

The “Trick of Law”

*The Hermeneutics of Early Buddhist Law in Tibet**Martin A. Mills**

5.1 INTRODUCTION

Constitutionalism – the principle that government should be limited in its powers, and those limits enshrined within laws that stand above the individuals and institutions that govern – is generally regarded as a good thing. As a good thing, it might seem obvious that everyone, or at least as many people as possible, should have it. Here, of course, things get trickier: after all, the very concept of whether something is a good idea depends on an underlying moral (and ultimately religious) culture, one that may not be shared universally or organized in a comparable way. For present purposes, one of the most salient questions facing any study of Buddhism and constitutional law is whether constitutionalism as a legal ideal might be consonant with Buddhism at all. That it might not be does not, of course, imply that Buddhist culture must be in some sense deficient, or indeed a ‘bad thing.’ Instead, we must actively consider the possibility that it is a *different* thing. In what follows, I will examine how, in Tibetan constitutional history, one of those major differences lies in the perceived role of the personal morality and ethical insight of Buddhist rulers and lawmakers.

Before addressing that question, however, it is worth rendering explicit how Western constitutional thinking depends upon its own Christian (or more broadly, Abrahamic) history of ‘Higher Law,’ or foundational constitutional principle. As Richard Helmholz (2010) has pointed out with great clarity elsewhere, Western constitutionalism is generally underlaid by three facets of Christian ecclesiastical thinking, all of which are in some sense either negated by, or have no direct equivalent in, many Buddhist traditions.

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The first principle is that the fundamental rules of Biblical law “stand outside our own volition, indeed our own full understanding,” largely as a consequence of having been bequeathed by God, rather than men. This is most obvious in the case of the Hebrew foundations of Biblical law, wherein Moses received the Ten Commandments from God on tablets of stone at Mount Sinai, and the law in the direct verbal instructions from God in the revelations of Leviticus; it is also inscribed in the Gospel of John’s opening proclamation that *In principio erat Verbum, et Verbum erat apud Deum, et Deus erat Verbum* (“In the beginning was the Word, and the Word was with God, and the Word was God.” John 1:1). In this sense, the word of true law, in a Biblical sense, necessarily precedes its human adjudicants and disseminators, who thereby cannot stand above or prior to it. Even in the case of secular and royal law, the Christian tradition – following the writings of Paul and Peter – ascribes the authority of kings and emperors to the power vested in them by God, rather than as something that flows from them personally (Roman 13:1–7; 1 Peter 2:13).

The second principle is that human law – whether ecclesiastical, royal, or secular – could not infringe or adjudicate upon the realm of ‘hidden things’ (*De occultis non judicat ecclesia*). Neither the devices and desires of the heart nor the personal convictions of the soul can be judged by a public court of law, coming instead under the jurisdiction and judgement of God, through private prayer, confession, and repentance.

In combination, the upshot of these two principles has been to set aside private (or ‘inner’) morality and insight from the scope of formal law, which exists in the public realm *between* individuals. Law in a formal sense is received primarily in textual form and submitted to and interpreted by persons not as individuals, but as representatives of an office in the Weberian sense – that is, as contractees, citizens, subjects, soldiers, judges, or monarchs. This ‘exclusion of the inner’ in turn serves as the foundation of what we might call a ‘constitutionalist disposition.’ This is the view that human law is, or *at least should be*, a public matter in both principle and practice, the parameters of which lie outside the subjectivities of the individual human heart. In the study of legal history, this disposition is found most clearly in the assumption that if you are seeking the source of a legal code or doctrine you will find it in one of two places: either in a previous legal codex, or in the hand of the divine. The one place you would not, or at least should not, find its source is within the heart of the lawgiver.

This disposition is not universally shared within the history of Christendom. Ideas, after all, do not hold sway by themselves. The two principles above found their place within constitutional history largely as a consequence of the birth-pangs of the Protestant Reformation in Europe, which often pitted private conviction against royal law. This struggle framed the formation of American constitutionalism. As Edwin Corwin pithily summarized in 1955:

The Reformation superseded the infallible Pope with an infallible Bible; the American Revolution replaced the sway of a king with that of a document. (1955, 1)

Indeed, this rejection of the personal authority of rulers in making and applying law has motivated the penning of most of the world's great constitutions. If the king himself (that is, in his 'body natural' as English law would term it – see Kantorowicz 1957) cannot be the source of law, then he must be constrained by it. This is the essence of what Richard Helmholz rightly identifies as the third main aspect of constitutionalism: its role in providing “structured and substantive limitations on government,” restrictions that apply either to (i) the boundaries between private rights (such as personal religious convictions) and public law (such as nationally established religions) and (ii) claims by monarchs and legislators to exist ‘above the law’ – a possibility deemed not only illegitimate but impossible according to the first principle, above.

While appropriate to the ‘Higher Law’ ideas held by certain forms of Christian constitutionalism, this methodological exclusion of the personal moral qualities of the lawmaker sits far less easily with Buddhist conceptions of law. Here, the legitimate role of the *personal morality and sagacity* of emperors, kings, and judges in both producing, overseeing, and interpreting law remains vital to the general understanding of Buddhist constitutional thought.

In large part, this derives from one of the core distinctions between Buddhism and the Abrahamic faiths. Within Buddhism, the central soteriological framework does not lie in the gulf between sinful humanity and a lawmaking and judging Godhead, but rather in a combination of paths (Sanskrit. *mārga*; Tib. *lam*) and grounds (S. *bhūmi*; T. *sa*) that lead, through ethical realization, to liberation from *samsāra*.

While Buddhism certainly has ample place in its cosmologies for divine realms and deities, this overarching ‘path and grounds’ framework sees both the human and the divine as *subordinate* to its vision of suffering and liberation. Indeed, humans and deities are only seen as morally distinct from one another as a matter of degree, not kind – a property shared within Hinduism (Fuller 1992, 3–4).

As a consequence, law in any absolute sense is neither recognized as, nor legitimated by, being divine in origin: while gods may be called upon as witnesses or guarantors and may also be seen to make demands that bind particular communities to certain ritual practices and prohibitions, there is simply no Buddhist equivalent of the Ten Commandments.

However, this is not to say that the Buddhist doctrine regards law as a purely personal and subjective matter. Here, we need to recognize that the term *dharma* involves two distinct but related meanings, particularly in Mahāyāna Buddhist thought. The first meaning is *dharma* as a doctrine of reality: that phenomena are characterized by impermanence, non-self, and emptiness, and that clinging to those phenomena produces suffering. *Dharma* from this perspective is seen to exist

eternally, whether a Buddha emerges in the world to reveal it or not (Williams et al 2000, 8) – it therefore precedes personal realization. The second meaning, however, refers to the paths that lead from ignorance of reality to knowledge and awakening, and from suffering to liberation. Travelling these paths involves different vehicles (S. *yāna*; T. *theg pa*) or traditions of teaching – most conventionally the *Śrāvakayāna* (T. *nyan thos kyi theg pa*, ‘hearer vehicle’), the *Pratyekabuddhayāna* (T. *rang rgyal gyi theg pa*, ‘solitary realizer vehicle’), and the *Bodhisattvayāna* (T. *byang chub sems dpa'i theg pa*, ‘bodhisattva vehicle’).

This last reference to the various ‘vehicles’ for teachings of the dharma is most famously illustrated in the parable of the burning house in the *Lotus Sūtra*, told by the Buddha to his disciple Śāriputra. In the parable, a wealthy man returns home to find his house on fire and his many children, unaware of the danger, engrossed in playing with their toys. Knowing that there is only one exit from the house and that trying to herd them out himself will take too long, the Buddha explains the solution devised by the wise father:

At that time the rich man had this thought: the house is already in flames from this huge fire. If I and my sons do not get out at once, we are certain to be burned. I must now invent some expedient means that will make it possible for the children to escape harm. The father understood his sons and knew what various toys and curious objects each child customarily liked and what would delight them. And so he said to them, “The kind of playthings you like are rare and hard to find. If you do not take them when you can, you will surely regret it later. For example, things like these goat-carts, deer-carts and ox-carts. They are outside the gate now where you can play with them. So you must come out of this burning house at once. Then whatever ones you want, I will give them all to you!” At that time, when the sons heard their father telling them about these rare playthings, because such things were just what they had wanted, each felt emboldened in heart and, pushing and shoving one another, they all came wildly dashing out of the burning house. (Watson 1993, 56–57)

When the children emerge from the burning house, however, they discover only *one* vehicle: a large jewel-encrusted carriage drawn by a pure white ox. Challenging Śāriputra as to whether the rich man had lied to his children (and thereby whether it is deceitful to teach different *yānas*), the Buddha explains that while it was necessary to preach several vehicles “to attract and guide living beings,” in truth there is only one ultimate vehicle (S. *ekayāna*; T. *theg pa geig pa*) of Buddhahood, which becomes clear once beings have escaped from the burning house of *saṃsāra*. He concludes, “that rich man was not guilty of falsehood. The Tathagata does the same, and he is without falsehood.”

