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RESEARCH ARTICLE

Judging in the Buddha's Court: A Buddhist Judicial System in Contemporary Asia•

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Abstract

Drawing on textual and ethnographic research conducted over the last five years, this article analyses an important genre of judicial practice in South and Southeast Asia that has been almost entirely ignored by socio-legal scholars: Buddhist systems of judging. Using the judicial system of one monastic group in contemporary Sri Lanka as a case-study, it argues that Buddhist judging requires more than just the internalization of moral principles, as is often assumed. According to Buddhist (monastic) principles of judging, legal *procedures*—similar to those used in state legal settings—are equally essential. These procedures govern everything from making legal complaints, to the structuring of trials, to determining jurisdiction, and many other topics. By examining Buddhist judicial systems, this article not only casts new light on the pluri-legal landscape of Asia; it also offers new reflections on the intersection of religion-based and state-based systems of law in the contemporary world.

Keywords: Buddhism; law; judges; courts; South Asia; Southeast Asia

1. Introduction[1]

A popular story about judging circulates widely across South and Southeast Asia. Although told in different ways, the story centres on a dispute between two women, each claiming to be the mother of the same young child. Eventually, the dispute ends up in a royal court, where it comes to the attention of a famous judge, who proposes to resolve the matter in an unusual way: asking one woman to hold the child's arms and the other to hold its legs, he instructs the two disputants to pull as hard they can, announcing that whoever wins the tug-of-war will be declared the mother. When one of the women refuses and begins to cry,

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[1] Unless otherwise specified, the non-English terms contained in this article are Sinhala and transliterated according to the standard guidelines outlined in Gair & Karunatilaka (1976), with the exception that I use *ae* instead of *ä* to transliterate ඇ and *aeae* instead of *ä̆* to transliterate ඈ. Where the original language may be unclear, I employ the following guidelines: "S:" indicates Sinhala and "P:" indicates Pāli. As with many Buddhist texts, the Sinhala texts cited below contain few grammatical stops or other types of punctuation. To assist with clarity, I have added punctuation marks to the translations. Interpolated punctuation marks appear in the text below inside of brackets.

the judge determines her to be the rightful mother. This story—which has striking parallels to a tale of Solomonic judgment in the Hebrew Bible[2]—can be traced to a genre of early Buddhist texts that describe the past lives of the Buddha. In that version of the story, the skilful judge turns out to be none other than the Buddha himself, in a previous incarnation.[3]

Stories of wise judges can be seen throughout the Buddhism's long and diverse textual tradition. Sometimes, the judge is the Buddha or the Buddha-to-be. Other times, the person judging is a learned monk or pious king. Drawing on these and other texts, some modern jurists and scholars have sought to identify a Buddhist theory of judging or (as it is more commonly referred to) "Buddhist jurisprudence." For the most part, these theories focus on the moral and affective features of adjudicators, identifying important qualities that jurists ought to possess.[4] What distinguishes Buddhist jurisprudence from other types of jurisprudence in these analyses are the ethical dispositions that judges are supposed to have: uniquely Buddhist virtues, such as equanimity, wisdom, compassion, and knowledge of the Buddha's teaching. Thus, when law-makers and legal theorists in Thailand speak about Buddhist jurisprudence—to take one example—they speak most often about the internal characteristics that ought to motivate those who implement and interpret law, such as the tenfold morality associated with virtuous Buddhist kings (P: *dasa-rāja-dhammā*, Thai: *totsapitrājadhammā*): charity, morality, generosity, honesty, forbearance, piety, restraint, non-violence, patience, and non-aggressiveness.[5]

These theories of Buddhist judging qua Buddhist jurisprudence do not exhaust the depictions of judging that one finds in Buddhist history. Although Buddhist texts frequently praise judges for their virtues, one should not reduce Buddhist conceptions of judging to theories of "virtue jurisprudence."[6] Equally important in the history of Buddhist judging are institutions and procedures designed not for influential laypersons, but for the Buddhist monkhood (the *saṅgha*)—a community of full-time ascetics who are thought to preserve and embody the Buddha's teaching. While details of these procedures do not feature prominently in the story literature that dominates the popular observance of Buddhism in most parts of Asia, they can be seen clearly in Buddhist literature that is addressed to monks.[7] This literature includes the important and frequently studied Vinaya Piṭaka ("Basket of Discipline")—a section of the Buddhist "canon" dedicated to explaining the norms of monastic life.[8] Yet it also includes a range of lesser-studied but equally influential

[2] 1 Kings 3:16-28; Lasine (1989).

[3] "Mahosadha Jātaka," in Fausbøll (1880), pp. 14–16.

[4] Consider the following formulation, for example: "The Buddhist approach to jurisprudence cannot really be separated from the Buddhist understanding of human psychology (especially motivation and intention), from its conception of the relationship between the individual and society, or from its vision of human possibility: what a good life is, or can be." Loy (2009), p. 1242.

[5] Mérieau (2018); Tonsakulrungruang (2019).

[6] Farrelly & Solum (2019); Solum (2003).

[7] Although the Buddhist *saṅgha* has historically consisted of men and women, monks and nuns, most (but not all) government officials and senior monks in South and Southeast Asia believe, for complex reasons, that the true lineage of Theravāda Buddhist nuns has died out. This attitude is common in Sri Lanka, from which the major case-studies in this article derive. As the texts, practices, and institutions that I examine here are directed at male monastics rather than female ones, I frame my argument using male pronouns and the gendered noun "monk." This should not be interpreted as discounting the important roles played by Buddhist nuns historically and in the present. Moreover, I suspect that most of the observations made about monastic judging can also be made about practices of judging among nuns and other groups of Buddhist renunciant women, such as ten-precept mothers (*dasa-sil mātā*) in Sri Lanka or precept-followers (*thila shin*) in Myanmar. On the controversies concerning the status and legacy of female renunciants in Buddhism, see the following sources: Anālayo (2013); Lindberg Falk & Kawanami (2017–18); Heirman (2019); Salgado (2019); Schonthal (2017–18); Seeger (2008); de Silva (2016).

[8] Scholars regularly argue over the validity of the term "canon" as it applies to Buddhism. I use this English word to translate the Pāli term *tipiṭka*, meaning 'the three baskets' or sections, which has generally been used by Buddhists to refer to those key texts that are thought to contain authoritative accounts of the Buddha's own words (*buddhavacana*). On the category and its uses, see Collins (1990); Lammerts (2018), pp. 137–46.

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modern texts—including monastic handbooks, rulebooks, and "Constitutions" (see below)—composed by and for monastic groups living in contemporary Asia.[9] Viewed through this body of monastic literature, Buddhist notions of judging have a much wider compass than is commonly assumed. More than just virtue jurisprudence, Buddhist judging requires a whole range of procedural features—institutions, systems, and protocols—for ensuring that judgments are made in consistent and impartial ways.

