

The Role of Rules in Personal Development and Interpretations of the Vinaya in Western Countries

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This paper deals with the issues surrounding, the teaching of a course on 'Buddhism and Law', in a Law School. To complete the analysis of the issues involved, I firstly, outline the background details of the students and my personal background in teaching 'Buddhism and Law'. Secondly, I address what I see the pedagogical challenges in this course and how I attempt to meet them. Thirdly, as the Vinaya is the basic code which defines monastic life and the students are enthusiastic 'rule-interpreters', I concentrate the rest of the paper on the way I deal with the Vinaya in this course.

Students opt for this course as a change to traditional courses (for example commercial law, taxation law). The students are in their fourth or fifth year and have mostly completed arts degrees. Students are educated in the social sciences and in particular have a good background in legal interpretation. Many students have an interest in philosophy and in religious issues generally. Some of the students are from ethnic communities, although very few have Buddhist backgrounds. I have found them very curious about Buddhism and they ask many questions about issues such as reincarnation, karma, the idea of 'no self' and they raise such issues as 'Buddhism a religion or philosophy?'

I am interested in poststructuralist approaches to religion and in particular the work of Foucault. I mention Foucault here as his work suggests particular ways to approach religious texts, the constructed role of knowledge, the structure of institutionalized discipline and the nature of transgressions. I also introduce new perspectives from 'ritual studies', ideas of 'performance theory' and modern hermeneutical approaches to religious texts.

How do I teach the course? This course follows the syllabus of many courses on Buddhism, namely the Brahmanical background to Buddhism, the life story of the Buddha and the main teachings of the Buddha dealing especially the four noble truths and the eight folds path. Students are interested in Buddhist ethics and they are curious about the collection of the rules governing deportment and etiquette. They also wonder how, given the fact that flexibility is needed for the spiritual life, why the rules are so strict.

What are the pedagogical rationales for such a course? What are its goals? I deal with the former question first and the later question in the conclusion.

Students, who undertake the course, are competent in legal analysis and the notions of legal positivism. I attempt to show that this form of legal reasoning is a highly constructed and paradigmatic form of legal analysis from a particular historical and a philosophical period. The issue then arises how we might interpret Buddhist texts? I show that an approach to the Buddhist law (Vinaya) requires a different form of analysis than that associated with western forms of legal analysis.

Most translators/ commentators have seen the Vinaya as a law. I suggest to the students that such a form of description misrepresents its nature. To present this argument I explain (a) the background European notions or expectations that saw Indian religious texts as 'law'. This involves a critique of Edward Said's work *Orientalism* (1978) and whether his insight is relevant to the finding that the Vinaya was a form of law in the

European sense of that term. (b) The course then explores the inadequacy of the appellation of ‘law’ to the Vinaya texts as they involve ritual practices, the training of moral virtues, the shaping of monks and nuns through the institution of both formal restraints and the shaping of subjectivity through a degree of freedom.

The Vinaya as a Training Scheme

A common approach to law regards ‘law’ as a series of general expectations that require obedience. Does it follow that the Vinaya is a form of law or is it merely a form of convention much like the rules of a club? However, the Vinaya is regarded, a related issue is, ‘does the Vinaya require consistent obedience, or are the narratives in the *Vibhāṅga* merely narratives or body of past precedents (that is, wise actions) against which proposed deeds may be evaluated?’

Scholars usually start the critique on the meaning of the Vinaya by noting that the Vinaya embodies the means by which an individual monastic may achieve the soteriological goal of Buddhism and that it determines the manner in which the collective community may sustain its identity (Holt 1981:3).

The term Vinaya has usually translated as ‘discipline’. Hara has surveyed all the uses of this word in Pāli and Sanskrit literature, argues the word is originally a verbal action noun (*nomina actionis*) formulated by the verbal route vi-ni -which means ‘drive out’ or ‘removal’ (Hara 2007: 285).

Is the Vinaya an Ethical System?

It is clear that Buddhism is based on a moral foundation, as it is clear that an essential part of Buddhism is an ethical system of thought which emphasizes moral purity in thought, word and deed (*sīla*) (Gethin 1998; Saddhatissa 1987).

However, an ethical life is not the same as an Enlightened one. The Buddhist emphasis is on being aware, rather than being good (Loy 2010:1241). An externally enforced moral code or a systemic theory of ethics is not part of traditional Buddhism, as far as we awaken to our true nature (Harris 1998:42-44). While some of the rules in the Vinaya are deontological in that they are moral absolutes, in the sense if you commit murder certain consequences will follow, the precepts and the training ‘rules’ (*sikkhapas*) generally are not commands. They are rather something where adherence is beneficial.

One aspect of the inquiry on the nature of the Vinaya is the issue of the extent that the Vinaya, in particular embodies ethics. Students are familiar with different western moral theories such as the approaches within deontological ethics, consequentialism, virtue ethics and ethical particularism.

