

The *Vinaya*: Legal System or Performance-Enhancing Drug?

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What can a lawyer say about the Pāli canon? If the lawyer happens to be T.W. Rhys David, the answer is “a lot”. Although a lawyer by profession, he preferred to expound doctrinal and historical matters. Buddhism for him was an escape from the nit-picking legalisms of the colonial bureaucracy. Perhaps this point may be generalised: most westerners who are drawn to Buddhism are in search of the exotic as well as the true. They tend to dislike the “legalistic” *Vinaya* and the “scholastic” *Abidhamma* because, though true, these most nearly approach European forms of intellectual discourse. It is not surprising, then, that *Vinaya* studies are a comparatively neglected corner of Buddhology. What is surprising, in a world which still thinks of law as a masculine profession, is that women have written the leading works in this field.¹ So what can we lawyers say about the *Vinaya*? We have tended to concentrate on the *Suttavibhanga* rather than on the *Khandaka*: we have been more interested in the *Vinaya* as a duty-imposing criminal law than as an institution-creating constitutional law. We have analysed the *sangha*’s legal procedures and punishments to the near exclusion of its claims about power and authority. In this paper, I take the less trodden path. By doing so I hope to suggest explanations for the success of the *Vinaya*. Hammurabi’s legislation may be older, Justinian’s *Digest* more informative about its sources, but the *Vinaya*, unlike them, is still in force. It continues to govern the daily behaviour of thousands of people and continues to produce its own specialists and literature. Which of its qualities have contributed to its survival? The apparent answer is: precisely those qualities which are the least legal. Law operates by way of sticks—“Do this, or you’ll go to prison”—while the *Vinaya* operates by way of carrots—“Do this, and you’re one step nearer to enlightenment”. Law, with its hierarchy of courts, can dispose

¹ I.B. Horner, *The Book of Discipline*, London, PTS, 1938–52; D. Bhagvat, *Early Buddhist Jurisprudence*, Poona, Oriental Book Agency, 1939. Male contributions include: J. Holt, *Discipline: The Canonical Buddhism of the Vinayapitaka*, Delhi, Motilal BanarsiDass, 1981; M. Voyce, “The Legal Aspects of Early Buddhist *Vinaya*”, PhD thesis, Law Department SOAS, held by the Senate House Library, London, 1982.

of questions finally while *Vinaya* disputes can rumble on undecided for millenia. The *Vinaya*, I am tempted to say, has outlasted Hammurabi and Justinian because it is a set of spiritual exercises rather than a legal system. But what would Loyola or à Kempis think of a set of spiritual exercises offering an analysis of 25 kinds of theft? Or an analysis of *mens rea* into motive and intention which matches many contemporary codes in sophistication? My problem with the *Vinaya* is that it will not fit comfortably into either of these categories. It is neither fish nor fowl.

The Pāli *Vinaya* (to which this paper is restricted) expresses the contrast between law and spiritual exercise by using two stock metaphors. *Vinaya* processes are compared either to a king giving judgement or to a doctor prescribing medicine. The medical trope sees the *Vinaya* as the super-drug, the anabolic steroid, which the trainer urges on his athletes to help them run that extra mile to *nibbāna* [M, I, 446]. This was probably not original to the Buddha (it is also found in the Jain monastic code²), but it conveniently encapsulates a message that the Buddha repeats endlessly in the *Suttapiṭaka*: “The training may be hard, it may be unpleasant, but it is good for you!” When the Buddha speaks in this way, he sounds like a parent urging a child to drink up the whole spoonful of medicine. But in other contexts he can sound the authentic legal note of *ex cathedra* promulgation:

“Then the lord gave Dhaniya, the potter’s son, a lengthy telling-off for his misdeeds. ‘Monks’, he said, ‘I set forth the following rule of training: If a monk should take what does not belong to him, then he suffers the penalty of defeat, provided that on similar facts he would be liable for flogging, prison or exile in the kings’ courts.’” [Vin, III, 44].³

This suggests one simple rule: we find the medical metaphor in the *Suttapiṭaka* and the legal metaphor in the *Vinayapiṭaka*. This is a useful starting point, but, given the haphazard way in which text has been assigned to each *Piṭaka*, and given the amount of material which is common to both, it is unlikely to be the whole truth. Another simple rule would focus on the Buddha’s death: while the Buddha was alive he talked of the *Vinaya* as a drug, but after his death he was credited with speeches treating the *Vinaya* as law. I shall examine both these possibilities, but reject them. Pāli literature uses both metaphors to describe the

² C. Caillat, *Atonements in the Ancient Rituals of the Jaina Monks*, Ahmedabad, LD Institute of Indology, 1975, 130.

³ All quotations from the Pāli are my paraphrase of the standard English translations found in the Pali Text Society and the Sacred Books of the Buddhists series. This unscholarly procedure is bound to introduce some inaccuracies (as I don’t read Pāli), but it has one advantage. Since I indicate what I want the texts to say in my own words, it will be easier for the reader to judge whether I have mistaken the meaning of the English translation or drawn wrong conclusions from it.

Vinaya because the nature of the *Vinaya* is poised halfway between the medical and the legal model. In the first half of this paper I shall examine this proposition in four of its aspects. In the second half, I shall offer an account of the institutional rivalry in which the Pāli approach to the *Vinaya* was honed. I derive my account from an analysis of three familiar texts which discuss the implications of the Buddha's death.

1.a. Obedience

One implication of the contrast between law and medicine relates to obedience. There is a difference between taking the doctor's advice and obeying the jurist's rule. I take the medicine which the doctor has prescribed for teleological reasons: the doctor and I share the aim of improving my health and I understand him to be the better informed partner in our joint enterprise. But I obey a rule of law for reasons of legitimacy or authority. In Weber's celebrated analysis, we classify these reasons as either traditional ("because we've always done it this way"), rational ("because it makes sense to do it this way") or charismatic ("because my hero has told me to start doing it this way"). The *Vinayapiṭaka* appeals to all three of these arguments. Each rule has been kitted out with an account of the occasion on which the Buddha promulgated it (its own charismatic legitimization) and the circumstances (its own rational legitimization in terms of policy). Some of the rules are also justified in traditional terms: "this is what hermits in general do" or "this is what past Buddhas have ordained as correct behaviour". It shows us a codifying Buddha who is not quite a god-like king like Hammurabi, nor an appointed sage like Solon, but who recognisably belongs to the same club of charismatic legal innovators. The *Suttapiṭaka*, however, portrays him as a salesman, a purveyor of snake-oil, who must persuade volunteers—against their natural inclinations—to submit to a rigorous discipline. In short, he is a doctor who must first persuade his patients that they are ill, and then persuade them that he knows the cure. He must use rhetoric and public relations ploys to achieve this end. Notice the way in which he creates a climate of opinion:

"Kassapa, I speak in praise of the monk who... himself speaks in praise of the training. I praise the monk who persuades others to commit themselves to the training, who expounds its true virtues to the right people at the right time. I do this so that my praise will persuade other monks to spend time with him and adopt his ideas. This will be for their long-term benefit." [A, I, 238].

