

Journal of the International Association of Buddhist Studies

Volume 18 • Number 1 • Summer 1995

Buddhism and Law

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Buddhism And Law—The View From Mandalay

Buddhism and Law—a new problem

In his contribution to this volume Professor v. Hinüber elegantly demonstrates that Pali Buddhism is a legalistic enterprise. The vinaya-dhara (the monks who had been trained in vinaya expertise) wrote for and argued with each other in an idiom that most closely resembles the glossators on the *Digest* of 13th century Europe and the early jurists of 10th century Islam. They talk and think like lawyers, even if the vinaya in action lacks some of the features which we nowadays expect from a legal system. The vinaya-dhara were experts in interpreting the sangha's collective intention and possessed a monopoly on the ordination of new recruits into the sangha. Thus, if we think of the sangha anthropomorphically, they are its super-ego and its reproductive organs, while the abidhammist meditators are its heart and soul. The conclusion I draw from v. Hinüber's article is that the vinaya is nearly as central to the Buddhist religion as the shari'a is to Islam. If we were to rank religions in order of legalism, Theravada would come at the legalistic end of the scale, near to Islam and far from, for example, Taoism. But on a direct comparison, Islam appears more legalistic, more concerned with regulating the day to day activities of its adherents, than the Theravada: it is possible to be a Buddhist without adhering to the vinaya but it is impossible to be a Muslim without following the shari'a. Burma presents a challenge to these generalizations about legalism and Buddhism. In Burma this gap between Islam and Theravada has narrowed—perhaps even to the point of disappearance. In pre-colonial Burma the monks adhered to the vinaya while the laity adhered to its own distinctive legal literature, known to the Burmese as "dhammathat and rajathat" and to the British as "Burmese Buddhist law." My main aim in this article is to persuade you that this law for the laity is, in a deep sense, Buddhist. If I can establish that dhammathat and rajathat are related to the dhamma-vinaya of the Pali canon in much the same way as the classic

texts of the shari'a (al-Shafi'i's *Risala* and al-Shaybani's *Asl*, for instance) are related to the *Qu'ran*, then pre-colonial Burmese Buddhism and pre-19th century middle eastern Islam can be counted as equally legalistic. This conclusion would be directly opposed to Max Weber's views on Buddhism, which have become conventional wisdom, but that does not cause me undue dismay. We are all iconoclasts now. Most of my contemporaries in S. E. Asian studies seem to spend most of their time complaining that the standard textbooks have got it wrong. We are midgets standing on the shoulders of giants, but we persist in believing that by kicking the giant hard enough in the neck we can persuade it to face the other way.

My source material is the legal literature of Burma, a surprisingly large amount of which survived in manuscript form into the 20th century. The great majority of the texts were written between the 16th and the 19th centuries, but under normal conditions Burmese manuscripts perish after about 150 years. The older the text, the more copyings it has passed through: we possess three radically different manuscripts of a popular dhammathat written as late as the 1750s. About a quarter of the material has been printed, and about a tenth of it has been translated into English. The manuscripts are to be found in libraries and private collections across Burma, and also in the libraries of London, Berlin and Japan: no systematic comparison and analysis of them has yet been carried out. The two more important genres of legal literature were *rajathat* (written in the vernacular languages of Burmese, Mon, Arakanese and Tai-Shan) and *dhammathat* (written in both Pali and the vernaculars). *Rajathat* emanated from the palaces and ministries of the capital city: they were the less ephemeral of the commands issued by the king. It would be misleading to think of them as legislation in our modern sense, but one or two of them circulated widely and retained some authority after their author's death. *Dhammathat* could be written by anyone—we have biographical information on about forty dhammathat authors: monks lead the field, followed by laymen holding royal appointments, from the Prime Minister through the Clerk-in-charge-of-the-Royal-Boats down to minor officials in obscure provincial towns. The members of Burma's legal profession, the *she-ne*, also contributed, as did more than one retired general. At least twenty dhammathats were written in verse. Burma's two most famous 18th century poets composed dhammathats in the vernacular, while some of the authors who wrote in Pali verse form had country-wide reputations for their learning. The less important

genres of legal literature were *pyatton* meaning jataka-type stories of clever judges and their tricks of the trade, *pyatton* in its other sense of a collection of actual law reports which were sometimes "vanity published" by the judge involved, *niti* literature made up of Indian wisdom verses in Pali which were translated into Burmese from the 18th century on, and *rajadhamma* literature which listed the duties of kings, the details of coronation ritual, the proper care of a white elephant and kindred topics. When combined with some inscriptions from 13th century Pagan and a few items of evidence from the Buddhist cities of first millennium Burma, this legal literature allows us to reconstruct Burmese legal history from the time of the first fixed irrigation systems in the last few centuries B. C. to the present day.

Legal anthropologists propose the general rule that irrigated rice growers are more legalistic than wheat or maize farmers.¹ The construction of dams and tanks creates problems of regulating access to water which tend to be solved through law rather than through kinship or caste. Evidence from all over mainland S. E. Asia confirms this hypothesis: the irrigators down in the valley, whether Khmer, Thai, Vietnamese or Burmese, have produced an elaborate legal literature while the slash and burn cultivators up in the hills have not. Leach tells us of a parallel dynamic in which the irrigators are Buddhist while the hill people are "animist" or "shamanic."² This coincidence suggests a link between Buddhism and legalism, but does not prove it: entirely different factors may simultaneously have pushed the rice growers towards law and towards Buddhism. However, once Buddhism had been adopted by the S. E. Asian elite and once they had chosen to adopt a S. Indian alphabet already used as a medium for Buddhist literature, the trends towards Buddhism and legalism mutually reinforced each other. Burma, which opted for Buddhism much earlier than Cambodia or Thailand, was the center of these developments. It has long been recognised that the law texts of Bangkok and Phnom Penh draw on a source written in 13th century Pagan. It now seems likely that the same is true of the law texts of Chiang Mai, Vientiane and Luang Prabang, though they may also have drawn on Tai codes composed before the Tai crossed the Mekong on their journey south. Burma not only led the way in combining Buddhism and

1. Hoebel, 1954, *The Law of Primitive Man*, (Harvard) 291; Newman, 1983, *Law and Economic Organization*, (Cambridge) 187.

2. Leach, 1954, *Political Systems of Highland Burma* (London) 56.

legalism, but also pushed the process further than its S. E. Asian neighbors. By the early 19th century, just before the start of colonial encroachment, Burma was more legalistic than its Buddhist neighbors. Since this claim is certain to annoy Thai and Khmer scholars, I must carefully define what I mean by it.

Contemporary legal philosophers get very excited about the adjective “autonomous”: a society is more legalistic (is nearer to the ideal of a *rechtsstaat*) the more its legal system can be described as autonomous. “Autonomy” in this usage combines two different arguments. On the one hand autonomous law has prevailed over such competing techniques for organizing society as caste, feudalism, bribery and bureaucracy. On the other hand by ceasing to be one of the contestants in society it has become the prize to be contested. “Autonomous law” is seen as the battleground on which different social groups can contest their different visions of society. The U. S. Supreme Court, for example, has the function of recasting political and ethical disagreements over racism or abortion into law suits that may be disposed of legalistically. Burma did not have the precise equivalent of the Supreme Court, nor did it have a written constitution, but in the third section of this paper I argue that Burmese law became the battleground on which the king, the sangha and the legal profession could contest their respective claims. To mention the Burmese legal profession is to introduce another sense in which Burmese legalism outstripped its Thai, Khmer and Indian neighbors: Burma was the only country in South or South East Asia to develop a legal profession independently of European influence. This is an important measure of legalism, since a society will only invent lawyers when there are enough law jobs to be done. Though this may sound like a truism, it took the genius of Max Weber to point it out. In the pages that follow I am critical of Weber’s sociology of Buddhism: his sociology of law, however, remains my constant inspiration. In Burma in the year 1800 “law” was considered essential for any society operating at a level higher than the village. It is “law” which defines the balance of power between the village and the city, “law” which regulates all important economic matters through its rules on debt and access to agricultural land and thus “law” which dictates the patterns of stratification and patron—client politics. The king was the power in the land, but to bring a matter before the king for decision entailed presenting it as a law-suit with the assistance of lay lawyers (the *she-ne*) or monk-lawyers (the *vinaya-dhara*). The pithy

phrases I want to use, such as “legalistic oriental despotism” or “constitutional absolute monarchy” or “dictatorial rechtsstaat,” sound paradoxical. But they embody the truth that Burma, which could not imagine any alternative to absolute monarchy, nonetheless went much further than its neighbors in solving “the problem of total power.”³

The sources I use reflect the views of Burma’s intellectual elites. It is now almost impossible to reconstruct the *mentalité* of the pre-colonial villager in the paddy field. There are hints that Burma’s popular culture was equally legalistic. Judgment tales (stories of clever villagers who won fame and fortune by their skill in dispute settlement) were the second most popular theme of stories and puppet shows. These puppet shows, the carriers of popular Burmese culture, were closer to Wagner’s *Ring-cycle* than to *Punch and Judy*. Each puppet show lasted for three days and was preceded by an overture telling of First Things, of how the world, humanity and civil society were created. A Royal Order survives which stipulates the contents of the overture in some detail. In the hope that it reflects the view from the village as well as that from the king, I summarize it here. “On the premier show the music begins with odes to air, fire and rain before the lady spirit medium makes her appearance.” After she has sung some of the 37 Major Choruses (a number associated with the cult of the *nats* or indigenous spirits of the locality), three potted shrubs are brought on stage to represent the hedge that marks the boundaries of the universe. We see tableaux of supernatural beings—the Naga “serpent” and the Garuda “bird,” followed by a pair of ogres. Next comes wild life—a frightened monkey looks down from a tree top, an elephant enters stage left, a tiger stage right, and then a horse stands up, trots, and gallops past a palace that has appeared stage right. Enter the first human puppet—he is a wizard seen mixing herbs and roots into a paste. Soon he is dancing faster and faster until he levitates out of view through a “neck hole” above the stage. In his wake he leaves civil society:

s28 The palace, or throne, is on the right of the stage: when there are two kings in a story, another throne is placed on the left of the stage.

s29 A hermitage, when necessary, appears near the second palace.

3. I have taken this phrase from Ghokale, 1966, “Early Buddhist Kingship,” *Journal of Asian Studies* 26: 20.

s30 Premier, Judge, Assistant Minister and City Officer enter the stage from left and march across it with all solemnity.

s31 Before the intermission begins, the ministers discuss with all seriousness *dhammathat*—customary law, *rajathat*—King's decisions, and *pyat-ton*—Law Court Decisions.

s32 Music of Exit and Drums of appearance are played and as soon as the music is over, the king appears on the throne. (ROB 1-3-1822)⁴

Once ascetics, ministers, the legal texts and the King himself have made their appearance, the intermission begins, followed soon afterwards by the first play of the night. The point I emphasize is that in the conventions of the puppet play the serious discussion of written law is used as a synecdoche for government in general. The puppets, as well as the intellectual elite, are legalistic.

Was Burmese legalism inspired by Buddhism? Burmese intellectuals could not have conceived any alternative. The Pali Canon, along with such quasi-canonical works as the Sri Lankan chronicles, Buddhaghosa's commentaries and the *Questions of King Milinda*, offered all the science, history, epistemology and sociology that Burma had. It would have been as difficult for Burma to think of law in non-Buddhist terms as for Aquinas or Kant to think of philosophy in non-Greek terms. The early kings of Pagan took a legal decision which intensified this Buddhist influence. The Tai kings who founded the cities of Vientiane and Chiang Mai promulgated short legal codes to attract population to their new cities in an early example of what we now call "Law and Development." As a result, Laotian and Lanna law is conceived as starting with Fa Ngum and Mangrai, these city-founding kings. Legal historians, analyzing these codes from outside, may find that they draw extensively on sources older than the kings who wrote them. But from inside the cultures, the codes are perceived as *new law* for a new kingdom. The early kings of Pagan took the opposite approach. Their recognition of *dhammathat* as the prime source of Pagan law amounted to a promulgation of *old law* for a new kingdom. The *dhammathats*, though they are written by named authors, are conceived as editions of the age-old law text which is written on the walls at the boundary of the universe. Many

4. Than Tun warns that this *rajathat* may have been written later in the century than the date it bears. Citations in the form "ROB date" are to Than Tun, 1984-90, *The Royal Orders of Burma, A. D. 1598-1885*, Vols. 1-10 (Tokyo).

of the dhammathats are introduced by the tale of Mahasammata and his clever judge Manu whose fallibility leads him to become a recluse, to travel to the boundary of the universe, and to bring back to the king the text of the dhammathat. A rich stew of influences has cooked up this story. The canonical account of Mahasammata in *Agganna sutta* [D III 80-98] is the most obvious ingredient: we can also taste hints of the *Arthasastra*, of early Burmese (and probably pre-Buddhist) hermits and shamen, and of the king's role as epistemological validator (what the king does not know is not worth knowing). Presenting the dhammathats as new editions of old texts enabled a ready made hermeneutic to be applied to them. Vinaya dharas had spent well over a millennium developing techniques to understand the vinaya pitaka as an old text. These techniques could be immediately applied to the elucidation of the dhammathats. The passage from oral to written law usually poses massive problems as a culture struggles to evolve techniques for interpreting the new-fangled law texts. Just such problems had to be faced in Chiang Mai and Vientiane. But in Pagan, the vinaya dharas had already developed techniques for written law which could easily be applied to the "old law" of the dhammathats. Writers of new dhammathat editions and sub-commentaries on the vinaya shared the same tools. By the 17th century we can identify authors who worked in both genres. Here is another sense in which law for the laity in Burma is more Buddhist than in Siam, Laos or Cambodia.

