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Samuhadda Vicchedani An Overlooked Source on the Dhammathats

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In 1874 the Burma Herald Press published *Samuhaddha Vicchedani*.¹ This Pali title means “Decisions on the Whole Law.” The work has a Burmese subtitle *Myanma taya lan dhammathat kyam* which means “The Dhammathat book that is a Pathway to Burmese Law” or (if we translate *taya lan* as “legal principles”) “The Principles of Burmese Law Dhammathat book.” It consists of 314 pages of Burmese text, within which extracts from sixteen dhammathats are divided into eighteen topical Chapters. The final chapter, for example, deals with the topic of Debt and gives extracts from nine dhammathats about interest rates, sureties, refinancing, and bankruptcy. Daw Than Saw’s translation of that Chapter follows this introduction. *Samuhadda Vicchedani* is an important source on Burmese legal history, which has been too long ignored. Ryuji Okudaira (in 1979) and I (in 1997) both omitted it from our bibliographies of Burmese law.² In fact no 20th century source makes mentions of it, though it was always on the shelves of European and American research libraries.

When the Emperor Justinian developed the technique of preserving legal materials from different texts by arranging them in topical chapters, he named the genre “Digest.” *Samuhaddha Vicchedani* is a Digest of Burma’s palm leaf manuscript dhammathat literature. It appeared twenty years before *Kinwun Mingyi’s Digest*, its better-known counterpart.³ It includes extracts from sixteen dhammathats, while

¹ W. DeCourcy Ireland, *Samuhaddha Vicchedani*? (Rangoon: Burma Herald Press, 1874).

² Ryuji Okudaira, “An Outline of the Origin, Development and Research on the Dhammathats” [main article in Japanese], *Tonan Ajia Kenkyu* [South East Asian Studies] 17 (1979): 99-130; Andrew Huxley, “Studying Theravada Legal Literature,” *Journal of the International Association of Buddhist Studies* 20 (1997): 63-91.

³ Kinwun Mingyi [at the instance and under the authority of G. D. Burgess,

Kinwun Mingyi uses thirty-three. *Samuhadda Vicchedani*, however, quotes from dhammathats such as *Atitya* and *King Jali* that Kinwun Mingyi did not own. The earlier Digest lacks what the later Digest has - the convenience of a full English translation.⁴ Daw Than Saw's translation begins to redress that lack.

A more important reason to welcome the reemergence of *Samuhadda Vicchedani* is that it covers the whole range of Burmese Law. The eighteen Chapter headings of *Samuhadda Vicchedani*⁵ are as follows:

- 0 On the Dhammathats
- 1 Judicial best practice
- 2 On dividing inheritance
- 3 Marriage
- 4 Law on divorce
- 5 "Adultery" by unmarried couple
- 6 Adultery by married couples
- 7 Law on commerce
- 8 Law on pawning
- 9 Law on land ownership
- 10 Law on saying too much
- 11 Law on assault
- 12 Law on accusation
- 13 Law on contracts
- 14 On hired labour
- 15 On giving
- 16 Law on handing over to another
- 17 Law on loans and Interest

Kinwun Mingyi's Digest covers only the topics of *Samuhadda*

Judicial Commissioner, Upper Burma], *A Digest of the Burmese Buddhist Law concerning Inheritance and Marriage being a Collection of Texts from Thirty-Six Dhammathats*, 2 vols. (Rangoon: Superintendent of Government Printing, 1898-1899).

⁴ Kinwun Mingyi, *Translation of a Digest of the Burmese Buddhist Law concerning Marriage and Inheritance, being a Collection of Texts from Thirty Six Dhammathats*, 2 vols. (Rangoon: Superintendent of Government Printing, 1902, 1910).

⁵ My thanks to John Okell for translating *Samuhadda Vicchedani's* front matter and to Daw Than Saw for translating its final Chapter.

