

Journal of the International Association of Buddhist Studies

Volume 20 • Number 1 • Summer 1997

PAUL L. SWANSON

What's Going on Here?
Chih-i's Use (and Abuse) of Scripture 1

GEORGES DREYFUS

Tibetan Scholastic Education and The Role of Soteriology 31

ANDREW HUXLEY

Studying Theravada Legal Literature 63

PETER SKILLING

The Advent of Theravāda Buddhism to Mainland
South-east Asia 93

ELI FRANCO

Distortion as a Price for Comprehensibility?
The rGyal tshab-Jackson Interpretation of Dharmakīrti 109

ROGER R. JACKSON

"The Whole Secret Lies in Arbitrariness":
A Reply to Eli Franco 133

ELI FRANCO	
A Short Response to Roger Jackson's Reply	149
TOM J. F. TILLEMANS	
On a Recent Translation of the <i>Samdhinirmocanasūtra</i>	153
JOHN R. MCRAE	
Review: <i>Zenbase CD1</i>	165
JOE BRANSFORD WILSON	
The International Association of Buddhist Studies and the World Wide Web	175

Studying Theravada Legal Literature

Two years ago the *Journal* devoted an entire issue to the subject of Buddhism and Law. I have two excuses for this early return to the subject. Firstly, I shall deal with areas that were untouched in 1995. I describe the legal literature produced by the pre-modern Thai, Khmer and Laotian cultures and discuss the strange absence of written Sinhalese legal works. Secondly, as an encouragement to potential researchers, I append a selective bibliography which emphasises recent scholarship and the discoveries of the last twenty years. This article was originally intended to be published alongside von Hinüber's *A Handbook of Pali Literature*.¹ He has provided a very useful list of addenda to the *Critical Pali Dictionary*'s numerical list of Pali texts.² I have considered whether to do the same. I have decided that it would be premature to do so: much more research is needed before we can make an authoritative list of surviving legal texts. Meanwhile, I must warn you that none of the information in that portion of the CPD's list headed 2.9.23 "Law" is reliable.

Few outside the specialist field of Theravada legal history are aware that the last twenty years have been a Golden Age of discovery. The number of manuscripts now available in book, microfilm and digital form has increased a hundred-fold since 1977. But the number of scholars examining these primary sources remains pitifully small: I know of about half a dozen colleagues around the world. A similar imbalance between human resources available and the shelves of manuscripts to be studied afflicts all branches of Buddhist studies and accounts for much of Buddhism's charm

I apologise to readers who are offended by my grudging use of diacritics. My aim has been to add diacritics only to Pali words in the titles of books, where omitting them might make the books harder to locate. Otherwise, because there is no generally agreed system for transliterating Southeast Asian languages and Sinhalese, I have omitted all tone markers and diacritics. I should warn Indologists that several of the books I mention have macaronic titles: typically the first few words are Pali and the last word Burmese or Thai.

1. von Hinüber 1996. See the foreword, v-vi.

2. *Ibid.*, 256-7.

as compared with such over-cultivated fields as the Shakespearian corpus. But in the field of Southeast Asian Buddhist law this disparity has reached Churchillian proportions: never in the field of human scholarship have so few scholars struggled to master so much fresh material. Since about 1977 scholars from Thai, Laotian and Burmese universities have boldly gone where their European predecessors dared not venture. Sponsored by Japanese research funds and equipped with the microfilm camera, the xerox machine and the scanner as tools of their trade, they have winkled manuscripts out from forgotten corners of libraries, from private collections and, above all, from the book chests of provincial monasteries. And to striking effect. In 1975 only one law text from the Tai Yuan culture of northern Thailand was in print. By 1989 one-hundred-and-thirty-two such texts had been discovered and made available on microfilm. Up to 1991 only one Mon *dhammathat* (the legal genre that provides norms for village-level dispute settlement) had been printed. Now eleven additional Mon *dhammathats* have been published in a handsome Mon-English edition. Before 1985 only three or four of the Burmese kings' *rajathat* (Orders of State, one or two of which promulgate something like a royal code of good citizenship) were in print: 1990 saw the publication of the tenth and final volume of Than Tun's magisterial Burmese-English collection. Before 1993 our knowledge of Siamese legal literature was limited to the *Three Seals Code* of 1805, which is an edited edition of that portion of the Ayutthayan palace legal archives which survived a particularly destructive Burmese raid. Pitinai Chaisaengsukkul has now copied and catalogued about seven-hundred legal manuscripts from central and southern Thailand. Meanwhile Sarup Ritthu has revealed that the Southern Kingdom based on Nakhon Sri Thammarat had its own distinctive tradition of law texts. According to rumour, we shall soon be able to say the same about the Tai-Shan and Tai-Khamti cultures.

This explosion of legal source material has coincided with a shift in academic fashion towards topics for which the Theravada legal literature is our prime source. Interest (particularly in western history departments) is switching from "dates and dynasties" towards the structures of everyday life. Topics such as the economics of the rice field, the relationship between the sexes and the complexities of social status are working their way to the top of the agenda. Since the chronicles concentrate on palace life and since popular story-telling was set in a never-never land derived from the Jataka, the legal literature is our only source for the details of everyday life. You're interested in freshwater fishing? Here's a description of the twenty different types of rod and net used by 18th century Burmese fish-

ermen.³ You want to know how much a rhinoceros horn sold for in Pnomh Penh in 1853? You can have prices for six different grades and an explanation of how to tell them apart.⁴ What would you do in central Laos if you saw a star-shaped piece of bamboo bark by the side of the trail? The *Code de Vientiane* tells us that this warns of an animal trap nearby.⁵ Whether you're studying the population statistics of Burma or pre-modern Southeast Asian marital relationships, it helps to know what they "knew" about the causes of barrenness in a couple:

The cause of conceptual gloom is prior bad *kamma* or doom, or a virulent worm has enfeebled his sperm, or abortions have damaged her womb.⁶

In short an enormous amount of new, potentially interesting source material awaits anyone who can read "late" Pali or one of the Southeast Asian vernaculars. The Theravada legal literature has at last been recognised as too important to be left to us legal historians. I am delighted by these developments but would add a single note of caution for non-lawyers. You cannot treat a 17th century law text from Cambodia as if it were a 20th century law text from Connecticut: they embody different assumptions about the functions of writing down law. A list of these differences and further wise advice about the use of pre-modern, non-western legal materials may be found in a twenty page book review by Bernard Jackson available in any law library.⁷

LAW TEXTS IN SRI LANKA

Sri Lanka has not shared in the exciting discoveries of the last twenty years. Indeed after two hundred years of unsuccessful search for Sinhalese Buddhist legal literature, it would seem that it is non-existent. This claim has two aspects, both of which are controversial. The first—that no Sri Lankan legal literature has survived—depends on our assessment of a mysterious text called the *Niti Nighanduva*. The second—that there never was any Sri Lankan legal literature—is harder to prove but is of great theoretical inter-

3. Richardson 1847, 375; *Manugye* dhammathat XII 3. Full citation of works included in the bibliography are given in an appendix.

4. Leclère 1898, 2:313-347 *Kram Prohmotont*.

5. Raquez 1902, 424; *kamphi phra thammasat buhan*.

6. U Gaung 1909, 2: 238; *Manucittara*, an obscure 18th century verse dhammathat.

7. Jackson 1975.

est. We lawyers think that no literate culture would forego the blessings of written law:

... production of codes, the use of written formulae in legal proceedings
 ... Some, if not all, of these consequences will certainly follow a
 widespread use of writing.⁸

Yet quite possibly Serendip, the fortunate island, has avoided producing legal literature throughout its history. Since 150 BC Ceylon has been as literate and cosmopolitan as anywhere else in Eurasia. If Sri Lanka, which harboured ships from Greece and Arabia to the west, China and the Spice Islands to the east, did remain lawless, it was surely not through ignorance of the concept of written law. Rather, it was because the needs that written law meets elsewhere in the world were nonexistent or otherwise satisfied in Lanka. The Southeast Asian experience indicates that Theravada belief and practice can coexist with written law for the laity. Sri Lankan Theravada has one distinctive attribute which is lacking in Southeast Asia—it has learnt to coexist with a modified version of the Indian caste system. The entire Buddhist population of Ceylon is classified by caste, whereas in Southeast Asia caste is only of concern to kings and untouchables at either extreme of the social ladder. Is there a sense in which caste as a form of social organisation filled up the niche which written law might have occupied?