In the early 18th century a fascinating work appeared which pioneered an alternative treatment of the relationship between the dhammathats and Buddhism. Shin Khemacara in his monumental *Vinichchayarasi* dhammathat attempted to demonstrate that every rule in the dhammathats could be traced to a source in the Pali canon. His theological justification was as follows:

The law of inheritance is also mentioned in the sacred books; hence inferences may be drawn as to what the law would be according to the sacred writings by comparison with the dhammathats and vice versa. The Buddha . . . has two kinds of heritage to bestow on his children, the temporal and the spiritual. Such temporal happiness as is enjoyed by the rulers of the brahma, deva or mundane worlds . . . are obtained by them only through observance of the rules he has laid down; hence indirectly the temporal welfare of every inhabitant of the three worlds is a heritage bestowed on him by the Buddha. The spiritual heritage is the spiritual bliss, secured by the attainment of arhatship and nirvana. The Buddha spoke more in praise of

the spiritual than the temporal heritage . . . Every one who is firmly established in the Buddha's teachings is entitled to become his heir and to inherit his two heritages, first the temporal by being born always a ruler in any of the three worlds, and secondly the spiritual, by the attainment of nirvana. . . . The subject of the two kinds of heritage is treated of in the *Dhammayada sutta* of the *Sutta Pitaka*. (D1:5 [D18])⁵

Following the Buddha's temporal heritage, as elucidated in dhammathat and rajathat, is a meritorious way of life which will lead to a favorable rebirth. Following the Buddha's spiritual heritage, as elucidated in the vinaya, is for celibates only but it leads towards the greater reward. Khemacara was not always successful in his search for canonical authority:

The 16 classes of son are seldom mentioned in the Tipitika, but it is as boundless as the ocean, and search should be made in the old writings for what is mentioned in the dhammathat. (D1:19 [D18])

And in at least one case he finds a contradiction between dhammathat and scripture:

That wills are invalid is the rule of the dhammathats. But, according to religious teaching, children should follow the dying injunctions of their parents. (D1:71 [D18])

I suggest in later pages that Khemacara's innovations were a response to increased Burmese sophistication in bibliography and literary history. By the 18th century it was apparent from the silence of Buddhaghosa, of the *Mahavamsa* and of the texts sponsored by Parakramabahu I that Sri Lanka had never had an equivalent of the dhammathat literature. That Burma should be in possession of a key Buddhist text which was unknown to the Mahavihara required some quick thinking. Since the dhammathat cannot share in the unbroken

5. References in this form are to U Gaung, 1902, *Digest of the Burmese Law being a Collection of Texts from Thirty Six Dhammathats* (Rangoon). D1:5 indicates s.5 of the first volume; [D18] indicates the quotation in that section from the dhammathat numbered 18 in the list at pages 5 to 13. D18 is Shin Khemacara's *Vinicchayarasi*. I must apologize to readers who are upset by the lack of diacritics in my transliteration of Burmese Pali. Since they are not used when transliterating the Burmese language, I have come to regard them as visual distractions.

lineage from Upali via the Mahavihara to Burma which authenticates the vinaya, Khemacara tries to ground it in the canon as a whole.

Several books have been written about Shakespeare's attitude to law, but it does not follow that Shakespeare was a legalistic author. Likewise the fact that the Burmese found legalism in the Pali Canon does not prove that Pali Buddhism is a legalistic religion. I believe that the Pali Canon contains seeds which can, under appropriate conditions, sprout into legalistic state or royal law. But only once, in Burma between the 6th and the 13th centuries, has the Pali canon been planted in appropriate conditions at the right time. To explain all the negative cases, all the instances where the seeds of Buddhist legalism fell on stony ground, would require more than one lifetime. But the outline of a shadow of a hint of a sketch of such an explanation might look like this: In India during the 5th and 4th centuries B. C. the seeds of Buddhist legalism sprouted and grew tall among Buddhist kings and traders and in big cities. The Hindu authors of *Manusmṛti* and *Arthasastra* in the 1st century A. D. redefined this early Indian law in terms of Brahmanic orthodoxy, since when the Buddhist contribution to Indian law has been obscured. In Sri Lanka caste won its competition with law to fill the niche of dispute settlement and social organization. In Thai and Khmer traditions (which paid lip service to Brahmins without having many proper Brahmins) law came under the king's control from the start. In China a highly sophisticated set of ideas for and against law were in circulation long before the arrival of Buddhism. Buddhism could affect Chinese law on the margins, but could not shape the direction of Chinese debate. But why is Tibetan law not more Buddhist than it is? Why does it not borrow more from the vinaya or from the Sutta pitaka's quasi-legal lists? Publication and analysis of the Tibetan law texts lags thirty or forty years behind S. E. Asia⁶ and until the basic work has been done it is unwise to speculate. But here is a very tentative suggestion. If the legal texts found at Tun Huang represent the earliest period of Tibetan legal writing, then perhaps they were written by scribes who were not particularly Buddhist in orientation. Perhaps Tibet took its law from the north, from the jumble of cultures trading along the Silk Route, and its religion from the south, from the Buddhist monasteries of Kashmir. These broad speculations of mine will probably turn out to

6. Before Professor French started publishing, I would have said "lags two or three centuries behind."

be wrong, but the interaction of Buddhism and Law at the most general level is such a new field that we do not yet know what kind of maps will prove appropriate. My thanks to the Numata Foundation, to the University of Chicago and to this Journal for sponsoring our expedition into *terra incognita*.

The Origins of the Burmese Buddhist Law Texts

Fin de siècle scholarship⁷ judged that S. E. Asian Buddhist law had a veneer of Buddhism tacked onto a solid core of Sanskrit sastric material. General reference works still reflect this original judgment with their descriptions of "the Buddhist-Hindu branch of the Hindu legal system,"⁸ or "a law of Hindu origin modified in the direction of Buddhism"⁹ or "the Burmese dhammathat, based on the Laws of Manu."¹⁰ One of my Departmental colleagues (now retired) forecloses any discussion of Buddhism and Law "since Burma and Sri Lanka between them provide no literary evidence of a distinct Buddhist jurisprudence."¹¹ In this section I reevaluate these sweeping judgments in the light of a century's further research on Burma.¹²

We are interested in essential influence, which a recent conference¹³ called "The Reception of Legal Systems," rather than in cosmetic

7. Forchhammer, 1885, "The Jardine Prize: An Essay" (Rangoon); Leclère, 1898, "Recherches sur les Origines Brahmaniques des Los Cambodgiennes," 1889-9 *Nouvelle Revue Historique de Droit français et étranger* 1 (N. p.); Masao, 1905, "Researches in the indigenous laws of Siam as a study of Comparative Jurisprudence," *Journal of the Siam Society* 2: 14, and *Yale Law Journal* 15: 28.

8. Wigmore, 1928, *A Panorama of the World's Legal Systems* (Washington) 224.

9. Weber, 1954, *Law in Economy and Society*, ed. Rheinstein (London) 236.

10. Hall, 1981, *A History of S. E. Asia* (London) 292.

11. Derrett, 1973, "Dharmasastra and Juridical Literature," *A History of Indian Literature*, ed. Gonda (Wiesbaden).

12. Since Forchhammer wrote on Burma, the following basic research has been published: U Gaung's Digest of Burmese dhammathats, Than Tun's full collection of rajathats, Nai Pan Hla's eleven Mon dhammathats and (most importantly for the study of Burmese origins) the complete Pagan inscriptions.

13. Colloque International sur la reception des systemes juridiques, Moncton, N. B., September 1992. In the next two pages I am summarizing arguments which I made in wearisome detail in my presentation to that conference: Huxley, 1994a, "The Reception of Buddhist Law in S. E. Asia," *La Réception des systèmes Juridique: implantation et destin*, eds. Doucet and Vanderlinden (Bruxelles) 139-237.

influence. Intellectual and palace circles in 18th century Burma welcomed the cosmetic salesmen of India. Sixty assorted Sanskrit works on grammar, astrology, erotics and palmistry were translated in mid-century and known collectively as the *Byakarein*: some of this material (a list of 21 types of virgin, for example) entered the later dhammathats. And in the 1790s eight Indian dharmasastras including the *Manusmṛti* were brought into the royal library from Ceylon, Calcutta and Benares. They encouraged King Badon to make certain comparative conclusions, but did not influence the Burmese dhammathats. At the same time, for reasons I shall discuss in the next section, 18th century dhammathat authors competed to insert yet more obscure Buddhist knowledge into their dhammathats. The hilarious lists of “40 kinds of female flirtings” were borrowed from the Jatakas and Dhammapada in the 1740s and inserted in a dhammathat text for the first time (D2:8 [D18]). All this 18th century activity is unessential—the equivalent of the contemporary European fascination with *Chinoiserie*—but to avoid its contaminating influence I must concentrate on the earliest surviving texts. There is, alas, only one well-dated early Burmese law text: King Klacwa’s edict on theft, promulgated on 6th May, 1249, is preserved in several different inscriptions and is therefore about as genuine as anything can be in this imperfect world. By offering incontrovertible proof that the Kings of Pagan drew on canonical Buddhist sources when drafting their laws, it destroys Forchhammer’s theory that Buddhist influence did not manifest itself until the 17th century.¹⁴ But it also casts doubt on modern accounts of Burma’s literary history: if the edict can be labeled as a work of literature (as its contents, length and argument demand), then it predates other Burmese language documents by three centuries and suggests that literacy in the Burmese language led to literature in the Burmese language much earlier than is presently thought. This is a helpful possibility to bear in mind as I turn from legal epigraphy to legal manuscripts. The problems of dating surviving dhammathat texts will never be fully solved. Each copyist introduces interpolations, and the point at which we decide an old text has become a new text cannot be scientifically determined. We must try to forgive the

14. The whole inscription, with its discussion of kamma, punishment and their inter-relationship, is Buddhist through and through. For a specific borrowing from the Pali canon, note the “12 royal punishments” from any one of these three sources: A II 1; M III 17; Mil IV.4.15.

inconvenience and uncertainty that such interpolations cause. As Derrett puts it in the context of India:

Interpolation could be another word for a general process, akin to fermentation, signifying that a sastra was alive.¹⁵

Interpolation demonstrates that the dhammathats are being preserved as legal documents for the present, not historical documents about the past.

Based on internal evidence combined with the accounts of Burmese literary histories, I treat the following as early dhammathats.¹⁶ We have one dhammathat, *Dhammavilasa* [D4], which epigraphy confirms as being written in 12th century Pagan.¹⁷ We have a group of works which claim to have been written before the rise of Pagan in the 11th century, such as *Manussika* [D2], *Pyumin* [D3], *Kyannet* [D36], *Manosara* [D1], *Mon Original* [M4] and *Mon Duttabaung* [M6].¹⁸ Some elements of these works may indeed be older than the 11th century, particularly the titles and exordiums. But in the form in which they survive, they have been subjected not only to 700 years of post-Pagan “fermentation,” but to the homogenizing filter of Pagan itself. Such was the prestige of 13th century Pagan with its 2,000 stupas, temples and monasteries that it sucked in all Pali scholarship from the region, refashioned it in its own image, and spat it out again. We learn of five Tai kings producing or using law texts between 1275 and 1317, the years of the Mongol invasion and the fall of Pagan. Three of them ruled over mixed populations in areas where Pagan’s writ had

15. Derrett 1973.

16. For details of this procedure, see Huxley, 1993, “Thai, Mon and Burmese Dhammathats—Who influenced whom?” 5th International Conference on Thai Studies, London 1993. It will appear in *New Light on Old Thai Law Texts*, Kiscadale Asia Research Series, ed. Huxley.

17. In fact we have several *Dhammavilasa* manuscripts in Burmese, the differences between which bear mute witness to “fermentation.” Furthermore, two radically different versions of *Dhammavilasa* have survived in the Mon and Arakanese languages: *Mon Dhammavilasa* [M3] and *Kyetyo* [D35]. If anyone ever has the ambition to produce critical editions of the Burmese law texts, they could start with this group of manuscripts, all of which provide variations on the same 12th century original.