The purpose of the burning house parable is explicitly to explain the Mahāyāna distinction between the transcendent wisdom that sees reality, and the conventional wisdom of ‘skillful means’ (S. *upāyakaśālyā*; T. *thabs la mkhas pa*) that is historically imminent and sees what each individual disciple requires at a particular point of

the path in order to be released from *samsāra*. While the latter wisdom is seen to arise out of the cultivation of the former, the latter does not *take the form* of the former: the goat cart and the jewel-encrusted carriage are different.

This Buddhist emphasis on the soteriology of *path* and *vehicle* means that, while there is a ‘final reality’ that exists prior to personal insight into it, any ‘law’ that is focused on Buddhist goals of liberation from *samsāra* depends upon a conventional and historically situated moment between teacher and disciple or, as we shall see, between a Buddhist ruler and subject, and most particularly upon the “wisdom of skillful means” possessed by the teacher and ruler. As a consequence, from the Mahāyāna perspective especially, the ‘hidden’ (in the sense of inner personal morality and ethical insight) cannot be excluded from the process of situated lawmaking. More than this, because the Buddhist path contains *ethical insight* at its heart, law is understood as being emphatically *within* personal volition and understanding.

Nevertheless, royal law in Buddhist kingdoms was generally understood to be distinct from Buddhist codes of lay and monastic discipline, thus separating out constitutional principle into two distinct spheres (Pirie 2017a, 406). In what follows, I will examine one of the few apparent exceptions to this split when it comes to Buddhist legal culture: the claim, widespread in Tibetan history, that its first Buddhist emperor, the seventh century Puryal ruler, Songtsen Gampo, based the first written law codes of his new empire on the ‘ten virtues’ (T. *dge ba bcu*) of Mahāyāna Buddhism – something of an early test case of “Buddhist constitutionalism.”

To do that, however, it is necessary to ask not simply whether Buddhist constitutional law is a contradiction in terms, but first and foremost to ask what Buddhist religious thinkers thought about public law in the first place. Here I will address the views of late Indian and Tibetan Mahāyāna writers. I will argue that they had much to say on this subject – in particular, regarding the origins, reality, and objectives of legal governance – much of which requires us to pay close attention both to legal texts and codes as well as to the rich philosophy and hermeneutics of governance within the Mahāyāna tradition.

Before moving on, a few words are necessary on the relationship between the terms constitutional and constitutionalism as used in this chapter. By ‘constitutional,’ I mean the very general sense of pertaining to understandings, however diverse, of the nature and form of legitimate governance, what Philip Abrams referred to as the “state-idea” (Abrams 1988). This is distinct from ‘constitutionalism,’ that far narrower idea that texts provide for formal limits on legitimate governance (generally in abstract, office-bearing terms). Thus, while the United Kingdom may lack a single written constitution, it certainly has deeply embedded constitutional and constitutionalist ideas. Constitutionalism thus argues that constitutional ideas should be rendered in a very specific way: one which, regardless of how secular it may claim to be, follows the principles of Christian ecclesiastical law in separating overarching law from the person of rulers, both in theory and in practice.

To these terms, however, I would add one further – that of “constitutional mythology,” a phrase I have explored briefly elsewhere (Mills 2011 and 2018), but which is hugely pertinent to the general study of Tibetan historiography. Tibetan history-writers, rather than seeking to discuss their ideas of governance in abstract, legislative terms, tend to embed those ideas *within* the life-narratives of key historical figures. In doing so, and in rendering coherently those ideas within the narrative, they usually transform those narratives significantly, in effect turning source material into mythology.

Such constitutional mythologies are exceptional neither to Tibet, nor to Buddhist societies, nor indeed to non-Western legal cultures – they are simply to be found in those constitutional frameworks that have not yet been captured by the rationalized, rule-based format of modern constitutional texts. Space precludes a comparative review of this here, but a single example will suffice: that of the constitutional status of the English monarch. The political theology of early modern English kingship has been examined in depth in Ernst Kantorowicz’s magisterial 1957 study, *The King’s Two Bodies*. But to grasp the full strangeness of English constitutional mythology, there are few better places than the opening page of John Allen’s *Inquiry into the Rise and Growth of the Royal Prerogative in England*:

To unlearned persons desirous of understanding the constitution of England, the transcendent attributes ascribed to the King, in his high political capacity, must prove a stumbling block at the very commencement of their studies. They may have heard that the law of England attributes to the King absolute perfection, absolute immortality, and legal ubiquity. They will be told that the King of England is not only not capable of doing wrong, but of thinking wrong, that he cannot mean to do an improper thing, that in him there is no folly or weakness. They will be informed that he never dies, that he is invisible as well as immortal, and that in the eye of the law he is present at one and the same instant in every court of justice within his dominion. (1830, 1)

Such constitutional mythologies might offend our modern sensibilities, appearing as folklore-ish renditions of the supernatural, the products of irrational and uncritical piety. This, however, is mainly because, as moderns, we are used to our constitutional ideals of governance being enshrined within the pages of a document, rather than being hung upon the shoulders of a historical person. For the Tibetan tradition, such a person was Songtsen Gampo and, later, the ruling Dalai Lamas (Mills 2018).

5.2 THE FIRST WRITTEN TIBETAN LAW CODES

Tibet’s Puryal Empire Period – during which the Yarlung Dynasty of southern Tibet expanded to found one of the most powerful empires of first millennium Asia, bringing into being what we call Tibet today – is revealed to us only partially in scattered piles of historical fragments: monumental inscriptions, tattered imperial

records hidden in the library cave of Dunhuang, and textual portions retranscribed by Tibetan historians across the intervening centuries.

In addition to these early fragments, however, later Tibetan tradition offers scholars a millennium worth of revealed prophecies, religious commentaries, and scholarly ethnohistories of the Tibetan Empire. Together these sources combine to create the received tradition prevalent from the medieval period onwards. These texts were generally composed from the late tenth century at the earliest, several hundred years after Songtsen Gampo's reign and in the wake of the fall of the Tibetan Empire. The accounts of Songtsen Gampo's life and rule can be found in some of Tibet's most famous post-imperial literature: from the 'hidden treasure' (*terma*) literature of the post-dynastic period such as the eleventh-century *Pillar Testament* and the twelfth-century *Compendium of Manis*, to later histories such as Sonam Gyaltzen's fourteenth-century *Clear Mirror of Royal Genealogies* or Pawo Tsuglag Threngwa's sixteenth-century *Feast for the Wise*. All of these sources present an idealized portrait of his rule, with many elements that are simply absent for near-contemporary accounts, such as those found at Dunhuang.

These post-imperial texts narrate the lives of the great and pious 'religion kings' (*chögyel*) that brought about the 'First Diffusion' (*sngar dar*) of Buddhism to Tibet, and with it the foundations of Buddhist culture in Tibet. Foremost among these 'religion kings' was the thirty-third *tsenpo* (emperor) of the Yarlung Dynasty, Tri Songtsen or Songtsen Gampo (or 'Songtsen the Wise,' c. 569?–649?). He was heralded by subsequent Tibetan tradition as the human manifestation of the celestial bodhisattva Avalokiteśvara, Tibet's patron Buddhist tutelary deity; as having expanded the imperial borders massively, effectively founding Tibet, as we now understand it, out of a medley of surrounding polities; as having founded the city of Lhasa as his personal fief; as having constructed the famed Jokhang, Ramoché, and Trandruk temples; as having brought writing and Buddhist scriptures to Tibet; and most of all for our purposes, as having inscribed the first written legal codes (*bka' khrims*). To say, as some have, that Songtsen the Wise was to Tibetans as King Arthur was to the British is to understate the matter; a closer analogy would be King Solomon's role in the history of Israel.