Vicchedani's Chapters Two to Five. *Kinwun Mingyi's Digest* contains no rules about Contract, Tort, Land Law, Debt, Charity, Employment Law, or all those other topics which the British intended to replace with their Anglo-Indian Statutory Codes. If a historian of Burma wished to trace the precolonial development of Burma's credit market. *Kinwun Mingyi's Digest* is of no avail, but *Samuhadda Vicchedani* offers twenty-one pages on the topic, which has been extracted from dhammathats written in the sixteenth, seventeenth and eighteenth centuries. The circumstances in which *Samuhadda Vicchedani* was written and published mark a watershed in the nineteenth century historiography of Burmese law. For a brief period in the 1870s, Burmese and English, from above and below the border, cooperated to transmit Burmese literature from palm leaf to printed book. This "Rangoon renaissance," as I call it, was particularly interested in Burmese legal literature. In the final part of this paper I shall argue that the beginning of the end of the Rangoon renaissance occurred on 23 January 1874. I start with the basic question: who wrote *Samuhadda Vicchedani*?

1. *Who wrote it?*

British Burma's *Register of Books Printed in 1874* names W. DeCourcy Ireland as author, and Mr. H. Ahee, the Sino-Burman proprietor of the Burma Herald Press, as copyright holder of *Samuhadda Vicchedani*.⁶ Certainly Ireland wrote the three page English language "Preface," but this portrays him more as the book's guiding spirit and editor, than as its actual author:

I have undertaken the office of bringing this work before the public with diffidence and some reluctance. Even a cursory revision of a text, laboriously collated from Palm-leaf MSS. is no easy task ... [p. iii]

If it was Ireland who brought the work before the public, who undertook the laborious collation of the Burmese text from palm-leaf mss.? And who wrote the Burmese language Preface, and the introductory chapter "On the Dhammathats," which follows it?

⁶ Euan Bagshawe, personal communication 27 October 2003

Circumstantial evidence suggests that it was U Thadoway of Akyab (1828-c1895), who spent most of his life working for the British Government in Arakan and who served directly under DeCourcy Ireland (1835-1902). *Samuhadda Vicchedani* was a collaboration between the thirty-nine year old Irish Assistant Commissioner and the forty-six year old Arakanese Extra Assistant Commissioner. Is it the kind of colonial scholarship that we can trust? Or was Thadoway a collaborator in the perjorative sense, by which I mean a Burmese middleman who wrote only what the English wanted to hear? In the final section I shall argue that Thadoway and Ireland, along with other members of the Rangoon renaissance, were the last trustworthy authors on law before the deluge. Treat with great care anything written between 1880 (when Em Forchhammer wrote his first account of Burmese law) and 1942 (when John Furnivall challenged the eternal verities of Burmese legal history). *Samuhadda Vicchedani*'s special importance is that it is the earliest printed account of Burmese law written by a Burmese. Three years later another pillar of the Rangoon renaissance published a second such account in English. I have discussed U Kyaw Htun's *Sandford Prize Essay* elsewhere.⁷ These two works share an insider point of view, since their authors spent their working life as Burmese judges, who listened to argument from the *she-ne*, the traditional Burmese legal profession, and who used the dhammathats as their sources of law. However Thadoway and Kyaw Htun were also outsiders, in that they were paid by the Rangoon Government, not the Mandalay Government of King Mindon.

DeCourcy Ireland's family owned estates in County Kildare, town houses in Dublin, and sent their boys to Trinity College, Dublin: in short they belonged to the Irish ascendancy. DeCourcy never knew his father, who had died in the year of his birth. He was educated at Kilkenney College and Trinity, from which he graduated B.A. in 1858.⁸ The following year he turned up in the Province of British Burma, and took a very lowly job as the Commissioner of Pegu's accountant. Though manifestly a gentleman, DeCourcy Ireland allowed himself to be

⁷ Andrew Huxley, "Rajadhamma confronts *Leviathan*: Burmese Political Theory in the 1870s," in Ian Harris (ed.), *Buddhism, Power and Political Order* (London: Routledge, 2007): 26-51.