18. Numbers with an M prefix refer to the Mon dhammathats published in Nai Pan Hla, 1992, “Eleven Mon Dhammathat Texts,” *Bibliotheca Codicum Asiaticorum* Vol. 6. I have given details of the numbering scheme in Huxley 1993.

once run, while the other two ruled mixed populations in what is now Thailand. To the extent that our surviving *Wageru* [D5] manuscript is unaltered by “fermentation,” it is one of this group: along with *The Laws of King Mangrai* it represents the spread of Buddhist law texts from Pagan to the new 14th century milieu of Thai Buddhist monarchs. In their present form these ten or so early dhammathats are written in Pali, Mon, Burmese and Arakanese. The conventional assumption that in the early 14th century they would all have been written in Pali is questionable: if King Klacwa wrote laws for his subjects in Burmese, why should the dhammathat authors not do the same?

Allowing for subsequent “fermentation,” these ten early dhammathats had reached their present state by the end of the 13th century. We can think of them as standing at the beginning of five centuries of post-classical dhammathat development, or we can think of them as standing at the end of a five century long shift from oral to written law. Let us take the latter perspective for a moment. Getting a clear judgment on the relative importance of Buddhist and Hindu inputs on Burmese written law entails getting a clear picture of how the shift from oral to written law took place. Consider this brief account from the latest western history of S. E. Asia:

The Indian law books, especially the Code of Manu (Manava-Dharma-sastra), were greatly honored in Burma, Siam, Cambodia and Java-Bali as the defining documents of the natural order, which kings were obliged to uphold. They were copied, translated and incorporated into local law codes, with stricter adherence to the original text in Burma and Siam and a stronger tendency to adapt to local needs in Java . . .¹⁹

This implies the “photocopier model” of acquiring written law: the credulous Burmese yokel is impressed by the Indian trader’s copy of *Manusmṛti*; pausing only to learn the alphabet, he pops the text in a convenient photocopier, pencils in a few alterations to reflect local custom, and triumphantly proclaims the resulting document as the law of Burma. Shifting a whole society from oral to written law does not work that way. At the very fastest the process lasts a century; normally it will take several centuries. The “photocopier model” grossly overestimates the degree to which Burma and Siam have borrowed from the *Manusmṛti*. 90% of this Sanskrit text concerns matters of

19. Reid, 1988, *The Land below the Winds* (London) 137.

caste, pollution, ritual and penance that are meaningless in a society unconcerned with caste and uninterested in pollution. Where S. E. Asian Buddhists have borrowed from the remaining 10% of the text, they more often than not adapt the material to their own ends. Looking at the early Burmese dhammathats, I find only four cases where the dhammathats reproduce provisions of Sanskrit law unaltered. They are the substituted sister²⁰ and the dead bride-groom,²¹ the rule that a king who protects his subjects receives a 6th part of all their merit²² and the advice on how different *varnas* should take the oath in court.²³ There are five more examples where a Sanskrit legal list inspires a Burmese adaptation of it: the six evil practices of women,²⁴ the eight forms of marriage,²⁵ the six types of son who can inherit and the six who cannot,²⁶ the man with a wife from each *varna*²⁷ and the periods a deserted wife must wait for her husband.²⁸ Since the average

20. Manu VIII.204. Found in *Pyumin* [D3], *Dhammavilasa* [D4], *Wageru* [D5] and thrice in *Manussika* [D2].

21. Manu IX,69. Found in *Manosara* [D1], *Manussika* [D2], *Pyumin* [D3], *Wageru* [D5], *Long Mon Sangermano* [M1] and *Short Mon Sangermano* [M2].

22. Manu VIII.304. Found at D2:10 in *Manussika* [D2] and in *Mon Duttabaung* [M6]. However, Glucklich suggests that Buddhist notions on karma had a strong influence on the writers of the *Manusmṛti*. Possibly, then, there is a Buddhist source for this rule which fed both *Manusmṛti* and *Manussika*? See Glucklich, 1982, "Karma and Social Justice in the criminal code of Manu," *Contributions to Indian Sociology* 16: 59.

23. Kautilya's Arthashastra 3.11.34-7. A less detailed version is in Manu VIII.88. Found in *Long Mon Sangermano* s21, and garbled in *Short Mon Sangermano* s3.

24. Manu IX,13. Found as a slightly different list of six in three Mon dhammathats: *Wageru* [D5], *Long Mon Sangermano* [M1] and *Mon Dhammavilasa* [M3]. The Burmese *Manosara* [D1] has a list of five.

25. Manu III 20-42. A list of eight is in *Dhammavilasa* [D4]. Both give eight technical names for each form of marriage, but even allowing for the translation from Sanskrit to Pali, only two of these are similar.

26. Manu IX.158-168; *Vishnu Samhita* ch. XV. *Wageru* [D5] and *Manosara* [D1] share a version of the 12 sons. A different list is shared by *Pyumin* [D3] and *Kyannet* [D36]. *Mon Dhammavilasa* [M3] expands the list into 16 types of son. So does *Dhammavilasa* [D4], adding that "the list comes from the Pitakat," i. e. the Pali Canon!

27. Manu X.150-155 offers two schemes of division. Either the Brahman wife's son gets a special portion and the inheritance divides 3:2:1^{1/2}:1 or the special portion is omitted and the inheritance divided 4:3:2:1. None of the early dhammathats mimic the first form of division. They all start from the 4:3:2:1 division, though there is considerable variation. I give fuller details of the Mon and Burmese texts in Huxley 1993, 20-21.

early dhammathat contains about 200 such rules and lists, I can offer a very rough quantitative estimate of Sanskrit influence at between 4% and 5% of the whole. This is hardly the "stricter adherence to the original text" postulated by the "photocopier model."

I propose an alternative picture of the move to written law which I call, borrowing from a recent study of early Islamic law, the "notebook model." But, before I expound this, some deep background is required. Before the arrival of Indian scripts in Burma there were already two kinds of village society using two kinds of oral law. Most of the population supported themselves by slash and burn agriculture, their legal needs fulfilled by the kind of custom that Savigny and Maine describe in the villages of mediaeval northern Europe. But by the 3rd century B. C., in favored places where the mountains met the dry plains, some villages had turned to irrigated rice agriculture. In legal terms this step is highly significant: it is as important as the difference between city and village in mediaeval northern Europe. Irrigation societies need more law than hunter-gatherer and slash-and-burn societies. A new range of social problems, such as organization of labor for large scale construction, differential access to irrigated land and agricultural credit (loans of seed-rice) has to be solved. Kinship relations become less important, while relations with neighbors are enhanced. I think of this first Burmese legal revolution as the change from oral custom to "oral law of the rice plains." We know of at least two cultures that underwent this shift: the Pyu of Burma's central dry zone and the Mon of Burma's southern coast. Recent archaeology has revealed that, among the Pyu at least, the first legal revolution (and the first permanent settlements large enough to deserve the description of "cities") occurred two centuries or more before they had any substantial exposure to Indian religion and Indian techniques of literacy.²⁹ The earliest evidence of Buddhism among the Pyu comes from the early 4th century. The earliest evidence of the adaptation of Indian scripts comes from the 5th century. "Indianization" in the wider sense lasted from then until the 10th century. The details of "Indianization" differed as between different irrigation cultures, but the general process

28. *Manu IX.76* has 8 years if husband absent on a sacred duty, 6 years if in pursuit of knowledge, 3 years if in pursuit of pleasure. D1-D5 all mimic the text, but give different periods and different reasons for the husband's absence.

29. Stargardt, 1990, *The Ancient Pyu of Burma* (Cambridge); Higham, 1989, *The Archaeology of Mainland S. E. Asia* (Cambridge).

must have been the same: local leaders of the various rice plains chose various bits of Indian culture to adapt to their own purposes. These leaders were in competition with each other, and also had to defend their rice plain against raids from hungry non-rice growers. The defensive walls which surround the center of each of the early irrigation systems tell us that this competition was anything but peaceful. At first, local leaders were attracted to one of the Indian religions, which offer new techniques for legitimizing secular power. Then, because Indian religions are based on written texts, they chose one of the Indian alphabets, and were exposed to as much Indian classical literature as they could acquire. Finally, after several centuries had elapsed, the oral "law of the rice plain" was written down, and law began to be seen as a semi-autonomous field, a written discipline which requires its own experts and practitioners. This is "Indianization" in the narrow legal sense or, if you prefer, the second Burmese legal revolution. Why did it not take place until several centuries after the introduction of Indian script and religion? Because a variant of Occam's Razor operates in legal history: actual legal systems never get more complicated than they need to be. During the 5th century A. D. patrimonial dispute settlement by the local chief was enough to get the job done. But from the 9th century onwards, land use was becoming more intensive, kingdoms were larger and literacy more widespread: the need for a more elaborate, legalistic dispute settlement was growing.

The first legal revolution requires some kind of Marxist analysis: how do changes in agricultural production bring about changes in the legal organization of society? It is a pre-state phenomenon, which must occur at the village level: even today there are large swathes of Burma given over to slash and burn cultivation where the first legal revolution has not taken place. The second legal revolution is usually analyzed in terms of state formation and cultural diffusion: does written law increase the power of kings? Did the rice growing village pay any attention to the royal law? How did Indian religion and script spread across the Bay of Bengal? I have discussed these questions elsewhere. Let us take a different angle of approach and consider the second legal revolution not as the process by which Burmese kingdoms were formed or Indian ideas diffused, but as the process by which Burmese law was reduced to writing. Calder has just published an analysis of the early history of Islamic law describing the develop-

ment of the classic Islamic legal texts.³⁰ Up to about 816 A. D., he says, legal discussion was purely oral. For the next fifty years the private notebook (the commonplace book or scrapbook whose contents have been accumulated over the owner's lifetime) played a crucial intermediary role. In a milieu where "a man writes down the best that he hears and memorizes the best that he writes down" it is the paragraph or segment—the single entry into a private notebook—rather than the whole text which migrates. An entry which has appealed to notebook makers in Cordoba, Qayrawan, Cairo, Baghdad and Bukhara stands more chance of survival than one that is only known to the legal enthusiasts of Cordoba. Segments of text were moved from city to city by traveling traders: it was the caravans which gave Islamic law its unity. Without these travelers the notebooks of each city would have become increasingly divergent. Even with them, local city traditions eventually solidified into the four schools of Sunni Islamic law. From about 860 A. D. some of the city archives of notebooks were edited down into through-composed full length texts—the first books of Islamic law. The transition to written law was complete when the text of these books became fixed and a consensus on legal methodology had been achieved. Thereafter legal composition took the form of commentary writing on the early books.

How much of Calder's analysis might apply to Buddhist S. E. Asia? For the period between 700 and 1300 A. D. we can, I think, treat the cities between Nakhon Si Thammarat in the Malay peninsula and Mrohaung on the borders of Bangladesh as forming a culture area comparable with the Arab Empire. There was no Caliph in S. E. Asia to impose political unity, but manuscripts could be carried from city to city by Buddhist monks, maritime traders and wandering Brahman ascetics. There are, however, significant differences. The Islamic transition was done extremely quickly, achieving a written canon in Arabic within a century whereas the S. E. Asian transition took four or five centuries before any legal texts were produced, and never reached a closure of the early legal canon: Burma kept on producing new dhammathats until late in the 19th century. The Arabs developed their own script and successfully fought off coca colaization by the older Mediterranean cultures. Reducing their oral custom to writing was part of the wholesale reinvention of "Arab oral culture" as "Islamic written culture." The 9th century Arabs needed to do this through

30. Calder, 1993, *Studies in Early Muslim Jurisprudence* (Oxford).

public debate in order to build a consensus of the faithful behind the written law. It was at this stage, and through this assertion of cultural independence, this popular enthusiasm for written law, that Islam became a “legalistic religion.” The inhabitants of Burma, who bought the whole Indian take-away from soup to nuts, from script to religion, missed this legitimizing stage. Despite these differences, the “notebook model” explains a great deal about the development of written law in S. E. Asia. It explains the plurality of the dhammathat genre—the puzzling fact that no single dhammathat text claims to be the oldest or the most authoritative. And it explains the wide diffusion of Indian material: segments of text have been moved around through transmission of notebook material and by passing into oral wisdom as legal maxims and proverbs. Hence a paragraph originating in the *Manusmṛti* or the *Samantapasadika* can find its way into the law text of a community that was unfamiliar with either book.

