many as the ideal way to rule a country. The legal code for Bhutan from the 18<sup>th</sup> century expresses a similar view, while using different imagery: ‘By placing the bejeweled parasol of the Buddha’s Teachings on the spokes of the wheel of the state law, the field of merit will remain for long.’<sup>1232</sup>

The picture that emerges from the above examples portrays the need to uphold the law – be it religious or secular – for the sake of the general well-being, in which social order could be said to be implied. This suggests that both types of law

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<sup>1227</sup> *bKra shis lhun po bca’ yig*: 38: *rab mang blo ldan mgu ba skyed byed pa’i/ brjid ldan gser gyi rdo rje’i gnya shing ’dis/ blun rmongs ’chal por spyod rnams gnya’ mnan te/ bzang po’i lugs zung spel la spro dga brtas/* The title can be translated as ‘The magnificent golden vajra-yoke that adds and makes up for deficiencies of the life-force of the two orders: a work definitely necessary for the whole central population of the Sangha and the subsidiaries, such as the internal estates of Tashi Lhunpo.’ *bKra shis lhun po bca’ yig*: 35: *bKra shis lhun po dpal gyi bde chen phyogs thams cad las rnam par rgyal ba’i gling gi dge ’dun dbu dmangs dang/ bla brang nang ma sogs lto zan khongs gtogs dang bcas pa spyi khyab tu nges dgos pa’i yi ge khrims gnyis srog gi chad mthud rab brjid gser gyi rdo rje’i gnya’ shing dge/*

<sup>1228</sup> Elsewhere in the same text, however, the imagery of the golden yoke is used, quoting the *Bodhicaryāvatāra*, in the analogy of the blind turtle, to describe how rare attaining a precious human life is. See *bKra shis lhun po bca’ yig*: 60.

<sup>1229</sup> This is a play on words: *bkur ba* means both ‘to carry’ and ‘to respect’.

<sup>1230</sup> *bKra shis dga’ ldan chos ’phel gling bca’ yig*: 498, 9: *thabs mkhas mdor bsdu kyi rang bzhin yul dus dang bstun pa’i dge ’dun nang khrims padma’i sbubs ltar gtsang ba dang/ gser gyi gnya’ shing ltar bkur bar ’os la/*

<sup>1231</sup> *’Bras spungs bca’ yig*: 321: *gser ldan dga’ ma’i khyon kun ma lus par/ dbang bsgyur lugs zung ldan pa’i pho brang che’i/ bka’ khrims gser gyi gnya’ shing rab lci bas/ ’gro rnams bde skyid dpal la ’god par shog/*

<sup>1232</sup> Aris, 1986: 126; 102b: *rgyal khrims ’khor lo’i rtsibs su rgyal bstan nor bu’i gdugs dkar bkod pas dge zhing yun ring gnas pa*



implemented punishments for similar reasons and in similar ways.<sup>1233</sup> As previously alluded to, this implementation of the rules, as contained in the monastic guidelines, concerned both monks and lay-people. We now turn to the way, and the extent to which, monasteries were involved in lay-people's justice.

### Justice, the Monks and the Laity

A number of *bca' yig* make it clear that the extent of jurisdiction was not necessarily based on the division between lay-people and monks, but rather that it was geographically determined. The moment one found oneself on monastic territory – this could be an estate (*mchod gzhis*) or the monastery-ground – one needed to abide by the rules belonging to that institution. This is in fact a more general Tibetan notion, as captured in an often used proverb: 'One should abide by the laws of the land of which one drinks the water.'<sup>1234</sup> Here the notion of law should be understood to have a rather broad meaning.

The Tibetan secular laws appear to have been viewed as 'reliable suggestions',<sup>1235</sup> rather than records of case law, and it is likely that this was also true with regard to local laws or customs. Many, assumedly, were passed on orally. This was in most cases, also true for monastery-level jurisdiction: most of the laws or rules would have been understood by the local populations, but not physically accessible. The *bca' yig* then only address those instances in which the rules were regularly broken, when the rules were seen to be in need of clarification, or when they concerned activities that the monk-authors felt particularly strongly about. The most common example is the killing of animals – either by hunting or slaughter – on monastic territory or within view of the monastic grounds.

The connection between territorial control – in particular with regard to hunting – and the *bca' yig* has been noted previously by Huber. He discusses the 'sealing' (*rgya sdom pa*) of specific areas, at specific times, while: 'In the individual monastic regulations, sealing was applied to a generally smaller, well defined unit of territory over which the monastery had rights and control.'<sup>1236</sup> The descriptions of monastic territory given in the *bca' yig* are sometimes very detailed, while others are vaguer. The guidelines for Sera je note that in the areas to the east of Sera:

One is not to buy or sell chang or slaughter animals. One may not burn black things (*nag bcangs mi bsreg*),<sup>1237</sup> or keep pigs and chickens. One is not to hunt for birds and wildlife in the mountains behind the monastery and in the vicinity.<sup>1238</sup>

<sup>1233</sup> In contrast, in Sri Lanka in the 1970s, a high-ranking monk is quoted as saying that monastic law, 'unlike secular law, is not strictly enforced if it is not suitable for the specific occasion.' Ferguson and Shalardchai, 1976: 126. Equally, Tibetans monks in exile are said to have a 'remarkably pragmatic approach, such that whenever a clash between (at least minor) religious observations and some practical imperative occurs, the latter prevails.' Gyatso, 2003: 237. To the extent that contemporary monastic tradition is a continuity of previous practices, this may indicate a divergence between theory and practice.

<sup>1234</sup> *lung pa de yi chu btung/ de yi khrims zungs*. Incidentally, John Locke conveys a similar notion namely that there is tacit consent to the laws of the country, which is to say, that anyone who travels on a highway implicitly consents and is bound by the local laws. See Locke, 1980 [1690]: 38.

<sup>1235</sup> French, 1995a: 101.

<sup>1236</sup> Huber, 2004: 133.

<sup>1237</sup> The meaning of *nag bcangs* is not clear to me. It may refer to cremating the bodies of lay-people.

<sup>1238</sup> *Se ra byes bca' yig*: 581: *se ra shar rnams su chang nyo tshong dang/ bshar ra mi byed/ nag bcangs mi bsreg bya phag mi gso/ dgon pa'i rgyab ri dang nye skor du bya dang ri dwags mi brngon/*

The monastic guidelines for Phabongkha are rather detailed on the area where hunting was not allowed, which then could indicate the parameters of monastic jurisdiction.<sup>1239</sup> Dung dkar monastery in upper Kongpo (Kong stod) forbid hunting and fishing in the hills and valleys up to one *krośa*<sup>1240</sup> from the monastery. If these types of activities were to take place the area had to be ‘sealed’.<sup>1241</sup> While this ‘territorial seal’, according to Huber, became a ‘legislative act’,<sup>1242</sup> it is not known here how exactly this legislation was enforced. In other bca’ yig, various punishments for killing animals within monastic territory are suggested. Perhaps the most common punishment was ‘the offering’ of a communal tea-round (*mang ja*). The monastic guidelines from 1903 for Pelkhor chöde (in Gyantse) give a punishment to those hunters and traders who were found to have killed animals within the stipulated parameters that consists of offering one of these tea-rounds.<sup>1243</sup>

Huber notes a more intriguing punishment, given by the Thirteenth Dalai Lama for Rongpo rabten monastery. The bca’ yig rules that: ‘When itinerant game hunters appear, they should be punished by gathering their weapons in the protector’s [*sic*] temple and in addition exhorted once again to observe lawfulness.’<sup>1244</sup> According to Huber, other bca’ yig mention that hunters and the like should be made to recite religious texts in the protectors’ chapel (*mgon khang*).<sup>1245</sup> Vows not to reoffend are still regularly made by the laity in the presence of the protectors. Often the chapels are laden with (ancient or now defunct) weaponry, possibly, in part for the above reasons. According to the traditional narrative, the protectors at the monastic territory were often the original chthonic inhabitants of the area, who got ‘converted’ to Buddhism – thus to harm their land, and everything on it, would equate upsetting these spirits.

Punishing lay-people for killing animals within the vicinity of the monastic territory was not just seen as a prerogative of the monasteries, but also as their *duty*. Monks, the bca’ yig tell us, were handed the responsibility to patrol the area and catch the lawbreakers. In the case of Phu lung monastery<sup>1246</sup> in 1947, it even came with extra paperwork:

When illegal activities committed by a couple of evil people take place, the lamas and the monks all need to – by means of starting a vigorous investigation – create a written agreement, in which a promise is made not to

<sup>1239</sup> *Pha bong kha bca’ yig*: 244.

<sup>1240</sup> *rgyang grags*, this is about two miles.

<sup>1241</sup> *Kong stod dung dkar dgon bca’ yig*: 589: *dgon pa nas rgyang grags gcig tshun gyi ri klungs su ri dwags dang nya gshor ba sogs byung na dgag pa’i ri rgya klungs rgya byed/*

<sup>1242</sup> Huber, 2004: 133.

<sup>1243</sup> *dPal ’khor chos sde bca’ yig*: 433: Interestingly, the wording describing the territory of the monastery and the rules concerning killing is identical to that found in the 15<sup>th</sup> century bca’ yig for the same monastery (here named rGyal rtse chos sde), as cited in *ibid.*: 134. This suggests that not only the – anonymous – authors of this 20<sup>th</sup> century text used older bca’ yig, but also that, presumably, the territory described in so much detail had remained the same for almost 500 years.

<sup>1244</sup> *Rong po rab brtan dgon bca’ yig*: 538: *nges med kyi ri dwags bshor rigs byung na mtshon cha mgon khang du bsdus thog khrims mthun mig lar ’doms pa’i chad pa ’gel/* The translation is Huber’s, see *ibid.*: 135.

<sup>1245</sup> *ibid.*: 136.

<sup>1246</sup> The full name of this monastery is sPo stod phu dgon chos lding rin chen spungs. Interestingly, the monastery is affiliated with the Karma Kagyü school and is a branch of Tshurphu, while the bca’ yig was presumably written by someone at the central government.

reoffend upon a previously established punishment, such as three bricks of tea, soup, flags, communal tea-rounds, scarves, and the like.<sup>1247</sup>

Monastic grounds – often not agricultural land, and thus without much economic value – were for the monks to protect. The bca' yig for Tashi Lhunpo even notes that monastic officials had to guard against animals in the hills nearby, because their presence or their overgrazing could cause landslides, from which the monastery had to be protected.<sup>1248</sup>

For the monks of Reting, however, the reasons for protecting the area around the monastery were formulated differently:

The birds and wild animals in this forest of Reting, the essence of enlightenment, and the source for the Kadam, are said to be the emanations of bodhisattvas. Therefore, no one – be they Mongolian, Tibetan, Hor, or nomads – may do them any harm, steal or kill them.<sup>1249</sup>

Sometimes, the impending paperwork, occasionally associated with protecting the monastic lands, was compensated by there being certain perks, either for the monastery as a whole or for the individual monks. The monastic guidelines for Pelyul darthang describe the 'borders' of the monastery and then state:

From where one can see the monastery, inside or outside, there abattoirs may not be maintained. If slaughter takes place, there is the punishment of the price attached to the meat. And if the buyers are still there then the meat *and* the price paid for the meat need to be both taken away.<sup>1250</sup>

This means that both the seller and the buyer of the meat would be punished for being complicit in the maintenance of an illegal slaughterhouse. At the same time, of course, both the meat and the money could be confiscated, which may have served as an incentive for the monks to patrol the area. This early 20<sup>th</sup> century bca' yig also suggests a similar type of punishment for the selling of alcohol on monastic grounds: 'When people buying and selling alcohol find themselves on monastic grounds (*gling*), the alcohol and the profit of the alcohol need to be taken away.'<sup>1251</sup> In other sets of guidelines it is more common to punish those carrying alcohol to the monastery by actual destroying their wares. The Mindröl ling bca' yig states: 'Even when a layman simply carries a vessel of chang beyond the border-marker, he needs

<sup>1247</sup> *Phu lung dgon bca' yig*: 610: *mi ngan bshan pa re zung gis 'gal rigs byung na/ bla ma gra rigs thams cad kyis 'phral du rtsad gcod drag po 'gugs sbyang gis sngar lam ja 'khor gsum/ thug dar cog mang ja snyan dar sogs gcod dras kyi phyin chad sdom pa'i gan rgya len cing/*

<sup>1248</sup> *bKra shis lhun po bca' yig*: 124: *khyad par rgyab ri nas dgon nang la rbab nyen yod rigs la rbab g.yul byed pa dang/ dbyar dus rgyab ris dud 'gro che chung gtong du mi 'jug pa sogs rang 'khri'i las don lhag bsam hur bskyed thon pa dgos rgyu dang/*

