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ABBREVIATIONS

<i>AJCL</i>	<i>American Journal of Comparative Law</i>
<i>BBACS</i>	<i>Bulletin of the British Association for Chinese Studies.</i>
<i>BARL</i>	<i>Bulletin des Amis du Royaume Lao</i>
<i>BEFEO</i>	<i>Bulletin de l'Ecole Française d'Extrême Orient</i>
<i>BLIJ</i>	<i>Burma Law Institute Journal</i>
<i>IJ</i>	<i>Indo-Iranian Journal</i>
<i>JA</i>	<i>Journal Asiatique</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JIAEA</i>	<i>Journal of the Indian Archipelago and Eastern Asia</i>
<i>JPTS</i>	<i>Journal of the Pali Text Society</i>
<i>JSEAS</i>	<i>Journal of Southeast Asian Studies</i>
<i>JSS</i>	<i>Journal of the Siam Society</i>
<i>MJT</i>	<i>Mikkyō Jiten</i>
<i>PTS</i>	<i>Pali Text Society</i>
<i>ROB</i>	Than Tun, <i>The Royal Orders of Burma A.D. 1598–1885</i> , Tokyo, vols. 1–7, 1984–1987.
<i>SBB</i>	Sacred Books of the Buddhists
<i>SBE</i>	Sacred Books of the East
<i>T</i>	Taishō Tripiṭaka

HOW BUDDHIST IS THERAVĀDA BUDDHIST LAW? A SURVEY OF LEGAL LITERATURE IN PĀLI-LAND

A. Huxley

1. Preamble

Buddhist Southeast Asia produced its own lively tradition of secular law texts. The tradition flourished from the twelfth to the early twentieth century in extremely diverse kingdoms. They were written by Siam, the large and expanding bureaucratic kingdom of the early nineteenth century, an international state by virtue of its many Chinese, European and Arabian visitors. And they were written in the 1890s by the tiny, semi-anarchic frontier state of Sipsong Panna hidden away in the mountains of Yunnan. My purpose in this paper is to describe and analyse this literature from the point of view of a legal historian, which means asking the following questions: is the tradition composed of one genre or many? Are the same genre rules applied consistently in different kingdoms? How much of a kingdom's definition of the scope and justification of its secular law, how much of its legal philosophy, can be reconstructed from the literature? And, above all, how far are we justified in applying the adjective 'Buddhist' to the secular legal literature?

The phrase 'Buddhist law' will signify to most of my readers the *Vinaya*, the canonical code regulating the daily behaviour of the Saṅgha. The *Vinaya* is Buddhist, first in the sense of its authorship, which enables us to judge the Buddha as a pragmatic organizer of human affairs, and secondly in the sense of its being found wherever Buddhism is established. To apply the adjective 'Buddhist' to a local Southeast Asian secular phenomenon may seem to devalue the phrase. This restrictive use may well be justified from the lofty perspectives of Buddhology, but it puts too much of a constraint on the concerns of Southeast Asian legal history. The early twentieth century colonial legal administrators in Cambodia and Burma made an assumption which I share. They expected to find legal rules, either oral or written, in use to regulate matters like criminal law, marriage, inheritance and ownership of agricultural land. When they found these rules in the secular law texts, they swiftly labelled them "Burmese Buddhist Law" or "the law of the Buddhist Laotians". They probably used the term 'Buddhist' to distinguish these from the Islamic legal practices which the French and British had come across earlier in Champa, Sumatra and the Malay peninsula. Insofar as Buddhology concentrates on India and China as its central areas of study, it can afford to ignore this secular law, which in both cultures was firmly established before the spread of Buddhism. I assume that in the India of Aśoka's time a Buddhist layman would follow the secular law of his subcaste and region. Only by becoming a monk could he change his legal status, "die a civil death" and adopt the *Vinaya* code.

In China also I assume a Buddhist layman to have been bound by imperial penal law and the local regulation of clan and trading association, with the difference that when he became a monk, he escaped from imperial control to a far lesser extent than his Indian colleague. But in other areas into which Buddhism expanded, in the Himalayan kingdoms, in Sri Lanka, in mainland Southeast Asia, Buddhism came as a civilizing force in the literal sense of the word. The introduction of written script and of well-developed theories and rituals of kingship precipitated the building of cities and the confederation of these cities by people whose most centralized achievement so far had been the market town. In these areas, where Buddhism is an important cause of the early stages of state-formation, secular law will be redefined in Buddhist terms as it comes to be written down.

The legal niche which Buddhism found already occupied in India and China here lies invitingly empty, and Buddhism reveals more of its inherent possibilities, as it helps develop the secular law. To talk of Buddhist secular law seems appropriate in the context of the Himalayan kingdoms, Sri Lanka and mainland Southeast Asia. Of the Himalayan kingdoms I am shamefully ignorant. Sri Lanka has produced no lasting tradition of written secular law texts, so I speculate on this absence towards the end of the paper, but otherwise ignore it. The area covered in the bulk of this paper can be defined as the predecessor kingdoms to modern Burma, Laos, Kampuchea and Thailand in the period A.D. 1044 to 1893, but since this is an impossibly cumbersome phrase, I shall replace it by the neologism Pāli-land. I invent the word to emphasize the important role that Pāli plays in Southeast Asia as a classical language. It is the language of the Buddhist canon, and of an enormous secondary literature supplying texts on matters as disparate as ethical homilies, *adhammic* psychology, social history and stories for popular entertainment. And it is also the *lingua franca* of the region's educated elite. The conversion to Theravāda Buddhism between the eleventh and the fifteenth centuries entailed the adoption of the Pāli Cultural Package, in which I include a script, language, literature, and the Saṅgha, as an organized institution. Southeast Asian secular law developed out of the Pāli Cultural Package as a whole—Buddhism in the widest cultural sense—rather than just from the Tipiṭaka—Buddhism in the narrow sense of its written canon.

Unfortunately, before discussing these comparative issues in sections 3 and 4, I have felt constrained to provide in section 2 a summary of my views on the problem of dating the legal manuscript traditions of each kingdom. I am painfully aware that such surveys are usually only of interest to those specialists with whom one disagrees, and I urge every reader whose interest is more casual to proceed straight to section 3. In the thirty years since Robert Lingat wrote the last comparative survey of Pāli-land legal manuscripts, whole new genres have become available (I think of Than Tun's translations of the Burmese *rajathat* genre) and whole new regional literatures have been unearthed (I think of Sommai Premchit's disinterment of Lan Na legal literature). At the same time many assumed facts of the 1950s are now in doubt. Michael Vickery has launched a challenge to the validity of any date given in any palm-leaf manuscript. I find his scepticism inspiring, and have tried to imitate it in my dating of the Burmese

dharmathats. But I concede that this type of argument, in which one must rigorously expose one's every assumption, does not make for a light reading.

2. Legal texts in the three sub-regions

Even a cursory glance at the surviving Pāli-land law texts is sufficient to show that they fall into three sub-regional traditions. To these I shall assign bland geographical labels. The area comprising Ramannadesa, Burma and Arakan I label the western region. Siam and Cambodia I label the Eastern region. Thus far I am following Lingat, who used the generic terms 'Burma' and 'Siam' to convey the same distinction. But, based on discoveries and translations of the last twenty years, I add a northern region, comprising Lan Na, Laos, the Shan States, Keng Tung and Sipsong Panna. This region had reached heights of state organization in the three centuries following the Mongol invasions which it was never again to attain. We now know just enough about the legal literature produced during these centuries of ascendancy to risk some generalizations about it.

I shall argue that the legal philosophy in each of these sub-regions is different. I mean by this that each sub-region made different assumptions about the proper scope and function of the texts, the proper authors of the texts and the reasons why and the degree to which the texts should be obeyed. Nevertheless, I shall argue, the three sub-regions have interrelated traditions, and enough in common to justify a common label as "Southeast Asian Buddhist laws". What unites the otherwise disparate sub-regional traditions is also what is most 'Buddhist' about them. To answer the question "How Buddhist is Theravāda Buddhist Law?" is also to discuss the question "To what extent do the laws of the Theravāda Buddhist kingdoms form a distinctive class?"

2a. The law texts of the western sub-region

The law texts in this region describe themselves as belonging to three separate genres of *dharmathat*, *rajathat* and *pyatton*. I shall describe each in turn, paying special attention to a couple of works which, by transcending their genre, appear as milestones of indigenous legal development.

Dharmathat

A *dharmathat* in Burma is a written collection of legal rules: it must deal with certain basic topics, such as inheritance, marriage and property disputes, but otherwise its author is free to cover what legal topics he chooses. The unique feature of the Burmese *dharmathat* genre is that different kinds of authors wrote within it for different kinds of reasons. Poets could specialize in versifying the *dharmathats*: in the eighteenth century the Wannudhamma Kyawdin wrote four separate *dharmathat* poems. Classical scholars could translate them into Pāli, grumbling as they did so that "a law book in the Burmese vernacular is like water

without a jar to keep it in.”¹ And men who had served the king as a military commander, or as a governor, could end their careers on a reflective note, not by writing their memoirs, but by composing a *dhammathat*.

By the nineteenth century all these texts had accumulated to form a genre described by Tambiah as “almost excessively luxuriant”.² But in the last hundred years they have suffered a ruthless culling. Jardine and Forchhammer, the first European scholars to be interested in the Burmese law texts, complained that many of the *dhammathats* listed in the pre-colonial Royal Library Catalogue had been destroyed during the British sack of Mandalay. After the even greater destruction sustained during World War Two, many of the texts which they worked on are lost to us. Those manuscripts which survived these vicissitudes were protected from the inquisitive hands of non-Burmese for some decades, but are now available again through the Osaka University / Burma Historical Commission Microfilming project.³ Early colonial scholarship assumed that the texts went back to a fifth century A.D. Hindu source.⁴ But postwar Burmese scholars, in particular E Maung, Shwe Baw, and Kyin Swi,⁵ have shifted the argument about dating onto a new plane. They remind us to be extremely cautious in assigning dates earlier than the seventeenth century to any surviving *dhammathat* text. Assigning earlier dates can only be speculative, because of the physical nature of parabaik manuscripts, which become illegible and need recopying in the Burmese climate at least every 200 years. (Our earliest surviving manuscript copy is dated A.D. 1749.) We must remember that one who copies a lawbook has much more excuse to alter inconsistencies and anachronisms than one who copies the sacred canon. In order to date a text earlier than the date of its surviving manuscript, we must look at the historical traditions associated with each title, which are reproduced internally in the exordium of each text, and externally in pre-colonial, mainly nineteenth-century, works of literary history and bibliography. When these sources agree on the author, the rank he held and the approximate date of composition, we can accept the information. When these sources disagree, or when it is uncertain which text they are referring to, or even when their claim to antiquity seems inherently overstated⁶ then we must assign a date no earlier than the manuscript itself.

¹ See the exordium of Winisaya Pakathani [D19] written c. A.D. 1771. References in this form: [D19] are to the “List of 36 *dhammathats* in chronological order” in the Kinwunmingyi’s Digest. This has been widely adopted as a master identification list.

² S.T. Tambiah, *Bridewealth and Dowry*, Cambridge, 1973, 182.

³ They are catalogued in Centre for East Asian Cultural Studies, “List of Microfilms Deposited in the Centre for East Asian Cultural Studies”, Part 8: Burma, Tokyo, 1976.

⁴ The empire they served had declared Burma to be a part of India. Many of them, like Jardine, had served in India and knew its legal literature before coming to Burma.

⁵ E Maung, *The Expansion of Buddhist Law*, Rangoon, 1951; Shwe Baw, *The Origin and Development of Burmese Legal Literature*, Ph.D. thesis, London, I.A.L.S., 1955; Kyin Swi, *The Judicial System in the Kingdom of Burma*, Ph.D. thesis, London, I.A.L.S., 1965.

⁶ *Manussika*, [D2], is an example of this case. It is reported to have been written during the time of the Kassapa Buddha, whom Buddhist chronology held to have lived 7000 years before Gotama!

Following this procedure gives us some safe dates for the better known *dhammathats* of the seventeenth and eighteenth century, but will not allow us to ascribe any earlier dates. Luckily some of the well dated *dhammathats* tell us that they are based on earlier works. *Dhammathatkungya* [D6], written c. A.D. 1613, says it is based on *Manosara* [D1], *Manussika* [D2] and *Dhammavilasa* [D4]. *Manuwunnana* [D16], written c. A.D. 1760, says it is based on the same three earlier works, along with two others and fourteen *Great Pyattons*. We can safely put D1, D2 and D4 into the group of earliest *dhammathats*, though we as yet have no reason to believe them earlier than the sixteenth century. *Wageru* [D5] must be added to this group, since it bears the name of a Mon king who reigned c. A.D. 1272, and since the Kinwunmingyi puts it earlier than the well-dated D6. We now have a group of the four earliest surviving *dhammathats* which I shall compare with three specimen *dhammathats* from the seventeenth and eighteenth centuries to see if any historical change is evident.

The earliest surviving dhammathats—pre-seventeenth century

One way to check whether any of this group can be dated as early as the Pagan period (A.D. 1044 to 1300) is to refer to the voluminous stone inscriptions which have survived from that period. Than Tun has found a reference to “deciding a dispute by consulting the *dhammathat*” and another to an *amunwan ca*, which appears to be a written book of punishments.⁷ Both date from A.D. 1249. These certainly show that written legal texts were in use towards the end of the Pagan period, but they do not help us to identify any of our four *dhammathats* as having been used in Pagan. Aung Thwin pursues a more promising line, and has unearthed thirteenth-century inscriptions which confirm some of the details supplied by nineteenth-century tradition as to authorship of *Dhammavilasa* [D4]. The tempting conclusion is that *Dhammavilasa* [D4] can be safely dated to the early thirteenth century, but a problem intrudes. The surviving text is in Burmese, while the exordium states that it was written originally in Pāli, before being translated into Mon. Was our Burmese translation made during the Pagan period, or as late as the sixteenth century? The text we possess mentions “earlier *dhammathats*” which could be an indication of lateness. What convinces me that the translation dates back to Pagan is the textual history of another *dhammathat* altogether.