And notice how testimonials from satisfied customers appear at regular intervals:

"Lord, when you told us to give up eating after midday, I was distressed. But when I recalled the unpleasant scrapes I used to get into when begging for alms after dark, I realised that you had made us happier and

wiser.” “And yet, Udayin, some silly people accuse me of overdoing the austerities!” [M, I, 448].

Such testimonials come from monks who have had glimpses of what it might be like to validate the Buddha’s new causal theories through visionary experience. The Buddha himself can prescribe with confidence because he can see the connections between our morality, our psychology and our future.

From this angle, the Buddha seems more like a scientist than a legislator. His conclusion that five grievous sins lead straight to hell in this lifetime is based on his own observations [Vin, II, 201; A, I, 402]. Experimental data also led him to state that the four *pārājika* offences render a monk immediately unfit for meditation and the monastic life. The relationship between law and natural science raises tricky legal theoretical problems which I would prefer to sidestep. For our present purposes, let us think of the Buddha as the inventor of a game. We must accept his rules if we want to play his game: *nibbāna* means winning, and *pārājika* means losing. Only if we share the Buddha’s aim should we follow his prescriptions:

“If, monks, you observe the training in full, you will attain your object in full. If you observe partially, you will attain your object partially. I must emphasise that these rules of training do not fail to work.” [A, I, 234].

We must obey the *Vinaya* rules in blind faith so that they will lead us to a state of mind which allows us to see why we were obeying them. To encourage us to make this leap of faith we are told of others who successfully followed the Buddha’s training. Sona, having just experienced enlightenment, describes his experience to the Buddha, rather like a post-graduate student giving an oral defence of his thesis [Vin, I, 183]. He has learnt to concentrate on six things, one of which is the contrast between non-violence based on the essence and non-violence “due to the contagion of habit and custom” [*sīlabbataparāmāsa*]. Buddhaghosa glosses this fascinating expression as “the mere holding on to what is held onto, having rubbed up against moral habit and custom (as though this was enough)”. I take this to mean that you know the medicine has finally worked when you cease thinking of it as law: when you do the right thing because you want to do it [“based on the essence”] rather than through mere obedience. This is the strongest statement I have found of the proposition that the *Vinaya* should be viewed as medicine rather than law: thinking of it as law is part of the very mindset which the medicine is designed to cure! That this occurs in the “legalistic” *Vinaya* rather than the “medical” *Suttapiṭaka* indicates the inadequacy of my first rule of thumb.

1.b. Two or three party procedures

Legal dispute-settlement characteristically involves three parties (two quarrelers and a judge) while medical problem-solving characteristically takes place

between two (the doctor and the patient). Typical of the way the *Vinaya* straddles the division between law and medicine is that it envisages both models. *Vinaya* procedure is two-party for the good monk, but three party for the bad monk. By “good monk”, I mean one who is both self-referring (he approaches his *Vinaya* teacher when worried that he might have committed an offence) and self-sanctioning (he will take whatever medicine he is prescribed). Buddhaghosa describes the procedure in relation to masturbation:

“If a *bhikkhu* becomes guilty he must go to the *Vinaya* teacher who... admonishes him: “I am like a physician, you are like a patient... you must tell me each and everything... There are eleven kinds of masturbation.”⁴

In the least important breaches of discipline such self-referring, or confession, becomes its own sanction: it is good for the monk’s mental development [M, I, 440]. In more serious cases, a public act of confession may be necessary, or a loss of seniority or a week’s banishment from the monastery. Such sanctions have to be voluntarily undertaken, whereas the four most serious cases lead automatically to defeat. Their *kammic* effects are such that, though you may continue dressing like a monk and living like a monk, you can no longer meditate like a monk. Having lost your *raison d’être*, you should slink quietly back into lay life. If, nonetheless, you try to stay on, then the *sangha* can perform an act of formal expulsion, publicising the defeat that has already taken place, or, with less formality, it can simply refuse to acknowledge you.⁵ Any monk good enough to be self-referring will be good enough to admit defeat, even when the bad news is broken as gently as this:

“If [the senior *Vinaya* master] finds that there has been an offence of defeat... he should give the *bhikkhu* thirty objects of meditation. If his conduct is unblemished... he can enter *samādhi*. When it becomes dark the *Vinaya* master visits him... ‘Good friend, how is the state of your mind?’ The *bhikkhu* replies ‘No *samādhi*’. The *Vinaya* master says ‘Good friend, you have to seek for yourself, as is befitting for you, some place where you can rest in peace.’”⁶

⁴ Smp, 359-362 = XII, 67–76. Since I am using P. Bapat & A. Hirakawa’s translation of the Chinese version [Shan-Chien-P’i-P’o-Sha, *A Chinese Version by Saṅghabhadra of Samantapāśādikā*, Poona, Bhandarkar Oriental Research Institute, 1970.] all references to Samantapāśādikā are in this form: the page number of their translation is followed by the equivalent chapter and paragraph number of the Pāli original.

⁵ Buddhaghosa lists these three possibilities as “personal ruin by one’s own actions, ruin by disassociation and ruin by punishment”; Smp, 386-7 = XIII.44.

⁶ Smp, 177 = VI.61.

In brief, the good monk submits to the will of the *saṅgha*, meaning his disciplinary community, the body of monks with whom he shares a *sīma*. His catch-phrase should be, “What may I do to please the *saṅgha*?” [M, I, 443].

The bad monk is not self-referring: he tries to conceal his offences. If one of his colleagues accuses him, and if he then denies the charge, the *saṅgha* must step in as a third party judge to settle what, structurally speaking, has become a typically legal dispute. But “settle” is an inappropriate word when there is no Supreme Court of Buddhism to give a final judgement. The *Vinaya* is well aware that unsettled disputes can fester and lead to polarisation. It analyses the problem in its chapter “On the monks of Kosambi” but does not suggest a solution, unless we are to take the faithful laity as the Supreme Court of Buddhism:

“Then the lay-followers of Kosambi neither greeted the monks, nor stood up before them, nor saluted them with joined palms... they did not revere, respect, esteem or honour them and they did not give them almsfood...” [Vin, I, 352].

But to recognise bluntly that the *saṅgha*, like Napoleon’s army, marches on its stomach would be too great a loss of dignity. The *Vinaya* must protect its own autonomy by finding a solution that leaves monks in charge. Its attempts to do so are described in *Cullavagga IV*. The disputants must agree to be bound by arbitration. Contractual principles must make up for the absence of jurisdictional finality:

“When monks go to another monastery for a ruling, they must agree to be bound by the decision, or the monks won’t hear their case. If the disputants will still not agree, then a verdict by referendum can be given. Two *Vinaya* experts are appointed by order to conduct the referendum. If they cannot settle it by committee, they can use a majority vote. If the disputants go from monastery to monastery forum-shopping in search of a favourable verdict, then they must be convinced that the legal issue is settled for good by the three methods of taking the vote: the secret, the whispering in the ear, the open.” [Vin, II, 92–8].