<sup>1249</sup> *Rwa sgren bca' yig*: 498: *bka' gdams kyi chu mgo ra (rwa) sgren byang chub snying po'i nags tshal 'dir/ bya dang ri dwags sogs kyang byang chub sems dpa'i sprul par gsungs pas/ sog bod hor 'brog sus kyang gnod 'tshe dang rkun gsod sogs mi byed/*

<sup>1250</sup> *dPal yul dar thang bca' yig*: 188: *mtshams dgon pa mthong ba'i phyogs phyi nang gang nas kyang bshas ra 'dzin mi chog gal te bshas tshe sha rin non pa'i chad pa dang nyo mi yod tshe sha dang rin rtsa gnyis ka 'phrog nges dgos/*

<sup>1251</sup> *ibid.*: *chang nyo tshong byed mi gling nang du byung tshe chang dang chang rin gnyis ka 'phrog dgos/*

to be punished, for example by breaking the vessel.<sup>1252</sup> *mTshur phu dgon gyi dkar chag* marks a similar situation, with the difference being that here there actually needed to be an intention to break the rules:

When local people (*zhol mi*), pretending to be newly arrived visitors, turn out to be carrying vessels of alcohol back and forth to the *bla brang* within the monastic compound (*gling gseb*), then the guards (*sgo ra ba*) of the *bla brang* have to take the discovered (*mgo byar mi bskos kyi*) alcohol vessels and destroy them without trace.<sup>1253</sup>

Interesting here is also the mention of guards (*sgo ra ba*), who were likely to have been charged with ‘policing’ the monastic compound. The destruction of wares may have been the lightest of punishments, as a government decree (*rtsa tshig*) from 1882 specifically intended to tackle the ‘use’ of alcohol and women (*nag chang*). This decree, written for all the major Gelug monasteries in the Lhasa area,<sup>1254</sup> states:

It is customary that when a lay-man or alcohol-sellers are in any way seen, heard or suspected of giving<sup>1255</sup> alcohol to monks, a punishment according to secular law, which is heavy as a mountain, is given, so as to set an example.<sup>1256</sup>

In other cases, it was the trespassing itself that had to be punished. Women caught fetching water within the monastic compound had to be given a suitable punishment, such as being required to offer a butterlamp of a *zho* each.<sup>1257</sup>

It appears that monasteries, when it concerned the wider territory for which they were responsible, exercised their judicial authority regarding lay-people only in the most serious cases (such as killing), but when laws were broken ‘closer to home’ the rules became stricter. It could be said that the laity and monks had to heed the same authority as soon as they found themselves within the gates of the monastery itself. The *mTshur phu dgon gyi dkar chag* remarks the following:

Once within the gates of the monastery, whether one is lay or ordained, high or low, male or female, young or old, everybody needs to heed the instructions of the three, the disciplinarian, the master (*dpon*) and his aides (*g.yog*), which is in accord with the contents of the *sGar chen gyi bca' yig*.<sup>1258</sup>

<sup>1252</sup> *sMin sgrol gling bca' yig*: 283: *mtshams mtho yan la chang snod khyim pas 'khur yang snod gcog pa sogs kyiis tshar gcod/*

<sup>1253</sup> *mTshur phu dgon gyi dkar chag*: 281: *zhol mi nas mgron por sne len yin khul gling gseb tu chang snod phar khur tshur khur byed pa byung ba bla brang gi sgo ra ba nas mgo byar mig bskos kyi chang snod 'phrog gcog gis shul med bzo rgyu ma zad/*

<sup>1254</sup> i.e. Sera, Drepung, Ganden, Gyütö and Gyümè.

<sup>1255</sup> Note that the verb *sbyin pa* here denotes religious giving.

<sup>1256</sup> *dGon khag gi dge 'dun pa rtsa tshig*: 345: *khyim pa dang chang ma'i rigs nas btsun par chang sbyin pa'i mthong thos dogs rigs cir gyur yang rgyal khirms ri ltar lei ba'i chas las drag po mig bltos la phan pa gtong lugs dang/*

<sup>1257</sup> *Pha bong kha bca' yig*: 435: *chos sde'i nang du bud med kyiis chu len pa byung na/ dkar me zho re sogs kyi chad pa ji ltar 'os pa 'gel/*

<sup>1258</sup> *mTshur phu dgon gyi dkar chag*: 280: *dgon gyi lcags ri'i nang tshud la ser skya mchog dman pho mo rgan gzhon tshang ma nas sgar chen gyi bca' yig dgongs don ltar dge bskos dpon g.yog gsum gyi bka' bkod la brtsi 'khur zhu dgos shing/*

In the monastic guidelines for Drepung from 1682, the ordinary lay-people and monks are to comply with the same basic rules: ‘Ordinary lay-people and monks may not ride their horses within the monastery. Loud songs and shouting at each other from afar and any loud noises may not be uttered.’<sup>1259</sup> In Jampa ling too, the laity was expected to behave more like monks when visiting the monastic compound:

Within the boundaries of the monastery, it is inappropriate even for lay-people to fight, to sing, to smoke, to use snuff,<sup>1260</sup> or to play mahjong, and so on. Therefore those who knowingly make such mistakes should be punished appropriately.<sup>1261</sup>

Similar kinds of typical lay-behaviour were also forbidden when people visited the monastery of Tengpoche in Nepal and it was the disciplinarian who was given the task to make sure that these rules were upheld: ‘The disciplinarian is to enforce [the rule] that outside guests do not do things that are forbidden such as drinking chang, fighting, being loud and laughing.’<sup>1262</sup>

Justifications why lay-people were not allowed to behave in a certain way tend not to be given in the sources at hand. A copy (*zhal bshus*) of *Rwa sgrenng bca’ yig*, written or copied in a wood-monkey year (*shing spre*l), according to *bCa’ yig phyogs bsgri*gs 2 by a Dalai Lama,<sup>1263</sup> takes issue with people, lay or monk, fighting on the circumambulatory route (*bskor lam*) around the Reting (Rwa sgrenng) area. Whoever was involved in this:

would, despite the fact that fundamentally legal debts should be dealt with by courts (*khri*ms sa), have to do practice by [giving] butterlamps and scarves to the Atiśa image (*jo bo rin po che*), by changing the textiles in the main temple and by [giving] a communal tea-round to the assembly.<sup>1264</sup>

The guidelines from 1913 for Thobgyel rabgye ling by the Thirteenth Dalai Lama lists things that neither laity nor monks could do in the vicinity of the monastery (*dgon pa’i nye ’dab*) such as riding horses, singing, and having hairstyles that incorporate fabric, as these ‘are things that are disrespectful to the Sangha.’<sup>1265</sup>

<sup>1259</sup> ‘*Bras spungs bca’ yig*: 312: *dgon nang du skya ser dmangs kyis rta zhon nas mi ’gro zhing gyang bzhas phud rgyangs ’bod dang ku co’i sgra che ba mi sgrags*/ Again the *bca’ yig* for Sera je by the Seventh Dalai Lama uses near identical wording, except that in this version only lay-people are addressed, see *Se ra byes bca’ yig*: 578.

<sup>1260</sup> *kha snar dud ’then*, literally: to draw smoke into mouth and nose.

<sup>1261</sup> *Byams gling grwa tshang bca’ yig*: 482: *dgon pa’i mtshams nang khyim pas kyang ’thab ’dzin dang/ glu gar/ kha snar dud ’then sho rgyag sogs nam yang mi rung bas rtogs ’jug gi byed ’dzol la chad las bab bstun gtong/*

<sup>1262</sup> *sTeng po che bca’ yig*: 463/ 6a: *phyogs mgron skor mi sogs kyis gling nang du chang dang/ ’khrug rtsod / ku re bzhad gad che ba’i rigs byas mi chog pa’i bkod ’dom dge bskos nas bya zhing/*

<sup>1263</sup> The text states that it is a reworking of a written order entrusted to the Dharma-protectors by the Fifth Dalai Lama, to prevent the monastery from disintegration, see *Rwa sgrenng bca’ yig*: 499: *gong sa lnga pa chen pos kyang dgon gnas ’di nyid mi nyams pa’i ched du chos bsrung la gnyer bcol gyi bka’ shog gnang ’dug pa nas ’di ga nas kyang yang bskyar byas pa yin pas/*

<sup>1264</sup> *ibid.*: 493: *bskor lam nang du rgya (rgyag) ’dres dang ’thab ’dzings (’dzing) ser skya drag zhan sus byas pa byung kyang (yang)/ khri*ms ky i bda’ ’ded khrims sa nas byed pa gzhir bcas kyang/ *jo bo rin po cher dkar me snyan shal/ gtsug lag khang gi thugs dar lcogs (lcog) spo ba/ tshogs su mang ja rnam bzhag sogs sgrub/* The bracketed words are corrections carried out by the editors of *bCa’ yig phyogs bsgri*gs 2.

<sup>1265</sup> *Thob rgyal rab rgyas gling dgon bca’ yig*: 454: *dge ’dun la ma gus pa’i rigs*.

The above selection of examples that show laity being affected by the monastery's rules strongly suggests that many Tibetan monastic institutions – at least from the 17<sup>th</sup> century onwards and likely before that as well – held judicial authority over their own territories and were able to punish lay-people for killing animals, trespassing and treating the monastic grounds as a playground.<sup>1266</sup> Not only did rules pertaining to the laity exist, they also appear to have been exercised. The *bca' yig* are the documents par excellence that indicate these local laws and whom they pertained to. The *mTshur phu dgon gyi dkar chag* explains this level of jurisdiction succinctly:

In short, all the monks (*ser mo ba*), high or low, who are part of this monastery (*gdan sa*), as well as the faithful sponsors who live in the mountains surrounding the monastery, as well as the pilgrims – basically all, monks or lay, man or woman, good or bad – need to take into account the contents of the precious *bca' yig* that establishes the law of the disciplinarian, the masters, and their assistants (*dge dpon g.yog gsum*).<sup>1267</sup>

### Mediation, Disputes, and Communal Violence

Able monks were often employed as intermediaries, often on a voluntary and individual basis. In particular, highly regarded monks were seen as ideal candidates for the job of 'go-between' or mediator (*gz'u ba*). Tibetan historiographical accounts abound with narratives of revered monks preventing battles and the like.<sup>1268</sup> In other Buddhist cultures, the 'holy man' is often seen to mediate between various social groups.<sup>1269</sup> The Vinaya limits the extent of this mediation: the monk is not to act as a matchmaker, nor is he to engage in marriage counselling. In the case of Tibetan Buddhism, mediation of legal or violent disputes was not out of bounds for monks. In Labrang, it seems, people even 'preferred adjudication by the monastery.'<sup>1270</sup>

According to Goldstein, adjudication was the first resort for civil disputes and it was 'only when this failed that cases were brought to the lord for adjudication.'<sup>1271</sup> This was also the case outside of political Tibet. In Spiti in the 19<sup>th</sup> century, people rarely had 'recourse to the law courts, or even to the primitive justice dispensed by their chief the Nono.' When someone's word was not trusted, he was made to swear an oath.<sup>1272</sup>

<sup>1266</sup> There is a possible parallel with the regulations in place in the 840s in China. The *Tiwei boli jing* 提謂波利經 was one of the main texts written to provide rules for lay-people who were under the authority of monks. See Barrett, 2014: 209.

<sup>1267</sup> *mTshur phu dgon gyi dkar chag*: 291: *mdor na gdan sa 'dir gtogs pa'i ser mo ba mchog dman thams cad dang dgon gyi lcags ri'i nang tshud du dad sbyin khag dang/ gnas mjal ba sogs gzhis byed nas 'dus pa'i ser skya pho mo drag zhan thams cad bca' yig rin po che'i dgongs don dge dpon g.yog gsum gyi khrims bkod la brtsi bkur zhu dgos shing/*

<sup>1268</sup> Stein, 1972 [1962]: 146-8.

<sup>1269</sup> For information about monastic mediation and reconciliation in 'early Buddhism', see Bailey and Mabbett, 2006: 219-31.

<sup>1270</sup> Nietupski, 2011: 81. More generally, monks appear to have been seen as more trustworthy. Bell reports that when there was a legal dispute between a lay man and a monk, justice was usually in favour of the monk. Bell, 1998 [1946]: 199.