5.3 THE RECEIVED TRADITION AND ITS CRITICS

In these post-imperial narratives, the codification of imperial written law under Songtsen Gampo went hand in hand with the emperor's initiation of a Tibetan written script and formal court literacy. Texts such as the eleventh-century *Pillar Testament* record how, during the reign of Songtsen Gampo's ancestor Lhatotori, Buddhist scriptures and a *stūpa* fell from the sky onto the roof of the dynastic palace at Yumbulagang in the Yarlung Valley. Among them was the *Karandavyūha*, a *sūtra* detailing the qualities and worship of the great Mahāyāna bodhisattva Avalokiteśvara, celestial protector of the Land of the Snows. However, Lhatotori

and his court were illiterate and unable to read the newly revealed scriptures, and as a consequence he had this 'Powerful Secret' sealed in a casket, enshrined and left for future generations to unravel.

Five generations later, as Songtsen Gampo expanded the Purgyal Empire across the Tibetan Plateau, he sent emissaries to India to study writing and grammar. Among these emissaries, most of whom died from the rigors of the journey and the Indian climate, was the young Sambhota of the clan Thonmi, a ministerial scion reputed for his intelligence. Arriving in India, he studied for years under two scholars, Kamsadatta and Devavidyāsimha, transforming the fifty consonants of the Indian Gupta script into thirty consonants of the Tibetan spoken language.

After some years, Thonmi Sambhota and Kamsadatta returned to Tibet, bringing with them several Buddhist texts. The *Pillar Testament* describes how, on his arrival at Lhasa, Thonmi both translated the texts in Lhatotori's casket and aided the emperor in formulating Tibet's first written law codes:

To the joy of the king, [Thonmi Sambhota] offered him the noble doctrine of the Mahāyāna, whereupon the king said: "Can you read the 'powerful secret' of my ancestor Lhatotori Nyenshel?" Lotsāwa Sambhoṭa studied them, reading *Vimalamitra's Glorious Mudras for Amending Breaches*, the *Karandavyūha Sūtra*, *Nāgā's Glorious Mudras for Amending Breaches* and *Reversing the Karma of the Ten Non-Virtues*.

They established four legal codes of the laws of the ten virtues. Then, in studying the script, the king did not go out for four years. The ministers said, "In not coming out for four years, the king is a know-nothing idiot! The happiness of the Tibetan people is down to us, the ministers."

The king overheard this, and thinking, "If they call me an idiot, it will not be possible to tame the people," spoke thus: "All you ministers and people, come and gather around me! When I, the king, remained in one palace and didn't move around from place to place, you were happy. Yet you ministers are saying that this very happiness of the Tibetan people is down to the ministers and that the people are under the command of the ministers." Having said this, he gave them an order: "It has become necessary for me to formulate the laws of the ten virtues. I wanted to make the law before. Previously, the lawless twelve minor border kingdoms of Tibet, lacking law, created manifold wickedness, harming my maternal lineage. All the people within my kingdom wanted blood price if a murder was committed and compensation if there was theft; wanted compensation for assault or robbery; for adultery, they desired the adultery price; and punishments to be enacted for lying, divisive speech, covetousness; harmful intent, wrong view and whatever actions were against the law. [The king] having declared this, the ministers thought: "this king is wise (*sgam po*) and will correctly hold and protect the practices of the holy doctrine." Being of profound mind, therefore, they named him King Songtsen the Wise." (KKM: 107–8)¹

¹ See also Uray's rendition of this episode (Uray 1972, 25–26).

The *Pillar Testament* rendition of the founding of Buddhist law translated above does indeed closely approximate the classical ten virtues within wider Mahāyāna literature: the three virtues of body (avoiding killing, stealing, and sexual misconduct), speech (avoiding lying, gossip, harsh speech, and slander), and mind (avoiding avarice, ill-will, and wrong views).

This is the version of the narrative of Songtsen Gampo's founding of the law of the ten virtues that probably represents the *locus classicus* of the later medieval received tradition. Its generally understood implication, at least among modern scholars, is that the emperor, in collaboration with Thonmi Sambhota, formulated his royal law on the basis of its codification in a Sanskrit text on the ten virtues, variously rendered as *Reversing the Karma of the Ten Non-Virtues*, or more simply *The Ten Virtues*, and that this was some version of, or commentary on, the *Daśakuśalāni Sūtra*. The later (and more famous and widespread) *Compendium of Mañis*, supports this general interpretation:

Then the emanated king, in order to introduce the sentient beings of the snowy land to the dharma, applied the law based on the *Sūtra of the Ten Virtues*. (MKB, Vol. E: f. 375–76)

But if the *Pillar Testament* presents us with the *locus classicus* for the received tradition of Songtsen Gampo's relationship with "the ten virtues," other texts and sources present a far less clear picture, one that has made the received tradition the object of considerable scholarly criticism. The most common and substantial criticism focuses on the historical possibility of literary transmission: that Songtsen Gampo's laws were based on pre-existing Indian texts on the ten virtues such as the *Daśakuśalāni Sūtra*. The core criticisms here are, firstly, that there seem to be no mention of them in any contemporary or near-contemporary imperial sources related to Songtsen Gampo's rule. Indeed, nothing resembling the *Daśakuśalāni* seems to arrive in Tibet until at least one and a half centuries after Songtsen Gampo's death. Thus Rolf Stein, in his 1986 essay, "Tibetica Antiqua IV: La tradition relative au début du bouddhisme au Tibet," places the first Tibetan literary references to the ten virtues in and around the reign of Trisong Détsen, a century later: in Buddhaguhya's letter to emperor Trisong Détsen (Tanjur No 5693, vol. 129, 284, col. 5); in the translation of the *Ten Teachings of Kṣīṭigarbha*, *Great Summary of the Mahāyāna* into Tibetan by the Chan master Rnam par mi rtoḡ pa in 800 (Kanjur No 905, Chapter 6); and, finally, in the imperial promulgation of the text in 822 (Stein 1986). Even then, as Fernanda Pirie has argued in detail, it was not associated with the practice of royal governance or administration (2017a). In other words, the assertion that Songtsen Gampo deployed the 'law of the ten virtues' *exclusively* on the basis of textual transmission from India is fairly clearly a *post hoc* fabrication.

The second criticism is that the legal code that is said to have emerged from this process – of both the 'ten virtues' and the appended 'sixteen norms of moral

behavior' – is only barely recognizable as the classical ten virtues. Thus, for example, the fourteenth-century *Clear Mirror of Royal Genealogies* lists these as follows:

Thonmi Sambhota, Gar Tongtsan Yulzung, Tiseru Gongton, Nyang Trizang Yangton, and one hundred ministers in all levelled differences and, in accordance with the king's behest, enacted the law of the ten virtues:

- (i) The good should be rewarded, and the wicked punished.
- (ii) The high should be suppressed by law, and the low skillfully protected.
- (iii) The bodyguard should be divided into four units.
- (iv) Highland water should be assembled into ponds, and lowland water conducted into channels.
- (v) Weights and measures should be organized, and fields divided into plots.
- (vi) People are to train in writing.
- (vii) Horses should be marked with ownership-colors.
- (viii) Exemplary customs should be established.
- (ix) Those making quarrels should be punished.
- (x) Murder should be fined variably.
- (xi) That which is stolen should be substituted eightfold, and with the thing itself, ninefold.
- (xii) Adulterers, having been castrated, should be banished to another country; liars/frauds should have their tongues cut off.

Furthermore:

- (i) Go for refuge in the Three Jewels, showing them devotion and respect.
- (ii) Maintain gratitude to one's parents and honor them.
- (iii) Do not forget benefactors such as fathers, uncles, and elders, the three, and repay them in kindness.
- (iv) Do not quarrel with superior persons and noblemen, but have faith in them, and adapt one's manners and behavior to them.
- (v) Fix one's mind on the divine religion and writings and understand their meaning.
- (vi) Have trust in karmic causation and avoid perpetrating sins.
- (vii) Be of benefit to friends and neighbors, and do not enact mischievous thoughts.
- (viii) Acting from a straightforward foundation, rest in a mind of renunciation.
- (ix) Showing moderation in food and alcohol, act modestly.
- (x) Returning debts on time, do not act dishonestly with weights and measures.
- (xi) Do not think on matters to which one is neither promised nor commissioned.
- (xii) Among friends, remain independent of women's useless gossip.
- (xiii) When the truth or falsity [of a case] does not emerge, pledge [one's] oaths before the local gods and protectors of the teachings as witnesses.

