

JIABS

Journal of the International Association of Buddhist Studies

Volume 27 Number 1 2004

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BUDDHIST SOURCES ON FETICIDE AS DISTINCT FROM HOMICIDE*

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After 1969 (Ling), the scholarly interest on the Buddhist view of abortion has been steadily growing.¹ This interest is not just historico-philological, but is related to the contemporary debate on legislation about abortion in many countries. In this paper I confine myself to historico-philological matters. My first aim is to present unambiguous evidence showing that at least one ancient school of Indian Buddhism made a clear distinction between abortion and homicide. My second aim is to contextualize this evidence, which unfortunately entails some degree of speculation.

The results of previous philological research can be easily summarised. The Pāli *Vinaya* and other canonical and post-canonical texts explicitly put abortion and homicide into one and the same category. The human fetus is at all times a ‘living being’ (*prāṇin*) because it is endowed with life (*jīvita*, *āyus*) and consciousness (*viññāna*) right from conception. Killing (*māraṇa*, *vadha*) is defined as ‘cutting off life’ (*āyuruccheda*), and therefore abortion is classified as the ‘murder of a living being’ (*prāṇātīpāta*). If the living being in question belongs to the human species, abortion is classified as ‘homicide’ (*manuṣyavadha*). Consequently, those Buddhists who are responsible for an abortion break the vow not to kill human beings and lose whatever religious status they have achieved: monks, nuns, novices, lay brothers and lay sisters would all infringe their vow. These results provide a correct description of the Buddhist position on abortion according to most schools. However, the picture is not

* This is a revised version of a paper I delivered on March 24, 2002, at the Annual Meeting of the American Academy of Religion / Western Region (March 23-26, 2002 – Saint Mary’s College, Moraga, California). The paper itself was based on a chapter of my PhD Thesis (Agostini 2002).

¹ See, e.g., Lecso 1987, Florida 1991, Stott 1992, Keown 1995 and 1999, McDermott 1999, Collins 1999, Green 1999, Perret 2000, Keown 2001, Green 2001.

complete, because two Buddhist sources that allow abortion have so far escaped the attention of scholars.

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Of the two passages I want to discuss, the first one is neither the more explicit nor the earlier one. It is the shorter one, and for easiness of exposition I deal with it first. For the scholarly study of abortion it is a unique source because it belongs to a text addressed to Buddhist lay brothers (*upāsaka*), not to clerics.

In the 12th century the Buddhist monk Sunayaśrī wrote the *Upāsakasamvarāṣṭaka*, *Eight Verses on the Vows of Buddhist Lay Brothers*. He also wrote a short commentary on it, the *Upāsakasamvarāṣṭakavivaraṇa*. Both texts are extant only in their Tibetan translations by Sunayaśrī himself and by Dar ma drags. Since these translations are located in the 'Dul ba (*Vinaya*) section of the Tanjur,² one would expect Sunayaśrī to represent the Mūlasarvāstivāda legal tradition, which, however, does not make any distinction between abortion and homicide (see Appendix One, 3.4).

In the fifth verse of the *Upāsakasamvarāṣṭaka*,³ Sunayaśrī lists grave infringements of the *upāsaka* precepts as “causes that [result in] the loss of the [*upāsaka*] vow” (*sdom pa ṅams pa'i rgyu rnams = *samvaratyāga-hetavaḥ*). The first infringement, as expected, is “homicide” (*mi gsod pa = *manuṣyavadha*). In the commentary we read Sunayaśrī's interesting definition of homicide:⁴

*yan lag lña mñon par grub pa'i lto na gnas pa'am phyir byuñ ba'i mi rnams
la sman dañ mtshon la sogs pas tshe'i bar chad*

² Tanjur, 'Dul ba: Narthang ed., Cat. numbers 3633-4, vol. U, pp. 174b7-175a6 and 175a6-180b4 (= N); Peking ed., Cat. numbers 5642-3, pp. 190b4-191a5 and 191a5-197a3 (= Q); Derge ed., Cat. numbers 4141-2, vol. Su, pp. 156b5-157a3 and 157a3-161b2 (= D); Cone ed., vol. Su, pp. 155b5-156a3 and 156a3-160b2 (= C); the Golden Tanjur was unfortunately not available to me. To my knowledge, these texts have not been edited, translated, or studied so far. I am working on an edition and translation. My dating of Sunayaśrī is mostly based on the fact that he himself translated both texts into Tibetan and on the dating of the co-translator Dar ma drags (see the Appendix in Agostini 2002).

³ N 175a3-4, Q 190b8-a1, D 156b7-a1, C 155b7-a1.

⁴ N 179a3, Q 195a7-8, D 160a5, C 159a5.

cutting off the life (*āyuruccheda*) of human beings (*manuṣya*) whose five limbs have developed (*pañcāṅgābhiniryta*), whether they are in the womb or have come out [of it], by means of drugs, cutting tools, etc.

The ‘five limbs’ are the head, the arms and the legs (see below). In this passage, Sunayaśrī defines ‘killing’ (*vadha*) in traditional terms as ‘cutting off life’: since life in Buddhism starts at conception, feticide at any stage of pregnancy would qualify as killing (*vadha*). But is it, at any stage of pregnancy, homicide (*manuṣya-vadha*)? No, says Sunayaśrī: it is homicide only if the fetus has already developed the ‘five limbs’. Prior to this development the fetus is not a ‘man’ yet, at least for the purposes of the legal definition of homicide. What is it then? Sunayaśrī does not say, and this is a serious difficulty: in the traditional classification of living beings according to the six destinies of rebirth (*gati*) and the four *yoni*s there is no room for a fetus who is not a man and yet is alive in a human womb.

Further, Sunayaśrī does not say whether abortion at the early stages of pregnancy would at least entail a minor offence — it seems not —, and whether his definition of homicide would hold good for Buddhist clerics too — as it should —, and not just for lay brothers: may a monk commit feticide without incurring a *pārājika* sin? Sunayaśrī adds nothing to defend or explain his position, apparently at variance with everything we know from many other sources. He must have assumed that for his audience all this was old news, and indeed we can now turn to an older source.

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The *Śrīghanācārasaṅgraha* is an anonymous text in verses on the conduct of Buddhist novices. It is not extant. Jayarakṣita’s commentary, the *Sphuṭārthā Śrīghanācārasaṅgrahaṭīkā*, is extant and refers to three other commentators. The anonymous author of the verses and his commentators belonged either to the Mahāsāṃghika school or, more probably, to a related one. The *Śrīghanācārasaṅgraha* and its commentary are certainly older than Sunayaśrī’s *Upāsakasamvarāṣṭaka*, but are difficult to date. Jayarakṣita may have lived as late the seventh century.⁵

⁵ On this text see Agostini 2003 and the literature therein quoted.

The author of the verses, in a section devoted to the first precept of novices (not to kill human beings), says:⁶

pañcaśākhādinirvṛttaṃ na hanyāt prāṇinam [yatiḥ] || 5cd ||

[A cleric] must not kill a breathing being who has developed the five branches etc.

Jayarakṣita comments:⁷

na hanyān na mārayet | kam ity āha | prāṇinam | prāṇo nāma vāyuḥ, so 'syāstīti prāṇī | sa ca kimviśiṣṭa eva? pañcaśākhādinirvṛttaḥ parigṛhyate | ataḥ kalalādiśātane saṃvaratyāgo na bhavati | prāṇīśabdena ca manuṣyagatiparyāyaḥ eva parigṛhyate na prāṇīmātram, sajanṭukasalilādiparibhoge duṣkṛtavacanāt | jātivācī vāyam śabdaḥ | tena strīpuruṣapaṇḍakam pañcaśākhādi[nir]vṛttaṃ mārayataḥ syad eva saṃvaratyāgaḥ |

“Should not kill” [means:] should not murder. Whom? [The author of the verses] says: “a breathing being”. Breath is wind. “Breathing being” [means:] one who has that [breath]. And by what [adjective] is it qualified? [A breathing being] “who has developed the five branches etc.” is referred to. Therefore, there is no loss of the vow if one destroys a [fetus at the stages of] *kalala* etc., and by the term “breathing being” [which in other contexts could refer to both men and animals], only a synonym for ‘man’s destiny’ is referred to [in this context], not breathing beings in general, because making use of water full of living organisms etc. has been declared to be a minor offence [and minor offences are discussed in a separate section]. Or this term [i.e., ‘breathing being’] indicates the species. Therefore, let there be loss of the vow for one who kills a woman, a man, or a ‘neuter’ who have developed the five branches etc.

Sunayaśrī’s and Jayarakṣita’s statements are very similar: according to both there is no “loss of the [lay or clerical] vow” (Sunayaśrī’s *sdom pa ṇāms pa*, precisely corresponding to Jayarakṣita’s *saṃvaratyāga*) when a fetus that has not “developed the five limbs/branches” (Sunayaśrī’s *yan lag lña mñon par grub pa = *pañcāṅgābhinirvṛtta*, corresponding to Jayarakṣita’s *pañcaśākhādinirvṛtta*), is destroyed. Therefore, Jayarakṣita and Sunayaśrī refer to the same theory. Only Jayarakṣita states the reason why a fetus that has not developed the five limbs may be destroyed: since

⁶ Singh 1983: “Appendix 6”, *pādas* 5cd reconstructed from the commentary.