<sup>1271</sup> Goldstein, 1971: 175. Goldstein notes that the term for 'mediation' is *bar zhugs* and for adjudication *bka' bcad gnan*, *ibid.*: 177. A similar process is described in *mTshur phu dgon gyi dkar chag*. This contemporary work notes that going to the *phyag khag* (presumably the monastery's treasurer's office) was a step only taken when all else had failed. See *mTshur phu dgon gyi dkar chag*: 583.

<sup>1272</sup> Diack, 1994 [1897] III: 92.

Trusted, ‘disinterested’ men were thus often called upon to intervene in disputes. In areas where monastics had good relations with the local population, these men were often monks. Of course, mediation and adjudication took place both in- and outside of the monastery’s walls. In some cases, monks are even reported to have pleaded for a reduction of a punishment involving mutilation on behalf of certain criminals.<sup>1273</sup> When *bca’ yig* report on monks’ acting as conciliators, it is often not specified who their ‘clients’ are. The *Mindröl ling bca’ yig* mentions that this role was to be taken seriously: ‘People who are strong in giving council should communicate sincerely and decide matters in accordance with the truth.’<sup>1274</sup>

For internal monastic matters, the obvious candidate for mediation would be the disciplinarian. The guidelines for Pelyul darthang indicate that this person was not handed an easy task:

From now on, the disciplinarian should not, when quarrels and suchlike occur, oversee major or minor disputes – whether internal or external, general or specific, large or small – that are not relevant. Surely, one needs to continue to treat all the external and internal rules of the Teachings (*bstan pa’i bca’ khrims*) with priority. Therefore, no one should encourage him to act as go-between for others, whether they be high or low, in disputes (*gyod ’khon par*).<sup>1275</sup>

From the above can be gleaned that the disciplinarian was asked to adjudicate various, perhaps personal, disputes and that that was, strictly speaking, not part of his job description. The involvement of the disciplinarian could easily lead to him losing the impartial stand many *bca’ yig* implore him to take.

Disputes – the *bca’ yig* demonstrate – seem to have been a common feature of monastic life in pre-modern Tibetan societies. Occasionally, these arguments became violent. Precautionary measures had to be taken, which is one of the reasons why no kind of weaponry could be taken into the monastery. The rules regarding this issue for Pelyul darthang monastery are like those of many other monasteries: ‘It is not allowed for anyone, whether oneself or others, to ride a horse, wear a knife, carry guns and the like within the monastic grounds (*gling*).’<sup>1276</sup> For this monastery, it cannot have been very uncommon for monks to carry arms *and* to use them, for it is stated:

Those monks (*dge tshul slong*) who have never used knives and guns may assemble during *poṣadha* (*gso sbyong*) and the summer retreat (*dbyar gnas*).<sup>1277</sup>

One of my informants, a Ladakhi monk who lived in Yangri Gar in Central Tibet

<sup>1273</sup> French, 1995a: 324.

<sup>1274</sup> *sMin sgrol gling bca’ yig*: 312: *gros dbang can rnams zol med kyi ’phros mol byad te thag yin thog tu chod/*

<sup>1275</sup> *dPal yul dar thang bca’ yig*: 198, 9: *deng phan dge bskos nas grwa tshang nang ’khon pa lta bu byung na dang/ spyi khag che chung rnams kyi don ma yin pa’i phyi nang gyi gyod che phra gang la yang gzigs mi dgos/ bstan pa’i bca’ khrims phyi nang thams cad la nan tan gzigs pa mtha’ ’khyongs nges dgos pas gzhan mtho dman sus kyang gyod ’khon bar bzhugs bcol mi chog.*

<sup>1276</sup> *ibid.* 189: *gling bar du rang gzhan sus kyang rta bzhon/ gri ’dogs/ me mda’ ’khur ba sogs mi chog pa [...]* The text goes on to mention that the more important incarnations and ‘owners of the Teachings’ (*bstan bdag*) are exempted from the rule on horse-riding.

<sup>1277</sup> *dPal yul dar thang bca’ yig*: 190: *gri mda’i sbyor ba byed ma myong ba’i dge tshul slong rnams gso sbyong dang dbyar gnas la ’tshog dgos/*

before 1959, confirms that monks fighting was a rather ordinary occurrence: 'In Tibet there were punishments for fighting, and there was a fair amount of fighting going on, but not here in Phiyang. If you would fight here, you would get expelled.'<sup>1278</sup>

The most dangerous types of disputes were seen as those involving various groups of monks, pitted against each other. This often led to communal violence. One of these clashes is actually mentioned in the Drepung monastic guidelines. Apparently a Mongolian had fired a gun, thereby killing a monk who – to judge from his name – must have been a scholar-monk (*dpe cha ba*). This episode seems to have occurred in the context of inter-collegial feuding, for the text states:

Even though previously, when the monastic houses (*khamts tshan*) fought over people and possessions, arrows and catapults (*mda' rdo sgyogs*) used to be employed, other than the Mongolian dNgos grub rgya mtsho firing a gun and killing Glu 'bum rab 'byams pa, nothing else has occurred. Still, from now on firearms should not be used.<sup>1279</sup>

The author goes on to warn that, in the case of illegal actions (*khriims 'gal rigs*) such as causing a rift in the Sangha and bringing down the Teachings by, for example, colleges and houses fighting each other, the ringleaders together with their gang were to be punished according to state law (*rgyal khriims*).<sup>1280</sup>

It was worse when conflicts did not remain within the monastery, but when a third party was invited to participate. The same author of the Drepung monastic guidelines, the Fifth Dalai Lama, also wrote the *bca' yig* for Gongra ngesang dorje ling in 1664. His remarks highlight the volatile situation this recently 'converted' monastery found itself in. He saw it as a breeding-ground for communal violence:

When one has solicited the help of one's close friends or country-mates, who come into the compound as an army and act as accomplices and aides with regard to joining in as avengers (*dgra sdebs la*), and when the lama, the chant-master and the disciplinarian behave very badly by not considering it important to impose order, then the original ringleader needs to be expelled.<sup>1281</sup>

Interestingly, monastics these days are still seen to take the side of their fellow-country-men when arguments arise:

On the down side, there is no doubt that misplaced local loyalty often leads monks unquestioningly to throw their weight behind someone in a dispute just

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<sup>1278</sup> Personal communication with dKon mchog chos nyid, Phiyang, August 2012.

<sup>1279</sup> 'Bras spungs *bca' yig*: 311: *khamts tshan rnamts mi nor sogs kyi don du 'thab 'dzings kyi dus mda' rdo sgyogs sogs kyi mtshon pa ni sngar nas byed srol 'dug kyang sog po dngos grub rgya mtsho me mda' brgyab nas glu 'bum rab 'byams pa bsad pa tsam las ma byung 'dug pas slad nas kyang me mda'i srol mi byed/*

<sup>1280</sup> *ibid.*: *grwa sa phan tshun dang khamts tshan 'thab rtsod kiyis mtshon dge 'dun gyi dbyen dang bstan gshig khriims 'gal byas rigs la gte po sde tshan dang bcas par rgyal khriims kiyis tsa ra skabs thob byed pa 'dir gsal ma dgos/* Also see Jansen, 2013a: 122.

<sup>1281</sup> *Gong ra nges gsang rdo rje gling bca' yig*: 226: *yul dang thab grogs sogs sde tshan du bcad pa'i mi dpung dgra sdebs la brten pa'i ngan rgyab kha 'dzin byas pa/ bla ma dbu chos sogs kiyis sgrigs mnan par mi brtsi ba'i log sgrub tshan chen byas pa byung na gte po ngo bo gnas nas dbyung/*



because he is from their locality, disregarding the right or wrong of the situation.<sup>1282</sup>

This strong sense of local loyalty was compounded by the fact that monastic houses (*kham tshan*, *mi tshan*) were (and are) usually organized on the basis of regional origins. For monks who were a regional minority, this could result in getting bullied, as the *bca' yig* for Pelyul darthang suggests:

No monk of this monastery, whether big or small, high or low, is to disturb the monks who have come from elsewhere by teasing, calling them names, or insulting them.<sup>1283</sup>

In this regard, the guidelines for Mindröl ling warn: 'Do not start fights that divide the community by slander, out of bias for one's own house (*mi tshan*).'<sup>1284</sup>

The Seventh Dalai Lama, as usual very much in agreement with the Fifth, notes in his guidelines for Namgyel dratshang the following on communal fighting:

Fights between colleges (*grwa sa*), regional groups (*yul tshan*), older and newer [monks], or mass fights with monks (*mi dpung grwa sdebs*) are all against the law and constitute 'causing a rift in the Sangha' (*dge 'dun gyi dbyen*) and 'bringing down the Teachings' (*bstan bshig*). Because the ringleader with his gang (*gte pos de tshan dang bcas pa*) will then be punishable under the secular law, there is no need to clarify this here.<sup>1285</sup>

Thus, monastic in-fighting was deemed to be a crime that was to be tried according to secular law, while this also was judged to cause a rift in the Sangha and to bring down the Teachings, thus merging religious and secular policies *and* ideologies.

### Internal Justice: Crime and Punishment

Throughout this study, references to different types of punishment for various monastic misbehaviour have been made. The most common one is the 'offering' of something. This can be offering prostrations, butter, scarves, or money. Other punishments are doing menial tasks, getting expelled, or getting expelled as well as tried according to secular law.<sup>1286</sup> More sporadic are mentions of corporal punishments. It is important to note that the severity of penances varies greatly amongst the *bca' yig*, and there is thus no overarching understanding of what punishments fit which crimes. Furthermore, the manner in which monks are punished is often left to the discretion of the monk-officials (usually the disciplinarian). In some cases, however, the penalties given are rather detailed. The *bca' yig* for Drigung thil

<sup>1282</sup> Gyatso, 2003: 231.

<sup>1283</sup> *dPal yul dar thang bca' yig*: 194: *phyogs nas 'ong ba'i bla grwa rigs la dgon pa'i grwa che chung mtho dman sus kyang brnyas bcos ming 'dogs 'phyas smod sogs yid sun du 'jug mi chog*

<sup>1284</sup> *sMin sgrol gling bca' yig*: 281: *dge 'dun sde nang du mi tshan phyogs khyer sogs khra mas dbyen bcos pa'i bkrug sbyor mi byed/*

<sup>1285</sup> *rNam rgyal grwa tshang bca' yig*: 71: *grwa sa phan tshun dang/ yul tshan/ gsar rnying/ mi dpung grwa sdebs kyi 'thab rtsod/ dge 'dun gyi dbyen dang bstan bshig khrims 'gal byas rigs la gte po sde tshan dang bcas par rgyal khrims kyi rtsa ra skabs thob byas 'gro bas 'dir gsal ma dgos/*

<sup>1286</sup> The last three ways of punishing monks are similar to the three possible penalties for monks described by the *Daoseng ge*: 1) to be made to do odd-jobs inside the monastic community 2) to be forced to return to lay life 3) to get referred to the civil authorities for trial. See Heirman, 2006: 77 n. 83.

from 1802 has a long section on crimes and punishments. It first addresses communal violence:

Because this monastery consists of a large area (*gling*), it would be wholly inappropriate to hold biases towards the upper or the lower part: all need to uphold the same ideals (*bsam pa gru bzhin*). If there are any quarrels, arguments, or physical fights, then [the punishment is] a communal tea-round, a hundred prostrations, three sets for the lama (*gsum tshan*),<sup>1287</sup> and a ceremonial scarf (*dar kha*) for the manager and the disciplinarian.<sup>1288</sup> If implements are used such as stones, sticks or claws (*sder mo*),<sup>1289</sup> then [the punishment is] a communal tea-round, three hundred prostrations, pole-flags (*dung dar*) and scarves (*snyan dar*), five sets for the lama, and three sets each for the manager and the disciplinarian. If knives are drawn and blood is shed, then [the punishment is] a communal tea-round, a thousand prostrations, pole-flags and scarves, seven sets for the lama, and five sets each for the manager and the disciplinarian.<sup>1290</sup>

Here we see a gradual increase in the severity of the punishment, as the harm inflicted on others gets more serious: the punishment is about three times more severe when one hurts someone with a knife than when one hurts another with one's hands or words. The text then goes on:

When people drink alcohol or smoke tobacco, because it smells bad and falls under intoxicants, or when someone arrives beyond the black pile of stones (*nag mtho*)<sup>1291</sup> riding a horse, [the punishment is] a communal tea-round, three thousand prostrations, pole-flags and scarves, nine sets for the lama, and seven sets each for the manager and the disciplinarian.<sup>1292</sup>

This means that drinking, smoking, and riding horses into the compound are punished more heavily than stabbing a person with a knife! There may be a number of explanations for this, but it is likely that, while the previous penalties in all likelihood involved only monks, the latter penalty also affected lay-people. Perhaps the general consensus was that they could be fined more heavily than monks. The text goes on to describe 'crimes' that could only be committed by monastics:

If something illegal happens that is an obvious defeat (*pham pa*, S. *pārājika*) such as sexual conduct (S. *abrahmacārya*), then [the punishment is] a communal tea-round, ten thousand prostrations, pole-flags and scarves, ten

<sup>1287</sup> It is not clear what needs to be paid here.