⁸ My thanks to Estelle Gittins, College Archives, Trinity College Dublin, for this information from *Alumni Dublinenses*.

employed as a member of the Uncovenanted Civil Service - a mistake that was to haunt him for the rest of his career. The “covenant” in question is the promise signed by the higher grades of the Indian Civil Service to reimburse their employers for any liability they incur. The promise was not as important as the financial deposit that accompanied it. A Covenanted Civil Servant had capital at his disposal. He would think of himself as a gentleman, and of his Uncovenanted colleagues as socially inferior.⁹ What misfortune or whim was it that drove Ireland from a comfortable life in Dublin to become one of Empire’s ancillary workers in Burma? His grandchildren and grandnephews have preserved oral accounts of an ancestor who had to leave Dublin in a hurry, suspected of involvement with the “Young Irish” movement. To make matters worse, he had been caught climbing from his girlfriend’s bedroom window in the early hours.¹⁰ If this ancestor were DeCourcy Ireland, it would explain his sudden departure from Dublin, and his scramble for any kind of job in a far away country.

Within two years of arriving in British Burma, Ireland had been promoted to Extra Assistant Commissioner of Toungoo. Chief Commissioner Arthur Phayre, who had a reputation for recruiting in unorthodox places, promised Ireland that his Uncovenanted status would not be a bar to future promotion. However, his successors found it increasingly hard to persuade Calcutta to stretch its rules to accommodate Phayre’s promises. By 1867 Ireland had reached the rank of Assistant Commissioner, the glass ceiling for Uncovenanted officers. He was thirty-two, and would go no further up the ladder unless he devised a strategy to break through that ceiling. His colleagues in Burma would not treat him as a gentleman? Very well. He already had a B.A., so was better educated than most of them. Were he to acquire a Doctorate of Laws, they could not but promote him. He spent his first long leave in Dublin and Galway, where he reached an understanding with Trinity College Dublin as to what publications on Burmese law would merit the

⁹ Ashley Eden plaintively addressed Calcutta soon after his arrival in Burma: “I am two men short in the commission ... Can you send me some active gentlemenlike men, not uncovenanted?” P3/261 October Routine Index, telegram of 16 September 1872. References in this form are to the Burma Home Papers held by the India Office Library, London.

¹⁰ My thanks to the late John De Courcy-Ireland of Dalkey, and to David de Courcy-Ireland of Ucel, for sharing their family history.

award of an LL.D. In 1869 he published *Ac: Ubademya koi*, containing his Burmese translations of Anglo-Indian legislation.¹¹ In 1874 he published *Samuhadda Vicchedani*, his Digest of the dhammathats. In 1878 Trinity College Dublin awarded him an honorary LL.D. and LL.B. Subsequently he was promoted far beyond the glass ceiling: as acting Inspector-General of Police in 1882 and as Commissioner in 1887 - the only Uncovenanted Officer ever to reach that eminence.¹²

U Thadoway started working for the British government in Arakan at the age of thirty-five. By thirty-eight he was Extra Assistant Commissioner 3rd class, 1st grade (earning Rs.150 per month). In 1867 he was promoted to 2nd class, 4th grade, given a Rs.50 raise and sent down to the quiet port of Sandoway in Southern Arakan, where Ireland was his immediate superior. After three years Ireland returned to Akyab to run its English speaking first court. Immediately after Ireland finished *Ubademya koi*, and turned his attention to the Digest, Thadoway was transferred to Akyab to run the Burmese-speaking second court, and to take over Ireland's caseload whenever the Assistant Commissioner was out of town conducting inspections. Thadoway retired from government service in Arakan in 1886 at the age of fifty-eight. I have found no trace of him in the archives after that: I assume he died during the 1890s. Other British Officers made similar partnerships with their Burmese Extra Assistant Commissioners.¹³ As Ireland's subordinate colleague, Thadoway had both opportunity and motive to compile *Samuhadda Vicchedani*. Ireland once indicated that he and Thadoway were in the habit of discussing Burmese legal topics together.¹⁴ And - a final piece of circumstantial evidence for Thadoway's authorship - Ireland described

¹¹ W. DeCourcy Ireland, *Ac. Ubademya koi* (Akyab: printer unknown, 1869).

¹² Herbert Thirkell White, *A Civil Servant in Burma* (London: Edward Arnold, 1913): p42

¹³ In Thayetmyo Horace Browne joined forces with E.A.C. Maung Tetto to write about Burmese law and history. Arthur Phayre may have had a similar relationship with Kyaw Htun (E.A.C. Danubyu).