Viewed from this second perspective, and through this second type of text, Buddhist judging appears to be more than an internal, cognitive practice of drawing on Buddhist values to adjudicate disputes. It is, rather, a comprehensive *internal* and *external* system of principles and processes used to categorize cases and arrange trials, allocate authority, and regularize inquiries. Buddhist judging in this sense denotes not only a mode of jurisprudence, but also a fully fledged *judicial system*—one that has striking similarities to the judiciaries of modern nation-states. These Buddhist judicial systems can be seen throughout modern Asia, wherever one finds communities of Buddhist monks. They play an especially important role in places like Sri Lanka, Thailand, Laos, Cambodia, Bhutan, and Myanmar, where Buddhist monks comprise a major part of the population.[10]

In this article, I look closely at Buddhist judicial systems as a way to give scholars a more complete view of the multiplex structures and concepts of judging in contemporary Asia. While monastic judicial systems can be seen throughout the region, this article adopts a detailed case-study approach, preferring comparison from the inside out—using an exemplar case to think about broader patterns—rather than a wider survey of all examples. Given that there is almost no in-depth research about monastic judicial systems in contemporary Asia,[11] the microcosmic approach provides socio-legal scholars with a much-needed portrait of how a Buddhist judicial system functions while also providing insights into the historical, cultural, and political forces that shaped the development of Buddhist judging over time.

The Buddhist judicial system I examine below is that of the second-largest unitary monastic fraternity in Sri Lanka: the Rāmañña Nikāya.[12] Over the last five years, I have studied this system using a wide variety of textual and ethnographic sources: published and unpublished legal documents, lineage histories, and behavioural guidelines written by

[9] As one example of the accuracy of this claim that these modern texts play a similarly important role in the lives of monks, consider the results of a recent survey of 1,669 *bhikkhus* in Sri Lanka that I led between 2017 and 2018: virtually the same percentage of respondent monks reported that they had "referred to" (S: *pariśīlanaya karanavā*) the Vinaya Piṭaka within the last month as reported that they had referred to a monastic "handbook" (S: *atpot*): 33% and 31%, respectively. This was a major island-wide representative survey with in-proportion sampling from all major monastic fraternities and provinces, as well as representation from urban and rural areas and across ages. I designed and conducted the survey in Sinhala with the help of an experienced survey team, with enumerators located throughout the country, as well as with considerable advice from academic and monastic colleagues in Sri Lanka. Surveys were anonymous and private. They were handed out to monks at their home monasteries in sealed envelopes; and they were collected on the same day or very soon after. Several rounds of pre-testing and piloting, as well as training, occurred between June and July 2017. Surveys were distributed and collected in all provinces between July and October 2017, with data entry running from November 2017 to March 2018. The survey is part of a major study that I am conducting on the lived practices of monastic law in contemporary Sri Lanka. Publications that analyze this data will be forthcoming soon.

[10] In contemporary Myanmar, for example, there are nearly half a million Buddhist monks—approximately one monk for every 100 Buddhist laypersons. As a rough comparison, this is approximately ten times more than the number of Catholic priests per devotee in the Catholic-majority countries of Europe. Crosby (2014), p. 198; Holy See Press Office (2017); Mourao (2011).

[11] Two important exceptions are: French (2002); Ashin & Crosby (2017).

[12] By fraternity, I mean a monastic group that traces its origins to the same lineage of monastic succession; participates in the same collective ritual actions (P: *saṅgha kamma*); considers itself as a single, unitary body; and identifies the same temple as its "headquarters" (S: *madhyasthāna*). Scholars often state that Sri Lanka's monastic community can be divided into three fraternities: the Siyam, Amarapura, and Rāmañña Nikāyas. However, the first two of these are divided into federated units that identify as distinct "chapters" (S: *parśva*) or "monastic councils" (S: *saṅgha sabhā*), or even "fraternities" (*nikāya*). On the *nikāya* generally, see Schonthal (2017), pp. 723–4.

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jurist monks within the fraternity (in Sinhala and Pāli languages); interviews with key monastic and lay legal officials; large-scale surveys of Buddhist monks; and observations from training workshops organized for monastic judges within the Rāmañña fraternity. While this article is informed by all of these sources, it engages most closely and directly with a particular set of normative texts produced by and for monastic judges (S: *anuvijjaka*). Those texts provide a detailed blueprint for how the Rāmañña judicial system should be organized and how monastic judges ought to behave.

By analyzing these (and other) sources, I show that, for at least some Buddhists in modern Asia, proper Buddhist judging requires much more than just pious motivations. It requires things like codes of conduct for litigants and standardized protocols for giving evidence, hierarchies of judicial officials and procedures of appeals. In short, Buddhist judging also requires well-defined legal procedures; and those procedures ensure that monastic judges and judgments will be viewed as fair, authoritative, and legitimate. This, in turn, suggests that Buddhist judging, as practised by monastic communities around Asia, is not as aloof from or alien to 'secular' conceptions of judging as some theories of Buddhist-virtue jurisprudence might suggest. That is, even if the goals or virtues of adjudication differ between state legal regimes and Buddhist ones, similar notions of procedural fairness and systematicity are integral to both.

2. Judging Buddhist Disputes

Like other systems of religious law in the contemporary world, the judicial systems of Buddhist monks in Asia interact with state law in varying ways. In some contexts—Myanmar, Thailand, and Bhutan, in particular—Buddhist monks have access to monastic judicial systems that are officially recognized and/or administered by the state. While these official Buddhist courts do not displace completely more traditional procedures of dispute resolution that take place within monasteries,[13] they do provide a decisive venue for addressing significant disputes among monks that cannot be resolved by their immediate community of peers. These tend to include: disputes over the use and distribution of *saṅgha* properties (such as paddy land and temples); quarrels over which monks ought to be given prestigious and powerful positions; controversies over the proper interpretation of Buddhist doctrine; and arguments about whether a monk has or has not violated the *saṅgha*'s stringent behavioural code. For example, when serious disputes arise over Buddhist doctrine in Myanmar that cannot be resolved within the monastery, those disputes can be referred to a government-appointed monastic tribunal, at either the regional or the national level.[14] Where major accusations of heresy or "monastic malpractice" are involved, Myanmar's State Sanghamahanayaka Committee (which is appointed by the government to oversee the monastic community) will convene a special national "Vinicchaya Court" to hear the matter.[15] Similarly, in Thailand, disputes between monks that cannot be handled at the local level may be dealt with in monastic tribunals that come under the jurisdiction of the state's official monastic body: the Supreme Sangha Council.[16] A comparable system can also be found in contemporary Bhutan.[17]

These systems of officially sanctioned monastic courts represent the exception rather than the rule. In most Asian countries, as well as most countries outside the region, governments do not officially recognize or sponsor Buddhist monastic judicial systems, meaning that the determinations made by monastic judges cannot be enforced by the

[13] On the procedural rules governing disputes in the Vinaya, see Schonthal (forthcoming).
[14] Tosa (2013).
[15] Ashin and Crosby, *supra* note 11.
[16] Borchert & Darlington (2017–18); Tonsakulrungruang, *supra* note 5.
[17] Whitecross (2013), pp. 124–8.

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police or other state authorities. Although Sri Lanka is a Buddhist-majority country with a national Constitution that obligates the government to "protect and foster" Buddhism, Sri Lanka's legal environment follows this second system.[18] While Sri Lanka's state-court judges acknowledge the existence of a monastic judicial system as a factual reality, they do not treat the decisions given by Buddhist monastic judges as authoritative sources of law nor as legally binding precedents that state courts are obliged to follow. At the same time, long-standing doctrines in Sri Lankan case-law prohibit state-court judges from intervening in disputes over specifically "ecclesiastical" matters such as Buddhist teachings or monastic discipline, which are deemed to be entirely "spiritual" in nature and therefore beyond the competence of state judges.[19]

This is not to say that state and monastic courts are completely isolated from each other. Some state-court judges treat monastic-court decisions as important evidence or advisory opinions when ruling on a dispute. Moreover, state courts admit routinely cases where "spiritual matters" mingle with "temporal" ones, as in the frequent cases of disputes concerning the guardianship, use, and transfer of property that has been entrusted to monastic groups.[20] Today, Sri Lanka's civil courts regularly hear property disputes, often between two monks, concerning the guardianship or use of monastery-owned rental lands, buildings, or even sacred relics.[21] So common and complex are these disputes that an important statute (called the Buddhist Temporalities Ordinance) and entire body of case-law (referred to as Buddhist Ecclesiastical Law) have evolved to address them.[22] In almost all cases of this type, the disputes are first heard by monastic judges in the Buddhist judicial system and then appealed to the civil courts by a disputant who receives an unfavourable judgment.