Taking the ten virtues as an exemplar, the twenty laws of Tibet were finalized at Shomara and affixed with the seal of the king and all the ministers, and so they were propagated [in Tibet] like the light of the sun and moon. (KKM, ff. 159–60)²

² See also Sørensen 1994: 180–84 for comparison.

Indeed, from this perspective, sources like the *Clear Mirror* themselves appear quite confused at times. For example, the enumeration of the king's new laws, as outlined above, is directly preceded by a section which states that Songtsen Gampo's imperial law was derived less from sacred India than from Tibet's northern neighbors:

Having adopted accounting from the eastern kingdom [China] and the Mi-Nyang; translated the holy doctrine from India in the south; unlocked treasuries of food, wealth, and fineries from the Sogdians and Nepalese in the west; *and adopted law and work (practices) from the Tartars and Uyghurs in the north* – in short, having enacted dominion over the four directions, he became the helmsman king over half the world. (GSM, f. 158, emphasis added)³

Indeed, on the question of Songtsen Gampo's law codes, we find them variously presented as the 'law of the ten virtues,' the ten religious virtues and sixteen codes of moral behavior, the four religious laws and sixteen secular ones, and, often enough, as the six law books. Even these presentations are once again at odds with the complex sets of legal precedents and procedures found in partial fragments in the Dunhuang documents (Dotson 2006).

Possibly the most confusing source on this is the tenth-century *Considerations of Wa* which, as one of the earliest post-dynastic sources, seems to claim that Songtsen Gampo *both did and did not* base his laws on the ten virtues. Thus, it describes the arrival of Thonmi Sambhota, accompanied by an indecipherable copy of *The Ten Virtues* (*dGe ba bcu; Daśakuśalāni*):

[Returning to Tibet, Thonmi Sambhota] was accompanied by [Kamsadatta], an Indian versed in reading and writing, and took with him some [texts of] the doctrine such as *Chos dkon mchog sgrin* [*Ratnameghasfitra*], *Pad ma dkar po*, *Rin po che tog*, *gZugs grwa lnga* and *dGe ba bcu* [*Daśakuśalāni*]. As there was nobody to translate them, the [texts of the] doctrine received the royal seal and were placed in the treasury of Phying pa [castle]. Then [the emperor] announced: "In my lineage after five generations there will be a descendant who will spread the doctrine of Buddha, and at that time the casket should be opened." (dBZh, 27–28)

Whereupon the emperor entered retreat for four years, at the end of which he nonetheless produced laws "on the basis of the ten virtues":

He therefore held a discussion with his four attendants who had been taught the alphabet and in four months, on the basis of the Ten Virtues, he made the law (*bka' khrims*) and put it into writing. [It included] the 'wergild' for the taking of human life, compensation (*rku 'jal*) for theft and robbery, the [cutting off of] the nose and the [removing of] eyes for sexual misbehavior, the taking of oaths for preventing lying, etc.). Wangdu and Diemberger 2000, 28)

³ See also Sørensen 1994:180.

The picture here is therefore a confused one, and while, for example, the *Pillar Testament* is extremely explicit that the ten virtues as understood in the classical Indian formulation were proposed by Songtsen Gampo – specifically, in the text itself, putting them in his own reported speech – , the principal assertion by post-imperial writers appears to be that, whatever form the imperial law actually took, it was in essence the ‘ten virtues’ (see also Uray 1972, n. 53).

We can see this in the way the *Considerations of Wa* asserts – indeed, within the same passage – that despite the fact that the *dGe ba bcu* (*Daśakuśālāni*) text would not be translated for a further five generations, the king’s law was nonetheless *based on* the ten virtues. This, at the very least, suggests that we need a wider frame of reference for understanding the post-dynastic claim that Songtsen Gampo’s laws were ‘based on the ten virtues’ than pure textual transmission.

In trying to make sense of all this – and perhaps more pertinently trying to understand how Tibetan post-imperial writers themselves made sense of it – one of the most important questions to address is: What precise legal reality was implied by a term such as “law based on the ten virtues?” In many respects, and by extension, this question evokes a much larger question about whether later writers, working as they also were within the fragmented ruins of the old Tibetan Empire, regarded Songtsen Gampo’s reign as institutionally ‘Buddhist’ in the first place.

For many modern historians of Tibet, the received tradition of Songtsen Gampo’s founding of written law cannot be taken as reliably historical,⁴ with Andreï Vostrikov famously lamenting the inability of Tibetan historians to “distinguish facts from myths – what is historical from what is legendary” (1970, 59). Toni Huber provides a somewhat more nuanced take on this frustratingly labile historical moment:

A large amount of painstaking historical, philological, and archaeological research now supports the view that what Tibetans have held most dear about their purported early Buddhist past and its founding figures is more a creative product of later, Buddhist-inspired history writing than a reflection of contemporary circumstance during the dynastic period. (1996, 58)

In approaching this problem, modern scholarship has frequently taken a distinctly political approach. The core conclusion – that much of Songtsen Gampo’s rule is a post hoc idealization – is either understood in terms of a bald political partisanship such as the ‘progressive glorification of royal ancestors’ (Aris, 1997, 9; Dotson, 2006, 11; Sørensen, 1994, 24; Tucci, 1962, 126) or some version of Hobsbawm and Ranger’s ‘invented tradition’ (1983), in which events such as Songtsen Gampo’s development of the ‘law of the ten virtues’ is a post hoc projection of textual ideas that actually came to Tibet centuries later (Stein 1986, 213–14, see also below). In many cases, this is treated as a pious elaboration. For others still, it is sufficient simply to discreetly

⁴ See Alexander Macdonald’s wonderful review of modern scholarly disappointment (2003, 129–31).

express doubt as to the historicity of such accounts and move on (Pirie 2017a, 2017b; van Schaik 2016).

5.4 LAW BEYOND THE TEXTS

It is worth being clear at this point: most of the criticisms, regarding *the integrity of the textual lineage* connecting the Indian corpus of Buddhist ideas about the ten virtues to Songtsen Gampo's laws, seem entirely sound. Setting aside the view that 'hidden treasure' revelations, discovered more than three hundred years after the events they describe, retain any privileged claim to historicity, there is effectively no evidence that the ten virtues as a textual tradition or codex existed in Tibet prior to Trisong Détsen's rule, more than a century after the death of Songtsen Gampo. In this regard, post-imperial claims that there was a *textual lineage* that bridged between the Indian tradition of Mahāyāna Buddhism and Songtsen Gampo's laws (such as in the *Compendium of Manis*) remain unsupported, at least according to our present records.

With that said, however, we should be careful not to allow the dubious historicity of such claims to distract us from two important considerations: firstly, the sheer difficulty in objectively assessing what exactly makes Songtsen Gampo's kingdom 'Buddhist'; and, secondly, the actual meaning and significance of such a post hoc fabrication, beyond merely whether it was true. It is possible, after all, to refuse to be taken in by an ideological claim *and* simultaneously to take it seriously as an influential artifact in its own right, which is itself worthy of further analysis.

While there are, so far, no known contemporary or near-contemporary written references to Buddhism during Songtsen Gampo's rule, we are reasonably certain that some of the great edifices of Tibetan Buddhism – in particular, the Jokhang, Ramoché, and Trandruk temples – seem almost certainly to have been built during that time. The significance of those building projects remains unknown to us, and the contemporary written records from that time are spartan at best. Upon what do we rely as criteria for such a designation as 'Buddhist': what people did, or what people said about what they did? Do we depend upon our own definitions of what counts as Buddhist, those of the time, those of later Buddhist writers, or indeed those of the nearby non-Tibetan courts? More specifically, when it comes to a phrase like "based on the ten virtues," are we sure we know what the writers of the *Pillar Testament* or the *Considerations of Wa* meant by this when they put pen to paper?

