

## EVOLUTION OF THE CONCEPTION OF LAW IN BURMA AND SIAM

By  
R. Lingat\*

We call law a collection of general rules either expressly enacted by legislature or derived from long usage, but in either case depending for its authority on the consent of those to whom it is applied. Law, as we understand it, is always connected with the existence of a political power which promulgates and enforces it, and is limited to a territory. Consequently, it may be amended, repealed or completed by an act of legislature if it is deemed desirable.

This notion of law is entirely foreign to the traditions of the peoples in the Far East. In the past, their law was based solely upon custom, and the binding force of custom was not considered as originating from a supposed silent common assent to it, but from its mysterious origin and the veneration people naturally feel for long observed traditions. Law, therefore, cannot be modified, but, as it is not fixed by writing, present custom may be altered and new rules may be added to it, though by a slow and imperceptible process, to fit in with new social needs or conditions.

A ruler had no power to enact law. He was born to maintain order and peace and to protect his subjects from dangers coming from inside as well as from outside the territory. His first task was to punish people contravening custom and to settle disputes between his subjects. He was therefore supreme judge and arbitrator. As he was invested with absolute power, his judgments were final, but they were mere orders, namely personal and accidental injunctions, having nothing of a general and permanent rule such as our law has.

---

\* *Lecture delivered before the Siam Society on Wednesday 9th, March 1949.*

## INDIAN NOTION OF DHARMA.

Up to this point, the system just described does not differ from that in use in all primitive societies, as we know from our own history of law. But, among nations of the Far East which had been influenced by Indian civilization, another feature has to be accounted for. In ancient India, as in primitive societies, the whole law, i.e. positive law, is custom. Kings and *rājas* are only responsible for keeping peace and order. It is a very noticeable thing that in so rich a language as sanskrit there exists no proper word to translate our word law as meaning positive law. It is true Hindus have the word *dharma*, which is sometimes wrongfully translated by the word law, but actually is quite a different thing, as I will explain briefly. Hindus, since the Vedic times, and even before, had the notion of a moral order coeval with the world, and to which every man had to adapt the conduct of his life if he was concerned with his salvation and progress. Moral nature is not governed by arbitrary rules, dependant on individual feelings, but has been established once for ever in a body of immutable rules, which are operating exactly as physical laws of a cosmic world, acting their part mechanically, punishing transgressors automatically, rewarding those obeying them by the same mechanical process. It is the collection of these eternal, transcending rules, that is called Dharma, and it was revealed by Brahma, the Self-Existent Being, to Manu, a semi divine being, and from Manu to ancient Sages, who in their turn made it known to mankind through abridged versions, called *dharmaśāstras*, or treatises on Dharma. It was the religious duty of every man to know Dharma and to strive to follow its dictates if he would avoid disgrace and ruin.

We have something similar to these conceptions in what the Romans called *jus naturae* or *jus naturale*, namely Natural law. Natural law is also considered by us as a collection of rules derived from an ideal and necessary order which is the permanent foundation of human justice. But our Natural Law is an unwritten law, sealed in every man's heart only, while in India the notion of Dharma has developed into a huge literature of *dharmaśāstras* to such an extent

that law proper, i.e. customary law, has been left aside entirely. To Hindus, this eternal Law alone was worth studying, and, as centuries went on, commentaries and *nibandhas* (treatises) were added to the primitive *dharmasāstras*, forming a monumental work of a nature unknown to other civilisations.

• Now, this *dharmasāstra* literature has a deep influence upon positive law itself. As it was a religious duty for people to carry out their precepts, many provisions of *dharmasāstras* became law for the upper classes of Indian society, while the lower classes contented themselves with holding to a few of them. Therefore *dharmasāstra* law, partially and unequally according to the cultural status of the peoples inhabiting India, passed into custom and was enforceable as law. But Law as expressed in *dharmasāstras* remained as it was, unaltered, in its whole, continuing to appeal to people, urging them to transform their modes of life and to submit to the whole Dharma.

As for rulers, —*rājas*—, this conception of Dharma tended to confirm the absence of any legislative power. They can do nothing against Dharma. Of course, they may act in contradiction to it, for they are absolute rulers, and they may rightly find it convenient, for the sake of public order or for the interest of the State, to deviate from the religious dictates of Law. But these will be incidental measures, unnoticed by those entitled to tell what real law is. Commands of kings can only endure if they are in conformity with Dharma, and not because of the absolute power of kings, but because of the transcending nature of the rule of *dharmā* which is underlying them. Rulers are auxiliaries of Dharma. The true law-givers are Manu and those inspired Sages who have revealed Dharma once for all.