This means that, in Sri Lanka, as in other places, Buddhist monastic fraternities must design and oversee their own in-house rules of conduct, procedures of adjudication, and conventions of punishment through which they can effectively manage disputes concerning not just property, but also Buddhist teachings, discipline, monastic comportment, membership, and a variety of other matters. Moreover, because the state courts do not recognize most of these issues as falling within the jurisdiction of lay judges (being purely "spiritual" in nature), this legal system must also be able to deliver judgments that appear acceptable and legitimate to the monastic litigants in the absence of any threat of enforcement by police. Therefore, the design of contemporary monastic judicial systems in Sri Lanka (and in other countries where there is no state-backed monastic system) should not only align with principles of fairness and truthfulness taken from Buddhist texts, but also be structured so as to discourage monastic parties who receive unfavourable decisions from ignoring those decisions or, more disruptively, relitigating the "temporal" aspects of the issue in state courts whose judgments *are* backed by coercion.

[18] On the status of Buddhism in Sri Lankan constitutional history and practice, see Schonthal (2016a).

[19] This was a rubric established in English common law in the case of *Middleton v. Crofts* (1736) and then applied to religious groups, including monks, starting in the British colonial period. For its specific application to Buddhists, see *Sumangala Unnanse v. Dhammarakkita et al.* (1908) heard in the Colombo District Court, 11 NLR 360.

[20] Following legal precedents in the UK, British colonial legislators introduced the binary of "spiritual" versus "temporal" to Ceylon (the island's name until 1972) in the early nineteenth century to determine the limits of legal jurisdiction as it applied to all religions. Consider, for example, the many ordinances drafted to regulate the "temporal affairs" of churches, such as Ordinance No. 12 of 1846, *An Ordinance to Regulate the Temporal Affairs of the Episcopal Churches in the Island of Ceylon*. Government of Ceylon (1938), pp. 162–9. By the end of the century, a *Buddhist Temporalities Ordinance* (No. 3 of 1889) governing the "temporal" affairs of Buddhist monasteries appeared. On the history and effects of this ordinance as it applied to Buddhist monasteries and sacred sites during the colonial period, see de Silva (2018); Kemper (1984); Rogers (1987).

[21] For a good collection containing some of these cases, see Weerasooria (2011).

[22] On these bodies of law generally, see Schonthal (2014).

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These concerns are not hypothetical. Monastic disputes migrate frequently from monastic tribunals to state courts in Sri Lanka, with disputants translating Buddhist legal arguments into the language of public and private law in order to make their case justiciable by state courts. In one widely publicized case, for example, a monk rejected directives given by senior monastic officials declaring that driving automobiles was forbidden according to monastic law; he then filed petitions in the Court of Appeals (and eventually the Supreme Court) arguing, among other things, that forbidding monks from driving violated their constitutional rights to equality under the law.[23] There are many other cases in which monks go to civil courts when they feel that the monastic judge (or other senior monastic official) has unfairly awarded the abbotship of a monastery to an undeserving monk. One lawyer who litigates these cases regularly estimates that approximately 30–40 cases like this may be pending in the island's civil courts in any one year.[24] These sorts of legal affairs—which seem to be occurring with increasing frequency[25]—underscore the importance for monastic fraternities of making sure that their in-house legal structures, and particularly their procedures and norms for making judgments, are perceived as legitimate by the monks who adhere to those fraternities.[26]

3. Judging Buddhist Disputes

Given this situation of legal precarity, Sri Lanka's monastic groups have continued to develop and refine their own judicial institutions for resolving disputes. These institutions, mostly referred to as monastic courts (*saṅghādhikaraṇa*), build upon the principles taken from the Vinaya Piṭaka and other Buddhist legal texts and add to them new protocols that the Vinaya does not mention.[27] Contemporary monastic groups have designed judiciaries, created curricula for training monastic judges, and drafted explicit procedures for making complaints and holding hearings. The largest fraternity in Sri Lanka, the Malvatu Branch of the Siyam Nikāya, for example, has established a judicial council (*adhikaraṇa saṅgha sabhāva*) to manage disputes among monks. That council is appointed by the Executive Committee (*kāraka sabhāva*) of the fraternity and headed by a Judicial Chief (*adhikaraṇa nāyaka*). The judicial council deals with matters on a case-by-case basis and is called upon when local abbots or regional monastic leaders cannot resolve a dispute themselves. To involve the judicial

[23] The case in question is *Venerable Dr. Paragoda Wimalawansa Thero and Others v. Commissioner of Motor Traffic*, case number SC 84/2007 (SC/Sp.LA/ 240/2007, CA Writ. App. 1978/2004); for an examination of the case and its background, see Schonthal, *supra* note 18, pp. 188–215.

[24] Interview with lawyer who specializes in monastic property disputes, 17 December 2014.

[25] Schonthal (2016c).

[26] Although they receive special administrative and financial support from Sri Lanka's Department of Buddhist Affairs, monastic fraternities are treated as "voluntary associations" for the purposes of civil court cases, meaning that their laws cannot be enforced on members, who are free exit at any time. For an early affirmation of this status, see *Dharmapala Unnanse v. Sumana Unnanse et. al.* (1907) 3 Bal 260. Monks are trying to change this status through Parliament and, among other things, gain statutory recognition for their systems of law. In making their case, they frequently point to the fact that the Sri Lanka government officially recognizes a separate system of Muslim personal law and largely accepts the decisions of Qazi Courts over matters of marriage, divorce, and inheritance. On this trend as well as the status and facets of Muslim legal institutions in contemporary Sri Lanka, see Schonthal (2016b); Schonthal, *supra* note 7.

[27] In this article, I use the phrase "the Vinaya" to refer specifically to the Pāli Vinaya Piṭaka, which predominates among Buddhist monastic groups in Southern Asia, most of whom follow the Theravāda tradition of Buddhism. The Pāli Vinaya is one of six complete versions of the Vinaya Piṭaka that have survived from the ancient period and one of three versions that is still used by Buddhist monks today. (The Dharmaguptaka Vinaya is used in East Asia and the Mūlasarvāstivāda Vinaya is used in Tibet and Mongolia and in some parts of Japan.) While the Pāli Vinaya Piṭaka plays a central role in the monastic legal practices of Theravāda Buddhist monks, it does not encompass the entirety of Buddhist monastic law as it is practised today. On the nature of the Vinaya Piṭakas as law, see Kieffer-Pülz (2014). On the diversity of Vinaya Piṭakas, see especially Clarke (2015).