Such assessments are necessarily and inevitably interpretative: they depend not simply on a verifiable history of textual and monumental sources, but also on an identifiable hermeneutics of governance and history. As Paul Ricœur described in detail, the simple fact of 'writing afterwards' changes the significance of historical events precisely because one knows *what came after* (1983). England's King John signing the Magna Carta at Runnymede in 1215 was famously described by Stubbs' *Constitutional History of England* (1874–78) as the earliest spark of the spirit and

growth of democracy, but we can be sure that neither King John nor the rebel barons he met with had any such idea in their heads.

In this regard, the historicity, intent, and Buddhist credentials of Songtsen Gampo's law codes raise three distinct kinds of question:

- (i) *What can we understand of the Tibetan imperial period from contemporary and near-contemporary sources?* This is typically the subject of Old Tibetan Studies, and centers around the study of archaeological remains, such as the royal tombs, imperial inscriptions, and the vast textual collections unpacked from Dunhuang, such as the Old Tibetan Annals, the Tibetan Chronicle, and the many legal fragments and case law reports.
- (ii) *What can we glean from later, post-imperial sources about the Tibetan imperial period?* This inquiry involves either filtering out accumulated additions and interpolations within post-imperial works or sourcing their references, thus mining them for the contents of putative original imperial material. The most famous of such endeavors is undoubtedly Géza Uray and Helga Uebach's analysis of textual sources to unpick the original imperial texts (Uebach 1992, Uray 1967 and 1972). In what follows, in order to create some continuity in this debate, I will revisit some of Uray's own examples in light of my own analysis.
- (iii) *What can we glean from those later sources about how post-imperial Tibetan writers understood and thought about history-writing itself?* This question, which I will also attend to, relates to what Huber refers to as "Buddhist-inspired history writing." Here, it is not sufficient to simply argue that subsequent Buddhist historiography was 'pious' (a common cipher for 'simple' and 'uncritical') or indeed that historical figures were simply 'glorified' (a distinctly Christological term, along with words like 'majesty' and 'power,' all associated with Hebrew and Greek notions of the divine). Nor can we necessarily be taken in by too monolithic a notion of 'tradition' with regard to the early post-imperial sources. While a 'received tradition' may have emerged by the late medieval period, we know that texts such as the *Considerations of Wa*, the *Pillar Testament*, and the *Compendium of Manis* emerged during a remarkably fractured and fractious period of Tibetan history (indeed, the so-called post-imperial *silbu-dü*, or 'time of fragmentation'). Much like today's scholars, the medieval authors of these and many other works were themselves trying to make sense of a difficult and often confusing range of historical sources from the imperial period, some (most notably the likes of Pawo Tsuglag Threngwa) engaged in extensive and detailed textual reconstruction, and others (such as Lama Dampa Sonam Gyaltsen, author of the

Clear Mirror) seeking to integrate their textual sources into a particular and sophisticated historical worldview and understanding of governance. Many were trained Buddhist chroniclers with significant philosophical training in the Mahāyāna. In other words, we can and should expect to find political, philosophical, and historiographic principles at work in their writings, just as Corwin could identify complex and sophisticated Christological ideas at work in the ‘higher law’ of American constitutional thought.

And indeed, this *is* what we find. The textual sources, both before and after the imperial period, consistently tell us that while texts are important, they are not the sole domain or object of constitutional thought and history.

5.5 THE HERMENEUTICS OF BUDDHIST KINGSHIP

Previously, I have argued that works such as the *Pillar Testament* and the *Compendium of Manis* are clearly influenced – both substantively and organizationally – by the hermeneutics of the *Avataṃsaka Sūtra*, a voluminous and influential Mahāyāna scripture from around the third or fourth century CE (Mills 2012).

The *Avataṃsaka* (also known as the *Mahāvaiṣṭya Buddhāvataṃsaka Sūtra*) was translated into Chinese in two versions by Buddhahadra in 418–20 and Śikṣānanda in 695–99 and rendered into Tibetan in the ninth century CE by the Indian *paṇḍita* Jinamitra at Samyé during the reign of Trisong Détsen (Ōtake 2007). Thematically, the *Avataṃsaka Sūtra* centers on the question of the cosmological reality of the historical Buddha as an object of devotion and discipleship, and the role of bodhisattvas within the world. Its most famous chapters – the *Daśabhūmika* (“Ten Grounds”; Tib: *‘phags pa sa bcu pa’i mdo*) and the *Gaṇḍavyūha* (“Flower Array,” T. Tib. *sdong po bkod pa’i mdo*) – have much to say on the subject of bodhisattva-kingship and the nature of history, and lengthy sections are given over to the precise status and role of the ten virtues and ten non-virtues in the path of the bodhisattva. There are three aspects of this that will be considered in this chapter, since they give us a doorway into understanding the post-imperial view of Songtsen Gampo’s law: the *Avataṃsaka Sūtra*’s notions of the origins of law, the reality of law, and the objectives of law.

5.5.1 *The Origins of the Law*

The *Daśabhūmika*, or *Sutra of the Ten Grounds*, details the ten virtues and their relationship with kingly law: specifically, it explains in depth both the ten virtues and the three realms of lower rebirth (familiar to many from the ‘wheel of life’ motif painted at the entrance to Mahāyāna Buddhist temples and monasteries) to which the ten non-virtues lead. An important aspect of the *Ten Grounds*’ explanation is that

the ten virtues are not primarily understood as a code of personal discipline, but as the personal qualities of a bodhisattva who has attained the second ground (the 'stage of purity'). That is, the virtues emerge 'naturally' from their stage of realization. For example, on the question of virtues of body:

Enlightening beings in the stage of Purity naturally become imbued with ten virtuous ways of acting: they avoid taking life, they abandon weapons and hostility, they have conscience and sympathy and are compassionate and kind to all living beings, wishing for their welfare. They do not harm living beings even in their fantasies, much less injure other beings by gross physical harm with the conception of beings as such. The enlightening beings also abandon taking what is not given. They are satisfied with what they have and do not desire others' possessions. Thinking of things that belong to others as belonging to others, they do not give rise to any intention to steal and do not take even so much as a blade of grass or a leaf that is not given to them, much less take the necessities of life from others. The enlightening beings also abandon sexual misconduct. They are satisfied with their own spouses and do not desire the spouses of others. They do not give rise to desire for others' spouses, much less have sexual intercourse with them. (Cleary 1993, 714)

The *Daśabhūmika Sūtra* clearly identifies this second bodhisattva ground as occupied by monarchs and emperors:

This is a brief explanation of the second stage of enlightening beings, the stage of Purity. Many of the enlightening beings in this stage are sovereigns, lords of four continents, and masters of the law, competent, powerful, able to rid beings of the impurities of bad behavior, to set them on the ten paths of virtuous conduct . . . Here enlightening beings become monarchs, leading sentient beings by the ten virtues: by all the virtue they have amassed, they will become saviors of the world, rich in the ten powers. (Cleary 1993, 718–20)

In this sense, the *Avatamsaka Sūtra* presents the virtuous king as inherently inclined toward the ten virtues, which spontaneously and karmically emerge, along with their royal status, from the stage of the path they have reached as a bodhisattva. Thus, lawmaking and the morality of the lawmaker are seen as naturally and logically intertwined. As with the narrative of Songtsen Gampo's formulation of the first written laws, these are seen as produced spontaneously from his wisdom (*sgam po*).

If we were to take such an understanding as our basis for the historical formulation of law – which I would argue that some medieval Tibetan writers certainly did – there is no necessary requirement for Songtsen Gampo to base his new written legal code on a specific pre-existing text or coding of the ten virtues. To say that his law was "emergent from the ten virtues" was to say that it emerged from his personal qualities as a regal bodhisattva.