The *Mahavamsa* contains a few legal references which have been cited as proof that certain kings wrote down law. I am very grateful to Steven Collins for reexamining them with an eye to their legal implications. I use his unpublished translations of the key passages. King Udaya I (797-801 AD) "had cases which were rightly decided set down in writing and kept in his palace, because he feared that decided cases might be reopened [through bribery]" (49.20-1). This would appear to be a register of judgements, a royal depository of judicial records. "Legal literature" is a flexible term, but I would prefer to restrict it to texts which achieve some public circulation outside the palace archive. General Ayasmanta, who acted as regent in the early 13th century "organised and separated the four varnas which had become mixed, and being intent on the good, had a treatise written containing questions about the dhamma" (80.41). The word "dhamma" need not indicate a written collection of legal norms. The sentence makes good enough sense as a description of two different ways in which Ayasmanta

8. MacCormack 1976, 229-248, 233.

behaved meritoriously: he reformed social organisation and he sponsored a book on religion. A 15th century poem, the *Giva Sandesaya* talks of "High Ministers who having learnt the art of deciding cases after obtaining a knowledge of the various laws of the kings, lovingly look after the entire people of Lanka . . ." ⁹ I read this as further proof that a royal legal archive was kept in the palace, to which library tickets were reluctantly issued in the name of such of the king's functionaries who could establish "a need to know." In the 16th century the island was divided into three Theravada kingdoms, which succumbed in turn to European force. All we know about law in the more cosmopolitan coastal kingdoms of Kotte and Sitawake, which fell early to the Portugese, comes from ethnology: a 17th century account of law in these Buddhist port kingdoms was written by de Costa and has been translated into English. ¹⁰ But note the frustrating remark made by L. Prera in Colombo in 1744, which hints that some Sinhalese legal literature was known to him: "I have never seen such an oath. Nor have I seen such prescribed in any Sinhalese book on laws, though I have read many." ¹¹ Stronger evidence that Ceylon once had a legal literature comes from Burma. An 18th century list of nine old dhammathats known in southern Burma includes "The Sinhalese Edition, compiled in Sri Lanka" ¹² while another Burmese list of Collected Royal Judgements in manuscript includes the *Elaya Kyemin Pyatton*, named after the famous Tamil invader of Sri Lanka. ¹³ Since neither work has survived, we can only guess what these references mean. Pyatton can refer to folk-tales as well as to law, so the latter text might have been a popular historical romance based on the rise and fall of King Elaya. One text of Sri Lankan law that definitely did circulate in southern Burma was Parakramabahu I's *Katikavata*—his supplemental vinaya code. Could this possibly have been known as "The Sinhalese Dhammathat"?

We have a surviving text, the *Niti Nighanduva*, which purports to be a code of Buddhist law. Whether it should be regarded as genuine depends on the verdict we reach in the case of *R v John Armour*. The *Niti Nighanduva* conveniently fulfilled 19th century needs and expectations. English administrators charged with the task of governing the kingdom of Kandy after 1815 needed a written statement of applicable law: the *Niti Nighan-*

9. Jayasekare 1969, 273.

10. At the order of Sir Alexander Johnstone, Chief Justice (1809-1817). It is held in the Public Record Office, London (C.O. 54 / 123-124).

11. Quoted in Kotelawale 1987, 112-120.

12. Huxley 1996, 93-5.

13. Forchhammer 1885, 76. Htin Aung 1962, 38.

duva was published as a description of law “as it existed in the last days of the Kandyan kingdom.” Was it written for an English readership by someone who knew what was required? John Armour stands accused of forging the *Niti Nighanduva*. He was well placed to act as a middle-man between Kandyan culture and the English colonists: having been expelled from his father’s house in Columbo for distributing anti-Christian literature, he married a Sinhalese woman and lived with her, native-style, in Kandy. He wrote and spoke better Sinhalese than any other European and had already published articles on the topic of Kandyan law in English. Specific documentary evidence against him exists: a manuscript has survived which looks like a rough draft for the first two chapters of the *Niti Nighanduva*. It was probably written by a European, since it uses Roman numerals, and its Sinhalese script resembles Armour’s Sinhalese handwriting. But does all this add up to forgery? Assuming that Armour was the author, I prefer to regard his efforts as a repackaging exercise. He wrote down the oral wisdom of his informants (the monks and bureaucrats of Kandy) in the form which the English authorities would find most palatable. The opening portions of the work, contrasting “the dispensers of justice” who are interested only in written law with “the Kings of Lanka who knew what was legal and what was not,” make it fairly plain that it was written after the British conquest in 1815. Armour’s sins, if any, are those of “inauthentic cultural appropriation” rather than forgery. The language of political correctness is more appropriate than the language of criminal law. By adopting a Sinhalese first person voice for one of his expositions of Kandyan law, Armour could be accused of having ripped off a marginalised culture. But if we condemn him now for falsely pretending to be a Sri Lankan, we come dangerously close to the judgement of his contemporaries that Armour had “gone native.” The *Niti Nighanduva* forced the British to take Kandyan law seriously: had it not existed the westernisation of Sri Lankan law would have gone further faster. Objectively, therefore, John Armour was a friend rather than an enemy to Kandyan culture. The *Niti Nighanduva* is an attempt, by an Englishman, to invent Sinhalese legal literature. This leaves our inquiry in an unsatisfactory state. Genuine legal literature may or may not have once existed. But none of it has survived.

THE EARLY DEVELOPMENT OF SOUTHEAST ASIAN LEGAL LITERATURE

That legal literature is absent from Sri Lanka but abundantly present in Theravada Southeast Asia suggests that the latter culture is not a carbon

copy of the former. Because Southeast Asian literature makes a virtue of its fidelity to Sri Lankan models, this truism needs to be emphasised. By treating the Mahavihara tradition of Ceylon as their touchstone of orthodoxy, Southeast Asian authors invite us to conclude that they merely imitate the Sinhalese sages. Legal literature is the largest and most important of the non-Sinhalese genres and therefore the best argument for the proposition that intelligent Theravada life can exist outside Ceylon. Early western commentators took Southeast Asian claims at face value and assumed that Southeast Asians were too unoriginal and stupid to have written the law texts themselves. This view is no longer tenable: it is virtually certain that the legal literature has a local origin. When and where in Southeast Asia did it emerge, and to what extent did it incorporate written material from elsewhere?

Epigraphic evidence will help answer the first question. The inscriptions of Angkor reveal sufficient about classical Khmer law that we can eliminate it from our inquiries: there is no evidence of any Buddhist legal influence in Cambodia until the 17th century. *Inscription 38* from Sukhothai, which dates either from the middle or the end of the 14th century, makes several clear references to the law contained in dhammathat and rajathat: it shows that Buddhist legal literature was well-established in central Thailand before 1400. *King Klacwa's Edict on Theft*, preserved in several inscriptions from Pagan, takes us two-hundred years further back. Promulgated on May 6th, 1249, it shows typically Buddhist legal features: it contains earnest discussion of the interaction between *kamma* and royal punishment and quotes directly from the Tipitika. On epigraphy alone we could conclude that Buddhist legal literature was invented in Pagan in the 13th century and spread eastwards into the Tai and Khmer cultures. But the manuscript evidence tells a different story: several early law texts are ascribed to particular cities of first millenium Southeast Asia. In my previous contribution to the journal I explained why I regarded these claims as plausible and why I preferred to think of Buddhist legal literature as having developed slowly in various Southeast Asian cities through the last half of the first millenium. Pagan was a clearing house rather than an innovator. It catalysed existing developments by assimilating the legal traditions of different cities into a standard model dhammathat which commended itself to the new Thai monarchies of the late 13th century. My reconstruction of the development of legal literature highlights the role of port cities like Mrohaung and Nakhon Sri Thammarat which traded directly with India. Recent work by Mayoury Ngaosyvathn and Michael Vickery prefers to highlight the Tai-Chinese connection. When the Tai moved into Laos from their homelands

on the borders of Vietnam and China they may have brought legal and governmental texts with them. Such texts would at first inevitably reflect the Chinese approach to law and government but gradually Chinese influence was displaced by the increasingly confident Theravada culture.

