

Thrimś khang and the Setting for Justice: The Spatial Evolution of the Courts of Justice in Bhutan

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Introduction

On 16 June 2014 a ceremony was held to inaugurate the new Supreme Court complex in Thimphu. The Supreme Court complex represents the most recent expression, if not the culmination, of a process of court design and judicial architecture in Bhutan. The evolution of the design and construction of Bhutanese courthouses¹ is an important, if overlooked, feature of the modernisation of the Bhutanese legal system. Even more than the creation of new demarcated spaces for the operation, display and manifestation of judicial authority, the modern courthouses are part of a broader programme that underpins the ongoing process of democratisation. In this chapter, the role and function of the courthouse and courtroom in Bhutan is considered from a brief consideration of the dzongs established to secure the power of the Drukpa state, the changing engagement between ordinary people and the formal structures of the state and state law and the relationship between the Bhutanese state, its judiciary and foreign donors and advisors. The approach adopted in this chapter draws on studies on architecture, history and legal history and seeks to consider what new understandings can be gained in the development of court architecture as part of the promotion of the Rule of Law. This chapter intentionally draws on studies of court architecture from beyond Bhutan and the immediate region to illustrate how Bhutan has sought to accommodate, engage with and adapt to existing and emerging perspectives on court architecture and its presentation of judicial and state power.

¹ Tibetan/Dzongkha: *Khrims khang*. I have used a Romanised version for those unfamiliar with Tibetan/Dzongkha.

The chapter is in four main sections. The first section outlines the main theoretical concerns that underpin the chapter and their importance to our understanding of the different levels of meaning associated with courthouses and courtrooms. The second section turns to consider the range of locations used for dispensing justice, from private houses, open-air settings to rooms located in the dzongs. Following on from the survey of where “justice” or “decision-making” occurred, the third section turns to consider significant changes introduced in the late twentieth century. It briefly considers the creation of the High Court and establishment of the Thimphu District court. It then focuses on the emergence of a new court style in the late twentieth century, sponsored by foreign donors, and manifested in the sub-district court at Phuentsholing. Finally, it looks at the construction of the Supreme Court complex in Thimphu and inaugurated in 2014. The final section returns to consider the wider implications and meanings that are made manifest by this period of major construction work and its part in the broader process of democratisation in Bhutan.

1. Theoretical Orientations

Why Courthouses and Courtrooms Are Important

Why consider courthouses and courtrooms? As a Scottish law student the court buildings and formal presentation of courtrooms, with the royal insignia and the ritual aspects of the court process, maces, wigs and robes were simultaneously fascinating and anachronistic. As a recent history graduate studying law the historical evolution of the Scottish courthouse and courtroom was conspicuously absent in the available academic literature. Working daily in the courts these interests were overshadowed by the prosaic day to day legal and court business. However, these interests were reawakened during fieldwork in Bhutan. Arriving in Bhutan in 2000 and over the following four years watching and visiting a range of courthouses and courtrooms these “neutral” spaces of decision-making began to open new insights in to the significance of the architecture of courthouses and legal proceedings. Mulcahy writing about the evolution of English courtrooms notes that “public buildings can both inspire and degrade those within them: they can calm or oppress.”² This will resonate with anybody familiar with the *dzongs* of Bhutan. Seats of administrative authority *dzongs* were viewed with caution, if not actual dread, by many of the older Bhutanese interviewed during fieldwork.

Courthouses and courtroom are familiar to us through film, television, newspaper and online coverage of major court cases and criminal trials. Yet, academic interest in the

² Mulcahy 2011: 1.

architecture of courthouses and the design of courtrooms is relatively recent. When we teach law our focus is on legal texts, for example, statutes and case law. However, for an understanding of how the law operates it is important to consider the settings in which it is manifested: the courthouses and courtrooms. Commenting on the significance of courthouses in the US, Chief Justice Hennessey states that “our courthouses are monument to our legal tradition, its noble purpose and occasional tragic miscarriages. They evoke the memory of historical events and of the aspirations, frustrations and fears of many people...they are not merely buildings, rooms and furniture but are, rather, monuments that evoke several centuries of human effort and progress.”³ There are several important themes expressed by Chief Justice Hennessey that are relevant to the discussion of Bhutanese court design and architecture. The idea of “legal” tradition and its ideals, of the range of responses to courts by the general population and finally as expressions not only of tradition but also of progress, of modernisation and, as it will be argued in this chapter, in the Bhutanese context to democratisation.