The earliest written law texts would have been individual notebooks compiled by bureaucrats who wanted to sound impressive when judging, by monks who needed notes on the legal status of donated property in case the king should try to confiscate it and by local regional patrons who would have to lend money’s worth to their clients and settle any local disputes over debts and manpower. The source of the Sanskrit verses they translated into Pali or the vernacular may have been the *Manusmṛti* itself, as brought from India by Pasupata ascetics,³¹ but was more likely to have been the *Subhasita* anthologies of epigrams, aphorisms and maxims. These Sanskrit anthologies, usually attributed to Canakya or Brhaspati, contain large quantities of material from *Manusmṛti*, Kautilya’s *Arthasastra* and other legal texts. Most, though not all, of the Sanskrit sources of the dhammathats can be found in one or another of these anthologies. If such Sanskrit anthologies were translated into Pali and if quotations from the Pali scriptures were added to the mix, we would get something very like a 9th century Burmese notebook. But we would also get something very like the existing Burmese *niti* literature, the three surviving Pali collections which are unknown in India but have influenced the

31. The Pasupatas were an antinomian sect of Brahmins who deliberately courted pollution by traveling abroad to dwell among the barbarians. Their involvement in the notebook period is demonstrated by the inclusion of the *kapilakavrata* rites of penance (which was their social charter) in three of the early dhammathats: *Pyumin* [D3], *Kyetyo* [D35] and *Mon Dhammavilasa* [M3].

rest of Buddhist S. E. Asia.³² I would not go quite so far as to claim that the Burmese *niti* are examples of the notebook stage of dhammathat development. A more reasonable claim is that the notebooks of the 9th and 10th centuries were the ancestors of both *niti* and dhammathat texts. They used a common core of material to different ends.³³ The dhammathats are aimed at an adult readership with practical problems to solve, while the *niti* are aimed at the schoolboy in need of short pieces of Pali verse to construe and an education in civics. Estimates of when Burma produced the Pali *niti* vary from the 5th to the 15th century.³⁴ My guess is that the notebooks crystallized into fixed texts of *niti* and dhammathat in the 13th and 14th centuries.

I have made the quantitative estimate that Hindu influence on the early dhammathats amounts to 4% of the whole. I must now meet the qualitative argument used by the *fin de siècle* scholars. Even if Sanskrit learning only influenced a small amount of the text, they said, it was significant because it touched on matters of legitimacy and internal organization. The dhammathats were legitimized by appealing to the name of Manu (resonant in Hindu mythology but unknown to canonical Buddhism) and were internally organized in terms of the sastric 18 heads of law. This is a case worth answering, even if some of the 19th century diffusionists pushed the argument beyond parody:

Turning from the Ganges to the Nile, it will be found that the description given by Diodorus of the Egyptian Mnues answers exactly to the account given in Burmese mythology of the ascetic Manu . . .³⁵

I have summarized the Burmese version of the Manu story in section one above. The Burmese have taken a Hindu hero and grafted him into a Buddhist myth. Is the result Hindu or Buddhist? Does the original

32. Gray, 1886, *Ancient Proverbs or Maxims from Burmese Sources, or The Niti Literature of Burma* (London) translates these three old works and adds an 18th century collection.

33. *Dhammaniti*, for example, quotes a verse from *Manusmṛiti* on the king getting one sixth of his subjects' merit and a verse from the Vinaya listing the four kinds of slave. [Dhammaniti s281 = Manu VIII.304; Dhammaniti s177 = V IV 224] Both these texts, as we have seen, are also found in the dhammathats.

34. Sternbach, 1963, "The Pali Lokaniti and the Burmese Niti Kyan and their Sources," *Bulletin of the School of Oriental and African Studies* 26: 329.

35. Browne, 1878, *Introduction to Manuwonnana dhammathat* (Rangoon) 1.

homeland of a mythic hero retain intellectual property rights in foreign spin-offs? The Islamic cultures of S.E. Asia tell epics about Alexander the Great. The Tantric cultures of Tibet have “Caesar of Rome” as hero of their national epic. Children all over the world right now are buying merchandise associated with Aladdin. I prefer to think of these as examples of local tale-telling (from Sumatra, Kham and Hollywood respectively) on borrowed themes. By analogy, the *Manu* of the dhammathats is a Burmese Buddhist story on a borrowed Indian theme.

As to the internal organization of the dhammathats and the influence of *Manusmṛti*'s 18 heads of *vyavahara* litigation, Shwe Baw has made a detailed examination of the topic.³⁶ He finds that only two of the Burmese dhammathats make any serious attempt to use the 18 heads as an organizing principle. *Dhammavilasa* [D4] uses the heads as chapter headings: its order of topics is quite close to *Manusmṛti*, but it uses only 15 heads. *Wageru* [D5] uses 17 heads as chapter headings, but they differ quite substantially from the Indian list. About half of the earlier dhammathats mention the 18 heads, and some of them even enumerate them, but these works are organized on a different principle which I call the “list of lists.” In the middle and later period dhammathats it is the “list of lists” which governs what little organization they exhibit. This approach derives from, and can be illustrated by, the Pali canon:

Thus the Buddha spoke: “Young man, inasmuch as the holy disciple has forsaken the 4 polluting actions, inasmuch as he is uninfluenced by 4 evil states to commit sin, inasmuch as he eschews the 6 means of dissipating wealth, therefore freed from 14 evils and guarding the 6 quarters, he walks victorious over both worlds.” [D III 190]

As Pope puts it: “I lisped in numbers, for the numbers came.” Reading on, we would find that each of the “6 means of dissipating wealth” has its own list of 6 attendant evils and each of the “4 young men who seem to be friends” invoked on the next page turn out to be false friends in 4 separate ways. This 6 x 6 and 4 x 4 structure has an obvious mnemonic purpose. An even older example of the “list of lists” approach can be found in the *Patimokkha*, the bi-monthly public

36. Shwe Baw, 1955, “The Origin and Development of Burmese Legal Literature,” diss., School of Oriental and African Studies (thesis #41 held at the Institute of Advanced Legal Studies Library).

recital of the 227 rules of monastic discipline. At the end of the recital the monk states:

Venerable sirs, I have recited the introduction, 4 cases of defeat, 13 cases entailing a meeting of the sangha, 2 indeterminate cases, 30 cases entailing expulsion, 92 cases entailing expiation, 4 cases that must be confessed, 75 rules of conduct, 7 ways of settling litigation.

Here the number 227 is what computer programmers would call a "checksum": if a novice has remembered the list of lists correctly, the totals of the constituent lists (as ticked off on rosary beads during the recitation, perhaps) will total 227. The Burmese and Mon dhammathats borrow this approach, but usually place the list of lists at the start of the text where it functions as a list of contents. *Mon Original* [M4] contrasts the Indian with the Burmese mode of organization in terms of roots (*mula*) and branches, a metaphor that is itself borrowed from the Vinaya:

There are 18 origins or roots of law, 32 branches of law and 39 digests of law. There are 3 kinds of bribery, 4 agati, 3 kinds of giving, 4 kinds of wives, 7 kinds of slaves, 7 kinds of minor cases, 4 kinds of questioning cases, 1 kind of fair case. [M4, s.6, 88]

Again, the number 32 is a checksum for the list that follows, though something has gone wrong with the copyist's (or my) arithmetic.³⁷ By the 18th century, Burmese authors had created all kinds of numerological variants on this approach. *Manuyin* [D17] talks of "18 roots, 30 major branches and 174 minor branches," which allows for yet more lists to be added to the traditional core. Note the sophisticated "checksum of checksums" concealed within this statement: $18 + 30 + 174 = 222$, an easily memorable number. The Siamese and Khmer law texts talk of ten root matters (or books of law copied from the wall at the end of the universe) which contain "the 29 heads of dispute which antiquity has handed down in the Holy dhammathat." The number 18 and its place value cognates 108, 180, 1080 etc. are auspicious in India. There are 18 puranas, 18 chapters of the *Mahabharata* and the *Bhagavad gita* and 18 traditional areas of knowledge. In S. E. Asia 18 has no such intrinsic significance. Having initially borrowed

37. In the above example, which totals 33, I presume we are meant to leave out the "one kind of fair case."

the doctrine of "18 heads of litigation," the S. E. Asian law texts soon discarded it. They organized their legal material on a different basis, but there is evidence that in later centuries they thought the number of heads of litigation ("branches of law") lay between 29 and 32.

Thus far I have been arguing that Hindu influence on the early dhammathats is less than is usually credited. I now turn to the proposition that Buddhist influence on the early dhammathats is greater than is usually credited. My quarrel is not with Forchhammer, who has made some very perceptive comments on this question,³⁸ but with Lingat, who has reduced Forchhammer's wisdom to the level of vulgar generalization. Robert Lingat was an expert on the Thai dhammathats who made himself into an expert on the Hindu dharmaśāstric literature. In some circles he is hailed as one of this century's leading comparative legal historians,³⁹ but he had no claim to expertise about the Burmese dhammathats. Consider this:

No provision in *Wageru* is founded upon a Buddha dictum or claims authority from the Buddhist dharma . . .⁴⁰

Let us charitably assume that the opening and closing portions of the text (which contain the Adoration of the Three Jewels, the Mahasammata story and the authors' wish to promote the interests of religion and achieve favorable rebirths) are not "provisions" in Lingat's sense. Perhaps we can discount s.5 (oath-taking in front of a Buddha image which possesses great supernatural powers), s.65 (monks giving instruction in the Tipitika are treated favorably compared with other educators) and s.156 (monks and Brahmins are immune to a charge of murder): perhaps these are too worldly. But surely s.170 claims its authority from the Buddha-dhamma? It tells the king how to decide which of two lay patrons made a particular religious donation and therefore deserves its merit. Though this in effect concerns a declara-

38. His most helpful remarks are not in the "Prize Essay" but hidden away in *Jardine's Notes on Buddhist Law* (1882-3)(Rangoon): In his note to s145 of *Manuwonnana* he says "The *Samanta Pasadika* and Buddhaghosa's *Visuddhimagga* form the chief source of the purely Buddhist portion of the Burmese dhammathats."

39. Jackson 1975, "From Dharma to Law," *American Journal of Comparative Law*: 490.

40. Lingat 1949, "The Buddhist Manu or the Propagation of Hindu Law in Hinayanist Indochina," *Annals of Bhandaka Oriental Research Institute* 30: 290.

tory judgment, since the king as judge cannot physically transfer an amount of merit from one party to the other, there is every sign that this was a real legal provision, in the sense that such disputes did actually come under the king's jurisdiction. Sub-section 1 gives off the whiff of authenticity:

If both parties founded the endowment at the same time, and if they be the king and his ministers, the king's claim shall get the preference, as he is the lord in the land.

Most fatal to Lingat's over generalization are those sections of *Wageru* taken straight from the Pali canon: "the 5 special duties owed between spouses,"⁴¹ "the 7 kinds of wives,"⁴² and the 4 *agatis* or wrong ways of judgment⁴³ are all "founded upon Buddhist dicta." A great deal more of such Buddhist material appears in other early dhammathats, for example "the 4 kinds of marriage" (depending on whether husband or wife is closer to an angel or beast).⁴⁴ the rule that whoever looks after you in your final illness can succeed to your goods⁴⁵ and "the 10 kinds of family protection which a young woman may have."⁴⁶

How did this legal material get into the Buddhist canon? Some of it, though it may be presented in the Dhammapada as verses spoken by the Buddha, or in the Jataka as a sermon preached by the Buddha in an earlier incarnation, is presumably not specifically Buddha-dhamma so much as general Indian wisdom current at the time. But a large body of legal material—that which occurs in the Vinaya and the Vinaya commentaries—is uniquely Buddhist, in that it reflects the idle speculations of the early sangha. The boredom and tension of army life combine to produce "the barrack-room lawyer," the regular soldier who develops an expertise in legal tricks and dodges. The sangha, another all-male institution under rigid discipline, apparently produced the same breed of logic choppers and artful dodgers. They

41. s.33 *Wageru*; cf *Uggaha sutta*: A III 36.

42. s.38-40 *Wageru*; cf *Sujata jataka*: A IV 91; J II 347.

43. s.194 *Wageru*, cf J I 260; V I 339; J II 1.

44. Found in *Manussika* [D2] and in the Burmese, Mon and Arakanese *Dhammavilasa* [D4, M3, D35] at D2:215. cf A II 57-9

45. Found applied to the laity in *Manussika* [D2], *Pyumin* [D3], *Dhammavilasa* [D4] etc. As a rule applying to monks and novices, it is in Mahavagga VIII.27.

46. This list, found in V III 139, must be the inspiration behind *Pyumin*'s [D3] list of 12 and *Manussika*'s [D2] list of 14 such protectors in D2:28.

are caricatured in the Vinaya as the *Chabbaggiyyas*, “the Group of Six Monks,” whose mission is to boldly roam North India breaking the rules in new ways or offering new excuses for old offenses. The monastic milieu threw up imaginative new defenses whose strength was discussed and assessed. Some of these monastic legalisms coalesced early enough to enter the Vinaya pitaka as the stories which follow the Old Commentary in the *Suttavibhanga*. Others just missed the cut and must be sought in Buddhaghosa’s *Samantapasadika* or in Jayaraksita’s hybrid Sanskrit commentary of the Mahasanghika school. That these two 5th century A. D. sources contain identical monastic legalisms, though they come from opposite ends of S Asia and from brands of Buddhism that had separated centuries earlier, indicates how early the non-canonical material is. It must date from the reign of King Asoka or his immediate successors. Would there be any similarity between the barrack room lawyering of monks and the law administered in the king’s courts? The sangha included people who were well informed about Mauryan legal practice:

Now at that time a certain former minister of justice who had gone forth among the monks was sitting near the lord. And the lord spoke thus to the monk: “For theft of what amount does King Bimbisara of Magadha impose floggings, imprisonment or banishment?” “For a *pada*’s worth, lord.” [V III 44]

It is ironical that the scriptures of “unworldly” “non-legalistic” Buddhism might be our only source describing Indian law in the last centuries B. C.!