Kyetyo [D35] is one of the two surviving *dhammathats* from Arakan, the long coastal strip running from Bengal to the Irrawaddy delta. Arakanese speak a dialect of Burmese, are Theravāda Buddhists, and were incorporated into the Pagan empire. But the Arakan kingdom was independent and culturally isolated from Upper Burma behind the mountains of the Arakan Yoma from the fall of Pagan until 1784 when, weakened by the machinations of Portuguese traders, a Janissary revolt by Afghan and Turkish mercenaries, and two earthquakes in the capital city, it fell to the Burmese king. The *Kyetyo* manuscript dates to 1762, and is a rearranged version of *Dhammavilasa* written in the local Burmese dialect. Unless all our guesses as to the early history of the *dhammathats* are wrong, a text of

⁷ Than Tun, “The Legal Systems in Burma A.D. 1000–1300”, in *BLIJ*, 1959, 173–74.

Dhammavilasa must have entered Arakan during Pagan’s hegemony. *Kyetyo*’s exordium states:

“Manu’s *dharmathat* was too brief, and had too many difficult words, therefore Thera *Dhammavilasa* wrote a larger edition and explained the difficult words.”⁸

This surely must imply that *Dhammavilasa* [D4] was translated into Burmese if not by Sariputta himself, at least during the Pagan era. One of our group of early *dharmathats*, then, is demonstrably a version of a Pagan era *dharmathat*, though of course it may contain interpolations from any subsequent period.

Have we enough information to date any of the other three? I think not. Strong historical traditions link *Wageru* [D5] with the eponymous Mon king who ruled c. 1272. Very likely these traditions are correct, but they must refer to a Pāli or Mon original, not to our text which is a Burmese translation. Literary tradition links the Burmese translation of *Wageru* with the name Buddhaghosa, but ascribes a date one hundred years later than when the famous Buddhaghosa flourished. This later date seems reasonable; I would therefore assign the Burmese translation of *Wageru* to the mid-sixteenth century. There is no external evidence to date *Manosara* and *Manussika*. The information about the *dharmathats* of the sixteenth century and earlier can be tabulated as follows:

D1 <i>Manosara</i>	D2 <i>Manussika</i>	D4 <i>Dhammavilasa</i>	D5 <i>Wageru</i>
<i>Author:</i> ?	?	Sariputta, monk, c. A.D. 1231	Mon King, c. 1272
<i>Language:</i> Pāli, then Mon	Burmese	Burmese, but originally Pāli and Mon	Burmese, but originally Pāli and Mon
<i>Judgement tales:</i> (none)	10	5	(none)
<i>Manu</i> 2 sons: Manu and Subhadra	None	simple cowherd— cucumber tale	1 son: no cucumber tale
<i>Heads of Law:</i> says 15 uses 17	says 17 uses 18	15	18

I have set out some salient differences between the four works in laconic form. After headings specifying the traditional author, and the language of original composition, I give the number of judgement tales found in the text. These are stories or fables describing the decision of a wise judge (who can be human, animal, or the future Buddha). The stories sometimes illustrate a rule of

⁸ Shwe Baw, *op. cit.*, chapter 2.

substantive law, but more often demonstrate a clever way of collecting and evaluating evidence. They are, I shall argue, characteristic of Pāli-land legal literature generally. The next heading, *Manu*, refers to the myth that is often used to legitimate these *dhammathats* by placing them in the context of Buddhist history and political theory. The earliest Burmese *dhammathats* present three versions of the myth, none of which can be shown to be earlier than the others. There is no reason to take any one version as basic or archetypal. The last heading, *Heads of Law*, refers to the way the *dhammathat* author has organised his material. The Hindu *Manu Dharmaśāstra* famously uses 18 heads of law as chapter headings for separate discussion of different kinds of dispute. Some of the early *dhammathats* quote a similar list, and *Wageru* and *Manussika* in fact divide their text into 18 chapters. But in no case is the list quoted or used identical to the list used by the Hindu *Manu*. The impression is of Burmese authors who have heard of the Indian tradition of 18 heads, rather than of authors who are writing with a copy of the ‘Indian work’ open on their desk.

The seventeenth-century dhammathats

Of the three important works which can be safely ascribed to the seventeenth century, the earliest is *Dhammathatkungya* [D6], which E Maung⁹ dates to 1613. The exordium specifically declares it to be a second generation *dhammathat*:

“This is a compilation of laws in *dhammathats* and *pyattons* so that people can see them as clearly as they see a flag [=kungya] from a distance.”¹⁰

The other two are the works of Kaingza, who acted as legal advisor to King Thalun (1629–1648). The salient details of these three works can be tabulated as follows:

D6 <i>Dhammathatkungya</i>	D7 <i>Kaingza Shwe Min</i>	D8 <i>Maharajathat</i>
<i>Author:</i> Pyanchi, Prince of Pagan c. A.D. 1613	Kaingza	Kaingza
<i>Based on:</i> D1, D2, D4 plus <i>pyattons</i>	D1	(<i>sui generis</i>)
<i>Language:</i> Burmese	Pāli, followed by Burmese tradition	Burmese
<i>Judgement tales:</i> 1	1	16
<i>Manu</i> ?	(?) 2 sons	(none)
<i>Heads of Law:</i> says 18, uses 11	10 sections	24 queries

⁹ E. Maung, *The Expansion of Burmese Law*, Rangoon, 1951, 8.

¹⁰ Shwe Baw, *op. cit.*

Kaingza has attracted much attention in recent years as the most important single individual in the development of Burmese legal literature. Okudaira credits him with “audacity and far-sightedness in presenting his work in the vernacular when Pāli was deemed to be the language of the legal elite” and with fostering the closer association of written law with Burmese sentiments and institutions. He asks: “Kaingza stands alone in the history of the Burmese legal literature... shouldn’t he be given more credit that he so justly deserves?”¹¹

Kaingza’s reputation rests on two surviving works. His *dhammathat* (D7 *Kaingza Shwe Min*, sometimes called the *Manosara Shwe Min*), which was explicitly an update of *Manosara* [D1], seems to have been written first. The later work, the *Maharajathat* (D8) is a new kind of literature altogether, perhaps best described by the Roman Law term *responsa*. Confusion has arisen over what genre to place it in because it is traditionally listed as a *dhammathat*, bears the title of a *rajathat*, and describes itself in its exordium as a *pyatton*. It takes the form of 24 sets of questions posed by the king and answered by Kaingza

Many of the questions concern legal proverbs or saws which were evidently alive in the oral tradition. King Thalun wants to know which of them adequately summarise current law. Others ask for detailed rulings on the kind of legal problems (inheritance, liability for debts, divorce, redemption of slaves, compensation for theft) which were traditionally *dhammathat* subject matter. Question 20 deals with offences against public order and status, the subject of the king’s special jurisdiction, while Question 22 and 23 cover monastic issues, which are subject to the rules of the *Vinaya*. That the work unites such different subject matter is itself of interest: they were evidently all considered as ‘legal questions’ in the seventeenth century, just as they would be in the twentieth. The tone of Kaingza’s answers, though, is the chief surprise. One catches, for the first and only time in the pre-colonial Pāli-land texts, the voice of Benthamite rationalism. I quote from Shwe Baw’s full translation:

“When a party’s witness takes the oath, and subsequently dies within a month, the verdict already given shall stand.”

“The *dhammathats* in Burmese do not mention these terms. Neither do the Pāli *dhammathats*. But a Mon *dhammathat*, the rules of which are followed by the Mon people, says that...”

“Writers on law have clearly stated that all the provisions in the *dhammathats* need not be followed, that the provisions which deserve to be ignored should be ignored.”¹²

¹¹ R. Okudaira, “The role of Kaingza Manuraja”, in *Ajia Afurika Gengo Bunka Kenkyu*, 27, 1984, 185.

¹² Shwe Baw, *op. cit.*, vol 2, 1–218, pages 211, 18, and 27 respectively.

I cannot agree with Okudaira's emphasis on Kaingza's choice of Burmese in which to write. By my calculations at least four important *dhammathats* were available in Burmese text before Kaingza. But I certainly share Okudaira's admiration for Kaingza's talents. In Burmese literary terms he appears as a solitary genius, a man born 300 years before his time. In a forthcoming paper I shall examine the proposition that the *Maharajathat* is the visible tip of a hidden iceberg—the only surviving indication of how Burmese professional lawyers thought about the law.

The eighteenth-century dhammathats

After Kaingza, authors either had a legal or a literary motive for writing *dhammathats*. The best known legal work is *Manugye* (D12) written about 1760. As representative of the literary group I have chosen *Manuwunnana* (D16), written about 1763, more or less at random: three others like it have also been published and partially translated. My third eighteenth-century *dhammathat* is from the legal, rather than the literary, sub-genre, but its provenance is unique: Sangermano's *dhammathat* is known to us only in a 40-page summarised translation first published in 1833.¹³ Father Sangermano was in Burma between 1783 and 1808, and appears to have made his abstract and translation after consultation with lawyers and learned men from Rangoon and perhaps Ava. Whatever text he was relying on (none of the surviving Burmese texts are remotely similar), he appears to have drawn also on an oral professional tradition. On some points, such as abatement of actions, Sangermano's *dhammathat* is the only one to give us a workable rule; on others he gives us information on current business practice that would not automatically have come to the notice of a Christian missionary:

“If a person does not pay off a mortgaged loan within five years, he is only bound to one half of the original sum. (In consequence of this law money lenders among the Burmese are very solicitous to have their money back before three years are expired, and if the debtor is unable to repay it, they will make him give a new bond, that thus they may continue to receive the interest of the money they have lent.)”¹⁴

A tantalizing hint of the kind of text Sangermano was working with comes from Halliday, who read one of the four Mon language *dhammathats* held in manuscript by the Bernard Free Library, Rangoon.

“I have only been able to examine one copy of a (Mon) *dhammathat*, but in that the first leaf was missing and there was no indication of authorship. It more nearly corresponds with the Burmese *dhammathat* which was before Sangermano than any other I have seen described. Like Sangermano's it is in ten books.”¹⁵

¹³ V. Sangermano, *A Description of the Burmese Empire*, Rome, 1833, reprinted London, 1966, chapter 24.

¹⁴ Sangermano's *dhammathat*, vol. 5, 22.

¹⁵ R. Halliday, *The Talaings*, Rangoon, 1917, 137.

Unfortunately, I have seen no indication that this Mon manuscript has survived World War Two. On the next page I summarize some comparisons between these three works in tabular form. All are of the third generation, in the sense that they incorporate seventeenth-century traditions into their text. From the literary side, *Manuwunnana* (D16) quotes some of Kaingza's solutions (in D15 and D19 the same author has translated both of Kaingza's works into Pāli verse). From the legal side, Sangermano's *dhammathat* alludes to the rule apparently introduced by Kaingza that interest on a debt cannot exceed the sum lent, while *Manugye* is steeped in Kaingza-isms.

D12 <i>Manugye</i>	<i>Sangermano's Code</i>	D16 <i>Manuwunnana</i>
<i>Author:</i> Bhummajeya, in charge of moat at Shwebo	?	Wunnudhamma Kyawdin, also wrote D15 and D19
<i>Based on:</i> (very syncretic)	(like a surviving Mon <i>dhammathat</i> ?)	6 <i>dhammathats</i> , incl. D1, D2, D4
<i>Language:</i> Burmese	Burmese	Burmese verse
<i>Judgement tales:</i> 37	none, but did Sangermano edit them out?	at least two
<i>Manu</i> Most elaborate 12 cases plus 7 cases; 7 year old cowherd	2 sons: Menu & Mano	elaborate; 2 versions of 7 cases
<i>Heads of Law</i> 14 volumes, some specializing	10 volumes, some specializing	A fivefold division standard also to D15, D17 and D17

How the Mon dhammathats relate to Burmese traditions?

Though in 1056 the Mon kingdom of Ramannadesa was conquered by Pagan, it regained independence first for one hundred fifty years following the fall of Pagan and again more briefly in the eighteenth century. In the nineteenth century it was separately ruled for a further thirty years as part of the British colony of Lower Burma. These periods of independence from the capitals of Upper Burma no doubt aided the preservation of the Mon texts. We have already seen that four Mon *dhammathats* survived into the twentieth century. Of these I can say nothing. They have not been translated, and it is not clear whether the manuscripts still exist. Eight handwritten Mon legal texts have recently come to light in the Moulmein National Library, but alas only their titles have been published.¹⁶

¹⁶ R. Okudaira, "The Burmese Dhammathats", in M.B. Hooker, ed., *The Classical Law Texts of South East Asia*, Singapore, 1986, 34.

For now *Wageru* (D5) is the only available exemplar of the Mon *dhammathat* tradition. Does it, as Forchhammer claimed, show that all the Burmese traditions rest on Mon models? If, as I have argued, neither portions of text from nor the general organisational principles of *Wageru* are incorporated into subsequent Burmese works, then *Wageru* itself is not part of Burmese traditions. Yet the supposition of a Mon origin for Burmese *dhammathats* has been universally accepted. Pagan's high culture began to emerge in 1056 after it had helped itself to the alphabet, libraries, scribes, religion and monks of Ramannadesa. In the absence of any evidence we must assume that among this booty was at least one Mon legal text, probably written in Pāli and possibly taking some technical terms and principles of organization from the Hindu *Manu Dharmasāstra*. Our earliest surviving *dhammathats* are 200 years later than this presumed Mon source, and may be based on intermediate texts which have not survived. They contribute nothing to proving the Mon origins of the Burmese tradition, though this still remains the best available guess.

Our texts do, however, establish a different and no less interesting point: in each of the three periods we have examined there is evidence of Burmese interest in contemporary Mon *dhammathats*. In the earliest period we have the preservation of *Wageru*'s text and the tradition that *Manosara* (D1) and *Dhammavilasa* (D4) were translated into the Mon language before the Burmese. In the seventeenth century we have Kaingza's citation of an unnamed Mon *dhammathat* which I quoted above. And for the eighteenth century we have Halliday's remarks about the similarity between Sangermano's *dhammathat* and the Mon work that he was able to examine. While there is only a slight suggestion that the Burmese *dhammathats* were at all influenced by Thai traditions, there was continuing interaction between Burmese and Mon *dhammathat* traditions right up to the nineteenth century. For these reasons, when considering the division of Pāli-land legal texts into regional sub-traditions, I shall treat Burmese and Mon *dhammathats* together.

Has the dhammathat genre changed through time?