¹⁴ Ireland's comments are in P/1986 B March 1883 64 General. Thadoway appears in the archives variously as "Moung Thadoway," "Moung Thadowe," and "Moung Thadwe." When U Thadoway reached the age of fifty-five, he was allowed to postpone his retirement for three years. This was just after Horace Browne's application to do likewise had been turned down: P/2882 B February 1887 22

him as “a judge of the old Burmese regime” whose “antiquated court” was “designed mainly to meet cases of Burmese law and custom arising amongst the large population of Burmese.” Because of his “total want of knowledge of the English language” his judgements showed a “garbled notion” of the English law of Contract “more mischievous than useful.”¹⁵ In other words, he was faithful to traditional Burmese law, which is an excellent qualification for making a Digest of the dhammathats. An accurate title page for *Samuhadda Vicchedani* should, in my view, read:

DECISIONS ON THE WHOLE LAW

A compendium showing the Path to Burmese law

Compiled by U Thadoway from dhammathat texts in his possession

Under the supervision of W. DeCourcy Ireland, B.A.

With a Preface by W. DeCourcy Ireland, B.A.

2. *How does it treat its source material?*

In his Preface Ireland admits that he has not given an accurate reproduction of what was written in the palm leaf. He has left out the Pali technical terms “wherever a Burmese equivalent could be found” so as to make his Digest “more readily available to those who are not advanced in such Pali scholarship as we find clothed in Burmese guise.” In addition, he admits to shortening the Burmese text of the extracts that he prints: “The full text will have to be sought in the Palm-leaf Mss.” since no publisher would agree “to print the text *in extenso*.”¹⁶ The extent of his shortening was drastic. Here are two examples comparing the *Samuhadda Vicchedani* extracts from *Manugye* with Richardson’s bilingual edition of *Manugye* (which Daw Than Saw and I henceforth cite in the form: *Manu* 3:40.) *Samuhadda Vicchedani* s.629 on the twelve types of sureties “reproduces” *Manu* 3:56. The Digest gives a mere five lines of text, while the dhammathat gives more than a page. S.631 on the nine types of debtor who should not be put in the stocks is an even more radical abridgement of *Manu* 3:44. The dhammathat covers most of two

¹⁵ V/24/2232 Criminal and Civil Justice Reports for 1870. per DeCourcy Ireland

¹⁶ Ireland, *Samuhaddha Vicchedani*, iii.

pages, while the Digest uses less than fifty words.

While Ireland dictated the overall policy for the book, and negotiated with publishers, it was Thadoway who copied out extracts from his palm leaf manuscript collection, and somehow arranged them into a top copy from which the Burma Herald Press could pull its proofs. The Burmese text mainly reflects Thadoway's legal judgement, and this is particularly true of its first two sections. The "Introductory Preface" deals with the history of the Burmese dhammathats. He looks in depth at the history of a single dhammathat, quoting it verbatim for his first seven sections,¹⁷ then adding in his own voice information about other important dhammathats, and an explanation of what *Samuhadda Vicchedani* means. Then follows his Chapter "About the Dhammathats," where he addresses the breadth of the tradition. Here Thadoway lists thirty-three law-texts by name, adding some information on authors, dates, and place of writing. He ends his introductory material by identifying the three most authoritative dhammathats in the Burmese tradition. These twelve pages contain his portrayal of Burmese law.

Thadoway starts his history at the dawn of time when King Mahasammata was elected to rule over men. Mahasammata had a wise minister called Manu, who sat as a judge on seven consecutive days and decreed his famous seven judgements. In those days wise men knew how to project themselves through the universe while in deep meditation. At various times these sages brought back the texts of the first three dhammathats called *Manusara*, *Manosara* and *Manussika* ("Essence of Manu," "Essence of Mano," "Of Things Human"). *Manusara* was re-edited first by one of the Pyu Kings (c700), then by a Mon King (c1450), then in the 1630s by King Thalun the Just, and fourthly in 1769 by Myat Aung. All this information has, in fact, been conveyed by a long extract from Myat Aung's preface to his 1769 edition. Thadoway has borrowed it to suggest that Burmese legal history goes back 1,100 years to the Pyu cities of the first millenium, and through them back to the beginnings of human social origins, personified in Mahasammata. He means that

¹⁷ Only six paragraphs in does it become clear that the words we have been reading were composed a hundred years before: "I, the High Headman and bearer of the extended title *Wunna-dhamma Kyawdin*, have compiled a new nissaya of the *Manusara Shwe-myin Dhammathat* ... in the year s.1131 [CE 1769]."