<sup>1288</sup> *spyi chos*, here this is an abbreviation of *spyi gnyer* and *chos khrims pa*.

<sup>1289</sup> This word usually refers to animal claws, but here it might indicate a specific type of weapon.

<sup>1290</sup> 'Bri gung byang chub gling bca' yig: 403: *dgon pa 'di gling rgya che bas gling stod smad zhes phyogs khyer kun slong byas na gtan nas mi 'thus pas gsum pa gru nang bzhin dgos/ gling gseb dang spyil bu sogs kyi nang du kha 'thab tshig rtsod lag thug byas pa byung na/ mang ja brgya phyag bla mar gsum tshan/ spyi chos la dar kha/ rdo dbyug rder mo sogs kyis khrab bton pa byung na/ mang ja brgya phyag gsum/ dung dar snyan dar/ bla mar lnga tshan/ spyi chos la gsum tshan re/ gri bton pa dang khrag phyung ba byung na/ mang ja ston phyag dung dar snyan dar/ bla mar bdun tshan re/ spyi chos lnga tshan re/*

<sup>1291</sup> This must refer to a specific boundary marker.

<sup>1292</sup> *ibid.*: *chang 'thung ba dang tha ma kha 'di dri ngan myos gyur du gtogs pas 'then mi dang/ nag tho'i yan rta zhon nas yong ba sogs byung na/ mang ja stong phyag gsum re/ dung dar snyan dar/ bla mar dgu tshan/ spyi chos la bdun tshan re/*

sets for the lama, and nine sets each for the manager and the disciplinarian. Having offered this, then if he stays in the monastery, he needs to [first] give back the remainder of his vows and if he does not genuinely abide by the trainings he then has retaken, he will be expelled.<sup>1293</sup>

It seems here that, contrary to what is often thought, sexual conduct did not necessitate the expulsion of a monk. Rather, the text explains what ‘reparations’ needed to be made, which included the retaking of the monk’s vows.<sup>1294</sup> The text concludes its section on punishments with:

If one talks back to the lama, or if one [physically] retaliates<sup>1295</sup> against the manager and the disciplinarian, then all this person’s things need to be neatly collected<sup>1296</sup> and he then gets expelled.<sup>1297</sup>

The suggestion here is that answering back to the lama or punching a disciplinarian was potentially punished more heavily than breaking one’s root-vows, for here the option of staying in the monastery is not given. Possibly, this type of rebellious behaviour was seen as more heinous than sex – the most un-monk-like behaviour of all. However, in Mindröl ling in the late 17<sup>th</sup> century, talking back to the disciplinarian was punished according to the severity of the occasion:

When there is backtalk the punishment is [the offering of] butterlamps consisting of one *khal* up to five *nyag* of butter. If there is physical resistance he is either expelled from the monastery or made to give a communal tea-round, scarves or butterlamps of one *khal*, depending on the gravity of the offence.<sup>1298</sup>

Merely verbally retaliating or resisting the disciplinarian was, in Phulung monastery in 1947, punished relatively lightly:

When one, while having done all sorts of things, still utters talk such as ‘I am important, I am powerful’ – out of disregard for the disciplinarian – and talks back at him, [that individual] needs be punished by doing prostrations, ranging from fifteen hundred through twenty-five hundred, depending on the gravity of the offence.<sup>1299</sup>

<sup>1293</sup> *ibid.*: 404: *mi tshang par spyod pa sogs pham pa dngos su 'gal ba byung na/ mang ja khri phyag re/ dung dar snyan dar/ bla mar bcu gsum/ spyi chos la dgu tshan re phul nas dgon du sdod na/ sdom ro phul nas bslab bskyar tshad ldan dang mi sdod na gnas nas dbyung/*

<sup>1294</sup> The topic of what actions incurred expulsion is addressed below in this chapter.

<sup>1295</sup> *lag slog pa*, literally ‘to return a hand’.

<sup>1296</sup> The language is not entirely clear, but it seems to suggest that the monk’s things are taken away, which correspond to what we find in other *bca*’ *yig*.

<sup>1297</sup> *ibid.*: *bla mar kha lan slog pa/ spyi chos las lag slog pa byung na kho rang gi dngos po thams cad gtsang mar blangs nas gnas dbyung byed/*

<sup>1298</sup> *sMin sgrol gling bca*’ *yig*: 281: *chas ldog na khal gcig nas nyag lnga’i bar gyi mar me dang bgya phyag lag gi ldog na gnas nas dbyung ba’am mang ja snyan dar khal gcig gi mar me sogs nye byas che chung gi skabs dang sbyar ba ’gel/*

<sup>1299</sup> *Phu lung dgon bca*’ *yig*: 612: *gcig rgyab gnyis snon gyis chos khrims pa la rtsis med kyi nga che nga btsan shed gtam shed ’gros kyi ma zung do brtos kha len byas na bgya phyag bco lnga/ lag len byas na dngul srang bco lnga nas/ nyi shu rtsa lnga re’i bar ’gal tshabs dang bstun pa’i gcod dras dgos/*

When punishment is mentioned in the *bca' yig*, flexibility of the rules is often emphasized and, in most cases, the type of punishment is left to the local monastic officials. In Phabongka monastery too, when actions not in accordance with the Vinaya were committed, the severity of the punishment had to fit the misdeeds: this could be the offering of butterlamps (*dkar me*), scarves, up to one or two communal tea-rounds.<sup>1300</sup> By contrast, in Thailand in the 1960s, offences incurred by the monks were punished by making them doing domestic chores, such as sweeping the compound or cleaning the latrines.<sup>1301</sup>

More in line with the Tibetan way of punishing, in early 20<sup>th</sup> century China, punishments were often physical, but also fines of two to ten Chinese dollars were common. If the offender did not have the money he would be beaten. Expulsion was rare and could only be executed by the abbot. In monasteries where the emphasis on meditation was less strong, penalties were milder. To judge from anecdotal information, in the case of Tibetan monasticism the opposite seems to have been the case. In China, the offending monks were sometimes made to do three prostrations in front of a Buddha image. Monks with no money to pay the fine would have to do a greater number of prostrations. The mildest type of penalty was chanting a sūtra,<sup>1302</sup> something I have not come across in the Tibetan context.

While in the Chinese monasteries the emphasis was on monetary punishments, this was relatively unknown in Tibet, partially also due to the relative scarcity of cash money. However, in recent times, it is more and more common for monks to have to pay a fine. In 2000, Sera Me monks in India were fined 25 rupees every time they skipped a debate-session.<sup>1303</sup> In the scholastic college (*bshad grwa*) of Drigung monastery in India, getting involved in a fight would cost three hundred rupees.<sup>1304</sup> It is unclear what the 'proceeds' of these fines are spent on.

### **A Note on Forced 'Offerings'**

All in all, the above given penalties are relatively light and – at first glance – appear to be stimulating a wrong-doer to 'pay' for his bad actions by giving him a chance to accumulate merit, perhaps similar to doing penance. The prostrations, which were also the punishments of choice in 6<sup>th</sup> century Chinese Chan monasteries,<sup>1305</sup> suggest that this was an opportunity for the individual to generate good karma on the one hand (although this is *never* reasoned in this way). Additionally, as these prostrations appear to have most frequently taken place in the presence of all the other monks, this punishment could also have been used as a way to put a rebellious monk in his place.<sup>1306</sup> It has been noted that '[f]ines in kind were common, but they were always described as "offerings"'.<sup>1307</sup> This is complicated by the fact that, although the verb that is most often used when fines of any sort are suggested is '*bul ba*', this, in its most basic meaning, is a self-deprecating honorific verb denoting 'to give'. In the case of ordinary, misbehaving monks being made to do prostrations in front of the

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<sup>1300</sup> *Pha bong kha bca' yig*: 242: 'dul ba dang mi mthun pa'i rigs su thad nas byas byung tshe 'phral du 'gal tshabs la dpag pa'i dkar me snyan shal lam/ mang ja gcig gnyis tshun gyi nyes pa brnag thog btsag 'gel gtong/

<sup>1301</sup> Bunnag, 1973: 95.

<sup>1302</sup> Welch, 1967: 119-20.

<sup>1303</sup> Lempert, 2006: 23.

<sup>1304</sup> Personal communication with dKon mchog chos skyabs, Rajpur, August 2012.

<sup>1305</sup> Yifa, 2002: 19.

<sup>1306</sup> In Sri Lanka, a similar type of 'public humiliation' as punishment for an injunction was carrying a hundred boxes of sand to the assembly. See Ratnapala, 1971: 177.

<sup>1307</sup> Huber, 2004: 135.

assembly, it would be the *only* correct verb to use. Furthermore, the texts conceptualize punishment very much as punishment (and not necessarily as offerings), since the word *chad pa* (punishment) is also employed, often in the same line.<sup>1308</sup> Nonetheless, butterlamps, scarves, and prostrations are first and foremost thought of as offerings.

The counter-intuitive status of these punishments is also remarked upon by Ngag dbang dpal sbyin:

The internal rules (*nang khrims*) talk about how first to tell someone he made a mistake, and that when it happens again he needs to do a hundred prostrations or give a hundred butterlamp offerings with his own money. Normally, butterlamps are offered out of faith, but here the person *has* to offer, whether he has faith or not.<sup>1309</sup>

The offerings then, while by no means voluntary, were a way to practice generosity – although it can be debated how much merit would accrue if the giver gave against his will. An important feature of the prostrations is that they were often done during the assembly: all the monks present would know that the monk did something wrong. It can also be seen as a way of making repairs with a community whose reputation the misbehaving monk had potentially damaged. Here we see that, while not unproblematic, referring to punishments as *'bul ba* is not entirely comparable to the 'papal rhetoric' employed by the Christian Church in medieval Europe, when referring to something like interest as 'gifts'.<sup>1310</sup>

The forced offerings that the authors of the *bca' yig* recommend to be given as punishments are not primarily focussed on the individual's morality or karmic status. However, there may have been an element of these punishments restoring a balance, within the community but also among the deities to whom the offerings were given. The monastic punishments were not in all instances easily rationalized from a Buddhist viewpoint. Corporal punishment, according to eyewitness accounts rife in Tibetan monasteries, is one such example.

### On Physical Punishment

The information on physical punishment in Buddhist cultures is diverse. For some, the case is quite clear-cut: 'First of all we must note that there was no corporal punishment in monastic Buddhism.'<sup>1311</sup> Pachow, in a similar vein, comments that the Buddhists 'do not inflict upon anybody any corporal punishment nor impose any fine, their punishments are comparatively very light.'<sup>1312</sup> More nuanced is the observation by Gethin, namely that 'the use of physical violence as a punishment for breaking the rules of the monastic code seems nowhere to be endorsed in the early Buddhist vision of monastic life.'<sup>1313</sup> While indeed in the Vinaya materials there are no known references to structural physical punishments for monks breaking rules or vows, textual material and oral history from a wide range of Buddhist cultures from different

<sup>1308</sup> Huber cites the following example from the *rGyal rtse chos sde bca' yig*: *mang ja 'bul ba dang bcas pa'i chad pa 'gal* ('the punishment of having to offer a communal tea service [to the monks] will be imposed'). *ibid.*: 134, n. 20.

<sup>1309</sup> Personal communication, Dharamsala, July 2012.

<sup>1310</sup> Ekelund (et al.), 1996: 118.

<sup>1311</sup> Wijayaratna, 1990: 143.

<sup>1312</sup> Pachow, 2000 [1955]: 62.

