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Buddhism and Law

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Buddhist Law According to the Theravāda-Vinaya A Survey of Theory and Practice

“Wait, Sāriputta, wait! The Tathāgata will know the right time. The teacher will not prescribe any rule (*sikkhāpadam paññāpeti*) to his pupils, he will not recite the Pātimokha as long as no factors leading to defilement (*āsavaṭṭhāniyā dhammā*) appear in the order (Vin III 9.26-30).” This is the answer of the Buddha to Sāriputta’s worries that harm may be done to the order, if no rules of conduct are prescribed in time. And Sāriputta further points out that some of the buddhas of the past neglected this very duty with disastrous results: Their teaching suffered a quick decay and an early disappearance.

This passage underlines three important points: first, the significance of Buddhist ecclesiastical law. For without *vinaya* there is no order (*saṅgha*), and without the community of monks there is no Buddhism.¹ Consequently the *vinaya*-texts are the last ones lost, when Buddhism eventually disappears.² Secondly, the rules of conduct must be promulgated by the Buddha himself. He is the only law giver, and thus all rules, to which every single monk has to obey, are thought to go back to the Buddha. The third point is that the rules are prescribed only after an offence has been committed. Thus rules are derived from experience and based on the practical need to avoid certain forms of behavior in future. This means at the same time that the cause for a rule is always due to the wrong behavior of a certain person,³ and consequently there is no existent system of Buddhist law.

1. There are of course exceptions: S. Lienhard, “Buddhistisches Gemeindeleben in Nepal,” *Zur Schulzugehörigkeit von Werken der Hinayāna-Literatur*, Part 1, AAWG 149 (Göttingen: 1985) 261-274.

2. Cf. CPD s.v. *antaradhāna*, and add to the references given there: Sv 898.18-899.26=Ps IV 115.10-116.26; Mp I 88.11-89.16; cf. Sp 13.6=Sv 11.17.

3. The first offender ever is the monk Upasena, Vin I 59.1-34, cf. Sp 194.1 and Sp 213.11-19 on *apaññatte sikkhāpade*, and MN I 444.36-445.25.

The arrangement of texts in the Theravāda canon underlines the importance of Buddhist law, for it is contained in the first part of the Tipiṭaka, the “basket of the discipline” (Vinaya-piṭaka) followed by the “basket of the teaching” (Sutta-piṭaka). This sequence is found already in the well-known account of the first council held at Rājagaha (Rājagṛha) immediately after the death of the Buddha according to the Buddhist tradition. This account, which forms an appendix to the Vinaya-piṭaka (Vin II 286.16-287.28), mentions several texts arranged in the same way as the contents of the Tipiṭaka described by Buddhaghosa in his commentaries in the 5th century C. E.⁴ There, of course, the third part of the canon, which is considerably later than first two parts, namely the “basket of things relating to the teaching” (Abhidhamma-piṭaka) has been added.

In spite of the prominence of texts containing Buddhist ecclesiastical law, they seem to have been formulated somewhat later than the Sutta-texts.⁵ At any rate, law always occupied the first place in the hierarchy of texts, even in the division and arrangement preceding the Tipiṭaka; the “nine parts” (*navāṅga*) of the teaching⁶ begin with sutta, that is, with the Pātimokkha(-sutta). This text, called either Pātimokkha or simply Sutta in the Tipiṭaka, and Pātimokkhasutta in post-canonical times⁷ is the very core of Buddhist law.

The Pātimokkhasutta contains 227 rules in the Theravāda tradition and slightly different numbers in other extant *vinaya* traditions.⁸ These rules are arranged according to the gravity of the respective offense.

4. The arrangement of the Tipiṭaka is found at the beginning of the commentaries to the three parts of the Tipiṭaka respectively: Sp 18.1-19; Sv 16.31-17.16; As 6.13-9.14.

5. O. v. Hinüber, *Der Beginn der Schrift und frühe Schriftlichkeit in Indien*, AWL 11 (1989) 41-54; cf. also the formula *dhamma vinaya*, never **vinaya dhamma*: This sequence, however, may also be due to rhythmical considerations: O. v. Hinüber, *Untersuchungen zur Mündlichkeit früher mittelländischer Texte der Buddhisten*, AWL 5 (1994) 16.

6. O. v. Hinüber, “Die neun Aṅgas. Ein früher Versuch zur Einteilung buddhistischer Texte,” WZKS 38 (Orbis Indicus. Festschrift G.Oberhammer) (1994): 121-135.

7. O. v. Hinüber, “Vinaya und Abhidhamma” StII (Festschrift für G. Buddruss) (in press).

8. The relevant material for easy comparison has been collected in W. Pachow, *A Comparative Study of the Prātimokṣa on the Basis of Its Chinese, Tibetan, Sanskrit and Pāli Versions* (Santiniketan: 1955) (review: Kun Chang, JAOS 80 [1960]: 71-77).

A transgression of any of the first four rules leads to the irrevocable expulsion from the order. This is why these rules are called *pārājika* "relating to expulsion."⁹ The first three rules deal with a breach of chastity (*methuna-dhamma*[*pārājika*], Vin II 286.25; Sp 516.2; 1393.24; *methunapārājika*, Sp 1382.24), with stealing (*adinnādāna* [*pārājika*], Vin II 286.32; Sp 303.18; 1393.25 "taking what has not been given"), and murder (*manussaviggaha*[*pārājika*], Vin II 286.37; Sp 476.7; 768.22; 1393.25 "species 'man'") respectively. These are immediately obvious offenses, which one might find in any law code. The fourth and last one of this group, on the other hand, needs some explication. It deals with monks, who make the false claim to possess supernatural powers (*uttarimanussadhamma*, Vin II 287.5; Sp 480.22 "things superhuman"). At first glance it might seem rather surprising that this claim could result in the expulsion from the order. This draws attention to the high importance given to meditative practices, which, according to the belief of the time of early Buddhism, would ultimately lead to the acquisition of supernatural, magical powers. Obviously some safeguard was needed against false ascetics in the order, who might do considerable damage to the Buddhist order by shaking the faith of the lay community, on which the Buddhists depended.¹⁰

While the name given to the first group of offenses is easily understood, the designation of the second group comprising 13 offenses called *Samghādisesa* has been discussed repeatedly without any convincing result so far.¹¹ According to the Theravāda exegetical tradition the word means "(an offense, which is atoned by seeking) the order (*saṃgha*) at the beginning and at the end" (*saṃgho ādimhi c'eva sese ca icchitabbo assa*, Sp 522.3=Kkh 35.20 quoted Sadd 791.26). This tentative "etymological" translation, which would not be possible on the basis of the form of the name as used in other Vinaya schools, means that the length of the punishment, which is a temporary expul-

9. O. v. Hinüber, *Die Sprachgeschichte des Pāli im Spiegel der südostasiatischen Handschriftenüberlieferung*, AWL 8 (1988) 3, note 2. The correct interpretation of *pārājika* may be preserved at Vin V 148.15* quoted Sp 260.3-5; but: *parājiito parājayam āpanno*, Sp 259.17.

10. On the interpretation of this rule see D. Schlingloff, "König Aśoka und das Wesen des ältesten Buddhismus," *Saeculum* 36 (1985): 326-333. Even if a monk had attained *uttarimanussadhamma*, he was not allowed to communicate this fact to people outside the order: *Pācittiya VIII*, Vin IV 25.13.

11. E. Nolot, "Sāṃghāvaśeṣa-, Sāṃghātiśeṣa-, Sāṃghādisesa-," *Bulletin d'Études Indiennes* 5 (1987): 251-272, referring also to previous literature.

sion from the order, has to be determined by the assembly of monks.¹² Though the pertinent procedure has been described at great length in a later part of the Vinaya,¹³ it is not fully understood in every detail as yet.

Again the first five offenses relate to sexual misbehavior: Losing semen otherwise than while sleeping, touching a woman, making a sexual remark, trying to seduce a woman, or acting as a matchmaker. The next offenses Saṃghādisesa VI and VII concern the compound (*vatthu*) for building either a cell for a single monk (*kuṭi*), or a "great" monastery (*mahallaka vihāra*). This has to be commissioned by the order. The construction of the building itself is the topic of a later rule, Pācittiya XIX. The rules Saṃghādisesa VIII-XII relate to inner conflicts of the order. Among them is the famous one on "splitting the order" (*saṃghabheda*), Saṃghādisesa X.¹⁴ The last rule regulates certain misbehavior of monks towards laymen.

Both offenses of the third group called "undetermined" (*aniyata*) relate to sexual misbehavior of a monk, who stays together with a woman either in an open place or under one roof. Depending on his actions he may be liable to either Pārājika I, Saṃghādisesa II-V or Pācittiya XLIV, XLV. It is legally interesting that the monk is considered guilty, if a trustworthy laywoman (*saddheyyavacasā upāsikā*) who is the very woman involved accuses him. Following the Pātimokkha, no further evidence is needed. The early commentary,

12. This seems to be meant by *śeṣe*, cf.: *nirṇaye vyaṃ pramāṇam, śeṣe rājā, Mrcchakatika*, act IX (before verse 39) "in evaluating the evidence we (the judge) are the authority, for the rest (i. e. the sentence) [it is] the king," cf. *śeṣe* (so read) *pramāṇam tu bhavantam, Mahābhārata* III 53.21 (Nalopākhyāna). In Mrcch this is said by the judge at the end of the trial of Cārudatta, which shows that investigation and judgement are clearly separated.

13. Cullavagga chapters I-III, Vin II 1.5-72.29.

14. T. Ohtomo, "Interpretations of Sikkhāpada, in the case of Saṃghādisesa X," *Indogaku Bukkyōgaku Kenkyū* (Journal of Indian and Buddhist Studies), 19.2 (1971): 831-834 (in Japanese); H. Bechert: "The Importance of Aśoka's so-called Schism Edict," *Indological and Buddhist Studies. Volume in Honour of J. W. de Jong on his 60th Birthday* (Canberra, 1982): 61-68, and "On the Origination and Characteristics of Buddhist Nikāyas, or Schools," *Premier Colloque Étienne Lamotte (Bruxelles et Liège 24-27 septembre 1989)* (Louvain-La-Neuve, 1993): 51-56; K. R. Norman, "Aśoka and Saṃghabheda," *Studies in Original Buddhism and Mahāyāna Buddhism in Commemoration of F. Watanabe* (Kyoto: 1993) 9-29; S. Sasaki, "Buddhist Sects in the Aśoka Period (I)—The Meaning of the Schism Edict," *Bukkyō Kenkyū* (Buddhist Studies) 18 (1988): 181-202; (II)—Saṃgha-bheda (1), *Ibid.* 21 (1992): 157-176.

however, the *Suttavibhaṅga* adds (and thus at the same time mitigates the rule) that it is necessary, too, that the monk does not deny having committed the respective offense.

Here we find one of the basic principles of early Buddhist law as laid down in the *Pātimokkha*: that the monk involved has to admit his intention to commit an offense. Consequently the moral standards of the monks are supposed to be very high. Speaking the truth is taken more or less for granted here as in Brahmanical tradition, where it is thought that brahmins speak the truth by their very nature. Given the high esteem for truth necessarily found in oral cultures such as early Buddhism or that the Veda, it is surprising that telling a lie is considered only as a *Pācittiya* offense (see page 6).

The fourth group of offenses comprises the largest number, altogether 122 divided into two groups: 30 rules concerning "expiation by giving up (something)" (*nissaggiya pācittiya*) and 92 rules called "pure expiation" (*suddha pācittiya*), because some ecclesiastical punishment is imposed.

The 30 *Nissaggiya* rules are of particular interest as they shed some light on the property a monk was allowed to hold. These rules concerning property are divided into three sets of of ten rules. The first deals with robes, the second with mats and material used to make them, and includes the important *Nissaggiyas* XVIII and XIX forbidding trade and the possession of any "gold or silver," i. e. money (*jātarūparajataṃ*, Vin III 237.36**), to which the *Suttavibhaṅga* gives a farsighted explanation: "or whatever is used (*ye vohāraṃ gacchanti*, Vin III 238.3)" thus including even paper money, if not credit cards.