Burmese law has its roots in the wider civilisation of Pali Buddhism.¹⁸ Turning to the local history of the Irrawaddy valley, he lists thirty-three dhammathats in the Burmese tradition. Burmese legal history delights in such lists: the point is to break them down into their sub-components. Thadoway's list of thirty-three is constructed from three sub-lists. He starts by reproducing a common list of ten early dhammathats from Upper Burma. His next ten dhammathats are associated with Lower Burma. The final thirteen are an eclectic mix, perhaps compiled by Thadoway himself, which include One Shoulder and Two Shoulder works, dhammathat and pyatton, texts composed by royal command and those written for sheer joy in exposition.

Thadoway's chapter on the dhammathats ends by ranking the three most authoritative dhammathats in order. Top of the list is *Kozaungkyop*, the compendium of nine dhammathats written in the 1580s under King Hsinbyushin of the Toungoo dynasty.¹⁹ Next comes *Manusara Shwe-myin* written in the 1630s (Restored Toungoo dynasty), and thirdly *Manuwnnana* written in the 1770s (Konbaung dynasty). Thadoway portrays the Burmese legal tradition as being at least fifteen centuries old, and as deriving from Buddhist sources. Thadoway's final Chapter shows a preference for starting each topic or subtopic with citations from *Kozaungkyop*. It also displays some tendencies to subtopical organisation with his first section covering the basics of Debt and his second dealing with sureties for most of its length. But if there is any pattern which explains exactly how Thadoway has ordered his material in this Chapter, I have not been able to spot it.

¹⁸ *Vide* Steven Collins and Andrew Huxley, "The Post-canonical Adventures of Mahasammata," *Journal of Indian Philosophy* 24 (1996): 623-45.

¹⁹ He refers to it alternately as *Kozaungkyop* and *Kozaunganyi*. (Cf Ireland *Samuhaddha Vicchedani*, 3 with Ireland, *Samuhaddha Vicchedani*, 5). Almost certainly he is referring to the same work, a fact underlined by the overlap between Forchhammer's summary of *Kozaungkyop* on debt and *Samuhaddha Vicchedani*'s extracts from the same. Emanuel Forchhammer, *Jardine Prize: An Essay on the Sources and Development of Burmese Law from the Era of the First Introduction of the Indian Law to the Time of the British Occupation of Pegu* (Rangoon: Government Press, 1885): pp. 67-84. Note, however, that *Samuhaddha Vichedani* s.643 and s652-3 do not appear in Forchhammer's summary.

3. *It marks the beginning of the end of the Rangoon renaissance*

Ireland and Thadoway expected the Rangoon Government to look favourably on *Samuhadda Vicchedani*. But the Chief Commissioner was critical of it, and refused any official support. This unexpected reaction requires an explanation. In this section I argue that its publication marks the collision between Calcutta's determination to remodel Burma on Indian lines, and the Rangoon renaissance's rediscovery of Burma's culture. The pressure to standardise Burmese law along Anglo-Indian lines came from Fitzjames Stephen, the stern utilitarian Law Member on the Governor-General's Council. In 1871 Stephen circulated a minute requiring that all of British India's territories should progress towards adopting standardised Anglo-Indian law. He recommended that a Judicial Commissioner of British Burma be appointed with the twin task of publishing the native law and implementing the Anglo-Indian codes. Douglas Sandford was appointed to the post in January 1872. In October Sandford announced a scheme to collect palm leaf mss. of dhammathats with a view to publication. He circulated details to British Burma's European officials and, at the Chief Commissioner's suggestion, to those few Extra Assistant Commissioners who could speak reasonable English.²⁰ Ireland and Thadoway read the circular with mixed feelings. On the one hand the Government had spotted the necessity of the work which they already had in hand. On the other hand, the circular had alerted potential rivals. It alerted men such as U Kyaw Htun, Extra Assistant Commissioner at Danubyu and Maung Tetto, Extra Assistant Commissioner at Thayetmyo to Rangoon's sudden interest in Burmese law. Ireland and Thadoway had several months lead over their rivals: they must work as fast as possible to ensure they were not overtaken.