⁷ Text in Singh (1983: 54). The translation is mine (cfr. Singh 1983: 138-139; Derrett 1983: 22).

it does not breathe, it is not a ‘breathing being’ (*prāṇin*), and since the vow as taught by the Buddha merely prohibits ‘killing breathing beings’ (*prāṇātīpāta*), the unbreathing fetus of whatever species may be killed.⁸ As for the human species in particular, the unbreathing human fetus is not a man (*manuṣya*), and its destruction is not homicide (*manuṣyavadha*). To be sure, it must be killing, given Jayarakṣita’s definition of death as the destruction of the faculty of life,⁹ not of breath.

Jayarakṣita also adds some temporal specifications: the period when the fetus is not a man starts with the first fetal stage (*kalalādi*), i.e. from conception, and ends with the development of the sexual faculties (*indriya*). Jayarakṣita does not say how long this period lasts. According to most Buddhist schools, the fetus is *kalala* in the first week, *arbuda* in the second one, *peṣī* in the third one, *ghana* in the fourth one, and *praśākhā* in the fifth and in the following weeks of gestation. During the long *praśākhā* stage the fetus has five limbs. By the end of the seventh week, the fetus is endowed with the *indriyas* (eye, ear, nose, tongue) other than body and mind (*kāya, manah*), already present at birth.¹⁰ The development of breath, therefore, seems to be more or less concomitant with the development of the sexual faculties and of the other faculties. According to this timeline,

⁸ I disagree with Derrett (1983: 22, n. 2), according to whom killing a living being who has not developed the five branches must “certainly be a *dukkata* [minor offence]”. He refers to Theravāda *pācittiya* 61, which is about killing animals.

⁹ *mṛtyur jīvitendriyanirodhaḥ* (Singh 1983: 54).

¹⁰ See Appendix Two for various opinions on the development of the limbs, breath, and the *indriyas*. As for the common Buddhist embryology here presented, the canonical passage on the five stages is found in a verse of the *Saṃyuttanikāya* I 206 (Feer’s old edition) and I 443 (Somaratne’s new edition) = *Kathāvatthu* 494: *pañhamam kalalam hoti kalalā hoti abbudam | abbudā jāyate peṣī peṣī [or: peṣiyā] nibbattatī ghanā | ghanā pasākhā jāyanti kesā lomā nakhā pi [or: nakhāni] ca*. In prose also in *Mahānidessa* I 20. The commentaries specify the duration of each stage: *tasmā kalalā sattāhaccayena ... abbudam nāma hoti ... sattāhaccayena ... peṣī ... sattāhaccayena ghanā ... ghanā pasākhā jāyanti ti pañcame sattāhe* (*Saṃyuttanikāya-aṭṭhakathā* I 301; see also *Mahānidessa-aṭṭhakathā* II 247-248 and Boisvert 2000: 308). These passages confirm a Thai monk’s suggestion (Singh 1983: 138, n. 8) that the five branches are the arms, the legs, and the head, which all develop at the *praśākhā* stage. To this stage must refer the very term *śākhā* in the *Śrīghanā-cārasaṅgraha*. Cf. *Suśrutasaṃhitā* III 17: *ṛṣṭīye [māsi] hastapādaśirasām pañca piṇḍakā nirvarttante* (Bhishagraṭna 1998: II 159); *Carakasāṃhitā* IV 11: *ṛṣṭīye māsi sarvendriyāṇi sarvāṅgāvayavāś ca yaugapadyenābhinirvartante* (Jādvaji Trikamji 1981: 618); *Aṣṭāṅ-gaḥḍdayasaṃhitā* II 1.54bc-55: *vyaktībhavati māse ‘ya ṛṣṭīye gātrapañcakam || mūrddhā dve sakhīnī bāhū sarvasūkṣmāṅgajanna ca* (Parāḍakara 1982: 371).

feticide within the first forty-nine days from conception would not be homicide.

Jayarakṣita must reconcile the legitimacy of the “destruction of the *kalala* etc.” (*kalalādi-śātana*), advocated by himself, with the proscription of abortion (*garbha-pātana*) enshrined in all *Vinayas*. We know that Jayarakṣita endorses this proscription because just as the various *Vinayas* explicitly mention the prohibition of abortion only after the general definition of ‘killing human beings’, so does he quoting the following verse:¹¹

virekavamanālepaviṣaśastrābhisaṃskṛtim |
na kuryāt prāñighātāya na ca garbhasya śātanam || 7 ||

[A novice] should not make preparations of purgatives, emetics, ointments, poisons, and weapons to kill breathing beings, nor [should he cause] the destruction of the fetus.¹²

This verse explicitly proscribes abortion using the phrase *garbhasya śātanam*, which is very close to the *Vinaya* compound *garbhapātana*. The author of the verses and Jayarakṣita, therefore, know and accept the *Vinaya* prohibition of ‘causing the fall of the fetus’, but they interpret it in a particular way. For, if “the destruction of the *kalala* etc.” (*kalalādi-śātana*) does not cause loss of the vow, whereas “the destruction of the fetus” (*garbhasya śātanam*) does, it follows that according to the author of the verses and Jayarakṣita the word *garbha* in the *Vinaya* does not apply to the fetus in its early stages of development (*kalalādi*), but only to a fetus that has developed the five limbs, as Sunayaśrī puts it, and breathes, as Jayarakṣita puts it. Therefore, the doctrine in favor of feticide is here reconciled with the *Vinaya*, and this means that it is addressed not just to novices, but even to monks.¹³

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¹¹ Singh 1983: “Appendix 6” (verse 7 reconstructed from the commentary).

¹² The reading *garbhaśātane* was also known to Jayarakṣita (ib.): *kecit garbhaśātana-nimittaṃ virekādikam na kuryād iti nimittasaptamīm varṇayanti*.

¹³ Differently Derrett (1983: 22): “...so an unformed embryo’s destruction (though an offence for a monk) is not a cause of loss of status for a novice”. The words in brackets are only Derrett’s opinion, based on the *Vinayas* of other Buddhist traditions.

As already seen, Jayarakṣita defines *prāṇa* as breath (*vāyu*). This is no innocent statement, for he could have hardly ignored another, more influential and less literal definition. Vasubandhu's *Abhidharmakośabhāṣya* mentions two definitions of *prāṇa*. The context is the same as Jayarakṣita's: 'killing living (or breathing) beings' (*prāṇātīpāta*). Vasubandhu's first definition is the same as Jayarakṣita's: *prāṇa* is wind (*vāyu*).¹⁴ The second and therefore preferable definition is different: *prāṇa* is the faculty of life (*jīvitendriya*).¹⁵ Another most authoritative text, the commentary to the Pāli *Vinaya*, in an analogous context (third *pārājika*: homicide), also mentions two definitions: in everyday language *pāṇa* means 'living being' (*satta*), but in rigorous language it means the faculty of life (*jīvitendriya*).¹⁶ The latter meaning is therefore the correct one according to both Vasubandhu and Theravāda orthodoxy. Since the faculty of life is present from the moment of conception, according to Vasubandhu and Buddhaghosa abortion qualifies as *prāṇātīpāta* and *manuṣyavadha* at all stages of pregnancy, no matter whether the fetus breathes or not. The definition of *prāṇa* as life is therefore crucial for those Buddhists who want to classify every type of feticide as homicide.¹⁷

¹⁴ *kathaṃ kṣaṇikeṣu skandheṣu prāṇātīpāto bhavati | prāṇo nāma vāyuḥ kāyacit-tasannīrito vartate tam atīpāyati* (*Abhidharmakośabhāṣya ad IV 73ab*; Pradhan 1975: 243 = Shastri 1970-1973: II 685).

¹⁵ *jīvitendriyaṃ vā prāṇaḥ tan nirodhayati | yady ekasyāpi jīvitakṣaṇasyotpadyamāna-syāntarāyaṃ karoti prāṇātīpātāvadyena spṛśyate nānyathā*. (*Abhidharmakośabhāṣya ad IV 73ab*; Pradhan 1975: 243 = Shastri 1970-1973: II 685).

¹⁶ *tattha pāṇo ti vohārato satto paramatthato jīvitindriyaṃ. jīvitindriyaṃ hi atīpātentō pāṇaṃ atīpāteṭṭi vuccati* (*Vinaya-aṭṭhakathā II 439*). Notice, however, that the Chinese text more or less literally derived from the *Samantapāsādikā* is so different that it agrees with Jayarakṣita: 問曰。何謂應知眾生。答曰。世人喚假名為眾生。論其實者生氣也。云何應知斷眾生命。答曰。斷生氣勿令生也 (T.1462 XXIV 751a10-13), "Question: How should one understand 'living being' (*satta*)? Answer: people in the world conventionally call it 'living being' (*satta*, instead of the expected *pāṇa*). Those who discuss its real nature [call it] 'breathing being / breath / production of breath' (*pāṇa*, instead of the expected *jīvitindriya*). How should one understand 'cutting off the life of a living being?' Answer: Cutting off breath / production of breath, so that one is not allowed to live". Only in minor details does my translation differ from Bapat and Hirakawa's (1970: 319).