Buddhaghosa demonstrates how to wage psychological warfare against the bad monk until he agrees to be bound:

“If the accuser and the accused approach the *saṅgha* asking for a decision, and they agree to follow its decision, the *saṅgha* can proceed. But otherwise they must be delayed three times⁷ until the accuser’s mind is pliable and properly subdued. If they still refuse to be bound by the decision, the *saṅgha* must say: ‘This place is too small, no *Vinaya* teacher

⁷ Could this possibly mean “three days”?

is available here: go to another monastery.' At the other monastery they will, after questioning, send the disputants on to a third, and so on, until they say: 'We shall gladly abide by your decision.'"⁸

Notice here that his accuser is considered equally reprehensible. To insist on the guilt of others is nearly as bad as to break a *Vinaya* rule. Anyone with an inquisitorial approach to his fellows is more than half way to acquiring a reputation for shamelessness.

A monk who does not refer himself for judgement is unlikely to punish himself after judgement:

"Even at the third time of asking, the monk stayed silent and would not budge from the assembly. Then, Moggallāna seized him by the arm, thrust him outside the porch and bolted the door... The Exalted One said 'It is very strange, Moggallāna, that that foolish person should have waited till he was seized by the arm.'" [Vin, II, 236].

This occurs at a significant moment: the Buddha is preparing his disciples to carry on after his death by instructing them in the fortnightly ritual of *Pātimokha* recitation. On this occasion, he was certainly thinking of the *Vinaya* as law rather than medicine—the rules have been organised into the *Pātimokha* code and Moggallāna, the role model for Buddhist bouncers, is there to enforce them. But it is by no means the only occasion on which the *sangha* applies violent sanctions:

"Off you go, Sāriputta and Moggallāna. Carry out a formal act of banishment from Kitagiri against those monks who follow Assaji and Punabbasu.' 'But, Lord, these monks are fierce and rough'. 'Then take a crowd of monks with you.'" [Vin, II, 11].

Muscular Buddhism (meaning the Shaolin temple traditions in China and the *pwe* monasteries of Burma which taught wrestling and sword-fighting) can find canonical justification in this passage. The legitimacy of violent *Vinaya* sanctions can also be supported by a simile which Ghokale describes as "almost a cliché within the canon":

"Good to bad monks are like rulers and robbers—when one is strong, the other is weak." [A, I, 69; D, I, 115].

This must imply that good monks, like kings, have to wield the big stick of punishment. They must form a posse or inquisition:

"There are monks who make their living in one of the twenty one acquisitive ways, such as practising medicine, acting as messengers, or usury... They hear that monks who know the Three *Pitakas* have set out on a mission to purify the *Sāsana* and will arrive today or tomorrow;

⁸ Smp, 390 = XIII.50–51.

they go into the forest and sit behind a bush, and at the slightest sound of grass or leaf they are terrified, thinking ‘Now we are lost’, for they imagine those monks coming and catching them and making them put on white clothes.”⁹

How effective is such an expulsion from the order? How long will the bad monk, X, stay in his white clothes? Both the local monasteries and the laity in the local villages will know that X has suffered defeat and been disrobed. But, if X is prepared to travel to a new region, there is no institution that can stop him getting hold of new saffron robes and presenting himself once more as a monk. Lay criminals can escape their reputation in much the same way, save that the judicial institutions of branding and amputation perform an advisory function. The defeated monk is branded in his mind, and only arahants have the necessary mental insight to recognise this. This begets a deep uncertainty within the *saṅgha*: a fellow monk may, as the Buddha warned, in fact be a layman:

“As an ass can follow the herd of cows pretending to be one, so a ‘monk’ can pretend to be a monk.” [A, I, 229]. “Though he sits in the middle of the assembled *saṅgha*, he is far away from it and it is far away from him.” [A, IV, 201].

And any formal act of the *saṅgha* at which X was present must be regarded as void, having been carried out in the presence of a layman. If the formal act of the *saṅgha* happened to be a punishment directed against Y, Y has a perfect reason for ignoring it. In such circumstances, Kassapagotta had to ask the Buddha:

“Is the punishment enacted against me *dhammika* [legitimate], *kuppa* [void] or *thānāraha* [voidable]?” [Vin, I, 312].

But once the Buddha had passed into final *nibbāna*, no-one could definitively answer such questions. If Kassapagotta had lived a century later, he would have been left in doubt forever as to whether he was an ass or a cow. The pupils whom he had ordained and subsequent generations of his lineage would have had to memorise the details of the dispute and argue it afresh whenever their status was put in question. It is not surprising that contemporary Theravāda Buddhism sets so much store by ordination lineages which include reports of bygone *Vinaya* disputes: they are what you must have if you do not have a “Supreme Court of Buddhism”. This lack of finality is one of the most important ways in which the *Vinaya* is not a legal system and one of the senses in which records of *Vinaya* disputes are not “case law” or “precedent”. To state the difference formally: legal precedents accumulate arguments that will be

⁹ R. Gombrich, *Theravāda Buddhism: A Social History from Ancient Benares to Modern Colombo*, London, Routledge & Kegan Paul, 1988, 110, quoting Buddhaghosa’s *Papañcasūdanī*.

useful in future similar cases. The position of the judge in the state hierarchy of courts is more important than his individual reputation for wisdom. The authority of legal precedent is based on the degree of similarity to the instant case. *Vinaya* precedents tell of decisions which are generally useless for the decision of future cases. Because there is no hierarchy (state or other), the purpose of the stories is to enhance an individual scholar's reputation for wisdom or to discredit his rival's reputation. They identify those trustworthy scholars of the past whose interpretations of the canon deserve the utmost consideration today.

1.c. General application

Characteristic of the legal model is that rules should apply to all citizens. "No-one should park here" is regarded as a better law than "No-one except Volvo drivers should park here". But medicine dare not deal in rules of general application: though penicillin is usually a useful drug, some people are allergic to it. "Most patients will find this treatment beneficial" is about as near as you can get to a rule in medical circles. That monks should be "trained in the training", that they should obey more of the *Vinaya* rules as they gain strength for further austerities, is a common theme in the canon. The dialogue between Bhaddāli and the Buddha [M, I, 437-47] discusses the jurisprudential implications of this. When the Buddha announces a new regime of one meal a day maximum, Bhaddāli does not think that he can manage it. The Buddha suggests that he wrap up a sandwich which he can eat in private later, but Bhaddāli now evinces the pride of the victimised—eating dinner is not enough: he must be seen in public to be eating dinner. For the whole three months of the rainy season, he lives apart from the community in disgrace. He apologises and gains re-admission just before the Buddha moves off on his annual travels. Bhaddāli submits to the Buddha's law-making, and is consoled by a conversation in which the Buddha agrees with his denigration of law-making. So far so good. The Buddha was willing to bend the rules a little for Bhaddāli, but not to grant him a public exemption. However, we must not expect consistency from an Omniscient Being. The next time a monk challenges the *Vinaya*, the Buddha gives in completely. When an anonymous Vajjian monk complains about having to recite more than 150 rules each fortnight:

"Lord, I cannot stand such a training!" [A, I, 230].