The Rangoon renaissance of the early 1870s was a homegrown movement, which started when the Burmese acquired printing presses independent of Government and the missionaries. Their first priority was to shift the Burmese tradition from palm leaf to print. A good example of this is Kyaw Htun's *Pakinnaka Dipani kyam* ("Explanatory Treatise on Miscellaneous Topics"), which summarised Burmese history and literary culture, and contrasted it with British history and

²⁰ P3/37 October 1872, Sandford to Eden; P3/38 October 1872, Eden to Sandford.

institutions.²¹ Most of the early native press books dealt with law: between 1869 and 1873 two dhammathats and one collection of pyattons (legal precedents) appeared. Though the presses at first were located in Rangoon, Mandalay took a close interest in the movement. The native press edition of *Maharajathat* (1870) thanks King Mindon for his assistance in providing palm leaf mss. Mindon's Minister with legal expertise, Kinwun Mingyi, met many of the leading figures in the movement. Kyaw Htun gave him a copy of *Pakinnaka* to take to Mandalay. He also talked to U Oun and Maung Gyi, two other employees of British Burma who were experimenting in writing about legal topics.²²

The English were also part of the "Rangoon renaissance" if we widen the phrase to denote the brief period of optimism that Calcutta would allow them funds to establish universities, law schools, and museums. Rangoon's Government House, a commodious brick building costing Rs. 1,900,000, opened for business in 1872. The two most important officials to move into it were the Chief Commissioner Ashley Eden and the Judicial Commissioner Douglas Sandford. They were both Rugby men, imbued with Thomas Arnold's ideal of the Muscular Christian Who Fulfills his Duty to God and Queen. Their duty in Burma, as they saw it, was to educate the Burmese about science, technology and trade, while educating the rest of the world in Burmese culture. To this end they submitted many an expensive scheme to Calcutta. By 1876 they had come to realise that Calcutta would not pay for the improvement and modernisation of British Burma. Eden and Sandford returned to India proper, where money was available for the kind of achievements that enhanced reputations within the India Civil Service.

Sandford, an admirably objective scholar, looked on King Mindon as an ally in the project to publish Burmese law. Alerted by *Samuhadda Vicchedani's* reference to *Kozaungkyop* as the most authoritative of the dhammathats, Sandford wrote to Mandalay to ask for a copy, and King

²¹ U Kyaw Htun, *Pakinnaka dipani kyam* (Rangoon: Gezet Pon-hneik-taik, 1873).

²² Michael W. Charney, *Powerful Learning: Buddhist literati and the Throne in Burma's Last Dynasty, 1752-1885* (Ann Arbor: Centers for South and Southeast Asian Studies, 2006): p. 225, 227. U Oun's translation of English legislation into Burmese was called *Tayama Ubadei*. Maung Gyi's two books were about the dhammathats.

Mindon had his scribes run one off.²³ Sandford's only fault as a scholar was his inability to read or speak Burmese. Extraordinary as it might seem, Sandford had spent two years searching for dhammathat texts before he discovered that the Burma Herald Press had already printed two of them in full. As soon as he discovered, he wrote to Eden asking whether the Government should buy copies to distribute to the Extra Assistant Commissioners. Would the Chief Commissioner be so kind as to shed "light on what authority *Maharajathat* has?" Eden slapped him down:

This work contains *Answers by Kaingza Manu to King Thalun's questions*. It is of authority among the Burmese. The 1870 edition was not printed at the invitation or with the assistance of Government, and no copies were subscribed for. The Chief Commissioner sees no objection to distributing it, but would advise that [Richardson's *Manugye*] has been the recognised authority on Burmese law ever since we occupied the Province, and it should still be maintained as the guide to the courts on all points of Burmese law.²⁴