According to this rough analysis of Hindu conception of law, positive law—i.e. law binding people directly as we understand it—is never expressly enacted in India. It is floating between an immutable, but partially unattainable, written law and a moving mass of oral customs and usages. It depends upon the will of the ruler as well as upon circumstances whether it will emerge and find its

way in a sentence; but as soon as the sentence is read, positive law is to be worked again and again, as no sentence, no royal command may last, only the original dictates of Dharma.

#### EXPANSION OF HINDU CONCEPTION OF LAW IN BUDDHIST INDOCHINA.

Hindus brought this conception of law to every country their civilisation spread over. If I had time enough, I could show you from many passages of sanskrit inscriptions in ancient Champa or Cambodia from the VIIth down to the XIIIth centuries, that rulers in those highly Hinduized kingdoms had never had any code of laws of their own, but always took their inspiration from Hindu *dharmaśāstras*, that is to say, not that they enforced the laws of Manu as law of their kingdoms, but that they held the laws of Manu as an ideal legislation which it was their duty as kings to approach as near as possible. There is nothing to be surprised at in Cham or Cambodian kings using Hindu books of law, as ancient Champa and Cambodia were Brahmanical kingdoms, thus having the same religious ideals as Hindus. The rules of *dharmaśāstras* are not limited to Indian territory and are not concerned with political influence as they reveal the necessary laws governing the moral order of Brahma's creation. In Cambodia as in India, Manu was to be the sole legislator.

But the same conception was also implanted or maintained in Hinduized countries which had adopted, or were converted to, a creed contrary to Brahmanical tenets, namely Buddhism, and especially pali Buddhism, such as Burma and Siam. This could not be done without a preliminary work of adaptation to which I must briefly refer before entering into the subject of this lecture.

This work was accomplished by Mons or Talaings, a people who had founded, towards the VIIth century, an important kingdom in lesser Burma, called Rāmañadeśa or Pegu, and two other kingdoms in central and northern parts of Siam, Dvāravatī and Haripuñjaya. Mons had been early converted to Pali Buddhism, and after the decline of Buddhism in India, their capital, Thaton or Sudhammapura,

became a fervent center of Buddhist faith and culture. In the middle of the XIth century, the Burmese king of Pagan conquered lesser Burma, but this conquest did not put an end to the cultural influence of Mons. As has been said for the Greeks, the captured Mons captured their barbarous victors. The king of Pagan was converted to Pali Buddhism, and in a few years Pagan with its Mon Buddhist communities took the place of Thaton as a great cultural center of Buddhism.

It is probably during this Pagan period that Mons, at the request of Burmese kings, had composed pali books equivalent to sanskrit *dharmasāstras*, laying down rules for administration of justice. This kind of book is called *dhammasattham*, a pali word corresponding to the sanskrit *dharmasāstra*.

#### DHAMMASATTHAM LITERATURE.

*Dhammasattham* literature is known to us chiefly through late Burmese versions, the most important of which is a MANUDHAMMASATTHAM purported to have been translated from pali into Mon at the request of Wareru, King of Pegu, at the end of the XIIIth century, and retranslated twice into Burmese in the XVIth and XVIIth centuries. Wareru, who proclaimed himself king of Martaban in 1287, the very year of the capture of Pagan by Mongol armies, is well known in early Siamese history because of his relations with king Rāma Khamhóng of Sukhothai. King Wareru's MANUDHAMMASATTHAM has been edited with an English translation in 1892 by Dr. Forchhammer, a German archaeologist then chief of the Burmese archaeological service. We know by Burmese traditions and references in later Burmese legal literature that there had been many other *dhammasatthams* besides the one translated by king Wareru's order. As in India, where *dharmasāstras* are many, *dhammasattham* gave rise in Burma, during the period of Mon influence, to an abundant output of literature. King Wareru's MANUDHAMMASATTHAM is especially interesting because it has kept through the translations, its original form of pali *dhammasattham*, and has not been contaminated by purely Burmese interpolations.

In composing this literature, Mon writers took for their model Hindu *dharmaśāstras*, and this is why many provisions of the new codes may be found in the Indian Manu code or other similar books. But *dharmasatthams* are quite different from sanskrit *dharmaśāstras*. First of all their authors left aside every matter which, in Hindu codes, was connected with Brahmanical religion or traditions. They were Buddhist people, and their codes were to be applied to Buddhist people. Therefore they had first to do away with all Brahmanical features. This led them to discard a good part of the sanskrit codes, the part concerning Hindu rites and sacraments, purifications and penances, as having nothing to do with Buddhism, and to borrow provisions only from the portion of *dharmaśāstras* dealing with administration of justice proper, the portion called *vyavahāra*, which in *dharmaśāstras* literature had reached a highly technical aspect and was already almost freed, at least apparently, from religious purposes. Consequently the size *dharmasatthams* was very small compared with that of *dharmaśāstras*. They dealt only with the eighteen types of lawsuits expounded by Manu and used them as headings of chapters. The substance of law was not entirely taken from Hindu codes. They introduced, as was natural, a few customary rules prevalent among the indigenous population, but only in the form of principles of a very general character.