<sup>1313</sup> Gethin, 2007: 64.

eras suggest that – as was (and is) the case in the domestic sphere – physical ‘violence’ was not unheard of in monasteries. The British explorer Pereira, who visited Labrang monastery in Amdo in the early 20<sup>th</sup> century, describes in some detail the monastic punishments he was told about:

For discipline, there is a president (Jewa).<sup>1314</sup> He has powers of punishment. For grave offences a sheet of paper is put over the monk’s face and he is branded on the forehead with a red-hot key and is then led to a small door and banished from the monastery. Another punishment is cutting off the ears and nose, but this is rarely, if ever, practised. Another punishment is to suspend a monk by the hands from a tree, either entirely or with his toes just touching the ground, and he is kept suspended for different lengths of time up to two or three days. The commoner punishments are beatings, or else being fined. Even lamas are liable to be punished in these ways, though generally they are given the opportunity of getting away.<sup>1315</sup>

Another traveller-account is that by Schram, who visited the border areas of Amdo and China in the 1920s:

At night, the disciplinarian with some of his lictors, armed with rawhide whips, makes a tour of the lamasery. Lamas found brawling, quarrelling, or fighting are brought to the court of the intendant, where penalties are meted out in various brutal forms.<sup>1316</sup>

While earlier authors, with their orientalist tendencies, may have been keen to point out the ‘brutal’ punishments Tibetan monks bestowed upon each other, the most commonly heard reports are of physical punishments that – though not excessive – were also not merely a slap on the wrist. Rogue monks tended to get punished by having to do prostrations or by getting beaten – neither for a prolonged time nor severely – by switches on the backside.<sup>1317</sup> In Tibet, according to one of my informants, often only the young monks would receive these types of punishments; it was not considered an appropriate punishment for monks who were more mature.<sup>1318</sup> Blo bzang don grub, an elderly monk from Ladakh who spent a number of years in Drepung in Tibet in the 1940s and 50s, recounted how discipline was maintained there:

If you would do something against the rules, the house-teacher (*kham tshan dge rgan*) would beat you with a stick.<sup>1319</sup> There were several people who would keep order in the monastery: the disciplinarian, the abbot, the disciplinarian’s assistants (*dge g.yog* and *chab ril*): if you would do something bad they would report you (*rtsis sprod pa*) to your house-teacher. He would then beat you or give you some kind of punishment. Prostrations were also a

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<sup>1314</sup> Presumably *spyi ba*.

<sup>1315</sup> Pereira, 1912: 417.

<sup>1316</sup> Schram, 2006 [1954]: 374.

<sup>1317</sup> Goldstein, 1964: 137.

<sup>1318</sup> Personal communication with Shes rab rgya mtsho, Rajpur, August 2012.

<sup>1319</sup> The same informant also told me that it was this house-teacher who initially told the new monk all the ‘local’ regulations they had to adhere to.

punishment, but it was mostly the stick. We never had to pay monetary fines or anything like that.<sup>1320</sup>

In some monasteries, fines, rather than offerings, were an accepted way to penalize a monk. The *bca' yig* for the Nyingma monastery Tengpoche in Nepal from 1918 states the following:

When a small number of evil people are involved in improper things that are a disgrace to the Teaching, disregarding what is right, then by means of investigation,<sup>1321</sup> strict punishments that befit the wrong-doings need to be imposed, which may be physical or material (*lus dang longs spyod*).<sup>1322</sup>

In some cases, the type of corporal punishment is specified, such as in the guidelines by Thirteenth Dalai Lama written in 1927 for a Central Asian monastery:

Arguments and fights should be definitely punished relative to the wrong-doings, setting an example (*mig lar 'doms*), ranging from having [first] offered butterlamps and scarves to the protectors, to doing either a hundred or a thousand prostrations up to getting beaten with the whip upon one's body.<sup>1323</sup>

According to one informant, elderly monks could often be overheard exchanging 'war stories' of their youths spent in the monasteries in pre-1950s' Tibet, saying 'I did this and this, for which I got thirty strokes with the whip (*rta lcag gis shar ba*)'.<sup>1324</sup> Currently, in Tibetan monasteries beating is less and less an acceptable form of discipline and one could say that these practices are being gradually phased out.<sup>1325</sup> Some monk-administrators, however, talk about how the old ways were more effective. Lama 'Tshul khirms', a monk high up in the administration of a large monastery in exile, is highly critical of current-day discipline:

The monks these days go everywhere. In the old days you needed to ask the disciplinarian for permission before you could go outside of the monastery. If you would get caught you would get fifty strikes on the backside. Now there is no physical punishment any more. Now the monks are all over the settlement (*gzhi chags*) and wander about at night.<sup>1326</sup>

There are some *bca' yig* that seem to suggest that lay-people too were liable to get punished physically. The guidelines for Tashi Lhunpo for example outline the rules with regard to the use of alcohol. The 18<sup>th</sup> century text states that no one, not even the lay-officials, could drink or even carry alcohol in Tashi Lhunpo and those people who would get caught buying or selling intoxicants would get a suitable corporal

<sup>1320</sup> Personal communication, Blo bzang don grub, Spituk, August 2012.

<sup>1321</sup> This translation is contextual; it is not entirely clear what '*gcig rgyab gcig zin gyis*' here means.

<sup>1322</sup> *sTeng po che bca' yig*: 464/ 6b: *mi ngan re gnyis kyis bstan pa'i zhabs 'dren tshul min zur gyes bltos med byed pa byung rigs la/ gcig rgyab gcig zin gyis 'gal 'tshabs dang bstun pas nyes chad lus dang longs spyod du yan por ma song bar btangs thog* [...]

<sup>1323</sup> *bKra shis chos rdzong bca' yig*: 496: *kha 'dzings sogs la srung mar mchod me snyan shal thog tshogs su brgya phyag stong phyag nas lus steng lcags 'bebs bar nyes mthun chad pa mig lar 'doms nges gcod/*

<sup>1324</sup> Personal communication with the director of Drigung Jangchub ling, Rajpur, August 2012.

<sup>1325</sup> Also see Dreyfus, 2003: 58.

<sup>1326</sup> Personal communication with Lama 'Tshul khirms', Dehradun, August 2012.

punishment to make them see the error of their ways, but they could not be asked for a pay-off (*za 'dod*) instead.<sup>1327</sup> A later set of monastic guidelines by the Thirteenth Dalai Lama for *mDo kham* *sho mdo dgon dga' ldan bshad sgrub gling*<sup>1328</sup> from the 1920s also suggests physically punishing anyone breaking the rules, be they lay- or monastic:

In accord with various relevant legal decrees, which resulted in hunting being illegal in the [previously] established areas (*thob khungs*), such as behind and in front of the main monastery and its branches, when people do not uphold this, they need to be physically punished.<sup>1329</sup>

Corporal punishment is mentioned only infrequently in the monastic guidelines. It is important to bear in mind that the Tibetan *bca' yig*, as other Buddhist monastic guidelines, often merely portray a normative picture: the way procedural justice was imagined by the authors. Oral accounts and the like then show us to what extent these rules were put into practice and the extent to which the general monastic attitude to justice accords with that found in written sources. With the information at hand, it is difficult to ascertain the degree and manner of physical punishment that took place in the monasteries. A set of monastic guidelines for the Sakya Mang spro monastery in Ladakh, written by the King Nyi ma rnam rgyal in 1711, threatens physical and even capital punishment, but only as an instrument of state law:

As it would not be right to become worse than householders, by taking into consideration the honour (*la rgya*) of the Teachings and the beings based on the religious rules and the state law, a lama should not diverge from this path. A doer of great misdeeds is confined to his monk-quarters<sup>1330</sup> and all that he has is confiscated by the *bla brang*. The matter having been carefully investigated, he is expelled by the *ganḍi* being beaten, thereby preventing any reoccurrence among the pure ones. When this is done, one is not to be his accomplice. After this, no one, be they high or low, monk or lay, in whatever capacity, is allowed to act as his support, his accomplice. As it is possible that there are those who innocently disregard this, these people will be penalized heavily by means of punishments of body and life through the secular law. Therefore, it is important for everyone to be unmistakable with regard to what is right and wrong.<sup>1331</sup>

<sup>1327</sup> *bKra shis lhun po bca' yig*: 99: [...] *nyo tshong byed mi gang yin la za 'dod tsam ma yin pa'i lus steng rang du nyes pa rnag thog gtsag khel gtong rgyu/*

<sup>1328</sup> This monastery is in Sho mdo, Lhorong country, in Chamdo prefecture. While it is currently included within the Tibet Autonomous Region, the Thirteenth Dalai Lama considered it to be in *mDo smad* (commonly understood to refer to Eastern Tibet).

<sup>1329</sup> *Sho mdo dga' ldan bshad sgrub gling bca' yig*: 527: *rtsa tshig rim 'brel ltar dgon ma lag gi rgyab mdun sogs sngar thob khungs su rñgon 'gal khrims 'bras la mi gtugs pa byung tshe lus steng du chad pa gtong/*

<sup>1330</sup> *grwa shag la/ sgo the* [sic: *them*] *sbyar ba*. Literally, to attach a threshold to the monks' quarters. It means either that he is locked into his room or out of his room.

<sup>1331</sup> *Mang spro dgon bca' yig*: 63, 4: *khyim pa las zhan par gyur na mi rung bas/ chos khrims dang rgyal khrims kyi sgo nas bstan 'gro'i la rgya la dgongs pas bla ma nas de lam du ma bor ba 44) nyes chen byed po de nyid grwa shag la/ sgo the sbyar bas rgyu dngos gang yod bla brang du bzhes, ngo bor bsgyur sbyang sed bkrol nas gan [ganḍi] rdung gis gnas nas dbyung nas gtsang dag phyis lam khegs pa gnang ba dang, de ltar gnang ba la gtso bor 'di [kha] 45) kha nas ngan rgyab mi byed cing/ de rjes mchog dman ser skya dbang yod su'i kyang rten skyob ngan (rgyab) byas chog rgyu min/ de la yang nyes med kyi rtsi med byas srid na 'di kha nas kyang (rgyal) khrims kyi sgo nas lus (srog gi) steng*



Within the Tibetan secular courts, physical punishments and even the maiming of convicted criminals were not uncommon practices. These types of punishments did pose a challenge to monastics involved in legal issues. French's monk-informant who used to work at the courthouse in Lhasa, stresses that he 'as a monk' was not allowed to have anything to do with this.<sup>1332</sup> By contrast, the people who punished the monks in the monasteries must have always been monastics themselves.

### The Punishment of Expulsion: *Pārājika* and Other Reasons

Among the lists of punishments that feature in most *bca' yig*, expulsion (*gnas dbyung*) is often given as the last resort, the highest possible penalty. But what crimes deserved such punishment, and what did it actually mean to get expelled? The threat of expulsion has been alluded to a number of times before. According to information on the basis of oral history, actual expulsion was rather rare. In most, but not all, cases, people were expelled when one of the four 'roots' were broken. The procedures of expulsion, as they are described in the monastic guidelines, are rather intricate. The 1947 guidelines for Phabongkha elaborate on the process:

When it turns out that someone has gone against [any of] the four roots, he will definitely be expelled from the Sangha. He – whoever it is – should offer a hundred prostrations in the back row during assembly. After that, he kneels and the disciplinarian sternly relates his misdeeds in public. Then, his monastic robes are taken away from him. He is made to wear white clothes and he is justly given two hundred lashes of the whip in order to make him an example for everyone to see. After that, as settled on paper and established in the *sūtras*,<sup>1333</sup> he is expelled.<sup>1334</sup>

The Thirteenth Dalai Lama suggests a slightly milder approach and recommends a fine for transgressing monks in Jampa ling in Chamdo:

Those who have incurred defeats need to first give scarves to the people of their own college and then they give a fine of twenty-five official silver *srang*. After that, as settled on paper and established in the *sūtras*, they are turned out.<sup>1335</sup>

A similar type of rigorous approach was suggested by the *bca' yig* for Menri monastery. Cech translates:

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*du chad pa drag po gtong nyes* 46) *yin pas so so nas spang blang 'dzol med gal che/* The bracketed words here indicate contracted writing forms.

<sup>1332</sup> French, 1995a: 324.

<sup>1333</sup> *shog thod* [sic?: *thog*] *mdo sgrub*, this seems to be a set phrase used when announcing expulsions, but the meaning is not exactly clear here.