S. E. Asia treated these monastic legalisms as texts on which to elaborate sermons, as themes on which to play variations and as *topoi* in Aristotle’s sense of “bases from which one argues.” While the Hindu borrowings merge into the textual background, some of these Buddhist borrowings are elaborated into prominence. Take the 4 *agati* (the 4 courses not to be taken) which are the Buddha’s equivalent of the two western rules of natural justice. All attempts to portray Buddhist legal procedure as fair must elaborate this text. The early Burmese dhammathats were content merely to mention the list, but 17th and 18th century works incorporate the *agati* into longer lists of

bad judicial behavior.⁴⁷ Lanna legal literature expands the list to five and tells a rather charming judgment tale “the Rishi and the Tiger” in which different animals give practical examples of each of the possible wrong judgments.⁴⁸ Siamese and Khmer dhammathats elaborate the theme into “the Words of Indra,” a beautiful and moving sermon. The cure for bribery, anger and fear of high rank is “to judge in conformity with dhammathat and rajathat.” The cure for ignorance is to consult the wise men, the monks and the former judges who know the law and traditions, and to study dhammathat, rajathat and niti.⁴⁹ Or take, as a prime example of monastic legalism, what the Burmese called “the 4 *padesa*,” a check-list for analysis of the price of a thing which Forchhammer describes as in general use in Burmese commerce.⁵⁰ This has been adapted from a long discussion in *Samantapasadika* of an ancient but non-canonical verse listing 5 *padesa*.⁵¹ These tells the Vinaya master how to value the item stolen to see whether the theft has triggered the highest penalty. Buddhaghosa’s discussion of the concept of market-value is probably of more interest to economists than lawyers, but the S. E. Asian legal authors loved it. The Lanna authors keep the number 5 (which *Samantapasadika* almost reduces to 4) but at the cost of clarity and sense.⁵² The Burmese authors whittled the *padesa* down to 4, but then elaborated innumerable sub-divisions of time, place, price and thing.⁵³ From a couple of pages away in *Samanta pasadika* comes the analysis of “25 kinds of theft” which is introduced as part of the ancient teachings:

47. *Wageru* [D5] s194; *Maharajathat* [D8] p218 has them as the first four items in a list of 12; *Manugye* [D12] p156 has them in a list of “7 men who should not be judges.”

48. Mangraisat s82 and s88 of Aroonrut Wichienkeeo and Gehan Wijeyewardane, eds., 1986, *The Laws of King Mangrai* (Canberra).

49. I am summarizing the khmer version: Leclère, 1898, *Codes Cambodgiens* (Hanoi). I understand that the Thai version in the Three Seals Code is identical.

50. Jardine 1882-3. Note to *Manuwonnana* s107.

51. In Bapat’s English translation of the Chinese translation, which I am using, it is on page 234-8. Bapat and Hirakawa, 1970, *Shan-Chien-P’i-P’o-sha* (Poona).

52. *Mangraisat*: s73 of the 1986 version published in Canberra; s 19 of the 1977 version published in *Journal of the Siam Society*.

53. *Manugye* [D12] p. 13-15. The discussion is interpolated into the tale of Manu’s judgment of the *Squirrel v Rat* case.

The ancient Teachers say: This matter of the second Parajika [the law against theft] is very difficult to understand. Therefore one cannot but have tortuous and fragmentary explanations. Therefore I must now say these 25 expressions which you must carefully examine.⁵⁴

The text proceeds to shoe-horn a great deal of monastic legalism on theft into a 5 x 5 matrix. An early Mon dhammathat mentions the 25 kinds of theft as do some later Burmese law texts, and *Manugye* [D12] manfully struggles to make sense of all of *Samantapasadika*'s Pali classifications,⁵⁵ but it is the Lanna law texts which really develop this theme. "Twenty Five Kinds of Theft" becomes one of the standard titles for a legal compendium. Sommai Premchit's catalogue lists 19 surviving manuscripts bearing this title, though he adds "They should present the standard group of 25 types of theft, with stories illustrating the different penalties for monk and for layman who commit the same offense. This sampling of the topic gives, altogether, 16 topics."⁵⁶

The strongest proof of Buddhist influence on the law texts is almost too obvious to mention. The only two legal literatures in the world which illustrate norms in terms of stories, parables and judgment tales are the Vinaya and the law texts of Buddhist S. E. Asia. In particular neither the Hindu sastric material nor the Chinese codes nor the laws of Java and Malacca share this peculiarity. You need only dip into S. E. Asian Buddhist law texts for a page or two before encountering those tell tale words: "There was once a certain king in Benares . . ." Buddhism is half way to solving a problem that has baffled every other literate culture—how to make law books interesting.

If I have spent too long making the simple point that Hindu influence on the dhammathats has been overrated and Buddhist influence underrated, this is due to exasperation. The same point has been argued by Burmese and Indian scholars⁵⁷ for over forty years, but the myth of Hindu origins will not lie down and die. It is worth pondering why the misjudgment has become so firmly entrenched. The dis-

54. Bapat and Hiraikawa 1970, 232.

55. *Mon Dhammavilasa* [M3] s3; ROB 28-1-1795 s5; *Manugye* [D12] 110-3.

56. Sommai Premchit, *et al.*, 1986, *Lan Na Literature: a Catalogue of 954 Secular Titles on Microfilm* (Chiang Mai).

57. See E Maung, 1951, *The Expansion of Buddhist Law* (Rangoon), Shwe Baw 1955, and Dev Raj Chanana, 1966, "Social Implications of Reason and Authority in Buddhism," *Indian Economic and Social History Revue* 3: 295.

covery that “dhammathat and rajathat” contains some provisions of Hindu law was publicized during the first decades of British colonialism in Burma. It coincided with and mutually reinforced the “discovery” that Buddhism was an anti-social religion uninterested in the events of this world. Both discoveries were convenient for the colonists: I would enjoy demonstrating that both were entailed by the imperatives of imperialism, but things were not quite that simple: it was King Badon (1781-1819) the last of the real old Burmese kings, who first expounded the Hindu origin of the dhammathats in writing, and the three scholars most responsible for spreading the idea worldwide were French, Swiss and Japanese. Furthermore, as a very first approximation to the truth, both discoveries have merit: the dhammathats do contain patent Hindu borrowings, and Buddhism does indeed urge a withdrawal from the worldly pursuit of wealth and sex. The pioneer legal historians qualified these original discoveries with passages that vehemently argue for the opposite,⁵⁸ but naturally such subtleties escaped the vulgar. Max Weber happened to be the most effective vulgariser of both ideas, and it is thanks to his influence that they continue to prop each other up to this day.

The political aspects of law: Why obey it? Who controls it?

In the last section I used literary history to demonstrate that the early Burmese legal literature draws more on Buddhist than on Hindu sources. In this section I turn to political history: what role did Buddhism play in the operation of the Burmese legal system? I shall tackle two inter-linked questions, the first of which is the Weberian topic of legitimacy. What reasons were advanced to persuade the ordinary citizen, the man in the paddy field, to obey dhammathat and rajathat? My starting position is that, though the rhetoric employed by kings and monks often overlapped, we can distinguish two characteristic arguments. Kings would tend to say “Obey law because I say so” while monks would tend to say “Obey law because it is Buddhist.” This distinction yields quite a useful bird’s-eye-view of the last eight centuries of S. E. Asian legal history. In Siam and Cambodia the royal view prevailed, and legislation by the king

58. Forchhammer 1885 is the earliest and most detailed of the three scholars. But on page 44 he likens Burmese law and Hindu law to “the *sister* languages Sanskrit and Pali, which have a common parent but are not derived from each other.”

became the normal legal genre, while in Lanna and Laos the monks got the better of the argument, and the sangha won effective control of written law. But in Burma the emergence of a third competitor made the plot more complex. Sometime between the 12th and the 16th century the legal profession established itself, equipped with its own slogan summarizing legal legitimacy: "Obey law because it is Burmese." The three cornered rivalry between king, sangha and lawyers gives the legal history of the 17th and 18th century a particular interest. But this did not just concern the legitimacy of law: theories of legitimation complement each other rather than rivaling each other, since the man in the paddy field is quite capable of obeying law for mutually incompatible reasons. The real point at issue in the elite world of monks, lawyers and courtiers was constitutional, or, in Hart's language, concerned with secondary rules of recognition and change.⁵⁹ Who was in charge of the legal literature? Who could authenticate a particular text as being authoritative on Burmese law? If the king ultimately exercises this power, he will be able to legislate, to engage in social engineering, by authenticating only the texts which decide as he wants. If the monks have final say, then Burmese law texts will be viewed as sacred and inerrant: the characteristics of such strongly religious laws as the Jewish Torah and the Muslim Shari'ah. If the lawyers can control which books are authoritative, then they have become the ultimate arbiters of power within a constitutional rule of law state.

Identifying such issues as matters of constitutional law is currently unfashionable. The usual approach is to mutter darkly about oriental despots while enumerating the Sanskrit and Pali themes which S. E. Asian monarchs used to justify their absolute power. I agree that, when center-stage in the theater-state, the king milked such themes for all they were worth: he emphasized his membership of the solar dynasty, his eleven kinds of royal umbrella, and his ownership of the seven treasures of the cakkavatti monarch. But when addressing a legal audience the king could sound reasonable and restrained, the very model of a constitutional oriental despot. Kaingza's *Maharajathat* states King Thalun's claims to legal preeminence in about 1640. The king has asked Kaingza to comment on the popular maxim "that rajathat overrides dhammathat, and mutual consent overrides rajathat":

59. Hart, 1961, *The Concept of Law* (Oxford).

I, Manuraja, submit the following answer based on learned works and authoritative precedents: Irrespective of what the dhammathats provide, what the king ordains is law and must be followed in disputes relating to property, life and injury to the human body. In these three matters what the king commands must prevail . . . Thus the rajathat should be followed if they conflict with dhammathat or other learned works. [D8 Xth Question, s.18]

This is a modest enough claim, is it not? The king claims the constitutional power to legislate in three areas: "property," which primarily means agricultural land but widens out to include the economy in general, "life," meaning his ultimate power of capital punishment as a synecdoche for punishment and criminal law, and "injury to the human body" referring to the King's Peace, his duty to put down robbers and dacoits. Why is this document not regarded as the Burmese *Magna Carta* or *Bill of Rights*? Mainly because these constitutional settlements ended a genuine political rivalry which never existed in Burma as long as the monarchy was unchallenged by any institutional competitor for power. The Peacock Throne remained the sole locus of Burmese power right up until the British consigned it to a museum. But also because it reflects a truth about the Burmese attitude to written law. Burma did not have a constitution (in the sense that contestants for power argue about the precise interpretation of clause 4 or amendment 5) because written law was seen not as something to be enforced to the last letter, but as instructions giving a general indication of policy and direction. As the king himself put it:

All officers in charge must learn from experience because custom is different from practice, practice different from the shape of things that would be brought about, the shape is different from the idea and the idea is different from the consequences. [ROB 24-9-1598]

Between the 9th and the 12th centuries, when the move from oral to written law was underway, written law created its own legitimacy. A written text derives authority from the novel characteristics inherent in writing. It has a permanence which human experts in oral law cannot hope to achieve. As an inhuman source of law, it can claim to rise above the various forms of bias and selective statement of which human law experts can be accused. If literacy is confined to a governing elite, then it will also get some authority from this connection.

More powerful than any of these, however, is the association of writing with Buddhism. The Burmese superstition that one should avoid stepping across anything written on the ground survived into the late 19th century. It was explained by saying that “Each letter is the image of a Buddha.”⁶⁰ The earliest dhammathats display a delight in the technology of weaving letters into words, sentences, paragraphs and books:

Listen, all good men, to the Dhammathat kyan which I am now making in letters, even like a garland made out of flowers. [D1, exordium]

and a touching faith in the certainty that writing brings into a dubious and disordered world:

Recording a debt in writing is like inscribing it on a rock on the face of the earth. It is never effaced and it is against nature that such debt be forgotten. [D1, 121]⁶¹

When did this novelty wear off, so that written law needed some form of legitimation over and above the fact that it was in writing? When writing was sufficient legitimation, texts could be written anonymously. Conversely, when we find a law text identified by the name of its author, this suggests that the author’s name has been remembered because it is necessary to legitimate his text. The earliest surviving dhammathat to bear the name of a credible human author is the eponymous *Dhammavilasa* [D4], written between 1174 and 1211 by a famous monk. In the preceding section I described how Pagan sucked in literature from the surrounding older literate cities. For law notebooks, I guess that those entering Pagan from Monland were identified as “Mano” texts while those coming from Pyu and north Burman cities and from Arakan were identified as “Manu.”⁶² King

60. Gray 1886, “Lokaniti” footnote to s388.

61. The loss of innocence is recorded in the 18th century *Manugye* [D12] III 19-20 which lists “the 12 ways in which debtors and creditors can cheat each other over a written debt agreement.”