¹⁷ See Poussin (1923-1931: III 154, n. 2): "Contre la première définition on formule cette objection que l'*āśva[sic]saprāśvāsa* manque pendant les quatre premières périodes de la vie embryonnaire. – Tuer un embryon ne serait donc pas chemin-de-l'acte. – Houéihouéi cite le Nanjio 1157 (école Mahīśāsaka) qui fait du *manuṣyavagraha* de Pārājika iii. L'embryon jusq'au 49^{me} jour..."

According to Buddhaghosa one who practices meditation on breath should ask himself: *ime assāsapassāsā nāma kattha atthi, kattha n' atthi*, “Where do these in-breaths and out-breaths exist?” And he should answer: *ime anto mātukucchiyaṃ n' atthi* “they do not exist [in one] inside the mother’s womb”.¹⁸ A literalist definition of *prāṇin* in Theravāda would entail extreme consequences: abortion would be legal at all stages of pregnancy. Not even Jayarakṣita claims this.

Jayarakṣita implies that the fetus starts breathing during gestation, when the fetus has five limbs. This theory is already attested in the *Jñānaprasthāna*, the fundamental text of the Sarvāstivādins, who however were anti-abortionists (see Appendix One, 4). In the *Jñānaprasthāna* the context is meditation on breath. The following passage tells us that it is only during the first four embryonic stages that breath is not present:¹⁹

入息出息。當言依身轉耶依心轉耶。答應言亦依身轉亦依心轉。如其所應。...不如所應在卵殼及母胎中。羯刺藍頰部曇閉尸鍵南。諸根未滿未熟。並在第四靜慮。入出息亦應轉。

Should one say that the activities of inhaling and exhaling depend on the body or on the mind? Answer: One should say that these activities depend both on the body and on the mind, as appropriate (*yathāyogam*)... If not as appropriate, then inhaling and exhaling would also occur in the egg and in the womb, at the stages of *kalala*, *arbuda*, *ghana*, and *peśī*,²⁰ when the faculties (*indriya*) are neither complete nor ripened yet, as well as in the fourth meditation (*dhyāna*).

The *Mahāvibhāṣā* quotes the last sentence and comments it as follows:²¹

¹⁸ *Visuddhimagga* (Warren and Kosambi 1950: 234). Translation in Nānamoli (1991: 276; I add the square brackets). See also *Vinaya-aṭṭhakathā* II 425 and *Paṭisambhidā-magga-aṭṭhakathā* II 498. It seems that Buddhaghosa is referring to the entire gestation period, and so Keown (1995: 72) understands. Buddhaghosa uses the term *assāsa* as a synonym of *pāṇa*.

¹⁹ T.1544 XXVI 921c13-21 (Xuanzang’s translation, A.D. 657-660). For a modern Sanskrit translation see Śāstrī (1955: 23). The same passage is found in Gautama Saṅghadeva’s translation (A.D. 383), entitled *Aṣṭa-grantha* (T.1543 XXVI 776a8-15).

²⁰ Somewhat different in Gautama Saṅghadeva’s version, who is not content with a transliteration: “... then the limbs and the skin in the egg or in the womb turn thicker, like koumiss” (T.1543 XXVI 776a14).

²¹ T.1545 XXVII 132b5-12. Cfr. *Yogācārabhūmi (Śrāvakabhūmi)*: *dvāv āsvāsaprasāvāsayoh saṃniśrayau | katamau dvau | kāyaś cittaṃ ca | tat kasya hetoḥ | kāyasamniśritāś cittasamniśritāś cāsvāsaprasāvāsāḥ pravartante | te ca yathāyogam | sacet kāyasamniśritā eva pravarteran | asaṃjñīsamāpannānāṃ nirodhasamāpannānāṃ asaṃjñīsattveṣu*

問何故羯刺藍位息不轉耶。答彼稀薄故若息轉者彼應流動。問何故頰部曇閉尸鍵南諸根未滿未熟位息不轉耶。答彼身爾時風道未通毛孔未開。若息轉者身應散壞。然在卵殼及母胎中。從羯刺藍乃至諸根未滿未熟。爾時未有息所依身風道未通毛孔未開。唯有息地羸心現前。雖有一事而闕三事故息不轉。

Question: Why does breathing not occur at the stage of *kalala*? Answer: Because it is thin, and if breathing did occur, [the *kalala*] would flow away. Question: Why does breathing not occur in the stages of *arbuda*, *peṣī*, and *ghana*, when the faculties are not complete yet, are not ripened yet? Answer: At that time in the body the path of the wind has not gone through yet, and the hair pores (*romakūpa*) are not open yet. If breathing did occur, the body would be scattered and destroyed. Thus, in the egg-shell and in the mother's womb, from the [stage of] *kalala* until the faculties are not yet complete and ripen, during this time there is no [1.] body yet [that could function as a] support of breath, [2.] the path of the wind has not gone through yet, and [3.] the hair pores are not open yet. There is only [4.] the presence of a gross mind to support breath [? *prāṇa-bhūmi-audārika-citta-saṃmukhī-bhāva*?]. Although one item [that supports breath, i.e. the fourth one] is present, since three items [numbered above] are missing, breathing does not occur.

We can link these elements of embryology to the Buddhist theory of life and rebirth epitomized in the twelve stages of the *pratītyasamutpāda*. All five embryonic stages mentioned above, from *kalala* to *praśākhā*, develop during the fourth stage of the *pratītyasamutpāda*, namely *nāmarūpa*, but the *praśākhā* lasts longer and reaches the subsequent stage of *saḍḍāyatana*:²²

云何名色。謂結生已未起眼等四種色根。六處未滿中間五位。謂羯刺藍頰部曇。閉尸。鍵南。鉢羅奢佉。是名色位。云何六處。謂已起四色根。六處已滿即鉢羅奢佉位。

deveṣūpapannānām sattvānām pravarteran | sacce cittasaṃniśritā eva pravarteran | tenārūpyasamāpannopannānām sattvānām pravarteran | sacet kāyasaṃniśritās cittasaṃniśritāḥ pravarteran | te ca na yathāyogaṃ tena caturthadhāna-samāpannopannānām sattvānām kalalagatānām cārbudagatānām peṣīgatānām sattvānām pravarteran | na ca pravartante | tasmād āśvāsapraśvāsāḥ kāyasaṃniśritās cittasaṃniśritās ca pravartante | tena yathāyogaṃ | ... dve āśvāsapraśvāsayor bhūmī | ... tatrāudārikaṃ sauṣīryaṃ nābhīpradeśam upādāya yāvad mukhanāsikādvāraṃ ... sūkṣmaṃ sauṣīryaṃ ... sarvakāyagatāni romakūpāni (Wayman 1961: 89-90 = Shukla 1973-1991: I 221; I modify the punctuation and eliminate editorial diacritics).

²² T.1545 XXVII 119a5-9.

What is *nāmarūpa*? After rebirth-linking has occurred, but the four material faculties (*indriyas*), the eye etc. [i.e. the ear, the nose, and the tongue], have not arisen yet, the six *āyatanas* are not complete. [It corresponds to] the five internal stages: *kalala*, *arbuda*, *peśi*, *ghana*, and [the initial stage of] *praśākhā*. This is the stage of *nāmarūpa*. What is *ṣaḍāyatana*? After the four material faculties (*indriya*) have arisen, and the six *āyatanas* are [therefore] complete. This is the [continuation of the] stage of *praśākhā*.

Jayarakṣita and Sunyaśrī must have relied on this theory. The ‘development of the five limbs/branches’ and the beginning of breathing correspond to the development of the *āyatanas*.²³ Even the *Vimuttimaggā*, in a passage that compares the twelve *nidānas* of the *pratītyasamutpāda* to the stages of the life of a plant, likens *ṣaḍāyatana* to the development of “branches”.²⁴ From this moment onwards, the fetus’ aspect and psychological activity are indeed comparable to those of a new-born baby; in particular, it feels pain.²⁵

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* * *

After the *indriyas* have developed, nobody would seem to doubt that the fetus is a man and that feticide is homicide. As for the preceding period of gestation, a doubt might certainly remain in a nihilist, according

²³ See also Asaṅga’s *Abhidharmasamuccaya* (V.V. Gokhale 1947: 31): ...’*ntarābhavo nirudhyate, kalalañ ca savijñānakam utpadyate, sa ca vipākaḥ | tata ūrdhvam indriyābhinirvṛtīḥ, yathā pratītyasamutpāde* ... See also *Abhidharmakośabhāṣya ad III 21d-22a* (Pradhan 1975: 132 = Shastri 1970-1973: II 437). See also the commentary to the *Arthaviniścayasūtra* (Samtani 1971: 121,123): *ta ete pañcaskandhāḥ kalalārvudaghanapeśiśākhāpraśākhāvasthā aniṣpannaṣaḍāyatana vijñānapratyayaṃ nāmarūpaṃ...kāyāśrita-cakṣurādyaṃ utpattau satyāṃ kāyāyatanaṃ paripūrṇaṃ bhavati | tadā tasyāyatanaśrāyāś cakṣurādāyasa tadāniṃ paripūrṇā iti*.

²⁴ Bapat 1937: 104, corresponding to T.1648 XXXII 450b23-24.

