What is Buddhist Law?

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I. Opening Ideas

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ABSTRACT

This Law Review article, and ones that follow, are an introduction to Buddhist Law and its influence in Asia and the rest of the world. While the legal traditions of all major religious traditions have been extensively studied and written about, there are very few scholars of, and little written in any language on, the legal concepts in the Buddhist tradition. There is basically nothing in the legal academic literature in the U.S. nor are translations of the actual legal texts available for general use when working to understand this form of thinking, or in making comparisons to other religious laws. This series of articles will examine the reasons for this gap, outline the contextual setting, explore the actual rules that were established, note how they influenced social systems in Asia and address other general aspects of Buddhist Law.

This article will have two types of writing: (1) in regular script, the legal discussion and description common to a Law Review and (2) in italics, translations of actual Buddhist law code texts, particularly the Vinaya, or canonical law code. The second type of writing is presented to familiarize non-Asian lawyers with the style of the text and some of the concepts and ideas that underlie Buddhism and Buddhist Law. Besides the intrinsic interest of a wholly unknown legal system, this material is useful for comparative lawyers, international lawyers, scholars of public policy and anyone doing law in a former or current Buddhist country.¹


At the time the enlightened one, the Lord, was staying at Verañjā near Naḷeru’s Nimba tree with a great company of five hundred monks. A Brahmin of Verañjā heard:

¹ Much of the work cited herein and many of the ideas come from a recent work by Rebecca Redwood French and Mark Nathan entitled Buddhism and Law: An Introduction, Cambridge, Cambridge University Press, 2014. I would like to thank all of the readers and authors of the essays in that book for their contributions to this subject matter. I have borrowed extensively from that text. I would like to dedicate this essay to the late Andrew Huxley, a pillar of the original inquiry into Buddhism and Law. Exceptional person, good friend, you will be sorely missed.

The languages cited have been limited to Pāli and Sanskrit, the two original ecclesiastical languages of South Asia. Most scholars think that the Buddha spoke in Māgadhī, the language of Magadha state in the central Ganges River valley, as well as several other dialects of northern India. The head of the Magadha state, King Bimbisāra and his son were both patrons of the Buddha. After the Buddha’s death, his teachings were translated into both Pāli and Sanskrit and so, P or S are used in the text to indicate the language used. Every effort has been made to use English translation instead of the Pāli or Sanskrit words which is provided in the footnotes.
Sir, the recluse Gotama, son of the Sakyans, having gone forth from the Sakyan clan\(^2\), is staying at Verañjā near Nal eru’s Nimba tree with a great company of five hundred monks. The highest praise has gone forth concerning the lord Gotama: he is indeed a Lord, perfected one, fully enlightened, endowed with knowledge and conduct, well-farer, knower of the worlds, unrivalled trainer of men to be tamed, teacher of gods and mankind, the enlightened one, the Lord. Having brought to fulfillment his own powers of realization, he makes known this world, together with gods including the Evil tempters, and the Noble ones; creatures, together with recluses and Noble ones, together with Evil tempters and men. He explains with the spirit and the letter the Noble-life completely fulfilled and wholly pure. It is good to see a perfected men like that.\(^3\)

**INTRODUCTION**

Why should we know about Buddhist Law? There are literally hundreds of thousands of books on Christianity and its relationship to the rules of the Bible, Canonical law and Christian legal systems, on Jewish law, the Torah, the Talmud and the history of Judaism, on Shari’a and the role of Islamic law in different Middle Eastern countries, on Hindu law and its relationship to the politics of India, but writing on Buddhist law and the effects of Buddhism on legal systems is only just now beginning to be explored.\(^4\) While the legal traditions of all major religious traditions have been extensively studied and written about—indeed they have their own academic departments, universities, conferences, book series, hundreds of scholars and lay persons who work and write on them—there are very few scholars of and little written on the legal concepts in the Buddhist tradition. This is particularly a conundrum given the current emphasis in both the general media and the academic literature on religion, religious laws and their applications—be it the invocation of Shari’a law in Iraq, arguments about the Torah’s role in Israel or the influence of the

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\(^2\) The historical Buddha was a member of a tribe called the Śākya, a family or clan within that tribe called Gautama, with the personal name of Siddhārtha. Ther term Śākyamuni means “sage of the Śākya tribe” while the term Buddha means “the awakened or enlightened one.” All of these, as well as many other names, are used to refer to him.

\(^3\) Adapted from Isaline Blew Horner, trans., *Book of Discipline, Part 1*; Pāli Text Society, 1938. (Vin.III. 1) Her translation in six volumes will be the one employed in this article. There are a few stock words and phrases that have been changed: Sir is substituted for “Verily, good sir,” and the term Noble or Noble one is substituted for the terms Brahmas, Brahmins and Brahma-life. The Buddha used the term Brahma in a very specific way and it can be confusing to first time readers. The word deva and devas has been replaced with the word god and gods. Mara has been replaced with the term Evil tempter; Demon would have been just as good.

\(^4\) While many scholars, in both the US and Europe, have worked on the Buddhist Law Code from a Buddhist vantage point, very few have worked on it from a legal vantage point, the purpose of this article. Frank Reynolds, emeritus from the Chicago Divinity school, put together several scholars in a conference in 1994 that was published as “Buddhism and Law,” *The Journal of the International Association of Buddhist Studies*, Vol. 18, No. 1, Summer 1995, pages 1-143. Andrew Huxley, to whom this article in dedicated, has also been a very important figure in promoting the legal point of view.
dharmaśāstras on the fundamentalist Bharatiya Janata Party in India. Four initial points demonstrating why we should know about Buddhist Law will be presented in this introduction.

First, we should know about Buddhist law because Buddhism has a detailed law code and a very long legal history. According to Buddhist tradition, the historic Sakyamuni Buddha, in his close to fifty years of teaching, expounded regularly on the correct legal rules for his followers all of which were then collected into a body of work called the Vinaya, the first of the three “baskets” of the Buddhist canon. In fact, this may be the only religion in which the founder is thought to have made regular, detailed decisions on legal matters in a narrative casuistic format covering hundreds of topics over a period of approximately five decades. While the Buddhist community may have altered and adjusted the rules before they were first redacted around the First Century BCE, there is little doubt that the Buddha, the central religious leader and not his community of followers, is considered the sole source of these rules, the architect of Buddhist law.

Second, Buddhist Law is uniquely focused on the socialization and internalization of the individual to a set of rules that will help him or her to operate within a community. This is a very different idea of law and one that has all but disappeared in the twentieth century. Our current definition of law, which will be discussed in the first Part of this paper, focuses on cases, rules, rights, judicial procedures, decisions and sanctions and not on how we want an individual to act or a society to operate so that everyone can get along. The Buddha was particularly concerned with the idea that the good deportment, conduct and behavior of an individual on a daily basis radically reduced conflict and the need for legal rules and increased the possibility of that person being able to pursue goals, in this case, meditation and enlightenment. Our definition and understanding of law will have to expand to include the range of processes and ideas included here.

Third, knowledge of Buddhist law and Buddhism is central to our local as well as our international concerns in the current political environment; we are currently engaged in commerce with, worried about, carefully watching the fighting inside, trying to reengage diplomatic negotiations with and propping up, states that either are currently Buddhist or

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5 See cite in 2.
were Buddhist for much of their history. Several states that have or had Buddhism as a major religion are currently of major interest to the US such as India, Sri Lanka, Myanmar, Thailand, Laos, Cambodia, Vietnam, Taiwan, China, Korea and Japan. As Peter Harvey and others have noted, one fifth of the current world population either is or has been influenced extensively by Buddhism and the vast majority, 99% of all Buddhists live in Asia, the current center of global commercial production. The Chinese government has stated that non-cult Buddhism (Tibetan Buddhism is cult-Buddhism, the Falun Gong is considered syncretic cult-Taoism-Buddhism) is the best and most attractive alternative to the atheism of the Communist Party. Thailand is 95% Buddhist, Cambodia is 90%, Myanmar is 88%, and Bhutan, Sri Lanka, Tibet, Laos, Vietnam and Japan are over 50% Buddhist. Large populations of Buddhist also exist in Macau, Taiwan, China, South Korea, and India. In fact, over half of all the Buddhists in the world currently live in China and, as the fourth largest religion in the world with approximately 488 million practitioners worldwide, the religion is growing throughout the Asian Pacific as well as the world.

Fourth, it is time to begin to look at Buddhist law because, although scholars in Buddhist Studies, Asian Area Studies and other disciplines have been writing on Buddhist cultures for a long time, they have primarily concentrated on translating and interpreting the enormous body of philosophical and religious texts more than legal and political writings. As one well-known Buddhologist, the late Ian Harris, has stated of the law and

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6 Find quote (in my office)
8 There are many versions of these statistics that are all fairly similar. I have used the figures given in http://www.buddhanet.net/e-learning/history/bstatt10.htm.
9 The Pew Research Project on Religion and Public Life presents the following figures: “There are about 488 million Buddhists worldwide, representing 7% of the world’s total population as of 2010. The three major branches of Buddhism in the modern world are Mahayana Buddhism, Theravada Buddhism and Vajrayana (sometimes described as Tibetan) Buddhism. While affiliation with particular branches of Buddhism is not measured in most censuses and surveys, Mahayana Buddhism is widely believed to be the largest, because it is prevalent in several countries with very large Buddhist populations, particularly China, Japan, South Korea and Vietnam. Theravada Buddhism, the second-largest branch, is concentrated in such countries as Thailand, Burma (Myanmar), Sri Lanka, Laos and Cambodia. Vajrayana Buddhism, the smallest of the three major branches, is concentrated in Tibet, Nepal, Bhutan and Mongolia. The Buddhist population figures in this study also include members of other groups that identify as Buddhist, such as Soka Gakkai and Hoa Hao.” Global Research Landscape, December 18, 2012, at http://www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/

Several commentators have noticed that Buddhism has a very high growth rate outside of Asia. For example, the Australian Bureau of Statistics, found Buddhism to be the fastest-growing spiritual tradition in Australia in terms of percentage gain, with a growth of 79.1% for the period 1996 to 2001 (200,000→358,000) See: http://www.abs.gov.au/ausstats/abs@.nsf/bb8db737e2a84dbca2571780015701e/bfdda1ca506d6cfaca2570de0014496e/OppeDocument
politics of Asia: “[D]espite high-level interest in the political manifestations of the great monotheist traditions of Christianity, Islam and Judaism, little sustained attention has been given to this crucial aspect of Buddhism, Asia’s most important religion.”