62. For another example of the vowel shift between Mon and Burmese, compare the names of the king of Thaton defeated by the king of Pagan in 1057: in Mon he is known as “Manohari” and in Burmese he is “Manuha.”

Narapatisithu commissioned⁶³ one of his most trusted monks to produce an official dhammathat combining the best of these earlier texts. The monk's name is Dhammavilasa, the official nature of his work is signified by calling it *shwe myin* (golden) and its incorporation of both streams of pre-Pagan text is signified by identifying it as "Manu-Mano." Hence the earliest surviving manuscript of the work is entitled *Manu Mano Dhammavilasa shwe myin dhammathat*.⁶⁴ Presumably the learned monk, who was also commissioned by the king to purify religion in Monland, wrote the work in Pali, but the palace translators must have set to work immediately. *Dhammavilasa* texts survive in the Burmese [D4], Arakanese [D35] and Mon [M3] languages: was there once a Pyu, or even a Chin or Tai-Shan, version? I am suggesting that this important work replaced the fading effectiveness of legitimation through writing alone by an appeal to the joint prestige of the king and his most famous monk.⁶⁵ Contrary to Hla Aung, who says that "The idea of a Burmese king enacting a dhammathat was unthinkable."⁶⁶ I would call *Dhammavilasa* a royally sponsored dhammathat. The interesting question is whether the author was persuaded by his royal patron to endorse any of the more controversial royal claims to power and influence. Would an official dhammathat differ in content from an unofficial one? Consider this passage:

This earth has an area of 2,400,000 yojanas. But any deviation from rightful ownership, even by a hairsbreadth, is wicked. Therefore kings take possession of all the lands in the kingdom and distribute them among their people in fair shares, thus obviating strife and discord. [D4 VIII 10]

This aspect of royal power is referred to by later Burmese lawyers as the "Lordship of Land and Water." Its precise implications remained a

63. That *Dhammavilasa* was commissioned by the king is only an inference from the wide spread of the manuscript. Pace Forchhammer, the Kalyani Inscriptions do not state that the king commissioned the monk.

64. The British Library ms. copied in 1749. Rangoon National Library has a later manuscript entitled *Dhammavilasa Manu Mano dhammathat thamaing*.

65. Dhammavilasa's fame was guaranteed in 1475 by the description of him in the Kalyani Inscriptions. Even during his lifetime, however, his reputation was known as far off as Sri Lanka: see Barnett, 1905, "The Manavulu-Sandesaya," *Journal of the Royal Asiatic Society*: 265.

66. Hla Aung, 1969, "The Burmese Concept of Law," *Journal of the Burma Research Society* 52: 27.



matter of controversy until the end of the Burmese monarchy,⁶⁷ when it was superseded by the even more feudal notion of the British Crown's eminent domain. Dhammavilasa's statement is the culmination of the long, tentative process of state formation from the start of irrigation to the imperial conquests of Pagan. Whenever a local big man extended the area of his political control, whenever a channel was dug to link two separate village irrigation systems, the act was justified by some such claim as "I deserve more power over land because I am better than you." The introduction of Indian ideologies of kingship allowed this to be put in more interesting ways but, as long as the claim was made orally, it remained a slogan rather than a legal doctrine. Oral rules on land use can get quite complex, but lack enough detail to make an intellectually coherent legal package. An official dhammathat, legitimated by the prestige of the king and his most meritorious monk, is motivated to tackle these issues and to convert the king's windy rhetoric into more precisely calibrated written claims.

In its heyday Pagan sucked the early law texts in from surrounding cities. At its collapse Pagan blew its blended law texts out to its successor kingdoms and their neighbors. Between 1275 and 1317 we hear of five Thai kings who sponsor or use written law texts. To Thai kings such as these ruling over ethnically mixed populations, an official dhammathat seems to have been a necessity. Between the 14th and the 17th centuries it was these Thai kings who made all the running in S. E. Asian legal history: Mangrai's dynasty in Chiangmai produced the profusion of Lanna legal literature that has been rediscovered in the last twenty years while the Ayuthayan kings wrote much of the legislation preserved in the Three Seals Code. In Burma nothing much happened until the 16th century, when a father and son team from the obscure central Burmese city of Toungoo took it in their heads to conquer the known world. They conquered Martaban in 1541, Pagan in 1545, southern Arakan in 1546, Ava in 1555, Lanna in 1556, Ayuthaya in 1563 and Luang Prabang in 1564. Laos and Siam did not remain under Burmese control for long, but the campaigns had the effect of bringing national legal literatures back in touch with each other. The wars were fought for manpower and booty, and manuscripts, particularly those from the royal libraries of conquered kings, were fair booty. Certainly the Burmese acquired copies

67. Compare ROB 27-7-1785 and *Maharajathat*, 216.

of Mon and Lanna legal literature during these campaigns: I guess that they also acquired law texts from Laos and Siam. But how were such texts to be regarded? Was the law they contained to be defined in ethnic terms as Thai law (and therefore inapplicable in Burma) or in Buddhist terms as universal law (and therefore to be cited in the Burmese courts)? The lawyers favored the latter approach, the king favored the former approach, and the sangha eventually adopted their own definition of legal orthodoxy. The resulting claims and counter-claims set off an explosion of dhammathat activity.

The earliest well-dated references to a legal profession appear in rajathats of 1597 and 1607. These Royal Orders regulate an existing profession, so the lawyers must have established themselves by 1500 at the latest. Where lawyers flourish, legal texts proliferate. A trainee lawyer has to acquire his own library by copying out his guru's collection of dhammathats. The more such quotable texts, the better. If written authority can be found for alternate and mutually contradictory rules, then clients whose case was hopeless acquire a text on which they can rely. They must have welcomed the "foreign" legal literature with open arms: they were plainly within the Theravada orthodoxy and plainly textually related to the dhammathats in use in Toungoo (thanks to the common origin in Pagan). Yet they added to the lawyers' storehouse of paths of justification with written rules hitherto unknown in Burma. The attitude of the legal profession between 1550 and 1620 can be summed up like this: We are going to use this interesting new material by quoting it in our courtroom arguments, and by incorporating it into our own personal dhammathats. Our normal legal practice involves treating dhammathat and rajathat as normative, and it is we, the legal professionals, who judge what shall count as dhammathat and rajathat. The royal response to this alarming call for legal autonomy was to reimpose some kind of unity on the vast variety of law texts that had flooded into Burma since 1541. The king claimed that this was his duty by analogy with his duty to impose unity on the monks when their disciplinary disputes lead to excessive fragmentation ("purification of the sangha"), his duty to present a unified account of history ("re-editing of the chronicles") and his duty to repair the ravages which time had wrought on the very words of the Buddha-dhamma ("purification of the Tipitika"). Between 1629 and 1648 King Thalun presented the world with both a purified dhammathat and an instant commentary on it. He could, and did, ensure that the new work got a wide circulation during his lifetime. But he had

no control over future kings and future generations of lawyers. If his dhammathat is to succeed in replacing its rivals, it must do so on its own merits. In the early 18th century the sangha entered the competition by writing a dhammathat that puts the word "Buddhist" back into the expression "Burmese Buddhist law." The *Vinnichayarasi* [D18] is scholarly, pious and positively dripping with the latest in classical Pali scholarship. By reasserting the claim that the dhammathats are legitimated in terms of religion, it set a standard that had to be met by both 18th century lawyers and kings. But the sangha's dignified contribution degenerated into farce: the monastic community split between those who wore their robe across both shoulders, and those who left a shoulder bare. The resulting battle was fought partly over the production and control of law texts. As a result members of the sangha competed to produce the most obscure, archaic and practically useless dhammathat text.

Let us return to the late 16th century. We can identify certain dhammathats of the period, such as *Kungya* [D6], *Dhammathatkyaw* [D10] and *Kozaungkyok* as being produced by the Burmese lawyers. These works combine a fondness for legal technicalities with a concern for practicalities. Let me illustrate this with *Kungya*, which eschews any attempt at classical learning, giving us only one judgment tale derived from the Jataka and none of the lists of sons, wives, degrees of marriage etc., which clutter up the other dhammathats. The rules are stated so as to be of maximum use in settling village disputes. *Kungya* tells us that a girl who has slept with several men can chose which of them to marry, and can demand 30 ticals of silver in the event of a refusal. I assume, with the greatest respect to all concerned, that this would be more useful at village level than the learned discussion of the five types of virgin offered by the other dhammathats. *Kungya* gives us one rule (otherwise found only in a late 18th century work) which also seems typical of village life, rather than palace decorum:

If a woman has illicit intercourse with the husband of another woman, the latter has the right to pull the ears or the top-knot of the former. If such treatment results in the loss of an ear or of the top-knot, the loser is entitled to claim the man as her husband; and if he refuses to take her to wife, he shall pay 60 ticals of silver as compensation. But if no such loss is sustained, he shall pay her 30 viss of copper. The above is the rule laid down in the dhammathats. [D:2.413]

The author, Min Pyanchi, boasts that the varied sources on which his work is based include “pyattons, pyatpons, rajathats, and the *Kyemin*, *Zalimin* and *Manussapeta* dhammathats”[D:1.5]. U Gaung’s Digest paraphrases *Kungya*’s preface:

It was written in 4 volumes . . . having for its basis an old dhammathat which contained more rules than the *Manu*, *Mano*, *Dhammavilasa* and *Manussika* dhammathats, and which was written as far back as 11 B. E. / 659 A. D. The old dhammathat was in the possession of *Sadaw Mahasangharajadhamma*, who resided at Pagan in the gilt monastery built by *Mohnyin Mintaya*, who ascended the throne of Ava in 788 B. E. / 1426 A. D.

This story of the rediscovery of an old dhammathat text kept in a Pagan monastic book chest is partially confirmed by epigraphy. An inscription of 1442 written by the Governor of Taungdwin to enumerate his pious donations confirms that a dhammathat text was held in a Pagan monastic book chest. Alas, the Governor of Taungdwin, though a nephew of *Mohnyin Mintaya* and married to one of *Mohnyin Mintaya*’s daughters, founded a separate monastery from that donated by *Mohnyin Mintaya* himself. But I hope that I am not being over-romantic when I suggest that the 1442 Pali dhammathat moved a few miles from one Pagan monastery to another, to form the basis of *Kungya*. When I speculate that this anonymous work was the first of the sources listed above by Min Pyanchi, in other words that it was called the *Kyemin* dhammathat, I probably am going too far into the fictional. But whatever sources *Kungya* drew on, they included the conversation and libraries of lawyers. When a married man becomes a monk and his wife remarries, the new husband must give way if the original husband leaves the sangha and returns to his wife. In the event of litigation, the new husband must pay the costs, but not any compensation for adultery [D:2.411]. This section reads as if it could have been extracted from a pyatton, a report of a real life case, since discussion of costs is common in pyattons but very rare in dhammathats. Other sections show a fondness for distinctions depending on lawyer’s abstractions. The claim to compensation for adultery, for example, is lost with the wife’s death “since a claim for compensation is not a debt” [D:2.454]. Either Min Pyanchi moved among professional lawyers, or his reference to “the authority of the pyattons, pyat-

pons and yazathats” must be understood as meaning that he had access to a Law Library.

King Thalun’s attempt to purify the dhammathats in the 1630’s led to the writing of two of Burma’s most important law books, *Manosara Shwe Myin* [D7] and *Maharajathat* [D8]. The first named work is a Pali language dhammathat, closely based on an earlier surviving work called *Manosara* [D1]. D7 was the joint work of Thalun’s favorite monk, the Taungpila sayadaw, and Thalun’s favorite lawyer, Kaingza, demonstrating how far things had changed since *Dhammavilasa* was composed at the end of the 12th century. It is no longer enough for the king to collaborate with a prestigious monk on a dhammathat: he must bring in a representative of the legal profession as well. Furthermore, the concept of “royal favorite” was by the 17th century becoming more bureaucratic. The Taungpila sayadaw held a distinct office, usually translated as “Royal Preceptor” or “Head of the Order.” The term most often used in the 18th century was *maha dhamma raja guru*, which I shall abbreviate to “MDRG.” Thalun may have intended to set up Kaingza as the legal equivalent: when he honored Kaingza with the title *Manuraja* he may have meant him to act as royal ambassador to the lawyers, as the MDRG was royal ambassador to the sangha. *Maharajathat* [D8] appeared under Kaingza’s name alone, but the introduction is almost embarrassingly fervent in its invocation of the MDRG’s authority:

I answered the questions relying on the guidance of the Taungpila sayadaw . . . He is like the mango tree that thrives in the verdant vale hard by the emerald cave.