²⁵ Boisvert (2000: 308), without speaking of abortion, sees the beginning of a completely new phase starting with the fifth week: “The first four stages would belong to the embryo, whereas the last, the *pasākhā*, where a distinct human form arises, would be the fetus”. Indeed, Buddhaghosa explicitly refers to the psychological activities that are possible after the development of the *indriyas*, at the stages of *sparśa*, *vedanā* etc. of the *pratītyasamutpāda*: *so indriyasampanno phusati vediyati tañhīyati upādiyati ghaṭiyati...* (Warren and Kosambi 1950: 464); see also *Mahāvibhāṣā* T.1545 XXVII 119a8-17. The Mahāśārngika tradition that the bodhisattva, as soon as he enters the womb, is immediately at the stage of *praśākhā* (Bareau 1955: 61, thesis 18) seems to confirm that this stage was felt to be qualitatively different from the preceding ones.

to whom consciousness arises from a body endowed with breath and with the *indriyas*.²⁶ But Jayarakṣita is not a nihilist, and we must assume that, just as any Buddhist, he also believes that the fetus is endowed with life and consciousness from conception. His idea that the unbreathing human fetus is not a ‘man’ (*manuṣya*) and may be killed is disconcerting: what is his source? He claims that everything he says comes from the *Vinaya*.²⁷ Therefore, we should now survey the definitions of ‘man’ and ‘abortion’ in the extant canonical or, lacking this, post-canonical *Vinaya* literature. In Appendix One I arrange all these materials into three groups because they disagree on a most important term:

1. according to some texts (see Appendix One, 1), homicide means killing a “man” (*manuṣya*);
2. according to other texts (see Appendix One, 2), it means killing a “being with the body/shape of a man” (*manuṣyavigraha*);
3. according to a third group of texts (see Appendix One, 3), it means killing “either a man or a being with the body/shape of a man” (*manuṣyaṃ vā manuṣyavigrahaṃ vā*).

When these terms are defined in the texts of the first and second groups, we find out that the terms *manuṣya* and *manuṣyavigraha* are equivalent: they both refer to the entire pre-natal and post-natal life. According to the texts of the third group, however, they are mutually exclusive: the term *manuṣyavigraha* refers to the fetus until the development of the *indriyas* (first forty-nine days according to the Mahīśāsakas), whereas the term *manuṣya* refers to the following pre-natal and post-natal life.

Jayarakṣita accepted the definition of *manuṣya* found in the *Vinaya* schools of the third group, but his *Vinaya*, whatever it was, belonged to the first group as no *manuṣyavigraha* was mentioned. Otherwise he could not claim that early feticide is not homicide. Among the *Vinayas* of the third group, the authoritative one for Jayarakṣita was either the Mahāsāṃghika *Vinaya* (extant in Chinese) or a related one (not extant).²⁸ It is

²⁶ *kāyād eva tato jñānaṃ prānāpānādyadhiṣṭhitatvāt | yuktaṃ jāyate ity etat Kambalāśvataroditam | | kalalādiṣu vijñānam asīty etac ca sāhasam | asaṅjātendriyatvād dhi na tatrārtho ’vagamyate (Tattvasaṅgraha, kār. 1864-1865).*

²⁷ *bhikṣuvīṇayāt samuddhṛtam (Singh 1983: 121)*

²⁸ See Appendix One, 1.3, and Agostini 2003.

remarkable that only this *Vinaya* omits a definition of the term man as including the entire pre-natal life, and only this *Vinaya* in its section on abortion mentions the “limbs” of the fetus, i.e. it seems to envision a fetus that has limbs. All this does not mean that the Mahāsāṃghika *Vinaya* explicitly allows feticide; it only means that its wording leaves room for interpretation.

With some reasonable degree of speculation, one may try to make sense of all this variety. We should start from the only piece of evidence we have: in the Sarvāstivāda tradition the reading *manuṣyaṃ* was changed into *manuṣyaṃ vā manuṣyavigrahaṃ vā*. The former reading is attested in Sanskrit fragments of the Sarvāstivādins, the latter one in Chinese translations, although the simple reading *manuṣya* is retained in one Chinese passage (see Appendix One, 4).

In the light of this evidence, I suggest that the ‘original’ reading was *manuṣyaṃ* in the Buddhist tradition in general, and that the wording of the canonical commentary as found in the Mahāsāṃghika *Vinaya* is also closer to the ‘original’ version: it is simple, devoid of any legal or abhidharmic sophistication, as though it reflected a time when the interpretation of the precept was not controversial. Later on, the simplicity of this wording allowed for two competing interpretations: 1. abortion is never allowed; 2. in some cases abortion is allowed. Most schools favored the first interpretation. They added definitions (Appendix One, 1) of the term *manuṣya* to enshrine in the canonical commentaries of the *prātimokṣa*, within their *Vinayas*, the interpretation according to which the fetus at all stages of pregnancy is a man endowed with life and consciousness. Other schools (Appendix One, 3) added the compound *manuṣyavigraha* to the old term *manuṣya* in the wording of the precept itself, as the Sarvāstivādins certainly did (Appendix One, 4): they accepted the interpretation of the term *manuṣya* as excluding part of the fetal life, but added the term *manuṣyavigraha* to explicitly protect the fetus in the early stages of pregnancy. Other schools (Appendix One, 2) substituted the term *manuṣya* with the compound *manuṣyavigraha*, understanding it as inclusive of the entire pre-natal and post-natal life.²⁹

²⁹ It may be worth noticing that a possible analysis (*vigraha!*) of this compound is *manuṣyaś ca manuṣyavigrahaś ca*. This possibility was well known to the Buddhists. The *Abhidharmakośabhāṣya ad IV 78d* (Pradhan 1975: 248 = Shastri 1970-1973: II 695-696)

Some data are consistent with this admittedly hypothetical reconstruction. The *Vinaya* term for abortion, ‘causing the fall of the fetus’ (*garbhapātana*), could have been interpreted in the light of the Indian medical and juridical literature: the miscarriage of an undeveloped fetus is a ‘flow’ (root *sru*), whereas the miscarriage of a developed one is a ‘fall’ (root *pat*).³⁰ In both cases abortion would be expressed by a causative form, ‘causing a flow’ in the first case and ‘causing a fall’ (*pātana*) in the second one. Buddhist texts only proscribe *garbhapātana*, and this terminology could be construed as allowing, by implication, an earlier abortion, **garbhasrāvāna*.³¹ I do not have any evidence showing that some Buddhists actually upheld this interpretation (Jayarakṣita is not explicit), but the entire point

analyses the compound *karmapatha* as composed of: 1. *karmapathās ca* 2. *karma ca karmapathās ceti*. This calls for a grammatical explanation. Yaśomitra (Shastri, ib. = Wogihara 1932-1936: 410) applies Pāṇini VII 4 82, which would also allow (*ayam api sidhyati*) a more simple analysis: *karma ca karmapathās ca karmapathā iti*. This corresponds to the analysis of *manuṣyavigraha* given above. Yaśomitra then goes further, to justify Vasubandhu’s more complex interpretation of *karmapatha*. Should we take the same step, the result would be that all human beings are *manuṣyavigraha*, and some are *also manuṣya*.

³⁰ Jolly (1977: 76; he uses the word ‘abortion’ in the sense of ‘miscarriage’): “Abortion in the beginning of pregnancy is called *garbhavicyuti*, *garbhavidrava* ... in the fifth or sixth month when the body of the fetus has already become firm, is denoted as *garbhapāta*. ... Others take the period of *garbhapāta* to begin with the fourth month.” Lipner (1989: 43) refers to Maṛīci as quoted in the *Mitākṣarā* commentary (11th-12th century) *ad Yājñavalkya-smṛti* III 20: *ā caturthād bhavet srāvaḥ pātaḥ pañcamasaṣṭhayoḥ*, “Till the fourth (month of pregnancy, miscarriage) would be an ‘emission (*srāva*), and a ‘fall’ (*pāta*) for the fifth and sixth (months)” (Lipner’s translation, ib.; *Yājñavalkya-smṛti*, p. 338).