The social and cultural manifestations of law have been emphasised in other articles to explore the constitutive effects of law and its effects on legal consciousness in Bhutan.⁴ However, when we turn our attention to courthouses and courtrooms our focus must shift from the broader social context to consider the ways in which legal actors think and behave in these formal settings. Recently, several scholars have reminded us of the importance of foregrounding the forms of knowledge specific to law.⁵ Riles in her work on globalised knowledge refocuses our attention when she notes that “legal knowledge is not a flourish or a detour: it is a very serious thing. The legal techniques at work in doing state work are real. They are consequential. And thinking of the state as the practice and effects of knowledge work does not trivialize it, but specify it”.⁶ Riles’s admonition is timely.

From a legal anthropological perspective, Gupta and Ferguson’s work on space, and notably on the state provide important insights that have not yet been applied to the local spatial conditions of courthouses and courtrooms.⁷ Although their work focusses on the state, it is argued that it provides an important entry point for the consideration of formal legal space. Gupta and Ferguson highlight two related metaphors in our conceptualisation of the state: “verticality” in the sense of the state sitting above civil society and “encompassment” which conceives of the state located in ever expanding

³ Hennessey 1984: vii.

⁴ See Whitecross 2002; 2009; 2010a; 2010b.

⁵ Braverman et al 2014.

⁶ Riles 2011: 89.

Ferguson and Gupta

circles starting with the family unit. Thus, “this is a profoundly consequential understanding of scale” which they argue is “one in which the locality is encompassed by the region, the region by the nation-state, and the nation-state by the international community.”⁸ We can apply these concepts to law and as will be discussed in this chapter, it provides a framework for considering the movement and transplantation of law and legal forms and their adaption by local cultural forms, in this instance to the architecture and design of courthouses and courtrooms.

2. Settling Disputes

From private house to the *dzong*: dispute resolution settings in Bhutan

Although the focus of this article is on the state sponsored courts, any discussion of dispute resolution in Bhutan must acknowledge the role of private, household level resolution of disputes between family members, neighbours or even communities. Both Aris⁹ and Ura¹⁰ highlight the emphasis on mediation and reconciliation between conflicting parties outside of the courthouse. Hainzl suggests that for Bhutanese the courthouse is an “institution of last resort.”¹¹ This perception of the courthouse as a “last resort” echoes Mulcahy’s comments discussed above. Chapter 11 (DA) of the *Thrimzhung Chenmo*,¹² or Supreme Law Code, passed by the National Assembly in the late 1950s sets out the criteria for negotiated settlements and only four matters are expressly excluded: theft, armed robbery, murder and treason. There remains a strong emphasis on negotiated settlement in Bhutan and it is actively promoted by the judiciary. In terms of the organisation of domestic space and its relationship to the contemporary courthouses and courtrooms, texts on the organisation of the space of Bhutanese houses are scarce. In part this is because of a range of styles across Bhutan. However, Karmay notes that in Eastern Tibet, “the ground floor shelters the cattle, the first floor the family and the last floor is used for storing straw and hay.”¹³ This description is applicable to Bhutan. Karmay goes on to say that “spatial organisation is based on the cosmic direction as well as on certain beliefs.”¹⁴ The construction and orientation of private houses, as well as, major buildings such as *dzongs*, monasteries and *chortens* are based on a range of geomantic principles and religious beliefs.

⁸ Ferguson and Gupta 2005:106.

⁹ Aris 1994.

¹⁰ Ura 1994.

¹¹ Hainzl 1998: 40.

¹² Tibetan/Dzongkha: *Khrims gzhung chenn mo*

¹³ Karmay 1987: 92.

¹⁴ Ibid.

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

At any stage of the proceedings, it shall be open to the parties to take the help of a *Chimi*, *Gup*, *Chipon*, *Mang-mi* or *Barmi* as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.¹⁵

Based on local-level mediation between the parties concerned by local men of influence (e.g. a village headman), the practice of arbitration and mediation has been strongly promoted by the judiciary in Bhutan.¹⁶ The fourteenth century Buddhist scholar, Longchen Rabjam describes acting as a mediator in reconciling differences as a “virtuous deed.” The *chimi* (National Assembly representative) and *gup* (village headman) each have some judicial functions at the local level. The role of local officials such as the *gup*, who acts as the head of the local village block (*gewog*), are to both maintain and foster social harmony thereby enabling communities to maintain control over local matters.