For Harris, this is a real oversight. Buddhism was the central factor in the formation of many states in Southeast, Central and Northern Asia. As such, it has a deep-rooted influence on their political development that is crucial to an understanding of the political and legal operations of these states. While recognizing the immense complexities of language, history, culture, and tradition, it is imperative to address the lack of information in this area.

This article and the ones that follow in this series will attempt to rectify this situation by providing a glimpse at some of the history of Buddhist law, the context of its origin, how it is interpreted and used, the original text, the Vinaya, as well as the unique legal systems of several states in which Buddhism has and is flourishing. Part One details four of the basic questions that need answering at the very beginning of such an enterprise: Where did Buddhist Law come from and who was Buddhist Law for? Can we think of all of this as “dharma” and where does this leave our usual definition of “Law”?

Part Two delves into the Vinaya, the Buddhist Law Code in a bit more depth. In this section, the questions are: how many Vinayas are there, what kinds are there and what are their dates? Why were they announced to begin with? And how are the Vinayas organized and what is their style? Part Three presents a small taste of all the different kinds of Buddhist-influenced legal rules that have evolved throughout Asia as well as the legal material present in the rest of the Buddhist canon besides the Vinaya. Each of these Parts will be interspersed with sections from the actual Theravādan Pāli text of the Vinaya, the Buddhist Law Code, set off and rendered in italics. Later articles will go into several of the above issues in much greater depth.

Part Three addresses the many instances of legal discussions and proscriptions outside the basic Law Code in both other parts of the canon and in other texts. The Vinaya and related texts affected and influenced directly many secular legal texts, was commingled with a variety of other documents in some areas and was subject to secular restrictions and strict boundary enforcement in several others. And not surprisingly, the general patterns of

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types of Buddhist Law follows the types of Buddhism in three different geographic areas: South and Southeast Asia; East Asia; and North Asia and the Himalayan region.

This article and the ones that follow are meant to be descriptive and explanatory rather than critical and argumentative. They are essays designed to provide a deeper understanding of the basic concepts and ideas in Buddhist law as well as the reasons that we might falter a bit in trying to understand them. The ultimate goal however, is to create a picture of the variety of Buddhist social and collective organizations and the rules that underlie them. At its deepest formulation, Buddhist law and politics represent a completely different and very subversive model of government not just a path to enlightenment. This is a model of spiritual and religious guidance, a form of social and collective government, that is at odds with our notions of the sovereign state, with the separation of church and state and with ideas about the socialization needed to create a good society. This is a set of rules for spiritual guidance that is loaded with concrete legal norms. At their most clamorous, these are very radical claims indeed and constitute a profound attack on current orthodoxy in law, religion, and law and religion scholarship. I hope they enkindle both delight and a spirited debate.

A Section from the Buddhist Law Code, Vinaya, on Refraining from Sexual Intercourse

Exegesis: The first four rules of theVinaya result in the worst form of sanction available to the Buddhist saṅgha or community, ostracism, also referred to as expulsion, defeat, exclusion and not in communion. The first of these four rules is the prohibition of sexual intercourse which has been described by the translator as typical of the religious sects of the period and also “a notion based as much on common-sense, as on the conviction that restraint and self-taming were indispensible factors in the winning of the fruit of a monk’s life.” In this passage, one of the forms of sexual intercourse is discussed. Ananda is the personal attendant and often considered the closest disciple of the Buddha. Having engaged in misconduct, these disciples plead that they have only injured themselves and not the dharma (P: dhamma) in their violations. They are requesting full ordination into monk status despite their transgressions:

“Now at that time, a great company of monks, dwellers at Vesāli and sons of Vajjins, ate as much as they liked, drank as much as they liked and bathed as much as they liked.

11 These are called the pārājika.
Having eaten, drunk and bathed as much as they liked, not having paid attention to the training, but not having disavowed it, they indulged in sexual intercourse not having declared their weakness. In the course of time, they became affected by misfortune to their relatives, by misfortune to their wealth, by the misfortune of disease, and so approaching the venerable Ānanda, spoke to him:

“Honored Ānanda, we are not abusers of the enlightened one, we are not abusers of dhamma, we are not abusers of the Order. Honored Ānanda, we are self-abusers, not abusers of others. Indeed we are unlucky, we are of little merit, for we, having gone forth well-taught under this dhamma and discipline, are not able for our lifetime to lead the Noble-life, complete and wholly purified. Even now, honored Ānanda, if we might receive the novice ordination,\(^{12}\) in the presence of the Lord, if we might receive the full ordination,\(^{13}\) we would dwell continuously intent upon states which are good and belonging to enlightenment. Please, honored Ānanda, explain this matter to the Lord.”

“Very well,” he said. And the venerable Ānanda having answered the dwellers in Vesāli, the sons of the Vajjins, went up to the lord Buddha. And, having come up to him, he told this matter to the lord.

And the Lord Buddha responded: “It is impossible, Ānanda, it cannot come to pass that the Buddha\(^{14}\) should abolish the teaching on defeat which has been made known for the disciples, because of the deeds of the Vajjin or the sons of the Vajjin.” Then the Lord for this reason, in this connection, having given a talk on dhamma, addressed the monks thus:

“Monks, whatever monk should come, without having disavowed the training, without declaring his weakness, and indulge in sexual intercourse, he should not receive the full ordination. But, monks, if one comes, disavowing the training and declaring his weakness, yet indulging in sexual intercourse, he should receive the full ordination. And thus, monks, this course of training should be set forth:”

“Whatever monk, possessed of training and mode of life for monks, but not disavowing the training and not declaring his weakness, should indulge in sexual intercourse, even with an animal, is defeated, he is not in communion.”\(^{15}\)

\(^{12}\) This is known as the pabbajjā ordination.

\(^{13}\) The full ordination of a monk or a nun is called upāsampadā.

\(^{14}\) The term used here to describe the Buddha is Tathāgata, “the one who has come (here) and gone (on to nirvana).” The Buddha commonly uses it to describe himself and all previous Buddhas.

PART ONE

This section deals with some of the preliminary issues that have to be cleared away to begin a discussion of the nature and content of Buddhist Law. Questions of its derivation and context, who it was actually composed for, what it was meant to be, when the actual law code was closed and redacted, how it relates to the term “dharma” which is often taken to mean law, the difference between Buddhist Law and Buddhism and Law, and how law will be defined for the purposes of these articles.

WHERE DID BUDDHIST LAW COME FROM?

In the fifth century before Christ in the Ganges river plain of what is now India, filled as it was then with forests, jungles, local villages and some larger towns, it was common to renounce your connection to society and go into the local forest for the purpose of meditating. The Brahman religion that was common in northern South Asia at the time had a category for this type of retreater, a sannyasin. Life was organized into different stages including student, householder, forest dweller and sannyasin (P: saṁyāsa), much like the pronounced stages in the modern world of infancy, early schooling, high school, marriage, work and retirement. For many older males and females, their children took over the animals and farm so that the last stage of their life could be in the forest, living a simple life devoted to spiritual practice. If her husband died, a wife could move to the woods nearby, still seeing her family regularly, but devoting her days to prayer and ritual. This pulling away from regular life to concentrate entirely on a personal spiritual path was normal within the Indian social system.

It was during such a meditating session that a young individual called Gautama (P: Gotama) was enlightened and then decided to teach what he had learned. So the presence of forest dwelling teachers was very common and much accepted. Unlike others however, the Sakyamuni Buddha became extraordinarily famous and taught what he had learned for close to fifty years thereafter. After several years, there were hundreds, perhaps even thousands of disciples, sometimes travelling in separate groups, following this sannyasin, known as the Buddha. A few homeless disciples travelling with a teacher could easily be managed, but problems arose among the Buddha’s followers once they began to increase in numbers; it
became imperative that a set of rules be developed. The results of this process was the *Vinaya*, the first section of the Buddhist canon, a listing of several hundred rules. They are traditionally attributed directly to the words and decisions of the Buddha and called *Buddhist Law* because they remain the rules enforced within the community of Buddhist disciples. It is generally accepted that they were reduced to writing sometime in the century before the Birth of Christ and have been maintained and indeed recited in reduced form twice a month\(^\text{16}\) in most Buddhist communities since that time. At his death, the Buddha stated that he did not want an individual to be the head of this religion, that only his sayings and teachings should remain paramount. Throughout the Buddhist world, then, the central images of the Buddha are as a teacher and a lawgiver.

**Who was Buddhist Law for?**

This particular origin story for the religion creates several problems for the non-Asian listener. These rules were for the *saṅgha* (P: *saṃgha*), a group of renouncers that had taken themselves out of society to facilitate meditation and the study of the spiritual doctrines with the Buddha. As part of this model, a synergistic relationship developed between the spiritual leader, the Buddha, and the renouncing monks and nuns, and the local lay populations, as was common in ancient India. These legal rules were written for the renouncing nuns and monks as both a form of socialization and a legal code of conduct. As a result, later scholars and followers have often stated that *Buddhist Laws* were just a series of rules followed by monks and nuns in sheltered environments without any general reference to the greater society. This is not the case. Although the Buddha is credited with creating the first monastic group, his followers and disciples were intimately part of the Indian religious and social landscape, not separate from it, and the rules they followed were very important to the lay population. Our image of Christian monasticism or spirituality in the West is not apposite to this early context.