The legal literature drew on at least five sources. Two of these, the Buddhist and Hindu traditions of written law, came from India. One, the imperial approach to organising government, came from China. And two, the oral custom of the irrigators occupying the vallies and that of the slash-and-burn hoe cultivators occupying the hills, were indigenous to Southeast Asia. The content of the rules on marriage, divorce and the relative status of the sexes (which vary little as between Thai, Burmese and Khmer law texts) are taken from the hoe cultivators of the hills. The rules on land-ownership, debt-slavery and adoption would have developed along with Southeast Asian irrigation from the Buddha's lifetime onwards. Readers of this journal will be most interested in the first category, the Buddhist influence on legal literature. References to the canon in the legal literature would take an entire book to catalogue, but I can enumerate the commonest canonical tropes in two short lists. The Southeast Asian legal literature very often refers to the following seven stories: the tale of Mahasammata and the origins of kingship (D iii 80), of the Cakkavatti king and his loss of the celestial wheel (D iii 58), of Devadatta and his Faustian ambition and punishment (V ii 202), of Vessantara, the paragon of generosity (Jat. #547), of Mahosadha, the wisest of the king's wise counsellors (Jat. #546), of Vidhura, the bureaucrat's bureaucrat (Jat. #545) and of King Adasamukha, who would not follow the letter of the law if that led to injustice (Jat. #257). And the following seven lists are very commonly incorporated in the law texts: the three kinds of slave (V iv 224), the four *agati* or principles of natural justice (J i 176; J iv 105), the four factors which determine a thing's market value (V-a viii 64), the five duties of marriage-partners (A iii 36), the seven kinds of wife (A iv 91; J ii 347), the ten types of female under male protection (V iii 139) and the twenty-five kinds of theft (V-a viii 60). The ratio of 4:2:1 between Vinaya literature, the Jatakas and the Suttas in this last list can be generalised: the Vinaya pitaka contributes most to the legal literature, while the Abidhamma pitaka is scarcely represented at all. It is a great mistake to think of the Vinaya as concerned solely with the minutiae of monastic dress and food: one third of *Samantapasadika* is devoted to the discussion of just three out of the two-hundred-and-twenty-seven rules in the Patimokkha—those concerning theft, murder and unlawful sex. In the excessive attention he pays to these three issues Buddhaghosa shares a general legal mind-set. But Vinaya influence on

legal literature goes beyond direct quotation into areas of genre, training and legal reasoning. The Vinaya literature was copied, taught and debated by a specialist group of monks. Such vinaya-dhara monks were the first legal specialists in Southeast Asia. Their techniques of training and argument acted as a model for the authors of dhammathat and rajathat and, in some parts of Southeast Asia, for the emergence of a distinct lay legal profession.

For a brief period following the fall of Pagan the Buddhist kingdoms of Southeast Asia must have shared a homogeneous legal literature. Then distinct sub-regional styles developed. From the 13th to the 19th century the political map of Buddhist Southeast Asia—the royal cities, the dynasties that controlled them and the amount of land which they effectively controlled—underwent constant, apparently random, change. All attempts to generalise about the region risk getting bogged down in detail. Happily the surviving legal literature divides itself into three distinct sub-regions each of which has developed the Pagan legal inheritance in a different direction. The western sub-region comprises the kingdoms of Burma. Speakers of the Burmese language, such as the kings of Ava, Toungoo, Sagaing and Mandalay, predominate but the land around the mouths of Burma's three great rivers is Mon territory, and was often ruled by independent Mon-speaking kings. There were also speakers of Pyu and Arakanese, languages closely related to Burmese. The Pyu were pioneers of Buddhism and city life during the first millennium, but lost their cultural distinctiveness thereafter. The Arakanese kept an independent kingdom on the narrow coastal strip along the Bay of Bengal until shortly before the European invasions. The northern sub-region is the land of the Tai. Their two most important kingdoms were Lanna, centred on Chiang Mai in northern Thailand, and Lan Xang, centred on Vientiane in Laos. From the 14th century onwards Theravada Buddhism diffused from these capitals into the smaller surrounding kingdoms—Keng Tung, the Sipsongpanna (in present day Yunnan), the Shan States and the piedmonts of northern Burma and southern Assam. Far to the north-west, in the main valley of Assam, and far to the east, in the Dien Bien Phu region of Vietnam, were Tai kingdoms which never converted to Buddhism. The chronicle of the Assamese Tai, the *Ahom Buranji*, includes a short legal document which allows some speculations about the non-Buddhist input to Tai legal literature. The eastern sub-region is also dominated by Tai-speakers, but the Siamese kingdoms of Ayutthaya and Bangkok have a more bureaucratic and international flavour. Whether they derived this from the remnants of the Angkor bureaucracy, from independent Khmer cities in central Thailand, or from regular maritime trading contacts with southern China, is a matter of debate.

Also included in the eastern region are khmer-speaking Cambodia, and the "Southern Kingdom" in the Malay Peninsula centred on Nakhon Si Thammarat. The northern region is land-locked and mountainous. Western and eastern regions both had ports enjoying access to the international trading routes. Siam and Phnomh Penh entered into this world of trade wholeheartedly, while the kings of Upper Burma approached it with some suspicion. Nonetheless by the early nineteenth century western and eastern regions had developed equally strong state institutions.

There is an important distinction between studying law texts as literature and as sources of law. In the former case the literary historian looks at what gets written while in the latter case the comparative lawyer looks at how what is written gets used. The literary approach, when applied to Buddhist Southeast Asia, emphasises similarities. Each of the three sub-region recognises the same genres of legal literature and identifies each genre by more or less the same technical term. *Dhammathat* (or some close variant such as *thammasat* or *dhammasat*) is the nearest equivalent to legal codes, *rajathat* (or some close variant such as *rachasat* or *yazathat*) describes the local equivalent of legislation and *pyatton* (or the local language equivalent of this Burmese word) describes a collection of precedents. While the literary historian will regard the three regions as one, a comparative lawyer will point out that each sub-region uses the genres differently. Each has established its own pecking order between the types of legal literature, reflecting three quite different sub-regional approaches to dispute settlement. Law in the western kingdoms developed in a direction I call "common law Buddhist," with professional lawyers and an interest in case law. The eastern kingdoms adopted a more bureaucratic approach which I call "state centred Buddhist": they regarded law as the preserve of the king and his small group of legal functionaries. The northern kingdoms, which had achieved impressive state organisations by the 15th century, never recovered from the Burmese invasions of the mid 16th century. Their legal approach relied heavily on monks, both as authors of texts and as settlers of disputes. I call this "small town Buddhist law," a phrase which hints both at their comparatively undeveloped traditions of the state and their simple but fervent piety. In the following pages I shall examine the three genres of legal literature in turn. Implicit in what I say is that literary history and comparative law feed back into each other. How legal literature is used, in other words, has a long term effect on what legal literature contains.

THE DHAMMATHAT GENRE

Dhammathat is characterised both by its contents and by its claim to authority. The contents of a dhammathat text should give a general account of law for popular consumption, much as works like "Everyman His Own Lawyer" and the "Penguin Guide to Law" do for us. Its appeal to authority should bypass the throne and the government: dhammathat rules should be obeyed because they are as old as human society, or because they are universally acknowledged as correct or because they are implicit in the Buddha's dhamma. If a text is written by the king or relies on his name for authority, I would prefer to label it as rajathat. But, since kings will try to associate themselves with any source of legitimacy that happens to be lying around, these categories are constantly blurred. For example, the oldest of the Cambodian codes translated by Leclère, *Kram Sanphea Thipdey* (1618), is a self-contained code aspiring to generality. On grounds of content I am happy to call it a dhammathat, even though its preamble tells us that it was promulgated by a king of Pnomh Penh. The king, I strongly suspect, coopted an existing dhammathat by adding his preamble because he wanted some of the legitimacy associated with the dhammathat text to rub off on him and his throne. Aroonrut Wichienkeo has shown the same process at work in Lanna. Forty of the Lanna legal manuscripts include *Thammasat* in their title but many of these compound the word with a royal signifier: there is a "Royal Thammasat," a "Thammasat of King Kuna," a "Mangrai Thammasat" and even a "Thammasat Rajathat." Assigning these hybrids to their proper genre must depend on personal judgement. For my part, if the text emphasises continuity with the wisdom of the ancients, I regard it as a dhammathat. If it stresses the beneficial innovations of the king, I regard it as rajathat.

Starting with the western sub-region, between twenty and forty different Burmese dhammathats have survived in whole or part. Around a quarter of these are in Pali (either prose or verse) and about a third of the remainder are in Burmese verse, including works by two of Burma's most famous poets: in 18th century Burma some dhammathats were written to show off artistic skills rather than to reduce friction in society. We know the names, and in some cases the authors and first lines, of another thirty or so lost works. I gave a general guide to this body of literature in my previous contribution to the journal. Two Arakanese prose dhammathats survive, one of which, *Kyannet*, is in Pali and contains rules on sexual inequality and the validity of wills which are quite different from the Burmese mainstream. A detailed study of *Kyannet* would reveal exactly how different the legal traditions of Arakan are from those of Burma. We have a dozen