Following the process of decentralisation of government initiated with the creation of the District Development Committees at *dzongkhag* level, the early 1990s saw the development of Gewog Development Committees at village level. Both institutions have been given legal status by Acts (*chathrim*) passed by the National Assembly and, importantly, these Acts gave formal legal recognition to the role of the *mangi ap* and the *dzomdu* (village meeting). This focus on the local level resolution of disputes is important for it highlights the everyday use and application of non-formal approaches to dispute resolution that maintain and adapt local level practices. In addition to the local level officials mentioned, a key figure in the process of dispute resolution is the *barmi*. These are local individuals who “are well versed in the law.”¹⁷ *Barmi* literally means “middle person” and his role is to act as an impartial negotiator between disputing parties. Once a settlement is reached, an agreement in the correct legal format is drawn up and signed by the parties before witnesses. Two particular forms of document were mentioned – *Genja* which is a simply contract or agreement, and a ‘*Bah*.¹⁷

The ‘*Bah*’ is an interesting document for it specifies the penalties which the one party to the agreement will pay to the other in the event of failing to abide by the terms of the agreement. This document contains features that are familiar from arbitration. Importantly, for this paper, this is where the state intervenes and specific requirements are

¹⁵ RCJ 2000: 43.

¹⁶ See Dubgyur 2000 and Wangchuk 2000. ¹⁷ Hainzl 1998.

¹⁷ Tibetan/Dzongkha: *gan grya* and ‘*bah*. The orthography of ‘*bah* is unclear.

set out for the agreement and its registration with the local District Court. The emphasis on written documentation of the agreement is not especially new. The importance of writing is reflected in the written land titles. However, the process of registering the agreement, which is especially important for ‘*Bah*, with the court establishes and re-emphasises the authority and legitimacy of the courts – without registration with the court then, in the event of a breach of the agreement the other party cannot seek legal redress without first establishing his/her claim thereby ensuring that state control and supervisory authority is maintained, indeed extended even over those areas which appear to be out with the formal control of the judicial system. This section underscores the importance of non-formal dispute resolution in Bhutan and thereby contextualises the discussion below of the evolution of the Bhutanese courthouse and courtroom.

3. From Dzong to Supreme Court

In the following discussion of courthouses and courtrooms, the emergence and architectural development of the courthouse in Bhutan is examined. The starting point is a consideration of the role of the *dzong*. The *dzong* or fortress/monastery was central to the establishment of the Zhabdrung Ngawang Namgyal’s “religious estate” in the seventeenth century and has served as the primary administrative centres since. However, in the late 1960s a new institution was created, the High Court and in time the first courthouses located outside of the *dzong* appeared in the late twentieth century, notably Thimphu District Court. As part of a wider Royal Government of Bhutan programme initiated in 1999 promoting “Accountability, Efficiency and Transparency,” a new form of courthouse was developed and constructed in Phuentsholing. Finally, in 2014 the new Supreme Court complex in Thimphu was opened. It is argued that the evolution of the Bhutanese courthouse and courtroom mirrors, indeed symbolises, changing approaches to governance and more recently acts as a metaphor for the emerging democracy established by the Constitution enacted in 2008.

The Dzong: Fortress, Monastery and *ad hoc* courtroom

The *dzong* is in many ways synonymous with Bhutan. However, the *dzong* has a long history. Marc Dujardin refers to Bhutan’s architectural heritage as “a living architectural tradition.”¹⁸ Of relevance to this chapter is Dujardin’s observation that Bhutanese architecture “has not yet been deprived of its culture-integrating and culture-generating

¹⁸ Dujardin 1997: 61.

role.”¹⁹ Amundsen provides an account of the development of the *dzong* in Tibet and in Bhutan.²⁰ Whilst it is important to keep in mind that the *dzong* was not uniquely Bhutanese, it is believed that it was introduced to Bhutan in the mid-twelfth century by a Tibetan missionary lama, Gyalwa Lhanangpa.²¹ In Tibet, the *dzong* served as a fortress guarding strategic positions. In Bhutan, notably after the arrival of the Zhabdrung Ngawang Namgyal, the *dzong* combined the functions of administrative centre, military fortress and monastery. Amundsen suggests that “the *dzongs* are physical expressions of the well-known concept of *chos srid gzhung ‘brel*: ‘the harmonious blend of religion and politics.’ As an administrative model, it is known as *chos srid gnyis ldan* or the ‘dual system’.”²²