In spite of this rule monks did own the financial means even to build monasteries at their own expense (*attano dhanena*, Vin IV 48. 21) as it is said in the commentary to *Pācittiya* XIX. It is not clear from the *Vinaya-piṭaka* how this was handled. Probably a layman attached to the monasteries managed the finances owned by the monks. This rule is one, if not the, earliest reference to "riches" in the possession of individual monks. At the time of the *Samantapāsādikā* it was usual that monks controlled their financial means. This is shown by his liability to pay damages in case any property belonging to the order was lost through his negligence.¹⁵

15. O. v. Hinüber, "Über drei Begriffe der buddhistischen Rechtssprache: issaravatā, givā und bhaṅḍadeyya," IT 7 (1979): 275-279. Property of monks

The third and last set of ten Nissaggiyas deals with the alms bowl and miscellaneous items such as medicine or the forbidden appropriation of things given to the whole saṃgha (*saṃghika lābha*) by an individual monk.

The “pure” Pācittiyas comprise 92 rules in the Theravāda-Pātimokkha and 90 in the Sarvāstivāda-Prātimokṣasūtra. The latter number seems to be the original one, for a few Pācittiyas have been split into two rules by the Theravādins or are counted in such a way, giving rise to some doubt about their originality. The initial arrangement of the rules in groups of ten has thus been obscured somewhat. The groups themselves are named after the first rule in a group.¹⁶

The consequences of transgressing a Pācittiya are not clear. The name of this group of offenses, which has been borrowed from Vedic ritual language,¹⁷ points to some kind of atonement (*prāyaścitta: pācittiya*), but no further details seem to be given in the legal texts of Theravāda.¹⁸

It may be sufficient to mention only a few of these offenses as examples. The very first rule concerns telling lies, and therefore is again one of the universal rules like Pārājika I-III. Here again the Buddhist law is near to concepts of the Veda. For the Vedic Dharmasūtras teach the same, e. g. *ahiṃsā satyam astainyam / maithunasya ca varjanam*, Baudhāyana 2.18.2 “non-violence, truth, not stealing, and avoiding sexual intercourse.” Even the formulation of this Pācittiya shows that it is has been taken over by the Buddhists from some earlier source because instead of the typical Buddhist wording,¹⁹ for

is listed in Sp 290-294; 1244ff; cf. also G. Schopen, *JiABS* 14.2 (1991): 312ff.

16. The structure of the Patimokkha will be discussed in detail in an article under preparation.

17. On the explication of the name *pācittiya* see O. v. Hinüber, “Die Bestimmung der Schulzugehörigkeit buddhistischer Texte nach sprachlichen Kriterien,” *Schulzugehörigkeit* . . . (as above note 1) 64ff., cf. H. Matsumura, *AO* 51 (1990): 67, note 17; very rarely also the form *pācattiya* occurs: O. v. Hinüber, *The Oldest Pāli Manuscript. Four Folios of the Vinaya-Piṭaka from the National Archives, Kathmandu*, *AWL* 6 (1991) 22; on Jaina evidence: C. Caillat, *Les expiations dans le rituel ancien des religieux jaina*, Publications de l’Institut de Civilisation Indienne, Séries In-8°, Fascicule 25 (Paris: 1965) 16.

18. On the classification of transgressions: É. Nolot, *Règles de discipline des nonnes bouddhistes*, Publications de l’Institut de Civilisation Indienne, Fascicule 60 (Paris: 1991) 384-386.

19. This wording is shared with Jaina legal literature, where rules begin with *je bhikkhu* . . .

which there is no correspondence in Vedic literature: "if a monk . . . (should do this or that) . . ." (*yo pana bhikkhu . . .*), a different formula is applied here: "if there is a conscious lie, it is an offense requiring expiation" (*sampajānamusāvāde pācittiyaṃ*, Vin IV 2.14**).

At the same time this wording is much simpler than the usually very careful, if at times somewhat clumsy, formulation of rules in the Pātimokkha: "Whatever monk should intentionally deprive a being of the class 'human' of life or should seek somebody who brings the knife to him (i. e. to the man to be killed), or should praise death, or should incite (someone) to death saying: 'Hello there, my man, of what use to you is this evil, difficult life? Death is better for you than life,' or should deliberately and purposefully in various ways praise death or should incite anyone to death, he is also liable to expulsion and not in communion," Pārājika III (Vin III 73.10**-16**, translation after I. B. Horner). Obviously this is an attempt to describe all possible conditions leading to a certain offense in a very comprehensive way. The struggle with the language and a certain awkwardness of the syntax underline the fact that the authors were not accustomed to this kind of legal formulation when they attempted to achieve something new and innovative in the history of Indian law. The rules laid down in the Pātimokkha seem to be the first attempt at a truly legal description of the facts in India.

It is only in the Pācittiya that violating living beings (*ahiṃsā*) other than man is referred to: Pācittiya XI concerns plants (*bhūtagāma*, Vin IV 34.33**), and much later in Pācittiya LXI animals (*pāṇa*, Vin IV 124.25**) are mentioned. In contrast to murder both these offenses do not result in expulsion from the order, not even to a temporary suspension of the rights of a monk, as does a Saṃghādisesa offense. This underlines the superior position held by man, who is considered to stand high above any other living being. This remarkable feature of Buddhist anthropology is also mirrored by the Dhamma: only men are able to become buddhas.

The last rule to be mentioned of this group is Pācittiya XIX concerning the erection of a monastery (*mahallaka vihāra*), already referred to above in connection with Saṃghādisesa VI and VII. This example suggests that rules once included into the Pātimokkha can never be dropped. The building described here seems to be a very simple, if not primitive, type of monastery. As soon as the monasteries developed into larger complexes, it became impossible to follow or even use this rule any longer. As a consequence the exact meaning seems

to have been forgotten very soon, already at the time when the old commentary, the *Suttavibhaṅga*, was formulated because the explanations given here clearly show that many details were no longer fully understood. The same fact can be deduced from the attempts to create a comprehensible text by reformulating the rule, as did some of those schools who use Sanskrit in their *Prātimokṣasūtras*. However, the exact meaning of this rule remains obscure.²⁰

Although evidently obsolete for a long period, perhaps even for more than two millennia, this rule has been kept because it was considered impossible to change or update the *Pātimokkha* promulgated by the Buddha himself: *suttaṃ hi appaṭivattiyam*, Sp 231.27 “for it is impossible to reverse the (*Pātimokkha*)sutta.” This opinion cannot have prevailed at all times, because the *Pātimokkha* as we have it today, must have been formulated by the order at an early date, and not by the Buddha. Very soon, however, in the history of Buddhism the assembly of monks decided not to touch the text anymore. The refusal to change even the “minor rules” (*khuddānukhuddakāni sikkhāpadāni*)²¹ hinted at in the pertinent discussion at the council of Rājagaha (Rājagṛha) (Vin II 287.29-288.15, cf. DN II 154.15ff.) could indicate the end of the freedom for any changes of the *Pātimokkha*.²²

A set of only four rules follows this large group. As these offenses have to be pointed out only by the monk who has committed them, they are named *Pāṭidesaniya* “pertaining to confession.”

The final group of rules in the *Pātimokkha* comprises 75 items and relates to appropriate behaviour (which would also apply to any layman) such as walking around properly dressed, avoiding talking while eating, etc. They are called *Sekkiya* “pertaining to training.” All these rules are formulated in the same way: “I shall not put my hand into my mouth while I am eating. This (rule) pertaining to training must be kept,” *Sekkiya XLII* (Vin IV 195.10**). The contents, arrangement, and number of these rules, which contain an interesting, though

20. D. Schlingloff, “Zur Interpretation des *Prātimokṣasūtra*,” ZDMG 113 (1963): 536-551, particularly p. 542ff.

21. Although it is not clear, what exactly is meant by these rules, it seems that *Pācittaya LXXII*, Vin IV 143.17* uses this expression in reference to the *Pātimokkhasutta*. The *Pācittiyas* are called *khuddaka*, Sp 735-7*; 886.2*; 213.18. Cf. also J. Dhirasekera, “The Rebels Against the Codified Law in Buddhist Monastic Discipline,” *Bukkyō Kenkyū* (Buddhist Studies) 1 (1970): 90-77.

22. The reason given is quite interesting: changes might confuse the laity: Vin II 288.17.

difficult, and probably popular vocabulary, sometimes vary considerably from one Vinaya school to another. In fact, this set seems to be a later addition²³ because the Pātimokkha is occasionally referred to in the canon as "These more than 150 rules, which are recited every half month—I cannot keep them" (*sādhikaṃ idaṃ bhante diyaḍ-ḍhasikkhā-padasataṃ anvaddhamāsaṃ uddesaṃ āgacchati nāhaṃ bhante ettha sakkomi sik-khituṃ*, AN I 230.17-19 etc., Mp II 346.29). The figure 150 only makes sense, if the 75 Sekkhiya-rules are excluded: 4 Pārājika + 13 Saṃghādisesa + 2 Aniyata + 30 Nissaggiya + 92 (originally 90) Pācittiya + 4 Pātiesaniya = 145 (143), to which the seven "methods to settle a dispute" (*adhikaraṇasamatha*) are added at the very end of the Pātimokkha. These seven methods are only enumerated without any further explanation and are found in the second part of the Vinaya-piṭaka, the *Khandhaka*, divided into twenty chapters called "large section," *Mahāvagga*, and "small section," *Cullavagga* respectively.

The first part of the Vinaya-piṭaka, the Pātimokkha briefly described so far, has been built around the rules for the behaviour of individual monks and nuns. This section of the Vinaya-piṭaka is called *Suttavibhāṅga* "explanation of the (Pātimokkha-)sutta."²⁴ Each single rule is embedded in a text of identical structure throughout the whole *Suttavibhāṅga* comprising four parts, the names of which are found in the account of the first council, and again, though slightly different, in the much later commentary on the Vinaya-piṭaka, the *Samantapāsādikā*.

According to the Theravāda tradition, the first two Piṭakas were recited and thus recognized as canonical at the first council immediately after the death of the Buddha. When Mahākassapa as the leading monk asked Upāli the most learned monk in *vinaya* to recite the texts comprising Buddhist law, he did so by inquiring about the place (*nidāna*, Vin II 286.27), where a rule was prescribed, about the person concerned (*puggala*, Vin II 286.27), and about the topic of the rule (*vatthu*, Vin II 286.27).²⁵ These three points, which constitute the

23. In contrast to all other groups the number of the Sekkhiyas is not given in the introduction to their recitation: Vin IV 185.1; 206.31; 207.15. This points to the fact that their number was not as strictly fixed as that of all the other offenses.

24. The existence of the Pātimokkhasutta also as a separate text is guaranteed by Kkh. It is referred to as a separate text at Spk II 203.12; Vibh-a 32.30.

25. This passage is quoted in Sp 14.5-7.

introductory story to a rule, are also designated as a whole as *vatthu* (Sp 29.16) “topic, introductory matter” in the commentary. These stories have been invented much later than the rules proper were formulated, for they are at times based on gross misunderstandings of the contents of a given prescription.²⁶

The introduction regularly ends with the sentence: “you should, monks, recite this precept (*sikkhāpada*).” The precepts themselves are called *paññatti* (Vin II 286.28) in the Vinaya-piṭaka in contrast to *mātikā* (Sp 29.16) in its commentary. Sometimes the content of a precept as originally formulated is considered incomplete and has to be supplemented. After the Buddha had ruled: “if a monk should take something away that has not been given, which is considered as theft . . .” certain monks held the view that “refers to inhabited places, not to uninhabited places” (. . . *bhagavatā sikkhāpadam paññattam tañ ca kho gāme no araññe*, Vin III 45.30). Consequently the Buddha had to specify the rule as “if a monk should take something away that has not been given from an inhabited or from an uninhabited place (*gāmā vā araññā vā*, Vin III 46.16**), which is considered as theft. . .” This method of expanding a definition is called “secondary prescription” (*anupaññatti*, Vin II 286.28). The commentary further explains that these specifications may be used either to strengthen (*dalhataram karonti*, Sp 228.5)²⁷ or to loosen (*sithilam karonti*, Sp 227.34) a rule depending on whether a precept is based on what is considered as an act or a behavior “to be avoided by all” (*lokavajja*) such as theft or murder, or “to be avoided because of a precept” (*paññattivajja*, Sp 228.1) such as Pācittiya XXXIff. “eating as a group of monks,” which is an offense only for monks. In this latter case additional rules mitigate the original one by giving exceptions, in the case of Pācittiya XXXIff., no less than seven times (!).