The Buddha allows him to pursue the threefold training in higher morality, higher thought and higher insight, unmediated by the rules of the *Vinaya*. The Vajjian monk, having abandoned lust, malice and delusion for good, reaches the same point that others reach by diligently following the *Vinaya*. An alternative route to the legalisms of the *Vinaya* exists, but the Buddha only allows it to

some. What has happened to such legal qualities as the universal applicability of rules, due process and fairness in application? As Bhaddāli puts it:

“Your Reverence, why are some monks round here subject to constant legal harassment while others get off with an easy ride?” [M, I, 442].

The Buddha replies that it is those who cooperate with their accusers who get an easy ride. The ones who complain of legal harassment are the ones who will not say “What may I do to please the *sangha*?” To lawyers, this is ominously reminiscent of the commonest justification for torture, brutality and human rights abuse. But doctors might judge it more positively: those who refuse to take their medicine do not get better so quickly. The Buddha, in his omniscience, is the perfect prescriber of medicine. He knows that that which will speed recovery for the Vajjian monk might be poison to Bhaddāli. The *Vinaya* itself is too strong a medicine for certain monks with borderline faith and will-power. They need special treatment just as in lay life the disabled need special treatment [M, I, 444].

If the *Vinaya*’s function is to help monks reach *nibbāna*, Bhaddāli’s next question cuts at the roots of the whole enterprise:

“What is the reason, your Reverence, why there were formerly fewer *Vinaya* rules and more monks who were established in profound knowledge? And why is the opposite now the case?” [M, I, 444–5].

Astonishingly, the Buddha accepts the factual basis of Bhaddāli’s question and attempts to explain it:

“The answer, Bhaddāli, is that the preponderance of rules and the scarcity of enlightened monks are both symptoms of the general deterioration in true dhamma and in life itself.”

Small is beautiful. Though the *sangha* has no governmental hierarchy, once it reaches a certain size, it will develop a hierarchy of esteem. Once the well-endowed monk, the famous monk, the intellectually self-confident monk and the monk proud of his seniority appear on the scene, so do the blotches (*āsavas*) which prevent enlightenment. The *Vinaya* is designed precisely to remove these blotches, and is, therefore, an epiphenomenon of our troubled times. But so, we are told in the *Aggañña-sutta*, is the emergence of kingship, taxation and state-law. At this point in the cycle of world ages, we must all—monks and laity alike—put up with law. We have fallen from the Golden Age, the pre-juridic Eden. In Buddhism as in Marxism, law is specific to a certain stage in the development of human society. This historicist perspective means that neither the Buddha nor Marx need take law as seriously as liberal theorists do. People have got on without law in the past and will get on without law in the future. Law is not a deep part of being human and thus requires only superficial explanation.

1.d. Anarchy, ahimsā and autonomy

So far I have been conducting an exercise in literary appreciation: what is signified by the tropes of the *Vinaya* as law, the *Vinaya* as a drug? Let us shift the enquiry into the realm of theory by asking how the *Vinaya* relates to the three abstract nouns which head this section. Is the *sangha* anarchic? Is it non-violent? Is it autonomous? The answer to the first question, at anything above the micro-level, is a clear “yes”. Beyond what takes place within the *sīma*, the *sangha* has no bureaucratic structure whatsoever. “The *Saṅgha* of the Four Quarters” is a pious fantasy. After the Buddha’s death there was no person, no committee, no triennial conference which could speak for the *sangha* as a whole. The second question is almost as easy to answer. When dealing with “good monks” who impose sanctions on themselves, the *sangha* can afford to be non-violent. But when purging the order of “bad monks” the Buddha approved of whatever violence was necessary. Can such violence properly be called a sanction? Organised government, sensing a threat to its monopoly on punitive violence, tends to decry these acts as “lynch law” or “mob justice”. This is mere propaganda. An anarchist community cannot have executions (which need an executioner who must be appointed by a government) or imprisonment (since prisons must be built and staffed by a government), but it does have access to a limited range of sanctions which depend on the mobilisation of popular anger and disapproval. Public shaming rituals (*charivari* or “rough music”) is one such, and the forced social isolation of an offender (*brahmadanda* or “sending to Coventry”) is another. The most important is ad hoc crowd violence, as in: “But Lord, these monks are fierce and rough!” “Then take a crowd of monks with you.” In Burma, in the 1690s and again in the 1870s, monks from rival lineages fought in the streets. From their point of view, they were not infringing the virtue of *ahimsā*: they were engaged in a vigorous enforcement of the *Vinaya* by forcibly defrocking shameless monks. The third question—whether the *sangha* is autonomous—needs further explanation, since “autonomy” has become a legal buzz-word. To lawyers, an autonomous institution means firstly a self-regulating institution, secondly an institution which has carved out its own methodology and epistemology and thirdly an institution which has become a self-referential closed circuit or, as the latest wave of German social theorists puts it, an “auto-poietic” system.¹⁰ The *sangha* at the local level is self-regulating: it can generally take care of itself. King Pasenadi was describing the *sangha* during the Buddha’s lifetime, but his comments aptly describe most *sanghas* most of the time:

¹⁰ For an introduction to Luhmann and Teubner’s thought, see M. King, “The Truth about Autopoiesis”, *JLS*, 20, 1993, 218–236.

“When I am hearing a case, people interrupt me... they spit and they cough. But when the Lord teaches *dhamma* to his disciples, they keep themselves in order. Indeed, it is striking how well-behaved the *saṅgha* is without *danda*, without the threat of the sword.” [D, II, 122].