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council, regional monastic officials must write formal appeals to the Executive Committee, which are then reviewed by the Judicial Chief each month. If the case is deemed significant, the Judicial Chief can appoint a subcommittee of the judicial council, consisting of two, three, or four members. Those monks review the case at the fraternity's headquarters in Kandy. Several hundred petitions may be received in a given year, not all of which are given hearings.[28]

The Malvatu method for processing and judging monastic disputes builds upon the fraternity's existing hierarchy of leadership, concentrated within an executive council, which is located at the fraternity's headquarters in the ancient royal capital of Kandy. Rather than a routinized system of lower and higher courts, the Malvatu dispute-resolution system relies, in the first instance, on the authority of more senior monks within a monastery or regional area to settle disputes among less senior monks. Only when those interventions fail does the judicial apparatus kick in. The Malvatu judicial system therefore is premised on and rooted in firm notions of hierarchy, in which power spreads from, but remains centralized in, the monastic leadership in Kandy. This hierarchical and centralized concept of judging echoes the pyramidal structure of contemporary courts, yet it likely takes its original inspiration from similarly hierarchical and centralized institutions of justice that can be found in the Kandyan kingdom in the eighteenth century, during the fraternity's formative period of growth. In the same way as Kandyan legal authority radiated outwards from the king's palace, so too does Malvatu judicial authority radiate from the fraternity's major monastery.[29] Thus, rather than the judicial committee hearing its cases in the regions where the dispute occurred, litigants must travel to the fraternity's headquarters in Kandy for a hearing. Similarly, the Malvatu's main institutional guidelines (*katikāvata-s*)—referred to by many as the fraternity's "Constitution" (*vyavasthāva*)—require that regional head monks (*pāḷāt nāyaka-s*) convey all dispute-resolution decisions to a central Executive Committee in Kandy for confirmation (*sthira karanu*).[30]

The Malvatu model for a monastic judicial system is not the only model in use in contemporary Sri Lanka. There are over 30 officially recognized monastic groups on the island, with membership ranging from over 6,500 monks (as in the Malvatu) to fewer than 100 in the smallest fraternities.[31] Many of these groups—in some cases working together in federated units—administer their own systems for managing disputes, and their own hierarchies and procedures for arriving at authoritative decisions. Of these various monastic legal systems, one of the most developed and complex is that of the Rāmañña Nikāya, the island's second-largest unitary monastic fraternity, with approximately 4,000 monks, accounting for nearly 20% of the island's total monastic population.

The sophistication of the Rāmañña Nikāya judicial system plays an important role in the fraternity's history and its thriving alongside the island's other monastic groups. The Rāmañña Nikāya is one of the younger monastic groups on the island, being officially founded in 1864 by monks who broke away from the dominant fraternities at the time.[32] Whereas older groups, such as the Malvatu fraternity, received large donations of land from kings and other aristocrats prior to the nineteenth century, the Rāmañña group has tended to rely on comparatively smaller donations of money, food, and properties from lay supporters—donations on which they, like all monastic groups, must rely for sustenance and security.[33] Adding to these relative challenges in acquiring material

[28] Interview with deputy prelate of the Malvatu fraternity, 30 July 2016.

[29] See e.g. D'Oyly (1833), pp. 221–48.

[30] Malvatu Chapter of the Siyam Nikāya (1984), 10, §9.7.

[31] These numbers come from a document obtained from the Department of Buddhist Affairs in 2013, entitled *vihārasthāna hā bhikṣūn vahansē saṅgaṇanaya*, Census of Bhikkhus and Temples.

[32] Malalgoda (1976), pp. 161–72.

[33] The exceptions here are large, wealthy monasteries with vast landholdings that can rely on rents and other investments for financial support. However, even those institutions rely on lay offerings of meals to feed monks.

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support is the fact that the Rāmañña Nikāya was formed, in part, as a protest against caste discrimination in other monastic groups. This meant, at least initially, that the fraternity could not rely on traditional networks of wealth and social status in order to attract and sustain essential lay support. Instead, they often had to appeal to the religious sensibilities of would-be donors and therefore to maintain a very high standard of discipline, learning, and piety among its monks. A sophisticated and effective judicial system appears to have played an important role in this process.

4. The Rāmañña Nikāya Judiciary

Like the Malvatu fraternity, the Rāmañña Nikāya has a "Constitution,"[34] promulgated by the fraternity's founders in the 1860s and amended multiple times since then.[35] This Constitution outlines the procedures, structures, and requirements for judging disputes. The current version of this Constitution, which runs to 235 pages (including appendices), situates the Rāmañña judiciary within a broader system of monastic governance, which includes a set of 47 Regional Sangha Councils (*prādēśika sanghasabhā*), an island-wide Administrative Sangha Council (*pālaka sangha sabhāva*) with representatives from all the regional councils, and a 14-member Executive Committee (*kāraka sabhāva*),[36] headed by a Great Leader (*mahānāyaka*) in which the "executive power" (*vidhāyaka balaya*) of the fraternity is vested.[37]

The general structure of the current Rāmañña judicial system is laid out in Chapter Twelve of the Constitution, entitled "The Position of District Judge, Judicial Councils and the Composition of their Duties." Here, the text prescribes a multi-tiered system of courts (*adhikaraṇa*-s) arrayed from the regional to the national level, each with its own jurisdiction as well as appropriate procedures of appeal for escalating cases. The entire system is overseen by a Judicial Chief (*adhikaraṇa nāyaka*), appointed by the Great Leader of the fraternity in consultation with the Executive Committee, who has at least 20 years of experience as a judge in the Supreme or High Courts (see below) along with a Chief Judicial Registrar (*pradhāna adhikaraṇa lekhakādhikāri*) and a Deputy Judicial Registrar, who deal with the everyday administration of the system.[38] Generally speaking, the Judicial Chiefs are very senior monks who serve for as long as they are capable or—as has been the case for three out of the four most recent Judicial Chiefs—until they become the Great Leader of the fraternity.[39]

At the lowest level are a network of approximately 50 Regional Judges (*prādēśika anuvijjaka*) who are chosen by the Executive Committee from among the members of the Administrative Sangha Council. The Constitution charges Regional Judges with "taking suitable steps for resolving and settling issues that are causing disagreements and disputes" and, if they cannot settle those issues themselves, to assist a Regional Judicial Committee in coming to a settlement.[40] Regional Judicial Committees are temporary bodies consisting of three Regional Judges appointed by the Judicial Registrar for the purpose of resolving a particular case. The Constitution presents the duties of Regional Judges as part-lawyer, part-magistrate. In their lawyerly role, they are responsible for "helping litigants in the region, both the accuser and accused, in

[34] As with the Malvatu text, the Rāmañña Constitution has the formal title of "convention" or "guidelines" (*katikāvata*) but is regularly referred to as the fraternity's "Constitution" (*vyavasthāva*).

[35] In the current version the Rāmañña Constitution, the Administrative Sangha Council (*pālaka sangha sabhāva*) retains the powers to amend and ratify updated versions of the Constitution. This group is described in the main text below.

[36] The size of these representative bodies and this Executive Committee has grown over time.

[37] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā (2015), p. 50, §69(i).

[38] *Ibid.*, p. 76, §109(i–ii). The Judicial Chief is also a member of the Executive Committee.

[39] Mātatē Dhammakusala (2001), pp. 32–3.

[40] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā, *supra* note 37, p. 90, §130(ii).