In contrast to this opinion found in the *Samantapāsādikā*, the commentary on the Pātimokkha, the *Khankhāvitarāṇi*, gives a slightly different explanation to *anupaññatti*. Without referring to “avoided by all” and “avoided because of a precept,” the *Khankhāvitarāṇi* states that an additional rule may either “cause an offense” (*āpattikara*, Kkh 24.37) as in Pācittiya XII, or “restrict an offense” (*anāpattikara*, Kkh 24.38) such as the addition “if not in sleep” (*aññatra supinantā*, Kkh

26. This has been discussed in detail by D. Schlingloff in the article mentioned in note 20 above.

27. It was not always clear which of the two categories applies, as in the case of Sekkhiya I: Sp 890.10-12.

24.38 = Vin III 112.17**), which restricts the “consciously losing semen . . . is a Saṃghādisesa,” referring to Saṃghādisesa I, or, as a third, possibility support an offense (*āpattiupatthambhakara*, Kkh 24.39), for which Pārājika II concerning theft as discussed above is quoted.

This difference of opinion on *anupaññatti* separates both commentaries and consequently is an interesting hint at the development of juridical thinking in Theravāda, a field that still awaits investigation.

In contrast to the account of the first council, the *Samantapāsādikā*, which does not know *anupaññatti* as a separate entry in the division of the *Suttavibhaṅga*, next mentions the “commentary explaining individual words” (*padabhājanīya*, Sp 29.16). This is the technical term for the explanation of the Pātimokkha found in the *Suttavibhaṅga* based on a way of legal thinking much more developed than in the Pātimokkha proper. Therefore it seems rather significant that no mention is made of this part of the *Suttavibhaṅga* in the account of the first council since this might indicate that this account dates back to a time when the *padabhājanīya* did not yet exist.

Next the offense proper (*āpatti*, Vin II 286.28; Sp 29.17: so read with note 7) is mentioned that is Pārājika, Saṃghādisesa, etc., and only in the commentary does a further technical term follow, the “intermediate offense” (*antarāpatti*, Sp 29.17).²⁸ This designates a somewhat lighter form of the offense than the one contained in the rule itself, and it applies when only part of the conditions are met that would normally result in committing a certain offense. For example, if a monk intends to steal an object, he may secure the help of a second person (*dutiya*), fetch a basket to carry the object, etc. In spite of his intention to steal, it is only “wrong doing” (*dukkata*) if he does not go beyond these preparations. Even if he touches the object or starts shaking it (*phandāpeti*), it is still one of the stages defined as *antarāpatti*, but now, if he shakes it, it is already a “grave offense” (*thullaccaya*). Only if the monk actually moves the object (*thānā cāveti*), is the offense (*āpatti*) defined as theft (*adinnādāna*, Vin III 47.34-48.4).²⁹

28. The meaning given s. v. *antarāpatti* in the CPD is wrong, and corrected s. v. *apatti*, *ifc*. It has to be kept in mind that this word has two meanings: 2. “offense committed, while being suspended because of an offense committed earlier,” for which see Cullavagga I, II and note 36 below.

29. Cf. J. D. M. Derrett, “Adattādānam: Valuable Buddhist Casuistry,” IT 7 (1979): 181-194.

At the end of this casuistry a final section is added giving the conditions of freedom from punishment (*anāpatti*). The monk, who was the first to commit the relevant offense (*ādikammika* “the first committer”), is never liable to punishment. Thus the Roman rule *nullum crimen sine lege* was formulated here at a rather early date in India.³⁰ The same applies for the concept of penal responsibility; mentally disturbed monks (*ummattaka*) are not punishable. This is the framework for all precepts from Pārājika to Sekkhiya with the exception, of course, of the “methods to settle a dispute” at the very end of the Pātimokkha.

The individual groups of offenses are separated from each other by very short texts, which are used only for the recitation of the Pātimokkha once a fortnight. These texts state, for example, that the 30 Nissaggiya rules have been recited, that no monk has violated them, and that the assembly is consequently pure, which means that no one has committed an offense.

An old paragraph shows how the Pātimokkhasutta was recited: All monks of a certain area (*gāmakkhetta* and not *simā!*) assemble and ask a monk, who knows the text by heart (*yassa vattati, taṃ ajjhesāma*). While the text is recited (*bhaññamāne*), an offense committed is dealt with according to law (*yathādhammaṃ yathāsattaṃ*) (MN III 10.8-16). Thus it is the very purpose of the recitation to secure the ritual purity of the order by making sure that all precepts contained in the Pātimokkha have been kept.

This rather broad outline of the *Suttavibhaṅga* may be sufficient, although only the first part, the “great commentary” (*mahāvibhaṅga*) has been taken into consideration so far. The structure of the much shorter second part, the “nuns’ commentary” (*bhikkhunivibhaṅga*) is basically the same. The text is neither read nor studied frequently, partly because the order of nuns ceased to exist long ago, as it is well known.³¹ It should be noted, however, that part of the rules for monks are also valid for nuns, as “common (*sādhāraṇa*) precepts,”

30. H. Hecker, “Allgemeine Rechtsgrundsätze in der buddhistischen Ordensverfassung,” *Verfassung und Recht in Übersee* 10 (1977) 89-115, particularly p. 97; cf. the discussion of *ādikammika*, Sp 610.6-611.4.

31. Cf. e. g.: T. Bartholomeusz, “The Female Mendicant in Buddhist Sri Lankā,” *Buddhism, Sexuality, and Gender*, ed. J. I. Cabezón (Delhi: 1992) 37-61, and P. Skilling, “A Note on the Bhikkhuni-saṅgha (II): The Order of Nuns after the Parinirvāṇa,” *Pāli-Sanskṛta-Vijākār. Mahāmakūṭarāja Vidyālay* 2436 (Bangkok: 1993) 208-251.

such as the four Pārājikas.³² Thus there are altogether eight Pārājikas for nuns, although only the four additional rules are actually given in the Bhikkhunī-Pātimokkha. In a more complicated way the 17 Saṃghādisesa for nuns are put together: 10 are specific for nuns, and Saṃghādisesa V, VIII, IX of the monks are to be inserted after Saṃghādisesa VI of the nuns, and Saṃghādisesa X-XIII of the monks are inserted between Saṃghādisesa IX and X of the nuns according to the commentary (Sp 915.34-38).

As the rules valid for nuns are much stricter than those for the monks, there is usually a higher number of precepts to be kept: 8 Pārājikas, 17 Saṃghādisesas, 30 Nissaggiyas, 176 Pācittiyas, and 8 Pāṭidesaniyas. Together with the number of Nissaggiyas, those of the Sekkhiyas and of the Adhikaraṇasamathas are identical for both monks and nuns. The rules for nuns are no longer recited. The introduction to the recitation of the Pātimokkha explicitly states: "The instruction of nuns does not take place, as they do not exist any longer."³³

In the same way the *Suttavibhaṅga* is built around the Pātimokkha, the structure of the second part of the Vinaya, the "great" and the "small sections" (*Mahāvagga*, *Cullavagga*) is, at least to some extent, determined by "legal formulas" (*kammavācā*). These formulas have to be recited to transact legal business in the order, such as appointing a certain monk to be in charge of the distribution of cells and beddings to monks arriving at a monastery, or to instruct the nuns, etc.³⁴ The admission of new members to the order is also regulated by *kamma-vācās*. The wording of these formulas is fixed exactly, down to the correct pronunciation of single sounds; for phonetic mistakes such as pronouncing a labial instead of a nasal in *saṃgham* versus *saṃghaṃ*

32. Other precepts are "not common" (*asādhāraṇa*) and consequently apply either to monks or to nuns. Therefore these offenses, though committed by a monk or a nun, disappear in case of a change of sex: *Mahāyānasūtrālamkāra*, ed. S. Lévi (Paris: 1907) 55.5; cf. O. v. Hinüber: *Vinaya und Abhidhamma*, as above note 7, at the end.

33. The relevant text is found in *The Paṭimokkha*, Trans. Ñānamoli (Bangkok: 1966) 9; the procedure is described at Kkh 12.6-14.2 and Sp 794.20-798.17.

34. A single monk can hold up to 13 functions (Sp 578.28, cf. Sp 1163.16), if he is able (*vyatta*, Sp 578.26 on Vin III 158.23) to do so. These functions are enumerated at Vin V 204.29-33, cf. Sp 1411.25-28 quoted Sp-ṭ II 344.15-18 ad Sp 578.28; also Sp 1195.22ff.=1396.6; further on *bhaṇḍāgarika*, Sp 354.21 and on *vihāracārika*, Sp 357.9ff.

would result in the invalidity of a legal act.³⁵ This dates back to the time of early Buddhism and to the days of orality when the spoken word was considered valid. No documents were known either to confirm an ordination or to be used as evidence in Buddhist law.

While the *Suttavibhaṅga* regulates the behaviour of individual monks, the *Khandhaka* describes the procedures to be transacted by the order. The first and longest chapter recalls the foundation of the Buddhist saṃgha and deals with the rules for the lower (*pabbajjā*) and higher ordination (*upasampadā*). The following chapters comprise the rules for the recitation of the Pātimokkha, for spending the rainy season, etc. There are altogether ten *Khandhakas*, which form the *Mahāvagga*.

Between these ten and the second set of ten *Khandhakas* found in the *Cullavagga*, which are enlarged by the two appendices containing the accounts of the first two councils held at Rājagaha (Rājagṛha) and Vesālī (Vaiśālī) respectively, there is no clear cut division. The only superficial difference may be seen in the fact that legal matters become increasingly involved in the *Cullavagga*. Thus far not much effort has been made to investigate and to understand the legal system described in these parts of the Vinaya.

The first three chapters of the *Cullavagga*, the *kamma-kkhandhaka* "section on legal acts," *parivāsa-kkhandhaka* "section on probation," and *samuccaya-kkhandhaka* "section on miscellaneous matters" deal mainly with procedures resulting from Saṃghādisesa offenses. If a monk has committed such an offense, he loses certain rights for a certain period, after which he can become a full member of the order again. This matter can get rather complicated if a monk commits a second, or third offense while on probation,³⁶ and in addition conceals them for a certain period, which in itself results in a particular form of punishment. Consequently the rules given in the relevant chapters are quite involved, and at times; it is a bit difficult not to get confused when reading these texts.

We are quite well informed about the consequences of a Saṃghādisesa. It is, however, not entirely clear how the procedures described

35. O. v. Hinüber, "Das buddhistische Recht und die Phonetik des Pāli. Ein Abschnitt aus der Samantapasādhika über die Vermeidung von Aussprachefehlern in *kammavacās*," StII 13/14 (Festschrift W. Rau) (1987): 101-127. - For more recent times cf.: F. Bizot, *Les traditions de la pabbajjā en Asie du Sud-Est*, AAWG 169 (1988).

36. Such an offense is called *antarāpatti*, see note 28 above.

in *Cullavagga* II and III relate to certain special cases mentioned in *Cullavagga* I. Here, five kinds of misbehavior together with five different legal procedures against them are named,³⁷ which, strangely enough, all result in the same consequences,³⁸ although one of them “expulsion (from a place)” (*pabbājanīyakamma*, Vin II 9.29-15.28)³⁹ results from *Samghādisesa* XIII, while the “suspension because of the refusal to give up a wrong view” (*pāpikāya dīṭṭhiyā appaṇinissagge ukkhepanīyakamma*, Vin II 25.9-28.17) relates to *Pācittiya* LXVIII. This, like many other problems in the *Vinaya*, still requires detailed investigation.

A minor point mentioned in this section deserves some attention, although it seems to be rather marginal at a first glance. When the Buddha asks *Sāriputta* and *Moggallāna* to drive away the *Assajipun-abbasuka* monks from the *Kiṭṭāgiri*, that is, to execute an “expulsion from a place” (*pabbājanīyakamma*), these prominent monks are afraid to do so, because those monks are “fierce and violent” (*caṇḍā . . . pharusā*, Vin II 12.34ff. = III 183.1ff.). Therefore the Buddha recommends that *Sāriputta* and *Moggallāna* should not go alone, but take with them a large group of monks. This is one of the very few passages where the difficulties to enforce a decision are mentioned.⁴⁰

On the whole, the *Vinaya-piṭaka* contains much information on the-ory, e. g. the very elaborate section on the “settling a dispute” (*samatha-kkhandhaka*, Vin II 73.3-104.11, cf. MN II 247.2-250.21 with Ps IV 42.13-46.25), which is a long and extremely detailed explanation of the corresponding key words found at the end of the *Pātimokkha* as mentioned above. Unfortunately, however, it is not explicitly stated, in which particular case which method for settling the respective dispute is to be applied. Nowhere is an example given for the entire procedure, beginning with the committing of an offense and describing the complete hearing within the order, with the final verdict and the eventual punishment. Even the commentary is not very

37. A corresponding list is found at AN I 99.4-8, which is explained at Mp II 164.32-165.7.

38. These are described repeatedly in the same wording Vin II 5.5-15 etc.; a special case is mentioned Vin II 22.12-23.2: *āpattiyā adassane ukkhepanīyakamma*.