The result was that the new literature was completely deprived of religious support, a perfect civil or lay code. One may be surprised that their authors, belonging as most of them did to the Buddhist order, did not try to introduce into their codes prescriptions taken from their Sacred Scriptures. As a matter of fact, they did, but in an almost imperceptible measure. The probable reason is that Buddhism, aiming at the formation of a monastical body, lay down constructive rules for the community of monks only. It will take a long time, as we shall see, before Buddhist law-givers will realize that there are in Buddhist canonical books and commentaries many ethical exhortations having a juridical bearing. More-

over our Mon authors wanted to retain and to attach to their works the name of Manu, associated in all Indian influenced nations with the origin of law.

#### THE BUDDHIST MANU.

For that purpose they invented a curious story which has met with a great success among Buddhist peoples of Indochina, for it is found as a preamble to every specimen of *dharmmasattham* literature we know. They first borrowed from Buddhist Scriptures the well-known legend of king Mahāsammata, who was a Bodhisattva whom the original inhabitants of the world had entreated to become their ruler. They added to the legend the story that king Mahāsammata had for councillor a nobleman called Manu, well versed in law. At the king's request, Manu, after having obtained supernatural powers, rose into the expanse of heaven, and having arrived at the boundary wall of the world, he there saw all the legal precepts carved in large letters, the size of a full grown cow. He committed them to memory, and, on his return, communicated them to king Mahāsammata. Such is the origin given by our learned authors to the prescriptions contained in their books, and hence the name of MANUDHAMMA-SATTHAM they all bear.

Their intention in framing that story is clear. They aimed at giving to the precepts of their *dharmmasatthams* the same authority as that enjoyed by the precepts of *dharmasāstras*, i.e. to present them as the expression of an immutable Law which even a king like Mahāsammata must yield to, if true justice was to reign in his kingdom. *Dharmmasatthams* would be, as *dharmasāstras* were, books of another and higher nature than records of local customary rules or usages. In a society still primitive, capable of evolution, which it might have been dangerous to enclose in its present collection of customs, they would constitute a kind of ideal law, which wise rulers would be able to adjust according to the fluctuating necessities of time. Briefly it is the Hindu system of law which would be introduced, if the credulity of people would accept that pious and inoffensive invention. And I have already stated that it obviously did.

However, the new Law of Manu, or that Law of a new Manti, greatly differed from the Brahmanical laws of Manu, by its being merely a civil or lay law, i.e. law, still of a transcending nature, but concerning social organisation only. As for the inner sense of it, the moral import to be attributed to their precepts, Buddhism alone was to be resorted to. It is partly due to this divorce between law and religion that the Hindu system as I have described it was bound to evolve gradually into a new shape. Another cause is in the breaking off of all connection with Hindu *dharmasūtra* literature. Once pali *dharmasattham* literature was completed, there was no reason to borrow or imitate from India again. On the contrary there was reason not to do it, as India was governed by its Brahmanical institutions, while countries over which Mon influence was spreading were more and more impressed by Buddhist morals and averse to Hindu thoughts. Being thus cut from its original sources, and compelled to nourish itself with local substance, Hindu system of law could not stay as it was. It is the further evolution of this system of law in Burma and Siam which I am proposing to summarize now.

#### DEVELOPMENT OF BURMESE LEGAL LITERATURE

Burmese legal literature appears at a very late period, a great portion of it having been composed during the reigns of Along-paya and his successors. This may be partly explained by the fact that most of the official records and archives had been destroyed when Ava fell to the Mons in the middle of the XVIIIth century. But it is very likely that the Burmese, during all the Pagan period and a great part of Ava period, had no code of laws of their own, and relied upon pali *dharmasatthams* composed during the Mon cultural influence. This is evident from the fact that king Wareru's Mon version of MANUDHAMMASATTHAM was twice translated into Burmese, first at the end of the XVIth century, then in 1637.

However the first translation of Wareru code seems to have given impulse to a national legal literature which terminated only with the British conquest of Burma. This literature is very vast.

A list contained in a History of Burmese Literature composed in 1888 enumerates more than one hundred *dharmasatthams* written either in Burmese or in pali, either in verse or in prose. About forty of them are still existant and are in use before Courts of justice. The most representative of them is the MANU KYÈ drawn up by a minister of king Alongpaya in 1756 and translated into English by D. Richardson, Assistant to the Commissioner of Tenasserim Provinces, in 1847, under the title: THE DAMASAT OR THE LAWS OF MENOC. It is in fact a kind of digest, composed of extracts from former *dharmasatthams* which are placed one after the other without trying to clear up their discrepancies.