Another issue is related to the fact that the Buddhist legal system of the *Vinaya* was redacted, and to a large extent closed to further changes, very early on, perhaps even before the Birth of Christ but definitely by the second century CE. This is unlike the legal systems in

\(^{16}\) This ceremony is called *upoṣadha* (P: *uposatha*).
most other religions. It does not mean that other Vinayas were not compiled with additions and replacements later on but it does mean that the basic Pāli and Sanskrit versions of the original text remained as standards. Additionally, most scholars point out that the varieties of different Vinayas are, in fact, quite similar.\textsuperscript{17} This would be the equivalent of the legal prescriptions and sayings of Jesus Christ—not the writings of the disciples, not the Epistles to the Corinthians or the decisions of the early church—being collected and made into rules within a few hundred years after his life and then frozen as the only legal code of Christians in the years that followed. This is not the Christian model. Instead, substantial parts of the law codes of the Christian churches are a much, much later development and involved the whole-scale incorporation of secular legal codes from European countries including systems of courts, lawyers, judges, rules and sanctions. As a result, the standard model of religious law in the imagination of an American or European scholar is the law of the Holy Roman Empire, the Christian Roman law code, employed first by Otto I of Germany in 936 that lasted until the abdication of Francis II of Austria in 1806. With this basic unified-state-system-with-an-Emperor template for religious law, the Buddhist law code, traditionally understood as created by the Buddha for his supporters, is not only \textit{not} similar to canonical law, it may not even be thought of as \textit{law} at all.

When asking “who was Buddhist Law for,” another issue arises as to the nature of the laws themselves. Some readers will think that the laws of the Buddhist Law Code sound like rules of conduct rather than a law code. This is a central issue in our inquiry and it has been a problem for many scholars. Arguably, most of the early proscriptions by the leaders of a religious movement will involve discussions of how the group is going to comport itself in terms of the general society. The Buddha was certainly concerned with this issue. But the Buddha was also concerned with how a person who was seeking to become enlightened according to his principles and teachings should act to maximize the possible acceptance and understanding of these ideas. He wanted to create a person who was socialized into a disciplined and kindly way of acting with a very humble, restrained and compassionate style of comportment.

\textsuperscript{17} The different vinayas that we will deal with directly in this text are the \textit{Theravāda-vinaya}, in Sri Lanka and Southeast Asia, the \textit{Dharmagupta-vinaya} commonly known as the \textit{Four-Part Vinaya}, used throughout East Asia, and the \textit{Mūlasarvāstivāda-vinaya} of Tibetan-speaking cultures.
The Buddha also wanted a person to be drawn without coercion or violence to both his teachings and to those who followed his teachings. The community of lay people who were learning from and supporting a group of monks or nuns was very concerned that the nuns and monks should follow exactly the requirements of the Buddha. The ability of the layperson to gain spiritual merit and future advancement in their next life depended directly, not only on their own behavior, but on the proper behavior, comportment and subsequent enlightenment of the monk or nun they were supporting. In other words, this was not a concern only for the individual nun or monk and their community; it was a serious issue for the vast number of lay Buddhists who were to receive most of their religious merit through these religious actors. Throughout Buddhist history, when the conduct of the monks or nuns was thought to fall short, there were often purges, sweeping changes and a cleansing of the Buddhist community.

**The Problem with the Word “Dharma”**

The name given to all of Gautama’s teachings after that evening-long meditation resulting in his enlightenment and throughout the next forty-five years is *dharma* (P: *dhamma*). This term was common in Indian languages at the time and had a broad range of meanings including, “the natural order of the universe and society as well as one’s duty or ritual obligations within that order.” The early founders of Buddhist Studies in Europe, Eugène Burnouf and Brian Hodgson, decided to use the English term “law” to translate the term *dharma*, which means that the whole of the teachings of Gautama after his enlightenment—the nature of the universe, the position of human beings in it, reality, karma, nirvana and all of the other basic ideas of Buddhist philosophy—are called “law.”

The English term *law* has some similar denotations as well as valences. We use *law* to describe the workings of the natural world (laws of nature) and the sciences (thermodynamic laws), to speak of authoritative positions (to lay down the law, his opinion is law), to describe a body of rules (Murphy’s law) or the rules that govern any sort of ritual event (the laws of the game). The meaning of the term *law* is much more circumscribed in

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the legal world; it refers to state-driven decision-making operations and the rules that are used in those processes.

For our purposes, Burnouf and Hodgson made a most unfortunate choice. Calling an entire religious system, its philosophy and its basic premises “law” creates, as one could imagine, immense confusion for the average legal reader about the nature of Buddhism, Buddhist teachings and Buddhist law. Frank Reynolds has stated that: “But ‘Law’ when it was used as a translation for Dharma, was used with cosmic, philosophical and/or ethical connotations that were never associated–in any really intrinsic or crucial way–with legal systems or codes.”\(^{19}\) Even today, entering the words “Buddhist Law” into any web search engine brings up sites on Buddhist religion and philosophy totally unrelated to our topic.\(^{20}\)

Although the term Buddhist law is used by practitioners and the general public to refer to all of the Buddha’s teachings and philosophy, for the purposes of this paper and in the academic discipline of Buddhist Studies, it refers to the rules of the monastic law code of the Vinaya, the first book of the Buddhist canon. Perhaps the foremost authority on this topic, Oscar Von Hinüber, has presented this comment by the Buddha followed by his own exegesis:

“Wait Sāriputta, wait! The Buddha will know the right time.
The teacher will not prescribe any rule\(^{21}\) to his Pupils, he will not recite the list of the rules\(^{22}\) as long as no factors leading to the defilement ... appear in the order (Vin.III.9).”

This is the answer of the Buddha to Sāriputta’s worries that harm may be done to the order if no rules of conduct are prescribed in time. And Sāriputta further points out that some of the buddhas of the past neglected this very duty with disastrous results: their teaching suffered a quick decay and an early disappearance.

This passage underlines three important points: first, the significance of Buddhist ecclesiastical law. For without vinaya there is no order (P: samgha) and without the community of monks there is no Buddhism. Consequently the vinaya-texts are the last ones lost, when Buddhism eventually disappears. Secondly, the rules of conduct must be promulgated by the Buddha himself. He is the only lawgiver, and thus all rules, to which every single monk has to obey, are thought to go back to the


\(^{20}\) This is a brief listing of what comes up with that Google search: A Basic Buddhism Guide: The Law of Karma - BuddhaNet (www.buddhanet.net/.../karma...); Basic Buddhism: The Theory of Karma - BuddhaNet; Dharma (Buddhism) - Wikipedia, the free encyclopedia; Karma in Buddhism - Wikipedia, the free encyclopedia (en.wikipedia.org/wiki/Karma_in_Buddhism); The teachings of Buddha And The Law of Cause and Effect 1, etc.

\(^{21}\) The term used here is sikkhāpadāṃ paññāpeti.

\(^{22}\) The list of all the rules is here called the Pātimokha.
Buddha. The third point is that the rules are prescribed only after an offence has been committed. Thus rules are derived from experience and based on the practical need to avoid certain forms of behavior in [the] future. This means at the same time that the cause for a rule is always due to the wrong behavior of a certain person ... "23

In this article, the term “Buddhisty law” refers not to the entire teaching of the Buddha but to the actual rules for social control that he is said to have developed. The term Buddhism and Law has been used as a differentiating term to indicate the ways in which Buddhism affected, was affected by and interacted with secular legal systems.

WHAT THEN IS “LAW”?  

As mentioned above, the definition of religious law that is based on the operation of the Holy Roman Empire of Europe, the procedures of the Islamic Shari’a or the practices in the Jewish Torah, is not going to be very conducive to the study of Buddhist law. This is a genuine problem and one that should be addressed at the start of this inquiry. The term “law” has come to mean something very particular in modern English, namely, “the written secular law of a nation-state, that is, the statutes, cases, rulebooks, law-codes, judicial processes and decision documents of a political entity.”24 So too has the term “religious law” taken on this coloration of judicial processes, rules and sanctions.

This definition excludes many of the cultural aspects of law and social sanctions that are used by people to maintain social control often without the use of institutionalized nation-state power. It excludes the very important processes and forms of socialization and social control that happen in social groups such as etiquette, social sanctions, social customs, ranking privileges, internalized rule-following, local negotiation, bullying, mediation, refusing to sue, leaving, ostracism, manners regulating speech, interaction and silence and other general behaviors. While Buddhist law includes cases, rules, judicial procedures, decisions and sanctions, its primary intent is to present a system of socialization and internalization for the individual in the saṅgha community so that she or he can be a

23 "Buddhist Law According to the Theravāda–Vinaya: A Survey of Theory and Practice," by Oskar Von Hinüber, in A Symposium on Buddhism and Law, Journal of the International Association of Buddhist Studies, Vol. 18, no. 1, Summer 1995, page 7. His translation of the Pali has been adapted for this article. Von Hinüber goes on to cite the passage on the very first offender, the monk Upasena.
practitioner of Buddhism. Therefore, if our definition of law is expanded to include many of these other processes used to regulate behavior, the possibility of studying legal systems such as Buddhist law, which is based in both external and internal socialization, opens up.

A further issue is that Buddhist law has been considered other-worldly and spiritual, not concerned with mundane daily issues, a religion that stayed out of the political and legal forums of the state. As Frank Reynolds has stated, the prevailing view was that “true Buddhism was not a religion that had a strong legal component,” because it was concerned “with individuals but not with issues of social, political and economic order.” He continues: “[b]uddhist secular law was given even less attention than the study of monastic law. The Buddhological [scholarly] community as such was hardly aware either of the presence of Buddhist secular law or the influence Buddhism had had on the legal systems in the countries where the śāsana (P: sāsana) had been established.”

Additionally, social scientists and comparative lawyers have failed to investigate the influence of Buddhism and Buddhist law because they have long been influenced by the views of famous German sociologist, Max Weber, the touchstone for interpretation of Buddhism. As David Gellner has pointed out, what Weber “wanted to know was whether, at any point in their history, non-European civilizational traditions had within them the religious and cultural resources to give rise to a capitalist spirit as had happened with forms of Protestantism in Europe and North America.” These resources or qualities were defined the active, rational, this-worldly, and ascetic approach. Weber stated that “Buddhism was rational, but not very ascetic; it did not encourage an active, this-worldly orientation on the part of its most dedicated followers.” From this reading of Weber, the primary message to comparative lawyers and scholars was that Buddhism was an other-worldly religion, concerned with the mystical and contemplative, and not actively engaged in mundane politics and law. This message has had a continuing influence that has undermined the study

of Buddhism and law. Patrick Glenn, a pre-eminent legal comparativist has stated as recently as 2010 that Buddhism spread:

“In a non-political, non-institutional way, just telling people about the way of the world and achieving some kind of political consensus only in Tibet. Generally, it was only within the communities of Buddhist monks or saṅgha, that some type of formal order developed, leaving external societies free to drift or even to enact positive (though not necessarily unreal) law.”