Generally, *dzongs* are oblong or square in shape, though of course this varies depending on the terrain on which the *dzong* was constructed. Behind high outer walls there are at least two open courtyards (*rdo chen*). The first to be entered was in the secular part of the *dzong*. The second courtyard was for the monks and demarcated the more sacred area of the *dzong*. The core of the *dzong* is the *utse*, a tall multi-storeyed tower at the centre of the *dzong*. The most sacred space in the *utse* is the *lhakhang* or temple with statues of Buddhist deities. Usually the *lhakhang* is adjacent to a prayer hall. The entrance to the prayer hall itself is usually decorated with murals, rather than statues. The walls of the *dzongs* are generally whitewashed with a broad red band just below the roofs. Referred to as the “Red Mouth” (*ske dmar*), this red band signifies the religious character of the building.²³

It is hard to know what the rooms of the *dzong* looked like. Certainly, the temples and various sacred spaces would have been elaborately decorated. However, many of the rooms within the *dzong* probably had minimal or no decoration. French notes that in central Tibet “on the whole, legal spaces were free of decoration, religious objects, altars or pictures. Tibetans stated that upon entering they knew these rooms were not religious in nature. When empty of their actors, legal spaces looked like the interior of any administrative office.”²⁴ Similarly, interviews with elderly Bhutanese suggest that the administrative sections of the *dzongs* were plain though painted with paints made from natural pigments.

¹⁹ Ibid.

²⁰ Amundsen 1994 and 2001.

²¹ Royal Government of Bhutan: 1993: 52. ²³

Amundsen 2001: 24.

²² In a presentation on Law and Legalism in Tibet in January 2017, B Jansen highlighted an image of a courthouse at Samye monastery which reflects the same features.

²³ French 1996: 150.

As far as we know, the *dzong* officials responsible for administering justice until the creation of the High Court in the late 1960s and the emergence only in the 1990s of a new formally trained legal cadre, conducted their business in the plain rooms of the administrative part of the *dzong*. An eighteenth-century law text, the *bKa' Khrims*, provides us with glimpses into the practice of administering justice that hints at both settling cases in the villages, as well as conducting investigations from the *dzong* and hearing certain cases in the *dzong*. Unfortunately, the *bKa' Khrims* does not discuss the physical setting or procedures that were to be followed when dispensing justice.²⁴ However, it does emphasise the interrelationship between maintaining order and the Dual System of government established by the Zhabdrung, Ngawang Namgyal.

Returning to Dujardin, discussing the role of Punakha *dzong* and its remodelling between 1985 and 1996 he describes the “active role of *dzong*...as setter of new architectural trends.”²⁵ Over the centuries, fires and earthquakes, as well as sporadic civil warfare in the eighteenth and nineteenth centuries, required *dzongs* to be rebuilt or altered. The cultural importance of the *dzong* as a symbol of Bhutanese tradition has recently been demonstrated in the restoration of the fire ravaged Wangduephodrang *dzong*, and more specifically Drukgyel Dzong. Drukgyel Dzong was seriously damaged by fire in 1951. In 2016 to mark the birth of the Gyalsey it was announced that it will be restored.²⁶ There are other recent examples that signal the continued cultural importance of the *dzong*.²⁹ Yet, it can be argued that although the *dzong* remains a vital, living cultural symbol, their practical function as the seat of administration and of the courtrooms has altered. In the following sections, we consider the gradual emergence of the courthouse as a separate building and the courtroom as clearly demarcated space for the delivery of justice.

Emergence of Separate Courthouses: High Court and the Thimphu District Court

The creation of the High Court in 1968 was a key event in the development of the Bhutanese legal system. Although a legal institution it is crucial that this event is understood in the wider context of reforms undertaken by the Third King, Jigme Dorji Wangchuck during the 1960s. The reforms began in the early years of his rule after his

²⁴ This can be contrasted from Tibetan law codes, for example the *Zhal Iice bco gsum* which discusses at length procedure as highlighted by Pirie at the Wolfson College Colloquium on Law and Legalism in Tibet on 20 January 2017.