In all these works, the story of Manu as a councillor of king Mahāsammata is told, with new details added. In some of them, Manu becomes an incarnation or a son of Brahma, born as a hermit. Others give him a brother called Mano who accompanied him in his daring flight. Others make him a shepherd, distinguished by his precocious wisdom in settling disputes among people. King Mahāsammata having heard of him, asked him to become his councillor. Manu complied with the royal request, but only after a seven days probation during which he had to try a new case every day. The first six days he gave sentences approved by all. But on the 7th day when a claim between two neighbours concerning cucumbers was submitted to him, he made a wrong decision. He then asked to take leave in order to retire into the forest, where he lived as a hermit, acquiring supernatural powers which enabled him eventually to soar over to the boundary wall of the world, and so on.

The aim of that story has remained the same, viz. to give to the prescriptions of the books an obligatory character, playing the part of a legislation the notion of which was still ignored. Our authors however were not unaware of the fictitious nature of that story. Some of them (such as MANU VANNANĀ, 1772) have identified Manu the law-giver with king Mahāsammata himself. King Mahāsammata being a Bodhisattva, it was a tempting idea to put the legal precepts in his mouth, thus making them a part of the

Good Law taught by the Buddha. But they refrained from giving way to this view. Mahāsammata, in conformity with Indian tradition, was to remain above all the first and foremost of kings. His rôle was to protect his people and to administer justice with equity, not to proclaim law. So our authors have carefully abided by the old story. But as they began to realize its weakness, they felt the necessity of giving fresh support to *dharmasattham* precepts. This fresh support they sought in the Buddhist Scriptures.

The evolution of legal literature in Burma may then be summarized as follows: *Dharmasattham* law, which hitherto was mostly Hindu, but laicized, would resume its religious substructure, but now it would be Buddhism which would sustain law. At the same time, *dharmasattham* substantial law would become more and more purely Burmese.

#### BURMESE RĀJASATTHAM LITERATURE.

Buddhism influence upon *dharmasattham* law was greatly assisted by another branch of Burmese legal literature to which I must refer briefly, that of *rājasattham* (in Burmese *yāza that*). *Rājasattham* is the science of kings, namely the art of governing and, more particularly, of adjudicating cases. Such works differ from *dharmasattham* because they purport to expound law in its practical applications, as exemplified by Sages or wise rulers of the past. They show how clever kings might get rid of intricacies of lawsuits. Therefore they were a complement to *dharmasattham* rules, as these could not be brought into practice without the assistance of kings. But it is altogether a distinct science, as kings when pronouncing judgements, have to consider not only the abstract principles of law, but also the diverse circumstances of cases. Burmese *Rajasatthams* were given as records or collections of judicial decisions attributed to kings or eminent individuals renowned for their sense of justice. This literature is fairly abundant, Forchhammer enumerating not less than 24 books of this kind, 17 of which are prior to the XVIIIth century, and his list is not exhaustive. A good many of them are purely literary works, written to entertain people

rather than to instruct them. Some are edifying tales and are placed under the names of Vidhura or Mahosadha, Bodhisattvas being already popular for the part they played in the RATAKAS as ministers of legendary kings. But some of them are substantial works, written with a design to contribute towards the interpretation of law.

Such is the case of the MAHARAJASATTHAM, which Forchhammer has mistaken for a *dhammasattham*, a work which was composed during the first half of the XVIIth century (more than a century before the *Manu Kyè*) by Kaingsā, King Thalun's minister. In this book, the author, under the name of Manu, gives his opinion in the form of answers to questions king Mahāsammata is asking him on certain points which are not dealt with by *dhammasattham*, or not clearly enough. The work is therefore based on former *dhammasatthams*, but with the object of reconciling and supplementing them. But, as its author is allowed more freedom than is a *dhammasattham*'s, he goes without hesitation to Buddhist Scriptures to find a support for his arguments or an authority for the new rules he proposes. Thus, to quote an example: Rules concerning partition of inheritance in Wareru code are almost a reproduction of those of Hindu *dharmaśūtras*, which are based upon the religious obligation of maintaining domestic cult. An inheritance has consequently to be divided in such a manner that the dead person will draw the greatest spiritual advantages from it. This explains the peculiar rights and the larger part of inheritance attributed in Indian law to the eldest son or to those sons the birth of whom brought more spiritual merits to their father. Wareru Code had adhered to these rules, though they had probably lost their foundation among the Mon population. MAHĀRĀJASATTHAM'S author unhesitatingly put them aside and substituted as principles for rules of inheritance a motion formulated in the *Vinaya*, or Disciplinary rules of the Buddhist Order, with regard to disposal of property left by a monk, viz: that property left by the deceased must be attributed to the one or ones who took care of him during his illness. This idea will subsequently lead law-givers to take into consideration for their

law of inheritance the affectionate feelings which unite members of a family. As seen by this example, a new set of rules was boldly proposed. These new rules were not speculative. As a matter of fact the author took them from actual customary rules which he wished to favour. In basing them upon passages of the Holy Scriptures, he was trying to justify them and to raise them to the status of Law.