One final issue in the definition of law is the recent work in the academy on legal orientalism. Following Edward Said’s lead, Teemu Ruskola and Piyel Haldar have presented the idea that non-Asian scholars prioritize their superior knowledge of texts, languages and cultures of Asia based on their own hermeneutical presumptions. Ruskola thinks that this framework allows scholars to decide which cultures have law and which don’t, how much law they have and how they should be viewed. It also creates a license for non-Asian scholars and others to dictate to Asians about the best forms of law and decision-making. With an orientalist definition of law, the superior party determines which legal systems are of value and which are not, and perhaps even with the best of intentions, which are “other-worldly” and therefore not legal. This faulty approach to the legal and religious legal systems of Asia is yet another reason why we need to learn more about Buddhist Law.

**A Section from the Buddhist Law Code, Vinaya, Against the Taking of What was not Given**

This is a passage from the “taking of what was not given,” the second of the first four rules of the Vinaya, that results in expulsion from the community.

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30 Like murder, this is a pārājika offense. I.B. Horner, the translator of the *Theravāda-vinaya*, commented about this section: “Stealing is ranked as a Pārājika or the gravest kind of offense, not merely because civilization agrees that, for various reasons, it is wrong to take something that is not given. It was particularly reprehensible for a Sakyan monk to steal, since at the time of his entry into the Order he morally renounced his claim to all personal and private possessions, and should henceforth have regarded anything he used as communal property, lent to him for his needs. In addition, it may be urged that if monks were restrained from stealing, any tendencies they may have had towards greed and gluttony, towards finery and luxury, towards carelessness in the use of their requisites, would have been reduced and perhaps eradicated, thus allowing a greater margin for the exercise of unfettered spiritual endeavor.” I.B. Horner, *Book of Discipline, Part 1*; Pāli Text Society, 1938, pages xxi-xxiii.
“If a monk instigator enjoins a second monk, saying: ‘Steal such and such goods,’ this is an offence of wrong-doing.

If the second monk, thinking these (are goods to be stolen), steals them, there is an offense involving defeat\(^{31}\) for both.

If a monk instigator enjoins a second monk, saying: ‘Steal such and such goods,’ and the second monk thinking these are the goods to be stolen, steals something else, there is no offense for the instigator, but there is an offense involving defeat for the thief.

If a monk instigator enjoins a second monk saying: ‘Steal such and such goods’ and, the second monk, thinking something else are goods to be stolen, steals them, there is an offense involving defeat for both.

If a monk instigator enjoins a second monk saying: ‘Steal such and such goods’ and the second monk thinking something else are the good to be stolen, steals something else, there is no offense for the instigator; but there is an offense involving defeat for the thief.”

“If a monk instigator enjoins a second monk, saying: “Tell of such and such matter, let so and so tell of such and such, let so and so steal such and such goods,” there is an offence of wrong-doing.

If he speaks to another there is an offence of wrong-doing.
If the thief agrees, there is a grave offence for the instigator.
If he steals these goods, there is an offence involving defeat for all four people.\(^{32}\)

Exegesis: In the short excerpt above, the subtle distinctions between the intentions and actions of an instigator and an accomplice are reviewed as well as the different levels of sanctions. If a monk instigator A convinces a second party B to steal what A intended to have stolen, and B steals it, they will both be defeated. If B knowingly takes something different, A has probably only committed a wrong-doing although the thief B is defeated whereas if B takes something different thinking he is following A’s orders, they are both defeated. The important nexus here is between the intent of the instigator and the intent and then action of the accomplice. If the accomplice follows, or thinks that he is following A’s instructions, defeat is inevitable.

The last section, involving four people, gives the levels of possible sanctions—no offense, wrong-doing, grave offense and defeat. When a monk instigator A convinces a second monk B to steal, monk A has committing a wrong doing. If monk B tells monk C, that is an offense of wrong-doing. If monk C tells monk D and he agrees, it is a grave offense for

\(^{31}\) As mentioned above, “Defeat” is the term used in English here to describe expulsion or ostracism from the community of monks or nuns which is the most serious sanction that can be administered.

\(^{32}\) Adapted from Isaline Blew Horner, trans., Book of Discipline, Part 1, (Vin.III.52).
monk A. If monk D then steals the goods monk A intended to be stolen, all four people, monks A, B, C, and D will be defeated.

What matters here is the match up of the intent with the plan and then the resulting action. This passage also demonstrates the degree to which having the motivation or intent to do the act and then the completion of the suggested act changes the sanction.

PART TWO

This section on the Vinayas is presented here as only a very initial introduction to the framework and ideas in these texts. Later articles will deal in much greater depth with these law codes and their content. It is important to point out here that the Buddhist Law Code, the Vinaya, represents one third of the three-part Buddhist Canon called the Three baskets or Tripaṭṭaka (P: Tipiṭaka), a massive document, several hundred times as long as the Hebrew or Christian Bible or the Qu’ran. Part Two will try to detail how many Vinayas there were and are, what kinds there are and what their dates are. It is also important to understand what types of information are contained in these texts and how they are organized. A final section interrogates their style and why they were written at all.

HOW MANY VINAYAS ARE THERE, WHAT KINDS ARE THERE AND WHAT ARE THEIR DATES?

According to tradition, after enlightenment under a pipal tree in approximately the sixth century BCE, the Buddha began teaching and deciding cases that were later compiled into the Vinaya. There are several points that can be made about the number and types of Vinayas.

First, while there is controversy among a select group of scholars about the dating of the texts attributed to the Buddha, there are some things that have been tentatively settled. People agree that tradition says that the entire Vinaya was first recited by the monk Upāli at the First Council right after the Buddha’s death. Also, we know that several different Vinayas were composed by various splinter groups within the early Buddhist community. Scholars have determined that the community split into two groups, probably a hundred years after the death of the Buddha at the Second Buddhist Council, over issues concerning the Vinaya. The two resulting entities were The Great Order of Monks, a group that eventually became

33 The Mahāsāṃghikas (Great Order of Monks).
the precursors of the Mahayana Buddhist tradition currently dominant in East Asia; and the Sect of Elders, that then split into other groups, one of which eventually became the well-known *Theravāda* group of South and Southeast Asia. Some of the other schools that developed from these further splits wrote their own *Vinayas* to use them within their communities. As Petra Kieffer-Püllz has stated, there are three *Vinayas* currently in use, the Chinese language *Vinaya* that is primarily used in East Asia, the Pāli language *Vinaya*, primarily used in South and Southeast Asia and the Tibetan *Vinaya* that is used in Tibet, Bhutan, Mongolia and some parts of the Himalayas and Central Asia. Scholars, who are studying the ancient texts argue sensibly that as many as possible of these early texts should be consulted to help create a fuller picture of what was originally meant by the Buddha. Practitioners such as Buddhist monks and nuns, who are reciting parts of the *Vinaya* twice every month, generally use their own version in their local language.

Second, for at least two centuries, the *Vinaya* was memorized and presented orally. Monk reciters or bhāṇaka learned a section of the text and then repeated it to the assembly throughout their career. At the end of their life, they taught it to an aspiring student. Scholars have reasoned that constant recitation in front of hundreds of others cleared up mistakes and the repetitions of words, phrases and ideas in the text was an aid to the process of memorization. The italicized text sections included in this article demonstrate this form of repetition.

Third, there is a tentative agreement on the dating of the various redactions of the body of the *Vinayas*. The Pāli language *Vinaya* of Sri Lanka and Southeast Asia, which is used in this article, is thought to have closed in the first century BCE, the Chinese *Vinaya* of East

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34 *Sthāvira-vādins*, or *Sthāvira-nikāya* (Sect of the Elders).

35 She has stated that: “Although only three *Vinayas* are followed today, those of the defunct Schools have been handed down complete and in fragments in different languages: Sanskrit, Pāli, Gāndhārī, and Tocharian, as well as Chinese and Tibetan translations. Six seemingly complete *Vinayas* belonging to the Dharmaupiktakas, Mahāsāṃghikas, Mahāsāsakas, Mūlasarvāstivādins, Sarvāstivādins and Theravādins are extant. Additionally, we have fragments of the Haimavatas (ascription contested), Kāśyapīyas, Mahāsāṃghikas-Lokottaravādins, Saṃmitīyas, and of several other unidentified schools. Many of these schools are referred to in inscriptions, and in the reports of the Chinese pilgrims who visited India between the fifth and seventh centuries. The *Vinayas* still in use today include the Dharmaupiktaka-vinaya in East Asia, the Mūlasarvāstivāda-vinaya in Tibet and Mongolia (and it seems in some circles in Japan), and the Theravāda-vinaya in Sri Lanka, Burma, Thailand and other countries.” Petra Kieffer-Püllz, “What the Vinaya Can Tell Us about Law,” Rebecca French and Mark Nathan (eds.), *Buddhism and Law: An Introduction*, Cambridge, Cambridge University Press, 2014, page 48.

Asia was closed upon its translation into Chinese six centuries later in the fifth century CE and the Tibetan language Vinaya of Tibet, Bhutan and Mongolia closed when translated into Tibetan in the ninth century CE.

Fourth, there is also little doubt that all of the various versions of the Vinaya “share a common core.”

For the purposes of this article, we have been using the Pāli language Theravāda Vinaya translated by I.B. Horner to explain legal ideas and reasoning in Buddhist Law. This is being done with the important scholarly caveat, as stated by the Vinaya scholar Petra Kieffer-Pülz, that there is “not just one Vinaya, but several, and they stem from distinct schools, from different time periods, from different regions, and were adapted to their environments to different degrees.” That there is variation even inside a single Vinaya must be taken into account as well. Also, “[a]s a corrective, information obtained from the texts has to be checked against external sources (archeological, epigraphical and numismatical). General statements on the basis of only one Vinaya should belong to the past.”

So, with these caveats fully in mind, we will be using this version of the Vinaya as one representative example.

HOW IS THIS VINAYA ORGANIZED?

The Vinaya is organized into two major parts with several subdivisions and a final appendix. The First Part consists of a core list of conduct rules for monks and nuns to follow after full ordination. Monks have between 219 and 262 rules to follow depending on the school of Buddhism and nuns have to follow between 277 and 371. The Second Part is a set of legal procedures for the monastic organizations to use when making community legal decisions.