³¹ Even in Hindu law, abortion, when not denoted by a term meaning ‘to kill the fetus’, is often referred to with a term related to the root ‘to fall’ (see the occurrences quoted in Lipner 1989: 65 n. 32, 66 n. 46). This, however, does not mean that there is a juridical difference between ‘causing the fall of the fetus’ and ‘causing the flow of the fetus’. For example, Vasiṣṭha (XX 24) says: “By killing a Brahmin or a fetus whose gender cannot be determined one becomes a *bhrūṇahan* — a murderer of a Brahmin; for fetuses whose gender cannot be determined grow to be males” (Olivelle 1999: 304); therefore, it does not matter that the sexual organs have yet to develop during the first month (Appendix Two) or even later (see Olivelle, ib.: n. ad loc.). Again, in *Yājñavalkya-smṛti* III 20 the term *garbhasrāva* covers cases of *garbhapāta*: *garbhasrāve māsatulyā niśāḥ śuddhes tu kāraṇam*, “in the case of a flow of the fetus, the means of purification [to be undertaken by the woman] is [to be undertaken for] as many nights as the months [of pregnancy]” (*Yājñavalkya-smṛti*, p. 338). The *Mitākṣarā* commentary (ib.) explains that the rule applies in the case of miscarriage at any month of pregnancy, even though in the later months one should say *garbhapāte*, and it refers to other examples of this imprecise usage in technical texts. Notice, however, that in common language the difference was maintained (*sravatir yady api loke dravadravayakartṛke parisyande prayujyate ...*; ib.).

of two stories found in the *Petavatthu* of the Theravādins is precisely to confute it. In both a jealous wife kills the fetus of a co-wife. The important difference is that in the first story the fetus is two months old and it ‘flows out’ (*pagghari*), whereas in the second story it is three months old and it ‘falls’ (*pati*). The edificatory purpose of these stories is evident: in both cases the woman is guilty of *gabbhapātana*, in spite of the etymological inconsistency.³² If this had not been the point, one story, without mentioning the age of the fetus, would have been enough. As shown in Appendix Two, the third month is a crucial one in the fetal development: it corresponds to the ‘five-limbed’ stage according to few Buddhist traditions and to classical Indian medicine. However, according to Theravāda doctrine (see Appendix Two) the fetus has five limbs already during the fifth week, and all *indriyas* develop during the seventh week. The disagreement with the *Petavatthu*, a text “clearly addressed to laypeople”,³³ indicates that if a layperson would ever make a difference between abortion and homicide in ancient India, she or he would most probably make it in consonance with the idea that a fetus is liquid up to the second month and solid thereafter, i.e. she or he would follow Indian medicine instead of Theravāda commentaries.

Other data are consistent with my suggestion that some Buddhist traditions reacted against the idea that early feticide is not homicide. Today’s anti-abortionists avail themselves of embryological arguments to make the point that the fetus at very early stages of gestation or even at conception is not substantially different from a fully developed human being

³² The *Petavatthu* stories are I 6 and 7 (pp. 5 and 6; for a translation see Kyaw and Masfield 1980). McDermott (1999: 158-161) analyses both, along with a third one from the *Dhammapada* commentary. In I 6 the guilty woman, now reborn as a *petī*, confesses her sin with these words: *sāhaṃ paduṭṭhamanasā akariṃ gabbhapātanaṃ | tassā dvemāsiko gabbho lohitaṃ nēva paggharī*. The fetus is still ‘liquid life’: *lohitaṃ nēva paggharī ti vipajjamāno ruhiraṃ nēva hutvā vissandi* (*Petavatthu-aṭṭhakathā*, p. 34). In I 7 she says: *sāhaṃ paduṭṭhamanasā akariṃ gabbhapātanaṃ | tassā temāsiko gabbho pubbalohitako* [or: *pūtilohitako*] *pati*. The fetus is now ‘solid life’: *pūtilohitako pati ti kuṇapalohitaṃ hutvā gabbho paripati* (*Petavatthu-aṭṭhakathā*, p. 37). The commentary introduces another important difference between the two stories: in I 6 (pp. 30-31), the woman asks a female non-Buddhist ascetic (*paribbājikā*) to cause the abortion in return of a meal (*annapānādīhi saṅgaṇhivā*), whereas in I 7 (pp. 34-36) she hires a doctor (*vejjaṃ āmisena upalāpetvā*). It seems therefore that the Buddhist author portrays non-Buddhist ascetics as willing to procure abortions up to a certain stage of pregnancy, but not thereafter.

³³ Hinüber 1996: 51.

and therefore feticide is always homicide. In the same vein, we may understand the attempts of the ancient Buddhists to develop a unique embryology according to which the fetus develops the limbs, or the *indriyas*, or breath, much earlier than other Indian traditions held. I arrange all the evidence in Appendix Two in order to show when the crucial development of the fetus takes place according to the various Buddhist traditions, to the Jainas, and to classical Indian medicine. The common Buddhist opinion was that the *indriyas* develop already in the seventh week, and that this development marks the shift from *manuṣyavigraha* to *manuṣya*. Not much room would be left for legal abortion. Some Buddhists belonging to the Mahāsāṃghika group, the Uttaraśailas and Aparāśailas, went as far as maintaining that the fetus is endowed with the *indriyas* at conception, thereby extending to all humans one of the features of the *bodhisattva*'s rebirth.³⁴ This singular theory could have allowed them to refute abortion without changing the letter of the *Vinaya*.

Conclusions

Feticide at the early stages of pregnancy is not homicide according to a Buddhist tradition represented by the author of the Śrīghanācārasaṅgraha, by his four commentators, the last one being Jayarakṣita (7th century A.D.), and by Sunyaśrī (12th cent. A.D.). I suggested that the reading *manuṣyaṃ vā manuṣyavigrahaṃ vā* in some *Vinayas* developed as a reaction to this tradition. This reading is already attested in a Chinese translation dated to 383 A.D. (see Appendix One, 3.1). By this date, therefore, the theory in favor of abortion might have been available in ancient India.

My findings have some relevance for the scholarly discussion of the date of the *Vinayas* and of the method of their composition. The wording of an important precept — and possibly of the canonical commentary on it — was still subject to modifications and additions in the first centuries of the Common Era, probably in the third or fourth century, as the Sarvāstivāda substitution of *manuṣyaṃ* with *manuṣyaṃ vā manuṣyavigrahaṃ vā* shows. Also, the sectarian distribution of the important readings

³⁴ See Bareau 1955: 61 (thesis 18 of the Mahāsāṃghikas): a tenth-*bhūmi bodhisattva* suddenly reaches the stage of *praśākhā*. See *ib.*, pp. 103 (thesis 25 of the Uttaraśailas), 105 (thesis 9 of the Aparāśailas).

manuṣyaṃ, *manuṣyavigrahaṃ*, and *manuṣyaṃ vā manuṣyavigrahaṃ vā* does not follow the lines of sectarian affiliation and must be explained as a result of late contamination.

Finally, I have not taken any position on the original Buddhist view of abortion because I have not found clear evidence on the original period. All we can say is that the unconditional prohibition of abortion is attested in most Buddhist traditions and is consistent with everything we know of the Buddhist view of life and rebirth. It is certainly possible that somewhere in ancient India local custom allowed feticide, and that some Buddhists decided that such a custom could be reconciled with the *Vinaya*.

APPENDIX ONE

Statements on Murder and Abortion in *Vinaya* Literature

1. The reading *manuṣyaṃ*

1.1. *Vinayamāṭṛkā*.

This is a commentary to the Dharmaguptaka or Haimavata *Vinaya*.³⁵ We are interested in the following passages:

若比丘斷人命。得波羅夷。不應共住。... 從受母胎乃至老時斷人命者。皆得波羅夷。³⁶

If a monk cuts off the life of a man, he incurs a *pārājika*. He should not reside together [with the other monks]. ... From [the time the new being] takes [place in] the womb of the mother until it is old, if [a monk] cuts off the life of man, he incurs in all cases a *pārājika*.

1.2. Dharmaguptaka *Vinaya*

This *Vinaya* was translated into Chinese in A.D. 410-412:

若比丘故自手斷人命。... 人者從初識至後識而斷其命。³⁷

³⁵ Nakamura 1980: 56 n. 24.

³⁶ T.1463 XXIV 839b27, 29.

³⁷ T.1428 XXII 576b26-27, c1-2.

If a monk intentionally with his own hand cuts off the life of a man ... Man [means]: from the first [moment of] consciousness up to the last [moment of] consciousness, and one cuts off his life.

1.3. Mahāsāmghika Vinaya

This *Vinaya* was translated into Chinese in A.D. 416-418:

若比丘自手奪人命...人者。有命人趣所攝。奪命者。令彼命根不相續四大分散。是名奪命。...欲墮胎者胎分乃至身根命根墮者波羅夷。³⁸

If a monk, with his own hands, takes the life of a man ... ‘Man’ [means:] a living being included in the human destiny of rebirth. ‘Takes the life’ [means:] he causes his life not to continue, and the four great [elements] (*mahābhūta*) to separate and scatter. This is called ‘taking life’... If [a monk] wants to cause a fall of the fetus, and he causes the fetus’ limbs, down to the body-faculty and the life-faculty, to fall, he is *pārājika*.

Since Jayarakṣita’s *Vinaya* was very close to the Mahāsāmghika *Vinaya*, a close comparison is in order. The statement 人者。有命人趣所攝 could be translated in Sanskrit as **manuṣya iti prāṇī manuṣyagatipariḡhūtaḥ**.³⁹ Jayarakṣita could have had this passage in mind when he gave the definition of *prāṇin*: *prāṇīśabdena ca manuṣyagatiparyāyaḥ eva parigrhyate* (see above for the entire passage).

It is important to notice that only this *Vinaya* does not define the term ‘man’ with some words like ‘from the first moment of consciousness...’. When it comes to define abortion, only this *Vinaya* envisions a fetus that has “limbs”, which develop at a later time than conception.

³⁸ T.1425 XXII 255a8-9, 17-18 and b25-26. See also the Mahāsāmghika *Bhikṣu Prātimokṣasūtra* and *Bhikṣuṇī Prātimokṣasūtra* (T.1426 XXII 549c12, T.1427 XXII 556c12).