As for the second sense, I have no problem regarding the 2500-year succession of *Vinaya* experts and authors as an autonomous intellectual community. Indeed a major thrust of my South East Asian research is to describe how “*Vinaya*-thinking” influenced and inspired the state-law of Theravāda Buddhist kings: it is in this sense that we can talk about Pāli Buddhism as having a strong and influential legal tradition. As to “auto-poiesis”, perhaps I can rephrase the issue thus: is the *Vinaya* in fact as self-sufficient as it claims? Or does it rely on unacknowledged help from outside its own closed system? Selvanayagam suggests that something is missing:

“Further, as we learn from life in Buddhist *saṅghas* and from the rule of Asoka, punishment and some form of violence were unavoidable. But there seems to be no discussion about their degree and procedures.”¹¹

What is missing, he explains, is state enforcement and, he implies, it is therefore perfectly proper that in Sri Lanka, Burma and Thailand the state purports to exercise control over the local *saṅgha*. I am not convinced. At the local level Buddhism’s approach to legitimate force may not be neat and tidy but, on the whole, it has worked. State control of the *saṅgha*, whether by Asoka in Mauryan India or by SLORC in contemporary Burma, seems to me an unwarranted intrusion on the order’s autonomy rather than a necessary intervention to prop up the *saṅgha*’s inherent weakness. To echo Rousseau—the *saṅgha* was born free but everywhere it is in chains. If the *saṅgha* does rely on unacknowledged help from outside its ranks, it is the faithful laity who supply it. Much more important than the very occasional royal purifications of the *saṅgha* were the quotidian acts of purification which the laity carried out. I have already cited the laity of Kosambi starving out the quarrelsome monks. This is not the optimum behaviour of a lay supporter, who should feed good and bad monks indiscriminately [A. IV. 212] but it is a predictable and effective way of pressurising defeated monks. We could think of it as “bottom-up purification” as opposed to the “top-down purifications” of Asoka and Parakramabahu. Such acts are not going to be recorded in rock-edicts or chronicles. That they occurred throughout Buddhist history has to be inferred from a few scattered references, as for instance from this comment on 19th century Burma:

“A monk is one who acts as a monk. Directly he breaks his laws, his holiness is gone. The villagers will have none such as he. They will hunt

¹¹ I. Selvanayagam, “Asoka and Arjuna as Counterfigures on the Field of Dharma”, *HR*, 32, 1992, 59–75, 74.

him out of the village, they will refuse him food, they will make him a byword, a scorn. I have known this to happen.”¹²

A recently published survey reaches the same conclusion:

“It is important to note that just as the laity play an important role within *Suttavibhaṅga* literature by reporting infractions of discipline to the Buddha, so has the laity in modern times continued to display great interest in insuring that the *saṅgha* adheres to the *Vinaya*. ”¹³

2. The Pāli constitutional literature

The constitutional literature of Pāli Buddhism reveals a consistent set of preoccupations and beliefs. Just as we can attempt to reconstruct the doctrinal and philosophical positions of the 18 schools from the *Katthāvatthu*’s denunciation of them, so we can infer a rival tradition against which the constitutional texts were composed. The claims about power and authority could not have become as precise as they are now unless they had been honed by honest argument with another *saṅgha*. I shall attempt to reconstruct the nature of that challenge by taking backbearings from the positions which the Pāli canon adopts. I hope my list of constitutional documents will not strike the reader as too eccentric: it consists of *Cullavagga VII* on schism, *Cullavagga XI* on the First Council and the *Mahāparinibbāna-sutta*.

Cullavagga VII is an action-packed popular drama, an epic in three acts designed to burn its way into the popular memory when recited or performed—Homer would have called it “The Upāliad” or “The Wrath of Devadatta”. It is not just a highly structured work of art: it playfully flaunts its structural armature at the beginning and end of its text. These bookends which support the main narrative both feature Upāli, who is otherwise absent from events. At the start Mahānāma persuades his brother that they should leave home to follow the Buddha, and his brother then has to persuade Bhaddiya, their boss, to do the same. Bhaddiya offers to come in 7 years’ time, alright, make it 6, what would you say to 5? perhaps we could agree on 4? This countdown runs all the way from 7 years to 1 year, 7 months to 1 month, half a month, then half a fortnight which is, of course, 7 days. It gives us notice that numbers are important to the work, and that the descending sequence from 7 to 1 governs the shape of the text. The countdown also builds up tension for the arrival of Upāli, who is suddenly transformed from personal servant to the 6 Sakyā nobles to seniormost of the newly ordained 7 monks. Twenty pages later, Upāli reappears for the climax where he joins the Buddha in a count up from 3+1 to 8+1 which defines the precise distinction between dissension and schism in the *saṅgha*.

¹² H. Fielding, *The Soul of a People*, London, MacMillan, 1898, 147.

¹³ K.L. Hazra, *Pali Language and Literature*, Emerging Perceptions in Buddhist Studies, no. 5, New Delhi, D.K. Printworld, 1994, vol.1, 135.

From a *Vinaya* point of view, this final conversation between the Buddha and Upāli is the point of the whole epic. The rise and fall of Devadatta has merely been an extra-long framing story, the moral of which is to lay down the point at which dissent becomes schism. Bearing in mind that Devadatta's schism has earned him an aeon in hell, the final words of the *sutta* are remarkably upbeat: "good schismatics" who do not misrepresent their opponents or manipulate public opinion will avoid Devadatta's fate.

The main narrative hangs on descending numerical pegs. In the first act we start with 6 + 1 (6 Sakyan Don Qixotes + Upāli, their Sancho Panza), and proceed via a 5 + 1 analogy (5 Television Evangelists + the Buddha) to 4 + 1 similes (4 similes for the causal link between Devadatta's ambitions and his imminent destruction). The second act with its three attempted Buddhicides culminates in a 3 + 1 plot (Kokālika, Kaṭamorakatissaka and Samuddadatta agree to join Devadatta in his plan to split the *saṅgha*). And the climax of act three, to which Devadatta's consignment to hell is a mere postscript, is the 2 + 1 chase and gunfight (Devadatta has rustled 500 head of cattle and is heading for the border. Sāriputta and Moggallāna ride out of town to head him off.) Within this structure there is scope for improvisation. The author of *Cullavagga VII* has added plenty of inessential but entertaining business—the ghost spy in Act 1, the clashing rocks and the limping hero in Act 2, the town drunk who comically misinterprets Sāriputta's motives in Act 3. However it is staged, this script makes good popular entertainment: in 4th-century India it would be performed by live actors at pagoda festivals, 18th-century Burma would have staged it using puppets and these days Bertolucci could shoot it as a cowboy movie. It is great popular art, but are we also to treat it as history? Dramatic logic demands that every hero needs a villain to thwart. In the higher worlds Māra plays this role, and it is tempting to consider Devadatta as a human *avatār* of Māra conjured up by literary necessity. He is Moriarty to the Buddha's Holmes, Lex Luthor to the Buddha's Superman—a plot device rather than a historical figure. My reading of the constitutional texts has led me to resist this temptation. The texts argue against a rival organisation, and Devadatta is the most promising candidate for leader of that organisation. My premise is that Devadatta was a historical figure, a younger contemporary of the Buddha who was treated by a large part of the original *saṅgha* as Gautama's legitimate successor. I believe that the *saṅgha* did vote on the question of the five austerities, and that the majority voted on Devadatta's side. The defeated minority, the Elders, then withdrew to form their own *saṅgha* from whom all present-day Buddhists descend. Whether this split took place before or after the *parinibbāna*, I could not say. Whether Devadatta was really a cousin of the Buddha or even a fellow Sakyan, I do not know. I am fairly sure, however, that Devadatta continues to

suffer the fires of hell until this aeon comes to an end: dramatic conventions demand it.