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making accusations—drafting an accusation paper (*cōdana patriyak*)—and drafting petitions responding to and appealing accusations."[41] In their judge-like role, they are required to offer solutions for the conflicts themselves or implement formal "legal decisions" (*adikaraṇa tīraṇa*) issued by higher courts.[42]

The two-sided role of Regional Judges conforms with prototypes taken *both* from the Buddhist law and state law. On the one hand, the role of Regional Judges is modelled on the role of examining judges (*anuvijjaka-s*) described in parts of the Vinaya Piṭaka.[43] On the other hand, as several monastic judges affirmed to me during interviews, the activities of Regional Judges also align closely with the work of regionally based dispute-resolution bodies functioning under the Ministry of Justice in Sri Lanka called "Mediation Boards" (*samatha maṇḍala*). Like the Regional Judges in the Rāmañña judicial system, these boards consist of local citizens, generally retired professionals, and aim to resolve disputes both by facilitating a debate and by urging the disputants to accept shared principles of justice.[44]

When Regional Judicial Committees preside over a case, the event is referred to as a Regional Court (*prādēśikādhikaraṇaya*). The Rāmañña Constitution gives these courts the following mandate:

> Examining, formulating a settlement (a peace) and implementing the required remedy (*piḷiyam*) for that settlement as it relates to any accusations (*cōdanā*) other than *uṭṭhāgāminī* and *chēdyagāminī* offenses [the two most serious types of monastic offences] or disagreements arising between monks or between monks and donors (*dāyakas*), or monastic teachers and monastic students concerning personal property or properties belonging to the triple gem [i.e. Buddhist institutions]; as well as any other matters that fall within the above-mentioned category as decided by the Chief Judicial Registrar on instruction to the Deputy Judicial Registrar.[45]

The jurisdiction (*bala sīmāva*) of the Regional Court and Regional Judges, like that of Sri Lankan Mediation Boards, therefore, covers comparatively minor disagreements. According to the legal framework of the Vinaya Piṭaka, these would also be disputes relating to small disciplinary offences that do not need to be examined or rehabilitated in front of the entire monastic community.[46] For example, these disputes might involve accusations that one monk transgressed a minor disciplinary rule (such as misbehaving in public) or might emerge from personality clashes among two or more monks. When a hearing is held, the relevant monks and judges gather at an "adjudication site" (*viniścaya sthānayak*) that has been agreed upon by all parties and the Executive Committee.[47] Given that minor disagreements can often be handled informally by temple prelates, most Regional Judges do not hear many cases. However, members of the Rāmañña judiciary have recently discussed the possibility of expanding the powers and influence of the Regional Judges so that they would be able to handle more significant cases that, at present, are heard by higher courts.[48]

[41] *Ibid.*, p. 90, §130(iii).

[42] *Ibid.*, p. 90, §130(iv).

[43] Schonthal, *supra* note 13, Section VI and following.

[44] For an ethnographic example of how these bodies work, see de Silva (2006), pp. 154–7.

[45] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā, *supra* note 37, p. 92, §134(i). The court is also responsible for recording the decision and sending it to the Deputy Judicial Registrar of the Nikāya, who then sends copies to the parties as well as other "relevant regional monastic Judges." *Ibid.*, p. 92, §134(iii).

[46] By "small offences," I am referring to those offences that, according to the technical reasoning of the Vinaya, do not need to be managed through "communal legal actions" or *saṅghakamma-s*. For more on these legal actions, see Schonthal, *supra* note 13.

[47] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā, *supra* note 37, p. 90, §131(i).

[48] This was discussed at a meeting of monastic judges that I attended in December 2018.

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Above these Regional Courts sits a High Court (*jyeṣṭādhikaraṇaya*) consisting of three Senior Judges (*jyeṣṭānuvijjaka*), selected from a panel of 21 such officials. Like the Regional Judges, the Senior Judges are selected by the Executive Committee from the Administrative Sangha Council based on their experience and learning. The Constitution gives the High Court the following powers:

> To settle, give decisions (*tīraṇa*) and administer the punishments prescribed in the Vinaya and, in this constitution, for transgressions relating to complaints (*paemiṇili*) involving: the control of movable and immovable property belonging to the Nikāya, worship sites, the monkhood or individuals as well as a claim to the [position of] Chief Incumbent of the temple; [the disciplinary offences of] moral failure (*śila vipattiya*), corrupting laypersons (*kula dūṣaṇaya*) and doing evil actions (*pāpa samācāraya*); and also requests and complaints that have been sent to the Chief Judicial Registrar under the provisions laid out in §135 (ii) and (iii) [relating to the appeals process].[49]

According to the Rāmañña Constitution, the High Court has jurisdiction over relatively serious matters, including property disputes and significant disciplinary transgressions, which fall short of suspending a monk from the fraternity. These might include disputes over who should administer the property associated with a given temple or accusations that a monk has been drinking alcohol. The High Court also hears cases on appeal. The Rāmañña Constitution allows both parties in a Regional Court dispute—the accuser and the accused—to apply to the Judicial Registrar to have their case reheard by a higher court within two weeks of the lower court decision being issued. To do so, the dissatisfied (*akeaemti*) party must send a letter to the Registrar laying out the reasons (*hētu*) along with any relevant documentation, who will in turn determine whether the matter can be appealed.[50]

At the apex of the Rāmañña judicial system is a Supreme Court (*uparimādhikaraṇaya*) consisting of 12 senior monks who are appointed by the Executive Committee along with the Judicial Chief and the Chief Judicial Registrar. Like the lower courts, the Supreme Court convenes as three-judge benches. However, in exceptional cases, five of the Supreme Court Justices can meet together as the Final Panel of the Supreme Court (*uttarītara uparimānuvijjaka maṇḍalaya*) and issue final, non-appealable decisions.[51] The Rāmañña Constitution offers the following explanation of the issues over which the Supreme Court has jurisdiction:

A. [Matters] concerning the membership of the Regional Sangha Council;

B. [Matters] concerning the membership of the Administrative Sangha Council as well as [the process of] selecting [members] for it;

C. [Matters] concerning withdrawing the studentship of monks and novices;

D. [Matters] concerning actions that go against the regulations in the Constitution, whether by some activity done in the administration of the fraternity, of by a working committee, or a board or an official;

E. [Matters] concerning the rejection of a High Court Decision [made] without an appeal (*ukkōṭanayakin tora va*) or the non-implementation of that decision;

[49] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā, *supra* note 37, p. 94, §140(i).
[50] *Ibid.*, pp. 92–3, §135(i)–(iii).
[51] *Ibid.*, p. 97, §145(iii).

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F. Accusations that have been advanced concerning the fact that [someone] has rejected regulations consistent with the Constitution from officials, or executive councils or judicial councils which have been appointed for the administration of the fraternity;

G. Cases relating to decisions made by the High Court on appeal (*ukkōṭita*);

H. Cases relating to decisions [issued by] the Supreme Court on appeal that have been advanced with the hope the decision [will be made by] a Final Panel of the Supreme Court of five justices;

I. All the questions that have not been addressed by another court in the fraternity that arise from time to time, while adjudicating, or examining, or making decisions, including the related punishments that are prescribed in the Vinaya and this Constitution.[52]

The Constitution therefore gives the Supreme Court powers over the most consequential topics and disagreements that the fraternity can face: questions of membership and dereliction of official duties; or questions of the abolition of monks' status as students or novices. Although not stated explicitly, by empowering the Supreme Court to address "all questions that have not been addressed by another court," the Rāmañña Constitution also gives the apical judiciary powers to nullify the memberships of senior monks from the fraternity in cases where it deems monks to have violated one of the four major *pārājika* offences. (Notably, the fraternity does not have any power to forcibly expel a monk from the temple, but only to rescind the monk's official association with the group and to request that the Sri Lanka government's Department of Buddhist Affairs, which keeps records of monastic affiliation, adjust its records accordingly.[53]) Litigants unhappy with decisions given by the Rāmañña High Court can appeal to the fraternity's Supreme Court within three weeks of the decision, in which case the Supreme Court judges may call for a new investigation or new witnesses or ask parties to clarify or resubmit documents. Through this process, the Constitution clarifies, the Supreme Court can do one of the following: "give its own decision, agree with the original decision, reject [that decision], change it or have that particular case reheard again by the original court."[54]