³⁹ The back translation *manuṣyagatipariḡhūta* is almost certain: it is a common term, and it deserved an entry in the *Mahāvvyutpatti* (Mvy. 9230; with a different Chinese rendition). I recognize that the back translation *prāṇī*, however, is less certain. 有命 literally means ‘having life’. In Mvy. 4917 it corresponds to *prāṇibhūta*. In the Mahāsāmghika *Vinaya* (*pācattika* 19: not to use water containing tiny living beings), we find the gloss 虫者乃至微細有命, “insects [means]: down to tiny 有命” (T.1425 XXII 345a10). Hirakawa’s *Index to the Abhidharmakośabhāṣya* (1973-1978) lists three Chinese translations for *prāṇin* (s.v.), and none of them is exactly 有命. Still, *prāṇa* (s.v.) is given as the equivalent of 命, and it is therefore at least possible that *prāṇin* (‘having *prāṇa*’) corresponds to 有命 (‘having 命’).

2. The reading *manuṣyavighraha*

2.1. Lokottaravādin *Prātimokṣasūtra*

*yo puna bhikṣuḥ svahastaṃ manuṣyavighrahaṃ jīvitād vyaparopeya....*⁴⁰

Whatever monk should, with his own hand, deprive one who has human form of life....

2.2. Theravādin *Vinaya*

*yo pana bhikkhu sañcicca manussaviggahaṃ jīvitā voropeyya... manussaviggaho nāma yaṃ mātukucchismiṃ paṭhamaṃ cittaṃ uppannaṃ paṭhamaṃ viññāṇaṃ pātubhūtaṃ yāva maraṇakālā ethantare eso manussaviggaho nāma. ...jīvitā voropeyyā ti jīvitindriyaṃ upacchindati uparodheti santatiṃ vikopeti.*⁴¹

Whatever monk should intentionally deprive a human being of life ... *Human being* means: from the mind's first arising, from (the time of) consciousness becoming first manifest in a mother's womb until the time of death, here meanwhile he is called *human being*. ...*Should deprive of life* means: he cuts off the faculty of life, destroys it, harms its duration.

3. The reading *manuṣyaṃ vā manuṣyavighrahaṃ vā*

Texts belonging to this section are mainly extant in Chinese. Before quoting them, one must ascertain what Chinese characters correspond to the compound *manuṣyavighraha*. Many rules of the Pāli *pātimokkha* are again quoted in the last book of the *Vinayapiṭaka*, the *Parivāra*. The Chinese translation of the *Upālipariṭicchāsūtra* is extremely close to this text, so much so that it seems to be a slightly different version thereof, possibly belonging to the Theravādins of the Abhayagirivihāra.⁴² In the

⁴⁰ Text in Tatia (1975: 7). Translation in Prebish (1996: 50). In the *uddāna* of the same text (folio 8, *verso*), Roth (1970: 27, n. 4) reads *manuṣyavisamīgrahasyā-....* He (ib.: xviii) used photoprints of the manuscript and the old edition by Pachow and Mishra (1956). However, Pachow and Mishra (ib., p. 7) read *manuṣyavighrahaṃ syāt*, whereas Tatia (1975: 8) has the correct *manuṣyavighrahasyā-...* The *Bhikṣuṇī Vinaya* of the Lokottaravādins (Roth 1970: 27) also reads *manuṣyavighrahaṃ*, but in a different context.

⁴¹ Pāli *Vinaya* III 73. Translation in Horner 1949-1966: I 125-126. Norman, too, translates *manussaviggaha* as "human being" (Pruitt and Norman 2001: 9).

⁴² Stache-Rosen 1976: 29-30; 1978; 1984: 30. The affiliation to the Abhayagiri school, however, is not certain (Hinüber 1996: 23). The *Upālipariṭicchāsūtra* was translated by Guṇavarman into Chinese in the first half of the 5th century (Stache-Rosen 1976: 27; 1984: 26-27, 31).

Upālipariṣṣchāsūtra the precept against killing human beings includes the following words: 故斷人類命, “intentionally cuts off the life of a [being] similar to a man”.⁴³ Like many *Vinaya* translations, the translation of the *Upālipariṣṣchāsūtra* is indebted to Kumārajīva’s version of the Sarvāstivāda *Vinaya* for the renditions of many technical terms. Therefore, this translation does not really tell us what force *viggaha* had for a Theravādin. For our purposes, however, it is enough that when we find the rendition ‘similar to a man’ in other Chinese translations, we can reasonably assume that the original Sanskrit term was indeed *manuṣyavighraha*.

3.1. The commentary entitled *Vinaya*.

The *nikāya* affiliation of this text is unknown. It is the most ancient *Vinaya* text transmitted in the Chinese Buddhist canon. It was translated by Buddhasmṛti in A.D. 383.⁴⁴ In the section on the third *pārājika* it says:

若比丘若人人形之類。自手念斷其命。… 在母胞胎中得二根。身根命根。比丘若於彼懷殺意咒墮人胎。作是殺者。波羅移不受。⁴⁵

If a monk, with his own hands, intentionally cuts off the life of a man or of a [being] similar to a man’s form/body, ... In the placenta it obtains two faculties: body faculty and life faculty. If a monk, having the intention to kill it, using charms, causes a fall of a human fetus, and doing this he kills it, [this monk] is *pārājika*, he is not accepted [in the *saṅgha*].

The expression “similar to a man’s form/body” seems to represent the transition between the literal meaning of *manuṣyavighraha*, “man’s form/body”, and its later Chinese renditions as “similar to man”.

⁴³ T.1466 XXIV 903c9. Stache-Rosen, showing the similarity with the Pāli version in her introduction (ib.: 20), translates 人類 as “einem menschen”, but her real translation (ib.: 43) is more literal and agrees with mine: “einem menschenähnlichen Wesen”. To be sure, the Chinese 人類 could also mean “mankind, humanity”, which would probably be the first meaning selected by a modern Chinese speaker. This meaning would agree with Horner’s translation and would spare us the task of looking into this expression any longer. However, we will see that another Chinese translation of *manussaviggaha* can only mean ‘similar to a man’ and that the Tibetan and Chinese translations of this term in the Mūlasarvāstivāda *Vinaya* do not mean ‘humankind’.

⁴⁴ Nakamura1980: 55.

⁴⁵ T.1464 XXIV 856b7-8, 25-27.

3.2. Mahīśāsaka Vinaya

The *Vinaya* of this school was translated in A.D. 422-423:

若比丘。若人若似人。若自殺...入母胎已後至四十九日名為似人。過此已後盡名為人。⁴⁶

If a monk by himself kills a man or a [being] similar to a man ... Until forty-nine days after [consciousness] has entered the maternal womb, [the being] is called ‘similar to a man’. At any time thereafter, it is called ‘man’.

Only this text specifies how long the *manuṣyaviḡraha* lasts: seven weeks (fourty-nine days).

3.3. Kāśyapiya Prātimokṣasūtra

It was translated in A.D. 543 by Gautama Prajñārucci, an *upāsaka* from Benares: 若比丘。若人若似人。故自手斷其命....,⁴⁷ “If a monk, intentionally, with his own hands, cuts off the life of a man or a [being] similar to a man...”

3.4. Mūlasarvāstivādin Prātimokṣasūtra and Vinaya

In the *Prātimokṣasūtra* we read:

*yaḥ punar bhikṣur manuṣyaṁ vā manuṣyaviḡrahaṁ vā svahastaṁ saṁcintya jīvītād vyavaropayec...*⁴⁸

⁴⁶ T.1421 XXII 8b2-3,7-8.

⁴⁷ T.1460 XXIV 660a1-2. On Gautama Prajñārucci see Wang (1994: 175) and Bagchi (1927-1938: II 440).

⁴⁸ Text in Chandra 1960: 2. In his edition, the string of syllables *yaḥ punar bhikṣur manuṣyaṁ vā manuṣya-* is reconstructed from the Tibetan, but Prof. Oskar von Hinüber kindly informed me that the Sanskrit text is extant in the Peking manuscript of the Mūlasarvāstivādin *Prātimokṣasūtra*. The Tibetan reads: *yañ dge sloñ gañ mi'am mir chags pa la bsam bzin du rañ gi lag giś dar te | srog bcaḍ dam | de la mtshon byin byin nam ...* (Vidyabhusana 1915: 79). Vidyabhusana's translation (ib., p. 40: "...takes away the life of a human being...") does not account for *mir chags pa*, “human fetus”, and this error was reproduced by Pachow (1955: 76) in his comparative study of the *prātimokṣa*. The Gilgit fragments edited by Chandra complement those previously edited by Banerjee (now in Banerjee 1977: 14), translated by Prebish (1996: 51), who has a note *ad loc.*: “The distinction between a human and one that has a human form seems to be only in this text.” This must be corrected in the light of the evidence of the Chinese translations. I know of only one more occurrence in published Sanskrit literature of the reading *manuṣyaṁ vā*

Whatever monk should intentionally, with his own hand, deprive a human or one that has a human form of life...