Mon dhammathats in prose (the best known of which has only survived in Burmese translation) and one in verse, a macaronic of the Pali, Mon and Burmese languages. Though there is no way of dating them, two of the prose dhammathats give the impression of antiquity and seem to me to be among the half dozen oldest surviving Southeast Asian dhammathats. Turning to the northern sub-region, in Laos the *kotmay thammasat Khun Borom*, the surviving text of which was compiled in 1503 from even earlier material, bears a dhammathat title. Mayoury Ngaosyvathn argues that this is the oldest of the Northern Tai law texts and that it has influenced Lanna legal literature. The “Code de Vientiane” (probably written in the 17th century) is also a dhammathat: it should properly be known as *khamphi phra thammasat buhan*. Finot mentions a Pali manuscript with Laotian translation called the *kotmai thammasat*,¹⁴ but I do not know if this has survived Indo-China’s turbulent 20th century. The earliest of the forty Lanna dhammathat texts can be dated to 1472 but many of these texts invoke the authority of King Mangrai who founded Chiangmai at the end of the 13th century. Further research is needed to establish whether Lanna legal literature is as old as it claims. None of the one-hundred-and-thirty-two Lanna law texts is written in Pali or in verse. Three law texts from the Sipsongpanna have recently been described. Their substantive rules reflect Tai custom elsewhere, but their literary expression borrows from Chinese genres. In the eastern sub-region the dhammathat has been completely swamped by the rajathat genre. In the *Three Seals Code* of Siam and the closely connected Cambodian literature, a Pali dhammathat has shrunk in length and function to become an index and legitimiser to the royal orders. The remaining portions of the dhammathat explain, making much use of Pali legal technicalities, what law consists of and why law should be obeyed, but the details of what law is are left to be expounded by rajathat. It appears that the process of moving substantive rules from a dhammathat to a rajathat context was still going on in 1805; Burnay notes internal evidence in the *Three Seals Code* that the compilers had access to a longer text of the dhammathat than they chose to reproduce.¹⁵

The dhammathats’ function is to provide guidance for unofficial dispute settlement. They are written in the paddy field rather than the king’s palace, and view law from a village perspective. Hence murder and rape give rise to financial penalties only: if the king wants to punish a rapist, that is his business—a matter of rajathat. And hence the rules for mortgaging land are

14. Finot 1917, 136.

15. Burnay 1939, 163.

described in detail, but neither the king's Land Registry nor the king's charges levied on land-transfer are mentioned. The procedural rules emphasised are those which allow an irrigation community to regulate its own disputes without calling on the royal enforcement procedures. Disputants are to be shamed or admonished into a settlement. Failing that, they are offered a range of non-fatal ordeal procedures which tempt the defendant into trying his luck, and allow a defeated litigant to lose the case without losing too much face. In such unofficial proceedings the rules in the dhammathat give an agreed normative background against which the disputants can negotiate. But extra-legal considerations of relative wealth, power, popularity and status loomed large in determining the outcome. A disputant who wanted the matter settled by strictly legal criteria could turn to the official courts, the domain of rajathat staffed by the king's appointees, but there too he would be disappointed. These institutions were usually more concerned with raising revenue through bribes and extortionate court charges than with administering justice. In one respect the Burmese dhammathats differ from the rest: they alone contain rules about the payment and regulation of the legal profession. These rules, which tend to favour the lawyer against his client, are testimony to the crucial role played by Burmese lawyers in copying and editing the dhammathats.

THE RAJATHAT GENRE

Rajathat are orders proclaimed by the king either covering a specific topic or giving general guidance to the judges of the royal courts. Some Laotian rajathats are apparently held by the National Library in Bangkok, but have not been studied or published. The Lanna literature is, as I have said, poised between rajathat and dhammathat but one or two royal orders on specific, narrowly focused issues have been preserved.¹⁶ However it is Burma and Siam, the strong, centralising states of the 17th and 18th century, which have preserved large collections of rajathat. At the head of these two national traditions stand the two rajathat inscriptions of 1249 (Pagan) and 1397 (Sukhothai) which I mentioned earlier. Since these inscriptions are extremely old and indisputably genuine, they have given rise to much analysis and debate.¹⁷ The genres which they initiated have, in manuscript form, swollen to enormous size. Over the last decade the Burmese rajathats have been collected, edited and published by Professor

16. Sommai Premchit 1986, #20 and #56.

17. Than Tun 1959b; Huxley 1991; Prasert na Nagara and Griswold 1992; Vickery 1978.

Than Tun. Siamese rajathat from Ayutthaya and Bangkok are preserved in King Rama I's *Three Seals Code* of 1805. The sheer bulk of this manuscript is hard to grasp. Compare it with the French Code of the same year—Dhammaraja Napoleon's *Code Civile*. Both were compiled in 1805 by imperially appointed committees of experts led respectively by Sunthon Wohan and Jean Portalis. Both were intended to function as social glue after decades of invasion and dynastic turmoil. Both were intended to be authoritative, in the sense that judges could not consult any sources earlier than the Code itself. Portalis' committee had to distil a compromise between the old wisdom of the *ancien régime* and the new revolutionary laws into a packet small enough to fit in every citizen's pocket. Sunthon's committee had to reestablish continuity with the royal archives of Ayutthaya, the bureaucratic traditions of the past, which the Burmese had nearly succeeded in destroying. Thus the *Three Seals Code* is about three times the length of the *Code Civile*. We can think of it as an internal bureaucratic reordering of the palace archive rather than as a single composed text. Four years earlier, a court official had versified the *Kotmai Lilit*, a selection of Ayutthayan laws dealing with the procedure for hearing appeals.¹⁸ This poem was intended to circulate as a text, to be read and admired by anyone educated enough to appreciate its elegant verse. By contrast the completion of the *Three Seals Code* seems more like a revision of the entire Siamese legal data base than a correction of a single text. The three copies of the final manuscript are, when seen in this light, mere back-up copies kept within the governmental buildings of Bangkok. Each of them was marked as royal property and guaranteed as genuine by the eponymous three seals of the Interior, Defence and Finance Departments. To what extent were the public able to consult the *Three Seals Code*? Lingat speculated that the third copy, kept within the offices of the *Lukkhun*, was "soon multiplied into innumerable copies"¹⁹ and James Low, writing in 1825 about Bangkok legislation in general, agrees: "The king orders copies to be given to his officers, and it is through these officers that the people procure copies."²⁰ But when the printing press offered a cheap and efficient medium for transmitting the *Three Seals Code*, it was rejected: Nai Mot's attempts in 1849 to print part of the *Three Seals Code* met with extreme royal displeasure. Evidently the Bangkok Bonapartes wished to retain control over the spread of legal knowledge. Secrecy was preferred to

18. Terwiel 1983, 94, 98.

19. Lingat 1931, 10.

20. Low 1847, 395.

promulgation until 1862, when Bradley was allowed to print his edition of the Code. 1862 conveniently marks the start of the modernisation process, the neo-colonial transplantation to Bangkok of European legal genres.

Lingat describes the archival reorganisation of 1805 as a step towards legislation and an important further concentration of state power in the hands of the Bangkok kings. He talks of earlier reorganisations of the archives of Ayutthaya, and favourably contrasts the Siamese practice with that of the Burmese kings. Perhaps he exaggerates these points a trifle²¹ but his fundamental point is well-taken: the Siamese kings periodically reorganised their archives so as to distinguish personal and ephemeral royal orders from those which were general and permanent. Than Tun's collection of Burmese rajathat demonstrates what a royal archive looks like which has not undergone such pruning: the rare general and permanent order, such as King Badon's order of 28-1-1795, is buried in a mound of personal appointments and occasional dispositions, such as:

Nga Pu is appointed Chief of Workers who use Curtains to cover Un-
sightly Things from the Royal View. (ROB 3-3-1806)

Vickery, after subjecting the dates supplied by the Three Seals Code to a close examination, suggests that earlier archival reorganisations had taken place under the Ayutthayan kings who reigned 1593-9, 1611-22 and 1633-43. But the more the archives were reorganised, the less we can use them at face value as historical evidence. The problems are evident: a law which the Three Seals Code dates at 1527 refers to another law dated 1690! Much of Siamese history has been based on a naive belief in the accuracy of the dates given in the preambles to the Three Seals Code: these dates urgently need confirmation from some other source. Perhaps Pitinai Chaisaengsukkul's recent discoveries, which include both pre-1805 manuscripts of Ayutthayan rajathats and post-1805 manuscripts that are textually independent of the Three Seals Code, contain the key to unlock these problems. They will also cast light on how far the rajathat leaked out of the archives into literature. Than Tun describes this process of leakage in Burma:

These orders . . . were kept in the Palace Archives known as *Shwe Daik*. They are now all lost. Fortunately, a minister or an assistant minister

21. Legislation is not the only way in which S. E. Asian kings may assert control over legal literature.



would have copies of these orders made for his own use and many of these survive.²²

In the Burmese case Than Tun has had to reconstruct the Palace archive (destroyed when the British sacked Mandalay in 1885) from the copies of rajathats that leaked into personal and monastic libraries. In the Siamese case, the Three Seals Code committee had to reconstruct the Palace archive (partially destroyed when the Burmese sacked Ayutthaya in 1767) from ministerial copies. Pitinai's discoveries suggest a wider-spread leakage of the texts of Siamese rajathats from the capital into distant towns, and from the high ministers down to subordinate local bureaucrats and officers. Sections of the Palace archive have taken on a new life as independent texts. If analysis of his discoveries shows that the written law available in Ayutthayan provincial towns was in rajathat rather than dhammathat form, we shall have a paradoxical legal picture: Ayutthaya's dispute settlement will prove to have been based on royal "legislation" despite the kings' best efforts to prevent people acquiring knowledge of that legislation!