*Rājasattham* literature, and especially Kaingsā's work, had a profound influence on further legal literature of Burma. They induced compilers of *dhammasatthams* to borrow more liberally and openly from Buddhist sources. As time went on, it was felt that that merely civil law revealed by Manu could not impose by itself on powerful rulers. If the Hindu notion of a supreme, all-abiding law was to survive, and with it the only limit to the capricious will of kings, the precarious authority of *dhammasattham* precepts should be corroborated by Buddhist sacred writings. A king would hesitate before performing an act, and might possibly give it up, if he could be convinced that in doing so he would transgress the dictates of his faith as well as those of Manu.

#### CHARACTER OF BURMESE LAW.

At the time of Alongpaya, Buddhism had deliberately invaded the law of Manu. The MANU KYÈ prefaced Manu's story with a cosmogonical introduction drawn direct from the SUTTA PITAKA and Buddhaghosa's commentaries. Passages from canonical books are intermingled with rules of ancient *dhammasatthams* and are often incorporated with them. I will illustrate this by some examples: In order to justify the rule that children must, in certain cases, pay debts contracted by their parents although unknown to them, Manu narrates a story which happened during Dīpaṅkara's time, according to which the daughter of a dead woman became blind because she had refused to pay her share of her mother's debt on the ground that she was not born at the time when the debt was incurred. When, on Dīpaṅkara's advice, she paid the debt, she recovered her eye-sight at once. Likewise, to

support the rule according to which a wife should not be put away on the ground only that she had borne no male child, Manu relates the story of a king of Benares who had had only daughters from his wife, though he had been a father eight times; he acquired nevertheless meritorious satisfaction, three of his daughters having attained the highest degree of sanctity. These stories are both borrowed from the JĀTAKAS or Buddhist Birth stories, a book in the pali canon: Buddha is now speaking by the mouth of Manu.

At the same time, purely Burmese customary rules were creeping into *dhammasatthams*, in so far as they could be supported by some principle or precedent derived from the Holy Scriptures. By this way, the Hindu system of law was continuing to do in Burma the same work as sanskrit *dharmasāstras* had done with regard to Indian customs, infiltrating and purifying primitive customs by raising up to the level of law only those which conformed with transcending law.

The result was that Burmese *dhammasattham* literature was no more that collection of simple and concise precepts which ancient pali *dhammasatthams* were. They were often prolix and confused. They explained and discussed more than they prescribed. Their substance is much richer, and a book like the MANU KYÈ had been rightly compared to an encyclopedic book, so multifarious is its subject matter, so abundant the quantity of information it gives about Burmese religious and civil institutions and usages. But, at the same time, such literature had lost most of the authority of Hindu *dharmasāstras* and pali *dhammasatthams*. They were no more sacred books, since they had to prove the rightness of their precepts. They looked more like speculative than inspired books.

Though their authority was lowered, this legal literature had never ceased being considered as the only permanent law of Burma. In many passages the MANU KYÈ reminds kings that they would secure peace and justice among their subjects only in abiding by the prescriptions of *dhammasattham*, and it goes even so far as to contrast with them those decisions supported by force only, which

he branded as a whole with the name of *pāpasattham*, "science of evil, art of sin." Burmese kings were too often despotic rulers. Mutability of royal constitutions was erected by them almost as a system in order that no hereditary rights conferred to individuals might oppose their omnipotence. Continuance of enjoyment of any privilege was dependant upon the capricious will of the king who had granted it, and would necessarily end at his death, for the accession of a new king instantly wiped out all his predecessor's institutions, unless they were graciously restored by the new ruler. It was therefore a very valuable thing for authors of *dhammasattham* to have been able to uphold the notion of a permanent law, unconcerned with, and inaccessible to, the whimsical humour of passing rulers. As a matter of fact, Burmese kings left no legislation. The best of them were satisfied with committing to their councillors the task of compiling new *dhammasatthams*. They continued to hold the rôle of supreme head of justice. In the final stage, justice was administered in their name by the *Hlut-taw*, a kind of Privy Council, which, under their supervision, adjudicated cases, but had no power to enact law, and the decisions of which did not even constitute binding precedents.