For the related passage in the Mūlasarvāstivāda *Vinaya*, we have to turn to the Chinese and Tibetan translations. This *Vinaya* was translated into Chinese by Yìjīng in the seventh century A.D.:

若復苾芻若人若人胎。故自手斷其命。...言人者謂於母腹已具六根。所謂眼耳鼻舌身意。人胎者謂初入母腹。但有三根謂身命意。...斷命者令彼命根不得相續。⁴⁹

And if a monk intentionally, with his own hands, cuts off the life of a man or of a human fetus... The word ‘man’ means: in the mother’s womb, already provided with the six faculties, i.e. the eye, the ear, the nose, the tongue, the body, and the mind. ‘Human fetus’ means: as soon as [consciousness] enters the womb of the mother, [the fetus] being provided with only three faculties, i.e. body, life, and mind. ... ‘Cuts off the life’ means: he causes another’s life faculty not to continue.

4. Sarvāstivāda: from *manuṣyaṃ* to *manuṣyaṃ vā manuṣyavīgrahaṃ vā*

The *Prātimokṣasūtra* of this school was discovered in Central Asia. Its *nikāya* affiliation became evident after a comparison with Kumārajīva’s Chinese version.⁵⁰ In the extant fragments of the third *pārājika* the simple reading ‘man’ occurs:⁵¹ *yaḥ punar bhikṣur manuṣyaṃ svahastena*

manuṣyavīgrahaṃ vā: it is found in the text on monastic ordination (*Bhikṣukarmavākya*) of the Mūlasarvāstivādins, in the section on the third *patanīya* (Banerjee 1977: 68).

⁴⁹ T.1442 XXIII 660a27-28, b4-6, b7. See also the Mūlasarvāstivāda *Vinaya Saṅgraha*, T.1458 XXIV 537c11-20. For the Tibetan version see Derge, Kanjur, Ca, 136a4-6: *mi’am źes bya ba ni gaṅ gis ma’i ltor dbaṅ po drug po ’di lta ste | mig gi dbaṅ po daṅ | rna ba’i dbaṅ po daṅ | sna’i dbaṅ po daṅ | lce’i dbaṅ po daṅ | lus kyi dbaṅ po daṅ | yid kyi dbaṅ po thob par gyur pa’o | | mir chags pa la źes bya ba ni gaṅ gis ma’i ltor dbaṅ po gsum po ’di lta ste | lus kyi dbaṅ po daṅ | tshor ba’i [sic; read srog = āyuṣ] dbaṅ po daṅ | yid kyi dbaṅ po thob par gyur pa la’o | ... srog bcaḍ dam źes bya ba ni de’i srog bcaḍ par gyur na’o. See also Mvy. 9236: *mānusa-vīgrahaḥ = mir chag pa [sic: chags pa]*.*

⁵⁰ Finot edited the Sanskrit, and Huber translated the Chinese version into French (Finot and Huber 1913). In the introduction (ib.: 465, n. 1) they speak of a “parfait concordance” between the Sanskrit and the Chinese.

⁵¹ Finot and Huber 1913: 477. Other Sanskrit fragments of the Sarvāstivāda *Prātimokṣasūtra* have been published by Simson (1986-2000), and the simple accusative *manuṣyaṃ* is confirmed by at least three of them (ib.: I 34, 114, 236; it is not certain whether Finot had already used the last one [ib.: I vi, n. 3]).

saṃcintya jīvitād vyaparopayec... To my knowledge, this is the only attestation in any Indian language of the reading *manuṣya*, as opposed to the more sophisticated *manuṣyaviḡraha*. Thanks to this reading, it is possible to trust the Chinese versions of other *Vinayas* where the simple reading ‘man’ occurs.

Strangely enough, the corresponding passage in Kumārajīva’s Chinese version of the Sarvāstivāda *Prātimokṣasūtra* is different from the Sanskrit. The reading is “a man or a [being] similar to a man”, 若比丘。若人若似人。故自手奪命...⁵²

The Sarvāstivāda *Vinaya* was translated into Chinese by the same Kumārajīva and others in A.D. 404-409. In the Vibhaṅga section of the Sarvāstivāda *Vinaya*, we find the statements relevant to murder and abortion. The reading is “a man or a [being] similar to a man”, just as in the Chinese *Prātimokṣasūtra*:

若比丘。若人若人類。故自奪命。...乃至胎中初受二根身根命根。於中起方便殺。...若比丘為殺胎故作墮胎法。若胎死者波羅夷。...乃至胎中初得二根者。謂身根命根迦羅羅時⁵³

If a monk intentionally, by himself, takes the life of a man or [a being] similar to man ... Including [the case when] in the womb [a fetus] first receives two faculties, the body-faculty and the life-faculty, and in this while [a monk] finds a means to kill it. ... As soon as [the fetus] in the womb obtains two *indriyas*, namely the body-faculty and the life-faculty, at the stage of *kalala* ...

In the second part of this and other *Vinayas*, which is not devoted to the explanation of the *prātimokṣa*, almost all schools mention the four *patanīyas* / *akaraṇīyas* as a fundamental teaching for a newly ordained cleric. The four *patanīyas* are grave offenses, and closely correspond to the four *pārājikas* in their order, content, and technical terms in all *Vinayas* but one: the only exception is the Chinese Sarvāstivāda *Vinaya*, which for the third *patanīya* merely uses the term “man”, instead of the expected “a man or a being similar to a man”.⁵⁴ This complex reading is

⁵² T.1436 XXIII 471a12. Huber’s translation (Finot and Huber 1913: 477): “un être humain ou pareil à un être humain ...”.

⁵³ T.1435 XXIII 8b12, 8c17-18, 10a25-27. On abortion see also ib. 157a27-b3 and the Sarvāstivāda *Vinaya Saṃgraha*, T.1440 XXIII 518c23-29.

⁵⁴ T.1435 XXIII 157a21-23: 佛種種因緣訶奪他命。讚歎不奪命。乃至蟻子。不應故奪命。何況人若比丘自手故奪人命... In the other *Vinayas* the wording of the third *pārājika*

also conspicuously absent in the Sarvāstivāda *Vinaya Saṃgraha*, a commentary to the precepts of the *prātimokṣa*.⁵⁵

The reading *manuṣya* is therefore the original one in the Sarvāstivāda tradition, because it agrees with the extant Sanskrit fragments of the *Prātimokṣasūtra*. It was later changed in the *Vinaya* only in the strategic context of the *prātimokṣa*, in the *Vibhaṅga* section, but it was left unchanged in the second section of the same *Vinaya*.

APPENDIX TWO

The crucial moment in the development of the fetus

At conception:

- According to some Buddhist schools related to the Mahāsāṃghikas, the Uttaraśailas (Bareau 1955: 103, thesis 25) and probably the Aparāśailas (ib., p. 105, thesis 9), the *indriyas* develop.
- According to a Buddhist text in the *Mahāsāṃnipāta* collection (T.397 [10] XIII 164b1-11) the fetus already breathes (ib. 7-9).

In the fifth week:

- According to Theravādin commentaries (Boisvert 2000: 308) the limbs develop. The week for the more important development of the *indriyas* is rarely specified, but see below the references to the *Kathāvatthu* commentary (eleventh week) and to the *Abhidhammatthavibhāvinī-ṭīkā* (seventh or eleventh week).

always matches the wording of the third *patanīya/akaraṇīya*: Theravāda, I 37; Dharmaguptaka, T.1428 XXII 815c3ff; Mahīśāsaka, T.1421 XXII 120a28ff; the Mahāsāṃghika *Vinaya* merely reads “the Four *Pārājikas*”, T.1425 XXII 415a24, thereby indicating exactly the same wording as in the *Vibhaṅga*. In the Mūlasarvāstivādin *Bhikṣukarmavākya* (Banerjee 1977: 68), the *patanīya* formula only mentions *manuṣyaviḡraha*, but in an ungrammatical way (*kuntapiḡlako 'pi prāṇeṣu jīvitān na vyaparopayitavyāḡ kaḡ punar vādo manuṣyaviḡrahaṃ vā*); the Buddha’s statement of the third *pārājika* is then quoted as including the words *manuṣyaṃ vā manuṣyaviḡrahaṃ vā*.

⁵⁵ The relevant section is T.1440 XXIII 518a21-519a2.

In the second month:

- According to a brāhmanic text, the *Garbhopaniṣad* (Kapani 1976: 8), the head starts to develop.⁵⁶ This text was perhaps composed in the 2nd-3rd century A.D.⁵⁷ Just as in common Buddhist embryology, the first two stages last one week each. However, the subsequent development of the fetus is described month after month. The head develops in the second month, the feet in the third one, the nose (and maybe breath) in the sixth one, along with the eyes and the ears. Remarkably, it is only in the seventh month that the *jīva* joins the embryo.

In the seventh week:

- According to the *Manobhūmi* section of the *Yogācārabhūmi* (Bhattacharya 1957: 27-28; T.1579 XXX 284c26-285a6) during the seventh and penultimate stage the *indriyas* develop (*caḥṣurādīndriyāṇām abhinirvṛttir indriyāvasthā*). The limbs have already developed in the fifth stage. To be sure, the *Yogācārabhūmi* does not state that each stage lasts a week, but since this passage is explicitly based on the authority of a *Garbhāvakrāntisūtra*, we can infer that each stage (except the last one) lasts a week, as in the three *Garbhāvakrāntisūtras* known to myself (see below). Notice, however, that in these *sūtras* the *indriyas* develop in the nineteenth week (see below).
- According to the *Saṃyuktāgama* (T.100 II 476b18-22) the *indriyas* and sexual organs develop. The limbs have already developed in the fifth week.⁵⁸
- According to the Mahīśāsaka *Vinaya* (T.1421 XXII 8b7-8) a *manuṣyavi-graha* becomes *manuṣya*. This passage does not specify that the *indriyas* develop. Other *Vinayas* (see Appendix One) do not mention the week when the *manuṣyavi-graha* becomes *manuṣya*, but they specify that it happens when *indriyas* develop.