The Rāmañña Nikāyas higher judiciary—its High Court and Supreme Court—share many similarities with the higher judiciary in Sri Lanka's public legal system. They have appellate jurisdiction and multi-judge benches. They have clearly defined powers that are exercised by judges who have been promoted from lower courts. Even the technical Sinhala language describing these bodies—terms like jurisdiction (*bala sīmāva*) and court (*adhikaraṇa*)—seems to echo descriptions of the judicial system in Sri Lanka's Constitution.[55] At the same time, the Rāmañña Constitution blends these state legal prototypes—visible in judicial systems throughout Asia and other regions—with categories and content taken directly from the Vinaya. The Vinaya, too, has its own escalating hierarchies of authority and decision-making as well as its own notions of multiple tribunals for hearing a dispute. The Rāmañña structures build on these frameworks.[56] In fact, many of the technical legal terms used in Sri Lanka's state courts and in its monastic courts

[52] *Ibid.*, pp. 96–7, §145(i).

[53] Weerasooria, *supra* note 21, pp. 594–5.

[54] *Ibid.*, p. 105, §151(v).

[55] Government of Sri Lanka (1978), Chapter XVI.

[56] On notions of "appeal" in the Vinaya, for example, see Kieffer-Pülz (2016–17); Schonthal, *supra* note 13, Section VII.

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(including the terms mentioned above) can ultimately be traced back to Pāli antecedents appearing in Buddhist texts: Sinhala legal terms for accuser and accused (*cōdikayā* and *cūdityā*), mediation (*samatha*), evidence (*sākṣyaya*), judge (*viniścakāriyā*)—among many others—derive linguistically from comparable legal terms used in the Vinaya. The resulting judicial system is, therefore, not so much a remaking of Buddhist legal principles in the image of state law, but a blended composite of the two.

5. Protocol and Predictability in the Rāmañña Judicial System

As elaborated in its Constitution, the Rāmañña Nikāya's judicial system solves two organizational problems. On the one hand, it clarifies the institutions, officials, and protocols for dealing with contentious matters that cannot be resolved informally or within the confines of a given monastery. This clarification is particularly important because the Vinaya Piṭaka (although it contains procedural rules specifying how monks should handle disputes) does not provide a comprehensive blueprint for how to run a court system.[57] On the other hand, the description of the Rāmañña judicial system also gives monks in the fraternity assurance that disputes will be handled in a fair, systematic, and predictable way. These assurances are strengthened further by the inclusion in the Rāmañña Constitution of specific rules for making legal accusations and conducting trials.

The Rāmañña Constitution lays out in lengthy and elaborate detail (comprising 20 separate clauses in the Constitution) very precise requirements for making an accusation (*cōdanāva*) against another monk. Accusations can be issued against an individual monk or a monastic body (such as a council or committee) either by monks or by laypersons. Both the target of the accusation and the accuser must be members of the Rāmañña Nikāya.[58] The Constitution clarifies that accusations must take the form of written documents—referred to as accusation papers or petitions (*petsam*)—which should be sent by registered post to the Chief Judicial Registrar. Those documents must explain the nature of the offence as well as specify the names and addresses of the accusing (*cōdaka*) and accused (*cōdya*) parties as well as any witnesses.[59] According to the Constitution, the Deputy Judicial Registrar must then record the accusations in a logbook and notify the accused party by writing within one week. From there, the Chief Judicial Registrar is required to nominate three Regional, High Court, or Supreme Court judges (depending on the matter) to serve as a court.[60] The Constitution also lists further protocols that apply to situations in which a monastic judge is accused of an offence, including the requirement that the case cannot be heard by close colleagues of that judge and, in matters that involve the highest judicial officials (such as the Judicial Chief), the requirement that the Chief Registrar of the fraternity (rather than the Chief Judicial Registrar) acts as presider.

Particularly notable in the Rāmañña Constitution are the detailed provisions designed to discourage false accusations and provide remedies for monks whose reputations have been damaged by suggestions of wrongdoing—even when those suggestions do not take the form of formal complaints. For example, the Constitution explicitly gives authority (*balaya*) to monks whose reputations have been slandered (*upavāda lak va siṭina bhikṣu*) to confront the accusers and obtain a formal legal decision that establishes their innocence and purity (*pāriśuddhiya*).[61] The Constitution also takes the further step of requiring that the Chief Judicial Registrar pursue accusation letters even in cases when those letters have not been submitted properly or accompanied by the required information. Doing so, the

[57] von Hinüber (1995), p. 21. On those procedural rules, see Schonthal, *supra* note 13.
[58] In the case of lay accusers, they should be patrons (*dāyakas*) of a Rāmañña Nikāya temple.
[59] Śrī Laṅkā Rāmañña Mahā Nikāya Pālaka Saṅgha Sabhā, *supra* note 37, pp. 97, §147(i); 100, §148(x).
[60] *Ibid.*, pp. 98–9, §148(i)–(vi).
[61] *Ibid.*, p. 97, §147(iv).

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Constitution indicates, will help to "protect the purity of monks and the faith (*śraddhāva*) of [the fraternity's] lay supporters."[62] In fact, according to the rules laid out in these sections, the Executive Committee of the fraternity can itself step in to take action itself against monks who have made (potentially baseless) accusations as a way to establish the innocence of accused monks as well as to protect the "unity (*sāmagriya*) of the monkhood."[63]

Similar attention to detail can be seen in the protocols that judges must follow when conducting the hearings. The Constitution includes step-by-step instructions for supervising a trial. It specifies that lists of witnesses, documents, and other evidence must be distributed to all judges and parties who are involved in the case, along with accusation letters, petitions, "answer sheets" (*uttara patra*), and other written submissions made by parties.[64] It gives the Chief and Deputy Judicial Registrars powers to issue subpoenas (*kaendavīmē āñāva*) to any monks who are "connected to the case" requiring them to come and give evidence, with significant penalties if summoned monks do not attend.[65] As it relates to High Court and Supreme Court cases, the Constitution also permits the appointment of "trial-assisting monks" (*viniścaya sahāyakayan vahansēlā*), who can help the litigating parties with collecting evidence, assessing facts, and negotiating the process of litigation. Trial-assisting monks also help the judges with understanding the context and issues being disputed.[66]

Adding to these details in the Constitution are instructions given to the Rāmañña Nikāya's judges at special legal-education meetings that happen multiple times a year. At one meeting held in November 2019, for example, a handout was distributed to monastic judges concerning how trials ought to progress. The handout breaks down the hearing process into three sequential steps, using terms taken from the Vinaya Piṭaka:

> **Beginning**—Gaining permission
>
> **Middle**—Laying an accusation and making [others] aware of what has happened (adjudication)
>
> **Conclusion**—Settling the case by establishing the guilt or innocence [of the monk].[67]

Building on rubrics and protocols taken from the Vinaya, the sheet—as well as similar sheets that I saw used at other judicial trainings—takes monastic judges slowly through the process of managing the plaints and responses of the accusing and accused parties. The written instructions begin by describing protocols for giving the accusing monk permission to make an accusation; they then discuss how to elicit evidence from both parties and to determine whether that evidence substantiates or disproves the allegation. The handout describes the processes of logical deduction that monastic judges ought to follow, specifying procedures for scrutinizing the accuracy of litigants' testimony and for identifying the proper legal principles (in the Constitution and the Vinaya) for resolving a given issue.[68] The instructions end with guidelines for arriving at a suitable verdict and for determining the appropriate remedy or punishment, if necessary.