The first group, from the sixteenth century and earlier, already show the characteristic Burmese plurality of sources. A specialist profession of pleaders had been in existence from the Pagan era. Since there was no single authoritative *dhammathat*, the legal argument of these pleaders must have been argument as to which rule from which *dhammathat* was applicable. The paradox that several different texts each derive their legitimacy from being transcribed by Manu from the boundary walls of the universe seems to have been first addressed by Kaingza. He pointed out the gap between the theoretical basis of authority and the actual practice of rewriting and revising the older works. He attempted to substitute the authority of the tradition as a whole for the historical authority of a given work within the tradition. In European terms, he explicitly promoted a common law approach of argument within accepted parameters, in place of a civil law approach of argument from one authoritative text.

In the eighteenth century the *dhammathat* tradition split between those authors with a legal interest, who followed Kaingza, and those with a literary interest,

whose versifications and Pāli translations were meant to re-establish the historic resonances, literary values and popular incomprehensibility of *dhammathats* before Kaingza, even while incorporating his changes to substantive law. The main characteristic separating the ‘legal’ from the ‘literary’ *dhammathats* lies in their approach to material from previous works. While the poets prefer a mechanistic, scissors and paste, approach to their predecessors, *Manugye* and Sangermano’s *dhammathat* try to give practical answers to problems by attempting a genuine synthesis of conflicting or parallel textual traditions. In a forthcoming paper I illustrate these differences by examining different traditions on the highly technical question of which actions abated on the death of a king. The peculiar mixture of Indian technical vocabulary and Buddhist ethics seems to me to be as present in the earliest group as in the last two. I cannot agree with those who see a ‘buddhization’ in the seventeenth century of what had previously been ‘de-Hinduized secular texts’. On the other hand the 18 fold division of law, which is assumed to be a Hindu borrowing, is only partially present in the first group and has almost vanished in the last two. The use of judgement tales, which we find in half the early group, was revived by Kaingza in his *Maharajathat* (D8). He appears to have enjoyed telling them and must presumably have considered them to have an educative function. The fashion he set was taken to extremes by *Manugye* (D12) in the next century; if judgement tales are a popularizing touch we can take it that *Manugye*’s author was aiming at a popular audience, in contrast to the literary elite whom his contemporaries addressed.

In short, Burmese pleaders, from the tenth to the nineteenth century, have enjoyed the ability to argue from several alternative *dhammathat* texts. Kaingza’s *Maharajathat* promoted rational forms of arguing for the priority of a particular rule, so that after Kaingza we can almost speak of an autonomous domain of legal thought in Burma similar to that which his contemporary professional colleagues in Europe were developing. Though later legal authors adopted many of Kaingza’s solutions to particular legal problems, they did not imitate his chosen genre—that of the *shaukton* or expert’s response to a king’s request for specific knowledge. To what extent did the Burmese legal profession adopt Kaingza’s more rational approach to the *dhammathats* as a source of law? Research among the surviving *pyatton* literature may be able to suggest answers to this question.

Rajathat

From the eleventh to the nineteenth centuries, the legal literature describes *dhammathat* and *rajathat* as the main sources of law. But it is not clear which texts are designated as *rajathat*. Etymologically the word indicates a book connected with the king. Some scholars have interpreted this as implying a book addressed to and containing advice for the king, and have assumed that ‘*rajathat*’ applies to some Burmese work analogous to Kautilya’s *Arthaśāstra* or the *Rājanīti* collections. Now that Than Tun has made available the vast surviving bulk of *ameindaw* or Burmese Royal Orders¹⁷ it seems better to interpret *rajathat* as a book written by

¹⁷ Than Tun, *The Royal Orders of Burma A.D. 1598–1885*, Tokyo, vols. 1–7 published 1984–1987. References to this work are cited ‘*ROB date*’ thus *ROB 18-3-1806*.

the king which can act as a source of law. On this reading *rajathat* is a subclass of *ameindaw*. All *rajathats* are *ameindaw*, but not vice versa. The obvious questions which this reading must answer are: 1. which *ameindaw* were *rajathat*?; 2. and were these *rajathats* ‘legislation’ in the modern western sense? I shall deal with the second question in s.3(a). Here I shall suggest an answer to the first question. No doubt every casual word uttered by a Burmese king inspired awe, agreement and obedience. The term *ameindaw* describes only what the king has ordered *ex cathedra*. The formal setting triggered the court bureaucracy’s machinery for writing down, dispatching and enforcing these royal orders. We get a glimpse of the public face of this procedure in Caesar Frederick’s account of royal decision making in Pegu in A.D. 1569:

“The king sits with the barons below him. People with written supplications sit 40 paces distant, each with a gift. Secretaries read the supplication—if the king acts for them he takes their gifts; if not he does not.”¹⁸

While the private, or bureaucratic side, is described in standing orders issued 200 years later:

“For dealing with one of the various petitions, write an order first in a *parabaik*, then on a long tapering toddy palm leaf called *sa gyun*. Get it checked by (another officer), and then sealed for dispatch by (a third).”¹⁹

The *parabaik* copies which were kept as the court record of each order did not survive the fall of Mandalay to the British. But copies of the orders were made from time to time by private individuals, and it is these which Than Tun has carefully collected, collated and published. Only a small fraction of this wealth of material is of legal interest, because the issuing of a Royal Order was the appropriate form of action for the king in all his public roles. To set the context in which these legal orders fall to be considered, I shall first give some examples of Royal Orders dealing with the king’s several roles.

1. The king as military commander:

“The king’s brothers shall march against the wild people of the north with 10,000 fighting men.”²⁰

“Severely reprimand the princes for inadequacy in dealing with the problem of deserters.”²¹

2. The king as guardian of religion:

¹⁸ Haklüt’s Voyages, vol. X, 127.

¹⁹ ROB 29-10-1757.

²⁰ ROB 27-4-1604.

²¹ ROB 14-5-1806.

“A forest recluse called Shin Indasara has compiled a text of his own and made himself a sophist. Collect and burn all copies of his work; Indasara is to leave his monastery and henceforth shall wear white robes.”²²

3. The king as organizer of the calendar and ritual observance:
“Declare 1598 to be a year with an intercalary month.”²³
4. The king as head of patronage:
“Nga Pu is appointed Chief of Workers who use Curtains to cover Unsightly Things from the Royal View.”²⁴
5. The king as arbiter of court style:
“Give loincloths bigger than normal sizes to the Guards of the Palace.”²⁵
“Ladies of the court who disobeyed my warning against cutting their hair short shall be imprisoned. The slave women who acted thus are to be drowned with big stones tied to their necks.”²⁶
6. The king as judge of appeal in individual cases:
“The decision made by Judge Letwe Bi Nan Thu in the case of the annually flooded vegetable gardens on Ah Laung Island is approved: it shall be the final decision.”²⁷
7. The king as “Minister for Legal Affairs”. Here the king lays down policy for his subordinates to follow. Sometimes the subordinates are the judiciary:
“When a father dies serving in the army, his military equipment devolves on the son who replaces him, rather than devolving by *dhammathat* rules.”²⁸

and sometimes the bureaucrats supervising them:

“Do not establish a Law Court in Upper Badon township; establish it in Badon town proper in a building with a double tiered roof.”²⁹

But, with one exception from the Pagan era, we never get an order about law addressed to the subjects as a whole. General promulgation appears to be irrelevant to the king’s needs: what matters to him is that the order has been transmitted to the correct functionary. The term *rajathat* best describes this last group of orders. Though the king’s decisions under head 6 would also be of legal relevance, *rajathat* has connotations of generality that would not apply to the king’s decision to confirm or deny an appeal. I concede, however, that the king’s activities as chief judge (6) would often stimulate him to issue a generaliszd order (7). Many of these orders date from the beginning of a reign. In these the king,

²² ROB 6-7-1799.

²³ ROB 30-3-1598.

²⁴ ROB 3-3-1806 s.3.

²⁵ ROB 19-4-1664.

²⁶ ROB 27-4-1806.

²⁷ ROB 8-5-1795.

²⁸ ROB 11-8-1692.

²⁹ ROB 16-5-1795.

taking over the direction of the bureaucracy, issues a new set of standing orders to his subordinates. Prince Nyaungyan, for example, uses his accession order to urge the officials to adopt a sort of public school ethos:

“s.40 Do not give much favour to your wife. s.41 Have time to improve yourself by learning from or discussing with learned men. s.42 Sleep only one third of the night time.”

Most of these accession orders contain general instructions for peace keeping and dispute settlement. By the end of the seventeenth century these give quite detailed rules on substantive law which the judges are now to apply. Examples such as *ROB* 3-3-1782 on debt or *ROB* 5-10-1692 on inheritance lay down law to be applied by the populace generally, but are addressed solely to the judges. This also describes the form of the Praetor's Edict in pre-classical Roman Law, though the parallel is inexact. The tone of the Praetor's Edict is one of Weberian formal rationality, that is of rational choice between law reform options according to criteria which are widely shared among the legal specialists. The tone of the *rajathats* by contrast is one of ceaseless struggle against the venality of the king's subordinates. They betray an overriding preoccupation with controlling abusive procedure on the part of judges and governors. Since the chief judge in a provincial town held all the other trappings of power, and since court fees were an important part of his personal revenue, the judicial process was in continual danger of becoming an extortion racket. Provincial chiefs and the eaters of revenue from a town had quickly discovered that revenue collection could be maximized by using the repressive power of the law, since their subjects placed a conveniently high value on being released from jail. The king acted as the people's champion against the regional Big Men for two reasons. In canonical social theory administration of justice is the king's first and foremost duty; abusive legal procedure therefore reflects badly on the king. Second, the wealth syphoned off by venal governors was wealth that might otherwise have gone into the king's own pocket: toppling the overweening functionary could be a source of revenue extraction for the king.

A late seventeenth century *rajathat* demonstrates how statements of substantive law, which may be conscious acts of law reform, are subsumed in a general context of denouncing abusive procedure. The legal point (the validity or otherwise of a will) is of some interest; it formed the subject of a debate which ensued in the early years of this century, when British judges interpreted Burmese law to disallow succession by will. But note also the mischief against which the order as a whole is directed:

“s.1 Distribute the property among the relatives when a person died without any heir.
s.2 But when a wealthy person died without any heir, officers of the locality shall do nothing but report it to a minister.
s.3 If an officer seized any portion of the property so left by a person who died without any heir, he shall repay ten times the value of the things he had taken and he and his family shall be severely punished.

s.4 When a deceased person left a will, it shall be given due consideration.

s.5 When a judge has been requested to do the division of the property among the heirs, the fees should not be too much; it should only be a nominal charge.”³⁰

This text, and others like it, are apparent examples of conscious legislation. But the context shows that changing the rules of law to be applied is subordinate to, perhaps a by-product of, the urgent and unceasing need to control his officials’ abuse of their peace-keeping powers. The Burmese king was too concerned with the latter to have sufficient time to pay attention to the former. Only in the nineteenth century, when King Mindon introduced salaries for his judiciary, was the requisite structural change made; history, in the shape of the subsequent British invasion, has not allowed us to see what effects this structural change might have brought about. But there is one *rajathat* which gives little attention to abusive procedure, and concentrates on laying down generally applicable rules of law. This is King Badon’s Edict of 28-1-1795³¹ which leaps out of its genre limitations to approach the western model in much the same way that *Maharajathat* (D8) defines a new world of rational legal discourse within the *dhammathat* tradition. I shall be referring to this text frequently henceforth. For convenience, and since it is unique, lengthy and heavy with Pāli scholarship, I shall designate it as “Badon’s Big One”. It is a consciously literary document which intersperses its statement of legal rules with more than twenty judgement tales and much quoting of the numerical lists of qualities which the Tripitika supplies in abundance.³² Perhaps in conscious reaction against the folksy flavour of the judgement tales in *Manugye* (D12), these tales are all taken from the canonical *Jātaka*.³³ In quoting them the king is claiming the authority of scripture, while *Manugye*’s author was content to claim the authority of oral traditions. The legal rules that scripture is being used to authorise are redolent of the increased, more bureaucratic, exercise of state power:

“s.5 I have issued the standard weights, baskets, etc which are customary and which are in accordance with the prescriptions found in the texts. Use only those that I have authorised to use.”

“s.8 Decide boundary disputes in accordance with the land records collected in 1783.”

³⁰ ROB 5-10-1692.

³¹ Translated most recently by Than Tun: “The Royal Order of King Badon”, *Asia Afurika Gengo Burka Kenkyu*, 26, 153. As with other Burmese *rajathats*, I am quoting Than Tun’s translation.

³² s. 81 for example, refers to the three qualities of a king, the four Saṅgha laws, the five forms of strength, the six qualities of a leader, the seven factors observed to keep prosperity from diminishing, and so on up to the twelve means of having a military success.

³³ Than Tun gives details of all the canonical sources in the article just cited.

“s.14 Ministers (of the capital city) must not deal directly with the eaters of towns. They must send instructions through (an intermediate official).”

Sometimes, indeed, we catch an echo of Kaingza:

“s.21 In trying cases, not all *dhammathats* or *pyattons* give analogous precedents. Decide as the case deserves is the guiding principle.”

Badon’s Big One more nearly approaches the spirit of western legislation than any other Burmese *rajathat*. It is unique in the surviving legal literature³⁴ in its assumption of increased legislative competence and its literary affirmation of Theravāda canonical traditions. At the very end of the eighteenth century the *rajathat* tradition was poised to modernise the legal system by legislative fiat. Yet in the nineteenth century the promise was to be unfulfilled.

Pyatton

Burmese use the term *pyatton* indiscriminately to include two kinds of texts which I would prefer to separate. On the one hand it means a collection of judgement tales—one might call them fictional law reports; on the other it means a collection of reasoned decisions given in real cases. To English eyes reared on a doctrine of binding precedent, the effect of lumping these sources together would be to give a spurious persuasiveness to the mythical judgement tales. The Burmese, however, thought the opposite: the judgement tales were inherently persuasive through their venerable age and connections with the Tipiṭaka: the authority of real law reports could only be enhanced by association with them. These judgement tales draw on the same story telling traditions that have supplied other Burmese legal genres. The folksy, Southeast Asian stories that occur in *Manugye* also appear in the Princess Learned in the Law *pyatton*, while the more formal *Jātaka* stories from the Indian subcontinent that are incorporated into Badon’s Big One can be found in the *Mahosot pyatton*, based on *Jātaka* no.546, and the *Candakumara pyatton*, based on *Jātaka* no.542. It was to remove barriers of language and length³⁵ that these portions of the Theravāda Canon acquired a separate “Reader’s Digest” existence in *pyatton* form. But their literary interest is infinitely greater than their legal interest. Precisely the reverse is true of the other *pyattons*—the genuine law reports—which are an important genre of legal literature.