We will be using the Pāli Theravāda Vinaya as an example which has 227 major rules for monks and 311 for nuns. The rules and divisions outlined here are not meant as the authentic list but as one statement derived from this Pāli Vinaya. The Appendix, which will

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39 This section is called the Suttavibhaṅga and it contains the Prātimokṣa (P: Pātimokkha) or the collection of the rules.
40 This section is called Skandhaka and also the Vinayavastu. The Pāli Vinaya is thought to have 22 sections while the Sanskrit Vinaya has 20.
41 The list of rules in the Prātimokṣa vary in number depending on the scholar, context, use, dating and the particular vinaya. This listing is taken primarily from “Buddhist Law According to the Theravāda–Vinaya; A Survey of Theory and Practice,”
not be covered in depth below, is a summary of the contents of the first two parts in 19 chapters and many think that it is a later addition to the work.\textsuperscript{42}

The First Part, the core list of rules for a monk, is divided into seven sections for monks with the first section of rules listing the most serious offenses and the last part, the least serious. The \textit{first section} of the First Part is made up of four rules that comprise the list of expulsion offenses, or the rules for which a monk or nun will be irrevocably expelled from the community.\textsuperscript{43} The two passages presented above in italics on “sexual intercourse” and “taking of what was not given,” are rules resulting in expulsion, the most serious of offenses. The other two are: depriving another of life or murder, and falsely claiming a state of attainment. This last one was considered an unusual offence at the time, to claim a state of spiritual attainment that had not been achieved; for Buddhists, it constituted a lie that was so heinous that it resulted in permanent expulsion. So these four offences comprise the \textit{first section} of the Rules.

The thirteen transgressions in the \textit{second section} resulted in a full investigation, a meeting of the community of Buddhists, possible probation and/or a temporary expulsion from the community.\textsuperscript{44} Typical of these \textit{second section} offences are rules about discharge of semen, conduct with the other sex, building of huts and monasteries, defamation of other monastics, causing a schism, or splitting the order, refusing to approach the teachings with respect, rejecting criticism and bringing families into disrepute. The \textit{third section} has only two rules and they concern a monk being in an enclosed place in private with a woman, an offense that only requires as evidence the accusation of a credible laywoman.\textsuperscript{45}

\footnotesize{by Oskar Von Hinüber, in A Symposium on Buddhism and Law, \textit{Journal of the International Association of Buddhist Studies}, Vol. 18, no. 1, Summer 1995, pages 7-45}

\footnotesize{\textsuperscript{42} The Appendix section is called the \textit{Parivāra}.}

\footnotesize{\textsuperscript{43} As noted above, these are called \textit{Pārājika} means “relating to expulsion,” (defeat).}

\footnotesize{\textsuperscript{44} These thirteen are called Sanghāvaseṇa or sanghādīsesa (formal meeting) offenses.}

\footnotesize{\textsuperscript{45} These two are called the \textit{Aniyata} (undetermined) offenses. Von Hinüber has this to say about these offenses: “It is legally interesting that the monk is considered guilty, if a trustworthy laywoman (suddheyyavacasā upāsikā) who is the very woman involved accuses him. Following the \textit{Pātimokkha}, no further evidence is needed. The early commentary, however, the \textit{Suttavibhaṅga} adds (and thus at the same time mitigates the rule) that it is necessary, too, that the monk does not deny having committed the respective offense.” See “Buddhist Law According to the Theravāda–Vinaya; A Survey of Theory and Practice,” by Oskar Von Hinüber, in A Symposium on Buddhism and Law, \textit{Journal of the International Association of Buddhist Studies}, Vol. 18, no. 1, Summer 1995, pages 10-11.}

\footnotesize{With respect to the confession by the monk and the concept of truth, he goes on to state: “Here we find one of the basic principles of early Buddhist law as laid down in the \textit{Pātimokkha}: that the monk involved has to admit his intention to commit the offense. Consequently the moral standards of the monks are supposed to be very high. Speaking the truth is taken more or less for granted here as in the Brahmanical tradition, where it is thought that Brahmans speak the truth by their very nature. Given the high esteem for truth necessarily found in oral cultures such as early Buddhism or that the Veda, it is surprising that telling a lie is considered only a \textit{Pācittiya} offense.” page 11.}
The fourth section details one hundred twenty two rules that result in a confession, forfeiture of the item or discontinuation of the practice. The first thirty rules discuss the property of a monk.\(^\text{46}\) Examples in this section concern: keeping too many robes; making another wash your robes; accepting too many robes from the laity; trying to obtain nicer robes, blankets, alms bowls or rugs; accepting or possessing gold or money; and buying, trading and selling goods. The discussion of possessing money is particularly interesting because it is well known that monks and nuns often had extensive wealth and commissioned the building of monasteries and other buildings.\(^\text{47}\) The second half of the fourth section\(^\text{48}\) contains ninety-two rules that result in reparations of some kind, often confession, including rules against deliberately lying, criticizing, complaining, showing disrespect, insulting, or telling malicious tales about other monks, damaging a living plant, not putting away bedding, not taking too much food, staying in an army encampment, tickling with the fingers, hitting or striking another monk, hurting an animal and many other socially inappropriate acts. The fifth of the sections is sanctioned by confession and provides four rules about correctly accepting and eating food.\(^\text{49}\)

The sixth section gives seventy-five rules of training concerning the behavior, bearing, and posture of a monk.\(^\text{50}\) These seventy-five rules concern more minor aspects of conduct and deportment that includes bodily behavior\(^\text{51}\) such as wearing robes properly, covering oneself when sitting, controlling one’s gaze, not speaking or laughing loudly, not swinging one’s arms or swaying the body, and not clasping the knees. It also delineates how a monk must act with respect to the food that he is offered\(^\text{52}\) and how he must eat, for example, without putting his fingers in his mouth or putting his tongue out. Next, this section continues with rules about to whom a monk may and may not teach the dharma.\(^\text{53}\) For example, he may not teach to someone in a high seat when he has a low seat, or while clasping

\(^{46}\) These are called the \textit{Nissaggiya pācittiya} (forfeiture/expiation) offenses.

\(^{47}\) The essays by Gregory Schopen and Shayne Clarke on this subject are particularly intriguing. Above at footnote ...\(^\text{*}\)

\(^{48}\) These are called the \textit{Suddha pācittiya} (expiation). Some authors divide this fourth section in half and call these two different sections: the fourth is the \textit{Nissaggiya pācittiya} and the fifth is the \textit{Pācittiya}. See for example, John C. Holt, \textit{Discipline: The Canonical Buddhism of the Vinayapitaka}, Delhi: Motilal Banarsidass Publishers, 1981, pages 33-41.

\(^{49}\) \textit{Pāṭidesanīya} (confession) offenses.

\(^{50}\) These are called the \textit{Sekhiyavatta} (training) offenses.

\(^{51}\) \textit{Sāruppa} offenses.

\(^{52}\) \textit{Bhojanapatisamuyutta} offenses.

\(^{53}\) \textit{Dhammadesanā pāṭisamuyutta} offenses.
his knees or to someone walking in front of him. Finally, there are miscellaneous rules about how and where to urinate and defecate, for example, not while standing, not into green vegetation or into the water.

The final section, concerns legal processes for conflicts between and among monks within the saṅgha community 54 such as who should be present when a decision is made, how to determine innocence and insanity, what is the correct level of unanimity and how to frame the results. These ideas show up in both the First and the Second Part of the Vinaya and are called “the Seven Methods of Settling Disputes,” 55 namely: (1) appeal to scriptures and direct evidence of the offense, (2) statements by trustworthy witnesses and the memory of the defendant, (3) insanity as barring a trial and decision on the issue, (4) a voluntary confession by the defendant of the offense that may cause some mitigation, (5) without a confession of the offense, a discussion of self-contradictions and other testimony, (6) the vote of the assembly of monks and the verdict, or (7) in the case of a irresolvable conflict, both sides bow down to each other, offer apologies and accept possible responsibility.

The Procedures, or Second Part 56 of the Pāli Theravāda Vinaya, has two divisions divided into chapters with much more narrative about the Buddha and occurrences during his life. The first division discusses matters of entry into the saṅgha by ordination, timing for the twice-monthly recitation of the rules by the Buddhist community, the three-month rainy season retreat, the call for criticisms, administration of medicines and disputes over making robes. 57 The second division of twelve chapters concerns procedures to deal with bad behavior, what to do when a monk on probation commits another offence, the seven rules for settling disputes, stories of a monk who promoted schisms, suspending the recitation of the rules if a monk has refused to confess, and the inclusion of nuns. 58 This section ends with a final narrative on the origin of the saṅgha and what happened after the Buddha’s death.

The Appendix, with a full discussion of the basic rules for nuns, follows. 59

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54 Adhikaraṇa-śamatha rules.
55 Saptādhikaraṇa-śamatha rules.
56 Skandhaka or Khandhaka is the general name of the Second Part of the Vinaya.
57 The first division is the Mahāvagga which has 10 chapters.
58 The second division is the Cūḷavagga which has 12 chapters.
59 The Appendix section is called the Parivāra.
Why was the Vinaya written and what is its style?

The Vinaya is about correct behavior not correct beliefs. This law code does not outline, at length, things that should and should not be believed by a person who is a Buddhist monk, nun or layperson. It does not say that a Buddhist is a righteous person who believes in the Vinaya or that anyone who does not follow the Vinaya is heretical. Nor does not decry those that do not believe in the Buddha.

Instead, the Vinaya is a very detailed set of rules about the comportment, behavior and presentation of monks and nuns both as individuals and as a community. As one scholars has noted: "The rules are best seen as tools to help transform the mind and behavior." Because the original followers of Buddha existed in a society that had many different types of religious seekers and religious believers, the Buddha wanted his disciples to be very well behaved, to have perfect demeanor and comportment, as a symbol of his teachings. The Vinaya is about the intentions, actions and behaviors of monks and nuns who have accepted the Buddhist path. It is a guide for the initiate, an aid in achieving the correct state of mindfulness; "discipline is meant to precede and support mental restraint, which leads to concentration and finally wisdom rather than the converse." Will Bodiford, a scholar of Japanese Buddhist Studies, has described the position of the Vinaya in the following way:

Because of the vinaya’s status as the founding charter for the entire Buddhist movement, it has played a far broader and deeper role in the doctrinal and social aspects of Buddhist religious life than suggested by the usual English-language translations “discipline” ... Vinaya texts are concerned with establishing not only rules for the disciplined behavior of members of the order, but also social practices that guide a well-organized religious order in the management of its affairs and property, in its interactions with the laity and secular powers, and most of all in defining its religious identity by linking the order historically to the Buddha, distinguishing the order from the laity, encouraging the laity to give to the order, and determining the proper procedures for going forth into the order; only by following such prescribed practices do members of the order become worthy recipients of the laity's charity.