Unable to speak Burmese, Sandford was putty in the hands of any missionary or civil servant who could. He strove to create an intellectual partnership between Mandalay and Rangoon, but the old Burma hands could always rebuff him by claiming a deeper knowledge. The same fate befell Sandford's contemporary John Nesfield, the Director of Public Instruction. One of the lasting results of the Rangoon renaissance arose from Nesfield's suggestion to Eden that the Government make a systematic collection of palm leaf mss., following the example "lately put into effect in Ceylon." He warned that this would require expenditure on a resident Pali scholar "to be employed as curator and general editor." Nesfield's initial suggestion was to hire a Pali scholar from Upper Burma, but he was dissuaded by the missionary lobby: "Having talked to Mason, Bigandet and Rev. Mr. Chard, it is clear to me ... that a professor from Mandalay would be worse than none." The Government should

²³ P7/69 24 September 1874, Sandford to British Resident Mandalay; P7/72 6 November 1874, British Resident Mandalay to Sandford.

²⁴ P7/37 April 1875, Sandford to Eden; P7/40 April 1875 Eden to Sandford.

recruit in Germany “where Sanskrit and Pali scholarship is advanced and ... a clever young scholar ... would embrace an opportunity of seeing the East on Rs.300 a month.”²⁵

Ashley Eden had no room in his vision of learning about Burmese law and culture for any partnership with Mandalay. Evidently he felt that Rangoon should not display any cultural cringe towards a King with whom Rangoon might soon be at war. He should, therefore, have welcomed *Samuhadda Vicchedani*, written by an Irishman and an Arakanese, both of whom were impeccably loyal to the Queen-Empress. Here was a Burmese judge of the old school, who knew his way round the dhammathats, in partnership with a Trinity College graduate who had already published in the field of law. What better team to describe Burmese law as the Burmese lawyers practised it before Burmese judges? In high expectation, Mr. Ahee wrote to Eden enclosing the first half of the book in proof. He mentioned Ireland’s opinion that it would “form a most useful handbook for the Burmese officials” and offered “100-200 copies at the special price of Rs.4 per copy.”²⁶ Eden sought advice from his two advisers on Burmese culture. Horace Browne replied that:

The work has such grave faults that in my opinion ... if the work were published, the government should warn officials that it should not be taken as a guide in Civil Cases.²⁷

W. Hadfield, the Government Translator thought it “entirely out of the question to put such a book in the hands of *myo-oke* as a guide, as it would only confuse and mislead them.”²⁸ The Chief Commissioner declined Mr. Ahee’s offer, summing up the advice he received in these words: “It is represented to Mr Eden that in some places the work is at variance with the existing law administered by the courts.”²⁹

As an example of state repression, this hardly compares with banning the book, or with punishing the author.³⁰ Ireland and Thadoway

²⁵ P5/174, November 1873, Nesfield to Eden.

²⁶ P5/127, Ahee to Eden 15 November 1873

²⁷ P5/129, Browne to Eden, 5 January 1874

²⁸ P5/128 Hadford to Eden 5 November 1873

²⁹ P5/130 Eden’s secretary to Ahee, 23 January 1874

³⁰ Perhaps Eden would have been more receptive if he had been told about the

simply had their request for state subsidy refused. I doubt that either of them, as opposed to Mr. Ahee, lost money due to Eden's decision. None the less it is a curious episode. What, in Rangoon's eyes, was the fault with *Samuhadda Vicchedani*? Some of Browne's and Hadford's criticisms were unfair. The function of a Digest is to offer views on the same topic from different source. A Digest that is self-consistent is not doing its job properly, so Hadford's criticism that two successive extracts on p. 78 of the proofs disagree with each other missed the point. And when Browne argued that "In some cases ... his exposition of laws is diametrically opposed to the well-known written and customary law of the country" he meant that some of the extracts in *Samuhadda Vicchedani* disagreed with rules laid down in *Richardson's Manugye*.³¹ But if *Manugye* was to be taken as deciding every controversial question in Burmese law for all time, why publish any more law texts? Browne was on more solid ground in criticising Ireland's policy of excluding Pali terms. He spoke of the Pali elements in the dhammathats as crucial to the understanding of these "old writings." Browne, who knew some Pali, flagged Ireland's ignorance of the language as a serious fault in his approach to Burmese law. Browne's casual put-down had ramifications during the 1880s. John Jardine (Sandford's successor as Judicial Commissioner) declared that in studying dhammathat and rajathat "I am convinced that the Pali scholar ought to have preceded the Judge."³² And Emanuel Forchhammer, who knew Pali but had only a rudimentary knowledge of Burmese, came to be regarded as the ultimate expert on Burmese law. Forchhammer and Jardine rejected the main conclusions of Thadoway and Kyaw Htun. According to the Rangoon renaissance, Burmese law was ancient and Buddhist. According to Forchhammer and Jardine, it was less than two centuries old, and was based on the Sanskrit dharmasastras.