This formulation, I would argue, can help explain the persistent conditional linguistic forms used by subsequent writers to relate the 'ten virtues' to the specific elements of Songtsen Gampo's law. Thus, the *Considerations of Wa* states:

For four months, the *tsepo* wrote the law codes, drawn out from the foundation of the ten virtues. (dBZh, 28)⁵

Here, “drawn out from the foundation” is *gzhi blangs*, in which *gzhi* is a basis, foundation or birthplace. Similarly, Orgyan Lingpa’s *Five Books of Law* has:

Conjoined with the ten virtues, a decree of law was composed. (KDNg, f. 20b.2)

And the *Treatise Known as Gateway to Engaging with the Dharma* by Sonam Tsémo (1142–82) has:

Taking the ten virtues as a basis/beginning, the law was composed. (Uray 1972, 53)

In all cases, this implicit connection between the ten virtues and the law is regularly understood not as a transposition or replication, but rather as an inspiration or spontaneous production. As we shall see below, this implies a potential distinction between the moral intentions of the lawgiver and the laws they produce.

5.5.2 *The Reality of the Law*

The second aspect of the *Avataṃsaka Sūtra*’s treatment of governance is the manner in which rule, whether religious or political, is seen as perspectively disparate. Quite literally, both buddhas and bodhisattvas are ‘seen’ differently by different people, depending on those people’s spiritual inclinations and stage of realization.

In the opening verses of the *Gaṇḍavyūha* chapter, this perspectival standpoint is laid out in voluminous detail. The text, famous for its presentation of the Mahāyāna view of the hierarchical distinction between the Mahāyāna and Śrāvakayāna vehicles, describes the Buddha’s teaching of the “coming forth of the lion” at Sravasti, in the garden of Anathapindada in the Jeta grove, to five thousand bodhisattvas, kings, and hearer-disciples (Cleary 1993, 1138). On entering meditative concentration, the Buddha reveals that he is not simply sitting in a grand kingly pavilion at Sravasti, but instead at the epicenter of an infinite buddha-field, its ground made of diamond and jewels, the pavilion a mighty palace the size of a city, all surrounded by and coextensive with an infinite number of buddha-fields, worlds and palaces, each inhabited with hosts of buddhas, bodhisattvas, and world-turning emperors. All of this vast cosmological drama was witnessed by the five thousand bodhisattvas attending upon the Buddha, but not his closest disciples, Śāriputra, Maudgalyāyana, Mahākāśyapa, Revata, Subhūti, Aniruddha, Nandika, Kapphiṇa, Kātyāyana, Pūrṇa Maitrāyaniputra, and so on, for whom little of note happened.

The *Gaṇḍavyūha* then renders in extensive detail the reasons for the different views of the bodhisattvas and the hearers which, it asserts, revolves around the fact

⁵ See Lewis Doney for a slightly different translation (Doney 2020, 105). Emphasis is added in all excerpts.

that the disciples, being *hearers* rather than *bodhisattvas*, seek only the personal peace of nirvana and are therefore incapable of the compassionate omniscience involved in the *bodhisattva* vehicle:

Because they were emancipated by the *vehicle* of hearers, they had realized the path of hearers, they had fulfilled the sphere of practices of hearers, they were fixed in the fruit of hearers; they rested on the knowledge of the light of truth, they were fixed at the limit of reality, they had gone to the state of eternal peace, they had no thought of great compassion and had no pity for the beings of the world; they had accomplished what they had to do for themselves. (Cleary 1993, 1147)

There then follows a lengthy discourse elaborating this general perspectival principle in multiple examples. Thus,

The situation was like that of hundreds of thousands of ghosts gathered on the bank of the great river Ganges, hungry and thirsty, naked, without shelter, emaciated, dehydrated by the wind and heat, attacked by flocks of crows, terrorized by wolves and jackals – they do not see the Ganges River, or they may see it as dry, without water, or full of ashes, because they are shrouded by actions that blind them. In the same way the old great disciples there in the Jeta grove did not see or penetrate the transfigurations of the Buddha, because they rejected omniscience and their eyes were veiled by ignorance. (Cleary 1993, 1148)

This same view is commonly enough expressed today. Thus, Dilgo Khyentse Rinpoche, in his recent commentary on the twelfth-century *Copper Mountain Testament*, which shares some authorship with the *Compendium of Manis*, argues:

Try to understand this comparison: the Buddha's twelve deeds and so forth differ in the traditions of the Hīnayāna and Mahāyāna [forms of Buddhism]. We only take the Mahāyāna version to be truly authentic. The Hīnayāna version is what was perceived through the limited vision of Hīnayāna disciples. This is the same as the analogy of a white conch shell being seen to be yellow by someone who has jaundice . . . The inconsistencies and dissimilarities in the life stories of enlightened beings come about because those beings are perceived differently from different levels of people who are influenced . . . The buddhas appeared [in different ways] because of the different karmic perceptions of different followers. (Dilgo Khyentse Rinpoche 1993, 12)

This aspect of the *Avatamsaka Sūtra* clearly influenced post-dynastic Tibetan writings on these subjects, both in substantive, narrative, and philosophical terms. The famous tale of Songtsen Gampo's meeting with the two monks of Khotan, found in almost all post-imperial Tibetan renditions and generally seen as the seminal portrayal of Songtsen Gampo as the bodhisattva Avalokiteśvara, is a classic example (Mills 2012). The two monks are described as receiving a vision in Khotan that Songtsen Gampo was Avalokiteśvara in person. Making the long pilgrimage to Central Tibet to meet the emperor, however, they witness a terrifying spectacle of torture and carnage in the name of the king's law, leading them to reject the idea

that he could possibly be Avalokiteśvara. Summoned before the king, however, he explains to them that what they saw were not actual people being harmed, but illusory manifestations (*sprul pa*), magically produced each day by the ruler. This vignette demonstrates clear matches with the *Gaṇḍavyūha*'s account of the seeker Sudhana's meeting with the Indian king Anala (Mills 2012).

In the post-dynastic texts on Songtsen Gampo's life from the *Pillar Testament* onwards this moral perspectivism is formalized, not only in the story of the Khotanese monks, but also in a series of narrative tropes that appear episodically throughout his royal biography. Indeed, even the king's birth is presented in terms of levels of illusion and clarity:

Three different ways of seeing this event arose: to the Buddhas of the Ten Directions, it appeared that the sublime Chenrésik, having planned the liberation of sentient beings in the snowy land of Tibet on the basis of the power of prayers in former times, shining like a brilliant lamp in the darkness of this wild region, had cast his gaze upon that precious place. In the perception of the Bodhisattvas of the Ten Grounds, it appeared that Chenrésik, with the intention of leading the sentient beings of this wild and snowy realm to the Dharma, manifested himself as a king who would strive to benefit beings by means appropriate to each. In the perception of the common black-headed people, it appeared that a son of unsurpassed wonder had been born to the king. (GSM, ff. 140–42)⁶

Likewise, as post-imperial texts such as the *Pillar Testament* and *Clear Mirror* regularly state, the essential relationship between the ten virtues of Buddhist doctrine and kingly law are, like the Buddha Śākyamuni's "coming forth of the lion," seen only by bodhisattvas and those others "who have eyes to see."

5.5.3 *The Objectives of the Law*

If, as mentioned above, there was potentially a difference between the spontaneous moral intentions of the bodhisattva-king and the laws he formulated, this was because such a formulation was understood to take into account the moral nature of the Tibetan people themselves. This is most obvious in the tale of the Khotanese monks mentioned above. Songtsen Gampo explains to the terrified monks:

Those who are to be tamed by me are not clothed by peace. [Therefore], through the door of wrathful means, illusory people are punished. (KKM 1989, 304)

And, in the *Compendium of Mañis* version of this tale:

The Tibetan people, having a monkey-father and a rock demoness mother, were difficult to subdue [and thus] difficult to lead to religion. As a consequence, fearful religious law was protectively employed. (MKB, Vol. 1(E), ff. 407)

⁶ See also Sørensen 1994, 161–62.