[62] *Ibid.*, p. 97, §147(iii).
[63] *Ibid.*, p. 97, §147(v).
[64] *Ibid.*, p. 100, §138(xi).
[65] *Ibid.*, pp. 102, §149(i); 103, §149(v).
[66] *Ibid.*, pp. 103–4, §105(i)–(viii).
[67] From a bound set of handouts entitled *vārṣika adhikaraṇa sammēlanaya* [Annual Judicial Meeting of the Śrī Rāmañña Nikāya], 29 November 2019. Copy with author.
[68] *Ibid.*

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Worksheets like these provide a remarkable amount of step-by-step guidance and detail for monastic judges. Especially revealing in this respect is the content of another handout that was used at multiple education workshops. This handout drew together important phrases and protocols taken directly from the Vinaya and presented them in the form of a script that judges can use to question litigants. The resulting instructions paint a picture of monastic judicial procedure that looks very similar to the formal varieties of stereotyped questions and answers used in other legal settings.[69] For example, during the middle "adjudication" phase of the hearing, the sheet provides the following dialogue:

Judge: Are you accusing this monk?

Accuser: Yes.

Judge: What type of offence do you accuse him of? Is it a failure of morality (*sīla vipatti*) etc.?

Accuser: It is a failure of morality/belief/behaviour/livelihood (*sīla/diṭṭhi/ācāra/ājīva*).

Judge: Do you what that failure is?

Accuser: Yes I know.

Judge: What is the failure of _____?

Accuser: The offense is a failure of _____.

[. . .]

Judge: Do you accuse [this monk] according to something you saw? Or heard? Or some distrust?

Accuser: _____.[70]

Following this script, the instruction sheet then turns to clarify the various factors (*karuṇu*) of litigation that judges ought to scrutinize, including: the reasons behind the dispute, the type of failure of which the monk stands accused, the source of the oral testimony that has been given, and the proof that has been adduced in support of that testimony. By following these protocols and principles, the handout suggests, judges can ensure that they deliver a correct verdict that accords with the Vinaya.

As with other procedures and structures examined above, the Rāmañña Nikāya rules for trials derive in clear and obvious ways from ancient templates visible in the Vinaya Piṭaka and other legal texts. While the Vinaya does not give step-by-step instructions for judges in quite this way, it does provide lists of questions and criteria for examining cases.[71] For example, one passage in the Vinaya instructs:

[69] Danet (1980); Winn (1991).

[70] *vārṣika adhikaraṇa sammēlanaya*, *supra* note 67.

[71] These can be seen particularly in the third section of the Vinaya, called the Enclosing (P: *parivāra*), which does not appear in other Vinaya traditions and which many scholars assume to be a portion that was completed later, after the other sections had been consolidated, as a summary of the two other parts of the Vinaya.

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> The accuser is to be questioned by the examiner (*anuvijjaka*): "Sir, this monk who you are accusing, why are you accusing him? Are you accusing him for failing in his moral conduct? Are you accusing him for failing in [his] behaviour? ... in [his] views?"[72]

The Rāmañña Nikāya legal curriculum draws on passages in the Vinaya like this, translating and organizing them into formal protocols and scripts that can be followed easily by monastic judges. The final product shows strong similarities with contemporary protocols for judging used by state courts, including features like meticulously patterned behaviours, clear sequencing of events, predetermined formats for inquiry, and stereotyped lists of questions and affirmations. These similarities do not indicate the dominance of one legal tradition over the other, but rather an underlying coherence between the two that not only permits the representation of one in the form of the other (one could also imagine state legal procedures presented in Vinaya terms, after all), but also encourages litigants and other monks to view the Rāmañña Nikāya judicial process as both orthodox (which is to say, aligned with legal principles laid out in the Vinaya) and standardized (which is to say, predictable, unbiased, and in accordance with a single set of fraternity-wide guidelines).

6. Normative Texts and Buddhist Judicial Culture

As prescriptions taken from normative texts, one should not see the lists of legal protocols and structures mentioned in the Rāmañña Constitution as infallible accounts of how monastic courts always function in reality, any more than one should see passages from state laws or constitutions as perfect descriptions of how state courts work on the ground. Nevertheless, the complexity and detail of the Rāmañña Constitution and other normative legal texts, as a whole, are important artefacts of that fraternity's legal culture. Regardless of whether monks always file their appeals within two weeks or send their letters by registered post rather than normal mail, scholars ought to appreciate nonetheless the importance of these legal ideals within the institutional imaginary of the Rāmañña Nikāya: they communicate a portrait of ideal judging that is based not only on moral principles for guiding judgments, but also on a predictable, systematic set of procedures that ensures all disputes are dealt with fairly, consistently, and by the correct authorities.

This concern with clear and regular judicial processes is shared by other monastic fraternities. Yet, the procedural sophistication and explicitness of the Rāmañña Nikāya judicial system go well beyond that of most other groups. The fraternity's 235-page constitution, for instance, is multiple times the length of the guidelines used by other monastic groups. The group's regular judicial training sessions also appear to be unique on the island. While long constitutions and regular legal education do not guarantee judicial scrupulousness, they do signal a special investment by the fraternity in the value of protocol and procedure in making a judge fair and a judgment legitimate.

In my experience, monastic judges as well as ordinary monks from the Rāmañña fraternity regularly voice pride in the group's comprehensive judicial system and see it as something that brings distinction and prestige to the fraternity in the eyes of laity and other monks because it demonstrates the seriousness, rigour, impartiality, and care with which the fraternity manages its monks—values that not only cohere with the dispositional and cognitive features of Buddhist-virtue jurisprudence described above, but also give outward institutional expression to the qualities of discipline and restraint

[72] Oldenberg (1879–83), vol. V, 160.1–4. Translation is my own and appears in a longer version in Schonthal, *supra* note 13.

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(S: *hikīma*, *saṃvaraya*) that form the foundation of monastic piety as understood both in the Vinaya and among contemporary Buddhists. As one senior monk put it:

> if we run [this legal system] in a highly organized manner, I think that all the other monastic fraternities [and laypersons] will have special respect for Sri Lanka's Rāmañña Nikāya .... We must take pride in that [system] and protect it as well.[73]

The scope and sophistication of the Rāmañña Nikāya's judicial infrastructure also indicate something else about the legal and organizational culture of the fraternity, namely the importance of systematic and consistent judicial procedures as a tool for engendering within the fraternity's monks confidence in and compliance with the judicial decisions given by monastic judges. In the absence of police enforcement or formal state recognition for monastic judges' determinations, these sentiments of assent provide a crucial affective, non-coercive way of securing judges' authority and improving the chances that their decisions will be adhered to—not through fear of penalties, but through widespread affirmation of their legitimacy. This kind of institutional buy-in is particularly important given the magnitude of issues dealt with by monastic judges. Rāmañña judges may be called upon to determine the fate of large tracts of land and valuable properties; they may be required to wade into complex disputes between monastic teachers and their students or between competing groups of monks residing at different Rāmañña Nikāya monasteries.