Under British rule, except for certain matters where legislation was introduced according to European models, the *dhammasattham* system of law continued to obtain. The British Government only patronized the compiling of a digest, a collection of extracts from all authoritative *dhammasatthams* in order to facilitate the task of judges. But, as in the past, *dhammasattham* rules were not positive law. Before being taken into consideration for adjudication of suits, they had to be examined in the light of the present state of things. A well established usage would prevail upon them. To quote a modern Burmese lawyer, Sisir Chandra Lahiri, in his *PRINCIPLES OF BURMESE BUDDHIST LAW*, "Buddhist Law is not the Law of the Dhammathats pure and simple, but it is the body of customs observed by the Burmese Buddhists."

Thus, Burmese *dharmasatthams*, though they came to be closely associated with Burmese feelings and institutions, and are no longer regarded as an expression of Eternal Truth, are only approaching our conception of law. They still aim, as their old sanskrit prototypes, at being the guidance or moral equipment of justice rather than stating actual rules of conduct. We have to turn to Thailand to see the already well-advanced evolution move forward nearer and nearer towards its fulfilment.

#### FORMATION OF SIAMESE LAW.

Differing from Burmese laws, Siamese traditional laws came to us embodied in a single code, compiled in the early years of this century by order of king Rama I, the founder of the still reigning Chakrī dynasty. This compilation was made with all the legislative materials existing at that date. It has thus preserved all that was remaining of the former legal collections. Its provisions were really law, and were applied as such by Courts of Justice till the codes used to-day were promulgated. This has much helped Thailand in the task of reforming its institutions and in paving the way to its admission among up-to-date States.

This position of Siamese law is the final result of a long process on which the history of Burmese law throws much light, and I now propose to outline it as shortly as possible.

It is most likely that the Siamese, when they were settled in the Menam Valley, even before they had constituted independent kingdoms, had been living under *dharmasattham* or Mon-Hindu system of law as I have described it. The presumption is very likely, because they had settled on an ancient Mon settlement, the Dvāravatī kingdom, which, although it had passed under Cambodian suzerainty, had maintained its original institutions. Mons had played there, as in Burma, an important rôle as a vehicle of Indian civilisation in its Buddhist form. History and local traditions afford so many proofs of it that it will be unnecessary for me to insist upon this point. Then it may be assumed that Siamese' or rather

Thai chieftains, before Siamese kingdoms were established, had already accepted *dhammasattham* as supreme rule of equity for administering justice among their countrymen. In any case, the system was undoubtedly received and had become a traditional practice in the early years of the Ayuthia period (middle of XIVth century), for we have documentary evidence of it from the Sukhothai period. A stone inscription discovered at Sukhothai and dating back to the end of the XIVth or beginning of the following century, deals with legal matters, —perhaps an unique example of that kind of epigraphy in all the Far East. The Royal prescriptions engraved on it are said to have been enacted according to *dharmasat-rūjasat*, i.e. according to the system which derives authority of royal orders from the authority of a supreme Dharma. There is therefore good reason to believe that the same conception was in favour among Siamese kings of Ayuthia period. We get a further evidence of it from the *dhammasattham* which prefaces the collection of laws compiled by King Rāma I of Bangkok, —or rather from the remains of this *dhammasattham* that collection has given us. It is said in the introductory *gāthās* or stanzas that this *dhammasattham* was first written in pali language in Rāmañña country, i.e. in Mon country, then translated into Mon, and translated again from Mon into Thai so that it could be easily understood by Thai judges. There is here a curious analogy with king Wareru' MANUDHAMMASATTHAM history, as the MANUDHAMMASATTHAM of king Wareru had also been translated first from pali into Mon and then from Mon into the vernacular language of the Burmese.

#### THE SIAMESE DHAMMASATTHAM.

As a matter of fact, the Siamese *dhammasattham* offers many substantial similarities to king Wareru's code. However the two books cannot be held as belonging to the same period of time. The story of Manu, which in Wareru's is told in a dozen of lines, is much enlarged in the Siamese *dhammasattham*, though not to the extent it covers in the Burmese *dhammasatthams* of Alongpaya's time. Besides, the greater number of divisions of the legal matter,

which, from 18 titles or types of lawsuits, traditionally adhered to in all Burmese *dharmasatthams*, increase to 39, and the new distribution of the matter under two headings corresponding roughly to what we call substantial and formal law,—not to speak of the new distinction made between fundamental and derivative law to which I will refer later on,—all this shows a clear progress in technicality which could not be attained in a work of the XIIIth century, but supposes a maturing of at least three centuries, if we compare it with parallel Burmese legal literature.

The contradiction between the early introduction of *dharmasattham* system in Siam and the apparently late character to be ascribed to the Siamese *dharmasattham*, may be easily solved, if we are ready to admit that the Siamese made use, not of only one, but of many *dharmasatthams*, which were afterwards combined into one version, the one at present in existence. A thorough examination of the Siamese text would support this assumption, for it would show clear evidence of more than one version being used in its composition. Furthermore, it is the natural tendency of such a literature to give rise to many successive inspired texts which purport to be more and more complete versions of the Eternal Law. The case of Siam would be almost incredibly exceptional if, as India, Rāmañña and Burma, it had not had several versions of its own Code of Manu. But, in Siam, all the versions eventually were merged into one, which, at the time of the last recension of laws, had entirely superseded all the others.