²⁵ Dujardin 1997:66.

²⁶ Kuensel (February 7 2016) “Drukyul’s victory rises to The Gyalsey.”²⁹ For example, Gasa *dzong*.

ascension to the throne in 1952, however it was during the 1960s that the extent of the reach of the reforms becomes more significant. The traditional structures of monarchical rule and administration inherited from the Second King, Jigme Wangchuck, were gradually being refined and transformed. The *Thrimshung Chenmo*, the foundation for the new Bhutanese legal system, was provided the legal foundation for these reforms. The creation of the High Court may be seen as a natural progression; however, its creation undoubtedly reflects growing pressure for a separate judiciary and an increase in the need for judicial decision making. The physical location of the High Court, near to but separate from Tashicho *dzong* made a symbolic yet highly visible statement about the role of the High Court.

The building provided a basic template for latter courthouses. A long low building of two stories with a higher central tower was to be reflected, as will be discussed at more length below, in the design of more recent district courthouses. Housing the Chief Justice and other High Court judges the High Court housed the administration and private offices of the Chief Justice and the High Court judges. The main courtroom is highly decorated with elaborately carved pillars, the judicial benches and a barrier between the public and the main area in front of the bench. The elaborate carvings and painting were each held to convey symbolic meanings as described by the Chief Justice, Lyonpo Sonam Tobgye during a tour of the courthouse.²⁷

By comparison the Thimphu District Courthouse was located between the Changlimithang Stadium and the Sunday Market. Set back from the main road and the Thimphu Chu (river) the low-rise building looked like many other older buildings erected during the 1970s and 1980s in Thimphu. A long-covered veranda ran along the front of the building with the courtrooms off. The courtrooms were small and simply furnished and as observed by a Bhutanese court user were “unremarkable.” The contrast between the District Court and the High Court may reflect their respective place in the judicial hierarchy of courts. However, another explanation is that the Thimphu District courthouse reflected the long-standing absence of decoration in courtrooms. The creation of separate courthouses did not immediate lead to a flourishing of courthouse architecture in Bhutan. Rather, the courthouses were constructed to resemble other government buildings – built with a focus on utility, function and cost rather than as symbolic manifestations of the state.

In 1994 a new Royal Court of Justice Research Unit was established. The Research Unit was to be instrumental in the shaping of a new approach to courthouse and courtroom design, meaning and function. The range of research undertaken by the Research Unit was broad – it included *driglam namzha*, the development of a new approach to legal education and, unusually, a focus on Bhutanese architecture. The High Court was probably the first

²⁷ Fieldnotes: 1 August 2003.

courthouse to reflect the work undertaken on Bhutanese architecture and decoration.²⁸ The fruits of the work undertaken by the Research Unit on architecture was to be reflected in a new courthouse design manifested in a new major courthouse in Phuentsholing.

Phuentsholing: Creating a New Courthouse.

Situated 174 km to the south west of the capital, Phuentsholing is the second largest city in Bhutan. Phuentsholing is described by the architect, Dujardin as “of a more hybrid typology and architectural arrangement due to its contiguity with the Indian border town of Jaigaon.”²⁹ The court in Phuentsholing is a sub-district court below the district court located at Chukha. However, due to the economic importance of Phuentsholing as Bhutan’s main centre of commerce and size, the court is an important one. Like many district courts, the Phuentsholing court was in cramped offices shared with the District Administration. Following a project sponsored by the Danish development department, Danida, a new purpose built courthouse was designed and built. The new courthouse was officially inaugurated in September 2003. The new court represents the reformulation of state-religious architecture of the *dzong* which serve as the “archetype of public, political and collective architecture.”³⁰ The Phuentsholing courthouse faces outwards rather than inwards like the traditional *dzong* conveying a sense of openness. Internally, the building is spacious, light and clean with separate offices for the clerks and judges. Significantly, there is a rear entrance for prisoners being escorted to and from their court hearings with separate holding cells for male and female prisoners. These features provide a marked contrast from the cramped quarters of both the local District Offices and the *dzongs* in which many courts were located.