<sup>1334</sup> *Pha bong kha bca' yig*: 609: *gal srid rtsa ba bzhi dang 'gal rigs shar tshe dge 'dun pa'i gnas nas nges par 'byung/ de'ang nyes can su yin nas tshogs dbus gral gsham du brgya phug* [sic: *phyag*] *gcig phul rjes/ pus mo btsugs/ chos khrims pas de nyid kyi byas 'dzol rnams tshogs gtam drag gtong dang 'brel rab byung gi chas gos rnams phud/ gos dkar g.yogs te lus steng du lcang* [sic: *lcag*] *dbyugs nyis brgya tham pa/ tshang ma'i mig lar 'doms slad gnad 'phrod btang thog shog thod mdo sgrub dang 'brel bar gnas nas dbyung/*

<sup>1335</sup> *Chab mdo dga' ldan theg chen byams pa gling bca' yig*: 548: *pham pa byung ba rnams nas so so 'i grwa tshang khongs su kha btags/ nyes chad rgya dngul srang nyi shu rtsa lnga sgrub rje shog thod mdo sgrub dang 'brel bar gnas nas bskrad/*

If the four root vows are weakened, then there should be no delay in expelling the monk from the monastery. He should leave naked with ashes thrown on him. He should not settle in the same area.<sup>1336</sup>

Even more detailed is the account given in the recently written *mTshur phu dgon gyi dkar chag*. The author here reconstructs the *bca' yig* that was in use in his monastery before it went missing:

If something occurs that necessitates someone being expelled from the monastery's community (*grwa sa'i skyid sdug*), the chant-master and the disciplinarian (*dbu chos*) report the culprit to the treasury (*phyag mdzod khang*) of the *bla brang* to which he belongs (*do bdag*). The treasury then dresses him in white. It is appropriate that he gets a punishment (*rtsa ra*) in front of everyone consisting of two hundred lashes of the whip, without protesting (*ka kor med pa*). He then needs to give, as an offering, a communal tea-round for the collected monks, which can be elaborate, average or limited, as well as scarves for the throne. He then is again placed among the ranks of the menial servants,<sup>1337</sup> clerks (*nang zan*), and tax-payers (*khral bzo*),<sup>1338</sup> of the person who was lord when he was a lay-person. Whether he is taxed or not is generally decided upon, depending on how he has been punished and the gravity of his offence.<sup>1339</sup>

According to the above text, the monk who breaks his vows is suitably 'laicized', punished physically and financially, and is returned as a subject of his previous 'lord'. The passage that follows elaborates on what vows were broken and discusses the object of the monk's downfall.

The girl also needs to give two communal tea-rounds, as a confession (*bshag pa*) to the assembly of monks, either elaborate or limited. According to the earlier *bCa' gsal*,<sup>1340</sup> there was a custom of giving the girl two hundred lashings with the whip as a punishment, but after some time doing this went out of practice (*mdzad brtas*) and it was substituted by the punishment of offering communal tea-rounds and by giving beautiful and expensive materials (*sbyor 'jags*) for a throne, pillar decorations or offering-materials and the like, which were honestly acquired. Withdrawing her from the community (*skyid sdug 'then pa*) also occurred, having made an example [of her], whether [she was] higher, lower or the same [social status]. In the place of each lash of the whip one kilo (*rgya ma*) of gathered wood had to be given, and the two-hundred kilos of wood then needed to be offered to the general assembly of

<sup>1336</sup> Cech, 1988: 73.

<sup>1337</sup> *rta thab*. This is an abbreviation of *rta thab g.yog*, servants who take care of the horses and the fire.

<sup>1338</sup> The exact meaning of this word is not clear; it may also denote 'tax-collector'.

<sup>1339</sup> *mTshur phu dgon gyi dkar chag*: 285: *gal te grwa sa'i skyid sdug nas 'dgos pa'i gnad don byung na dbu chos lhan rgyas nas nyes can do bdag bla brang gi phyag mdzod khang du rtsis 'bul thog phyag khang nas gos dkar bkon te kun gyi mig lam du 'doms pa'i lus steng du rtsa ra rta lcag nyis brgya tham pa zhu re ka kor med par gnad 'phrod thog dge 'dun 'dus tshogs rnam la mang ja rgyas 'bring bsdu gsum khri dar rnam gzhag dang bcas pa 'bul sgrubs dgos pa'i thog slar yang skya rtsa rang bdag gis gzhis khag gi rta thab nang gzan dang/ khral bzo khungs 'jug khral snon mi snon sogs nyes chad ji gnang nyes 'gal che chung la gzhigs pas bka' dpyad spyi khur zhu rgyu dang/*

<sup>1340</sup> Presumably, this is the name of the text that is deemed lost.

monks – this is what it said in the *bca' yig*. Having consulted with various guiding materials (*lam ston yig cha*), things differed according to the specifics of the personal inclinations of the person in charge (*do bdag so so'i babs*). The custom was that the treasury decided on either a heavy or a light punishment that was fitting, making sure that [the offence] would not again occur in the future.<sup>1341</sup>

The other instance that mentioned the female party getting punished can be found in a *bca' yig* written for another Kagyü monastery. In this *bca' yig* for the Sikkimese Phodang (Pho ldang) monastery from the 18<sup>th</sup> century, it is suggested that the woman would be punished by making a confession and giving offerings, similar to those of the monk. She also had to vow not to reoffend. If the monk and the girl continued their practices, they needed to do the same types of confessions and in addition pay twenty-five coppers coins (*smar zho*).<sup>1342</sup>

Sometimes, even allowing the mere presence of women in the monastery was enough to get expelled – at least, according to the warning given in a text directed to the population of Sera monastery:

Even if it is one's own mother, she may not get permission to stay unless it is during the 'Great Giving ceremony' (*gnang chen*). If there are women in the monastery without permission, then the one responsible along with his accomplices will be expelled and the instigators each have to carry out the punishment of one communal tea-round and five hundred prostrations each.<sup>1343</sup>

Breaking the vow of celibacy is the most commonly mentioned 'defeat' in the monastic guidelines.<sup>1344</sup> While sometimes *bca' yig* took a more pragmatic approach towards sexual conduct, in particular in Himalayan regions,<sup>1345</sup> for a monk to have sex *always* was tantamount to a loss of vows. A monastic community then could decide to either let the person retake his vows or to expel him. It is important to note that many other, and I dare say most, *bca' yig* – if they mention sexual conduct at all – do *not* take a tolerant stance with regard to issues of celibacy. To cite an example from the guidelines for Mindröl ling monasteries, written in 1698:

<sup>1341</sup> *ibid.*: *de'i bu med nas dge 'dun mang tshogs rnam la bshag pa mang ja rgyas bsdu gnyis dang/ de snga bca' gsal la bu med kyi lus steng du rta lcag nyis brgya tham pa re'i risa ra chad pa gcod srol 'dug kyang bar lam kha cig la mdzad brtas byung ba'i dbang gis mang ja rnam gzhag rgyugs dod sogs chad las rnam gtsang bsgrubs thog 'du khang gi gdan khri dang/ kha 'phan mchod rdzas sogs spams mtho sbyor 'jags zhus te skyid sdug 'then pa sogs kyang byung stags mig ltos rim shas kyi phyis mchog dman mos snyoms dbang gis rta lcag re'i dod du tshogs shing rgya ma re la bsgyur ba'i rgyugs dod sing rgya ma nyis brgya re dge 'dun spyi'i tshogs shing du 'bul lam zhu rgyu bcas bca' yig gi dgongs don dang/ lam ston yig cha rim pa la go bsdur/ do bdag so so'i babs kyi dmigs bsal zor lei yang sogs phyag khan nas 'os shing 'tshams la phyis lam 'doms pa'i dpyod rgya mdzad srol yod pa dang/*

<sup>1342</sup> Schuh and Dagab, 1978: 246: *bud med des kyang gong gyi bzhugs bshags ltar sgrub ste phyin chad sgrigs lam ras su mi bor ba'i mtha' 'dom dang/ sngar tshig rjes 'gal mi yong ba'i gan sdom tha gtsang blang/ de min byed lte kho rang gnyis ka'i las smon dbang gi chos skal zad pa (lta bu) tshod med sdig can du shar tshe gong gsal bshags brten thog smar zho (nyi shu) rtsa lnga sgrub/*

<sup>1343</sup> *Se ra theg chen gling rtsa tshig*: 187: *rang gi ma yin na 'ang gnang chen gyi skabs ma gtogs rgyun gtan gnang ba zhu sa med/ gal te dgon nang du bud med gnang ba ma zhus pa'i rigs byung tshe byed gte khag theg dang bcas gnas dbyung dang 'go byed so sor mang ja phyag lnga brgya re'i chad las 'gel/*

<sup>1344</sup> It can be no coincidence that this is also the case in the Vinayas. See Clarke, 2009b: 116.

<sup>1345</sup> For an example of such a *bca' yig*, see Jansen, 2014.

When someone is suspected of having had intercourse, he needs to be investigated and if it is found to be true, he is to be expelled (*gnas nas dbyung*) under the sound of the very loud *ganḍi*.<sup>1346</sup> Even if his [case] seems to have supporters, it needs to be put an end to, for it has been determined that it was ‘the first *pārājika*’.<sup>1347</sup>

A recurring myth, upheld by scholars even today, is that celibacy was only enforced in Gelug monasteries and that the attitudes towards sex in other institutions were more *laissez-faire*. While it is not possible to make claims on the actual practices of these non-Gelug monastic institutions, on the basis of the textual sources at hand it can be stated in no uncertain terms that on the level of monastic *policy and ideology*, sexual conduct was never simply tolerated. In fact, the emphasis given on celibacy is found as often in non-Gelug *bca’ yig* as it is in Gelug *bca’ yig*. Thus, unless the topic is the extent to which celibacy was practised in Tibet based on eye-witness or personal accounts and such like, the myth that monastic institutions other than Gelug monasteries displayed a general, or even ideological, disregard for upholding the vow of celibacy needs to be put to bed once and for all.<sup>1348</sup>

Another set of guidelines for a Nyingma monastery, this time for Tengpoche from 1918, is equally intolerant of vow-breakers:

As soon as a defeat of the four roots has occurred, the person who has broken his promise (*dam*) to his lama is expelled under the sound of the *ganḍi*. Not being allowed to leave behind his boot,<sup>1349</sup> he has to survive in the [lay-] community himself and in accordance with state law.<sup>1350</sup>

The guidelines written in 1938 for Dophü chökhör ling give a reason why these monks may no longer stay at the monastery:

If a *dge tshul* or *dge slong*, however good he is, has transgressed the four roots, as there is no more partaking in either Dharma or material goods together with the Sangha, he should be expelled.<sup>1351</sup>

<sup>1346</sup> A *ganḍi* is a piece of wood used in the monastery to signal both daily activities and exceptional circumstances. See Helffer, 1983: 114.

<sup>1347</sup> *sMin sgrol gling bca’ yig*: 279: *de dag gang rung dang khyed par mi tshangs spyod kyi nyes pas gos pa mthong thos dogs gsum dang ldan pa la dogs pa chod nges pa’ i rgyu mtshan yang dag mthong na ’chal pa’i klad pa ’gems pa’i ganḍi’i sgra drag po dang bcas pas gnas nas dbyung/ de’i rgyab snon pa snang yang tshar gcod/ pham pa dang po’i mtha’ ’gegs phyir/*

<sup>1348</sup> e.g. Willis, 1989: 101: ‘Of the four schools, only the dGe-lugs-pa enjoins strict celibacy [...].’ In other instances, a similar sentiment is couched in more innocuous terms, such as that the Gelug monasteries ‘emphasize celibacy and purity.’ See Samuel, 2013: 11. Another recent reiteration of this myth can be found in Clarke, 2014: 116.

<sup>1349</sup> *zom nyer bzhag*. While this exact phrase is not attested in the dictionaries, *zom lus* (leaving one’s boot, i.e. leaving something behind unintentionally) does occur, see Goldstein, *The New Tibetan-English Dictionary of Modern Tibetan*: 963. Here it must refer to any business the ex-monk may have in the monastery. The phrase may have some parallels with the well known narrative of Hwa shang Mahayana leaving one of his shoes behind at Samye, i.e. some of his views remained current in Tibet.

<sup>1350</sup> *sTeng po che bca’ yig*: 464/6b: *rtsa ba bzhi’i pham pa byung ba dang/ bla mar dam nyams pa’i rigs ganḍi’i sgra dang bcas gnas nas dbyung ba las zom nyer bzhag mi chog pa sogs ’dus pa’i sde dang/ rgyal po khrims kyis ’tsho zhing/*

<sup>1351</sup> *rDo phud chos ’khor gling bca’ yig*: 565: *dge tshul slong gang yin kyang rtsa ba bzhi las ’das na dge ’dun dang lhan cig chos dang zang zing gi longs spyod byar med pas gnas nas dbyung zhing*

Regularly, the monastic guidelines imply that monks who break their vows may not take their material wealth with them. The South Monastery of Sakya did not allow the expelled monk to take his possessions with him, and his things would be passed on to a monk relative in the same monastery. In other places around Sakya, however, an ex-monk could take his things, provided he admitted his transgression and offered the monk-community a ‘big tea’ (\**mang ja*). The monk who tried to hide his faults, however, would be entirely dispossessed.<sup>1352</sup>

Naturally, it was not just breaking the vow of celibacy that was punished by expulsion. The *bca’ yig* for Jampa ling from 1927 notes the range of ‘crimes’ that could possibly result in getting sent away:

When there is someone who has been stained by the faults of the four roots and alcohol, by for example having hurt [another] by stones, knives and weapons, then the wrong-doer gets expelled without chance for appeal.<sup>1353</sup> Examining the severity of the misdeeds he is punished by the lama and the officials with, for example, a communal tea-round by general rule or by being returned to lay-life as before (*skya rtsa snga srol ltar*). And when the monastery has done its task for the general benefit independently, the general populace should then take [this] lay-person as their responsibility.<sup>1354</sup>

As mentioned previously in this chapter, violence was a problem in many monasteries, throughout the ages. A teacher at the Drigung monastic college in India acknowledges that sometimes this type of violence still occurs.