THE PYATTON GENRE

I use the Burmese term *pyatton* to describe a collection of precedents, understood in the non-technical sense of "information" rather than the technical sense of "binding authority." The American judge Richard Posner gives a useful analysis of this distinction: he argues that in disciplines where methodology is weak, helpful information will tend to be gathered in the shape of anecdote, example and analogy.²³ If we think of *pyatton* as meaning "helpful legal information" we can understand why the genre includes such different types of text: "pyatton as anecdote" can be a collection of mythical judgement tales, "pyatton as example" can be a theoretical analysis of law and society and "pyatton as analogy" can be a collection of law reports. The Burmese had to use complex circumlocutions to distinguish these three subgenres. *Manugye* talks about sorting out a jurisdictional muddle between occasional and fulltime royal advisers "by the two omens, namely the decisions of former kings and embryo Buddhas" (my "pyatton as anecdote") "and decisions given in modern times in accordance with these precedents and dhammathat"²⁴ (my "pyatton as analogy").

22. Than Tun 1984-90, 1, vii.

23. Posner 1988.

24. Richardson 1847,151; *Manugye* VI.6.

Judgement Tales

Pyatton can mean a collection of folk stories describing the exploits of a clever judge. A scriptural model for such collections is provided by the *Great Tunnel Jataka* (#546) describing the career of a local boy who makes good because of his skills at dispute settlement. Within this frame are crammed many stories illustrating his courtroom successes each one of which could be used as the plot for a puppet show, the theme for a story teller or the precedent for a judge. Such judgement tales are particularly popular in Southeast Asia. "Poor boy vindicates his rights in court by clever argument" is nearly as popular a theme as "poor boy wins princess with magician's help." The 547 Jataka of the Canonical collection were supplemented by further Southeast Asian collections written in Pali which have spread throughout the region under such titles as *The Fifty Jataka* and *The Chiang Mai Jataka*. In these collections judgement tales are mixed indiscriminately with romances, fairy tales and edifying sermons. Collections devoted exclusively to judgement tales are popular in the vernacular languages: the Burmese *Decisions of the Princess Learned-in-the-Law* and the Khmer *Stories of Judge Rabbit* are well-known examples. Maspero reports a popular belief that the latter collection was written by Buddhaghosa—which demonstrates how non-canonical stories seek to borrow authority from canonical sources.²⁵ The next stage is for the judgement tales (both canonical and extra-canonical) to infiltrate dhammathat and rajathat, at which point an interesting phenomenon occurs: when used to illustrate a legal point, rather than an ethical moral, the judgement tales prove to be highly adaptable. Different lawyers may use the same tale to illustrate different conclusions.²⁶ The judgement tales are Theravada legal literature's main distinctive feature but have received little scholarly attention. Much of the material is already available in translation: this is a prime area in which an ambitious graduate equipped with the latest literary theories could make her mark.

Theoretical analysis

By arranging some judgement tales into a particular order and by providing a commentary thereto, the authors of pyatton collections could give a self-conscious jurisprudential analysis of law and society. The *Manugye* dhammathat orders nineteen judgement tales into a meditation on the legal aspects of state formation. Twelve stories tell of the cowherd's clever

25. Maspero 1929, 362.

26. Huxley 1996, 107-110.

judgements within his village, then seven stories recount his clever handling of appeals once he has been appointed judge at the royal court. The seven tales date to the 11th or 12th century and show us how Theravada Buddhism was originally preached *de haut en bas* from palace to village. The twelve tales were, I have argued, brought together in this form in the 18th century immediately after the fall of the Restored Toungoo dynasty to show that village wisdom is, in the long run, preferable to the ideas emanating from the palace.²⁷ Two other works use the same technique to give a theoretical analysis of legal reasoning though, judging by the corrupt state of their text, they were only of marginal interest to their intended audience. Included in a Nan text of the *Mangraisat* we have *The Traditions of King Mahosot* which arranges judgement tales into a twelve fold analysis of ways in which the judge can find the truth. From Burma we have the first two questions of the *Maharajathat* which must originally have offered an eight fold analysis of judicial fact-finding. I have analysed the Nan text in some detail, because it is one of the very few occasions when the legal literature reflects on itself: here, if anywhere, Theravada jurisprudence is to be found.²⁸

Law Reports

Thirdly, pyatton can refer to non-fiction as well as fiction: a pyatton can be a collection of real-life decisions by flesh and blood judges. At the highest level of the court heirarchy, judgements were automatically preserved in the palace archives.²⁹ I do not count such legal data-bases as literature, unless an editor has prepared and circulated a selection of these law reports. Such manuscript collections have survived from all three regions. The oldest, *Khlong Jea Phaya Kuena*, contains a selection of verdicts given by Kings Kuna and Tilokaraja from 14th and 15th century Lanna. That the four manuscripts of this collection are substantially identical indicates that the text was regarded as an important source of Chiangmai traditions. From 17th century Cambodia comes *Chbap Tumnim Pi Bauran*, a collection of fifty cases concerned with *lèse majesté* collected by the king's aunt.³⁰ Early 19th century Burma produced the *Yesagyo Hkondaw Pyatton*, a collection of forty seven judgements dealing mainly with small-town quarrels. These works give invaluable glimpses of actual dispute settlement, which some-

27. Huxley 1997, 21-39.

28. Huxley n. d.

29. As we learn from *Maharajathat* p. 184 and ROB 2-9-1785.

30. Leclère 1898, 1:123-162.

times differed markedly from what the other law texts lead us to expect. A Cambodian litigant who inadvertently farts while taking the oath loses his case. A Burmese husband is allowed the right (unknown in Burmese dhammathats but mentioned in Laotian legal literature) to sell his adulterous wife into prostitution. Why—given that noone suggests that Theravada law had a system of binding precedent—were these collections of law reports collated and preserved? The natural assumption is that information about how wise judges of the past handled disputes would be helpful to judges of the present. In more technical terms, such collections could be quoted as persuasive, but not binding, authority in a later case. This seems plausible, but remains unproven, since none of the judgements which have been preserved quote previous “law report pyatton” as authority.

Defining Legal Literature

By restricting legal literature to the three genres of dhammathat, rajathat and pyatton I have used a very narrow definition which does not reflect any Southeast Asian classification. Judging by the convoy evidence (the texts which appear alongside the legal literature in manuscript) no sharp distinction was made between law, morality and good behaviour. Law texts are often bound together with Jatakas and other works on ethics and *politesse*. A larger question is whether legal literature should include texts about kingship and Vinaya. Those of us who think that Buddhist society divides itself neatly into the three units of laity, sangha and king will want to treat law for the king and law for the monk alongside law for the laity. Pre-modern Southeast Asia would not have disagreed with this analysis: in Burma (the only culture for which we have reliable information about authorship) we find the same person writing dhammathats and vinaya-tikas (as for example the Taungpila Sayadaw in the 17th century) or rajathats and rajaniti (as for example the Maungdaung Sayadaw in the 18th century). Hence I have added some rajadhamma and Vinaya references to the bibliography.

A SELECT BIBLIOGRAPHY

What follows is a guide for the interested student, rather than an exhaustive bibliography. In particular, I have left out most of the excellent work written in Japanese. For all-inclusive listings of relevant material, see Ishii ed. (1978), *A Preliminary Bibliography for the Study of Customary Laws of Southeast Asia and Taiwan*, Hooker ed. (1986), *Laws of South-East Asia, Volume 1 The Pre-Modern Texts* 497-533 and Marikar (1978), *A Bibliography of the Books and Periodicals on the Laws of Sri Lanka (Ceylon)*.

The Most Recent Surveys

To find out more about legal literature in a particular Theravada culture, you should first consult the following articles, which are the most up to date available in English. For Sri Lanka, see Tambiah (1968) *Sinhala Laws and Customs*, ch. 4. Though thirty years old, this account of Kandyan Buddhist law has not been bettered. For Burma and Thailand, see Okudaira 1986, *The Burmese Dhammathat* and Ishii (1986), *The Thai Thammasat*. Both may be found in Hooker ed. 1986. Unfortunately this volume bears a stratospheric price-tag and thus is less popular with librarians than its contents deserve. For a more iconoclastic approach to the Burmese dhammathats and the *Three Seals Code* see Huxley (1996), *Thai, Mon and Burmese Dhammathats—Who influenced Whom?* and Vickery (1996), *The Constitution of Ayutthaya—an Investigation into the Three Seals Code*. These are in Huxley ed. (1996), *Thai Law: Buddhist Law*. In the same volume are the best available introductions to the legal literature of Lanna and Laos: Aroonrut Wichienkeo (1996), *Lanna Customary Law* and Mayoury Ngaosyvathyn (1996) *An Introduction to the Laws of Khun Borom*. For Cambodia, nothing has been written during the last hundred years to replace Leclère (1898), *Codes Cambodgiens* except for a few pages in Khing Hoc Dy (1990), *Contributions a l'histoire de la litterature Khmer*. If you can find a copy, Zhang Xiaohui, Xu Zhongqi and Zhang Xisheng (1990), *Explorations in the Laws of the Dai Nationality in West Yunnan* gives the first general account of the Sipsongpanna (Tai-Lu) codes.