The Phuentsholing courthouse combines several elements of *dzong* architecture. The tall, deep central tower of the courthouse is reminiscent of *utse*, the central towers of *dzongs*. This tower is balanced by two lower wings to each side in which the courtrooms and offices are located, which like the tower draw on the architectural style of the *dzong*. There are three key features that evoke the architecture of the *dzong*. The first is the very large oriel window (*rapse*) on the central block through which light enters the entrance hall and the second floor shrine room. Two smaller oriel windows on the first floor allow light into the two main court rooms. These windows and the open walk ways on the ground and first floor are elaborately decorated. The second feature is a broad band of red around the top of the walls interspersed with “mirrors” which copies the detailing of *dzongs* and temples. The final feature is the use of a special form of roof called *jabzhi*.

²⁸ Royal Court of Justice 2001: 14.

²⁹ Dujardin 1997: 65.

³⁰ Dujardin 2000: 164.

Normally, or at least in the past, the use of *jabzhi* which can best be described as a form of lantern, square with windows on all four sides, was restricted to palaces, temples and monasteries. These elements draw on a high register of architectural features reserved for religious or government structures and convey a strong message to those approaching the court. This is underscored by the presence of a *dar shing*, a tall pole with a long white flag, surmounted by a golden parasol indicating the need to observe *driglam namzha* (official code of conduct) both in the immediate vicinity, as well as, inside the courthouse. The authority and almost sacral nature of its functions appear to blend with a modern, efficient building, separate from the older district offices and by inference independent from political and policy considerations.



Figure 1: Phuentsholing District Court.

This blending of the key elements of *dzong* architecture is further developed in the decoration of the courtrooms. Entering the court rooms from the public entrance, one notes that the orientation is to the rear of the room. At the front of the court next to the public entrance are benches for the public. Separated by a low barrier and two pillars, the judge's raised dais is located at the rear. A side door allows the judge to enter directly from his or her private chamber. In front of the judge's seat on the dais is a low intricately carved table. Behind the judge's dais are two national flags and along the wall framed photographs of the current monarch and the four previous monarchs.

The Court Seal has a prominent place above the judge's dais, and above this a red dance mask representing Shingje Chogyal, Lord of the Dead. Directly in front of the dais, two tables facing each other across the width of the dais are reserved for the clerks of court and prosecution. On the right and left pillars, respectively are two further dance masks – one white, representing White God, and one black representing Black Demon. In other courts, for example the High Court of Justice and the District Court in Jakar Dzong one finds the same imagery. The three masks will be recognisable to most court users from a dance performed annual as part of the annual *tshechu* (Tenth Day) celebrations. The dance, called the *rakhsa marcham*, tells the story of the judgment of a sinner (a

hunter) and a virtuous man (a householder) by the Lord of the Dead.³¹ There appears to have been a move during the late 1990s to introduce a variety of symbols into the decoration of the courts, notably the design and use of a Court Seal and the masks used in the *rakhsa marcham*.

As with many of the offices of high officials, there is a social ordering of space – moving from less-honoured to more-honoured. This social ordering of space applies both horizontally and vertically. In the courtroom, this is reflected in the placing of the judge's dais against a solid wall, though it is perhaps modified for rather than being in the corner furthest from the entrance, it is in the centre of the space. The vertical hierarchy of the space is emphasised by the portraits of the kings hung on the wall above and behind the dais. The judge raised by the dais occupies the next level, followed by the clerk of court and legal representatives seated in front of the dais. Of course, litigants and accused individuals who are standing before the judge may be looking directly at the judge but traditionally to have to stand was considered a less dignified posture socially. These comments apply to the layout of both the District Court in Jakar and the High Court, Thimphu.

The inauguration of the Phuentsholing law court in 2003 marked a major shift in courthouse design and it is argued the conceptualisation of the Bhutanese courthouse and courtroom. For the first time the design and presentation of the courthouse make plain the conscious adoption and adaptation by the Bhutanese judiciary of cultural symbolism. By observing the evolution of the architectural symbols, we gain important insights into the role of the courthouses in projecting several competing and complimentary discourses that seek to present and naturalise a vision of the Bhutanese state of which the judiciary is an important, separate, constituent element.