39. The definition given for *pabbajaniyakamma* in the PED is not correct.

40. A similar case is the infliction of *Brahmadāṇḍa*, Vin II 290.19-21. It needs a minister of king *Mahasena* (334-361) to defrock (*uppabbajesi*) a monk accused of a *pārājika* (*antimavathu*), Mhv XXXVII 38ff.

informative in this respect, although a few additional details are provided, which will be discussed below.

The tenth and last section of the *Cullavagga* proper dealing with legal matters contains the account of the foundation of the order of nuns. Thus the structure of the *Khandhaka* corresponds in this respect to the *Suttavibhaṅga*, which is concluded by the *Bhikkhunivibhaṅga*.

The very last and probably latest part of the part of the Vinaya-*piṭaka* is an elaborate and difficult handbook called *Parivāra* on how to handle the material accumulated in *Suttavibhaṅga* and *Khandhaka*. It is quite evident that this text is a compilation of separate, occasionally over-lapping short texts, sometimes in verse, mostly in prose. It is only in the *Parivāra* that some kind of hearing is introduced and briefly discussed in chapter X, the "further summary in verses" (*aparaṃ gāthāsaṃgaṇikāṃ*, Vin V 158.2-159.24) and chapter XI, "section on reproof" (codana-kaṇḍa, Vin V 160.2-162.23). Three parties are named: a *codaka* "one who puts forward a reproof or accusation," a *cuditaka* "one who is reproofed or accused," and an *anuvijjhaka*⁴¹ "an investigator." The latter has to be impartial and should be careful not to arouse anger in either party, who, in their turn, have to speak the truth etc. Again nothing is said about the contents of such a hearing in the Vinaya-*piṭaka* itself. It is only the commentary that offers some information. For here the "investigator" (*anuvijjhaka*) is defined as an "expert in law" (*vinayadhara*), who sits to decide a case (*adhikaraṇa*)⁴² that has been brought before the assembly of monks (*saṃghamaññhe otinṇaṃ*, Sp 1360.3ff.).

Thus only comparatively late legal literature yields some, though mostly somewhat vague, information on the actual working of Buddhist law in practice. This of course is a problem faced by all students of Indian law. For just as the Vinaya-*piṭaka* describes theory rather than practice, so do the Dharmaśāstras. Information about the practical application of Hindu law in court is rarely referred to, and mostly found in literature outside the realm of Dharmaśāstra such as Sanskrit

41. This is the correct form of the word: CPD s. v.

42. This word is used only for ecclesiastical cases (cf. Sp 593.24-595.5), the corresponding expression for secular law being *aṭṭa*, derived from Sanskrit *artha* with Dravidian or Sinhala despiration: O. v. Hinüber, "Drei Begriffe . . .," as in note 15 above, p. 278 note 12. The meaning of Sanskrit *adhikaraṇa*, even in a legal context, is slightly different; cf. PD s. v.

drama, where the well known *Mṛcchakaṭika* may serve as an example.⁴³

Information on Buddhist law as laid down in the Vinaya-piṭaka, on the other hand, can be gathered from random references in the commentaries (*aṭṭhakathā*) on the Vinaya-piṭaka such as the *Samantapāsādikā* or the *Kaṅkhāvitarāṇī*, a commentary on the Pātimokkha, or even in commentaries on other parts of the Tipiṭaka. As the vast commentarial literature has not been made easily accessible by adequate indices, the following examples are by no means the result of a systematic search. Although better and clearer evidence still hidden somewhere in the *Aṭṭhakathā* may surface in the future, it may be useful to translate some relevant passages for easier reference.

Resuming what has been stated repeatedly, though briefly in the *Parivāra*, the *Samantapāsādikā* describes in some detail how a legal expert (*vinayadhara*, cf. Vin I 169.7) has to act with respect to persons who bring a case before him and with respect to the Vinaya-rules he is going to use.⁴⁴ Once a case (*vatthu*) is brought before the assembly of monks (*saṃghamajjhe*, cf. *vinayadharo saṃghamajjhe pucchati*, Kkh 89.23), plaintiff (*codaka*) and accused (*cuditaka*) have to be asked, whether they are going to accept the final verdict (*vinicchayena tuṭṭhā bhavissatha*, Sp 590.1ff., cf. Vin V 224.16ff.). Only if both agree can the investigation begin.⁴⁵ In case, however, they answer "if we like it, we shall accept [the verdict]," they should be sent away to worship a stūpa, and the whole matter should be handled in a dilatory way, until both parties are worn down (*nimmada*) and apply again for a hearing. Only after having sent them away thrice should the hearing finally begin (Sp 590.4-10).

On the other hand, the assembly of monks may be unable to handle the case, because their majority is either shameless or incompetent (*alajji-*, *bāla-ussanna-*, Sp 590.10-15, cf. Vin V 224.19-21). In the

43. P. V. Kane, *History of Dharmaśāstra* Vol. 3 (Poona: 1973) 279, refers to act IX of that drama. Information on law suits from a much later time is given by J. Duncan M. Derrett, G. D. Sontheimer, and G. Smith, *Beiträge zu indischem Rechtsdenken* (Wiesbaden: 1979) 61ff. (on Maharashtra), and by R. Larivière, "A Sanskrit Jayapattra from 18th Century Mithilā," *Studies in Dharmaśāstra*, ed. R. Larivière (Delhi: 1984) 49-80 (on Bihar).

44. The qualities of a *vinayadhara* are described at length at Sp 871.29-875.29.

45. Monks, who were disenchanted with a decision of king Kaṇṇirajānutissa (89-92) even tried to murder him, for which they were thrown into a precipice (*pabbhāra*): Mhv XXXV 11 cf. note 62 below.

first case, a committee has to be formed (*ubbāhikāya*, Sp 590.11, cf. Sp 1197.21-25 on Vin II 95.29).⁴⁶ In the case of incompetence, legal experts have to be invited, who are to be agreed upon by both parties (*sabhāga*, Sp 590.12, cf. Sp 1354.28-31). These have to decide according to *dhamma-vinaya-satthusāsana* “teaching-discipline-prescription of the teacher (i. e. the Buddha)” (Vin V 224.21ff.), which means following the *Samantapāsādikā* according to the “true cause” (*bhūtaṃ vatthu : dhamma*, Sp 590.15ff.), to “reproof and remonstrations” (*codanā, sārānā : vinaya*), and finally to a “correct motion and a correct proclamation”⁴⁷ (*ñattisampadā, anussāvanasampadā : satthusāsana*, Sp 590.16ff.). Thus the rather general terms “teaching” etc. get a very technical and specific meaning in this particular Vinaya context.

When finally a group of monks capable and competent to decide the case has been established, the hearing proper can begin with the plaintiff (*codaka*) stating his case, which then has to be examined with all necessary care (*upaparikkhitvā*, Sp 590.19), before a verdict in accordance with the true facts (*bhūtena vatthunā*, Sp 590.19) is reached and made known. This has to be done in a rather simple form of a motion followed by a single proclamation (*ñattidutiya*, Vin V 220.3, cf. Sp 1395.24-32).⁴⁸ It is noteworthy that no document such as a *jayapattra* is mentioned to be issued as written proof for the winning party.⁴⁹

Further, it is stated that an incompetent and shameless monk cannot blame another monk who is acting as a *codaka*. If he should approach the order with such an intention, his complaint has to be dismissed (*uyyojetabba*, Sp 590.26) without any hearing. On the other hand a modest but incompetent monk has to be given guidance (*nayo*, Sp 591.1) when he brings his case forward.

Once the plaintiff and the accused have stated their respective case, the legal expert has to decide without rashness (*sahasā avinicchinitvā*, Sp 235.29) and has to take the following six points into consideration: 1. the facts (*vatthu*), 2. the Pātimokkha (*mātikā*), 3. the commentary on the Pātimokkha (*padabhājanīya*), 4. “the three sections”

46. This is one of the *adhikaraṇasamathas*: “by committee.”

47. On “motion” and “proclamation” cf. O. v. Hinüber, *Das buddhistische Recht* mentioned above in note 35.

48. This verdict is not mentioned in the enumeration of *ñattidutiya kamma*, Sp 1396.1-6.

49. This is usual in Hindu law; cf. R. Larivière mentioned in note 43 above.

(*tikepariccheda*),⁵⁰ 5. the “intermediate offense” (*antarāpatti*),⁵¹ 6. the conditions, under which there is no offense (*anāpatti*) (Sp 235.22-236.22). Having considered all this and having taken all these facts and conditions as his guiding principles (*suttam*, Sp 236.23), his verdict is irrefutable as if the Buddha himself had been sitting in court as a judge and had passed the verdict (*vinicchayo appativattiyo, buddhena sayam nisiditvā vinicchitasadiso hoti*, Sp 236.26ff.). For the Buddha has decided many disputes himself and has given hints (*lakkhaṇa*) how legal experts should decide in future (Sp 272.2-7).⁵²

Although all this advice may be of some help for a monk who has to decide a case in agreement with the Vinaya, it is still not clear how such business was really transacted. The following episode related in the *Samantapāsādikā* gives at least an impression how this could have been done:

A certain monk in Antarasamudda took a well formed coconut, turned it, and made it into a drinking cup polished like mother-of-pearl. Then he left it behind and went to Cetiyaḡiri. Another monk went to Antarasamudda, stayed in the very monastery, saw the cup, took it away with the intention to steal it, and went to Cetiyaḡiri, too. The monk who originally owned the cup saw the other monk drinking rice-gruel and asked: “Where did you get that?”—“I brought it from Antarasamudda.” He said: “This is not your property. It has been stolen,” and dragged him before the assembly of monks. There they did not get a decision and went to the Mahavihara. There the drums were beaten (to assemble the monks). An assembly was held and the hearing (*vinicchaya*) began. The Elders, who were experts in the Vinaya, decided that it was theft. A member of this assembly was the Elder Godha, the Abhidhamma expert, who was at the same time an expert in the Vinaya. He spoke thus: “Where has he stolen this cup?”—“It was stolen in Antarasamudda.”—“How much is its value there?”—“It is worth nothing, because coconuts are split there, their contents is eaten, and the shell is thrown away, being considered as something like wood.”—“What is the value of the manual labour of the monk there?”—“A penny (*masaka*) or even less than a penny.”—“Indeed the Buddha has prescribed somewhere a Parajika with regard to a penny (*masaka*) or even less than a penny.”—This being said there was a unanimous approval: “Excellent, excellent, well spoken, well decided!”

50. They are defined as: 1. *atikkantasaññi*, 2. *vematiko*, 3. *anatikkantasaññi*, Sv-nt I 135. 22-24: The example quoted is Nissaggiya I, Vin III 197.15-18.

51. See note 28 above.

52. Cf. the *vinayamahāpadesa*, Sp 230.33-233.2, where Vin I 250.36-251.6 (Sp 1103.25-1104.30) is quoted.

And at that time when the king Bhatiya left the city to worship the stupa, he heard this noise and asked: "What is it?" Having heard everything as it had happened, he had the drum beaten in the city: "As long as I live, a case decided for monks, nuns, or householders by the Elder Godha,⁵³ the Abhidhamma expert, is well decided. I put [persons] who do not abide by his decision under the jurisdiction of the king."(Sp 306.29-307.22).

The context of this paragraph is a long discussion on many aspects of theft, in this particular instance on the different value of an object at different places. This value again is crucial to determine the gravity of the respective theft. According to Vin III 59.14-30 (quoted Vin V 33. 23) one of the conditions resulting in a Pārājika after an object has been moved (*thānā cāveti*) is that the value of that object has to be at least five pennies (*pañcamāsako vā atireka-pañcamāsako vā*, Vin III 54.16). If the value is less than five, but more than one penny (*atirekamāsako vā unapañcamāsako vā*, Vin III 54.22) it is a "grave offense" (*thullaccaya*); if it is a penny or even less (*māsako vā unamāsako vā*, Vin III 54.27) as in the case quoted from the *Samantapāsādikā*, it is only "wrong doing" (*dukkata*).