How old is the genre? *Dhammathatkungya*, written in 1613, and *Manuwunnana*, written in 1764, claim to be based on *pyattons* as well as *dhammathats*, so the genre must be sixteenth century or earlier. Were they known as early as the Pagan period? Some of them bear names of early kings, like the *Alaungsitthu pyatton* named after a king of Pagan, and the *Duttabaung pyatton*, named after the founder of the older city of Prome, but this is weak evidence. The temptation for a legal document to claim false antiquity is ever present and must be constantly

³⁴ Though there are internal indications of precursor texts that have not survived, issued either earlier in Badon’s reign or under a previous king.

³⁵ *Jātaka* no. 546 alone is the length of a good novel.

discounted. Strong evidence about Pagan can only come from the surviving epigraphy, which Aung Thwin has sifted for information about law:

“The litigants had taken the case to the Appellate Division because, as one stated, no satisfactory decision had been reached at the first two levels... The decision was subsequently declared, written down by the judges in palm leaf books called *Atuin Phrat Ca* and affixed with the seal of the court as well as those of the individual judges, then stored. These decisions were collectively called *Amu Kwan* or *Amhat Kwan* (literally ‘legal case documents’) and must have been the basis for later expansion of the legal code.”³⁶

Pyattons, like the other characteristic features of Burmese law, were already in use in Pagan. The phrase “judgement according to *dhammathat* and *pyatton*” is as much a cliché of legal texts as the phrase “judgement according to *dhammathat* and *rajathat*”. This, and the fact that *pyattons* were explicitly cited as source material by *dhammathats* indicates that Burmese law was, to some extent, ‘case law’. This follows logically from the Burmese commitment to a plural *dhammathat* tradition, to the ascription of authority to the genre as a whole rather than to one work within that genre. Legal argument where one, usually sacred, book is the sole source of law is formally restricted to argument by analogy and scholastic arguments of interpretation. But when argument between plural authorities is allowed, be they precedents, textbooks or *dhammathats*, the ‘paths of legal justification’³⁷ are far more numerous and the resources of legal argument much richer. Lawyers must now use arguments based on the respective weight of rival authority, or based on which authority more closely describes the facts at issue, or based on which authority gives the fairest result in the current case. These arguments generate agreed criteria for sources of law, case similarity and situational ethics which are added to the store of legal discourse. The combination of wide paths of justification with the existence of a legal profession must have drawn the Burmese judge into the dialogue, even when he was an administrator or military man by occupation. The fact that *pyattons* were collected shows that judges were not content merely to settle individual cases. They wished also to contribute to the store of legal argument, to put their classifications and choice of authorities to the test of discussion by fellow lawyers. Thus a judge in 1806 contributes a classification of different kinds of assault based on their relative seriousness.³⁸ And a judge in 1791 enforces a right unknown in the surviving *dhammathats* (but known elsewhere in Pāli-land) that a husband may sell his adulterous wife into prostitution.³⁹

³⁶ Aung Thwin, “The Nature of State and Society in Pagan”, Ph. D. thesis, Michigan, 1976, 123. See also Aung Thwin, *Pagan—origins of modern Burma*, Hawaii, 1985, 124.

³⁷ I borrow this useful phrase from Goutal, “Characteristics of Judicial Style in France, Britain and the USA”, 24 *AJCL*, 24, 1976, 43.

³⁸ *Mi Sone v Mi Pon* 1806 Yesagyo *pyatton* quoted by Shwe Baw in his work referred to above.

³⁹ *Mi Hla v Thiri Kyaw Thu* 1791 Yesagyo *pyatton*, also quoted by Shwe Baw.

Law reports, it seems, were important sources for reconciling conflicting *dhammathat* traditions. This need not entail the extreme common law idea of *binding precedent*—of reported decisions which a judge must follow. *Pyatton*, rather than supplanting *dhammathat* and *rajathat*, were used as aids in interpreting them. But there exists a thought provoking order of King Badon which states the opposite:

“s.13 A ruling at any one of the courts of the capital shall be taken invariably as a precedent.”

In the absence of machinery to publish the judgements of the central courts, or at least to distribute them to the provincial judges, this must be empty verbiage. Eighteenth century Burma has left no evidence of a ‘Weekly Law Reports’, no trace of a daily newspaper printing court judgements, so we must assume that this order is pure bluster on Badon’s part.

2b. The law texts in the northern regions: Lan Na and Laos

In the valleys and plains surrounding the Upper Mekong were a series of kingdoms where Northern Thai families ruled over mixed populations, and Northern Thai languages and scripts were the medium of literary expression. To the west, south and east of this hinterland, mountain ranges cut off easy access to the sea. During the first three centuries of European exploration of the peninsula the region was little known, and towns like Chiang Mai and Luang Prabang were invested with the same glamour as Timbuctoo or El Dorado. The modern tourist, on his 55-minute flight from Bangkok to Chiang Mai, needs a special effort of the imagination to comprehend that the same journey only seventy years ago would have taken between three and six months. Parts of the region still possess the lure of impenetrability: Keng Tung, Laos, and the frontier region between Burma and China, for example, are still inaccessible to the tourist. His close cousin the foreign scholar must surmount special obstacles in uncovering evidence of these kingdoms.

In the nineteenth century European travellers came to recognize the cultural unity of the area, though there was still confusion about what to call it. Those reaching the area after landing at Rangoon described all the kingdoms as *Shan*; those travelling north from Bangkok or east from Hanoi knew them as *Laotian*. I follow the modern practice of referring to them as *Northern Thai*. Before summarising the law texts of the separate Northern Thai kingdoms, I shall summarize them in tabular form:

<i>Kingdom</i>	<i>Capital</i>	<i>Legal texts</i>	<i>Language</i>
Lan Na	Chiang Mai	yes	Tai Yuan
Central Laos	Vientiane	yes	Laotian Tai
Western Laos	Luang Prabang	yes	Laotian Tai
Keng Tung	Keng Tung	no	Tai Khon
Sipsong Panna	Keng Hung	from 1890	Tai Lu
Various Shan States, mostly west of the Salween River	various capitals	no	Tai Shan

Lan Na

At the close of the thirteenth century King Mangrai of Chiang Rai defeated the Mon kingdom of Haripunjaya and established his new capital 100 miles to the south at Chiang Mai. Northern Thai culture was crossing the watershed between the Upper Mekong basin and land draining into the Gulf of Thailand. The chronicles tell us of immediate dynastic links between Mangrai and kingdoms 4,5 and 6 on the table, but the widest expansion of Lan Na political influence, under King Tilok (1442–1487), and the golden age of its literature came later, in the fifteenth and sixteenth centuries. The introduction of the Burmese Saṅgha under Kuna (1335–85) and the Thai Saṅgha under Sam Fang Kaen (1411–1442) had meanwhile entailed the introduction of Pāli (and presumably other) literary traditions. In 1558 the Burmese invaded Lan Na, and it subsequently suffered dreary centuries as a distant provincial tributary to Burma. By the late eighteenth century the Pax Birmanica had broken down; banditry and large-scale manpower raids from neighbouring kingdoms combined to cause severe depopulation. The nineteenth century witnessed a gradual recovery in population, aided by successful manpower raids on the northern neighbours, and the beginnings of Siamization, as the rulers of modern Thailand sought to impose Siamese practices of government and religious organization on the erstwhile independent kingdom. Our surviving legal manuscripts are presumed to date from the high culture of the fifteenth and sixteenth century. Certainly conditions thereafter were not conducive to the composition of such works.

Thanks to Sommai Premchit's heroic labours, one hundred and thirty two legal texts have been microfilmed and are described in the most recent catalogue.⁴⁰ He and his colleagues in addition have printed fifteen additional works in modern Thai transliteration. Other texts have been found by Richard Davis, who commissioned the copying of two texts which are now in Australia, and Camille Notton, whose manuscript was destroyed during a wave of anti-French feeling during one of the murkier episodes of World War Two.⁴¹ A copy of this has been published in Thai transliteration.⁴² In translation we have only the first 22 sections of a manuscript I shall denote the *Sarabari*⁴³ text and a complete translation of one of the Richard

⁴⁰ Sommai Premchit, ed., *Lan Na Literature: Catalogue of 954 Secular Titles*, Social Research Institute, Chiang Mai University, 1986.

⁴¹ Kraisri Nimmanahaeminda tells this story, and also translates six sections of the text in "The Irrigation Laws of King Mangrai", *Ethnographic Notes on Northern Thailand*, Cornell, 1965.

⁴² Prasert na Nagara, Lanna Folklore Studies Centre, Chiang Mai, 1981.

⁴³ Griswold and Prasert na Nagara, "Epigraphic Studies, No 17", *JSS*, 65, 1977, 137.

Davis manuscripts which I shall denote the *Nan* text.⁴⁴ Judging by the descriptions in the catalogue, the Lan Na literature is composed of five different traditional titles, which can be listed as follows.

1. *Royal works*. These are general legal provisions, sometimes called *dhammathats*, which lay down substantive rules of law. Unlike Burmese *dhammathats*, these are associated with the Lan Na king in the sense that they incorporate rules of particular interest to him, and in that a king is traditionally named as author. Looking at the royal works in the 1986 catalogue we find fifteen texts ascribed to Mangrai himself, while King Kuna gives his name to four. No. 52 on the catalogue recites the whole dynasty from Mangrai to the Burmese invasion in its title. Nor are the kings purely historical: three works bear the name of King Mahasammatta, the legendary first Buddhist king whom, elsewhere in Pāli-land, Manu is said to have served. It is Mahāsammatta, the king, rather than his wise judicial counsellor, who is credited with law making. The genre is nearer *rajathat* than *dhammathat*.
2. *Customary Law works*. None of the works bearing this title are in translation. These may be just an alternative title for the Royal Works, or they may constitute one (or several) sub-genres.
3. *Twenty-five kinds of theft*. Judging by the catalogue description the works with this title mostly deal with theft, but neither together nor separately do they yield anything like a 25-fold analysis of theft. We seem to have a title for specialist monographs on theft which has come adrift from its traditional text. Burma also has a tradition of 25 kinds of theft which is alluded to in Badon's Big One⁴⁵ and given in full by *Manugye* surrounded by lashings of Pāli legal scholarship.⁴⁶ If there is influence, can we say whether Burma has influenced Lan Na or vice versa? Both Burma and Lan Na knew some of the other tradition's law texts. S.47 of the Nan text refers explicitly to a Burmese rule, while nineteenth century Burmese bibliography lists a "*Pyatton* of King Kuna of Chiang Mai". Since the Lan Na texts are coeval with the earliest and most indeterminate Burmese *dhammathat* period, it will be very difficult establishing which way the influence flowed. Here at least is an example where Burmese texts have preserved, while Lan Na texts have lost, the textual tradition attached to a title.
4. *Worldly and Dhamma law compared*. According to the catalogue some works with this title do compare the duties of monks (as laid down in the *Vinaya*) with the duties of the laity (as laid down by Lan Na tradition), but in the Nan text this title applies to a compilation dealing mainly with quantum questions. Perhaps this work received this title by analogy with the *Vinaya*, which is the only work in the Buddhist canon to give careful thought to the scientific gradation of punishment.

⁴⁴ Aroonrut Wichienkeo and Gehan Wijeyewardane, *The Laws of King Mangrai*, Canberra, 1986, 21–79.

⁴⁵ s.29 enumerates 11 of the kinds of theft.

⁴⁶ *Manugye*, (pages 110–13 of Richardson's edition) gives the whole list, along with Pāli terms for each of the 25 and a Pāli collective noun for each of 5.

5. *The Tradition of King Mahosot*. In Burmese terms we would call this a judgement tale *pyatton*, since it mainly tells stories of clever decisions, taken from *Jātaka* no. 546 and from other non-canonical sources.⁴⁷ But this would be somewhat misleading, and would undervalue the literary and legal thought that has gone into the selection and arrangement of the stories. As it stands it is a work unique in Pāli-land—a monograph on the moral aspects of dispute settlement which has been constructed out of judgement tale traditions.

General impressions of Lan Na legal literature

Is it possible to guess, on the information I have outlined, who wrote these texts? Many of them, especially those I have called Royal Works, are written in the first person by a king and deal with matters of special interest to a king. Presumably they issued from the king and his court scribes. But speculation about the authorship role of other Lan Na dignitaries is dampened by our profound ignorance of the sixteenth century Chiang Mai royal court, and of the paths to promotion available to a well-placed Lan Na citizen. In these circumstances, arguments from silence become weak. True, we have no reference to the existence of professional lawyers on the Burmese model, or the existence of court Brahmins with a specialised legal role on the Siamese model, but such evidence might be unearthed at any minute, particularly during the present boom in Lan Na studies. It is safe to guess that disputes were judged outside the capital by local strongmen who would hold a governorship or military command under the king. We do not know whether these strong men were under any pressure to deliver just sentences, to judge according to written law and to contribute to the further development of the law. The possibility of lay, or judicial, authorship of some legal texts remains only a possibility.

Can we say on what sources the Lan Na texts draw? Probably not, as yet, but we can limit the field by some negative statements. There does not appear to be any Indian influence via the *Manu-Dharmaśāstra* or similar text. In Burma the evidence cited for such influence is the Manu legend and the division into 18 heads of law. Neither of these is found in Lan Na.⁴⁸

Neither, unless the surviving Haripunjaya *dharmathat* contains any surprises, does there seem to have been any Mon influence, whether from Haripunjaya or Ramannadesa. Burmese law was quoted, but can not have been a formative influence, else surely the Manu legend would have appeared. Neither can we yet descry any influence from Siam and Cambodia to the south, or Laos to the north east, except that Lan Na judgement tales draw in part from a pool common to Laos and Cambodia. There is one positive statement to make: from the Burmese invasion onwards it has been the Saṅgha who have copied and collected the texts.

⁴⁷ One of these non-canonical stories is also found in the Laotian literature.

⁴⁸ The *Sarabari* text, article 22, mentions 16 heads of law. A different list of 16 heads appears in the copy of Notton's manuscript. This does not appear to be a close enough parallel to suggest any Hindu influence.