The design of the courthouse drawing on earlier, pre-existing architectural models sought to present a recognisably “Bhutanese” appearance whilst seeking to establish a link with other traditions of lawgiving. Equally important to the traditional elements incorporated in the external architecture and internal decoration are those features that physically draw on a central theme of Bhutanese governance promoted in the late 1990s, transparency. This is conveyed by the physical transparency of the building which looks out on to an open area of ground rather than into a courtyard. The simpler architecture suggests a sense of efficiency which is reflected in the provisions for the detention of prisoners and their separation from the public attending the courts. Indeed, many aspects of the design and layout of the Phuentsholing court would not strike a western observer as noticeably different, and the décor merely a reflection of local tastes. However, to

³¹ Pommaret 1989; 2007 and Whitecross: forthcoming.

overlook these important elements of design is to overlook the symbolic significance of courthouses and courtrooms.

The Supreme Court: The Apogee of Bhutanese Court Architecture

Inaugurated in June 2014, the Supreme Court located in Thimphu represents the latest manifestation of judicial architecture in Bhutan. The building of the Supreme Court took approximately nine years with the foundation stone laid by the former Chief Justice, Lyonpo Sonam Tobgye in October 2005. It is worth noting that ground breaking ceremony took place several years before the foundation stone was laid.

The construction of the Supreme Court was funded by the Government of India. The Indian Prime Minister, Narendra Modi, officially opened the Supreme Court on 16 June 2014. Before discussing the architecture of the Supreme Court, it is necessary to acknowledge the role of India and other non-Bhutanese organisations in informing and shaping the Bhutanese legal system. A range of foreign aid organisations have been actively involved in the development of the Bhutanese legal system, in developing the court processes and the administration of the courts. Danida has notably funded the building of six new district courts, including Phuentsholing. The significant funding provided by the Government of India is an important reminder of the close connection between both countries that is reflected in role of Indian lawyers, judges and academics being more actively consulted and involved in the development of the Bhutanese judicial and legal systems. This close relationship began in the 1950s with the drafting of the Supreme Law Code.

The Supreme Court is a recent addition to the structure of the Bhutanese legal system. Introduced by the Constitution as the guardian and upholder of the Constitution it was established in February 2010. The Supreme Court is composed of five judges or benches. It is worth noting the names of the five benches: Lion, Elephant, Horse, Peacock and Garuda. These five names are based on the vehicle or animal support of the thrones of the five dhyani buddhas. The lion is associated with Vairocana, the elephant with Akshobhya, the horse with Ratnasambhava, the peacock with Amitabha and finally the garuda with Amogasiddhi. The names therefore associate each Supreme Court bench symbolically with one of the five dhyani buddhas. The five dhyani buddhas in Vajrayana Buddhism represent different qualities of the Buddha, for example, Ratnasambhava with equanimity. Therefore, the naming of each of the five benches demonstrates considerable thought about the significance and importance of the Supreme Court as an institution. Although funded by India, the design and the decoration of the new Supreme Court are explicit representations drawn from Bhutanese architectural, cultural and religious history and traditions.

The location of the Supreme Court reflects the depth of thought given to the physical location and its presence, as well as to the symbolic aspects of its design. The decision to

locate it close to Tashicho *dzong* and the Parliament each representing the executive and the legislature respectively, arguably seeks to present the Supreme Court as the main manifestation of the Bhutanese judiciary and legal system as separate from the other two arms of the new democratic system of governance. The independence of the judiciary was specifically highlighted in his speech on the inauguration of the Supreme Court by the former Chief Justice, Lyonpo Sonam Tobgye, who stated “they are within sight of each other, symbolizing the importance of checks and balances...demonstrating the need for vigilance and transparency.”³²



Fig. 2: The Supreme Court, Thimphu.

Unlike the Phuentsholing courthouse, the separate courthouses for each of the five Supreme Court benches are tall, square buildings. Their appearance is intentionally like a temple. The traditional architectural features noted in the design of the Phuentsholing courthouse are repeated. Oriel windows, the pagoda style roof and the simple decoration of the exterior of the courthouse with the red band and white mirrors present a refined, yet visualised solid, sense of the sacred. The Supreme Court presents the strongest statement of the courthouse as sacral space. Of course, although judges may describe the ambience of the Supreme Court as “sacred” and believe that the new courthouses will “generate a sense of reverence”, it cannot be assumed that the Bhutanese public, the citizen, will perceive the Supreme Court, or indeed the new district courthouses in the same way. As Branco observes, the “question of its recognition” as sacred “is not without controversy.”³³ Unlike the new district courthouses built with support by Danida and other

³² Zee News “PM Modi Inaugurates Bhutan’s Supreme Court.”

http://zeenews.india.com/news/nation/pm-modi-inaugurates-bhutans-supreme-court-building_939822.html. last accessed 13 December 2016.