This story is dated by the Sinhalese king mentioned, who may be Bhātikābhaya (C. E. 38-66).⁵⁴ Two points deserve special attention. First the case is decided by a monk, who is not primarily an expert in the Vinaya, but in "philosophy," Abhidhamma. His opinion and decision is not only appreciated in this paragraph, he is quoted again thrice as an authority in different legal matters such as the following:

"Somebody decapitates someone else, who is running quickly in a battle, and the corpse continues to run. A third person causes the running corpse to fall by a blow: Who is guilty of a Pārājika? Half the Elders say the one, who interrupts the walking; the Elder Godhaka, however, the expert in Abhidhamma, says the one who has cut the head"(Sp 478.16-20).

It is remarkable that these are monks discussing the possibility of a Pārājika in a battle, perhaps not only in theory. For they might have

53. The exact form of the name of the Elder is not clear. The tradition has Godatta, Godha(ka), Goda, Gotta, and Godanta.

54. E. W. Adikaram, *Early History of Buddhism in Ceylon* (Colombo: 1953) 86ff. The date may have to be postponed by sixty years; cf. H. Bechert in the introduction to the reprint of W. Geiger, *Culture of Ceylon in Mediaeval Times* (Stuttgart: 1986) XX. However doubts about these new dates are raised in the review by R. Gombrich, OLZ (1990): 83ff.

had in mind monks in arms such as those mentioned in the *Sāsanavaṃsa* in much later times.⁵⁵

Perhaps it is not a coincidence that monks knowledgeable in Abhidhamma were particularly apt to decide Vinaya cases, because the way of thinking in both, Buddhist philosophy and law, shows some similarities: the latter may have served as a model for the former in which case the Abhidhamma is based on the application of the methods developed in juridical thinking and on material drawn from the Suttas.⁵⁶

In contrast the Sutta experts do not seem to have enjoyed any particular reputation for their knowledge of the Vinaya,⁵⁷ as the following episode demonstrates, which at the same time shows, how a quarrel could start in the saṃgha:

At one place an expert in the Vinaya and an expert in the Sutta were living together. Once the monk, who was an expert in the Sutta, went to the toilet and left some of the water for rinsing in the respective pot. The legal expert went to the toilet later, saw the water, left and asked the monk: "Venerable sir, did you put the water there?"— "Yes, venerable sir."— "Dont you know that this is an offense (against Vin II 222.21)?"— "No, I do not know."— "There is, venerable sir, an offense."— "If there is an offense, then I shall confess it."— "If you acted without knowing and intention, there is no offense." Consequently he (the Sutta expert) was of the opinion that his offense was no offense. The legal expert, however, told his pupils: "Although the Sutta expert has committed an offense, he does not know it." The pupils said to the pupils of the Sutta expert: "Although your teacher has committed an offense, he does not know that it is an offense." They (the pupils of the Sutta expert) went and informed their teacher. He said: "In the first place the legal expert said it is no offense, now he says it is an offense. Obviously he is telling a lie." They (the pupils of the Sutta expert) went away and said (to the pupils of the legal expert): "Your teacher is a liar." Thus the quarrel grew. Then the legal expert got the permission (from the order) and transacted the formal act of suspension (*ukkhepaniyakamma*) against (the Sutta expert), because he did not recognize an offense (according to Vin II 21.5-22.11 with Sp 1148.23-1149.10).

55. Cf. note 86 below.

56. Cf. O. v. Hinüber, "Vinaya und Abhidhamma," quoted above in note 7.

57. Cf. the remarkable observation of Sāriputta in his *Sāratthadīpani*: "The Elders who teach the Mahā-aṭṭhakathā are ridiculed as 'Suttantikatheras,' because they are ignorant of the Vinaya (Sp-ṭ II 267.23)."

Here the legal expert (*vinayadhara*) draws the attention of a monk to an offense which he has inadvertently committed. In other instances legal experts are approached by monks, who seek their advice, as did a certain monk, who had joined the order in old age (*mahallako pabbajjanto*). Consequently he was unable to reach a seniority in the order corresponding to his natural age and then suffered several disadvantages when food or other goods were distributed. After having become depressed to the point of shedding tears (*assūni muñcanto*), he remembered family property (*kulasantakam*) still in his possession, which he had not given up thinking: "Who knows what is going to happen?" (*ko jānāti kiṃ bhavissati*). Upon inquiry a legal expert quite unexpectedly allows the monk to use this property he owned as a layman and which he still holds. Then that monk settles down in a village and becomes a *samaṇa-kuṭumbika* "an ascetic-householder" (Spk III 32.25-33.17). In spite of the opinion of this anonymous legal expert this status does not seem to conform to the Vinaya rules, though it was accepted in 5th century Ceylon according to the paragraph quoted.⁵⁸

Other instances, where legal experts are approached for advice are less interesting, for it is only stated in a very general manner what is allowed and what is not (*kappiyākappiya*: Sp 872.17ff. ≠ 1375.34ff. cf. Vibh-a 474.1-6), or that they should decide a case (Ps II 95.29-96.3). It shows, however, that legal experts were much needed and probably enjoyed considerable reputation and respect.

A second interesting point is that decisions made by Godhaka extend to laypeople, as the announcement of the king underlines. Evidently monks did also care to pronounce opinions on secular law, for the king refers explicitly to householders (*gihin*). Unfortunately it is impossible to guess what kind of legal case the king might have had in mind. It is perhaps possible to think of disputes about the ownership of land, which is decided by a monk in 18th century Burma, as discussed below.⁵⁹

While the possible interference of monks with secular law remains somewhat obscure at present, the concern of the king with legal matters of the order is well known and relatively well documented from ancient times. The legal basis for this interference of the king is given

58. On the problem of a monk's property in modern Siam see R. Lingat, "Vinaya et droit laïque. Études sur les conflits de la loi religieuse et de la loi laïque dans l'Indochine hinayaniste," BEFEO 37 (1937): 415-477.

59. See note 99 below.

in the third chapter of the *Mahāvagga*, which deals with the beginning of the retreat of the monks during the rainy season (*vassūpanāyika-kkhandhaka*, Vin I 137-156). As the exact date of the beginning of the rainy season is crucial for certain ceremonies to be held by the order, a calendar is needed. As is well known, however, the Buddhist calendar and presumably the one in general use at that time in India followed the lunar system, which means that the months are too short such that the calendar soon gives a date that is far too early for the first day of the rainy season. Therefore the date has to be adjusted every third year by inserting an intercalary month. This was done by order of the king, with the purpose to guarantee a modestly uniform calendar within the borders of his realm. The corresponding wish of king Bimbisāra to insert a second month *āsāḥa* (June / July), and thus to postpone the first day of the rainy season is communicated to the monks.⁶⁰ On this occasion the Buddha rules: "I allow you, monks, to follow kings" (Vin I 138.35). Although referring only to matters concerning the calendar in the given context of this precept, the rule is formulated in such a way as to allow a very extensive interpretation. Whether or not this was intended from the very beginning is a matter of conjecture. In any case the commentary certainly takes this to cover a wide range: "I allow you, monks, to follow kings means: Here it is allowed to follow [kings] so that no disadvantage may happen to the monks, if the rainy season is postponed. Therefore also in other matters, if legal (*dhammika*), one has to follow [kings]. In illegal matters, however, one should not follow anybody (Sp 1068.3-7)." It is well known from the history of Buddhism that the general rule allowing the king to interfere was badly needed and rather frequently used. Before quoting some selected examples, it may be useful to have a look at the lower jurisdiction, to which the order also had to appeal to occasionally.

The introductory story to the first *Samghādisesa* for nuns (Vin IV 223.4-224.4) offers an interesting example how the order, in this particular case, even the one of the nuns, settled disputes with laypeople. A certain layman had given some type of building (*uddosita*)⁶¹ to the nuns. After his death his two sons inherited his property and divided it between them. That very building devolved upon the son, who did not favor Buddhism. Consequently he tried to take the building away

60. On Bimbisāra and the Vinaya see A. Bareau, "Le Bouddha et les rois," BEFEO 80 (1993): 15-39, particularly p. 29ff.

61. On the meaning of this word see O. v. Hinüber, "Bemerkungen zum Critical Pali Dictionary II," KZ 94 (1980): 25.

from the nuns, who in turn asked the judges (*vohārike mahāmatte*, Vin IV 223.27), whether they owned the building or not. The case is decided in favor of the nuns, because the judges are well aware of the fact that the deceased layman had donated the building to the nuns. The case, however, does not end here, but escalates, for the impious son of the pious layman starts molesting and abusing the nuns after he lost the case (*parājito*, Vin IV 224.4). Again the nuns turn to the judges. As a result the layman is fined (*daṇḍāpesum*, Vin IV 224.8), but he does not leave it at that, and viciously gives land next to the building donated by his father to a “heretical” sect (*ājivika*) and asks these *Ājivikas* to molest the nuns. For that he is put in jail by the nuns. Now Buddhist laypeople start to worry about these litigious nuns: “First they took the building, then they had him fined, thirdly they had him put in jail, now they might see to it that he will be executed” (Vin IV 224.13-15). At that point the Buddha is asked and he rules that nuns are not allowed to bring a law suit against laymen (Vin IV 224.25**–28**). The technical word for “litigious(?)” used in the rule of the *Pātimokkha* is *ussayavādikā*, Vin IV 224.25**. This seems to have become obsolete very soon, and already the old commentary on this rule in the *Suttavibhaṅga* explains this word by the common term used in secular law for “adversary” in a law suit: *attakārikā*, Vin IV 224.30 with Sp 906.23.

At a much later date the *Samantapāsādikā* enters into a lengthy discussion on the behaviour of nuns in court, beginning with an interesting remark that a law suit is called *atta* “case,” if it refers to secular law in contrast to the ecclesiastical term *adhikaraṇa*. The word *atta* is defined as “what is decided by judges” (*vohārika-vinicchayo*, Sp 906.24).⁶² The corresponding term used in Buddhist ecclesiastical law, on the other hand, is *adhikaraṇa* “case, dispute” (Sp 906.25). Further in contrast to a singular secular term for “adversary” (*attakāraka*) the ecclesiastical “plaintiff” (*codaka*), and “accused” (*cuditaka*) are well distinguished. While a secular “judge” is called *vohārika*, an *anuvijjhaka* decides in ecclesiastical law.⁶³

62. Cf. note 42 above. The term *atta* is also used, when king *Kaṇirajānutissa* (89-92) decides a case concerning an *uposatha*-house: *uposathāgāra-atta*, Mhv XXXV 10 (Mhv-ṭ 640,21ff.); cf. note 45 above. Moreover *atta* survives as a legal term in South East Asian Dharmaśāstras.

63. Cf. *codaka-cuditaka-anuvijjhaka*, Sp 879.28ff., cf. Vin II 248.16-249.28 quoted Vin V 190.8-16 and AN V 79.9-81.15. There is a long *codanādivinichayakathā* in the *Pālimuttakavinayavinicchayasāṅgaha-Vinayālaṅkāraṭṭhakathā* *Be* (1960) chap. 31, 309-330. At a very early period the ecclesiastical

This shows that both systems of the law, secular and ecclesiastical, had their own terminology, or more precisely, that the Theravāda Buddhists created their own system of legal terminology differing from the one common in India and used in the Dharmaśāstras. Moreover the Theravāda terminology and the whole legal system seems to be the superior one, as far as that can be ascertained given the present state of research.

In the same way as the terminology used in secular and Buddhist ecclesiastical law respectively is not uniform, the procedure to settle a dispute differs considerably. The secular law suit described in the commentary on the dispute between the nuns and the impious layman is fairly simple. Although it seems impossible at present to find out anything about the legal background to this description in the *Sam-antapāsādikā*, it is not unlikely to think of one of the Dharmaśāstras.

A hearing in secular law is simply described as: "after the evidence (*kathā*) has been heard, after the judges (*vohārika*) have reached a verdict (*vinicchaya*) and one party (*aṭṭakārika*) has been defeated (*parā-jita*), the hearing has come to an end (*aṭṭapariyosāna*, Sp 907.24ff.).

The commentary then continues that it is forbidden for nuns to start a law suit on their own initiative: "if a nun, when she sees the judges coming, states her evidence (*kathā*), this is wrong doing (*dukkata*) for that nun" (Sp 907.9). Perhaps this means that judges (*vohārika*) could be approached any time, even when met by chance. On the other hand judges were sent to villages to administer justice,⁶⁴ and they could act on their initiative and bring persons to court (*ākaddhati*): "if she goes into the presence of judges (*vohārika*) being summoned by the bailiffs (or "servants of the adversary": *aṭṭakārakamanussa*), who have come either in person or sent a messenger saying: 'Come!' . . . (Sp 908.11-13)."