Perhaps the “Secular and Dhamma laws Compared” titles indicate that monks were concerned with the authorship of the texts in the period before the invasion. At any rate, my provisional impression is of a largely self-made tradition, worked out by the king with his court scribes and spiritual advisors. The vast number of different texts that have survived may also indicate that the genre was more literary than legal. A provincial governor in sixteenth-century Lan Na might well have three or four of these texts at his disposal. But it is hard to imagine him consulting them or feeling he had to reconcile them. I suspect that the deposits of dust blown off the Lan Na texts in the 1980s had started accumulating soon after the documents were written.

Laos

The boundaries of the Lao People’s Democratic Republic are defined by the upper reaches of the Mekong. They include all land on the north and east bank of the river that is not part of the Confucian and Mahayana Buddhist cultures of China and Vietnam. There are no compelling geographical factors which unify this area: the Upper Mekong has too many inconvenient rapids for large scale water-borne transport. The modern state has inherited boundaries largely defined by the imperatives of French Colonial policy. Yet there was a historical predecessor ‘Laotian’ kingdom—that of Lan Xang founded by King Fa Ngum in 1353.

The first question is whether surviving literary traditions display a cultural unity, reflecting the Lan Xang period, or a diversity reflecting the three kingdoms of the eighteenth century and later. Lafont reports on a collection and census of manuscripts in Laotian monasteries which he undertook in the 1950s. From monasteries in Champassak, Vientiane and Luang Prabang, 1616 texts were recovered, of which only 32 were common to each region. It should be no surprise that the 32 common texts were portions of the Pāli canon. Otherwise the textual traditions of the three cities connected with areas outside the frontiers of modern Laos: Vientiane with its old provinces across the Mekong (now part of NE Thailand); Luang Prabang with Lan Na; Champassak with the south-eastern part of the Korat plateau (now in east Thailand). Lafont concludes:

“Thus one can write that, leaving aside the basic Buddhist works, there exists not a homogeneous Lao literature, but three literatures whose diffusion is essentially regional.”⁴⁹

But his inventory mentions no legal texts. If the legal literature follows the same pattern, it can be presumed to be eighteenth century or later. If the texts from the three capitals betray a common source, they can be dated back to the Lan Xang period.

Unfortunately, the Laotian law texts have received less attention in European languages than any others in Pāli-land. The first French governor of western Laos,

⁴⁹ P.B. Lafont, “Inventaire de manuscrits des Pagodes du Laos”, *BEFEO*, 52, 1965, 429.

Lt. Col. Tournier, arranged for the translation into French of a “*Code of Vientiane*” by a group of mandarins, monks and interpreters. In 1902 he persuaded a visiting traveller, Raquez, to publish a summary of the translation as part of his travel journals of Laos.⁵⁰ Since then I have been able to discover no further European language reference to the legal texts, unless one counts a serialized reprint of Raquez’ summary in 1970.⁵¹ Since we are lucky to have even one summarized translation of a Laotian law text, we must bear the inane comments which Raquez interjects into the text with stoic endurance. To help us place the text in its full socio-economic context he has added notes such as: “Bravo! Faut de la fidelité dans le mariage!” or “Pas de flirt au Laos! Ah! Mais non!” We are compensated for our encounter with this classic example of the “ooh la la!” school of legal history by many fine photographs of Laotian women *en deshabille* with which Raquez has enhanced the text.

Manuscripts of other law texts certainly survived into this century. Finot’s catalogue of Laotian manuscripts mentions one held in the Royal Library of Luang Prabang and three held in the library of the Ecole Française d’Extrême Orient.⁵² In addition he consulted a 206-page text “used by the tribunal in Luang Prabang”. Three of these documents bear the title ‘Lao Custom’, though they seem to have different contents. One is called ‘The Custom *Dhammathat*’ and has a Pāli text with Laotian translation. The manuscript belonging to the Luang Prabang tribunal bore the title ‘*Rajathat*’, leading one to speculate whether any texts analogous to Burmese *rajathats* have survived. Apparently they have. The National Library in Bangkok is said to hold texts of 26 ‘Laotian Royal Edicts’. How much about Laotian legal literature can be gleaned from these few facts? Firstly, as in Lan Na, the works are associated with royalty. Finot reproduces the exordium to the Luang Prabang tribunal copy which states:

“I, Mahakosat Khattiyavonsa, ...give this present ordinance to be the pious safeguarder of religion for five thousand years.”⁵³

The tradition that kings are concerned to control dispute settlement goes back, the Laotian chronicles tell us, to Fa Ngum, the founder of Lan Xang. They report a coronation speech made by Fa Ngum in which he lays down general principles for keeping the peace and sets a standard fine for adultery.⁵⁴ Secondly, the word *dhammathat* is found as part of the title associated with a law text, in this case one written first in Pāli. Thirdly, there is no shortage of Laotian judgement tales. Raquez’ “*Code of Vientiane*” contains several. Finot tells us of the texts he has examined:

⁵⁰ A. Raquez, *Pages Laotiennes*, Hanoi, 1902, 403–48.

⁵¹ Phouvang Phimmasone, *BARL*, 1970–1972; 23–6; 75–88; 94–9; 123–31; 70–76.

⁵² L. Finot, “Recherches sur la littérature Laotienne”, *BEFEO*, 17, 1917.

⁵³ L. Finot, *op. cit.*, 136.

⁵⁴ A French translation of this passage can be found in Pavie’s *Mission Pavie*, 1898, vol II, 30–31. An English translation occurs in R. de Berval, *Kingdom of Laos*, Saigon, 1959.

“They often give, added to rules of law, the story of how the rules originated.”⁵⁵

And Phimmasone describes the two sources for these judgement tales:

“The judicial stories are in general the commentaries on different articles of the Laotian Code to which they are annexed. They are sometimes collected in separate volumes called “Commentaries on the Text of the Law”.”⁵⁶

These stories are the now familiar mixture of *Jātaka* tales and locally produced imitations. There are many stories in common with those found in Cambodia, and rather less which are also found in Lan Na traditions. But what of the initial question I posed? Do the law texts represent a unified tradition dating back to the Lan Xang kingdom? Tournier, who first came across the texts and arranged for their translation, has this to say:

“In all the areas previously forming part of the Vientiane kingdom, the Code, or rather the Customs, of Vientiane have force of law. In the north it is the Customs of Luang Prabang which have force. These two Codes, or Customs, are nearly identical. Of Hindu origin, they were imported into Laos at the same time as the sacred texts, in A.D. 638.”⁵⁷

I shrink from criticizing this passage, since Tournier had access to several law texts, and I have read only a mangled summary of one. But there are indications that he was carried away by the late nineteenth century penchant for ascribing a Hindu origin for every Southeast Asian text. In Raquez’ “*Code of Vientiane*” we find no Manu legend, no division into 18 heads of law following the Manu *Dharmasāstra*, and no Sanskrit legal technical terms. The tests I have used to identify Hindu influence in Burma give a negative result here. Indeed the heads of division of the “*Code of Vientiane*” are the most Buddhist in all Pāli-land: the five books are divided by reference to the ‘Five Precepts’—the minimum vows that every lay Buddhist must keep. They deal successively with adultery, murder, theft, falsehood and drunkenness. Nor is it clear in what sense the Luang Prabang code is ‘nearly identical’. Finot describes the contents of the Luang Prabang texts he saw as differing one from the other. None of them follows the “*Code of Vientiane*” in using the Five Precepts as a base for classification. Finot’s account points to the existence of separate textual traditions in the Laotian sub-kingdoms, and implies that any law texts originating in the Lan Xang period have been substantially reworked after 1700.

⁵⁵ L. Finot, *op. cit.*, 137.

⁵⁶ Phouvong Phimmasone, “Cours de Litterature Lao”, *BARL*, 4, 1971, 41.

⁵⁷ Lt. Col. Tournier, *Notice sur le Laos Français*, Hanoi, 1900, 54.

The other Northern Thai Kingdoms

Can a kingdom which uses writing to preserve religious truths nevertheless be too small to produce written legal texts? Is there a 'take off point' for the development of legal literature based on size of population and spread of land? Or is the kind of government a determining factor, so that rule by an extended royal family inhibits, while rule by a less personalised bureaucracy promotes, the use of written legal sources? These are the questions posed by consideration of the legal texts of Keng Tung, the Sipsong Panna and the western Shan States for, like snakes in Ireland, they do not exist.

Chronicles from all three areas survived and have been published in recent editions.⁵⁸ They relate a history continuing from the twelfth century, and a constant tradition of dynastic links between the kingdoms and their Northern Thai neighbours which continued into this century.⁵⁹ Religious texts were common, and there is evidence pointing to more widespread literacy in these kingdoms than elsewhere in Pāli-land. Milne says of the western Shan States "There are few homes in which there is not at least one copy of the sacred writings."⁶⁰ Tournier, despite his general portrayal of the Lu of Sipsong Panna as feckless trouble makers, remarks that female literacy is common compared with the rest of Laos.⁶¹ Copies of religious texts from Keng Tung have just been published, their editor having arranged from a distance for the manuscript chests of the Keng Tung monasteries to be opened, and copies of "manuscripts liable to be of interest to us" to be copied *in situ*.⁶² But nowhere is there any hint of a legal literature. The argument from silence is overwhelming. Woodthorpe, visiting Keng Tung in the 1890s, seems to have assumed the existence of a Burmese *dhammathat*:

"Civil cases, divorce, inheritance and the like, follow the laws of Manu, as in other Buddhist countries."⁶³

But all other foreign visitors have implied that the Burmese, like the British after them, were content to leave the local kings to administer local oral custom. Justice was administered by the king and his immediate relatives; kingdoms were too small to necessitate further delegation of power. Disgruntled litigants must always have had an easy option to avoid a judgement against them: they could emigrate to a neighbouring kingdom or join the permanent outlaw bands who inhabited the

⁵⁸ For Sipsong Panna: Tawee Swangpanyangkoon, *The Xishuangbanna Chronicle*, Chiang Mai, 1986; for Keng Tung: Saimong Mangrai, *The Padaeng Chronicle and the Jengtung Chronicle*, Ann Arbor, 1981; for the western Shan States: Saimong Mangrai, *The Shan States and British Annexation*, Cornell, 1965.

⁵⁹ Saimong Mangrai, in his *Padaeng Chronicle and the Jengtung Chronicles*, relates from personal memory the celebrations surrounding the marriage in 1932 between the daughter of the ruling Sawbwa of Keng Tung and the youngest son of the (then retired) Sawbwa of Chiang Mai.

⁶⁰ L. Milne, *The Shan States*, Rangoon, 1910, 214.

⁶¹ Tournier, *op. cit.*, 84.

⁶² A.R. Peltier, *Tai Khoeun Literature*, Bangkok, 1987.

⁶³ R.G. Woodthorpe, "Some account of the Shans", 26 *Anthrop. Inst.*, 1892, 21.

badlands between kingdoms. In these circumstances, if law books were not already introduced from elsewhere, then there could have been little local pressure to produce them.

There is one late exception to this general picture. Sipsong Panna managed to keep its political autonomy until 1948. During the colonial carve-up of the Upper Mekong, ratified by the Anglo-French Border Commission at Mong Sing in 1895, the Lu of Sipsong Panna successfully played the Chinese card. They avoided colonization by encouraging British and French fears of annexing any of the Celestial Empire by mistake. In truth Chinese influence in the nineteenth century was minimal in Sipsong Panna, due to a justifiable Chinese wish to avoid the malaria endemic to this part of the Upper Mekong. Later, informed comment emphasized that the Sipsong Panna legal traditions were influenced more by Burma than by any other source. Scott says:

“The settlement of all disputes was left in the former days to the Burmese, and although they always took money from both sides they were satisfied with less than the Chinese majors.”⁶⁴

At any rate, in the late nineteenth century the king of Sipsong Panna had learnt one thing from his unexpected brush with colonial *haute politique*: he now realized that an independent state must have a written legal code, and proceeded to enact one himself.⁶⁵ The indigenous tradition of written legal texts in Sipsong Panna thus starts in the late 1890s.

2c. The eastern law texts: Siam and Cambodia

From Siam we have a singular law text in both senses of the word. Almost all we know of laws from the Ayuthayan period stems from the single law text of the Three Seals Code of 1805. And the text is extraordinarily ambitious in the way it manipulates all surviving texts into a Compendium or Digest. King Rama I, who ordered and supervised the Three Seals Code, stands comparison with Napoleon, his better known contemporary codifier. The codes differ greatly in their approach to promulgation, as we shall see, and also in their approach to social change. Napoleon selectively incorporated new legal rules thrown up by the French Revolution, while the Three Seals Code:

“essentially represents an attempt of a new Thai dynasty, one without roots or any formal claim to the throne, to provide itself and the society it governed with a sense of continuity and contact with the past.”⁶⁶

⁶⁴ J.G. Scott quoted in Saimong Mangrai, *op. cit.*, 1965, 278.

⁶⁵ A brief description is given in Tournier, *op. cit.*, 84, and Xieng La, “Etats Chans Français”, *Revue Indochine*, 1902, 929. A fuller description is apparently given in “Code Lu” in *France-Asie*, which I have not yet been able to see.

⁶⁶ C.M. Wilson, “Nineteenth century Thai Administration”, *JSEAS*, 15, 1980.

But the immediate background to codification was similar: Siam since the fall of Ayuthaya in 1767 was doubtless every bit as disorganized a polity as was France after the fall of the Bastille. The Three Seals Code starts with a *dhammathat*, which consists solely of the Manu legend and three Pāli technical legal lists, details of which I give in s.5. The ‘Words of Indra’ follow—a short judgement tale extolling the judge who avoids the four agatis. This is evidently viewed as an addendum to the *dhammathat*. The rest of the Code consists of texts of Ayuthayan royal orders, usually with a preamble giving the date and occasion of the king’s order. Most of these have been sorted by subject matter to correspond partially with the list of twenty-nine heads of litigation in the *dhammathat*. These, we are told, are the root matters. But the last third of the Code represents branch matters—unsorted orders from more recent kings. Earlier this century these dates were taken more or less at face value, but they have been recently subjected to a great deal of critical analysis. The more they are examined, the less trustworthy they appear. Outside the Code, we have the merest hints of what Ayuthayan law texts were like. The epigraphic evidence is the best known: in the fourteenth century stone order emanating from Ayuthaya there are references to *dhammathat* and *rajathat*.⁶⁷ For seventeenth-century Ayuthaya, La Loubère tells us that the corpus of law was made up primarily of “the constitutions of the ancient kings”.⁶⁸ In the mid-nineteenth century James Low describes some law texts he has acquired from southern Thailand and Mergui as having been produced prior to 1805.⁶⁹ His description allows us some hints as to what law texts which survived in the southern region prior to 1805 looked like, but the texts themselves, which he says he donated to the Royal Asiatic Society, await detailed study.