If weapons, like knives, are involved, the monks get expelled. One has to always look at the circumstances, though. If someone gets into trouble again and again and when this is addressed he talks back to the teacher, then sometimes there is no way other than to expel him. Most of the time, however, someone like that leaves before he can get expelled. Once they are expelled they cannot come back.<sup>1355</sup>

The *bca’ yig* written by the Fifth Dalai Lama for Gongra ngesang dorje ling lists intercourse (*mi tshangs spyod kyi skyon*), killing a person, stealing something of value, and hurting others as crimes that could lead to expulsion, but adds the smoking of tobacco (*tha ma kha’i du ba rngub pa*) and stealthily using the Sangha’s general possessions for oneself (*dge ’dun spyi’i rdzas la sbas shubs*).<sup>1356</sup> The latter issue of using the monastic community’s possession is also seen by the author of the *bca’ yig* for Dophü chökhör ling written in 1938 as a reason to send a monk away: ‘If it

<sup>1352</sup> Cassinelli and Ekvall, 1969: 234.

<sup>1353</sup> *zhu ngo mgron brgyud med pa*. This is a ‘government’ term for reporting to a higher official through an aid. See Goldstein, *The New Tibetan-English Dictionary of Modern Tibetan*: 933.

<sup>1354</sup> *Byams gling grwa tshang bca’ yig*: 482, 3: *gal te rtsa bzhi chang gi nyes pas gos pa dang rdo gri mtshon gyis rmas pa sogs nyes can zhu ngo mgron brgyud med par gnas dbyung thog mang ja nyes chad sogs bab che chung la gzhigs pa bla ma las snes spyi bcad dang/ skya rtsa bcas snga srol ltar grwa tshang spyi phan rang bdag chog rgyur ’di skor mi skya ’go dmangs rnams nas kyang theg pa khur len bgyis/*

<sup>1355</sup> Personal communication with dKon mchog chos skyabs, Rajpur, August 2012.

<sup>1356</sup> *Gong ra nges gsang rdo rje gling bca’ yig*: 225.

transpires that a person has taken additional donations and salary, he will be expelled.<sup>1357</sup>

Throughout this section, the technical term ‘expulsion’ has been used to translate the Tibetan *gnas dbyung*, without explaining what this actually entailed. Was a monk permanently expelled, banned from the monastery, or was there a way to make amends?

### Re-entering the Monastery

Clarke has criticized the translation of ‘expulsion’ for the Sanskrit *asaṃvāsa*. He argues that, according to the Vinayas, being no longer in communion – the actual meaning of *asaṃvāsa*, did not equate expulsion.<sup>1358</sup> It is argued that in the Indian case, it was not entirely clear what happened to a monk who committed a *pārājika*. The examples given above, however, make it rather clear that in the Tibetan context, *gnas dbyung* meant becoming dislocated, being made to physically leave the monastic grounds rather than simply to no longer be in communion. According to the *Mahāvvyutpatti*, *gnas nas dbyung* is a translation of *utkṣepanīya*: to get thrown out.<sup>1359</sup> As far as I am aware, the more Vinayic *gnas par mi bya ba*, which is a translation for *asaṃvāsa*, is not used in the bca’ yig. Thus, while it is clear that expulsion was a punishment given to monks, what happens after that is not. Clarke counters the widespread notion that monks who, for example, had sex were ‘immediately and irrevocably expelled from the Buddhist order.’<sup>1360</sup> He argues that this equation of sex with permanent expulsion has been created by ‘modern commentators’, though not supported by Indian Buddhist monastic law codes.<sup>1361</sup>

In the Tibetan situation, we have seen that the punishment of expulsion, be it for a *pārājika* or otherwise, was not always immediate. Rather, many bca’ yig recommend a process of careful investigation. Furthermore, in some cases there was a way back to the monastery. While many bca’ yig state that monks who have been expelled elsewhere may not be allowed in to the monastery,<sup>1362</sup> the return to monkhood was technically not impossible. This is in line with the fact that all Vinayas, except the Pāli Vinaya, allow men to remain members of the monastic community ‘if truly remorseful.’<sup>1363</sup>

An example of a bca’ yig in which re-entering the monastery is possible is the set of monastic guidelines for the Sikkimese Phodang monastery by the Fourteenth Karmapa Theg mchog rdo rje (1797-1868?), composed in 1846. In this text, he – possibly taking the specific circumstances of Sikkim into account – mentions inmates of the monastery who have had sex (here: *mi tshangs gyid pa*). They can, he states, remain in or perhaps ‘re-enter’ the monastery and the monastic group to which they belonged.<sup>1364</sup> This can only take place after the person in question has made extensive reparations in the form of offerings to the Three Jewels and the monastic community, has confessed his faults, has made prostrations in the assembly and ‘renewed his

<sup>1357</sup> *rDo phud chos 'khor gling bca' yig*: 565: 'gyed phogs 'phar blangs sogs ra khrod na gnas nas dbyung/

<sup>1358</sup> Clarke, 2009b: 116-9.

<sup>1359</sup> Via: Lokesh Chandra, *Tibetan-Sanskrit Dictionary*: 1369.

<sup>1360</sup> Clarke, 2014: 162.

<sup>1361</sup> Clarke, 2009a: 30.

<sup>1362</sup> See for example: *rDo phud chos 'khor gling bca' yig*: 564: *de yang dgon sde gzhan nas gnas dbyung rigs sgrigs su mi 'jug*. This is also stated in the guidelines for sKu 'bum's Tantric college. See *sKu 'bum rgyud pa grwa tshang bca' yig*: 276.

<sup>1363</sup> Clarke, 2014: 103.

<sup>1364</sup> The wording is: *sngar rgyun skyid bsdug* [sic: *sdug*] *la bcug*. Schuh and Daggyab, 1978: 246.

seat<sup>1365</sup> in the assembly. What is made clear is that the monk, having had intercourse, effectively loses his monastic vows and therefore has to retake them.<sup>1366</sup> However, this does not deny the perpetrator future monkhood. Risley, who may have had direct or indirect access to a *bca' yig* in use in 'Pemiongchi' (Padma yang rtse) monastery in the late 19<sup>th</sup> century, makes a similar observation in his *Gazetteer of Sikkim*:

The regulation which is most frequently violated is that of celibacy; but in most of the institutions other than Pemiongchi celibacy is not observed. Should it be proved that a Pemiongchi monk consorts with women, he will be expelled by a chapter, unless it be his first offence and he prays publicly for forgiveness, and then is awarded some penance and pays a fine of 180 rupees according to the rules of the lChags-yig [sic: *bca' yig*].<sup>1367</sup> He must also pay over again the entrance fees and presents as before.<sup>1368</sup>

Clearly then, the Tibetan monastic guidelines cited above, seem to follow Clarke's findings regarding Vinaya, in that they imply that sex does not *need* to lead to expulsion, and that retaking the vows was possible. Pelyul darthang monastery's guidelines show a willingness to let even murderers back among the ranks:

Those who have been dismissed from the yellow ranks, such as those who have started a family, have killed a man, who have done things like robbing and deceiving people by, for example, taking their wealth (*rgyu brgyags pa*), or otherwise, those who have insulted others by having caused fights, arguments and strife, when they re-enter the assembly, may only enter after having developed the preliminaries, having been engaged in various practice-sessions, and having confessed.<sup>1369</sup>

As has been indicated above, the people who re-enter are, in terms of their vows, new monks and thus need to take a junior position:

When they do enter the assembly, they only sit in the lowest row, and not in the higher rows without having taken vows. When they enter the assembly they need to have quit their previous bad behaviour. If they have not, then they

<sup>1365</sup> This means that the person in question loses seniority.

<sup>1366</sup> Schuh and Daggyab, 1978: 246: *mi tshang gyid pa byung na bla ma las 'dzin dbu chos nas zhib bcod thog 'dzin bzung kyi byed lte kho pa rang la rgyal khrims rtse bar bzung ba'i thog mar rten gyi drung du snyan bshal steng mchod 'dus sder zho drug gi tshogs 'khor mang ja sbyor brgyad bla ma la maṇḍal brten gsum mtshan grangs bab stun dbu chos las 'dzin so sor phyi mdzod kyi mtshon pa'i sne bshags lag ldan yod med gyis bshags brten smar steg 'gres ma'i dmar zho bcu gnyis sgrub ste tshogs bshams nas brgya phyag dang tshogs gdan gsar rjes thog slar sdom sems gyis na gan tshig blang ste sngar rgyun skyid bsduḡ la bcug.*

<sup>1367</sup> This rendering of the spelling Risley explains as the 'the iron letter', in the sense of the 'inflexible rule'. This may have been a local etymology or merely Risley's flight of the imagination. See Risley, 1894: 300.

<sup>1368</sup> *ibid.*: 302.

<sup>1369</sup> *dPal yul dar thang bca' yig*: 193: *ser gral nas bud de khyim 'dzin pa dang/ mi bsad pa/ rgyu brgyabs pa sogs jag khram gyi las byas pa/ gzhan yang de mtshungs kyi khyim thabs rtsod snog byad pa sogs gzhan gyis 'phyas smod gshe ba'i rigs rnamslar tshogs su zhugs tshe sngon 'gro nas chos thun la rim zhugs bcas sgrigs bshags byas ma zin par [sic: bar] tshogs la mi gzhug.*

need to be dismissed from the rows of the assembly and unless they are punished suitably, they may not be allowed back in just like that.<sup>1370</sup>

The text furthermore states that these people, even if they are allowed into the assembly, may not be promoted to lama, chant-master (*dbu mdzad*), or teacher of ritual dance (*'cham dpon*). This effectively means that monks 'with a past' could not occupy positions in which they had to fulfil an exemplary or public function.

### **State Involvement in Monastic Legal Processes**

As we have seen above, the *bca' yig* occasionally recommend handing over a monastic culprit to the 'secular authorities'. Particularly regarding the issue of murder, the case is almost always referred to 'secular law' (*rgyal khrims/ srid khrims/ spyi khrims/ nag khrims*) – which may have meant different things at different times, but always indicated a legal authority outside the monastery. In the same way, Goldstein comments that 'murder cases were always considered to be under the jurisdiction of the government; the government retained ultimate control over the taking of human life.'<sup>1371</sup> Thus when rogue monks were involved in fights that ended in death, there would have been both monastic and secular punishment.<sup>1372</sup> According to the *Mindröl ling bca' yig* all crimes that fell under general law (*spyi khrims*) needed to be reported to the headman (*spyi pa*) at the estate.<sup>1373</sup> It is unfortunately not specified what crimes these were and what was to happen next.

We do know that in the early 20<sup>th</sup> century, it was not only murder for which monks were punished under secular law. Bell reports that the Drepung ringleaders who tried to start a rebellion against the Tibetan government were beaten, expelled and subsequently punished under secular law.<sup>1374</sup> Furthermore, a picture taken during Bell's mission to Lhasa in 1920-21 shows a Drepung monk with his head in stocks. The note accompanying the photo states that this was his punishment for forging currency notes.<sup>1375</sup> Naturally, the closer both the author of the *bca' yig* and the monastery were to the central government the more likely the threat of secular punishments.

A set of guidelines directed to the whole of Sera monastery, of all large monasteries physically the closest to the Ganden Phodrang government in Lhasa, written in 1920, attempts to add an extra layer of state control:

When there are reports of people who have the responsibilities of scholars but whose colour and smell do not accord, who disgrace the Dharma or

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<sup>1370</sup> *ibid.*: *gal te tshogs su gzhug skabs kyang gral smad las mtho sar rab byung ma zhus par sdod mi chog /tshogs la gzhug phyin bya ngan snga ma rnams las ldog dgos/ ma ldog tshe tshogs gral nas phyir phud de gang 'tsham gyi nyes chad gcod pa ma gtogs rang dgar mi 'jog pa nges dgos/*

<sup>1371</sup> Goldstein, 1968: 234, 5. In Thailand too, homicide was the concern of state authorities. Unlike in Tibet, however, also all 'criminal' cases that involved lay-people were to be reported to the state as well. See Bunnag, 1973: 53.