Classics of the Secondary Literature

On Sri Lanka: Derrett (1956), *The Origins of the Law of the Kandyans* suggests that Sinhalese "Buddhist" law is essentially South Indian, with a small "sub-Aryan" admixture. Lingat (1989), *La Fonction Royale à Ceylan* examines the role of the Buddhist kings of Lanka. On Burma: Forchhammer (1885), *The Jardine Prize: An Essay* was the first scholarly European investigation into the field and should be treated with care: half of what Forchhammer said was brilliantly perceptive while half was hopelessly inaccurate. E Maung (1951), *The Expansion of Burmese Law* is a series of lectures by Burma's finest legal historian (and quondam Judge of the High Court, Rangoon). Than Tun (1959a), *The Legal System in Burma AD 1000-1300* is based on a thorough knowledge of the Pagan inscriptions. On Siam: one scholar towers above all the others in reputation and productivity. Out of his very many published works, I recommend these four as a good starting point: Lingat (1937), *Vinaya et Droit laïque*, Lingat

(1950), *The Evolution of the Conception of Law in Burma and Siam*, Lingat (1951), *La Conception du Droit dans L'Indochine Hinayaniste* and Lingat (1952), *Les Régimes Matrimoniaux du Sud-Est de l'Asie*. While Lingat always painted the big picture, his colleague, concentrating on details of the textual tradition, has left a sounder foundation for future scholarship: Burnay (1939), *Matériaux pour une Edition Critique du Code de 1805*. His project has been carried forward by Vickery (1984), *Prolegomena to Methods for using the Ayutthayan Laws as Historical Source Material*. On Cambodia: Leclère (1898-9), *Recherches sur les Origines Brahmaniques des Lois Cambodgiennes*. It was this article, along with Forchhammer 1885 which led Max Weber into regarding Buddhist Southeast Asian law as "a law of Hindu origin modified in the direction of Buddhism." On Lanna: Wyatt et al. (1984), *Symposium on Societal Organisation in mainland Southeast Asia prior to the Eighteenth Century* reacts to the first few legal texts from Chiangmai to be discovered and published.

Doctoral Theses

The following four theses were produced by Doctoral students attached to the Law Department, SOAS: Shwe Baw (1955), *The Origin and Development of Burmese Legal Literature*; Kyin Swi (1965), *The Judicial System in the Kingdom of Burma*; M. L. S. Jayasekera (1969), *The Sources and Development of the Customary Law of the Sinhalese up to 1835*; M. B. Voyce (1982), *The Legal Aspect of Early Buddhist Vinaya*. The first two are held at the library of the Institute of Advanced Legal Studies, London; the last two are held at Senate House Library, London. The library of the University of Paris holds Mayoury Ngaosyvathn (1975), *Changement et Continuité de la Justice: Cas du Laos*.

Legal Literature in Translation

The two key works of Sinhalese legal literature are both translated: LeMesurier and Panabokke (1880), *Niti Nighanduva* is the nearest we have to the tradition explaining itself in its own words. Ratnapala (1971), *The Katikāvatas* translates and annotates the vinaya proclamations of the Sri Lankan kings. A surprising amount of Western legal literature from Burma, Arakan and Monland—up to a third of the total—is available in English: the key work is U Gaung *A Digest of the Burmese Buddhist Law concerning Inheritance and Marriage being a Collection of Texts from Thirty Six Dhammathats* in separate Burmese (1898; 1899) and English (1902; 1909) editions. U Gaung is often referred to by the ministerial title of "the Kinwunmingyi" which he bore under the last two kings of

Mandalay. His *Digest* contains excerpts from many manuscripts, including two from Arakan and Burmese works that have subsequently disappeared. Additional passages from some of the same dhammathats are translated in Jardine ed. (1882-3), *Notes on Buddhist Law*. The second volume of Shwe Baw 1955 doctoral thesis translates all of Kaingza's *Maharajathat*, an innovative law text from the early 17th century. Richardson (1847), *The Damathat, or the Laws of Menoo*, a parallel translation of the *Manugye* dhammathat, was reprinted often throughout the 19th century, ensuring that *Manugye* became the best known of the Burmese dhammathats. Forchhammer (1892), *King Wageru's Manu Dhammasattham* gives what purports to be a 13th century Mon original in Burmese and English translation. Sangermano (1833), *A Description of the Burmese Empire* gives a forty page summary of an otherwise unknown dhammathat which is closely connected with Numbers 1, 2, 5, 8 and 10 of the Mon dhammathats in: Nai Pan Hla (1992) *Eleven Mon Dhammasat Texts*. This beautifully produced edition reproduces the Mon manuscripts as well as translating them. For Burmese rajathats see the ten volumes of Than Tun 1984-90 *The Royal Orders of Burma AD 1598-1885* which has become the essential tool for pre-colonial Burmese historiography. It gives the full Burmese text of each order, coupled with an English language summary. Htin Aung (1962), *Burmese Law Tales* translates some law reports from the *Yesagyo Hkondaw* pyatton, and retells several judgement tales from the oral tradition. Bandow (1881), *The Precedents of Princess Thoodamma Tsari* translates the best known Burmese collection of judgement tales. Gray (1886), *The Niti Literature of Burma* translates three of the most popular ethical works. Taw Sein Ko (1893), *A Preliminary Study of the Kalyani Inscriptions of Dhammaceti* translates a pious 15th century Mon king's grappings with a knotty problem in the Vinaya.

The Northern law texts have been much less well served. Only three of the Lanna discoveries are translated: Aroonrut Wichienkeo and Gehan Wijeyewardane (1986), *The Laws of King Mangrai*. This very useful volume transcribes and translates a Chiangmai text contained in a manuscript from Nan, which suggests that some at least of their legal literature was shared between the Middle Mekong kingdoms. The only Laotian text translated is the "Code de Vientiane" *khamphi phra thammastat buhan* in Raquez (1902), *Pages Laotiennes*. An interesting portion of one of the Sipsongpanna (Tai-Lu) legal codes has been translated in I. Bain (1989), *The Correct Attitude and Approach for handling Legal Cases*. Leclère (1903), *Contes Laotiens* contains a chapter of *contes judiciaires*, and some helpful comparisons with the Burmese and Cambodian judgement tale col-

lections. Sila Viravongs (1970-1), *Thao Sieo Savat—Conte Judiciaire Lao* and Bregues (1904), *Contes Judiciaires Laotiens* translate more Laotian judgement tales. The Ahom laws are in chapter two of Barua (1935), *Ahom Buranji*. Turning to the Eastern texts, the *Three Seals Code* has been very badly served by translators. If you want to consult it seriously, you must learn Thai. However, non-Thai speakers can sample its charms from the portions translated into French in Lingat (1931), *L'Esclavage Privé dans le Vieux Droit Siamois*, Lingat (1961), *Le Délit de Voisinage Maléfique* and the extensive French paraphrases in Lingat (1964) *La Preuve dans l'ancien Droit Siamois*. By contrast, all of the Cambodian legal literature is available in translation, thanks to Adhémar Leclère's exemplary work: Leclère (1898), *Codes Cambodgiens*. Khmer judgement tales are translated in Leclère (1895), *Cambodge, Contes et Légendes*, Midan (1933), *Histoires du Juge Lièvre -Recueil de Contes Cambodgiens* and Anonymous (1970), *Recueil de contes Khmers—Le Juge Lièvre*. The Cambodian works on good manners are translated in Jenner and Pou (1975-81), *Les Ckap, ou "Code de Conduite" Khmers*. Written at the beginning of this century in the midst of Thailand's transition to modernity, Vajirananavarorasa (1969-83) *The Entrance to the Vinaya* expounds the traditions of Thailand's strict-observance lineage.