Perhaps the Cambodian law texts give some clue as to the nature of Ayuthayan law. By these I mean the texts which have survived from Theravada post-thirteenth century Cambodia to be collected by Leclère⁷⁰ rather than the surviving epigraphy of Angkor, which has had much more exposure and scholarly discussion. Just prior to 1881 the French Protectorate published 39 books of law and sent them without comment to provincial governors as “a sort of repromulgation of laws which were much ignored and which no one applies anymore.” Bishop Cordier then translated ten of the books into French and added the text of a fortieth. Leclère added the texts of fourteen more books, and translated the whole corpus into French.

Like the Siamese texts, the Cambodian Codes are presented as the orders of named kings at particular dates. Like them the *dhammathat* and the ‘Words of Indra’ act as a legitimizing introduction to the whole corpus. These two books are similar but not identical in the two traditions. There is no reason to assume that the dates quoted are any more safe than the Siamese dates, but if we take the more

⁶⁷ Griswold and Prasert na Nagara, “An Ayuthayan Law of 1397”, *JSS*, 57, 1965, 109.

⁶⁸ S. La Loubère, *A new historical relation of the kingdom of Siam*, London 1693, repr. Oxford, 1975.

⁶⁹ J. Low, “On the laws of the mu’ung Thai”, *JIAEA*, 1, 1847, 327.

⁷⁰ A. Leclère, *Codes Cambodgiens*, 2 vols., Hanoi, 1898.

recent dates at face value, then we learn of a recension by King Ang Duong in 1853 which shows Siamese influence. There are direct textual parallels between his new laws on Quarelling and Slaves and the Siamese titles of 1805 with the same name. To imagine that a copy of the Three Seals Code was present in Cambodia before 1850 and was drawn on for new royal orders does not commit us to imagining a colonial imposition of law by Bangkok, and still less an incorporation of Cambodia into the territorial area of Siamese law. It is enough to imagine the code being given as a gift by a superior king to his tributary king as an edifying gesture. But there are other Cambodian codes, both undated and dating to before 1805 which show further textual parallels.⁷¹ There are three possibilities:

- (1) That Cambodia is drawing on a pre-1805 Siamese recension which was changed very little by the 1805 revision.
- (2) That the 1805, or some previous Siamese recension, drew on existing Theravāda Cambodian law texts.
- (3) That Cambodia and Siam have symbiotic traditions. That from the fourteenth century onward the traditions have continued to influence each other.

The best evidence for (2) is the nineteenth-century oral tradition reported by both Leclère and Chandler that “the Siamese stole our books from us. That is why they are cleverer than we are.” The tradition rings true, especially when Leclère’s informant gives a specific time and place—the Siamese sack of Lavek in 1583. But we await an analysis by historians with the necessary linguistic skills in Siamese and Khmer. On a general first impression I tend towards holding a weak version of (3): that whenever the law texts started being produced in Siam and Cambodia, from then on they influenced each other.

3. The Buddhist substratum of Pāli-land law

3a. A common concept of law

In the foregoing description of the legal texts I have concentrated on the separateness of the three regional traditions. In this section I ask whether they share any common concept of law. To ask such a question regrettably involves arid problems of definition and theory, discussion of which I shall try to keep to a minimum.

I draw the distinction between a legal text and a written source of law. The former is a written collection of rules about social behaviour, while the latter is a legal text which judges are expected to use in settling disputes. The distinction depends not on the contents of the legal document, but on popular expectations about its use, historical information about which is particularly elusive. To start with the easiest case, there can be no doubt that the *Vinaya* is treated as a written source of law by those whose behaviour it addresses. The procedures and

⁷¹ These include the *dhammathat* and the “Words of Indra” as well as the texts on Ordeal and Judges.

substantive rules which it lays down are those which the saṅgha are expected to follow. Of course the authorship of the Vinaya provides an excellent reason for treating it as authoritative⁷²; it is, after all, the paradigm case of Buddhist law. The Pāli Cultural Package contained, then, a source of law for monks but no source of law for the laity. The early adoption of lay legal texts throughout most of Pāli-land shows that the Pāli Cultural Package was perceived as deficient, as containing an empty slot which had to be filled by local composition. But were these texts expected to govern dispute settlement? Were they sources of law as well as legal texts? I plan to answer this question elsewhere by examining the descriptions that Chinese and European visitors to the area have left of dispute settlement. Here I want to concentrate on linguistic evidence. Are there words in the various Pāli-land vocabularies which are translatable as ‘secular law’ or ‘source of law’? This is a difficult question, since seven languages are involved, not all of which have been well studied.⁷³ Burmese, the only one in which I have some competence, does not have a word exclusively isolating secular law. The word *taya*, which comes nearest, can also mean ‘ethical discourse’ or ‘the moral content of a sermon’. I would be surprised if Mon, Khmer or Thai are any different. But there is a Pāli phrase which expresses the idea of ‘sources of law’: at least in the western and eastern regions, if you want to say “Judges must decide cases according to legal rules” you say “Judges must decide cases according to *dhammathat* and *rajathat*.”⁷⁴ I have not yet found this formula in the texts of the northern region, though both nouns, *dhammathat* and *rajathat*, are used separately, in Lan Na and in Laos, as part of the title of legal texts. Can the absence of the formula in the north be connected with the doubts recently expressed as to whether the northern law texts were treated as sources of law? In the words of Gehan Wijeyewardene:

“The number of manuscripts now reported suggests that in the past the copying of texts was a major enterprise of monks. It also suggests that the purpose of the enterprise was not strictly pragmatic—the law codes were not primarily copied for the instruction of those making judgements. The contemplation of this fact alone raises a host of questions still unanswered.”⁷⁵

My hypothesis is that the formula ‘according to *dhammathat* and *rajathat*’ is used in Pāli-land to mean ‘according to written sources of law’. Where the formula is not found, as in Lan Na and Laos, I doubt that the legal texts were ever treated

⁷² More attention should be paid to the role of the Buddha as legislator. He, at the very least, deserves a place in the Guinness Book of Records as author of the legal code in longest continuous use.

⁷³ Legal texts survive written in Burmese, Mon, Khmer, Pāli and modern Thai, and in both the Yuan and Laotian dialects of Northern Thai.

⁷⁴ In Burma this formula is found in the following Royal Orders: 11-12-1637, 5-10-1681, 3-3-1782, 12-11-1783, 25-12-1783. In Siam the formula is repeated often in the stone pillar text found at Sukhothai containing an Ayuthyan law of 1397—Griswold and Prasert, *op cit.*, 1969. In the Cambodian Codes it is found five times in the Words of Indra—Leclère, *op cit.*, 33–36.

⁷⁵ Gehan Wijeyewardene, at p. 3 of Aroonrut Wichienkeo and Gehan Wijeyewardene, *The Laws of King Mangrai*, *op. cit.*

as sources of law. Why and when did these two Pāli words acquire their specialized meaning? Do the words bear the same meaning in the different regions? Discussion of these questions has been made more difficult by the propensity of scholars earlier this century to translate the terms into Sanskrit, and to assume that they must bear the same meaning in Pāli-land as they did in the Hindu culture of the tenth century AD. It needs repeating that a *dhammathat* is not the same as a *dharmaśāstra*, if for no other reason than that the words *dhamma* / *dharma* have different connotations for Hindu and Buddhist. In Pāli-land I would define the word *dhammathat* as:

Written rules for the settlement of disputes among the laity which are legitimate for all or any of the following reasons:

1. They derive from antiquity.
2. They are written in Pāli.
3. They were written by wise and holy men, including:
 - a. monks famed for their piety and learning.
 - b. the king's wise judicial counsellor—a job description which was introduced as part of the Pāli Cultural Package in such stories as the *Mahosot Jātaka*.
4. They do not contradict Dhamma (in the sense of the Buddha's message) or kamma (in the sense that the natural world, in this life or the next, will reward merit and punish demerit).

In the western region the very early *dhammathats* would rely more on 1 and 2, while sixteenth-century *dhammathats* would rely on 1 and 4. Kaingza made a determined effort to rest legitimacy on the inherent rationality of the tradition. In the eastern region we can only guess about the *dhammathat*'s claim to legitimacy before 1805. After 1805 the *dhammathat* included in the Three Seals Code and the Cambodian Codes was reduced to a myth and an index. The substantive rules have been removed, and the *dhammathat* is concerned wholly with legitimizing rules contained in *rajathat*. In the northern region it appears that *dhammathat* was simply one genre title applicable to legal texts; it seems that use of the word implied no claim as to why the contents should be accepted by judges. Understanding the Pāli-land concept of *rajathat* has caused more difficulty. Consider these three definitions, all concerned with Burmese *rajathat*.

Rajathat is “laws promulgated and acts done by the king as an arbitrary and capricious ruler.”⁷⁶

Rajathat is “the science of kings, namely the art of governing or more particularly of adjudicating cases, and it also meant the judicial decisions of the kings themselves.”⁷⁷

⁷⁶ E. Forchhammer, *The Jardine Prize; an Essay*, Rangoon, 1885.

⁷⁷ R. Lingat, “The Evolution of the Conception of Law in Burma and Siam”, 38 *JSS*, 38, 1950, 18; R. Okudaira, *op. cit.*, adopts this definition in his work on page 40.

“We have the impression that rajathat is both the law made by the king and the court procedures described by the king.”⁷⁸

The first two definitions rely on a misleading analogy with Sanskrit *rājaśāstra* and Hindu culture. The third definition is based on a minute examination of the Burmese corpus of Royal Orders, and allows these texts to speak with their own voice. But I shall have to widen Than Tun’s definition to include the *rajathats* of the northern and eastern region. I would define *rajathat* as:

Written rules for the settlement of disputes among the laity which are legitimate for all or any of the following reasons:

1. They were compiled by the founder king of a particular kingdom, and were thus to be obeyed on social contract principles. They represented the original constitutional settlement, and are comparable to the Laws of Solon, the XII Tables and the American Declaration of Independence.
2. They were legislated by later kings, who have successfully claimed a legislative capacity.
3. They were orders by the king in his role of Minister for Law and Order. They were addressed to his subordinate bureaucrats and were limited to criminal law and to curbing the abusive procedures of his subordinates.

The western region prefers to understand *rajathat* as 3. The eastern region sees *rajathat* as 1 and 2. Robert Lingat takes this point a great deal further. In a series of articles⁷⁹ he has argued that the eastern tradition has, while the western tradition has not, invented legislation in the modern, European, sense. To examine this kind of claim we need at least a rough and ready definition of the European model, which is a complex amalgam of ideas developed at different periods. From the time of Bentham onwards, it has comprised at least these notions:

- A. *general promulgation*: legislation should be made known to everybody.
- B. *general application*: legislation should be relevant to everybody.
- C. *valid indefinitely until repealed*: King A’s legislation should remain in force after his death until implicitly or explicitly repealed.
- D. *no limit on subject matter*: legislation can affect rules of substance as well as procedure; civil law as well as criminal law.
- E. *top of the hierarchy of sources*: in the event of a conflict of rules from different sources, legislation prevails.

⁷⁸ Than Tun, quoted in Okudaira, “The role of Kaingza”, in *Ajia Afurika Burka Kenkyo*, 1984, p. 183, n. 11.

⁷⁹ R. Lingat, “L’influence Indoue dans l’ancien droit Siamois”, *Etudes de Societé et d’Ethnographie Juridique*, 25, 1937, 25f.; “The Evolution of the Conception of Law in Burma and Siam”, *JSS*, 38, 1950, 9f.; “La conception du Droit dans l’Indochine Hinayaniste”, *BEFEO*, 44, 1951, 163ff. His earlier published thoughts on this subject give the most detailed statements of his arguments. See his book review of Phaya Vinaisanthon in *JSS*, 24, 211–19.

Using as evidence only the texts and our knowledge of their transmission, how and when did *rajathats* approach the western model in these four respects? In the following table I plot the regional views of *rajathat* against these five aspects of the modern idea of legislation.

	Western	Northern	Eastern
A. general promulgation	no	?	no
B. general application	yes	yes	yes
C. valid until repealed	no	yes	yes
D. no limit on subject matter	no	yes	yes
E. top of the hierarchy of sources	no	?	yes

I must briefly summarize the five horizontal lines of data. General promulgation was, with one exception, unknown to Pāli-land. *Rajathats* were addressed to subordinate bureaucrats and not to the populace at large. For Siam, it is well known that the Three Seals Code was not published until the mid-nineteenth century, and that an early attempt to print copies for general distribution led to the imprisonment of the over-zealous courtier involved. For Cambodia, the preface to the 1876 recension tells us that it was distributed to 52 regional governors only. For Lan Na and Laos I have no evidence. For Burma in the eighteenth century the orders which mention promulgation either specify that lower ranks of the bureaucratic hierarchy shall hear the text:

“This order shall be sent to all provincial chiefs and the chiefs must explain it carefully to their subordinates.”⁸⁰

“All officers employed in the judiciary shall listen to a reading monthly of *ROB* 3-3-1782, and everything that they do shall agree with those orders strictly.”⁸¹

or attempt to frighten the populace into submission:

“Proclaim this order by displaying the execution blade and solemnly announcing the fact that the punishment for disobedience would be an execution with that blade.”⁸²

But in the seventeenth century there are hints of a special promulgation procedure for ‘orders of great importance’. In 1604 the Minister Nay Myo Mahādhamma is asked to report:

“on the origin of carrying the Royal Order of Great Importance on a young bull elephant with a howdah called Ye Ka, and beating the big drum and big gong when every sentence of the order is read.”⁸³

⁸⁰ *ROB* 20-3-1758, s. 3.

⁸¹ *ROB* 21-8-1785.

⁸² *ROB* 1-1-1760, which may be a special case: it is addressed to the Crown Prince leading the fighting men against Ayuthaya, and thus has a “martial law” flavour.