<sup>1372</sup> Goldstein, 1964: 133.

<sup>1373</sup> *sMin sgrol gling bca' yig*: 307: *gal te spyi khrims la gras kha byas pa'i nye che ba rnams slar gzhis su spyi par btug*

<sup>1374</sup> Bell, 1998 [1946]: 332.

<sup>1375</sup> See [http://tibet.prm.ox.ac.uk/photo\\_1998.286.53.2.html](http://tibet.prm.ox.ac.uk/photo_1998.286.53.2.html) (viewed: 30-10 2014).



practitioners of the Dharma, they should be suppressed according to secular law, without relenting.<sup>1376</sup>

Elsewhere, in the same text, there is a relatively long section on the occurrence of people in the vicinity posing as monks, or – to be more specific – on those who seem to be neither lay nor monks and set on doing bad things.<sup>1377</sup> The work states that it was not allowed to count these people among the Sangha:

And if there are still people who stay on pretending, like summer grass pretends to be a winter worm and a rabbit pretends to be a rock, then the officials who have agreed to let them stay may not act as if they did not know, because they themselves were in charge. After they [the officials] have been expelled, they are punished heavily for this according to secular law, and then they are banished.<sup>1378</sup>

Here, it is not just people who pretend to be monks who get punished according to state law, but also those monastic officials who allow them to stay, in all likelihood accepting bribes in return for this favour. This shows that having these people live in the vicinity was probably seen as a sort of security threat. Sera monastery's great power also meant being responsible for keeping imposters at bay. The 'purification' of the Sangha was thus, contrary to what was the case in for example Sri Lanka, Thailand, and occasionally even in Mongolia,<sup>1379</sup> not directly the responsibility of the state but of the monasteries that were guided and, perhaps, goaded by the ruler, but only when this leader was in a position to assert himself, as was the case during the rule of the Thirteenth Dalai Lama. In light of the contents of a number of bca' yig, the picture of Tibet as a centralized state ruled by a theocratic government in Lhasa is not convincing.<sup>1380</sup> Monasteries were, for the most part, self-regulating bodies. The threat of secular law was merely a last resort.

More research is needed to establish the relationship between the secular and the monastic laws in Tibetan culture, in particular in regard to the influence of monastic rulings and punishments apparent in governmental regulations. An interesting example of this is the description of the way government officials were punished for faulty behaviour. They were to make prostrations, and if their position had become untenable they were made to wear white clothes and driven out of the premises on a donkey.<sup>1381</sup> This is more than vaguely reminiscent of how monks get expelled from their monasteries according to the descriptions given above.

Another noteworthy issue is that of the legal status of the monastery as a safehaven for others. In Sri Lanka, in the 10<sup>th</sup> century, wanted criminals could seek

<sup>1376</sup> *Se ra theg chen gling rtsa tshig*: 184: *mdog dang bro ba mi mtshungs pa'i mkhas pa'i 'khur 'dzin pa'i rigs nas chos dang/ chos pa'i rkang drangs pa'i go thos rigs byung tshe rgyal khrims kyi rje gnon yan por ma song ba gtong rgyu dang/*

<sup>1377</sup> *ibid.*: 186: *skya min ser min las ngan pho tshugs pa 'di rnams*

<sup>1378</sup> *ibid.*: *gal te da dung dbyar rtsa dgun 'bu ri bong rdo rdzus byas nas sdod mi byung tshe/ chu gram mnyam sdod kyi las sne rnams nas mi shes pa'i rgyu mi 'dug pa so so'i 'go byed nas gnas dbyung byas rjes/ 'di nas rgyal khrims kyi nyes pa drag pa dang bcas phyogs mthar sa 'dzin la gtong rgyu yin/*

<sup>1379</sup> The relationship between the Sangha and the state in Mongolia is a complex one, and seems to have fluctuated greatly over time. Wallace's article on law and the monkhood in Mongolia is very informative on this matter, but a further investigation, particularly with a comparison to Tibetan practices, is a desideratum. See Wallace, 2014.

<sup>1380</sup> Here I am in agreement with Samuel, 1993: 33.

<sup>1381</sup> Travers, 2009: 372, 3.

refuge in the monasteries from where they could not be extradited. During that time, the king had transferred the judicial authority he previously enjoyed over the property of the Sangha to the monastery, and from then on the monasteries were allowed and required to manage their own property in all aspects.<sup>1382</sup> Several remote monasteries in 8<sup>th</sup> century China exercised a similar level of autonomy: they seem to have regularly sheltered less savoury characters.<sup>1383</sup> Considering that certain Vinaya rules, such as that of not letting wanted criminals become monks, appear to have been created to appease the secular authorities, it is puzzling that monasteries would offer amnesty to these people, to say the least. One does not expect the Tibetan monastic guidelines to offer wanted criminals an escape from justice, but the *bca' yig* for Gongra ngesang dorje ling contains some surprising information. This text was written by the Fifth Dalai Lama for a monastery that had previously sided with those who opposed the Mongolian troops who had helped the Dalai Lama gain temporal power. While the text does not call on the monastic authorities to undermine state law, it does declare: 'When there are 'criminals' (*nag chen*) who have broken other [people's] laws and ask for refuge, one should be of benefit.'<sup>1384</sup> The text, unfortunately, offers no context for this statement, making it difficult to explain. What can be noted from this remark, however, is that in the late 17<sup>th</sup> century even the highest political authority, the Dalai Lama himself, was aware that his government did not have the power to submit all wrong-doers to justice, thereby acknowledging the legal plurality that Tibetan areas had known for centuries.

While state interference in monastic affairs has clear historical precedent, current governmental regulations in Tibetan areas are perceived by monks as going against monastic rule,<sup>1385</sup> in particular with regard to the expulsion of monks. The set age-limits of monks entering the monastery and the appointment of those to high positions are further examples of this. With the exception of murder, treason, and forgery, on the whole, the historical *bca' yig* demonstrate that monasteries themselves had the authority to make these types of decisions; something exemplified by the fact that the individual monastic guidelines contain such varying regulations with regard to these issues.

### **Concluding Remarks: Monastic Buddhist Notions of Justice**

This chapter has given a number of examples informing us about the legal position of the monks and monasteries in Tibetan areas. The distinctions between the monastic law and the secular law, which need further scrutiny, are occasionally clearly demarcated in the text and at other instances left unclear. Both the Dharma and law are concerned with keeping a balance of power, which ultimately brings about wide-reaching effects, the primary of which is the happiness and welfare of sentient beings. A Bhutanese law code lays bare the connections that are less visible in the monastic guidelines:

Whether there is happiness or not in all the lands  
Depends on whether there is a state law created in accord with the Dharma  
The prophecy of the Dharma-cakravartin on governing the state

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<sup>1382</sup> Gunawardana, 1979: 4.

<sup>1383</sup> Gernet, 1995 [1956]: 223, 4: 'officials denounced the remote Buddhist establishments as hideouts for convicts and draft-evaders.'

<sup>1384</sup> *Gong ra nges gsang rdo rje gling bca' yig*: 228: *gzhan gyi khrims las 'gal ba'i nag chen skyabs zhu bar byung tshe phan pa sgrub/*

<sup>1385</sup> Schwartz, 1994: 730. This is further confirmed by Re mdo sengge's remarks noted earlier.

Can be truly seen in the Teachings of the Buddha; other than that what else is there?<sup>1386</sup>

In many ways, law may be seen as promising justice and social order, but within Tibetan society there seems to have been awareness that secular law is not separable from cosmic effects and that social order thus is not dependent on this type of justice alone. A passage of a *bca' yig* from 1918 cited earlier, connecting the purity of the Sangha, the happiness of the land, and the adherence to the sixteen pure 'human rules' further illustrates this point.

Monks, we know from other sources, were part of the legal system in Tibet, but the influence of monastic ideology on legal structure has not yet been established, while there are indications suggesting that this influence was substantial.<sup>1387</sup> The *bca' yig* that have stronger links to the state authorities tend to show more involvement in the execution of justice, but on the whole most monasteries, regardless of their affiliation, demonstrate an awareness of both their rights and responsibilities. Meting out punishments was one of those responsibilities, which clearly never had 'a return to inner morality' as an objective,<sup>1388</sup> but rather, according to the texts, penalties served 'to make an example' (*mig lar 'doms*) of the perpetrator, preventing others from doing the same in the future. Failing to carry out that duty of punishing led to further punishment. This may have some correspondences to descriptions of the ideal behaviour of Bodhisattvas that feature in some Indic Buddhist texts. In the *Bodhisattvabhūmi*, for example, the Bodhisattava is not only required to correct the behaviour of others by punishing; he commits a fault if he neglects to do so.<sup>1389</sup> The emphasis in the monastic guidelines also lies on a fair but pragmatic application of the rules: justice is not done at all costs. It should be noted that karma, the *law* of cause and effect, is not engaged at any level in the *bca' yig*.

Notions of fairness and justice – if at all mentioned in Buddhist Studies literature – are often addressed in terms of the workings of karma. Tempting though it may be to then conclude that for Buddhists the natural law of karma can be equated with all types of justice, such as social, punitive and conciliatory justice, it is clearly mistaken to conflate a doctrinal issue with actual practice. Collins argues this point in the following way:

In the European-Christian case, everyone is intimately aware, as a matter of day-by-day experience, of the continuous and changing way ideals and the *Lebenswelt* coexist, of their sometimes stark, sometimes subtle and nuanced relations of contradiction, complementary opposition, or agreement; and so it is easy to see immediately that such an abstract and simplistic deduction from universal and ideal premises – God will punish, therefore there should be no need for law – is quite inappropriate for historical understanding, however

<sup>1386</sup> The translation is after Aris, 1986: 124; 101b: *rgyal khams kun tu phan bde 'byung mi 'byung/rgyal khrims chos bzhin bca' la rag las phyir/rgyal srid chos kyi 'khor los bsgyur ba'i lung/rgyal bstan tshad mar 'dzin las gzhan du ci/*

<sup>1387</sup> Further research might, for example, shed light on whether the situation was anything comparable to the Western European one, where ecclesiastical courts were the first modern legal system. See North and Gwin, 2010: 136.

<sup>1388</sup> French, 1995a: 344.

<sup>1389</sup> Naturally, the text, along with its commentary by Tsongkhapa, states the usual caveats. See Tatz, 1986: 82; 238.

admirable the ideals may (or may not) be. The Buddhist case is just the same.<sup>1390</sup>

The way in which monastic law is understood by monastic authors themselves is rather similar, if not identical to law outside of the Tibetan monastery. Laws, and by extension justice, serve to secure social order. As Pirie put it: ‘The legal form promises justice and appears to guarantee order. This is what makes it particularly effective as an instrument of government.’<sup>1391</sup> In the Tibetan societies, where the government has traditionally been a symbolically prominent yet a functionally absent factor, the distinctions between law and custom,<sup>1392</sup> or law and morality are less easily made.<sup>1393</sup> Buddhist morality and secular law ultimately are both ‘normative social practices that set standards for desirable behavior and proclaim symbolic expressions of social values.’<sup>1394</sup> Religion is often seen as providing a means of social control, which implies ‘a system of rewards and punishments, either internalized during socialization or externally supplied by institutions, or both.’<sup>1395</sup>

The bca’ yig emphasize externally supplied punishments, but not because karma is not part of the equation, or not believed in. In other words, the goal of promoting justice – by, for example, making a monk do prostrations – is not in order to let the monk accumulate merit, thereby cancelling out his misdeeds, but rather to keep the peace, to restore the reputation, to promote the sense of cohesion and to strengthen the identity of the monastic community. While Buddhism is regularly both praised and vilified for its individualist tendencies, on a monastic level, the execution of justice was a communal exercise and karma played only a minor part. This notion of justice as being communal and for the sake of social order is strongly connected to the perceived responsibility of the monastic community in society.

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<sup>1390</sup> Collins, 1998: 435.

<sup>1391</sup> Pirie, 2010: 228.

<sup>1392</sup> Ramble, 2008: 41.

<sup>1393</sup> A similar remark can be made with regard to Burma. See Huxley, 1995: 81.

<sup>1394</sup> Wallace, 2014: 332.

<sup>1395</sup> Gombrich, 1975: 218.