Legal Literature in Southeast Asian languages

Several important pre-colonial Burmese texts have been published in Rangoon and Mandalay. Among them are Maung Tetto's 1878 edition of Myat Aung's *Manoo Woonana*, a Pali verse dhammathat written in 1772 by an ambitious ex-monk, the anonymous (1870), *Mahapanna-kyaw pyatton* which includes ten pages of *Shin Kyaw Thu of Hanthawadi's pyatton* written in 1625 and U Nirodha's ed. (1899), *Vinaya samūha vinic-chaya kyan* a collection of twenty-four vinaya treatises written by Burmese sayadaws, each of which had circulated in manuscript during the 18th and 19th century. At p.121-9 of Okudaira 1979, whose title can be translated from the Japanese as *An Outline of the Origin, Development and Research on the Dhammathats*, is a catalogue of sixty-five legal manuscripts held by the University Central Library, Rangoon and sixty-six more at the Rangoon National Library. But note that Burmese libraries have been closed to non-Burmese students for the last thirty years. Some of this material is available in microfilm as catalogued in *List of Microfilms Deposited in the Centre for East Asian Cultural Studies: Part 8, Burma*. I understand that Cornell also holds much of this in microfilm in its "Luce Collection" but I'm not aware of any published catalogue. Pe Maung Tin's two articles *Burmese*

Manuscripts in the British Museum and in the Bodleian Library, Oxford list ten legal manuscripts held in England. Two relevant Burmese Pali works are in print: Jaini (1983), *Zimme Paññāsa* is an edition of the Burmese collection of *Fifty Jataka* while Maung Tin (1914) has edited *Rājādhirājavilāsini*, a florid 18th century Pali work about kingship by the 1st Maungdaung sayadaw. Turning to northern legal literature, the discoveries in Lanna over the last twenty years are catalogued in Sommai Premchit (1986), *Lan Na Literature: Catalogue of 954 Secular Titles available in Microfilm*. Much of this has been transcribed into central Thai and discussed in Prasert na Nagara, Pitinai Chaisangsukkul and Aroonrut Wichienkeo (1989) twelve volume work, whose title translates from Thai as *Basic Research on the Ancient Lanna Law: An Analysis of its Legal Structure and Texts as Inscribed in Palm Leaves from Time Immemorial*. Details of the Laotian law texts which have been printed in Vientiane may be found in Mayoury 1996. A Pali work on kingship and government called the *Lokavinaya* or the *Dhanañjaya Jātaka* was known in most Middle Mekong capitals. A version of it from Kengtung has been edited: Jaini (1986), *Lokaneyyapparanam*.

Details of the various printed and digitised editions of the *Three Seals Code* are given in Ishii 1986 and Vickery 1996. Relevant materials held in Bangkok libraries are catalogued in Burnay (1930), *Inventaire des Manuscrits juridique Siamois*. The seven-hundred newly discovered central and southern Thai legal manuscripts are catalogued in Sarup Ritichu (1996), *Local Laws of Southern Thailand* and Pitinai Chaisaengsukkul (1996), *Newly Discovered Source Material*. The manuscripts described by Low (1847), *On the laws of mu'ung Thai or Siam* are, I am reliably informed, still held in the library of the Royal Asiatic Society, London, although they do not appear in its catalogue. A *Traditional family law text, Ayudhya-style writing* was exhibited at the Australian National University Library in July 1987. Twenty Cambodian legal manuscripts which Leclère deposited with the Bibliothèque Nationale de Paris are catalogued in Khing Hoc Dy 1990.

BIBLIOGRAPHY

- Anonymous. 1870. *Mahapanna-kyaw pyatton*. Rangoon: the Hanthawaddy Press.
- . 1970. *Recueil de contes Khmers—Le Juge Lièvre* Tome 4. Fasc. 4 Serie de Culture et Civilisation Khmeres. Phnomh Penh: Edition de l'Institut Bouddhique.
- . 1976. *List of Microfilms Deposited in the Centre for East Asian Cultural Studies: Part 8, Burma*. Tokyo: Centre for East Asian Cultural Studies, The Tokyo Bunko.
- Aroonrut Wichienkeeo, and Gehan Wijeyewardane. 1986. *The Laws of King Mangrai*. Canberra: The Richard Davis Fund and the Australian National University.
- Aroonrut Wichienkeeo. 1996. "Lanna Customary Law." *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 30-41.
- Bain, I. 1989. "The Correct Attitude and Approach for Handling Legal Cases." *Thai-Yunnan Project Newsletter* 4: 25-6.
- Bandow, C. 1881. *The Precedents of Princess Thoodamma Tsari*. 6th ed. Rangoon: American Mission Press.
- Barua, G. 1930. *Ahom Buranji: From the Earliest Times to the End of Ahom Rule*. Calcutta: Assam Government.
- Bechert, H., Khin Khin Su, and Tin Tin Myint. 1979. *Burmese Manuscripts*. Wiesbaden: Franz Steiner Verlag. No. 42 of their catalogue at 1:53-4 is a 19th century dhammathat.
- Bregues, J. 1904. "Contes Judiciaires Laotiens." *La Revue Indochinoise* 2: 124-8.
- Burnay, J. 1930-2. "Inventaire des Manuscrits juridiques Siamois." *Journal of the Siam Society* 23 (1930): 135-203; 24 (1931): 29-79; 25 (1932): 127-52.
- . 1939. "Matériaux pour une Edition Critique du Code de 1805." *Journal of the Siam Society* 31: 155-168.
- Derrett, J. 1956. "The Origins of the Law of the Kandyans." *University of Ceylon Review* 14: 105-150.
- E Maung. 1951. "The Expansion of Burmese Law, a Series of Lectures." Rangoon: Royal Printing Works.
- Finot, L. 1917. "Recherches sur la Litterature Laotienne." *Bulletin de l'Ecole Française de l'Extrême Orient* 17: 5-224.
- Forchhammer, E. 1885. *The Jardine Prize: an Essay*. Rangoon: Government Press.
- . 1892. *King Wageru's Manu Dhammasattam: Text, Translation and Notes*. Rangoon: Government Printing.
- U Gaung (alias the Kinwunmingyi). 1902-9. *Translation of a Digest of the Burmese Buddhist Law concerning Marriage and Inheritance, being a Collection of Texts from Thirty Six Dhammathats*. Vol.1 1902; vol. 2 1909. Rangoon: Superintendent of Government Printing.

- Gray, J. 1886. *The Niti Literature of Burma*. London: Trubner's Oriental Series.
- Htin Aung. 1962. *Burmese Law Tales, The Legal Element in Burmese Folk-Lore*. Oxford: Oxford University Press.
- Hinüber, O. v. *A Handbook of Pali Literature*. Berlin: Walter de Gruyter, 1996.
- Huxley, A. 1991. "Sanction in the Theravada Buddhist Kingdoms of S.E. Asia." *Receuil de la Société Jean Bodin* 58.4: 335-370.
- . 1996. "Thai, Mon and Burmese Dhammathats—Who Influenced Whom?" *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 82-131.
- . 1997. "The Village Knows Best: Social Organisation in an 18th century Burmese Law Text." *South East Asia Research* 5.1: 21-39.
- . N. d. "The Traditions of Mahosadha: Legal Reasoning from Northern Thailand." Forthcoming in *Bulletin of the School of Oriental and African Studies*.
- Ishii, Y., ed. 1978. "A Preliminary Bibliography for the Study of Customary Laws of Southeast Asia and Taiwan." *Bulletin of the National Museum of Ethnology, Tokyo* 3.2: 781-833
- . 1986. "The Thai Thammasat (with a Note on the Lao Thammasat)." *Laws of South-East Asia, Volume 1 The Pre-Modern Texts*. Ed. M. Hooker. Singapore: Butterworths and Co. 143-203
- Jackson, B. 1975. "From Dharma to Law." *American Journal of Comparative Law* 23: 490-512.
- Jaini, P. 1986. *Lokaneyyapparāṇaṃ*. Pali Text Society Text Series 175. London: Routledge and Kegan Paul.
- . 1983. *Paññāsa-Jātaka or Zimme Paññāsa* Pali Text Society Text Series 172. Vol. 2. London: Routledge and Kegan Paul.
- Jardine, J., ed. 1882-3. *Notes on Buddhist Law. By the Judicial Commissioner, British Burma*. Eight parts, issued separately. Rpt. as one volume 1903. Rangoon: Government Printing.
- Jenner, P., and S. Pou. 1975-81. "Les Cpap, ou 'Code de Conduite' Khmers." *Bulletin de l'Ecole Française de l'Extrême-Orient* 62 (1975): 369-94; 63 (1976): 313-350; 64 (1977): 167-216; 65 (1978): 361-40; 66 (1979): 369-94; 70 (1981): 135-94.
- Khing Hoc Dy. 1990. *Contributions à l'Histoire de la Littérature Khmère Volume 1: Littérature de l'époque "Classique" (XVe-XIXe siècles)*. Paris: Editions L'Harmattan. 63-8.
- Kotelawale, D. 1987. "Realms of Law: Judicial Procedure of the Low Country Sinhalese during Dutch Rule in Sri Lanka." *Modern Sri Lanka Studies* 2: 112-120.
- Leclère, A. 1898. *Les Codes Cambodgiens (publiés sous les auspices de M. Dourner, Gouverneur général de l'Indochine française)*. 2 vols. Paris: E. Leroux.
- . 1903. *Contes Laotiens et Contes Cambodgiens*. Paris: E. Leroux.