³³ Branco 2016: 434.

funders, the new Supreme Court complex appears to break with the subtle design features of these new courthouses that convey a sense of transparency. Perhaps in drawing so heavily on the tradition of temple architecture with high windows this important element has been lost. Maybe the lack of visual transparency is intentional.

Conclusion

Transplanting Practices: Courthouses and Democracy

In 2008, the former Chief Justice, Sonam Tobgye stated that the “construction of court buildings is an investment in the delivery of justice.”³⁴ More recently in an address to the Austrian Development Agency for its support for the construction of a new courthouse in Dorokha, Chief Justice Tshering Wangchuk developed on his predecessor’s theme stating that the funding enabled “the judiciary to play its designated role in a democratic

³⁴ Kuensel (September 8 2008) “Supreme Court foundation stone laid.”

constitutional monarchy.”³⁵ Walking through the district courthouse in Phuentsholing the functionality of the building is striking. Unlike the narrow veranda where petitioners gathered, the cramped offices and the courtroom formally located in Jakar *dzong*, the new spaces provided by the new courthouses offer shelter from the elements and delineated public and private spaces that cater to the myriad of administrative and legal activities associated with a courthouse. Throughout this chapter, it has been argued that there is a need for us to pay closer attention to the design, presentation and use of courthouses and courtrooms. The programme of courthouse construction is more than about creating buildings and rooms fit for purpose. It is part of a wider concern: the establishment and promotion of democracy.

As this chapter illustrates courthouses, their design and the presentation of the courtrooms are part of larger, subtler political and cultural agendas. Whereas in France, the United States and to varying extents the courthouses of Scotland and England adopted Greek or neoclassical styles to convey “reason and wisdom” based on the need to “implement an identifiable architectural type – the Palais de Justice or the Courthouse” as part of “democratic justice,” Bhutanese courthouses have adapted sacred architecture for its courthouses, epitomised in the Supreme Court complex in Thimphu. For the Bhutanese judge this manifestation of the courthouse is undoubtedly seen as a physical symbol of Bhutanese democracy, grounded in the cultural and religious heritage of the country. Indeed, the claims to reason and wisdom set out by western jurisdictions based on Enlightenment and revolutionary ideals can be, as pointed out, be equally identified with in the Bhutanese approach to justice. The present Chief Justice, Tshering Wangchuk notes that the modern courthouses should “remind judges of their sacred responsibilities....and inspire trust and confidence of the people [by] serving as “an omnipresent manifestation of the rule of law and justice.”³⁶ This is a top down view of the law reflecting the vertical hierarchy of the courts, as well as, their role as a manifestation of the state. The recently completed district (*dzongkhag*) and sub-district (*dungkhag*) courts based on the model of open, transparent courthouses developed in Phuentsholing may offer and present a modern courthouse for the new democracy but also reflect the extending reach of the state sponsored court into more areas of everyday life and disputes, as well as, being the entry point in a vertical hierarchy of courts through which disputes can be appealed.

The everyday operation of law cannot be separated from the practices embedded in the local and national courts, police units, the processes of legal education and interactions with other officials who are involved in the implementation and interpretation of state

³⁵ Kuensel (August 1 2015) “Dorokha dungkhag court inaugurated”

<http://www.kuenselonline.com/dorokha-dungkhag-court-inaugurated/> last accessed 4 November 2016.

³⁶ Ibid.

law. From the laws and rules applied to household property and private land, to the mundane regulations of weights and measures used in public markets and shops, the regulation of businesses and the duties and responsibilities owed by individuals to each other and the state are all conditioned by the background presence of the law and underlying social and cultural values embedded within it. It is upon these values that the contemporary Bhutanese courthouse and the internal space of the contemporary courtroom have drawn on to legitimise and make simultaneously familiar and unfamiliar the new forums for delivering justice in civil and criminal cases. Cultural meanings and understandings, in which the routine ways of doing things are not articulated, inform the design and practices of Bhutanese courthouses and courtrooms.³⁷

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³⁷ Huxley 1996; Merry 2000; Watson 1977.

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