⁸³ *ROB* 20-6-1604.

The Minister replies that the custom originated with the king's control over the agricultural calendar. A year later this procedure is used on the death of the king to proclaim 'Business as usual; don't panic'.⁸⁴ And in the thirteenth century we have one stone text from Pagan which describes a general promulgation:

"Four hundred and forty four inscription stones must be made (of this edict). A pavilion is to be built (to shelter each inscription) placed under a grand canopy. All villages without exception must (hear?) these inscriptions. Villages having more than 50 houses must have this inscription set up. On full moon days, all villagers must assemble round this pillar with music and offerings. The village headman must wear his ceremonial robe and read aloud this inscription before the assembly. People from small villages where there are no such pillars must come to a nearby big village to listen to the reading of this inscription."⁸⁵

This promulgation procedure is entirely appropriate to a kingdom where writing has become, in the two hundred years since its adoption, well established among officials but still largely unknown to villagers. Its attractive feature is that it has converted a potentially tedious recital of the law into a festival, with the requisite elements of music, dressing up and offerings. King Klacwa has done everything within his power to ensure that he is addressing all his subjects and not just his bureaucracy.

In the second horizontal line I consider general application: all reigns made a distinction between the king giving a decision in a particular case and the king enunciating a general rule. In the third line I compare attitudes to post mortem validity. In the western region the dogma was that a king's *rajathat* was valid only during his lifetime. This certainly fits with the understanding of criminal law as highly personal to the king. And it fits with the personalized notion of bureaucratic service to the crown which saw the new king almost automatically promoting new candidates to ministerships, governorships and so on. Yet it can never have been completely true. If King A's *rajathat* altered vested property rights,⁸⁶ there can hardly have been a reversion of ownership on King A's death. And the inertia factor must often have operated: a provincial bureaucrat accustomed to using King A's *rajathat* as a manual for status disputes or inheritance is unlikely to stop using it the moment he hears of King A's death. He will wait at least until King B sends him an up-to-date replacement. We glimpse the inertia factor lying behind the order of 5-10-1681:

⁸⁴ *ROB* 28-10-1605.

⁸⁵ *ROB* 6-5-1249. I quote from the fuller translation in Than Tun, "A History of Burma to the end of the Thirteenth Century", *New Burma Weekly*, 3-1-1959, 8.

⁸⁶ As, for example, *ROB* 11-8-1692: "When a father dies serving in the army, his military equipment devolves on the son who replaces him, rather than devolving by *dhammathat* rules."

“The Royal Orders of earlier periods are ambiguous: ignore them. Collect only the Royal Orders of the last four reigns (covering 1633–1673) and refer to them in all affairs of state.”

In the eastern and northern regions, by contrast, the whole exercise of keeping legal texts was to preserve the *ipsissima verba* of long dead kings. This must surely be because they were regarded as still binding.

In the fourth line I look for evidence that the field which *rajathat* could cover was limited. Such evidence only appears in Burma, where a change of attitude is apparent during the period covered by Than Tun’s collection. An early order like 9-1-1368⁸⁷ deals hardly at all with issues of compensation. Gradually, from the end of the seventeenth century, there was more royal intervention in the civil law or *dhammathat* sphere culminating in Badon’s Big One, which unembarrassedly discusses civil issues such as inheritance and custody.

In the last line I examine whether *rajathat* claims to be at the top of the hierarchy of sources. In the western region we have an explicit hierarchy which puts *rajathat* above *dhammathat*, but which sets private agreement above them both. This seems to mean that disputants who have agreed to compromise or mediate cannot later ask for their rights as promised by *rajathat*. For the northern region, I have no evidence. For the eastern region the *rajathat* portions of the Three Seals Code contain all the substantive law: there cannot be a conflict between *rajathat* and *dhammathat*. Yet Rama I was careful not to make inflated claims for the importance of *rajathat*: he justified the production of the Three Seals Code in terms of restoring the true text of the ancient law, rather than by using the language of legislation as the supreme source. Only in Cambodia have I come across a glorification of *rajathat* which compares to the worst extremes of nineteenth-century English positivism. The preamble to the 1872 recension states:

“Parties to a trial must, when the judge is on the point of pronouncing sentence, assure themselves that the law is contained in these books. If so, they must accept the sentence. If not, they need not accept the sentence.”⁸⁸

To conclude, in respect of post-mortem validity and generalized subject matter, Lingat’s analysis is correct, and Siam is nearer the western model than Burma. But the northern region also had, in Lingat’s words, ‘reached the same stage’ as Siam. I would prefer not to talk of ‘stages’, with their implicit evolutionary overtones. I prefer to say that Burma started off with a different conception of *rajathat* as a source of law to that adopted elsewhere in Pāli-land, and that this coincided with a different approach to the diffusion of legal knowledge. On this point compare Sarasin Viraphol on Siam:

⁸⁷ Assuming it is substantially uninterpolated; Than Tun warns that it may contain interpolations.

⁸⁸ A. Leclère, *op. cit.*, vol. I, 6.

“However, Siamese law and Chinese law in the operational sphere were at one in conceiving that law was to be regarded rather as a model than as an independent means for attaining private justice. Knowledge of the law and the administration of justice was to remain in the sphere of officialdom, and the public which ventured forth to seek justice must necessarily be placed at the mercy of officials.”⁸⁹

with a Burmese *rajathat* of 1784:

“If the unlettered peasant, through ignorance of law, should in relation to hereditary office or appanage or theft or rapine or in respect of any other legal claim, raise inappropriate pleas, instruct him what to plead, how to present his petition and how to support them by appropriate argument, having due regard to the Manu *dhammathat*, the *Mano dhammathat*, the *Shwe Myin dhammathat*, *Royal Edicts*, ancient precedents and judicial decisions.”⁹⁰

3b. Legitimation within Buddhist social theory

The Pāli Cultural Package contains a social theory: a description of the way humanity and human society have evolved culminating in the social contract by which wise Mahāsammata was elected as the first king.⁹¹ Pāli-land kings could use this passage as one way to legitimate the institution of monarchy. But there is no mention of Mahāsammata writing legal texts. If the legal texts of Pāli-land are to be brought within Buddhist social theory, Mahāsammata must be credited with possession of such a text, which can then serve as a fictional ancestor. Pāli-land has adopted one of two techniques to achieve this. The simpler technique, adopted by some of the Northern region texts, is to give Mahāsammata’s name as author of particular law texts; three of the Lan Na texts described in the 1986 catalogue do this. But a more complex technique is used by the western and eastern regions. They invent, or adapt, the legend of Manu, who rose to become Mahāsammata’s judicial counsellor, and who retrieves the *dhammathat* which bears his name from the boundary walls of the universe.

In the Siamese and Cambodian version of the legend, a Brahmin recluse and an autochthonous *Kiennara* (half woman, half fowl) produce two children, named Soobadra and Manu. Soobadra, the elder, goes to the edge of the world to recover arcane spells and knowledge which he presents to Mahāsammata. Manu, meanwhile, finds employment as Mahāsammata’s legal adviser, until one day he errs in a case involving ownership of a cucumber whose vine roots on one side of a fence but fruits on the other. He resigns, meditates and travels to the edge of the universe where, written in letters as big as an elephant, he finds the text of the *dhammathat*. He memorizes it, returns to earth, writes it down and presents it to the first king.

⁸⁹ Sarasin Voraphol, “Law in traditional Siam and China”, *JSS*, 65, 1977, 81.

⁹⁰ Translated by E. Maung, *op. cit.*

⁹¹ The Aḡaṇṇa-suttanta, *Dīgha-nikāya*, no. 27.

The *dhammathat* in the Three Seals Code which contains this legend claims to originate from Ramannadesa, so we might expect to find this version of the Manu legend somewhere in the western tradition. In the earliest group of Burmese *dhammathats* only *Manusara* (D1) has this version. Other early *dhammathats* either omit the legend altogether or omit Soobadra or omit the cucumber judgement. I have already described how *Manusara* founded the main line of Burmese development after its revision by Kaingza as his *Shwe Myin dhammathat* (D7). It seems that both the western and the eastern traditions are based on the same early Mon / Burmese *dhammathat*. And the nearest surviving work to this urtext is *Manosara* rather than, as Lingat suggests, *Wageru* (D5). This speculation finds confirmation in the name shift that occurs. The younger brother is named ‘Manu’ in “Manosara” in the Three Seals Code *dhammathat* and “Mamosara” in the Cambodian *dhammathat*. I take the Cambodian spelling to show the end of a transmission: the Manu legend must have travelled from east to west, from Rammanadesa to Ayuthaya to Cambodia. But the “Manosara” spelling is also found in later Burmese *dhammathat*.⁹² I assume that Siamese and later Burmese authors are confusing the name of the founding law hero [Manu] with the more familiar name of the text he left behind [Manusara D1]. The name Manusara, essence of Manu, is more appropriate for a text than for a person; there seems little point in naming a hero ‘essence of himself’. I have to assume that the name of Manu had lost its resonance in the public and scribal imagination of both eighteenth-century Burma and Ayuthaya.

In the eastern region the *dhammathat* was retained just for the legitimation of the Manu myth, and the index to what is being legitimated—the four lists of Pāli legal technicalities. In the western region the eighteenth century saw the baroque elaboration of the legend in *Manugye* (D12) where the Manu story acts as a frame for 12 judgement tales which Manu decided as a village cowherd and 7 judgement tales (culminating in the cucumber story) which Manu decided as Mahāsammata’s judge. There is, I believe, a level of eighteenth-century social theory implicit in this version. The 18 additional judgement tales are intended to describe models for dispute settlement at village level and in the king’s court. They are meant to carry the canonical story of Mahāsammata into further levels of societal growth. In the northern region, where the Manu legend has not so far been discovered, there was a search for further ways of legitimizing the law texts through Buddhism. Northern kings in both Laos and Lan Na took pains to insist that their rules contained nothing adhammic. The most charming, and ultimately impractical, attempt to root a northern law text in Buddhist teaching is the division of the “*Code of Vientiane*” into five books which mirror the five precepts. The books relating to drunkenness and lying are inevitably less central than the books dealing with murder, theft and adultery.

⁹² In the *Manosara Shwe Myin* (D15) written in Pāli around 1765. In the *Vinisaṃyā Pakathani* (D19) written in Pāli around 1771 it is misspelt *Manurasa*, a missplacement of consonants reminiscent of the Cambodian misspelling.

3c. Direct influence from the Tipiṭaka

To what extent do the law texts incorporate direct quotation from the Pāli canon? They all do to some extent, but some groups make a greater display of scriptural quotation than others. The Siamese Three Seals Code has comparatively few references to the canon. The two Burmese texts which transcend their genres—Kaingza’s *Maharajathat* and Badon’s Big One—lie at the other extreme.

The *Jātaka* stories are quoted most often, followed by the lists of qualities enumerated in the *Suttapiṭaka*. Legal literature was glad to pass on to its readership such elegantly tabulated knowledge as the seven kinds of wives, the ten qualities of kingship and the four *agatis*, vices to be avoided by a judge. But the crucial influence from the Tipiṭaka must have been the *Vinayapiṭaka*, since it provided a model both for the very idea of a written text dealing with substantive and procedural laws, and for the decorative incorporation of judgement tales. In the *Vinaya* these stories tell of the event which caused the rule to be formulated. In the western and northern traditions they are sprinkled about haphazardly to elaborate and illustrate certain points of law. In the eastern tradition they are not allowed into the law texts themselves, but form an independent literature. Sometimes the appeal made by secular law to the *Vinaya* is explicit, as in Badon’s Big One:

“s.35 A monk who causes quarrels among the assembly of monks is driven away from it. A man who creates fights among his fellows must also be driven away from the community...”

3d. Law and kamma

One cannot over-emphasize the degree to which lay Theravāda Buddhism depends on *kamma*. A layman performing any act with ethical connotations is operating within a merit economy. He is either increasing or decreasing his store of merit. I use the economic metaphor advisedly, since lay Buddhists often keep a ‘merit account book’ in which they enter their *kammic* credits and debits. *Kamma* is conceived as having been a natural world process before the rolling of the wheel of the Buddha’s message. It is temporally, perhaps even logically, prior to the *Dhamma*. Is it, as has been often claimed, ‘natural law’ idea? Answering this question would involve analysing the changes of meaning which two thousand years of European intellectual history have wrought on the phrase. I am content to adopt Gombrich’s statement:

“Ultimately *karma* is itself the law (behind all other laws) which will catch out the malefactor; it has an authority over and above the authority of its agencies... Regulatory institutions, such as the existing legal system and indeed the pantheon are indirectly legitimized as agents of reward and punishment; even if punishment appears unmerited, it may result from bad

acts in a former life. Nature itself thus has a kind of immutable authority: its essence (*svabhāva*) is in part normative (natural law).”⁹³

When I first started thinking about this, I was puzzled by the co-existence of *kamma* and legal sanctions. Put crudely, why bother executing a dacoit when, in this lifetime or the next, he will inevitably suffer due *kammic* retribution? I now realize this is a non-question, since legitimation of law is a matter of both / and rather than either / or. Governments, to maintain their power, will manipulate all and any set of ideas be they traditional or modern, religious or utilitarian. Separate and mutually contradictory modes of legitimation (“Obey the law because it is old”. “Obey the law because it is new”.) can simultaneously appeal to different groups of citizens. Indeed, most of us, most of the time, are quite capable of being persuaded simultaneously by such contradictory appeals. So now I prefer to examine the artfulness with which the authors of the legal texts have balanced the conflicting appeal of secular and *kammic* sanctions, and of carrots and sticks (or arguments invitational and deterrent, as Bentham puts it).