The style of the Pāli Theravāda Vinaya resembles that of many religious texts—filled with long exalted passages on the Buddha, narratives of his teachings, homilies, exegeses,

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casuistry, endless definitions of the terms, repetitions of phrases and other literary devices. It is similar to the Hebrew Bible as an anthology using many diverse genres and the Qur’an, which veers off into passages that do not pertain to the social rules being discussed. In contrast, the recent version of Roman Catholic Canon (1983), is much more succinct and law-code like in its presentation, though it includes passages on Norms and the Pastoral Council.

Karma Lekshe Tsomo has pointed out that there is a direct connection between Buddhist philosophical and ethical literature, and the forms of legal reasoning in the law code. She states: “Among the influential factors that affect the consequences of actions and were relevant to Buddhist legal reasoning are: the nature of the action, the intention behind the action, the agent of the action, the mindset of the agent, the object of the action, the modus operandi, and the factors or the circumstances surrounding the event. These factors for legal reasoning are even encapsulated in some law codes in Buddhist countries.”63 These aspects of reasoning are very apparent in the italicized passage on the theft of items by monks between Part One and Part Two, above. In that passage, the intention behind the action in the instigator’s mind was to steal a particular object. If the action was not taken by the instigator’s agent, the level of criminal punishment for the instigator was reduced. Each of these factors has to be presented and weighed under the circumstances to determine the level of sanction: no offense, wrong-doing, grave offense or defeat. When there is no completion of the original intention, there is little culpability.

Peter Harvey has written about culpability after stressing that the nature of the Vinaya as a text that “drastically limits the indulgence of desires and promotes a very self-controlled, calm way of life, of benefit to the monks and nuns themselves and an example which ‘inspires confidence’ among the laity.”64 In his discussion of culpability of a defendant under the law code, he goes into an extensive description of when, what and how knowledge is needed for an offense, whether or not a mentally ill person or one who is unhinged, confused, distorted, afflicted with pain, frightened, “kneading their heart,” or forgetful, can have actual knowledge. With regard to intention, the Vinaya makes distinctions between unintentional, accidental, “not one’s wish,” unconscious acts of intention and an action done

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to avoid a schism in the community. The detail in the rest of his article outlines the impact of doubt, error, partial error, partial ignorance, recklessness, carelessness, avoiding foreseeable harm in one’s intention, having a compassionate motivation, and using an agent to accomplish your goal. Also, if the defendant is overcome with honest remorse, guilt, or regret, he or she may be treated more lightly for the acknowledgement of the violation or transgression. Thus the style of the Vinaya, while enormously varied from page to page, is capable of great detail when outlining legal factors for consideration in a case.65

A Section from the Sutta-Piṭaka, the second basket of the Buddhist Canon, in a book called the Dīgha Nikāya or The Long Discourses of the Buddha. The Thirty-first section of this work is called the Sigālaka Sutta: To Sigālaka, Advice to Lay People.

[Exegesis: There is much material relevant to law in the rest of the Buddhist canon, a vast compendium of stories, philosophical explanations, detailed studies, lists and many other genres. Unlike the Vinaya sections above, these passages in the Sutta-Piṭaka always start with “Thus have I heard,” as they are meant to recount the act of listening to the Buddha and then reciting back what he said. The partial entry below is meant to provide social guidance to a young man about the best course in life and how he can tell good friends from bad. It has been termed, “Advice to Lay People” in several translations. A characteristic of the Buddha was the presentation of material in a manner that was most likely to be understood by the listener. Here, the layman presents the Buddha with a ritual to the four directions and thus the Buddha tailors his response in terms of that schema.]

“Thus have I heard.

Once the Lord was staying at Rājagaha, at the Squirrels’ Feeding Place in the Bamboo Grove. And at that time Sigālaka the householder’s son, having got up early and gone out of Rājagaha, was paying homage, with wet clothes and hair and with joined palms, to the different directions: to the east, the south, the west, the north, the nadir and the zenith.

And the Lord, having risen early and dressed, took his robe and bowl and went to Rājagaha for alms. And seeing Sigālaka paying homage to the different directions, he said:

‘Householder’s son, why have you got up early to pay homage to the different directions?’ . . . . [and the Householder’s son said]

‘Well, Lord, how should one pay homage to the six directions . . . ?’ . . .

[And the Buddha responded] ‘Then listen carefully, pay attention and I will speak.’

‘Young householder, it is by abandoning the four defilements of action, by not doing the evil from the four causes, by not following the six ways of wasting one’s substance – through avoiding these fourteen evil ways – that the good disciple covers the six directions and by such practice becomes a conqueror of both worlds, so that all will go well with him in this world and the next . . .

‘What are the four defilements of action that are abandoned? Taking life is one, taking what is not given is one, sexual misconduct is one, lying speech is one. These are the four defilements of action that he abandons.’ . . .

‘What are the four causes of evil from which he refrains? Evil action springs from attachment, it springs from ill-will, it springs from folly, it springs from fear. . . .

[And with respect to friends], the Teacher added:

‘Some are drinking-mates, and some
Profess their friendship to your face,
But those who are your friends in need,
They alone are friends indeed.

Sleeping late, adultery,
Picking quarrels, doing harm,
Evil friends and stinginess,
These six things destroy a man.

He who goes with wicked friends
And spends his time in wicked deeds,
In this world and the next as well
That man will come to suffer woe.

Dicing, wenching, drinking too,
Dancing, singing, daylight sleep,
Untimely prowling, evil friends,
And stinginess destroy a man.

He plays with dice and drinks strong drink
And goes with others’ well-loved wives,
He takes the lower, baser course,
And fades away like the waning moon.

The drunkard, broke and destitute,
Ever thirsting as he drinks,
Like stone in water sinks in debt,
Soon bereft of all his kin.

He who spends his days in sleep,
And makes the night his waking-time,
Ever drunk and lecherous,
Cannot keep a decent home.

‘Too cold! Too hot! Too late!,’ they cry,
Thus pushing all their work aside,
Till every chance they might have had,
Of doing good has slipped away.

But he who reckons cold and heat
As less than straws and like a man,
Undertakes the task in hand,
His joy will never grow the less.66

PART THREE

Buddhism spread throughout Asia, down to Ceylon (Sri Lanka), out to Burma and Thailand, up through Gandhara in northern Pakistan and Afghanistan, out along the Silk Route to Central Asia, to China and into Tibet. At every juncture there are interesting tales of transmission and translation that become part of the lore, mythology, and history of the introduction of Buddhism into a particular area. The enormous importance of Buddhism in Central and East Asia at the time is conveyed in mythic, historical narratives such as the one below that shows the value of a translation of a Buddhist text in 4th century China.

One of the most famous translators of Sanskrit texts into Chinese was Kumārajīva (344-409/413 CE), a monk from the Central Asian state of Kucha, an oasis that sat along the northern stretch of the Taklamakan desert in what is now northwestern China. It was an important resting point on the Silk route and a very large center of Buddhist study, reported to have over 5,000 monks. Tradition states that Kumārajīva was not only related to royalty, but also one of the most famous scholar-translators of his generation. This fact became known to a Chinese general, Lu Guang, who captured him and kept him as a hostage. Over the next eighteen years in confinement, Kumārajīva learned Chinese and began translating some of the Buddhist canon into that language. In 401 CE, an army finally defeated his

captors and managed to bring him to Emperor Yaoxing, ruler of the Latter Qin, at the capital Chang’an, today known as Xi’an. There he was anointed a National Treasure and asked to create a translation bureau to continue his translations, many of which are still considered authoritative today. One of his most famous translations is the Sarvāstivādin Vinaya or Ten-Category Vinaya of 61 fascicles that was completed in 404-409 A.D.

Part Three of this article is an initial discussion of the many other related Buddhist legal texts that are available inside as well as outside of the Buddhist canon. As the religion moved throughout Asia, these texts influenced hundreds of secular political and legal institutions. Sections in this Part include a discussion of the variety of legal materials in the Buddhist canon outside of the Vinaya that contain legal proscriptions for kings as well as commoners, and models of political and legal power. Secular law texts in some of these countries copied and were influenced by Buddhist law and at other times, secular institutions strongly regulated Buddhist institutions. Historically there was a much more fluid boundary between secular and Buddhist legal systems in many of the Asian states than commonly assumed. While the forms of Buddhism and Law remain very diverse, three different contextual patterns emerge rooted in geography and type of Buddhism and each of these patterns is discussed below with examples.

**Does The Rest of the Buddhist Canon Contain Legal Materials?**

There is a great deal of legal source material contained in the rest of the vast Tripatīka (Pali: Tipitaka), called the three baskets of the Buddhist canon. The Pāli Theravada edition is divided into two other baskets after the Vinaya, namely, the Teachings or Discourses of the Buddha, Sūtras (P: Suttas) or Sūtra-piṭaka and the Commentaries and Treatises, Abhidharma (P: Abhidhamma) or Abhidharma-piṭaka. There are many other passages throughout these two other divisions of the Tripatīka that point to correct and incorrect actions; two will be discussed below. Also, there are hundreds more canonical and non-canonical texts in other parts of Asia attributed to the Buddha or a famous Buddhist teacher that inform us about legal concepts, rules and ideas which will be discussed next.

According to most traditions, the Buddha expressed his attitudes on politics, laws, government institutions, leadership, social welfare and many other subjects, ideas that are also recounted in texts, proverbs, stories, sayings, and homilies. It is important to remember
that these statements were not commandments or injunctions presented with sanctions that
should be applied if violated. But they were oftentimes taken as injunctions in Buddhist
societies and by Buddhist leaders, such that following them made you a good ruler or person
and disobeying them a bad. Living in a society filled with people who were not following
these prescriptions made it harder for you as a Buddhist to gain merit and reach
enlightenment.