A good step towards simplification had then been made. But it was only a preliminary and necessary step to a more important practice, which would distinguish Siamese people from other Indian civilized countries. It was the practice of connecting royal decisions with *dharmasattham* rules.

#### ROYAL ORDER AND LAW.

As I have just said, it is most likely that Siamese had first lived under the Mon-Hindu system of law. Their chiefs, lords or kings, kept to *dharmasattham* rules for their guidance in governing

their people. They regarded them as the supreme expression of truth and equity, showing to princes the right way for an impartial administration of justice, and they never confused their own authority with that of these sacred precepts. They enjoyed absolute power and could act however they pleased. But their decisions were mere orders, they could not alter the law as revealed by Manu and could not stand as permanent rules. At the best, their authoritativeness could last as long as the ruler who had ordered them was living, but once dead they failed to have any standing, and fell, unless the new ruler was pleased to sanction them. As in Burma, kingship in Siam did not pass instantly from the deceased ruler to his successor. A king is king by the ceremony of coronation. This lack of continuity is well evidenced by the fact that after the demise of a king, all officials ceased to be in office and had to be reappointed by his successor. Such being the conception of kingship and kings' powers, there was apparently no place for what we call law.

But royal decisions, even if they are mere orders, may be worth keeping, if they appear to be useful, or if they are good precedents of kings rightly administering justice. Siamese kings, very early, made a habit of collecting the sentences and ordinances of their predecessors in order to profit from them. It thus evolved, beside *dhammasattham* literature, another legal literature; similar to, and bearing the same name as, the *rājasattham* literature which had so great an influence upon the development of legal literature in Burma. But, while in Burma *rājasattham* treatises were speculative, if not purely literary works, Siamese *rājasatthams*, closer to the true meaning of the word, were real decisions of kings, precedents taken from actual sentences or orders, and not fabricated or borrowed from Buddhist Scriptures. The value and authority of such records were due to the king's reputation of being a good ruler, viz. a ruler governing according to rules of equity.

#### SIAMESE RĀJASATTHAM.

This *rājasattham* literature must have grown up parallel with *dhammasattham* a long time before it was thought of amalgamating the former with the latter. If chronology of old Siamese

laws could be relied upon more than it is, it would perhaps be possible to infer from the dates of their preambles an approximate date for this important shift. I am inclined to put it at the end of the XVIIth century, during king Naresuen or king Ekatotsarot's reigns. At that time, Pegu, the old Mon kingdom, had passed by conquest under Siamese sovereignty, and it may be on that occasion that a suitable *dhammasattham* was found or framed. Ayuthia Annals mention for the year of the Goat 957 C.S. (1595 A.D.) a legislative work accomplished by the Siamese king. The mention is too vague to afford any certitude, and I put it only as a very hypothetical inference. The question of date is unimportant here, as the further evolution of Siamese law may be accounted for pretty safely.

The Siamese *dhammasattham* divides legal matters into two categories, the fundamental and the derivative categories. Fundamental categories, or *mūla-attha*, are the rules of Manu himself (called Manusāra in the book). They are the precepts contained in the *dhammasattham*; they are limited in number, having been enunciated once for ever by Manu. The derivative categories, or *sūkha-attha*, are orders and sentences issued by kings of the past with reference to, and as application of the first. They are therefore many and will continually increase, as they proceed from kings adjudicating cases and exercising royal power. Once they are put in an abridged and impersonal form, they may be considered as part of the *dhammasattham*.

Then, instead of collecting the decisions of their predecessors in separate records, Siamese kings were advised to verify their conformity with the rules of the *dhammasattham*, to have them written in the form of abstract *mātrās* or sections, and to place them under the corresponding headings of Manu Law. Decisions of kings became henceforward permanent rules, not because they emanated from kings, but because they were illustrations of the Eternal Law and partaking of its authority.

The technical process by which this combination was effected is well known to us thanks to a text preserved in the Siamese Code of 1805 and called The Law in 36 articles. In this text one of the last kings of Ayuthia, probably Boromakot, entrusted magistrates of the High Court of Justice, most of whom were Brahmans, to examine some edicts issued by his predecessor and to write them into the form of sections, so that they might be added to the prescriptions of the law. This last stage of law making had to be sanctioned by the king.