The detail and systematicity of the Rāmañña Nikāya judicial system also remedy a particularly difficult and perennial dilemma faced by many monastic judges: given the fact that monks see each other regularly at collective rituals and that litigants and judges often know each other (sometimes from childhood), monastic judging can be a fraught game, ripe for questioning by those who fail to get a favourable judgment. One High Court judge recalled to me:

> It's always really hard when disputes occur over the control of temples because we know all the monks in our monastic fraternity. ... We know both parties in the case. Thus, it's real conundrum (*hari ubhatōkōṭika gaeṭluvak*) for us. How do we give a totally impartial decision?[74]

Therefore, in much the same way as legal protocols invoked by state judiciaries (who also struggle with accusations of partisanship and influence), the meticulousness of the Rāmañña judicial protocols and procedures serves to discourage accusations of partiality, favouritism, or illegitimacy—accusations that are frequently made in the context of heated intra-fraternity disputes over temple incumbency or monastery land.

These procedural rules provide guiding ideals to which monks can aspire and from which monks can take comfort when adjudicating cases among their peers. When I asked the above monk about how judges ought to handle that specific predicament, he offered up just such an ideal:

> When one is a judge (*viniścayakāravarayek*), and taking the seat of judgment (*viniścaya āsanaya*), he should act such in a way that is completely faultless, free from any arrogance or anything like that. Next, he should have extreme patience towards whomever [he is judging]. No matter what, it's not good to show any lack of consideration for a person. He should have a pleasant look on his face, and work in a way that shows compassion and sympathy especially to the person who had done the offence, the accused (*cūditayā*). [The judge] should build faith in [the accused's] mind about the

[73] Interview, Colombo, 17 December 2017.
[74] Interview, Wadduwa, 14 December 2020.

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> court process (*adhikaraṇaya*). Then, in every situation, [the judge] should listen attentively to [the accused], showing respect for the Buddha's teaching (*dharma*) and the Vinaya, and without showing any disdain for him. He must listen with the utmost attention. It's not good to cut someone off by making some sign with your mouth or your eyes. [A judge] must not doing those things, he should not speak while stretching out his legs or arms. He must be in the habit of doing all his duties with extreme discipline and patience.[75]

Visible in this paragraph is a tightly packed synthesis of Buddhist judging imagined both as Buddhist-virtue jurisprudence and as a procedurally robust judicial system. The ideal judge, as described here, not only must cultivate certain mental dispositions—patience, humility, sympathy; he must also adhere closely to a number of outward behavioural protocols that both manifest and further support those interior states: he must smile, stick to the judicial process, listen attentively, indicate respect for the Buddha's teaching, not interrupt the litigants, and refrain from twisting his face or gesticulating with his body. According to this rendering, the ideal judge is not simply ethical and virtuous in motivations; he is disciplined, consistent, and restrained in his actions—actions that adhere perfectly to the rules of behaviour and legal procedure that appear both in the Vinaya as well as in contemporary legal texts such as the Rāmañña Nikāya Constitution or the various judicial worksheets disseminated at educational events. The Sinhala phrases used by the speaker to refer to judges, litigants, and court procedures can be applied *both* to Buddhist monastic courts and to lay courts, implying that ideals of judging transcend monastic contexts alone. As suggested in the quote above, the perfection of judging in the monastic judicial system offers a measurement for the perfection of judging in other systems of law: in Buddhist law and other legal systems, proper judgment requires that virtuous internal dispositions must be paired with carefully disciplined and meticulously organized external behaviours and procedures.

7. Conclusion

As can be seen above, Buddhist judging connotes more than a set of pious principles or mindsets that decision-makers ought to adopt in interpreting law and resolving disputes, more than the cultivation of Buddhist moral values (equanimity, compassion, patience, etc.) in the minds of judges. Viewed through the lens of legal texts written by and for Buddhist monks—particularly those produced by the Rāmañña Nikāya—Buddhist judging also implies a set of procedural elements: fair, consistent, and systematic methods for managing disputants, running trials, airing grievances, considering evidence, ordering authority, and processing appeals. Buddhist judging, in this view, connotes not simply a form of virtue jurisprudence, but a broader set of institutional arrangements as well.

Those who are interested in judging and judgment in Asia ought to pay attention to these Buddhist conceptions of judging (in this broader sense of combined jurisprudential and procedural features) and take seriously the contemporary examples of Buddhist judicial systems that appear in the region. They should do so not only because these systems form a key part of the pluri-legal landscapes in virtually every Asian country, but because they also reveal a (perhaps unexpected) coherence between the legal imaginaries of religious virtuosi and those of state legal actors. The concerns of Rāmañña Nikāya monks with developing clear and systematic protocols for making plaints, organizing trials, assessing evidence, or processing appeals align closely with the concerns of Sri Lanka's law-makers and jurists in reforming the state legal system. One can see similar kinds of alignments in

[75] *Ibid.*

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the judicial apparatus associated with Thailand's official *saṅgha* organization, which condenses decision-making authority in a small coterie of senior monks who reign over a large group of middling monastic officials—a monastic legal structure that shows striking similarities to the elite-led and bureaucracy-heavy universe of state legal power that one finds in contemporary Thailand.[76]

These alignments between Buddhist and state legal cultures are not simply the result of political interference in religious law or the deliberate imitation of state law by Buddhist monastic law-makers. Even when monastic judicial systems come into being as a result of state-led legislation or administrative reform, as in the cases of Thailand or Myanmar, the legal and institutional imaginaries that form the basis of those reforms circulate widely among cultural elites, both political and religious. Rather than simply exporting legal prototypes from one domain (politics) to another (Buddhism), the institutions of monastic judging and those state judiciaries—or at least the idealized presentation of those systems in normative texts—draw concurrently from a shared reservoir of cultural assumptions about who should interpret rules and resolve disputes and how they should do so. Official Buddhist judicial institutions, such as those in Myanmar and Thailand, are the product of explicit and implicit co-ordination between the legal imaginaries of high-ranking monks and those of high-ranking legislators, not the displacing of one imaginary by the other. A similar argument may be made about the Buddhist judicial systems created by monastic groups in Sri Lanka. As one can see in the long quote from the monastic judge in the section above, as well as in the many parables of wise judges taken from the Buddhist-story literature mentioned in the introduction, the same qualities and procedures that contribute to a perfect act of judgment by the Buddha also make for a perfect act of judgment by the magistrate. Utopias of judicial action circulate freely among populations, ignoring the imagined boundary between religious and secular law.

Studies like this one complicate the usual story of (post-colonial) legal modernity in which, during the nineteenth and twentieth centuries, the growing ambit of state power co-opts and transforms religious law so as to make it similar to or compliant with political structures of control.[77] Looking at Buddhist judicial systems, like that of the Rāmañña Nikāya, shows that symmetries between religious law and state law may not be causal, but intersectional, paired manifestations of a set of wider, ambient legal values or ideologies that underlie and subsect all domains of life. At the same time, it demonstrates that the so-called "hybridities"[78] for which these symmetries seem to provide evidence are not an unnatural agglomeration of transplanted legal concepts that give rise to some unintended cyborg (part state law, part religious law). Rather, they might equally be read as evidence of an already-existing terrain of shared legal values and imaginaries—monuments to a larger ocean of shared utopias that link together the rarefied worlds of those who design courts for states and those who theorize the work of judges in a more transcendent frame of reference.

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[76] Larsson (2018).

[77] To choose only a few examples: Cohn (1996); Giunchi (2010); Kugle (2001); Mamdani (2012).

[78] Important recent works on this topic include: Berman (2010); Deinla (2019); Lawan (2014).

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