To change the subject completely, a newspaper article carried the news that the chairman of the Rugby Union and the chief executive of the Rugby League will undertake joint discussions later in the month:

“It is the first time that senior representatives of the two codes have met on an official basis since the great schism of 1895 when rugby league was founded.”¹⁴

Here is a voluntary organisation which split a century ago in such acrimony that until recently the two halves did not explicitly recognise each other’s existence. But implicitly they had to do so, since they had to develop “conflict of law” rules. Players sometimes switch from one code to the other, so each side must have rules governing the conversion process. These need not be the same: the League might let Union players straight in, while the Union might refuse to admit League players or makes them wait in limbo for a specified time. The development of such rules represents an implicit dialogue between the codes: a jockeying for prestige whereby the code with the stricter conversion rules could claim to be “the senior code”. The battle for prestige is also pursued by representing your weak points as virtues: if the Union denounces the League for having broken the precept against taking gold and silver, the League can reply that the Union members are effete southern scum who do not have to work for a living. Another important factor is the precise history of the schism in 1895. Which of the rivals can claim institutional continuity with the united organisation of 1894? Who has physical possession of the minute books, the memorabilia, the relics of William Webb Ellis?

These issues—the rules for conversion, the jockeying for prestige, the claim to institutional continuity—are the main themes of the Pāli constitutional literature. Both sides claim institutional continuity with the pre-split *saṅgha* in which the Buddha was *primus inter pares* and Devadatta was recognised as “of great psychic power, of great majesty” [Vin, II, 188]. The Elders portray Devadatta as Jung to the Buddha’s Freud: he was a brilliant pupil who went off the rails, resigned and founded a new organisation. The Devadattans must have painted the Elders as the new organisation—as Franco to the Spanish Republicans in 1937 or as the Provisional IRA to the Official IRA in 1973. I infer that the Devadattan claim rested on viewing the *saṅgha* as an elective democracy. If the majority so voted, new precepts could be added to the *Pātimokkha*. And if the majority voted for Devadatta as the new *saṅgharājā*, then *vive le roi!* There does not appear to be anything anachronistic or non-Indian about such an

¹⁴ O. Slot, “End in Sight to Rugby’s 100-year War”, *Independent On Sunday*, 8/01/1995, Sports Section, page 1.

election: the prime minister of Magadha naturally assumes that if the Buddha did not nominate his successor, the *sangha* would elect one themselves. He has great difficulty understanding Ānanda's concept of a *sangha* ruled by *dhamma* [M, III, 7]. Ānanda has to justify it by emphasising the very special qualities of the Buddha:

"The Buddha blazed a new trail, he was the progenitor of a new spiritual lineage, he was author of a wholly new book—none of us can match that achievement." [M, III, 15].

But emphasising the Buddha's uniqueness is the first step towards deifying him. When the Elders credit the Buddha with the power to prolong his life almost indefinitely [D, II, 104], they are treading dangerous ground: virtual immortality is not normally a human characteristic. And when the Buddha's skin shines forth brighter than gold [D. II. 133], this recalls the iconography of Indian gods rather than human heroes. One of the few things we know about Devadattan doctrine is that they made "offerings to the three past Buddhas but not to Sākyamuni".¹⁵ For them, Gautama may not even have been the founder of the *sangha*, but merely one of a succession of the *sangha*'s human leaders. The Devadattan loyalty was to the *sangha* which the Buddha once headed. Their claim to institutional continuity depended on the assertion: "we are what the original *sangha* has decided to become". The Elders' claim to institutional continuity had to be based on fidelity to the Buddha's intentions: "we are what the Buddha intended the original *sangha* to be". Hence, the leitmotif of their constitutional literature is "we have added nothing, we have taken nothing away."

Imagine a debate between these two positions. If I were briefed to argue the Devadattan case, I would put it thus:

"The Enlightened One said that he did not aspire to lead the *sangha*. Yet you Elders behave as if his views on right training were an unalterable code of the *Vinaya*. You are treating him as a posthumous codifier. You regard him *ex post facto* as the *sangharājā*. But if he was the *sangharājā*, why does he have no successor?"

To which the Elders must reply:

"We do not slavishly follow the Sakyamuni as the chariot follows the horse: we are in charge of our own destiny. It is by our own joint decision that we Elders have chosen to follow the Buddha's rules without addition or subtraction."

This would explain the otherwise baffling tradition that the Buddha signified his willingness for the lesser and minor rules to be rescinded [Vin, II, 286; D, II, 154; Mil, 143]. The Elders have had to invent this tradition, and the subsequent

¹⁵ H. Giles, *The Travels of Fa-hsien*, Cambridge, Cambridge University Press, 1923, 36.

discussion of it at the First Council, in order to meet the Devadattan argument. Their response utilises a technique known to contemporary lawyers as “autocthonisation of the grundnorm”. By the grundnorm, alias the ultimate rule of recognition, we mean the source of validity beyond which we cannot go. The Pāli canon locates it in Mahākāssapa and his 500 arahants:

“I put the motion three times—that the *saṅgha* should neither promulgate new rules nor abolish old ones... I interpret the *saṅgha’s* silence to mean that it approves the motion.” [Vin, II, 287].

Superficially this motion changes nothing, but it implies that the *saṅgha* has the power to change the rules, though they are not in fact exercising it. Thus it shifts the grundnorm from the Buddha to the First Council. In the last 15 years the governments of Australia and Canada have gone through exactly the same exercise: by passing new constitutions which were identical with the old constitutions, they have autocthonised their grundnorm from London to Canberra and Ottawa. Such was the Elders’ reverence for the precepts of the Buddha that they had to arm themselves with the Buddha’s express permission before daring to take this step.

We know that the Devadattans were prepared to add new rules to those laid down by the Buddha, but there is no evidence that they abrogated existing rules. If the Elders wish to place themselves on the moral high ground—if they want the rhetorical advantage of taking the middle path between two extremes—then they need another bogeyman to advocate the jettisoning of rules of training. It is this dialectic which brings Subhadda into existence:

“Subhadda, who had become a monk in old age, said ‘Enough tears, Gentlemen! Dry your eyes! We are well rid of the great master. He used to annoy us by saying: ‘You should do this, you mustn’t do that’. But henceforth we can please ourselves!’”[Vin, II, 283; D, II, 162].