This idea of the nature of a people as an object of law – as an intermediary function in the formation of legal codes and practice themselves – is similarly enshrined in the *Gaṇḍavyūha* chapter of the *Avataṃsaka Sūtra*. Thus, after the seeker Sudhana questions King Anala’s apparently ruthless and bloody application of the law in his kingdom, Anala explains:

I have attained enlightening beings’ magical liberation. The people in my realm are given to all sorts of evildoing – murder, theft, rape, falsehood, slander, vilification, divisive talk, covetousness, malice, false views, villainy, violence, cruelty. I am unable to turn them away from evildoing by any other means, so in order to subdue them, mature them, guide them, and secure their welfare, out of compassion I have illusory executioners kill and maim illusory criminals, making a display of intense suffering and pain; seeing this, the people in my realm become afraid to do evil. Seeing the people alarmed by this device, I have them give up evildoing and conduct themselves virtuously; then I establish them in ultimate security, the end of all suffering, the bliss of omniscience. (Cleary 1993, 1245)

In Mahāyāna Buddhist terms, this is of course the principle of ‘skillful means’ discussed above, in some respects similar in logic to the Islamic concept of the “objectives of the law” (*maqasid al-shari’ah*). This is the jurisprudential principle that the law, however it is formed, must lead people toward a particular set of religious objectives (Kamali 1999), even if they do not completely understand their full religious significance. Within such a perspective, law is goal-oriented rather than simply normative. In the Islamic legal traditions, these are largely focused on the formation of mutual aid, compassion, and education within the Islamic community itself. In the post-dynastic Tibetan sources and the *Avataṃsaka*, the objectives of law are focused on avoidance of the lower realms of rebirth and, as we saw above, “ultimate security, the end of all suffering, the bliss of omniscience.” Similarly, in the seventeenth century, Geluk scholar Sumpa Khenpo described how:

At that time good laws were introduced by the king and the councilors, in order to lead the Tibetan subjects to the excellent religion, according to which (the laws) the men steady in the ten virtues and the so-called “sixteen pure human moral rules,” (notably) . . . should be noblemen. (Uray 1972, 54)

In the tale of the Khotanese monks and also the *Gaṇḍavyūha*, such a goal required both the deployment of wrathful kingly means and the performance of ‘illusory manifestation’ (*sprul ba*): in the *Pillar Testament*, the *Compendium of Mañis*, and the *Clear Mirror*, Songtsen Gampo is depicted as magically producing both victims and torturers and executioners, all with the objective of terrifying his subjects into observing the ten virtues. Put simply, in goal-oriented jurisprudence, codified law does not need to look like the “ten virtues” in order to lead Tibetans toward them.

Medieval Tibetan writers thus identified a disjuncture between the intentions of Songtsen Gampo as bodhisattva-king and the necessities of ruling non-virtuous and

recalcitrant populations, a recurring theme in Tibetans' historical self-understanding. Similarly, in Müsépá's *Lineage of Sakya Succession* (1475),⁷ the story is told of how the Sakya ruler Pakpa carried out harsh laws. When a monk grew concerned at this behavior by a Buddhist ruler, Pakpa – in a manner remarkably similar to Songtsen Gampo and the Khotanese monks – explained the skillful means behind his actions. The monk later exclaimed:

Being truly amazed at [Pakpa] Lama's ability, he told everyone he saw about this incident. He realized that Pakpa's actions and behavior were performed to tame all beings, and that the animal slaughter, tax collection, and corvée labor pertained to the karma of the individuals. May I come to regard [all these actions] as the extraordinary [karmic consequences]! (Mus srad pa: *Sa skya gdung rabs*)

This obviously means that, from this Tibetan perspective, law as a form of royal and governmental regulation can and does often 'look' very different from more normatively identified Buddhist ethical principles. The relationship between the two is expressly understood as indirect, mediated by the nature of the people ruled over, and the wisdom and skillful means of the ruler as bodhisattva.

Indeed, in a sense the secular law (as opposed to the Buddhist *vinaya*) is understood as derivative and in a very real sense 'illusory.' Thus, in his *Naming of the Sources of Religious Sponsors* (StSby, ff. 14–15), the Geluk historian Longdöl Lama Ngawang Losang (1719–94/5), explained how this involved law as a 'trick' (T. *zol*):

If (it is asked) so: What are the sixteen (points) of the law of the sixteen pure human moral rules composed by king Songtsen Gampo . . . As in this way the ten virtues of the excellent religion were completed by the trick (*zol*) of law, the gates of the three damnations were closed, the way of paradise and liberation was widened. So it is said. (Uray 1972, 54)

Here, Longdöl's use of the term *zol* is cognate with the notion of a magician's illusion, akin in many respects to the Mahāyāna idea of 'illusory manifestations.' In this respect, the post-dynastic texts are both explicit and repetitious on the point, following the philosophical view of the *Avatamsaka Sūtra*: that the reality and mechanisms of law, and therefore of kingly rule itself, are illusory in nature, and certainly not clear to ordinary eyes.

5.6 CONCLUSION

In his monumental study of Buddhism in Tibetan societies, *Civilised Shamans*, Geoffrey Samuel commented extensively on the historical tensions between two modalities of Tibetan religious life: the clerical and the shamanic. The *shamanic*, Samuel argued, invoked "alternative modes of reality" that were fundamental to the

⁷ Mus srad pa (1424–98): *Sa skya gdung rabs*. Text ref. S1550: Sakya Research Centre.

vicissitudes of everyday life and often ethically antinomian in application; while the *clerical* concentrated on the authority of scholarship, philosophical analysis, and adherence to more classical rule-bound notions of ethical behavior (1993, 9–10). Indeed, in line with Samuel’s analysis, there are Tibetan clerical approaches that emphasize a clear lineage of textual sources that leads from Indian Buddhism to Tibetan law.

Nonetheless, most of what has been discussed above fits very neatly into Samuel’s characterization of the ‘shamanic modality’: the idea of public law as a kind of ‘trick’, ‘manifestation’, or ‘skillful means’: the notion of reality, and in particular the reality of governance, as being perspectival and somewhat illusory; the idea that ethics is a hidden underlying or fundamental reality that shapes law, even laws that do not seem to follow ethical codes in any straightforward or obvious way.

In seeking to understand these things, we are forced to grapple with a Buddhist tradition that is different from Helmholtz’s portrait of European and American constitutional thought in three key ways. First and foremost, public law in this view was expressly understood as not *directly* embodying or representing Buddhist norms and rulings, but rather as moving toward the underlying objectives of those norms and rulings. This principle was not uniquely Tibetan but derived from long-established Mahāyāna logics about the nature of the spiritual path (*lam*) toward liberation, and the place of rulers and monarchs on that path. This meant that law was seen as Buddhist in a complex and perspectival way. Secondly, as with the Islamic traditions of jurisprudence, public law was understood as goal-focused rather than norm-focused. The form of law was seen as determined by larger moral objectives that, in turn, were derived from a wider picture of Buddhist striving toward liberation. Thirdly, and as a consequence of the above, the quality of public law was seen as dependent on the personal moral insight and sagacity of the lawmaker. While there is seen to be a clear distinction between royal law and the monastic code of discipline, both are seen to derive from the wisdom of the founding leader, whether that be the emperor or the Buddha.

In regard to its origins, reality, and objectives then, Buddhist law (within this Mahāyāna framework, at least) is quite unlike Helmholtz’s description of Christian constitutional thought, in that Buddhist law (in the Tibetan examples discussed in this chapter) *must* exist within the purview of the lawmaker’s “own full understanding” because “hidden things” – namely, private conviction and morality – are seen to be essential elements in its formation.

Thus, the post-imperial narratives about Songtsen Gampo’s founding of the law both emphasize a textual lineage (in particular, reference to a ‘*sūtra* of the ten virtues’) as well as valorizing the wisdom of Songtsen Gampo in formulating the laws ‘based on the ten virtues.’ Like the wealthy father standing outside his burning house in the *Lotus Sūtra* parable then, medieval Tibetan histories of law present

multiple legitimations to promote Tibetans' flight from non-virtue to law. And as with the parable, this may be seen as a 'trick,' but it is not seen to be a falsehood.