The judges are not obliged to hear the evidence of both parties to reach a decision, if the case is known to them: "if the judges (*vohārika*) have heard about an ecclesiastical case (*adhikarana*), which has gone through the correct procedures (*gatigata*), they may say, after they have seen the nun and her adversary (*aṭṭakāraka*): 'You need not

terminology seems to have been slightly different: *codaka* "plaintiff" contrasts with *adhikarane āpanna* (AN I 53.34ff., Mp II 101.13) instead of *cuditaka*. In Sanskrit *codaka* etc. have a different meaning.

64. An *āyuttaka* "official (to administer law)" is sent to a village at the request of villagers: Spk III 61.1-25; cf. CPD s. v. *āyuttaka*; on travelling *vinayadharas* see Sp 1354.28-31.

give evidence (*kathanakicca*), we do already know that matter,' and they may give [their verdict] deciding (*vinicchitvā*) by themselves (Sp 907.27-30)."

This also shows how secular and ecclesiastical law interlock. The evidence given within the order (*saṃgha*) can be used immediately without further hearing. There seems to have been, however, one restriction: This was possible only, if the "correct procedure" (*gatigata*) has been followed by the order. Quite casually some important information is included about the correct procedure to be followed when a case was decided in the order. The relevant term (*gatigata*) is mentioned once in the Vinaya itself (Vin II 85.3) without further explanation, which, most fortunately, is provided by the *Samantapāsādikā*: "not a correct procedure (Vin II 85.3) means: not having been decided (*avinicchita*) twice at that very place (i. e. in one and the same monastery) (Sp 1192.24ff.)." Originally, it seems, *gatigata* has been restricted to one particular way of settling disputes namely "by majority" (*yebhuyyasikāya*, Vin II 84.20-85.14). At the time of the commentary, that is in the 5th century C. E., it was universally applied to all kinds of disputes as a kind of safeguard against errors and wrong decisions. This was indeed necessary, as the Vinaya does not know of any possibility of appeal in an ecclesiastical case because this was technically impossible. Once the order had decided, there was no higher authority that could be invoked as the next higher legal level. Therefore a wrong decision by a legal expert accepted by the Saṃgha really was a disaster, as vividly described in the *Samantapāsādikā*: "for if a legal expert (*vinayadhara*) thus decides a case in excitement etc.,⁶⁵ the order in that monastery splits (*dvidhā bhijjati*), and the nuns depending upon the instruction [of the monks in that monastery] divide into two parties, and so do the laypeople and the donors. Their tutelary deities also split in the same way. Then beginning with the deities of the earth (*bhummadevatā*) up to the Akaniṭṭhabrahmas [the gods] split (Sp 1368.19-24)." In short, a wrong decision by a *vinayadhara* soon reaches "cosmic" dimensions.

Against this, a second hearing of the same case by the same persons seems to be a somewhat weak safeguard against errors and a serious restriction of the possibilities of the adversaries. In contrast to this the

65. This is one of the wrong ways of behavior for a *vinayadhara*: CPD s. v. *agati*, 2.

Dharmaśāstras usually know of three legal levels,⁶⁶ though details vary of course as the Dharmaśāstra texts were composed at different places and at different times. Interestingly, the legal tradition of Theravāda, which has hardly ever been used for tracing the history of law in India so far, describes a much more complicated system of legal levels in secular law in the commentary on the *Mahāparinibbānasutta* of the *Dīghanikāya*.⁶⁷ “The old laws of the Vajjis (DN II 74.10) means: Formerly the kings of the Vajjis did not say: ‘seize that thief!’ if somebody was brought and shown to them: ‘This is a thief!’ but they handed [the case] over to the arbitrators (*vinicchayamahāmatta*). If these decided that he was not a thief, he could go free; if he was a thief, they would not say anything themselves, but hand him over to the judges (*vohārika*) (Sv 519.10-14).” Then follow the *suttadhāra* (Sv 519.15), who according to the subcommentary is a *nītisuttadhāra* “the one, who is an expert in the guidelines for making a decision.” The next is the *aṭṭakulika* or *aṭṭhakulika* (Sv 519.16), which seems to be an expression similar to the *kula* or *pañcakula* of the Dharmaśāstras.⁶⁸ Unfortunately the meaning of this Pāli word remains obscure. The subcommentary explains: “eight important persons born into eight traditional families and abstaining from wrong procedures” (Sv-pt II 161.12-14), which sounds rather fantastic. For the first part of the compound seems to be *aṭṭa* “case” rather than *aṭṭha* “eight.”

The next higher legal level is the “general” (*senāpati*, Sv 519.17) and the viceroy (*uparāja*, Sv 519.17), before the accused is presented to the king himself. Here the text continues: “if the king decides that he is not a thief, he is released, if, however, he is a thief, the ‘book of the tradition’ (*pavenipothaka*) is consulted. There it is written ‘who

66. J. Jolly, *Recht und Sitte* (Strassburg: 1896) 134, and Kane, *History*, as in note 43, vol. III, 280-284.

67. Already G. Turnour (1799-1843) referred to this text as early as in 1838 according to R. Fick: *Die sociale Gliederung im nordöstlichen Indien zu Buddha's Zeit* (Kiel: 1897) 70, note 1 (rev.: S. Konow, *Göttingische Gelehrte Anzeigen* [1898] 325-336). Fick has very carefully collected all the relevant material concerning jurisdiction from the Jātakas, which, of course, do not reflect the conditions at the time of the Buddha. Further it has to be kept in mind that Fick's book is based only on Ja I-V; Ja VI was not yet published at the time of his writing.

68. According to Kane, *History*, as above note 43, vol. III, 282ff.

does this has to be fined in that way.' The king compares his deed to that and fines him accordingly⁶⁹ (Sv 519.18.21)."

Thus the king as the last and highest legal level is at the same time the seventh in the line, if the passage is to be understood that way. The commentary on the *Āṅguttaranikāya* also refers to the "old law of the Vajjis" and says: "the kings acted according to the old traditions, investigated (*parikkhitvā*) themselves, surrounded by the *aṭṭakulika*, the general (*senāpati*) and the viceroy, consulted the 'book of tradition' (*paveṇipotthaka*), and punished accordingly (Mp IV 11.23-12.1)." Following this text it seems that three of the "legal levels" were councilors of the king. This is nearer to the evidence of the Dharmaśāstras and perhaps also nearer to reality. For it is not impossible that the commentary on the *Dighanikāya* intends to demonstrate how during an earlier and, of course, better period law had been administered much more carefully than this was done during the days of the commentator.⁷⁰

A third text again gives a slightly different description of a hearing. For the commentary to the *Majjhimanikāya* says: "just as in a country, where a case (*aṭṭa*) begins, it reaches the village headman (*gāmabhojaka*),⁷¹ if he cannot decide ([*v*] *nicchetum*, so read), the district officer (*janapadabhojaka*), if he is unable, the 'great official for arbitration' (*mahāvīnicchaya-amacca*), if he is unable, the general (*senāpati*), if he is unable, the viceroy (*uparāja*), if he is unable, it reaches the king. After the king has passed his verdict (*vinicchitakālato*) the case (*aṭṭa*) does not go to any other [instance]. For by the word of the king [the case] is solved (*chijjati*)⁷² (Ps II 252.8-14)."

69. The king also can correct wrong decisions: "having sat one day (in court) deciding a wrongly decided case [*dubbinicchitam aṭṭam vinicchinto*, Thūp 236.10ff.], he stood up very late . . ."

70. It should be kept in mind that the commentaries were composed in the Mahāvihāra not long after the time of king Mahāsena (334-361), during which this monastery suffered much from the injustice of that king; see below.

71. A. N. Bose, "The Gāmabhojaka in the Buddhist Birth Stories." IHQ 13 (1937): 610-616, and R. Fick, as note 67 above, index s. v.

72. An older and quite different sequence of legal levels is found in the *Suttavibhaṅga* on Pārājika II dealing with theft: "king of the whole earth, king of a country (*padesarāja*), ruler of a district (*maṇḍalika*), border chief (*antarabhogika*), judge (*akkhadassa*), high official (*mahāmatta*)" (Vin III 47,1ff. with Sp 309.3-15): All these persons can inflict punishment (*chejjabhejja*). It is interesting to note that the word for "judge" *akkhadassa* corresponds to Sanskrit *akṣadarśa(ka)*, which according to the PD occurs in grammatical literature only, and is not attested in juridical literature: Mahābhāṣya ad Pāṇini 8.4.2, Kāśika ad Pāṇini 8.4.49. A further instance in

In contrast to the commentaries the historical texts such as the *Mahāvamsa* contain much less information about secular law.⁷³ For instance it is said of king Udaya I alias Dappula (812-828): “judgments that were just he had entered in books and (these) were kept in the royal palace because of the danger of violation of justice” (Mhv XLIX 20, trsl. W.Geiger). These are the “books of tradition” (*pavenipotthaka*) known to the commentaries a few centuries earlier. This is an interesting confirmation of the information on jurisdiction described in the commentaries, which shows that this evidence at least to a certain extent mirrors the actual way law was administered. At the same time this points to the fact that there seem to have been collections of precedents.⁷⁴

The evident interest of the commentaries in secular law is easy to understand. Although members of the order were not entitled to accuse laymen, they were nevertheless forced from time to time to seek the protection of a court, and they were able to do so. For without even naming any culprit, which was forbidden in the Vinaya, they could induce a court to issue a statement such as: “we shall punish anybody committing such and such a crime in such and such a way.” The crime in question could be stealing property of the order, which was now protected without going to court if a theft occurred. This crime would be persecuted at the initiative of the court now, and the culprit was punished without further involvement of the order (Sp 909.27ff.).⁷⁵

Offences committed within the order were no less dangerous than threats from the outside, such as theft or the willful destruction of property belonging to the order. For within the order the monks had no power at all to enforce their decision on dissenting monks. This is particularly true when it was necessary to remove a monk from the

Buddhist literature has escaped the PD Budhasvāmin: *Brhatkathāśloka-saṃgraha* XX 194, cf. Vāk 4.1954, p. 89; cf. also: *kumāraka*, *dharmīṣṭha*, *akṣadarśa*, *gaṇaka*, *mahāmātra*, Abhis-Dh 87.9.

73. Geiger, *Culture of Ceylon*, as note 54 above, § 139.

74. Similar collections are mentioned by R. Okudaira, “The Burmese Dhammathat,” *Laws of South-East Asia. Volume I: Premodern Texts*, ed. M. B. Hooker (Singapore: 1983) 35.

75. Although all this is said in reference to nuns this paragraph in the Vinaya-piṭaka and in the Samantapāsādikā, it is also valid for monks: *yo cāyam bhikkhuninam vutto bhikkhūnam pi es' eva nayo*, Sp 909,29ff.; cf. also Sāriputta's *Pālimuttakavinayavinicchayaśaṅgaha-Vinayālamkāratikā* Be (1960) 433. 12ff., where this paragraph is quoted from Sp. 908.23ff. substituting the word *bhikku* for *bhikkhuni* in the *Samantapāsādikā*.

order. In this respect only the king and his police can help, who did so since the times of Aśoka, as is well known from his inscriptions.⁷⁶ In much later times efforts of Sinhalese kings to restore the order within the saṅgha are rather well documented by the katikāvatas surviving from mediaeval times.⁷⁷

Earlier interferences of Sinhalese kings are related in *Dīpavaṃsa* and *Mahāvāṃsa*. One crucial point occurred in the reign of king Mahāsena (334-361/274-301, Dīp XX 66-74, Mhv XXXVII 4ff.), when the monks of the Abhayagirivihāra succeeded in persuading the king that their Vinaya was superior, and that the monks of the Mahāvihāra were following wrong practices. This resulted in a major crisis of the Mahāvihāra, during which the monks even had to abandon their monastery temporarily after losing royal support.