If we treat Subhadda as historical, then we can identify him as the ideologue of anarcho-Buddhism (with the Chabbaggiyas as the direct action wing of the movement)¹⁶. But he strikes me as a stock fictional character. He is there as a contrast to Subhadda the Brahmin, the last of the Buddha’s converts and the audience for the Buddha’s last definition of orthodoxy [“Wherever the noble eightfold path is practised”]. The Pāli commentaries labour to add detail and depth to the portrait (his profession was barber, his former home was the town of Atuma, his animus against the *Vinaya* rules can be explained by identifying him

¹⁶ In some of the non-Pāli *Vinayas* the Chabbaggiya monks play a prominent part in the First Council. A very useful comparison of *Vinaya* traditions on this point is J. Dhirasekera, “The Rebels against the Codified Law in Buddhist Monastic Discipline”, *Buddhist Studies (Bukkyō Kenkyū)*, 1, 1970, 90–77.

with the anonymous monk at Vin, I, 248) but I am unconvinced.¹⁷ “Good” Subhadda was ordained when the Buddha was old. The Buddha ordained “bad” Subhadda when Subhadda was old. “Good” Subhadda was the last to be preached to by the Buddha. “Bad” Subhadda was the first to renege on what the Buddha preached. He is a creation of the Elders’ story-tellers, a convenient fiction who enables them to boast: “The Devadattans would add new rules, Subhadda would abrogate old rules but we take the middle track of nothing added, nothing taken away.”

I now turn to consider the *Mahāparinibbāna-sutta* as a constitutional document. It is, admittedly, a great deal more than that. It has been described as “the Buddhist Gospel”, as a “final recapitulation of familiar themes” and as “Scenes from the Life of a Travelling Preacher”.¹⁸ Its tempo is a stately *Marche Funebre* as the Buddha falls ill in chapter 2, rejects the rest of his life in chapter 3, reaches the spot where he will die in chapter 4, arranges his funeral in chapter 5 and dies in chapter 6. Other elegiac themes are sounded: preparations for the forthcoming war between Magadha and the Vajjians dominate chapter 1. We hear of Pāṭaliputra, a great city to come, and Kusinārā, a great city long in the past. The *sutta* ends with several parties competing for control of the Buddha’s remains, all of whom have to put up with an unsatisfactory compromise. I think of the *sutta* as “The Buddha Makes his Final Dispositions”. He makes his last visit to familiar spots, sums up his message to the laity in the discourse at Pāṭaligāma and declares his last will and testament, his “instructions as touching the *saṅgha*”, at D, II, 154, (in words clearly taken from *Cullavagga XI*) and at D, II, 100–1 in the familiar but still moving speech starting “Be ye lamps unto yourselves”. If we think of the *sutta* as composed by the Elders to justify their position vis-à-vis the Devadattans, the message becomes: “Let *dhammavinaya* [rather than Devadatta] be your teacher”. “Be ye lamps unto yourselves [rather than basking in Devadatta’s artificial illumination]”. For the Elders there will be no Pope of Buddhism, no Rightly-Guided-Imam of Buddhism, because Buddhism will be ruled by a text instead of a human. Tradition has made Devadatta into the Buddha’s cousin to emphasise this point: even the Gautamids, the Buddha’s relatives, have no special claim over the faithful.

Slipping back into my role as Devadatta’s advocate, I would reply:

¹⁷ The process of embellishing this story continued into the 18th century. Badon’s *rajathat* of 28/01/1795 (which I think was drafted by the 1st Maungdaung sayadaw) adds a detail that I have not found in earlier accounts: “Mahākāssapa on hearing Subhadda’s words said that the old man should be disrobed, sprinkled with ash and exiled.” Than Tun, “The Royal Order (Wednesday 28 January 1795) of King Badon”, *JAAS*, 26, 1983, 153–201, 189.

¹⁸ S. Collins, *The Perfect Moral Commonwealth* (forthcoming), n.d.

“Fine. Ok. You have enthroned a text rather than a human being. But what happens when there is a dispute as to the interpretation of the text? Whose reading will prevail then?”

Rule by a constitutional document will necessarily degenerate into rule by the Supreme Court empowered to interpret it. It is to answer this point that the Buddha preached the four Great Authorities [D, II, 124]. His argument is, we would now say, Dworkinian:¹⁹ he asserts that there is enough overall consistency in the *dhamma-vinaya* that different interpreters must agree on the answer to controversial questions. There is “One Right Answer” both to questions of interpretation and to questions of canonicity: a pseudo-sutta can be spotted by its inconsistency with the rest of the material. Not only is the canon internally consistent: it has been well-published. The episode in which Māra tells the Buddha to drop dead (and the Buddha agrees to do so!) has been included so that the Buddha can express his confidence that his followers are now “well trained, carrying the doctrinal books in their memory, masters of the lesser corollaries that follow from the larger doctrine,... able to preach it to others, establish it, minutely explain it and make it clear.” [D, II, 104]. Likewise the episode of Subhadda the ‘good’s’ conversion, prominently placed at the end of the penultimate chapter, allows the Buddha to define the true doctrine—“Void are the systems of other teachers” [D, II, 151], to extol Sāriputta’s guardianship of the lineage of the faith [D, II, 83] and to lay down four months’ probation for anyone converting to Buddhism “from another doctrine”. Woe betide the Rugby League player who asks to play Rugby Union!

The last of my trio of constitutional documents is *Cullavagga XI*, the account of the First Council. Once more the tone is different: the author strives for an affectless, bureaucratic prose style as if he were writing “the Minutes of the *Saṅgha*’s First Committee Meeting”. But, as the overlapping material makes clear, the account is designed to complement the *Mahāparinibbāna-sutta*. The activities of the First Council can be minuted under six paragraphs: [1] The canon is defined and (theoretically) closed by Upāli and Ānanda’s recitations. [2] The grundnorm underlying the *Vinaya* is shifted from the Buddha to the 500 arahants. [3] The policy underlying strict *Vinaya* observance is acknowledged. Lay opinion is a decisive factor in choosing not to change the precepts because prudence dictates that the laity must be given no opportunity to criticise the *sangha*.²⁰ [4] Ānanda demonstrates how the good monk responds to a judgement against him:

¹⁹ R. Dworkin, *Law’s Empire*, Oxford, OUP, 1988.

²⁰ This is not quite the same as saying that the laity are given the job of enforcing *Vinaya* rules: I argued above that this was true in practice, but the minutes of the First Council are not evidence for my case. The *Vinaya*’s ideology is that the *sangha* is wholly autonomous.

“I do not myself see anything wrong in what I did, yet I trust my colleagues enough to confess it as an offence.” [Vin, II, 288].

[5] Purāṇa demonstrates the polite way to differ from the Elders:

“Well chanted by the Elders are *dhammavinaya*, but I prefer to be guided by what I myself heard the Lord preach.” [Vin, II, 289].

Purāṇa must presumably exemplify the “good schismatic”²¹ mentioned at the end of *Cullavagga VII*. Compare and contrast with Devadatta. [6] Finally Channa provides an object lesson in how judgement should be enforced against the bad monk:

“How can I enforce the *brahmadanda* against Channa who is fierce and rough?”
“Take as many monks as you need, Ānanda.”

And the minutes end with a couple of items of good news: Ānanda collects the largest yet lay gift of robes, Channa achieves enlightenment and the Elders live happily ever after. Date and place of the next meeting: at Vesālī in 110 years time.