TIBETAN SOURCES

- ANK 2000. ཨ་མེས་ཞབས་པག་དབང་ཀུན་དགའ་བསོད་ནམས་ཀྱི་བཀའ་འབུམ། (*The Collected Works of A-mes-shab Ngag-dbang Kun-dgah bSod-nams*). TBRC: W29307.
- dBZh དབང་བཞེད། (*Considerations of Wa*). Wangdu, Pasang, and Hildegard Diemberger. 2000. *dBa' bzhed – The Royal Narrative Concerning the Bringing of the Buddha's Doctrine to Tibet*. Wien: Verlag der Osterreichischen Akademie der Wissenschaften.
- CJSG བསོད་ནམས་རྩེ་མོ། (1142–1182) ཚོས་ལ་འཇུག་པའི་སློབ་ཀྱི་བྱ་བའི་བསྟན་བཅོས། (*Treatise Known as Gateway to Engaging with the Dharma*). TBRC: W2DB4568.
- GSM བསོད་ནམས་རྒྱ་མཚན། (1312–1375) རྒྱལ་རབས་གསལ་བའི་མེ་ལོང་། (*Clear Mirror of Royal Genealogies*) W23770.
- KDNg ཨ་བླ་རྒྱུ་བུ། (b. 1323) བཀའ་ཐང་སྟེ་མུ། (*Five Books of Law*). TBRC: W17319.
- KhGSt (*Feast for the Wise*) དཔའ་ལོ་གཞུག་ལག་ཟེང་བ་ (1504–1566) ཚོས་འབྲུང་མཁམ་པའི་དགའ་སྟོན་ TBRC: W1PD96069.
- KKM rGya-mtsho, Smon-lam, ed. 1989. བཀའ་རྟེན་ལ་ཁོས་མ་ (*Pillar Testament*) Lanzhou: Kan su'u mi rigs dpe skrun khang.
- MKB 1975. མ་ཤེ་བཀའ་འབུམ་ (*Compendium of Manis*). Bla brgyud gsol 'debs dan lo rgyus skor sgrub thabs kyi chos skor. New Delhi.
- Mus srad pa ལྷམ་སྒྲུབ་པ་ (1424–1498) ས་སྐྱ་ག་དུང་རབས། *Sa skya gdung rabs*. S1550: Sakya Research Centre.
- StSby རྫོང་རྫོལ་ལྷ་མ་པག་དབང་སྟོ་བཟང་། (1719–94/5) བསྟན་པའི་རྩིན་བདག་བྱུང་རྩལ་གྱི་མིང་གི་གྲངས། (*Naming of the Sources of Religious Sponsors*) TBRC: W1NLM293.

REFERENCES

- Abrams, Philip. 1988. "Notes on the Difficulty of Studying the State." *Journal of Historical Sociology* 1 (1): 58–89.
- Allen, John. 1830. *Inquiry into the Rise and Growth of the Royal Prerogative in England*. London: Longman.
- Aris, Michael. 1997. "Foreword." In *Tibetan Histories: A Bibliography of Tibetan-Language Historical Works*, edited by Dan Martin, 9–12. London: Serindia.
- Cleary, Thomas. 1993. *The Flower Ornament Scripture. Translation of the Avatamsaka Sutra*. Boston: Shambhala.
- Corwin, Edward S. 1955. *The 'Higher Law' Background of American Constitutional Law, vol. 1*. Ithaca: Cornell University Press.
- Doney, Lewis. 2020. *Bringing Buddhism to Tibet: History and Narrative in the Dba' bzhed Manuscript*. Berlin/Boston: Walter de Gruyter GmbH.
- Dotson, Brandon. 2006. *Administration and Law in the Tibetan Empire: The Section on Law and State and Its Old Tibetan Antecedents*. Unpublished PhD thesis, University of Oxford.

2009. *The Old Tibetan Annals: An Annotated Translation of Tibet's First History*. Vienna: Austrian Academy of Sciences Press.
- Fuller, Christopher. 1992. *The Camphor Flame: Popular Hinduism and Society in India*. Princeton: Princeton University Press.
- Helmholz, Richard H. 2010. "Human Rights in the Canon law." In *Christianity and Human Rights: An Introduction*, edited by John Witte, Jr. and Frank Alexander, 99–112. Cambridge: Cambridge University Press.
- Hobsbawm, Eric, and Ranger, Terence. 1983. *The Invention of Tradition*. Cambridge: Cambridge University Press.
- Huber, Toni. 1996. "Literal or Literary: Reflections on New Translations of History's Mirror." *Tibet Journal* 21 (4): 58–67.
- Kamali, Mohammad Hashim. 1999. "'Maqāṣid Al-Sharī'ah': The Objectives of Islamic Law." *Islamic Studies* 38 (2): 193–208.
- Kantorowicz, Ernst. 1957. *The King's Two Bodies: A Study in Medieval Political Thought*. Princeton: Princeton University Press.
- Khyentse, Dilgo. 1993. "Foreword." In *The Lotus-Born: The Life Story of Padmasambhava*, by Yeshe Tsongyal, 3–7. Hong Kong: Rangjung Yeshe Publications.
- Macdonald, Alexander W. 2003 (1982). "Religion in Tibet at the Time of Srong-btsan Sgam-po: Myth as History." In *History of Tibet*, edited by Alex McKay, 129–40. London: Routledge.
- Mills, Martin A. 2011. "The Many Bodies of King Songtsen Gampo: Constitutional Mythology in Tibetan History." In *Exploring Tibet's History and Culture*, edited by Pabitrakumar Roy, 88–120. New Delhi: Central University of Tibetan Studies.
2012. "Ritual as History in Tibetan Divine Kingship: Notes on the Myth of the Khotanese Monks." *History of Religions* 51 (3): 219–38.
2018. "Last Gift of the God-King: Narrating the Dalai Lama's Resignation." In *Tibetan Subjectivities on the Global Stage*, edited by Shelley Bhoil and Enrique Galvan-Alvarez, 155–74. New York: Lexington Books.
- Ōtake, Susumu. 2007. "On the origin and early development of the Buddhāvataṃsaka Sūtra." In *Reflecting Mirrors: Perspectives on Huayan Buddhism*, edited by Imre Hamar, 87–107. Wiesbaden: Harrassowitz.
- Pirie, Fernanda. 2017a. "Buddhist Law in Early Tibet: The Emergence of an Ideology." *Journal of Law and Religion* 32 (3): 406–22.
- 2017b. "Which 'Two Laws'? The Concept of *trimnyi* (*khriṃs gnyis*) in Medieval Tibet." *Cahiers d'Extrême-Asie* 26 (1): 41–60.
- Ricœur, Paul. 1983. *Time and Narrative, vol. 1*, trans. Kathleen McLaughlin and David Pellauer. Chicago: University of Chicago Press.
- Samuel, Geoffrey. 1993. *Civilised Shamans: Buddhism in Tibetan Societies*. Princeton: Princeton University Press.
- Sørensen, Per. 1994. *Tibetan Buddhist Historiography: The Mirror Illuminating the Royal Genealogies*. Wiesbaden: Harrassowitz Verlag.
- Stein, Rolf. 1986. "Tibetica Antiqua IV: La tradition relative au début du bouddhisme au Tibet." *Bulletin de l'École Française d'Extrême Orient* LXXV: 169–96.
- Tucci, Giuseppe. 1962. "The Two Wives of Srong-btsan sgam-po." *Oriens Extremus* 9: 161–66.
- Uebach, Helga. 1992. "Notes on the Section of Law and State in the Chos-'byung of IDe'u." In *Tibetan Studies: Proceedings of the 5th Seminar of the International Association for Tibetan Studies Narita 1989*, edited by Ihara Shōren and Yamaguchi Zuihō, 823–32. Narita: Naritasan Shinshoji.

- Uray, Géza. 1967. "Traces of a narrative of the Old Tibetan Chronicle in the Mkhas pa'i dga' ston." *Monumenta Serica* 26 (1): 498–505.
1972. "The Narrative of Legislation and Organization of the Mkhas-Pa'i Dga'-Ston: The Origins of the Traditions Concerning Sroñ-Brcan Sgam-Po as First Legislator and Organizer of Tibet." *Acta Orientalia Academiae Scientiarum Hungaricae* 26 (1): 11–68.
- van Schaik, Sam. 2016. *The Spirit of Tibetan Buddhism*. New Haven: Yale University Press.
- Vostrikov, Andreĭ Ivanovich. 1970. *Tibetan Historical Literature*. Calcutta: R.D. Press.
- Wangdu, Pasang and Diemberger, Hildegard. 2000. *dBa' bzhed - The Royal Narrative Concerning the Bringing of the Buddha's Doctrine to Tibet*. Vienna: Verlag der Österreichischen Akademie der Wissenschaften.
- Watson, B. 1993. *The Lotus Sutra*. New York: Columbia University Press.
- Williams, P. 2009. *Mahayana Buddhism: The Doctrinal Foundations* (2nd ed.). Oxon: Routledge.