Eden's real objection to *Samuhadda Vicchedani* was that it included too much. The Digest made the Burmese law on all topics easily

Digest in advance. Ireland had kept his plans to himself until the work was in proof.

³¹ Hadford made the same bad criticism: *Samuhadda Vicchedani*, p. 30 states that the dead wife's property goes to her parents. "This is quite wrong ..." says Hadford, "for in such cases the Burmese law says that her wearing apparel only goes to her parents."

³² John Jardine, *Notes on Buddhist Law III* 12 December 1882, vi (Rangoon: Government Press, 1882).

available at a time when Calcutta was searching for ways to restrict the application of Burmese law to the two topics of Marriage and Inheritance. Stephen's policy was to force the Extra Assistant Commissioners to apply the Indian Contract Act instead of the dhammathat rules on Wages, Debt and Partnership. At a time when ninety percent of them spoke no English, and Rangoon was having problems getting the Anglo-Indian Codes translated into Burmese, it would have been counter-productive to endorse a printed restatement of the dhammathat rules on Contract. Both Thadoway and Ireland tried to reassure their critics. Thadoway warned that *Samuhadda Vicchedani* may contain some rules that "may conflict with royal edicts or the principles [*taya-lan*] in Statute Law [*Ek-ubade*]." ³³ Ireland added that he had eliminated anything "which would clash with the English Criminal Laws in force in British territory." And he made this rejoinder to Eden, Browne and Hadford:

It has been asserted by some critics, who have seen the text of this book, that some of the provisions in it trench upon ... the Contract Law recently passed ... [This] is a question of greater difficulty. The Laws bearing on contract questions are those followed, at present, by the purely Burman Courts. ³⁴

Like it or not, Thadoway had described Burmese law as it was. *Samuhadda Vicchedani* reflected what the Burmese judges did in their own courts. For an unbiased seeker after the truth of Burmese law, this was enough. Eden's message to Ahee of 23 January 1874 marks the end to the Government's attempts to procure such unbiased knowledge of Burmese law. Thereafter, through the 1880s and 1890s, Burmese legal history was written by Europeans, and shaped to fit their colonial agenda.

4. *Conclusions*

What the Chief Commissioner disliked about *Samuhadda Vicchedani* - its catholic coverage of all the topics of Burmese law - is precisely what

³³ Ireland, *Samuhaddha Vicchedani*, 6.

³⁴ *Ibid.*, iii.

makes it such a valuable source for legal historians. I can point the interested reader towards three copies in London libraries, and to another copy in Ithaca, N.Y.³⁵ After the Third Anglo-Burmese War (1885-6) the Judicial Commissioners were able to force Burmese judges to apply the Indian Contract Act. The traditional Burmese rules on debt no longer governed agricultural finance, and the Chettiar money-lenders of South India, who knew how the Indian Contract Act worked, took over the funding of Burma's rice crop. By the 1930s even the most blinkered Indian Civil Servant had come to deplore the resulting landlessness and anti-Indian sentiment. We can only look at this profound social change through Burmese eyes when we can understand how agricultural finance was organised before the 1880s. Daw Than Saw's translation of Chapter 17 of *Samuhadda Vicchedani*, which follows, provides the raw material for such an understanding.

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³⁵ SOAS Library has the first edition (GPC 290.12148) and a later edition (A 345.910058). The India Office Library has a later edition (Myan. A.1546). I am told that the Koch Library at Cornell University possesses a copy. I have digitised the first edition as a series of pdf file (not all pages, alas, are legible in their entirety). Interested researchers who cannot find a copy nearby may apply to me by email.

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