The commentary on the *Mahāvāṃsa* gives some of details on this dispute: "the Abhayagiri monks had deviated from the clearly formulated word of the Buddha in the Vinaya-piṭaka, in *Khandhaka* and *Parivāra*, by changing the wording and the interpretation (*atthantara-pāṭhantarakaraṇavasena*) and split from the Theravāda." Then follow a few of the controversial points, some of them of considerable consequence as they refer to the ordination procedure (*upasampadā*) (Mhv-ṭ II 676.20-677.5). Unfortunately all this is stated in a very general way in this commentary. Therefore it is not possible to get a very clear idea how far the Abhayagiri and the Mahāvihāra Vinaya really differed in wording or interpretation. Luckily, however, there is one passage in the *Samantapāsādikā*, where the differences in wording in both Vinayas are discussed, and where the relevant sentence is quoted in both versions.⁷⁸ This is the commentary on Saṅghādisesa VIII, which deals with unjustified accusations of a Pārājika offense (Vin III 163.21**-

76. Relevant material has been discussed in the articles mentioned in note 14 above. According to Mhv V 270 (cf. Sp 61.4) monks were expelled (*uppabbajapayi*) from the Saṅgha by Aśoka because of *micchādīṭhi*.

77. N. Ratnapala, *The Katikāvatas. Laws of the Buddhist Order of Ceylon from the 12th Century to the 18th Century. Critically Edited, Translated and Annotated*. Münchener Studien zur Sprachwissenschaft Bei-Heft N (München 1971). Regulations for the Siamese order provided by Rama I are preserved in the *Kotmai Trā Sām Duang*, chapters 28 and 29: Y. Ishii, "The Thai Thammasat," *Laws of South-East Asia*, as note 74, p. 147.

78. This discussion referring to a dispute within the Sinhalese order only, has been omitted from the Chinese translation of the *Samantapāsādikā*: P. V. Bapat and A. Hirakawa, *Shan-Chien-P'i-P'o-Sha. A Chinese Version by Saṅghabhadra of Samantapāsādikā*, Bhandarkar Oriental Series 10 (Poona: 1970) 387.

26**). The introductory story relates, how the monk Dabba Mallaputta is accused by the nun Mettiyā of raping her, which is an offense against Pārājika I. The accusation turns out to be unfounded, and the Buddha rules that the nun Mettiyā should be expelled (*nāseti*).⁷⁹

Now in the commentary the problem is discussed at some length, whether the nun was expelled with the consent (*paṭiññāya*) of Dabba Mallaputta or not. If Dabba had consented, he was instrumental in the punishment (*kāraka*), which would have been a fault of his (*sadoso*). Again at the time of king Bhātiya there was a dispute between the Abhayagiri and the Mahāvihāra monks referring to this very point. As both fraternities were unable to settle their dispute, they brought it before the king, because no other higher instance was available to them: “The king heard [that they were unable to settle their dispute], brought the Elders together and appointed an official (*amacca*) named Dīghakārāyana, who was a brahmin, to hear the case. This official was indeed wise and an expert in foreign languages. He said: ‘The Elders should recite their text.’ Then the Abhayagiri monks recited their text: ‘*tena hi bhikkhave Mettiyaṃ bhikkhunim sakkāya paṭiññāya nāsetha.*’ The official said: ‘In your opinion (*vāde*), reverend sirs, the Elder is the agent and has committed a fault (*sadoso*).’ Then the Mahāvihāra monks recited their text: ‘*tena hi bhikkhave Mettiyaṃ bhikkhunim nāsetha* (Vin III 162.38).’ The official said: ‘In your opinion, reverend sirs, the Elder is not the agent and without fault. Here, what has been said last, is correct. For the experts, whose views are found in the commentaries (*aṭṭhakathā*) had deliberated that . . . (Sp 583.5-15).”

This is a rare, if not unique instance, because the texts of both Vinayas, the one of the Abhayagiri and the Mahāvihāra, are quoted. Both texts are exactly parallel and differ only by the insertion of two

79. “Revocation” (*nāsanā*) refers to novices (*sāmaṇeras*) according to Pācittiya LXX (Vin IV 139.18**-34**, cf. the definition at Sp 870.35-871.4 and Sp 1013.1; 1014.10-1015.4) and also to nuns (*bhikkhuni*). For Mettiyā commits an offense against Saṃghādisesa VIII of the monks, which is also valid for nuns (*dve duṭṭhadosā*, Sp 915.34). In contrast to the Saṃghādisesas for monks, however, those for nuns include “expulsion” (*nissāranā*, Vin IV 225.7), which refers to the five offenses discussed in *Cullavagga* I (Vin II 1-28) (*pabbājaniyakammādi*, Sp 1147.14). These include *ukkhepaniyakamma* (Vin II 21.5-25.7), which is identical with *samvāsa-nāsanā* (Sp 582.22ff.). Thus it is correct to use the term *nasetha* here referring to Mettiyā. This shows that nuns and novices are equal before Buddhist ecclesiastical law, at least in certain respects. Both are also subject to *daṇḍakamma*: for novices, Vin I 84.14ff.; for nuns, Vin II 262.29ff., though the punishments called *āvaraṇa* are different for both novices and nuns.

words in the Abhayagiri-Vinaya. If any conclusion can be drawn from this evidence of a single sentence, both Vinayas may have been largely identical, as one would expect anyway. Nevertheless the difference, however slight, is legally quite significant.⁸⁰

This dispute had to be settled by a secular judge, because there is no higher authority the monks of two different monasteries could turn to. In spite of the secular nature of the court, the ultimate victory of the Mahāvihāra—of course, because the *Samantapāsādikā* after all is a Mahāvihāra text—is due to the opinion expressed in earlier commentaries. Therefore it has to be supposed that the said brahmin, although he should have been an expert in the Sanskrit Dharmaśāstras rather, was also versed in Buddhist law. This could be the reason for the remark that he knew foreign languages.⁸¹ For, if he was able to decide a case according to Buddhist law, he should have at least some training in Pāli, if not in Sinhalese Prakrit as well, because the commentaries were not yet translated into Pāli during the reign of king Bhātiya according to the Buddhist tradition.

Problems of this kind arose time and again within the saṃgha in Ceylon. The reforms of king Parakkamabāhu I. (1153-1168) trying to put an end to these confrontations by uniting the saṃgha are well known. Still conflicts involving ecclesiastical and secular law did not cease to exist in Ceylon or in other parts of the Theravāda world. Thus far the relevant material found in printed texts, specifically the commentaries to the Vinaya, has never been collected systematically. This is true also for Vinaya texts existing only in manuscript form so far, or for inscription and documents.

Leaving aside the efforts by kings or by modern secular governments⁸² to guarantee the purity of the saṃgha by removing monks not

80. Adikaram, as in note 54 above, p. 88, quotes this text in a rather imprecise way.

81. On an actual language problem in the hearing of a case concerning a fire, which started in a monastery, where monks from different parts of South East Asia were living: Royal order of May 22, 1642, in *The Royal Orders of Burma, A.D. 1598-1885*, ed. Than Tun Vol. I (1983) 124. Kyoto 1983-1986, Vols. I-V: Order of May 22, 1642: I(1983), p.124, cf. I(1983), p. 119: April 29, 1641. All references to this collection given here refer to the English summary. This case is also of interest as it shows that monks were subject to secular law; cf. R. Okudaira as in note 74 above, p. 28.

82. Cf. e. g. H. Bechert, "Neue buddhistische Orthodoxie: Bemerkungen zur Gliederung und zur Reform des Sangha in Birma," *Numen* 35 (1988): 24-56, where the text of the law for ecclesiastical jurisdiction of 1980 can be found on p. 51-56. The laws for the order in Thailand are found in *Acts on the*

complying with Vinaya rules, or by having them reordained, a few concluding remarks may be made on a very famous dispute, which kept the kings of Burma busy for about a century. This is the so called *ekamsika-pārupana*-controversy, which extends over the better part of the 18th century in Burma. It is described at some length in Paññāsāmin's *Sāsanavaṃsa*, which was adapted into Pāli in C. E. 1861 from a slightly earlier Burmese version of C. E. 1831⁸³ (Sās 118-142 / Sās-trsl. 123-144), and resumed by M. Bode and again at great length by N. Ray⁸⁴: In C. E. 1698 a monk named Guṇābhilaṅkāra ordered his disciples to cover only the left shoulder when entering a village. This was thought to be an offense against the "correct behavior while collecting alms" (*piṇḍacārika-vatta*, Vin II 215.6-217.35), where it is said that a monk should enter a village well covered (Vin II 215.33ff.).⁸⁵ The party of Guṇābhilaṅkāra became known as the "group that covers one shoulder" (*ekamsikagaṇa*), and the traditionalists as the "well dressed (or: well covered) group" (*pārupanagaṇa*) (Sās 118ff. / Sās-trsl. 124). After a bitter feud, which at times was intensified by a conflict between forest dwellers (*araññavāsin*) and village dwellers (*gāmvāsin*), during which the village dwellers even took up arms (*samnahitvā*, Sās 119 / Sās-trsl. 125) to drive the forest dwellers away from the villages back into the forest,⁸⁶ the matter was finally settled in C. E. 1784 by king Bodawpaya (1782-1819) in favor of the traditionalists (*pārupanagaṇa*). His predecessors had vacillated between both parties and consequently conflicting decrees had been issued in course of the 18th century. These royal orders, which are preserved at least in part, underline the

Administration of the Buddhist Order of Saṅgha [sic] B.E. 2445 (1902), B.E. 2484 (1941), B.E. 2505 (1962) (Bangkok: 1989). In accordance with articles 18 and 25 the "council of Elders" (*mahātherasamāgama*) has filled the frame described by the law of 1962 with regulations for the order: *Kaṭṭh mahātherasamāgam chapāp di¹ 11* (B. S. 2521: A.D. 1978) (Bangkok 2522 : 1979).

83. V. B. Liebermann, "A New Look at the *Sāsanavaṃsa*," BSOAS 39 (1976): 137-149.

84. M. Bode, *The Pāli Literature of Burma* (London: 1909) 65-76; N. Ray, *An Introduction to the Study of Theravāda Buddhism in Burma* (Calcutta: 1946) 217-236.

85. The correct way of wearing the robe is also included in rules for a monastery in 10th century Ceylon: "Tablets of Mahinda IV at Mihintale," *Epigraphia Zeylanica* 1 (1904-1912) 99, lines 9-15. The inscription refers to the *Sikakarāṇi*, the text of which is given loc. cit. in note 5.

86. See note 55 above.

importance of the Vinaya dispute, which seems to have been a rather important topic of politics at times.⁸⁷

Though the dispute is interesting in itself, it may be sufficient here to concentrate on its end, because some royal orders extant supplement the evidence found in the *Sāsanavaṃsa*.⁸⁸ Early in C. E. 1784 King Bodawpaya summoned both parties to present their views, after the leader of the “one shoulder group,” at that time Atulayasaddhammarājaguru, who had been the preceptor of King Mahadhammayaza (1733-1752), had written to the king from his exile and stated his views he thought were supported by the *Cūḷagaṇṭhipada*: “‘a fold of the robe (*civara*) has to be bound as a chest cover above the outer robe (*saṃghāṭi*).’ Novices should put their upper robe (*uttarāsaṅga*) on one shoulder when entering a village and bind a chest-cover” (Sās 135 / Sās-trsl. 138). Thus the “one shoulder group” finally found some textual evidence supporting their view, what they had needed badly during an earlier hearing under King Singu (1776-1781) (Sās 129ff. / Sās-trsl. 133) without finding it.⁸⁹ Here suddenly a new Vinaya text is mentioned, and Paññāsāmin a bit viciously implies that it had been forged under king Sane (1698-1714) by a layman bribed by monks of the “one shoulder group” (Sās 119 / Sās-trsl. 124).

Of course Atula’s claim is challenged at once and upon examination it turns out that he had—intentionally (?)—mixed up the old *Vinayagaṇṭhipada* with the *Cūḷagaṇṭhipada* (Sās 136 / Sās-trsl. 139). Consequently the king ruled that the *pārūpanagaṇa*, led at that time by Nāṇavilāsasaddhammarājādhirājaguru,⁹⁰ who had been made head of the saṃgha on June 3, 1782,⁹¹ was correct, and thus the *ekaṃsikaṅga* was suppressed once for all. This was made public by the proclamation of a series of royal orders.⁹² It can be inferred from the evidence contained in these orders that Atula had been in exile

87. *Royal Orders of Burma*, as mentioned above in note 81.

88. This is particularly important for the Pāli *Sāsanavaṃsa*, which, according to Liebermann p. 148 omits a “key sentence” from its source of 1831 relating the end of this conflict. This sentence, most unfortunately, is not communicated in that article.

89. Cf. the series of royal orders issued between February 24, 1780, and November 23, 1780, on the lacking scriptural evidence, *Royal Orders III* (1985) 82-84.