Klacwa’s edict on theft is a graphic example of the attitude of a thirteenth-century Burmese king, all the more valuable since the text is indisputably authentic. He quotes a list of twelve terrible modes of execution from the Canon, and proclaims that this is the kind of action a king can be expected to take. But the list is embedded in such a complex set of arguments against committing theft. I summarize Klacwa’s rhetoric as follows:

1. Being compassionate, I don’t want to adopt the horrible punishments used by earlier kings.
2. Obedience will give one prosperity in this life and hereafter.
3. Theft is not beneficial to fellow human beings.
4. Twelve horrible forms of death are applied to a thief.
5. Even if not caught, a thief must always worry about capture; he must live as an outlaw without a home.
6. No thief has ever escaped capture for more than three years.
7. After death the thief will go to the four hells.
8. Before death the thief will be punished by the king with reference to the written texts and the degree of his crime.
9. The canonical list of executions is recited, along with their traditional meanings.
10. In the next existence the thief will be burnt inside and out for ten million years. When reborn to mankind, he will be born blind and in great poverty.⁹⁴

In 1 to 3 the king is using moral persuasion: he is pointing out the *kammic* carrots which reward right behaviour. In 4 to 6, the king enumerates the worldly sticks which follow from disobedience: royal punishment is only one of these. In 7

⁹³ R. Gombrich, “Buddhist karma and social control”, *Comparative Studies in Society and History*, 17, 1975, 218.

⁹⁴ *ROB* 6-5-1249.

and 8, he declares that royal punishment and *kamma* are complementary sticks. In 9 and 10, he describes the sticks in graphic detail borrowed from the Pāli Canon. There is a progression as we move through the edict from the king speaking as friendly adviser to the king speaking as keeper of the peace to the king enunciating awesome religious doctrine. A subject who fails to follow the king's advice and commits theft will either suffer in this lifetime through royal punishment, or in his afterlives through the operation of *kamma*. If the king is totally successful in catching thieves, the fail-safe of *kammic* retribution will be unnecessary.

This deals with criminal law and the infliction of punishment. But what about payment of compensatory damages as regulated by the *dhammathats*? Does a thief who pays damages to his victim thereby erase his *kammic* debt and evade further *kammic* retribution? The Burmese *Wageru dhammathat* was written about the same time as Klacwa's edict, though no doubt the text we contains later interpolations. Sections 47–51 deal with adultery and can be summarized as follows:

1. An adulterer shall either be born 500 times in hell or, if born to mankind, will be born thrice as a hermaphrodite or as a woman.
2. There are five degrees of adultery.
3. Compensation is payable at 15, 30, or 60 pieces of silver.
4. The husband has a right to kill the adulterer only if caught *in flagrante delicto* (defined as ending when the escaping adulterer reaches the bottom of the stairs from the bedroom).
5. Damages for adultery depend on the status of the cuckold: 11 statuses from slave to royal minister are enumerated.

Wageru gives pride of place to *karmic* retribution, but then proceeds to define compensation and to limit the husband's right to immediate vengeance. It is silent as to whether payment of appropriate damages will exempt the adulterer from the *kammic* retribution described in 1, though the strong language used therein perhaps hints at a negative answer. If *dhammathats* are to encourage compensatory damages, they should explicitly describe the payment thereof as *kamma*-cancelling. One of the recently published North Thai Mangraisat documents (assumed to date from the fifteenth century) takes this approach:

- “1. Brahmā established four royal punishments: chaining, amputation, exile and execution.
2. Later on, when the people complained that law and order were deteriorating, the king allowed compensation in money to be paid, so that people would not be stirred into seeking revenge.
3. He who acts wrongly but then pays compensation has his demerit cured.”⁹⁵

⁹⁵ Wichienkeo and Wijeyewardene, *The Laws of King Mangrai*, *op. cit.*

The only tentative conclusion I can draw from this glimpse of early punishment theory is that kings were more high-handed in co-opting *karmic* retribution to their worldly ends than were the pious authors of the early *dhammathats*.

Conclusions

In the present paper I have been trying to show how, starting from the identical Pāli Cultural Package and not radically dissimilar oral customs, the three areas of legal texts have evolved in different directions. From the point of view of literary criticism, the genre traditions are related, but have a different emphasis in each region. From the sociological point of view the ‘guardians of the law text’, the humans involved in copying, collating and re-writing the law texts, are different in each region. In Burma they comprise a self-selecting group of monks, courtiers, judges and, I suspect, pleaders. In the northern region the texts were certainly preserved by the monks, and may also have been written by monks at the king’s behest. In Siam, and perhaps also Cambodia, a hereditary group of Brahmins taken from Angkor, the *lukkun*, acted as a Royal Department of Keepers of the Law Text (and also, I suspect, as legislative drafters).

Of the three traditions, the western or Mon / Burmese is of the greatest comparative legal interest. Firstly because it developed a legal profession earlier than any western European nations. The only earlier model available for comparison is the emergence of the *prudentes*, the lawyers of late republican and classical Roman law. They—Cicero is the best known example—could use their specialist knowledge of law and rhetoric to build political power bases. In Rome the lawyer-client and the patron-client relationship overlapped. An unanswered question of Burmese history is whether the pleaders had, by virtue of their profession, similar political possibilities.

Secondly, because Burma possessed a legal ideology deceptively similar to that of the English common law, substantive law was seen as a national birthright rather than an imposition from the king. The responsibility for preserving and restating the substantive law rests with the people, exercisable by a literate subgroup whose authority they recognize. Here the comparison breaks down, for in England the job was handed to judges, and to the written records of their pronouncements on law in a particular case, while in Burma judges (and perhaps pleaders) were included among the ‘guardians of the law text’, but were supplemented by others with poetic and theoretical interests, by those who saw the *dhammathat* genre as the proper repository of all knowledge on social life.

Before my praise of Burmese law carries me away, I had better admit to two distortions which are inherent in the evidence I have been examining. Firstly, the law texts of Burma are more numerous, more accessible, and cover a greater time span than those of the northern and eastern traditions. The Siamese and Cambodian codes, at least in the form in which they survive, may not date back much before the eighteenth century, while the northern texts from Lan Na appear mostly to date from the fifteenth and sixteenth century. In comparing law texts I am inevitably comparing different periods of different cultures. Secondly, just as the

map is not the territory, so the Law Texts are not dispute settlement in practice. Many of the earlier European visitors to Burma and Siam said, in effect: “Nice code—pity they don’t practise it.” My next task, for another paper, is to sort through this and other evidence of actual dispute settlement, and to try to ascertain how far practice and theory diverged.

What kind of factors might have caused the separate development of the three Pāli-land legal traditions? I would look first at ecological factors. The Irrawaddy and Chao Phraya Rivers offer opportunities for expansion which are denied to those living near the non-navigable Salween and Upper Mekong. The Pāli-land evidence indicates a take off point for the development of legal texts in terms of the size of area controlled. Thus the states clustered around the last named rivers—Keng Tung, Sipsong Panna, the Shan States—never developed a legal literature. Lan Na in the sixteenth century seems to have teetered on the cusp of being big enough. For two hundred years texts were produced, but, after the Burmese invasion and the subsequent depopulation, production lapsed.

Yet, if we widen our view to include Sri Lanka, smallness of territory cannot be the only factor inhibiting the growth of legal texts. None of the Pāli-land kingdoms had such a grand sweep of tradition behind them as did the Buddhist kingdoms of Sri Lanka. And none could look back in the eighteenth century on such a long tradition of literacy. There is some slight evidence that earlier Buddhist kingdoms may have had written law texts.⁹⁶ But whatever works once existed, they did not have ‘guardians of the law text’ to preserve and develop them. The arguments from silence are overwhelming: if the coastal Buddhists had relied on traditional law texts, they surely would have showed them proudly to the Portuguese strangers who were so inquisitive as to their laws. And representative texts would surely have been packed up and taken to Kandy when the kingdom moved up there, just as in Thailand one-tenth of the legal literature survived the sack of Ayuthaya to be lovingly preserved in Bangkok. Sri Lankan Buddhists, despite 1800 years of literate culture, did not produce a lasting textual tradition of secular laws.

The obvious difference between Pāli-land and Sri Lankan Buddhism is that the latter has made accommodation with a caste system based on the Indian model. The top two *varṇas* have dropped out, but Sri Lankan literary tradition expressly derives its caste system from the four *varṇa* model described in the *Manusmṛti*. Indian and Lankan caste share the same legitimating texts, but there is evidence of divergent development:

“Whereas, therefore, a description of an Indian tribe or caste is concerned with the custom or habits which its members traditionally follow, in Ceylon it will be found that writers who discuss the subject

⁹⁶ One of the chronicles refers to a thirteenth-century Prince Consort compiling a textbook of law. One of the Burmese literary histories refers to a Ceylon *dharmathat*, which has since been lost.

occupy themselves largely with the duties which the several communities may be called upon to perform.”⁹⁷

If this sounds faintly reminiscent of the Burmese *ahmudan* and the Siamese *sakdi na* systems of administration, it will remind us that in Brahmin-less Sri Lanka the king performed the brahmin’s role of consolidating and legitimating caste. Indeed, this royal rule was viewed as being secular, so that the Portuguese had no qualms in taking over this ‘caste jurisdiction’ from the king when they supplanted him. The Lankan king was a busy ruler: as well as organizing the economy and purifying the Saṅgha (which was also the role of monarchs in Pāli-land) he had sole responsibility for the administration of justice and the exercise of caste jurisdiction. Theoretically there was an administrative level standing between him and the village courts, who should be appointed from the literate aristocracy. Those wishing to enter at this level, I have suggested, were an important group of the ‘guardians of the law text’ in Burma. We have evidence that in Sri Lanka they were not much interested in the legal administration:

“The chief officer being principally chosen from the noble families, it frequently happens that they are men of inactivity and inability; being inexperienced in the affairs of the provinces or department committed to their charge, they were frequently guided in judicial as well as in other matters by the provincial headmen or by those of the household.”⁹⁸

And Geiger has said of the mediaeval Buddhist kingdom:

“As to the administration of justice the information we can gather from the *Mahāvamsa* is not very copious. The reason may be that for a good deal of jurisdiction concerning minor offences the village community and its headmen were competent, so that the general public are not much affected by these legal affairs.”⁹⁹

I am unsure which is cause and which effect, but I do see a relationship between the absence of a written legal tradition and the fact that men staffing the middle levels of administration are uninterested in their legal functions. In their absence from the legal picture, there is a twofold division of law jobs. At the top the king must regulate caste and promulgate decrees about the administration of justice. At the bottom village headmen can enforce and enunciate local unwritten village law. In a thirteenth-century inscription we see a Buddhist king pursuing his two functions. He exhorts his subjects to: “Preserve the station of their families and follow ancestral customs.”¹⁰⁰

⁹⁷ F.A. Hayley, *Treatise on Laws and Customs of the Sinhalese*, Colombo, 1923.

⁹⁸ Sir J. D’Oyley, *Sketch of the Customs and Constitutions of Kandy*, Delviwala, 1929; he is describing Kandy circa 1815.

⁹⁹ W. Geiger, *Culture of Ceylon in Mediaeval Times*, Wiesbaden, 1960.

¹⁰⁰ R. Pieris, *Sinhalese Social Organisation*, Colombo, 1956.

If we widen the area of legal comparison yet further to include India, we might choose the presence or absence of brahmins as a factor influencing the path of legal development. In India they preserve the sacred nature of a body of rules which the Buddhist countries consider secular. In Sri Lanka their absence pushes the king into combining the roles of administrator of justice and adjudicator of caste, and inhibits the production of written law texts. In Siam and Cambodia the added legitimacy they brought to the monarchy was bought at the price of allowing them to monopolize the law texts. Only in Burma, where the court brahmins played a role as unimportant as the college of heralds in the modern UK, was there significant movement towards an autonomous legal culture.

Are Pāli legal terms found outside Southeast Asia?

There remains one important historical question on which I have not ventured an opinion, because a solution goes beyond my present knowledge. But members of the Buddhist Forum may have come across further relevant evidence. I have argued that western and eastern traditions go back to an urtext written in Pāli and extant in Ramannadesa in the twelfth century. I have suggested that the closest surviving *dharmathat* we have is the Burmese *Manosara* (D1). But I have not dealt with the question of whether the urtext itself entered Southeast Asia as part of the Pāli Cultural Package. Was secular legal scholarship in Pāli a development local to the Mon lands of the Irrawaddy basin? Or was a Pāli legal text composed elsewhere, for example in northeast India or Taxila or Sri Lanka, and then introduced into Southeast Asia by Theravāda monks?

From the western and eastern law texts one can combine several Pāli technical lists which are either genuinely antique or clever forgeries. I would be grateful to any one who could point me towards parallel passages in any of the languages of south and east Asia. From the eastern *dharmathats* come:

1. The list of 24 points of procedure—a sort of checklist for judges to follow—divided into eight groups of three which bear the Pāli names: *timūlako*, *tiatthata*, *tinissayado*, *titulabhūto*, *tieyssaro*, *tidhammattho*, *timatthaka*.
2. The list of 10 works on procedure (?) with the Pāli names: *lakkhaṇa indabhāsā*, *dharmā-annuna*, *sakaccha*, *sakkhicetako*, *annamanno*, *patibhanatitakkho*, *athapontho*, *daṇḍo*.
3. The list of 29 sorts of dispute in Pāli, too long to reproduce here.

From the western *dharmathats*, and alluded to in northern texts, comes:

4. the list of 25 kinds of theft, divided into 5 groups of 5 collectively entitled *ekawondakapensaka*; *nanabandapensaka*; *thahatekapensaka*; *pokpapayankapensaka*; *tagra wa harapensaka*.

If these lists have parallels outside Southeast Asia, it would immeasurably strengthen the conjecture, originally put forward by Forchhammer, that a secular

legal text arrived as part of the Pāli Cultural Package. In itself I find the conjecture plausible. *Wannadhamma Shwe Myin* (D15) traces its textual tradition as follows:

“This is my version of (1) Kaingza’s *Shwe Myin* (D7) of (2) Bodawyattha’s 1550 version of (3) an unknown Mon priest’s version of (4) a Pāli *dhammathat* written by the third legendary king of Pagan in the third century A.D.”

It is only stage (4) which is inherently unlikely, since we have good reason to believe that Pagan was founded in A.D. 1044. But could not stage (4) represent a genuine Mon tradition that their book was based on a text that was (a) from some non-Mon kingdom (b) from great antiquity and (c) written in Pāli? We must choose whichever of two conjectures is less implausible. Either a secular legal text was composed in Pāli somewhere outside Southeast Asia, but has survived only within Southeast Asia by Mon transmission and adoption. Or a summary of the Sanskrit Manu *Dharmaśāstra* arrived in tenth-century Ramannadesa and stirred up a frenzy of legal creativity by Theravāda Buddhists. If passages parallel to the Pāli lists I have mentioned can be located in manuscripts from China, India, Sri Lanka or Central Asia, it would make the first conjecture much more plausible.