Keown has argued that Buddhist ethics are a type of ‘virtue ethics’ (Keown 2001:25-26). Sidwerts argues for a consequential approach to Buddhist ethics, while Clayton argues that Buddhist ethics are best understood as a combination of virtue ethics and utilitarianism (Sidwerts 2003; Clayton 2006). While this short summary of various approaches do not represent the subtleness of these positions, students are open to the conversation that ‘Buddhist ethical theory’ is distinct approach and may not be fitted into western forms of ethical theory.

Bronwyn Finnegan writes that one ‘might wonder whether Buddhism is in need of ethical theorization’. The fact she argues, ‘that no systematic theory was developed within Indo-Tibetan tradition gives one pause to reflect’ (Finnegan forthcoming). Hallisey takes this absence to indicate that Buddhist intellectuals employed a kind of ‘ethical particularism’, which recognizes a diversity of values (Hallisey 1996). Hallisey takes this absence to indicate that Buddhist intellectuals developed an approach which was not monolithic as Buddhism utilized more than one moral theory and that it drew its

ideas of virtue and moral development from stories and that it employed a kind of ‘ethical particularism’ (Hallisey 1996, 1997).

Is the Vinaya a Form of Generalized Norms Based on the Idea of ‘Obedience’

Legal anthropologists and ethnologists have long sought to find law in non-western societies seeking criteria, which may be used to classify certain cultural content as ‘law’. This western scientific project within legal anthropology and comparative law has been seen as Eurocentric as it is based on the formulation of ‘representation’ of criteria that can be generalized across other societies. Western forms of legal education have also generally assume that ‘laws’ are a series of generalizations and that law enshrines the idea of obedience to a form of centralized authority. However, some social orders are not ruled based. In fact searching for ‘law’ often gives a distorted view as little attention is given to power relationships or wider forms of cultural relationships (Eberhard 2005).

Given the issues within ‘ethical particularism’ and the approach to law in western societies, the challenge for students is to form an opinion about the Vinaya as a form of law, as a training scheme, or group convention.

To discuss these matters we discuss the limitations of the legal model as regards the Vinaya. It is generally assumed by scholars that adherence to the rules is required. Huxley seems to endorse a different approach, as he argues that in a personal situation of any particular hypothetical monk or nun, that the Vinaya is not a code as such, but more a compendium of factual situations for each monastic to consider as regards their own situation (Huxley 2002:208). He seems to suggest that a monastic has a personal choice as to whether or not he/she should follow a rule and this choice may not be in breach of a rule.

In line with Indian understandings on religious texts, is obedience required to ‘rules’? For instance, Clarke, has shown in the case of non-Pāli Vinayas, that in the case of an offence against *Pārājaka* 1, that an offender was given a penance and not necessarily expelled from the Sangha (Clarke 2009a; 2009b).

Here I might foreshadow a point elsewhere concerning the nature of the Dharmaśāstra (Voyce 2010). Here I refer to the debate over the nature of these texts and the extent they were utilized in decision-making. I follow the approach, that texts acted as forms of suggestions which may be utilized along with other local texts or with regard to other local nuances. This approach posits the Dharmaśāstra, not as a code, but ‘rather as a situation-specific tool if appropriate (Menski 2003:125). The idea of a Vinaya as a legal *regula* with ‘dos and donts’ in what we might call the traditional European sense of rules, needs reconsideration.

Is the Vinaya a Specific Type of Medicinal Treatment?

Huxley asks ‘is the Vinaya law?’ He concludes ‘not he considers if you insist law should have a sovereign and sanction’ (2002:131). Huxley points out that the Buddha should be seen like a physician recommending medicine: ‘the training may be hard, it may be unpleasant but it will be good for you’ (1996:142). To support this approach Huxley cites the Buddha who says: ‘if a Bhikkhu becomes guilty he must go to the Vinaya teacher ...who admonishes him: ‘I am like a physician, you are like a patient.. you must tell me each and everything’.¹

Huxley concludes that the Vinaya is ‘halfway between the medical model and the legal model’. Huxley further applies Max Weber’s reasons for rule adherence. He argues that the Vinaya rules are obeyed out of traditional reasons (‘because we’ve always done it

¹ Shan-Chien-P’i-P’o-Sha (1970:359-362).

this way') rational ('because it make sense to do it this way') or charismatic ('because my hero has told me to do start doing it this way'). Huxley argues that the Vinaya appeals to all these models (Huxley 1996:143).

In an Encyclopedia entry on *Legal Systems of the World* published in 2002, Huxley returns to the issue of Vinaya as law. He argues that the Vinaya should not be seen as law according to positivist conceptions of law such as laid down by Jeremy Bentham and Hans Kelsen. He argues that the institutional form of definition in this code is different from that found in the codes such as Hammurabi and Justinian (Huxley 2002:207). He goes on to say that 'the fundamental attitude to causation leads Buddhist lawyers to prefer situations rather than rules'. As there is naturally disagreement about the application of rules the best approach, Huxley argues, in practice is to regard each rule is 'defeasible' or at best as a 'rule of thumb' that is the 'summation of past experiences that, for one cause or another, may not apply to the instant case' (Huxley 2002:208).