90. The *Sāsanavaṃsa* gives his name as Nāṇabhisāsanadhajamahadhammarājaguru, Sās 134 / Sās-trsl. 135.

91. *Royal Orders IV* (1986) 11.

92. *Royal Orders IV* (1986) 47-52: April 21-26, 1784.

since the reign of king Hsinbushin (1773-1786), when he was summoned to court on April 21, 1784. The next document of April 25, 1784, confirms that he had based his views on the *Cūḷagaṇḍi* (sic) already during the reign of Alaung-paya (1752-1760), and the document continues that Atula and his followers were supposed to be sent into exile again in 1784, but before that he was sentenced to collect fodder for elephants in the woods together with his followers.⁹³ In a last document dated April 24, 1784, the king revokes all these punishments at the request of high ranking monks.

It is not entirely clear which Vinaya texts exactly Atula used to support his opinion. Of course an old *Cūḷagaṇḍhipada* is referred to together with a *Majjhima-* and a *Mahāgaṇḍhipada* by Sāriputta in the introduction to his *Sāratthadīpanī*, a 12th century commentary to Buddhaghosa's *Samantapāsādikā*.⁹⁴ However, all these Gaṇḍhipadas were written in Sinhalese, and Sāriputta mentions only one in Pāli, the *Vinayaḡaṇḍhipada*.

According to the *Sāsanavaṃsa* Atula was asked about his *Cūḷagaṇḍhi* by his adversaries: "Is your *Cūḷagaṇḍhipada* quoted as a support [for certain views] in the great Vinaya subcommentaries (i.e. *Vajirabuddhitikā*, *Sāratthadīpanī*, *Vimativinodani*)?"—"It is quoted in the three great Vinaya subcommentaries as a support."—"If this is so, how then can it be said in the *Cūḷagaṇḍhipada*: 'This has been said in the *Sāratthadīpanī*; this had been said in the *Vimativinodani*?' For [the *Cūḷagaṇḍhi*] being later than the three great subcommentaries, the three great subcommentaries are quoted as a support [in the *Cūḷagaṇḍhi*] (Sās 138 / misunderstood Sās-trsl. 141)." Consequently Atula is defeated on the grounds of chronology: An earlier text cannot possibly quote from a book composed at a later date.

Thus the *Cūḷagaṇḍhi*, of which Atula produced a copy during the hearing of his case, belongs to the late Vinaya literature, and cannot be identical with the much earlier Sinhalese *Cūḷagaṇḍhipada*. Which text is it then? So far this was not known, until F. Bizot, EFEO Chiang Mai, drew my attention to the manuscript Or 9238 of the British Library, which comprises 17 fascicles (*phūk*) copied in Khmer script in C. E. 1793 and bearing the title *Guyhatthadīpani Cūḷagaṇḍhisankhepa*

93. This kind of punishment is mentioned much earlier as *udaka-daru-valikādinam āharapanam*, Sp 1013.22.

94. W. B. Bollée, "Die Stellung der Vinaya-Tīkās in der Pāli-Literatur," XVII. *Deutscher Orientalistentag, July 21-27, 1968, in Würzburg*. ZDMG Supplementa I, 3. Wiesbaden 1969, p. 833, and CPD: Epilegomena 1.2.10.

“the abbreviated version of the small text on knotty points [in the Vinaya] called lamp [elucidating] the hidden meaning.” This manuscript, which quotes from the *Majjhima-* and *Cūḷaganṭhipada*, is incomplete. Fascicles 1, 2, and 12 are lost and even fascicle 17 does not contain the end of the text. Luckily the continuation is found in the *Cūḷaganṭhipadamahāvagga* copied in C. E. 1836 and preserved at Vat Sung Men in Phrae (North Thailand).⁹⁵ This manuscript comprises another sixteen fascicles without reaching the end of the text. In addition to this large Vinaya text there is further a *Mahāganṭhipadamahāvagga* in the same monastery in fifteen fascicles and also copied in C. E. 1836,⁹⁶ which obviously contains only a fraction of the complete text, perhaps less than 10%, for it ends with the Uruvelā-Kassapa episode right at the beginning of the *Mahāvagga*. The enormous length of these text seems to be due to extensive quotations borrowed from well known earlier Vinaya literature. However, now and then new opinions seem to have been inserted, which show that these texts in fact provide new and potentially very interesting material for the late history of Buddhist law. As the *Sāsanavaṃsa* quotes one sentence verbatim from the *Cūḷaganṭhi*, it is not impossible to verify if the *Cūḷaganṭhipada* of the British Library and Vat Sung Men are identical to Atula’s text.

Indeed the relevance of *Mahā-* and *Cūḷaganṭhipada* seems to be considerable for Buddhist law in Burma in the recent past. For, as Shway Yoe (alias Sir James George Scott: 1851-1935) writes, there were rival parties following the “Mahagandi” and “Sulagandi” respectively during the second half of the last century. This dispute centered on a controversy over simple or luxurious life styles of monks: “faction feeling runs so high that street fights between scholars of these two sects are very common, and often so embittered that the English authorities have to interfere to restore peace in the town, for the laity takes sides with equally bitter animosity.”⁹⁷

Thus there will never be an end to Vinaya controversies as long as the *sāsana* continues to exist. Research in these matter is still quite in its infancy and has hardly really started. Rich material is buried in printed editions and probably also in manuscripts. Inscriptions from

95. The reference number is 01-04-028-00, roll no. 49.

96. The reference number is 01-04-027-00, roll no. 49.

97. Shway Yoe, *The Burman. His Life and Notions* (London: 1910) 149 (reprinted with a biographical sketch of the author by J. Falconer [Arran: 1989]).

Theravāda countries and royal orders from Burma have not been used so far. The latter contain many interesting details on the possible interrelation of ecclesiastical and secular law evident already in older literature. For although judges are advised to use a dhammathat and are even provided with copies,⁹⁸ a Buddhist legal expert (*vinaya-dhara*) decides about the real estate of two monasteries on May 14, 1720,⁹⁹ by referring to documents(?), in this particular case most probably to landgrants dated C. E. 1654 and C. E. 1444 (!) respectively. The royal order confirms his decision.

Thus the working principles of legal procedures seem to have been fairly stable over a long time. And if a royal order of June 17, 1784, proclaims that the rainy season (*vassa*) in that year had begun on July 1,¹⁰⁰ this brings us back right to the *Mahāvagga* of the *Vinaya-piṭaka*.

All this rich, hardly explored history of law quite different and independent from Hindu Dharmaśāstras is at the same time a considerable intellectual achievement of Indian culture. Only in the very recent past the first steps to understand or even to discover the elaborate system that seems to underly Buddhist legal texts have been taken.¹⁰¹ This aspect has not been touched in the present discussion, which tried to concentrate only on the Theravāda legal tradition leaving aside the *Vinaya* of other schools, which at least as far as the *Mūlasarvāstivādins* are concerned, have an equally rich heritage of texts mainly preserved in Tibetan.¹⁰² Once all this will have been thoroughly researched, Buddhist, and perhaps particularly Theravāda law¹⁰³ might

98. *Royal Orders I* (1983) 24: June 23, 1607.

99. *Royal Orders II* (1985) 73.

100. *Royal Orders IV* (1986) 62.

101. H. Bechert, "Laws of the Buddhist Saṅgha: An Early Juridical System in Indian Tradition," lecture given at the symposium on Recht, Staat und Verwaltung im klassischen Indien, Munich, July, 1992; O. v. Hinüber, "The Arising of an Offence: *āpattisamuttāna*. A Note on the Structure and History of the Theravādivinaya," *JPTS* 16 (1992): 55-69.

102. G. Schopen's "Doing Business for the Lord: Lending on Interest and Loan in the *Mūlasarvāstivāda-vinaya*" has succeeded in finding influences of Dharmaśāstra on a *Vinaya*, which sheds new and quite unexpected light on the history of Buddhist law. Dharmaśāstra influence can be felt perhaps in *Vibh-a* 382.29-383.32, where it is said that there is a difference in offenses such as murder or theft depending on the person against whom it is directed.

103. Theravāda law seems to have been held in high esteem among Buddhists, as can be deduced from the fact that the *Samantapāsādikā* was translated into Chinese and taken over by the Dharmaguptaka school; cf. note 78 above.

stand as a major Indian contribution to culture in general.¹⁰⁴ Today usually Indian indigenous grammar is cited and Pāṇini quoted, or Brahmagupta is named in the field of mathematics.¹⁰⁵ Law, legal literature, and juridical thinking of the Buddhists are passed over in quite unjustified silence in this context, even in a purely Indian context; for in the slim, but highly stimulating volumes contributed by J. D. M. Derrett to the History of Indian Literature or to the Handbuch der Orientalistik¹⁰⁶ Buddhist law is omitted, and the Vinaya as a law book is well hidden in the volume of the History of Indian Literature on Pāli literature. This will certainly change once the system of Buddhist law is understood, and it can be achieved only by a comprehensive investigation first of all into the legal terminology,¹⁰⁷ which is the key to understand the development and history of Buddhist law.

ABBREVIATIONS

AAWG	<i>Abhandlungen der Akademie der Wissenschaften in Göttingen. Philologisch-historische Klasse. Dritte Folge</i>
Abhis-Dh	<i>Abhisamācārikā Dharmāḥ</i> ed. B. Jinanada. Patna 1969
AN	<i>Āṅguttara-nikāya</i>
AO	<i>Acta Orientalia</i>

104. Cf. W. Rau, "Indiens Beitrag zur Kultur der Menschheit," *Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main*. Band XIII, No. 2. (Wiesbaden: 1975).

105. Cf. D. Pingree, "History of Mathematical Astronomy in India," *Dictionary of Scientific Biography*, Vol. 15 (New York: 1978) 533-633.

106. *Dharmaśāstra and Juridical Literature* (Wiesbaden: 1973); *History of Indian Law (Dharmaśāstra)* (Leiden: 1973). Later J. D. M. Derrett has devoted some studies to Buddhist, though not to Theravāda law, e. g.: *A Textbook for Novices. Jayaraksīṣa's «Perspicuous Commentary on the Compendium of Conduct by Śrighana»*, Pubblicazioni di Indologica Taurinensia XV (Torino: 1983).

107. Here a recent Ph. D. thesis from Göttingen deserves to be mentioned: P. Kieffer-Pülz, *Die Simā. Vorschriften zur Regelung der buddhistischen Gemeindegrenze in älteren buddhistischen Texten* (Berlin: 1992).

AWL	Akademie der Wissenschaften und der Literatur, Mainz. <i>Abhandlungen der geistes- und sozialwissenschaftlichen Klasse</i>
BEFEO	<i>Bulletin de l'École Française d'Extrême-Orient</i>
CPD	V. Trenckner, <i>A Critical Pāli Dictionary</i> , Vol. I (1924 -1948), Vol. II (1960-1990), Vol. III, 1 (1992), Vol. III, 2 (1993). Copenhagen
DN	<i>Digha-nikāya</i>
IHQ	<i>Indian Historical Quarterly</i>
IT	<i>Indologica Taurinensia</i>
Ja	<i>Jātaka(-aṭṭhavanṇanā)</i>
JAOS	<i>Journal of the American Oriental Society</i>
JPTS	<i>Journal of the Pāli Text Society</i>
Kkh	<i>Kaṅkhāvitarāṇi</i>
KZ	<i>(Kuhns) Zeitschrift für vergleichende Sprachforschung</i>
Mp	<i>Manorathapūraṇi</i>
OLZ	<i>Orientalistische Literaturzeitung</i>
PD	<i>An Encyclopaedic Dictionary of Sanskrit on Historical Principles</i> . Poona 1976ff.
PED	T. W. Rhys Davids and W. Stede, <i>The Pāli Text Society's Pāli-English Dictionary</i> (London) 1921-1925
Sadd	<i>Saddaniti</i>
Sās	<i>Sāsanavaṃsa</i>
Sp(-ṭ)	<i>Samantapāsādikā(-ṭikā: Sāriputta: Sāratthadipani)</i>
Spk	<i>Saratthapakāsini</i>
StII	<i>Studien zur Indologie und Iranistik</i>
Sv	<i>Sumaṅgalavilāsini</i>
Vin	<i>Vinaya-piṭaka</i>
ZDMG	<i>Zeitschrift der Deutschen Morgenländischen Gesellschaft</i>

Pāli texts are quoted according to the editions mentioned in the Epilegomena to the CPD, if not stated otherwise.