⁵⁶ The French translation (Kapani 1976: 15) skips some words, with the result that *saptame* is wrongly rendered as “sixième”.

⁵⁷ So Lipner (1989: 54), with a question mark.

⁵⁸ It is not a Sarvāstivādin text. An ancient Japanese tradition ascribes it to the Kāśya-pīyas. Scholars are inclined to ascribe it to the Mahīśāsakas or Dharmaguptakas (Mayeda 1984: 101).

- According to the *Vimuttimaggā* (T.1648 XXXII 433b5-16 and in particular b17; English translation by Ehara et al. 1961: 173), one can speak of a body. The limbs have already developed in the fifth week. Notice that this Theravādin text agrees with the first opinion mentioned in the *Abhidhammatthavibhāvinī-ṭīkā*, but not with the second one (seventh week), which is also found in the *Kathāvatthu-aṭṭhakathā*.
- According to the first opinion mentioned in the *Abhidhammatthavibhāvinī-ṭīkā* (Saddhātissa 1989: 163-164 = Wijeratne and Gethin 2002: 249), the *indriyas* develop. Saddhātissa (1989: xix) dates this text to the twelfth century. The second opinion mentioned in the same text refers to the eleventh week and agrees with the *Kathāvatthu* commentary (see below).

In the eleventh week:

- According to the *Kathāvatthu-aṭṭhakathā* (p. 148) the *indriyas* develop.
- According to the second opinion mentioned in the *Abhidhammatthavibhāvinī-ṭīkā* (Saddhātissa 1989: 163-164 = Wijeratne and Gethin 2002: 249), the *indriyas* develop.

In the third month:

- According to classical Indian medicine (*Carakasamhitā*: Jādayji 1981: 327-328; *Suśrutasaṃhitā*: Bhishagratna 1998: 159; *Aṣṭāṅgahṛdayasaṃhitā*: Parāḍakara 1982: 369-371) the limbs develop.⁵⁹ In these texts the fetus' stages last one month each: in the first month the fetus is *kalala*; in the second month it is *ghana* (male), or *peṣī* (female), or *arbuda* (*napuṃsaka*, 'neuter'); in the third month the limbs develop.⁶⁰
- According to the combined evidence of the *Petavatthu* stories I 6 and I 7 (p. 5-6; for a translation see Kyaw and Masefield 1980) the fetus is liquid in the second month and solid in the third one. According to Indian classical medicine this happens in the fourth, or fifth, or sixth month (Jolly 1977: 76).

⁵⁹ The *Suśrutasaṃhitā* was composed in the first centuries B.C. and reached its present form in the first centuries A.D. (Filliozat 1975: 12); the *Carakasamhitā* was composed in the second or first century B.C. (ib., p. 18); the *Aṣṭāṅgahṛdayasaṃhitā* was composed between the seventh and tenth centuries A.D. (ib., p. 11).

⁶⁰ See also Jolly 1977: 66-67.

In the fifth month:

- According to Jaina texts, the *Viyāhapannatti* and especially the later *Tandulaveyāliya*, the limbs develop (Caillat 1974: 51 and *passim*). In the *Tandulaveyāliya* a *śloka* mentions four successive stages of fetal development, corresponding to the first four of the Buddhists, and states the duration of the first two: the *gabbha* is *kalala* for one week, *abbuya* for another week, then *pesī*, and then *ghaṇa* (no time framework is given for the last two stages). This is followed by a prose passage that says something more and something different. It is said that the *pesī* precedes the *abbuya*, or that they represent the same stage (as in Indian classical medicine). Particularly important and at variance with the standard Buddhist tradition are the following statements: the fetus becomes a *pesī* in the second month, in the fourth month the pregnancy is evident from outside,⁶¹ and only in the fifth month does the fetus develop five protuberances, i.e. the hands, the feet, and the head.

In the nineteenth week:

- According to the *Garbhāvakraṅtisūtras*, the *indriyas* (eye, ear, nose, tongue) develop (T.317 XI 888b16-17; T.310[13] XI 324a7-8; T.310 [14] XI 330a4-5). The limbs develop in the fifth week (ib.: 887b16; 323a25; 329b5-6).
- According to some “minor texts” (*luṅ phran tshogs* [*sic*; read *tshegs*]) quoted in the ‘*Dul ba mdo rtsa’i rnam bśad ñi ma’i ’od zer legs bśad luṅ gi rgya mtsho* (a Tibetan work of the 13th century; vol. 1, f. 195b, lines 5-6)⁶² the senses develop.

The author is Kun mkhye mtsho sna ba śes rab bzañ po (1250-1300 A.D.). As the title indicates, this work is a commentary on the *Vinayasūtras* by Guṇaprabha, the greatest authority on monastic discipline in the Mūlasarvāstivādin tradition.

⁶¹ “il fait gonfler le corps de la mère” (Caillat 1974: 51):

⁶² This passage is also quoted and translated in a note to the English translation of a nineteenth century Tibetan treatise on *Vinaya* by Koñ-sprul Blo-gros-mtha’-yas (see Koñ-sprul Blo-gros-mtha’-yas 1998: 374 n. 104).

APPENDIX THREE

Abortion Allowed in the Chinese Version of the *Samantapāsādikā*

Surprisingly enough, the Chinese version of the Pāli commentary to the *Vinaya*, the *Samantapāsādikā*, registers some cases in which a monk who indirectly procures an abortion is not guilty:⁶³

女人向比丘言。云何得墮胎。比丘答言。汝可按殺兒自墮。比丘教按。女人以熱氣熨之。比丘無罪。若比丘教自按殺。女人喚餘人為按殺。比丘無罪。若但教按即死。隨其自按。若餘人按死者。比丘得重罪。

1. The woman said to a Bhikkhu: how can abortion be brought about? The Bhikkhu said in reply: you can squeeze the fetus dead and then it will fall by itself. Thus the Bhikkhu instructed her to squeeze it down, but the woman applied hot massage. The Bhikkhu [here] is not guilty.
2. If a Bhikkhu has given instruction to squeeze it down herself and if the woman has called in another person to squeeze it down dead, then the Bhikkhu is not guilty.
3. A Bhikkhu has given instruction to merely squeeze it so that it would soon die. Following this instruction, [the woman] squeezes it; or, even if there is another person to squeeze it dead, then the Bhikkhu becomes guilty of a grave offence.

In the first two cases, the monk is not guilty because the woman does not exactly follow his instructions.⁶⁴ In the third case, the instruction of the monk is merely to squeeze the fetus, and therefore he is guilty of a “grave offence”,⁶⁵ no matter who actually squeezes it.

The Pāli parallel passage organizes all the elements found in the Chinese text in a different way: the fetus is either crushed or heated by oneself or by another person. In all cases the monk incurs a *pārājika*. In the Pāli *Vinaya* III 84, the monk suggests to “crush” (*maddassū ti*) the fetus, but the woman “has it crushed” by someone else (*maddāpetvā gabbhaṃ pātesī*). The monk is guilty of a *pārājika*. The commentary explains why the monk

⁶³ T.1462 XXIV 753a5-9. I present the translation by Bapat and Hirakawa (1970: 328), but I separate and number the paragraphs differently.

⁶⁴ I am indebted to Oskar von Hinüber for the interpretation of this passage.

⁶⁵ Either a *pārājika* or a *saṅghāvaśeṣa* (Nolot 1991: 385).

is guilty, even though there is a disagreement between what the monk says and what the woman does:⁶⁶

madditvā pātehī ti vutte aññena maddāpetvā pātehi, visaṅketam. maddāpetvā pātāpehī ti vutte pi sayam madditvā pātehi, visaṅketam eva. manussaviggaha pariyāyo nāma natthi. tasmā gabbho nāma maddite patatī ti vutte sā sayam vā maddatu aññena vā maddāpetvā pātetu visaṅketo natthi pārājikam eva. tāpanavathusmim pi es' eva nayo.

Having [the monk] said: ‘Crush and kill [the fetus]’, she kills it by having [someone else] crush it. [This is a] disagreement. And even if [the monk] says: ‘Have it crushed and killed [by someone else]’, and she crushes and kills it herself, [there would be] a disagreement as well. With reference to [the precept about] *manussaviggaha* there is no variation. Therefore, once it is said that the fetus, if crushed, dies, whether she herself crushes it or kills it by having [someone else] crush it, there is no disagreement. It is just a *pārājika*. This same exegesis [applies] to the story of burning [the fetus].

To conclude, according to the Chinese text, disagreement (*visaṅketa*) matters, and therefore the monk in some cases is not guilty, whereas according to the Pāli *visaṅketa* does not matter, and therefore the monk is always guilty. Notice that all this has nothing to do with the age of the fetus. I therefore would assume that even when the monk is not guilty, the woman and her assistants are guilty of homicide.

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⁶⁶ *Vinaya-aṭṭhakathā* II 468.

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