In genre terms D8 is unique. Each chapter consists of about a dozen questions sent to Kaingza by the king, along with Kaingza’s considered replies. The king cites popular legal maxims and enquires if they are good law. Or the king asks about reforms which have been introduced in D7 and, in effect, invites Kaingza to explain the policy behind the reform. It is partly a commentary on D7, and partly a discourse on what counts as normal legal practice and acceptable legal argument. If we translate *Manuraja* as “Attorney General” and think of Kaingza as a politician who is simultaneously head of the legal profession, then we get a clearer idea of his intentions. Note that between them Thalun, Kaingza and the Taungpila sayadaw challenged the prevailing fiction that the dhammathats could only be changed by

restoration to their original purity. They boldly state that some rules in the ancient dhammathats needed reform in current conditions, and proceeded to change them by what amounted to royal legislation. One such change concerned the effects of sworn evidence: the judge's decision could no longer be annulled if the witness suffered a catastrophe within weeks of testifying.⁶⁸ Another change abolished the right to make a will.⁶⁹

Forty years on, these events were described in the earliest of Burma's surviving literary histories, Shin Uttamasikkha's *Pitakat Thamaing*.⁷⁰ The following passage from this under-used manuscript is my prime piece of contemporary evidence for the rivalry between lawyers and kings:

Scholars in the reign of Hsinbyushin produced the *Dhammathat-kyaw*. The *Manosara-kye*, written in Pyumin's reign, was translated into Burmese in Hanthawaddy during the reign of "second king." During [Thalun's] reign, *Manosara kye* was re-edited into alphabetical order, and renamed *Dhammathat Shwe Kyam* by [the Taungpila sayadaw] and [Kaingza Manuraja]. They did not use the *Kyemin dhammathat kye*. These dhammathats, *bedin*, *kalap*, *panci*, *vitak*, *danti* and *lokaniti* texts are secular works which endanger the path to nirvana. Among them, three dhammathats and [some] dietary medical treatises were written by hermits, but the commentaries on them were written by scholars. Please note this fact! It is only proper and correct that these matters be laid before successive kings.⁷¹

What does this interesting distinction between trustworthy "scholars" and untrustworthy "hermits" signify? Blaming Manu the hermit for

68. Okudaira, 1984, "The Role of Kaingza," *Ajia Afurika Gengo Bunka Kenkyu* 27: 183.

69. See Huxley, 1990b, "Wills in Theravada Buddhist S. E. Asia," *Receuil de la Société Jean Bodin* 62: 66. Evidence that this change happened during Thalun's reign is only circumstantial.

70. This passage is part of the last page of the manuscript printed in Burmese in Bechert, Khin Khin Su and Tin Tin Myint, 1979, *Burmese Manuscripts*, Vol. 1 (Wiesbaden) 172. I am very grateful to my colleague John Okell for the English translation, and to Dr. Lobo of the Museum für Indische Kunst, Berlin, for sending me photographs of the whole manuscript, which is catalogued under the number MIK I 4194.

71. Comparing this with a tabular dhammathat history in English, which I think represents the literary history also called *Pitakat Thamaing* written in the 1820's by the 1st Maungdaung sayadaw, "Hsinbyushin" would be Bayinnaung (1551-81), and "second king" would also be Bayinnaung (meaning the second king of Greater Toungoo?).

not being a Buddhist scholar is like blaming the Old Testament prophets for not being Christian: Manu the hermit is a contemporary of Mahasammata the first king who lived several eons before Gautama Buddha turned the wheel of the law! "Hermits" could mean anything, from forest monks at the near end of orthodoxy to Brahmans, alchemists and animists at the far end. But I take it that in this context "the hermits" represent the lawyers with their appeal to the authority of Manu the hermit. The implied contrast is between lawyers saying "obey law because it is old" and monks saying "obey law because it is religious." By now the sangha were experts in textual history. Within a century the question of whether *Culaganthipada* was written in 13th century Ceylon or 5th century B. C. India would be, literally, a matter of life or death. To scholars who could confidently settle that question, the absence of evidence that 5th century Sri Lanka knew any dhammathat was becoming embarrassing. The subtext of Shin Uttamasikkha's message might be paraphrased thus:

We admit that the original dhammathat is not a Theravada document in the grand tradition: its textual history does not go through first millennium Sri Lanka. But the commentaries on it are in the grand Theravada tradition, so we monks are the ultimate legal authorities as long as we can ground its content in canonical literature.

Why is it worth mentioning that Kaingza et al. did not use *Kyemin*? Because, I surmise, *Kyemin* was typical of the newly discovered dhammathats which the lawyers were busily citing in court. The sentence stands for the purification of the dhammathats, the expulsion from legal discourse of certain works popularized by lawyers in the previous century. Pronouncing an anathema on texts is one thing: making it stick is quite another. The only way to test whether Thalun in fact had the power which he asserted to control lawyer's discourse was to wait a century and see whether lawyers are still doing as Thalun had bid them.

A century after Thalun, his great-great-great grandson, the last of the Toungoo dynasty kings, occupied the throne. Two dhammathats, both written by monks but otherwise very different, were produced in his reign (1733-52). Firstly Shin Maha Buddhingura, sayadaw of the Heir Apparent's monastery, compiled the *Kitti dhammathat kyaw* [D10] which completely ignores the legal innovations of Thalun's reign. Analysis of the sections on Inheritance in the Digest reveals

neither references to nor parallels with D7 and D8, King Thalun's official dhammathats. The largest bunch of parallelisms are with *Dhammavilasa* [D4], but exactly half of the sections quoted are unparalleled in the surviving old dhammathats. This indicates that it preserves an old textual tradition otherwise lost to us; the various literary histories identify this source as *dhammathat kyaw* or *kitti dhammathat* written by eight judges between 1581 and 1599. In the 1740s Buddhingura is ignoring the reformed royal dhammathats of the previous century in order to reproduce textual traditions from 150 years before. *Kitti* is connected with the lawyers' dhammathats of the 16th century, so in practice, if not in intent, he was preferring the lawyers' claim to Thalun's claim. I have looked hard for evidence of Buddhingura's motives. If we can identify him with the *Sasana-vamsa*'s "Buddhankura" of the reigns 1698-1733, then he was one of the four leading one-shoulder monks of the period, and we can speculate about an alliance between lawyers and the one-shoulder tendency. But identifying monks from a single literary reference is a mug's game. Mabel Bode warns:

These small bibliographical puzzles, which we are not willing to leave unsolved but must waste much time in solving, result sometimes from the choice of well-known or well-sounding Pali names by theras of different epochs and their pupils, commentators and copyists, sometimes from the renaming of distinguished teachers by their royal admirers.⁷²

The second dhammathat produced in this reign was *Vinnichayarasi* [D18] by Shin Khemacara, a pupil of the king's MDRG. This is my personal favorite among the Burmese law texts. While the Pali dhammathats written later in the century give off an odor of scholasticism, Khemacara, writing in simple Burmese prose, gives us an idea of what a good popular sermon of the period might have sounded like. He cites some older dhammathats—Manuyin, Manosara, Manusara, Manussika and *Dhammavilasa*—by name, but he wants to ground every rule in scriptural authority. When he can, therefore, he illustrates each rule with extensive and learned quotations from the Pali canon.⁷³ *Vinnichayarasi* combines the conventions of legal

72. Bode, 1909, *The Pali Literature of Burma* (London) 28-9.

73. In the Digest excerpts, we find quotations from the following: the *Dhammadayada Sutta*, the *Dhammapada*, the *Vinaya*, *Vessantara Jataka*, *Mahosodha Jataka*, *Mahakunala Jataka*, *Katthaharika Jataka*, *Vinaguna*

scholarship (the citation of earlier dhammathats) with the conventions of religious scholarship (the appeal to the Pali canon and its commentaries). Its implied message is that Burmese law is, after all, Buddhist law, and the sangha must therefore be the ultimate judge of what is proper.

In 1752 begins a new reign, a new dynasty and a new approach to monastic discipline. King Alaungpaya, the founder of the Konbaung dynasty, appointed Atula, a prominent one-shoulder monk, as his MDRG. The appointment led to the production of an important law text, the *Atula pyatton*. This is a case-book, a collection of law reports “compiled from the pleadings of fifty lawyers and twenty five judges,” the common denominator of which is that a monk, or group of monks, appears as plaintiff or defendant. As MDRG, Atula was the conduit through which monks were summoned to appear in court,⁷⁴ and he must have arranged to be sent written reports of all the cases which crossed his desk. Sometime after the incoming king replaced him in 1760, Atula edited these records into a single manuscript. This work, or some other aspect of Atula’s tenure in office, stimulated an energetic counter-reaction by the two-shoulder monks which manifested itself in the production of several new dhammathats in Pali and Burmese verse. I shall examine these “antiquarian” legal works shortly. First we must consider why Atula was regarded as a *legal* threat, and why the battle should be fought around *legal* literature. The important dhammathat produced in Alaungpaya’s reign was *Manugye* [D12], the best-known and most accessible of all the Burmese dhammathats. To know *Manugye* is, in a sense, to know the whole genre, since it is as much an encyclopedia of legal argument as a through-composed textbook. Whether its author was a lawyer before being appointed minister in charge of the capital city moat is unknown. But in true legal fashion he prefers the virtue of all-inclusiveness to the principle of non-contradiction. It offers in Burmese prose a storehouse of different rules on each issue without expressing a preference between them. And yet, on the important points where Thalun attempted to legislate, it does not cite material that contradicts Thalun’s approach. If *Manugye* represents what lawyers thought in the

Jataka, Sujata Jataka, Sambhula Jataka, Garudhamma Jataka and Buddha’s sermon to Uggaha. These references typically end with a phrase like this: “Therefore the rule laid down in the dhammathat is in perfect concord with the doctrine contained in the sacred writings” [D2.307].

74. ROB 5-9-1757.

1750s, it is evidence that they had changed their practice in accordance with Thalun's wishes. Retrospectively, Thalun's assertion of a power to legislate was proving successful. The *Kitti dhammathat kyaw* was evidently a last ditch and unsuccessful attempt to set the clock back to the 16th century. But if Thalun's assertion of a power to legislate was now proving successful, this could have sinister implications for those monks who were out of favor in palace circles. If previous kings successfully asserted a right to change secular law by legislation, why should they not assert a right to change the text of the Vinaya, or at least the interpretation of the text of the Vinaya, by legislation? No one minds a royal purification of the sangha as long as the king enforces your version of orthodoxy. What frightened the two-shoulder monks under Alaungpaya was the prospect of a purification with the wrong guys in charge.

This is the background to the formation of the group of two-shoulder monks whom I shall call "the Committee for the Promotion of Pali Dhammathats." The senior monk and leading light of this group was the Taungdwin Sayadaw.⁷⁵ During the last years of Alaungpaya's reign, he encouraged Lankasara,⁷⁶ one of his pupils who showed talent as a poet in the Burmese language, to apply it to versifying the old dhammathat traditions. The resulting work, *Kandaw pakeinnika linga* [D13], appeared two years before Alaungpaya's death. Lankasara went on to be a one-man "Committee for the Production of Dhammathats in Burmese Verse": eight of his verse dhammathats are listed in the Burmese literary history written in the 1830s. Alaungpaya's son and successor appointed the Taungdwin sayadaw as MDRG but would not sponsor a purge on the one-shoulder monks. It was at this stage, I surmise, that the Taungdwin sayadaw set up his committee. Its initial membership comprised Candapanna and Tejosara from the sangha and Myat Aung, who had recently left the sangha for a career in government service.⁷⁷ Candapanna is mentioned by the *Sasanavamsa* as a bulwark of two-shoulder orthodoxy while Myat Aung trained under Shin Candavara, a two-shoulder luminary who was to succeed the Taungdwin sayadaw as MDRG. By 1772 the Taungdwin sayadaw had

75. Mon Phyo 1724-1762. Monastic name Shin Nana. Title as Head of Order "Nanbhidhamma lankara MDRDRG."

76. Tun Nyo 1726-1809. Monastic name Lankasara. Titles after leaving the Order: "Maha Cannsu" and "Twinthintaik Wun."

77. Listed in s.II of *Vannadhamma Shwe Myin* [D15].

died, and been replaced on the committee by the Sinde sayadaw,⁷⁸ who was twenty years younger and an equally fervent two-shoulder protagonist.⁷⁹ Tejosara was the first to complete his assignment: his *Shin Tejosara Shwe Myin* in Pali [D14] was completed in 1760 “having,” as the preface boasts, “been solicited by the Prime Minister.” The next three committee works came out under the name of Myat Aung: *Vannadhamma Shwe Myin* in Pali [D15] in 1768, *Vinichaya Pakasani* in Pali [D19] in 1771 and *Manuvannana* in Pali [D20] in 1772. It is the second of these works in particular which clarify the aims and objectives of the committee:

This is in accordance with what the ancient dhammathats say on the subject. These ancient authorities are taken exception to by the compilers of [D7 and D8] as being inconsistent with the Vinaya. The present compiler has, to avoid adverse criticism, merely mentioned what the ancient jurists have laid down. Monks have, in the Vinaya, their own rules to go by, and these will be given later. (D:1.397 [D19])