The passage cited above, the Sigalovada Sutta of the Long Discourses of the Buddha\textsuperscript{67} beginning “Thus has I Heard,” is one of the sūtras that gives the rules that pertain to lay
persons, often referred to as “The Layperson’s Code of Discipline,” or “Advice to Laypersons.”
The Sigalovada Sutta is so named because it describes the encounter of a young man named
Sigala with the Buddha in which he recounts several lists, such as the four defilements of
action that we know from the Vinaya–namely taking life, stealing, sexual misconduct and
lying. This is followed by the four causes of these evil actions–desire, hatred, ignorance and
fear–which is taken directly from the philosophical passages of Buddhist teachings.\textsuperscript{68} After
describing the six ways of ruining wealth (meant in every sense of the word)–drinking,
wandering the streets at night, going to theatres, gambling, bad company and laziness–the
Buddha goes on to discuss what a good person should do, and how she or he should act
towards their friends (partially excerpted above), wife, parents, teachers, workers and
ascetics. For example, the good Buddhist layman should commit to be generous, kind with
words, helpful, impartial and full of integrity to his friend; the friend should respond back by
being supportive, protecting wealth, providing shelter, being loyal and honoring his family.
This kind of reciprocal relation, providing a way to act as well as judge a relationship, is then
set out for all of the other relationships–wife, parents, teachers, workers, and ascetics. Again,
rather than presenting these as rules with sanctions or denouncing the actions of others,
here the Buddha is presented as simply outlining what a good layperson should do to be a
practitioner on the path of enlightenment he has set forth.

In several parts of the Dīgha Nikāya, the first of the five sūtras in the Sutta-piṭaka, the
Buddha outlines the origin of the world and society and how a good leader should rule.

\textsuperscript{67} Dīgha Nikāya
\textsuperscript{68} It is a basic Buddhist teaching that most evil actions are caused by the sets of mental conditions and emotions that drive
those actions.
Scholars such as Steven Collins and Andrew Huxley have argued that these passages present a social contract theory of political order or a set of specific guidelines for "the behavior of kings that constitutes a political philosophy." After citing several different sūtras, Rupert Gethin discusses the ten virtues of a good king (charity, moral restraint, generosity, honesty, gentleness, religious practice, good temper, mercy, patience and cooperativeness) and then concludes:

We should be cautious about reading a text . . . as preaching a Buddhist form of constitutional law and monarchy. Nevertheless, as Collins himself notes, the literary material found in the Sūtra-piṭaka provided resources that could be drawn on both to contest and justify military and political power, with the same text sometimes being used both ways. At the very least, the tales of kings and . . . [wheel-turning Buddhist kings] found in the texts of the Sūtra Piṭaka have been used by Buddhists to reflect on how a king should behave.

Historically, there is little doubt that many kings and leaders who either were or became Buddhists tried to fulfill these ideals, often much to the chagrin of their advisors, and that many Buddhist leaders who chose not to incorporate these ideas into their leadership style were judged very harshly.

**What kinds of other Buddhist legal texts are there?**

While the Vinaya is the primary source for formal Buddhist law, it was not used in some parts of the Buddhist world, it has been replaced in some, and quite different forms of it are employed in still others. But the basic ideas of this central legal text were often incorporated into both religious and secular legal documents. In some cases, the secular laws were directly influenced by, even copied from, Buddhist laws, in others the secular laws influenced interpretations of the Vinaya, at other venues, they were commingled into a wide variety of pluralistic legal systems and in still others, the secular legal system was primarily used to regulate Buddhist institutions. Most of the serious academic writing in this area

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70 The terms used here is cakravartins (P: cakkavattins).
71 See Rupert Gethin, "Keeping the Buddha’s Rules," in French and Nathan, Buddhism and Law; an Introduction Cambridge, Cambridge University Press, 2014, page 73-74. He also states, "But the classic example of the implications of the first understandings of dharma for kings is the story of Temiya, a young prince (a Buddha to be) who feigns dumbness in order to avoid becoming king and having to act as judge and condemn criminals."
questions the idea of a fixed separation between monastic and lay law. It is the task of the next several decades of scholarly work to look critically at the enormous variety of texts that exist in the historical and current Buddhist law world.

One example of legal texts that were drafted as Buddhism spread is local temple ordinances drawn up by the saṅgha of monasteries and nunneries for the operation of their temple or institution. In Tibet, these were called bca’yig and they existed in all but the smallest of monasteries or nunneries. In Sri Lanka, these internal temple ordinances were called kriyākāra; there were also legal regulations written not by the monasteries but by the secular government for the monasteries and nunneries. An example of this latter type of text is discussed by Jonathan Walters who has translated and described “a [twelfth century] act of monastic regulation recorded in stone by a powerful Sri Lankan Buddhist King ... flanked on either side by colossal Buddha images exquisitely carved from a single rock outcropping fifty-six meters long.” These proclamations were written by Sri Lanka Buddhist kings and they detail actual monastic legal regulations, as well as sanctions for not following these regulations. The purpose of these stone carved texts, still visible today, was for the secular government to impose legal rules on the monastics to keep them pure and following their own disciplinary rules.

Another area of textual development was commentaries, exegeses and treatises on the Vinaya. Two of the most famous are commentaries on the Pāli Vinaya, written by Buddhaghosa in the 5th century CE, that became dependable authoritative texts for secular judges and lawyers and were used for centuries throughout the Theravāda Buddhist world. Buddhaghosa was a brahman born in India who converted to Buddhism and then travelled to Ceylon and became the preeminent Pāli expositor. Andrew Huxley has written extensively on the use by Burmese jurists of both the Vinaya and the writings of Buddhaghosa to argue cases and craft secular legal rules such as the local law codes. But there was also a great

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72 These were called sāsana-katikāvata
74 The two Pali commentaries are the Samantapāsādikā and the Kānkhāvitarāṇi, of Buddhaghosa.
75 vinayadhara
76 The local law codes were called dhammasat (P: dhammasattha).
deal of interchange and variation in the historic Burmese legal courts. Christian Lammerts has stated that:

As the examples above demonstrate, monastic law during the seventeenth century [in Burma] was anything but simply commensurate with the dicta of the Pāli Vinaya. Nor was the relative jurisdiction of Vinaya- or dhammasattha-derived law uniformly articulated by the various materials we have surveyed. Rather, there was a considerable amount of variation in ideas about the authoritative textual sources of monastic law and the separation of distinct lay and monastic jurisdictions.77

He goes on to give one example of a case of monastic inheritance law in which the parties relied on secular law and another case of secular inheritance in which a law from the Vinaya was used. He aptly calls this process “jurisdictional and textual intermingling.”

**Basic Patterns of Buddhism and Law Throughout Asia**

Providing patterns of development throughout a large area over many hundreds of years is a task fraught with the dangerous likelihood of inaccuracies, serious errors and overbroad generalizations. Recognizing this as a caveat, the following overly broad observations are presented. The range of types of relations between Buddhism and Law correlate, not surprisingly, with previous scholarly assessments of the types of Buddhism that developed in different areas of Asia. It is also important to remember that Buddhism was extremely diverse and most areas had enclaves or mixtures with other types of Buddhism and with other religions as well.

*Buddhist Law in South and Southeast Asia*

Ceylon and Southeast Asia were the first sites of the transplantation of Buddhism from India into a foreign country. Scholars think that Theravādan Buddhism came to Ceylon (Sri Lanka) as early as the third century BCE when a monastery was established in the capital city of Anurādhapura and not long thereafter, a substantial part of the population had

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converted to the new religion. As a result, from this early point, “Sri Lankan jurisprudence had to accommodate Buddhist ideals as they exerted a powerful influence on the customs governing the relationships between the state and its subjects.” Sunil Goonasekera has further indicated that “[from this point, a strong identity developed between Buddhism, the Buddhist community and the state of Sri Lanka, which compelled the head of the state to protect, maintain and sustain Buddhism on the island.” 78 While Sri Lanka adopted Pāli Buddhism directly from the mainland, the process of transmission to Southeast Asia happened with the aid of the Ceylonese Buddhist community. It came, however, according to the late Andrew Huxley, as part of the “Pāli-Buddhist package,” that is, cultural, social, administrative, textual and religious aspects of Indian Buddhism were all adopted together. As he has described:

Three separate ethical and legal systems have coexisted in the area of Pāli Buddhist [Southeast Asian] society: Monks, kings and laity were each bound by their respective legal codes, known as Vinaya, rajādhamma and dhammasat. ... The rajadhamma developed from the royal courts and monasteries of Ceylon in the early centuries CE. Southeast Asia contributed the dhammasats from the twelfth century CE. Each of the dhammasats is a collection of rules, many of them reflecting local Southeast Asian wisdom traditions. Each is adorned with lists, stories, technical terms and other odds and ends from the Pāli scriptures, commentaries and manuals. The dhammasats also contain a few elements from Hindu law texts in the Manusmṛti tradition. ... The idea of topical law reports is borrowed from the Vinaya. ... By the sixteenth century, dhammasats and rajasat texts were being compiled from Laos in the north, down to Malaysia in the south, and from Phnom Penh in the east, to Akyab [far western Burma] in the west. 79

As Huxley explained, political power in Southeast Asia was maintained through this balance between the king, the saṅgha and the laity—a tripartite model of government. As a result, Buddhist texts and legal concepts played a foundational role in the development of the Southeast Asian state, both politically and legally.