- . 1898-9. "Recherches sur les Origines Brahmaniques des Lois Cambodgiennes." *Nouvelle Revue Historiques de Droit français et étranger* Sept. / Oct. (1898): 609-656; Mai / Jun. (1899): 265-288.
- LeMesurier, C., and T. Panabokke. 1880. *Niti Nighanduva, or The Vocabulary of Law as it Existed in the Last Days of the Kandyan Kingdom*. Colombo: Government Printer.
- Lingat, R. 1931. *L'Esclavage Privé dans le vieux lois Siamois*. Paris: Les Editions Domat-Montchrestien.
- . 1937. "Vinaya et droit laïque: Etudes sur les conflits de la loi religieuse et de la loi laïque dans l'Indochine hinayiste." *Bulletin de l'Ecole Française de l'Extrême-Orient* 37: 415-477.
- . 1950. "Evolution of the Conception of Law in Burma and Siam." *Journal of the Siam Society* 38: 9-31.
- . 1951. "La Conception du Droit dans l'Indochine Hinayaniste." *Bulletin de l'Ecole Française de l'Extrême-Orient* 44: 163-187.
- . 1952. *Les Régimes Matrimoniaux du Sud-Est de l'Asie. Tome 1: Les Régimes Traditionnels*. Paris: E. de Boccard.
- . 1961. "Le Délit de Voisinage Maléfique dans le vieux droit Siamois." *Journal Asiatique* 249: 63-84.
- . 1964. "La Preuve dans l'ancien droit Siamois." *Recueils de la Société Jean Bodin* 17: 397-418.
- . 1989. "La Fonction Royale à Ceylan." *Royautés Bouddhiques*. Ed. G. Fussman and E. Meyer, preface by L. Dumont. Paris: Ecole des Hautes Etudes en Science Sociales.
- Low, J. 1847. "On the Laws of mu'ung Thai or Siam." *Journal of the Indian Archipelago and Eastern Asia* 1: 327-429. At p. lvii of vol. 2 of the journal Low reveals that his article was written in about 1825.
- MacCormack, G. 1976. "Professor Gluckman's Contribution to Legal Theory." *Juridical Review* (1976): 229-248
- Marikar, J. 1978. "A Bibliography of the Books and Periodicals on the Laws of Sri Lanka (Ceylon)." *Colombo Law Review* 4: 130-143.
- Maspero, G. 1929. *Un Empire Colonial Français: l'Indochine*. Vol. 1. Paris: Editions G. van Oest.
- Maung Thettoo, ed. 1878. *Manoo Woonana*. Rangoon: Superintendent of Government Printing.
- Maung Tin, ed. 1914. "Rājādhirājavilāsini." *Journal of the Burma Research Society* 4: 7-21.
- Mayoury Ngaosyvathn. 1996. "An Introduction to the Laws of Khun Borom." *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 74-81.
- Midan, P. 1933. "Histoires du Juge Lièvre—Recueil de Contes Cambodgiens." *Bulletin de la Société des Etudes Indochinoises* 8.4:I-VI, 1-116.
- Nai Pan Hla. 1992. *Eleven Mon Dhammasat Texts*. Bibliotheca Codicum Asiaticorum 6. Tokyo: The Centre for East Asian Cultural Studies for Unesco. A less opulent paperback version preceded it: Nai Pan Hla. *The Significant Role*

- of the Mon Version Dharmasastra. Tokyo: Institute for the Study of the Languages and Cultures of Asia and Africa. 1991.
- U Nirodha, ed. 1899. *Vinaya samūha vinicchaya kyam*. Vol. 1: 1899 vol. 2: 1901 vol. 3: 1902. Mandalay: Mandalay Times Press.
- Okudaira, R. 1979. "An Outline of the Origin, Development and Research on the Dhammathats" (main article in Japanese). *Tōnan Ajia Kenkyū* (South East Asian Studies) 17: 99-130.
- . 1986. "The Burmese Dhammathat." *Laws of South-East Asia, Volume 1 The Pre-Modern Texts*. Ed. M. Hooker. Singapore: Butterworths and Co. 23-142
- Pe Maung Tin. 1924. "Burma Manuscripts in the British Museum." *Journal of the Burma Research Society* 14: 221-246. Lists nine law texts.
- . 1925. "Burma Manuscripts in the Bodleian Library, Oxford." *Journal of the Burma Research Society* 15: 145-7. Lists a dhammathat in Burmese verse.
- Pitinaï Chaisaengsukkul. 1996. "Newly Discovered Source Material from 34 Central and 14 Southern Provinces of the Siamese Kingdom." *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 42-62.
- Posner, R. 1988. "The Jurisprudence of Skepticism." *Michigan Law Review* 86: 827-891.
- Prasert na Nagara, Pitinaï Chaisaengsukkul, and Aroonrut Wichienkeeo. 1989. *Wichai phu'nthan ru'ang kotmai Lanna boran: wikhro' rabop khrongkan sang lae nu'aha botbanyat thi chara nai bailan* (Basic Research on the Ancient Lanna Law: An Analysis of its Legal Structure and Texts as Inscribed in Palm Leaves from Time Immemorial). 12 vols. Bangkok: Mahawitthayalai Thammasat.
- Prasert na Nagara, and A. Griswold. 1992. *Epigraphic and Historical Studies* (Bangkok: the Historical Society under the Royal Patronage of H. R. H. Princess Maha Chakri Sirindhorn). Study #4.
- Raquez, A. 1902. *Pages Laotiennes*. Hanoi: Schneider. The "Code de Vientiane" is summarised on pp. 402-418. This version has been reprinted, without illustrations, in *Bulletin des Amis du Royaume Lao* 1970-2: 23-6; 75-88; 94-9; 123-31; 70-76.
- Ratnapala, N. 1971. *The Katikāvatas: Law of the Buddhist Order of Ceylon from the 12th to the 18th Century*. München: Kitzinger, München Studien zur Sprachwissenschaft.
- Richardson, D. 1847. *The Damathat, or the Laws of Menoo*. Moulmein: American Baptist Mission Press.
- Sangermano, V. 1885. *A Description of the Burmese Empire*. 1st English ed. Rangoon: 1885. Trans. W. Tandy with a preface by John Jardine. 5th ed. Santiago de Compostela: Susil Gupta, 1966.
- Sarup Ritchu. 1996. "Legal Manuscripts from Southern Thailand." *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 62-73.

- Somma Premchit. 1986. *Lan Na Literature, Catalogue of 954 Secular Titles*. Bangkok: Chulalongkorn University Bookstore.
- Tambiah, H. W. 1968. *Sinhala Laws and Customs*. Colombo: Lake House Investments. Ch. 4.
- Taw Sein Ko. 1893. "A Preliminary Study of the Kalyani Inscriptions of Dhammaceti." *Indian Antiquary* (January 1893): 11-17; (February 1893): 29-53; (April 1893): 85-89.
- Terwiel, B. 1983. *A History of Modern Thailand 1767-1942*. St. Lucia: U. Queensland Press.
- Than Tun. 1959a. "The Legal System in Burma AD 1000-1300." *Burma Law Institute Journal* 1: 171-184. Rpt. without footnotes in *Essays on the History and Buddhism of Burma by Professor Than Tun*. Ed. P. Strachan. Isle of Arran: Kiscadale Press, 1988. 69-82.
- . 1959b. "A History of Burma." *New Burma Weekly* (March 1, 1959): ch. 4.
- . 1984-90. *The Royal Orders of Burma, AD 1598-1885*. 10 vols. Kyoto: Centre for Southeast Asian Studies.
- Vajirananavarorasa, Krom Phraya. 1969-83. *The Entrance to the Vinaya. Vinaya Mukha*. 3 vols. Bangkok: Mahamakut Rajavidyalaya Press.
- Vickery, M. 1978. "A Guide through some Recent Sukhothai Historiography." *Journal of the Siam Society* 66: 182-243.
- . 1984. "Prolegomena to Methods for using the Ayutthayan Laws as Historical Source Material." *Journal of the Siam Society* 72: 37-59.
- . 1996. "The Constitution of Ayutthaya—an Investigation into the Three Seals Code." *Thai Law: Buddhist Law Essays on the Legal History of Thailand, Laos and Burma*. Ed. A. Huxley. Bangkok: White Orchid Press. 132-194.
- Sila Viravongs. 1970-1. "Thao Sieo Savat—Conte Judiciaire Lao." *Bulletin des Amis du Royaume Lao* 3-6: 59-67, 79-82, 191-9.
- Wyatt, D., et al. 1984. "Symposium on Societal Organisation in mainland South-east Asia prior to the Eighteenth Century." *Journal of Southeast Asian Studies* 15: 233-270.
- Zhang Xiaohui, Xu Zhongqi, and Zhang Xisheng. 1990. "Explorations in the Laws of the Dai Nationality in West Yunnan." *Proceedings of the 4th International Thai Studies Conference, Yunnan*.