This process led to the Siamese legal collections being submitted to periodical revision, when obsolete prescriptions were removed, while new provisions were added to, and intermingled with, old ones, which is effectively a distinctive feature of Siamese traditional system of law. This is also the reason why the Siamese Code, very unlike Burmese *dharmasatthams*, is not encumbered with discussions and reasonings, and is hardly connected with Buddhist speculations, except for those rules which came direct from the *dharmasattham*. This is again the reason why the Siamese appear to have been early provided with a real code of laws, a fact which they may be proud of.

Siamese laws generally begin with a preamble setting forth the fundamental rules, i.e. *dharmasattham* rules, sometimes in their pali version, and next they give, in a succession of *mātrās* or sections, the prescriptions derived from them in course of time. Laws are distributed under headings or *lakṣaṇas* corresponding to the 39 kinds of lawsuits, as pointed out by the Siamese Manu. I am speaking only of the codified part of the compilation made in 1805, for it appears that the system came into disuse at the end of Ayuthia period, through negligence or public troubles, so that, at the time of the fall of the capital, many royal edicts and ordinances were waiting to be promoted to the status of law.

#### GROWTH OF THE LEGISLATIVE POWER OF THE KING.

By means of the system just described, Siamese kings were very near to becoming legislators. As a matter of fact, they could

legislate on condition they would follow, or at least would not deviate from, the dictates of the *dhammasattham* as well as the derivative rules ascertained by their predecessors. As soon as their decisions were formally recognized as examples of the Law, they became law proper. Of course, it may be assumed that, under stable and strong dynasties, the process of identifying royal orders with *dhammasattham* precepts was but a formal ceremony.

However, the old conception of law inherited from India still survived at the beginning of the Bangkok period. This is clearly shown by the circumstances which led the first king of Bangkok to command a new revision of the legal collections, — a revision which was to be the last one. The immediate cause of the revision was a trivial case of divorce, in which a woman had filed a petition for a decree *nisi* to which her husband had refused to consent, alleging his wife had been unfaithful to him. The high Court of Justice had however granted the decree; basing their decision upon a section of the law according to which, even though the husband may be blameless, when the wife applies for divorce she must succeed. Appeal against the sentence was made to the king, who declared that such a judgment was against justice and equity. He then commanded that a comparison be made between the copy of the law used by the magistrates of the High Court and copies of the same law kept in the Palace. On perusal this showed the same rule enacted alike in all the copies. The king then proclaimed that the original text of the legal collections must have been falsified by wicked men to suit their own designs in the discharge of their judicial duties, and that it must be restored in its original purity. He then recalled that, at the beginning of his reign, he had ordered a revision of the Buddhist Holy Scriptures which also had become deteriorated and adulterated through the depravity of men, and this restoration of the pure Law of Buddha had been

very beneficial in the realm of Religion. He then commanded a similar work to be undertaken in the realm of civil government, viz. the revision of the legal collections with a view to restoring their conformity with principles of the *dhammasattham* and with the enactments made by kings of old accordingly.

It cannot be assumed that the Siamese king really believed that the legal rule actually in force concerning petition of divorce by a wife was not that set forth alike in all the available copies of the law. In other less formal occasions, he did not show so much reluctance in repealing provisions of the old laws which he disapproved. However his official attitude was very significant, and the parallel drawn by him between the revision of the Holy Scriptures, — which could be but a restoration, — and the revision of the legal collections, show that even at that time a king, at least theoretically, could not legislate by himself. He was bound to feign a restoration of the original text in order to introduce in the body of laws changes necessitated by variations of social as well as moral ideas.

The code of laws as revised by king Rāma I did not undergo any modification during the reigns of his two successors, and we have to wait for his grandson, king Mongkut or Rāma IV, in the middle of the XIXth century, to see the old conception of law deliberately and definitely put aside. King Mongkut was a progressive minded monarch. He ridiculed Manu the rishi story, and did not feel bound at all by old provisions of law whenever they appeared to him no longer suitable for modern times. With him, and still more with his son and successor king Chulalongkorn, the Law of Manu was over. Many provisions of the old code were repealed and replaced by new enactments relying upon the royal will only.

This final evolution of law was undoubtedly beneficial. As I have said, it has facilitated the transition of Siam to modern

institutions. Social relations cannot be determined once and for ever by a permanent set of rules. Law must vary, and must be able to vary, with the changing conditions of human affairs. However, the abandonment of the traditional system was not without danger. Had not the Siamese kings been enlightened monarchs, well aware of the limited possibilities of their action, the absolute, unrestricted power they had acquired therefrom could have led the Siamese nation to disorder and anarchy. The old Indian conception of law is not entirely wrong. One may believe it would not be altogether a bad thing if national legislators could be convinced that there do exist immutable laws of justice and equity upon which their own laws could not indefinitely prevail. Be it called Dharma, precepts of Manu, or Natural Law, such an ideal legislation is a necessary creed for men of all races to build up international cooperation and peace.

---