Dhammathats like [D7] and others qualify the statement that a lay pupil shall not inherit from a *rahan*. This rule is inconsistent with the Vinaya and I have attempted to reconcile them. Readers must use their own discretion in the application of these rules. (D:1.406 [D19])

The Committee is in general concerned about the interface between Vinaya and dhammathat and in particular has a quarrel with Kaingza’s two legal works. The Committee shared with the 17th century legal profession a hostility towards the legislative ambitions of Thalun, Kaingza and the Taungpila sayadaw. But they had different reasons for their hostility. The lawyers and the king were engaged in rivalry over who should control law. Unlike the similar rivalry in 17th century England, there were no constitutional implications. The lawyers did not want a constitutional monarchy but simply a wide selection of texts from which to argue. *Manugye* gave them the kind of dhammathat they needed, and thereafter they conceded Thalun’s right to legislate. His posthumous reputation was his winning card: his reign was

78. See D20 s.II and III; translated in Browne, 1879, preface, *The Manoo Thara Shwe Myeen* (Rangoon) 2.

79. Shin Nanasadhamma, the Sinde sayadaw (1744-1816). He was one of nine elders honored after Badon’s final resolution of the shoulder dispute, and served on Badon’s twelve man Committee of Monastic Discipline.

remembered as a period of firm government at home and peace abroad. The Committee's objection is more principled: ancient texts are always to be preferred to modern texts, and the issue of legitimacy is to be decided on grounds of textual authenticity, rather than legislative competence. They can avoid criticizing King Thalun outright: the claim to legislate is obviously a misunderstanding caused by the unfortunate use of the Burmese vernacular in Kaingza's *Maharajathat* [D8]:

Kaingza's [D8] has been misunderstood and applied to cases in a manner never contemplated by him, because it was written in Burmese. Unless a dhammathat is written in Pali, it cannot retain its original meaning. The rules of law are the contents, and the Pali language the proper container. [D19, Exordium]

King Thalun attempted a new style of legitimating argument: "Obey law because I, the king, say so." The 18th century lawyers appear to be saying "Our professional practice a century after Thalun is to recognize his reforms as valid." The Committee, fighting a rear-guard action, says "Obey law because it is old. Obey law because it is in Pali. Obey law because expert monks certify it as being authentic." The Committee, in short, wants law to be legitimated for exactly the same reasons that Buddhism is legitimated as the true religion and the Mahavihara traditions of Sri Lanka as the true form of Buddhism. But if law is to be obeyed because it is Buddhist, what is to be done with well-established Burmese rules which have no Canonical origin? Khemacara hoped such cases did not exist: if you kept on looking through the Buddhist literature you would eventually find a scriptural model. Forty years later, in *Rajabala*, one of the Pali dhammathats influenced by the Committee, the distinction is drawn between law (presumably originating in the Buddhist scriptures) and local custom (which refers here to a rule applicable all over Burma):

It is only in compliance with local custom that the son-in law is required to serve his parents-in-law three years before he may leave them. (D:2.319 [D23])

The Taungdwin sayadaw's campaign to promote the dhammathat as work of art and monument to classical scholarship was certainly responsible for the five works I have mentioned. What other effects

did it have? For fifty years dhammathat production was shifted dramatically from plain Burmese prose into the exotic channels of Pali prose, Pali verse and Burmese verse. Between 1733 and 1758 all four dhammathats produced were in Burmese prose: between 1758 and 1819 only one of the fifteen dhammathats produced was in Burmese prose. It is all too easy to be seduced by conspiracy theories and to see the inspiration of the committee behind each of these works. But by Badon's accession in 1781 the movement had probably developed its own momentum. By then each of the authors associated with the Committee had advanced their career in the Order or in public service. "If you want to get ahead, write an antiquarian dhammathat" must by then have seemed like plain common sense. I give details of these authors and their works in the form of a table, which fails to highlight the striking role played in the politics and literature of the period by high ranking monks who disrobed in middle age at the king's invitation in order to serve him as minister. Myat Aung had not risen far within the Sangha before disrobing and producing his three Pali dhammathats. But the Chaunggauk sayadaw,⁸⁰ author of D22 and D23, and the Maungdaung sayadaw⁸¹ are good examples of this startling phenomenon. The latter was King Badon's MDRG when in April 1784 he brought a century of dispute and intrigue to an end by purging the sangha of the one-shoulder tendency. Atula was sentenced to death by exposure in the northern forests, but reprieved the next day. Instead he and his sizable band of followers were forcibly disrobed and thereupon disappear from history.⁸²

What did the Taungdwin sayadaw's committee achieve? Ultimately their side won and the one-shoulder faction was eliminated, but the

80. Shin Saddhamanandi 1736-93. Disrobed in 1775 and subsequently was awarded the military (!) title "Balaraja" and the administrative title "Atwinwun." In addition to the dhammathats he wrote poetry in Burmese, including "On the Characteristics of Great Men," and the *Suttavaddha Niti*, a collection of edifying ethical and legal material from the Pali Canon.

81. Myat San 1753-1833. Monastic name Nanabhivamsa. MDRG under Badon and master mind of the resolution of the shoulder dispute, until he disrobed in 1812 at the king's invitation. Under his lay title, Mahadhamma Thingyan, he wrote or co-wrote more than 40 works, including the three most crucial sources for 18th century history: *The Glass Palace Chronicle*, *the Literary History of 1820* and the *Thatthana Wuntha Sadan*, the source of the later and better known *Sasanavamsa*. He perfectly exemplifies the maxim that history is written by its winners.

82. ROB 25-4-1784; ROB 27-4-1784 describes the cunning ruse which Badon adopted to supply them all with lay clothing at no expense to himself.

credit for this belongs entirely to Badon, a king strong and determined enough to intervene. The dangers of relying on the king to purify the sangha were underlined when Badon later pressed his own unique Buddhist theology on the sangha. The Committee did not affect the practice of the legal profession. No matter how many elegant works of antiquarian legal scholarship they produced, they were not going to persuade the Burmese lawyers to exchange courtroom badinage in Pali or address the judge in perfect Burmese verse. The immediate effect of their campaign was to draw a distinction between “working dhammathats” in Burmese prose and “antiquarian dhammathats” in verse or Pali. The only dhammathat to be produced in Burmese prose between 1758 and 1800 is intended as a working lawyers’ reference book on inheritance “to enable one to grasp the subject at a glance, just like a bee who gathers pollen to convert to honey.”⁸³ 110 of its 134 sections are taken straight from D11 and D12, which shows that authors concerned with practical legal purposes ignored the recent antiquarian material and went back to consult the Burmese prose dhammathats of the early 18th century. The Committee did, however, produce an unintended longer term effect. Their activities were eventually to persuade the British that Burmese law texts were arcane, obscure and impractical. When the colonial government arranged for some dhammathats to be printed in the early 1880s, the four works chosen were all Committee productions: Myat Aung’s three Pali dhammathats and one of Lankasara’s Burmese verse texts. Exposure to these four works went a long way to persuade the British that Burmese pre-colonial law had been unchanging, backward looking and obscure. It deepened the contempt which the British felt for the institutions of Mandalay and therefore encouraged them in the wanton destruction of the social system in which Burmese Buddhist Law had flourished. However this story, which explains much of Burma’s present *anomie*, falls outside the scope of this paper.

How did the Committee fare in their campaign against legislation? Inevitably, as the Konbaung dynasty developed a stronger bureaucracy, it came to exercise something nearer and nearer to legislative power. In the second half of the 19th century King Mindon clearly borrowed

83. This simile is more usually applied to the behavior of monks on their early morning alms round. Perhaps a hidden metaphor is intended: as lay donors have cooked rice ready to give to the monks, so this book has legal information pre-cooked for all who need it.

LAW AS ART

18th Century Dhammathats showing the influence of the “Committee for the Promotion of Pali Dhammathats”

Names of committee members appear in bold type.

Regnal Years dhammathat	author	King	Head of Sangha genre
1733-52	Khemacara Buddhinkura	<i>Rajadhipati</i>	<i>Kyaw Aungsantha Sayadaw</i> Burmese prose Burmese prose
1752-60		<i>Alaungpaya</i>	<i>Shin Atula</i> Burmese prose Burmese prose Burmese verse
1760-3	Tejosara	<i>Naungdawgyi</i>	<i>Taungdwin Sayadaw</i> Pali

1763-76	<i>Sinbyushin</i>	<i>Candovara</i>
D16	Twinthinwun	Burmese verse
D17	Twinthinwun	Burmese verse
D15	Myat Aung	Pali verse
D19	Myat Aung	Pali verse
D20	Myat Aung	Pali verse
D24	Sonda Sayadaw	Pali verse
1776-81	<i>Singu</i>	<i>Mantie Sayadaw</i>
D21	Letwethondara	Burmese verse
D22	Chaunggauk Sayadaw	Pali verse
D23	Chaunggauk Sayadaw	Pali
K44	1st Monywa Sayadaw	Pali
1781-1819	<i>Badon</i>	<i>1st Maungdaung Sayadaw</i>
D25	Ketuja	Pali
D26	Panam Wungyi	Burmese verse
D28	Pe Thi	Burmese verse
D29	Candasu	Burmese verse
D30	Shwe Po	Burmese verse

techniques and forms from British legislative practice but, even without the British example, I think the 19th century kings would have developed as much legislative power as their Siamese contemporaries. But in both countries it was less a constitutional entitlement of royalty than a status which they had to earn. Thalun's legislation achieved posthumous recognition because history remembered him as a purveyor of peace and plenty. The 19th century kings were hard put to emulate his reputation when their kingdom was disappearing in slow motion to the British. The last king to rule over the whole of "Burma proper" and the last king who could claim to be a *cakkavattin* without provoking guffaws was Badon. My analysis of Badon's legislative practice is a convenient place to end this account of Burmese institutional rivalry over law and its legitimacy. Shortly after his succession Badon promulgated a short Royal Order on legal matters [ROB 3-3-1782]. All but one of the twelve sections confirm "business as usual"—the popular maxims that relieve indebtedness continue to apply, fees for judges and lawyers should be fixed, and the hereditary succession of village chiefs should continue. The twelfth section, where the king allows property to be inherited by the parents and grandparents before it escheats to the crown, may involve a change in the existing law but it is a concession against the royal interests—a generous gesture by a newly enthroned king. This business-like Order is typical of the rajathats produced by earlier kings. But 13 years later, after Badon had purified the sangha and revamped its disciplinary structure, he promulgated a unique rajathat that is his own contribution to the long debate over control of the law texts. ROB 28-1-1795 was widely circulated during and after his reign, and drawn to the attention of judges and ministers by several later Orders. Modern scholars have long been aware of its importance, and two full translations of it exist.⁸⁴ In legal content it adds nothing to his accession order 13 years earlier, but in presentation it is something else. It is a monument of Buddhist scholarship, a compilation of legal lists from canonical sources, Jataka stories with some legal or ethical bearing and provisions from the Vinaya which the laity should emulate. It is the king's response to the claim that Burmese law should be obeyed

84. Kyin Swi, 1965, "The Judicial System in the Kingdom of Burma," diss., SOAS (thesis #22 held at the Institute of Advanced Legal Studies Library); Than Tun, 1983, "The Royal Order (Wednesday 28 January 1795) of King Badon," *Ajia Afurika Gengotenyō Bunkyo* 26: 153-201.

because it is Buddhist. His implied message is: Yes—Burmese law is Buddhist, but this does not mean that only learned monks like Khemacara can justify law in terms of Buddhism. Nor does it imply the Committee view that Buddhist law must be written in Pali. I, your king, am fully capable myself of linking the Buddha-dhamma to dhammathat and rajathat. Was he capable? Was he sufficiently well-versed in the scriptures to make the Royal Order's allusions to 21 different canonical jataka or to take passages from all over the Sutta pitaka and the commentaries? It gives every impression of having been drafted by a monk, and I strongly suspect the hand of the Maungdaung sayadaw, who among his other duties was a sort of Poet Laureate to Badon. But if it was ghost-written on Badon's behalf, this was kept uncharacteristically quiet. Evidently it was important to portray the order as the king's own work.

There are no clear victors in the institutional rivalry which I have been discussing. The lawyers succeeded against Thalun in one sense—D7 and D8 never became uniquely official sources of law—but lost to him in another—the 18th century lawyers recognised the posthumous legitimacy of Thalun's legislation. The monks succeeded in one sense—Khemacara put the Buddhist legitimacy of the law at the center of 18th century debate—but lost in another—Badon successfully challenged the sangha's claims to be the sole judge of whether law was sufficiently Buddhist. The kings succeeded in establishing a right to posthumous legislative competence, but the right was only available to kings posthumously judged to have been successful. Such muddled compromise is typical of any country's constitutional history. The U. K. and U. S. A. have a tradition of enshrining the compromise in a Bill of Rights or Constitution—a binding document which is then interpreted legalistically. In Burma this did not happen. Instead of a single constitutional convention they had an ongoing constitutional conversation. To contribute to the "dhammathat and rajathat" genre was to join in that conversation. Its ostensible topic was the relationship between Buddhism and law.