These three constitutional documents rehearse the same themes for different audiences. “The Wrath of Devadatta” is addressed to the laity, whether Buddhist or non-Buddhist. It tells them that the Elders are the real thing and the Devadattans an inferior and evil-minded substitute. “The Buddha Makes his Final Dispositions” presents the same themes (along with much else besides) to the average monk, while “The Minutes of the First Council” summarise the nature of the *Vinaya* and the nature of authority within the *sangha* for a specialist audience of *Vinaya-dharas* and controversialists. It is *Cullavagga XI*, the most technically legal of the three, which provides the most obvious bridge between the constitutional literature and the issues I raised in the first half of this paper. I hope to have shown that the peculiar nature of the *Vinaya*—half drug, half legal system—can be largely explained by the Elders’ quarrel with the Devadattans. The Elders must have been aware from early on that their policy of “no addition or subtraction from the Pātimokkha” could only work at a local level. Ānanda admits as much to Gopaka-Moggallāna:

“The truly enlightened Lord laid down *Dhamma* and *Vinaya*. We meet once a fortnight in groups which cluster round a single village neighbourhood to check what has happened to each other. If a monk has committed an offence, we deal with it according to the instructions of *Dhamma*. Consequently it is *Dhamma*, not our fellow monks, which rules us.” [M, III, 10]

²¹ If Purāṇa is intended to exemplify the ‘good dissentient’ mentioned at V, II, 202, then someone has miscounted the number of his followers.

Above the local level, the *sangha* is merely an abstract notion. There is no Rome or Canterbury where bureaucrat monks administer the *Sangha* of the Four Quarters. And therefore there have been no inquisitions or heresy trials, and the *sangha* has split more often than interfering busybodies like Asoka have been able to clamp it back together. Herein lies its strength and longevity. Mendelson, in his discussion of the Burmese *sangha*, expresses a universal truth:

“Its strength lies in adherence to *Vinaya*, relations with lay donors and ability to discipline itself by forming small governable monastic groups such as taiks or sects, which are the *sangha*’s best defence against those who would use it for secular ends.”²²

That the longest lasting law code in human history operates on anarchist principles is a pleasing paradox. In South and South East Asia today, the best hope for the *sangha* is that contemporary governments have assimilated so many European dogmas about the state as to have forgotten what anarchy really means. The modern state creates a Devadattan “National *Sangha Organisation*” which it then manipulates and controls. But the real *sangha* of the Elders will continue to slip between its fingers and escape its grasp.

Postscript on dates, non-Pāli and extra-canonical Pāli sources

The relative dating of documents within the Pāli canon depends on linguistic considerations which are far beyond my competence. Insofar as I can judge from the translations I have read, I would put the composition of the “constitutional literature” in the second or third century after the Buddha’s death. If that means they were written during Asoka’s reign, so much the better. Whatever one thinks of the Third Council, the Theravādins clearly felt gratitude to Asoka for something. I have a pet theory—a flight of fancy—to explain what might have happened. What if the Devadattans had gained control of the Buddha’s body (hence the Elder’s hostility to Kusinārā as a “wattle and daub town”) and were in control of some or all of the *stūpa* containing his relics? And what if Asoka’s collection of all the relics and redistribution of them into 84,000 *stūpas* was a ploy to put them under the control of the Elders? Since control of the relics meant control of the *stūpa* festival and its revenues,²³ Asoka’s “purification of Buddhism” meant prosperity for the Elders. But, as Devadatta himself could have told them, pride comes before a fall. If Asoka helped the

²² E. Mendelson, *Sangha and State in Burma*, ed. J. Ferguson, Ithaca, Cornell University Press, 1975, 172.

²³ G. Schopen, “Death, Funerals and the Division of Property in the *Mūlasarvāstivāda Vinaya*”, in D. Lopez, ed., *Buddhism in Practice*, Princeton, Princeton University Press, 1995.

Elders to supremacy over the Devadattans, he also presided over the disintegration of the *sangha* of the Elders.

Later Buddhist literature adds snatches of information to the Devadatta story. The *Dhammapada* commentary mentions a great popular festival “to celebrate Devadatta’s death” [DhA, I, 126]. I presume this was the Elders’ rationalisation of the fact that the Devadattans had their own equally popular *stūpa*, festival and market complexes. Buddhaghosa describes the Vajjiputtaka monks at the Second Council as Devadatta’s party. He glosses the phrase “they came to grief at the hands of the laity” [Vin, III, 23] as “Some were expelled, some were punished by the king, some were separated by death”.²⁴ Another late Pāli source deplores the fact that Devadatta “passed separate ordinances and pro-claimed a separate *Pātimokkha*” [Ud, 60]. The Sanskrit *Mahāvastu* developed stories about the rivalry between the Buddha and Devadatta when they were young cousins and the *Vinaya* of the Mūlasarvāstivādins “conspicuously expands the history of the schismatic”²⁵ with new episodes such as a deathbed attempt to scratch the Buddha with poison-coated fingernails. Can we use this continuing demonisation of Devadatta as evidence that his cult continued to prosper? A recent book describes a similar dynamic against those whom early Roman Christianity regarded as heterodox.²⁶ Fa-hsien tells us of a Devadattan *sangha* in the early 5th century CE; Hsüan-tsang mentions three monasteries in eastern Bengal which followed Devadatta’s restrictions on milk-products. But this does not conclusively prove the continuity of the Devadattan *sangha* over 1,000 years: they may have been “neo-Devadattans” inspired by literature. The *Jātaka* collected stories of the rivalry between Gautama and Devadatta in previous lifetimes. As Milindapañha notes, there are 16 *jātakas* in which the Buddha was born inferior to Devadatta (showing that at that point his *kammic* balance was inferior) and 6 more where they are born as equals. Nāgasena gives a fairly plausible explanation, but is it possible that these stories have infiltrated the Pāli from a Devadattan corpus? A feature of the later literature was to play Devadatta [the antinomian] against Upāli [the spirit of the *Vinaya*]. Devadatta wanted to lead the *sangha*: Upāli wanted to be a forest recluse. Devadatta was a nobleman: Upāli was his barber.²⁷ In the case of Kumāra-Kassapa’s pregnancy,

²⁴ Smp, 170 = VI.51.

²⁵ E. Lamotte, *History of Indian Buddhism*, trans. by S. Webb-Boin, Louvain-la-Neuve, Publications de l’Institute Orientaliste de Louvain, 1988, 658.

²⁶ E. Pagels, *The Origin of Satan*, New York, Random House, 1995. Reviewed by N. Cohn in *New York Review of Books*, 42.14, 21 Sept. 1995, 18–21.

²⁷ For the *Apadana* Upāli’s lowly status requires explanation. *Vinaya* connotes law and law connotes kings. Therefore, Upāli must have been a *cakkavatti* in 1000 previous lives and a king of the devas in 1000 other lives [Ap, I, 37].

Devadatta and Upāli give conflicting verdicts, and the Buddha (of course) supports Upāli [Th, 200].