Thailand currently is 90% Buddhist with a constitutional monarchy strongly supportive of monks and monastic institutions similar to the traditional Southeast Asian

Buddhist model. Benjamin Schonthal, who has written about the Sri Lankan governments relationship to Buddhism, stated of Southeast Asia:

In certain places, Pāli sources insinuate the dominance of political authority by describing the rights of kings to periodically “cleanse” (sodheti) local monastic fraternities of impious or heterodox monks. In other places, Pāli texts suggest the superiority of religious authority by describing monks as assessing the virtues, beneficence, and legitimacy of kings. ... In a way, these twin modes of religious governance may be seen as inflecting the legal regulation of Buddhism in modern nation-states with Theravādan Buddhist majorities. In modern-day Thailand, Laos, Cambodia, Myanmar/Burma, and Sri Lanka, laws pertaining to Buddhism consist of two types: One set of laws gives states powers to manage the conduct and wealth of Buddhist monks; another set of law obligates the state to protect the welfare of Buddhism generally.80

Buddhist Law in East Asia

After travelling up through Pakistan, Afghanistan and Central Asia, Buddhism was imported into China from approximately the first century CE, and from there, into the rest of East Asia. While several different Buddhist Vinayas made the journey along the Silk Route, the legal ideas encoded in the Dharmaguptaka-Vinaya have been arguably the most influential. It is important to remember however, that over time, as William Bodiford has pointed out, many other texts, especially apocryphal and visionary Mahāyāna texts, “present[ed] an approach to the precepts that differ[ed] from that found in the vinaya. ... [T]he Mahāyāna scriptures present universal precepts to be observed by all sentient beings, whether they are male or female, monastics of laypeople, humans or nonhumans (as long as they can understand human speech.)”82 Still in use today, the Dharmaguptaka-Vinaya, also called the “Four-Part Vinaya,” was first translated into Chinese in 405 CE by Buddhayaśas, another fascinating figure.

81 Other groups are thought to include the Mahiśāsakas, Kāśyapīyas, Mahāsāṃghikas and Sarvāstivādins.
Born in Kashmir in what is now northwestern India, Buddhayaśas was renowned for his astonishing memory and his recitation of full Buddhist texts. One of his pupils was Kumārajīva, mentioned above, who invited him in 408 CE to come to the Chinese capital of Chang’an to help with translations. Buddhayaśas, in collaboration with a Chinese monk, is credited with the translation of the Dharmaguptaka-Vinaya, the “Four-Part Vinaya,” as well as several other texts into Chinese.83

China presents an unusual case in the history of the transmission of Buddhism outside of India in that it had a written language, a law code and a fully established tradition of political and legal institutions long before Buddhism began to enter the culture. The conclusion of many scholars, that Buddhism played no part in the development of secular law in China, is belied by the mass conversion of the population to Buddhism in the fourth century and thereafter, the constant interactions thereafter between monks, monastic institutions and the administration of the various states throughout China for almost two thousand years. There are many hundreds of recorded state regulations throughout Chinese history concerning Buddhism84 as well as many emperors and warlords who announced that they were Buddhist and enforcing Buddhist laws.

Korea and Japan received much of the Chinese Buddhist tradition between the fourth and the sixth century CE including missionary monks, the establishment of monasteries, introduction of textual sources, commentaries, schools of Buddhism and monastic codes. The Four-Part Vinaya was initially adopted by monasteries in both Korea and Japan and retained historically by the Koreans but eventually dropped by most Japanese Buddhists in favor of other forms of religious law, often locally created. In Japan, the very first law codes included references to Buddhist institutions and the early courts counted the Vinaya as one of the six fields of learning. William Bodiford has stated, “In a startling move, the Japanese monk Saichō (767-822) fought for and succeeded in establishing a separate Tendai school of

83 T. H. Barret has stated, “This seems to have prompted both the undertaking of full Vinaya translations and also the nomination of monks to govern their own disciples as well as the Buddhist community as a whole. The former process resulted in the early fifth century in the production of no less than four written versions of the complete Vinaya in China at a time when it was still commonly orally transmitted in South Asia.” T. H. Barret, “Buddhism and Law in China: The Emergence of Distinctive Patterns in Chinese History,” in Rebecca Redwood French and Mark Nathan (eds.) Buddhism and Law: An Introduction, Cambridge, Cambridge University Press, 2014, page 206.

84 On this point, see Timothy Brook’s work “The Ownership and Theft of Monastic Lands in Ming China,” in French and Nathan, pages 217-233.
Buddhism that rejected the vinaya and conducted ordinations based solely on the Mahāyāna discourse scriptures. ... It is difficult to exaggerate how much Saichō altered the course of Buddhism in Japan. By rejecting ordinations based on the vinaya in favor of rituals derived from Mahāyāna precept discourses alone, Saichō implicitly dismissed any distinction between the laity and the clergy insofar as the bodhisattva precepts themselves admitted no such distinction."^85

_Buddhist Law in North Asia and the Himalayan region_

The third broad division of the transmission of Buddhism is to the North Asian and Himalayan region of Tibet, Mongolia and Bhutan where the Tibetan language *Mūlasarvāstivāda-vinaya* is still the law code for the monastic communities. Bhutan and Mongolia received the transmission of Buddhism primarily from the Tibetans who began the process of conversion by the 8th century CE. Tibetan history cites an early king sending scholars to Kashmir to create a syllabary and orthography for the Tibetan language. They brought back a written language but also many other organized, legitimating forms of knowledge such as texts and rituals from a universal religion, symbols, laws, reasoning, grammar and administrative institutions that deeply affected Tibetan society.

By the 13th and 14th centuries, Tibet had a particular political formation called “patron-priest” which meant that external patrons, usually a strong Mongolian warlord (including Qubilai Khan), became the military force backing a priest, a Tibetan Buddhist leader from a particular sect. Riding through the countryside to the capital, these external armies often laid waste to the land of Tibet and then placed their religious leader on the throne. As French has stated:

“The patron-priest relationship (T: *yon bdag mchod gnas*) became a central principle in Tibetan political ideology ... producing a distinctive historical pattern. The basis of this diarchy derives from the practice of the Buddha who gathered his disciples into a monastic unit that needed to be supported by local leaders and a lay population of believers. ... They were the “sun and the moon,” with the Buddha as the personal embodiment of religion and the king as the personal embodiment of political power.”^86

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Several law codes were drafted over a 100-year period of the 17th century that show influences from earlier Tibetan and Chinese law codes as well as Buddhism. In some, a long introductory encomium details the relationship between the “Sun and the Moon,” a Tibetan monk as the Buddha-like priest and the Mongolian leader as the lay patron. The last law code written during this period, the Ganden Podrang Law Code, was still in operation over three hundred years later in the 20th century and on the desks of the Tibetan High Court when the Chinese took the country over in 1959.

Vesna Wallace has written of the relationship between Buddhist law codes and the political system of Mongolia that began during the second conversion of the Mongols in the late 16th century. Their dual law system, the law of dharma and the law of the state, is described in historical texts as derived from India, coming to Tibet and then introduced by Qubilai Khan to Mongolia. The Mongolian law code texts during this early period also begin by paying extensive homage to the Buddha and the dharma. As she points out, the interdependence between the Buddhist monastic law codes and the state laws were most evident:

during the Bogd Khaan state when the attempt to make all members of society legally responsible for the conduct and moral condition of monks became a symbolic expression of the communal values of a Buddhist society. General disobedience of such law would result in disintegration of the Buddhist character of the Bogd Khaan’s state. On these grounds, the observance of the law was deemed to be one’s civil and religious duty.87

CONCLUSION

This is the first in a series of Law Review articles introducing Buddhist Law and its influence in Asia and the rest of the world, a new topic for academic legal literature in the US. The articles that follow will provide more information on the types of Vinayas and their contents, examples from various contextual settings in Asia, the actual rules that were established in different areas, how they influenced social systems in Asia, what and how Buddhist law fits into Anglo-American ideas of jurisprudence and philosophy and other issues. The use of two different types of writing in this article, both italic translations of actual Buddhist legal

materials and regular legal discussions and descriptions common to Law reviews, is meant to help the non-Asian lawyer adjust to the style of the legal texts and some of the concepts and ideas that underlie Buddhism and Buddhist Law.

Buddhist Law developed in the fifth century before Christ in the Ganges River plain in the forests, jungles and local villages of what is now northern India. The collection of casuistic stories and the resulting rules brought before the Buddha for decision became the Vinaya, the first section of the Buddhist canon and they remain the rules enforced within the community of his disciples today. The Vinaya is a system of socialization and social control that includes rules on dress, deportment, etiquette, general behaviors, manners, speech interactions, silence as well as rules on theft, murder, lying and sexual impropriety and accompanying social sanctions such as ostracism. As such, it is quite different from our current definition of law.

While there are many different Vinayas as a result of the splinter groups that veered off in different directions in the early centuries, almost all versions of the Law Code created for Buddhist disciples that have come down to us retain basic similarities in form and content. This article has employed a very specific version of the Vinaya, the Pāli Theravādan Vinaya and does not provide examples of the other types. There is also a great deal of other legal source material contained in the rest of the vast Tripaṭṭaka (Pali: Tipitaka), the Buddhist canon and hundreds of other texts throughout Asia attributed to the Buddha and famous Buddhist teachers that inform us about legal concepts, rules and ideas on a wide variety of topics in law and politics from leadership, to social welfare, and taxes. Buddhist populations take this advice very seriously as it affects their own possibility for merit making and advancement to enlightenment. Three different geographical types of Buddhist law are outlined to demonstrate the variety of historical and current forms.

The goal of this series of articles is to begin to increase our understanding of the basic concepts in Buddhist law to a level at least commensurate with our understanding of Christian law, Jewish law, Muslim law and Hindu law. There are reasons that we might falter a bit in trying to understand it. Buddhist law was devised as a set of rules and behaviors, both individual and collective, that reduce the possible instances of desire, ignorance and anger that can cause immoral actions. While rather strictly requiring good comportment in every aspect of a person’s life, it also emphasizes the basic Buddhist ideas of compassion, kindness,
trustworthiness, and many other attributes that distinguish good individuals and citizens. Besides the intrinsic interest of a wholly unknown legal system, this material is useful for comparative lawyers, international lawyers, scholars of public policy and anyone doing law in a former or current Buddhist country. And there is so much more to research needed such as Buddhist Law on women and nuns, how crimes compare with other countries and other religious codes, what the key jurisprudential concepts are, how Buddhist philosophy and ethics figure into the law codes, and many others.

And these law codes and legal systems represents a completely different and very subversive model of government, not just a path to enlightenment, by requiring the socialization of individuals, the strong sanctioning of social inappropriateness, the recognition of the need for religion in tandem with, as opposed to separation from, politics, and a reorientation of the purpose of government. This set of rules for spiritual guidance, loaded with concrete legal norms, constitutes a profound attack on our current orthodoxy in law-and-religion scholarship and is meant to provoke new conversations.