Vinaya and the Notion of Transgression

Buddhist monastic rules regulate nearly every aspect of monastic life. Should the rules be seen as a collection of 'rules' or 'guides' which allow or even necessitate permissible violation? Some students suggest that the approach of 'ethical particularism' in the light of ideas on 'transgression' suggests such a possibility.

This interpretation of rules as regards sexual behavior indicates that violation of rules or what I call transgression may have been part of the rule making system. I explore this issue in the context of Foucault's and Bataille's ideas on transgression. Following this line of thought I examine how conduct, not normally allowed within a legitimized setting was acceptable within a particular framework. In other words, the Vinaya may have acted as a set of guides for those in need of a certain style of discipline and for others a regime mechanism to be transcended.

Bataille suggests that rules should be seen as more than prohibitions. Rules also imply 'transgressions' (Bataille 1986: 65). In other words, if we examine the relationship between the taboo (for example the Vinaya rule against sexual intercourse) and the transgression of the rule on the prohibition of sex, I suggest we may find that the taboo is not an absolute phenomenon. In fact, 'prohibition' and 'transgression' form an ensemble that defines social life (Crapanzano 2004:136). As Foucault writes:

the limit and transgression depend on each other for whatever density of being they possess: a limit could not exist if it were not absolutely uncrossable and, reciprocally, transgression would be pointless if it merely crossed a limit composed of illusions and shadows (Foucault 1999a:60).

Foucault indicated that it was only when the taboo was violated that the full force of the taboo was experienced. Transgression involves a breaking down of established patterns, through excess or violation, and thus presented the opportunity for the transgressor to experience a new kind of subjectivity. To Foucault the religiously inspired and transgressive sexual experience was more intense than rule based conformity, as it gestured towards the ultimate experience of enlightenment and an ecstasy in common with the divine (Foucault 1999a).

This argument about sexuality prompts the question as to 'what was the Buddhist attitude toward sex (i.e. sexual behavior) in ancient India?' Was it regarded as sinful and 'bad'² as with Christians in early Christian times? In Buddhism, sexual behavior may be

² This assessment, as I later show about Christian views, is an overstatement given the disparity of views concerning sexuality in time and place. For a more balanced view, see Price (2000: 1156-1158).

seen as an activity, which was not necessarily 'bad' but rather as problematic as it promoted distraction (Gross 2000:1115). In the context of the rules for monks and nuns, sexual intercourse was not really the problem: the problem was the moment of 'letting go' and making sex happen (Gyatso 2005:285).

This view of sexuality combined with the Buddhist view of the body (in some contexts noted as 'foul and disgusting') opens up new ways of regarding sexuality and the problems of desire in Buddhism. Should we examine the internal conquest of desire we may see that the concern of the Vinaya was not over physical action as such; rather the battle was over the purity in the mind (Foucault 1999b).

The Role of Confession in the Vinaya

What is the role of 'confession' in the religious life generally? Confession involves the 'making known or acknowledgment of ones faults or wrong doings'.³ Many students have ideas of confession from Catholic origins. However; the word 'confession' requires a culturally specific definition.

Confession is often associated with the full admission of personal guilt for misdemeanors. In Christianity confession was originally part of the sacrament of penance, which involves contrition, confession, satisfaction and absolution. The institution presupposes a theory of individual guilt, a moral order against which sins are committed and a system of authority, which can receive sins and give absolution.

This approach needs adjustment in the context of early Buddhism, as there is no equivalent concept of what is called 'sin' in Buddhism as understood by Christianity. In Buddhism, the root of evil is ignorance and false views (Rahula 1972:3). Furthermore, in Theravāda Buddhism there is no list of transgressions, which can be dissolved by mechanistic absolution, as Theravāda Buddhism does not contain the concept of penances. In other words, the consequences of ones actions cannot be escaped as 'kamma ripens without fail.'⁴ At the same time Buddhist, monks did not have sacramental powers to absolve misdemeanors.

What are the mental and physical stages a 'confessor' has to go through in the Vinaya? My approach has been to use Foucault's writings to examine Buddhist texts to indicate how confession may have acted as part of the disciplinary process within a Buddhist monastic setting. Together with the students, I discuss the four aspects of how monks and nuns may be shaped by the confession process.

Firstly, the confessor had to address the ethical territory he/she breached. This would mean the confessor reflecting on the precepts and the idea of *sila* or morality. Under Buddhist teachings, consideration might also be given to the nature of conditioned existence, and how wrongdoing may have been motivated by unskillful behavior, such as greed hatred or delusion.

At the same time, the confessor had to convince the confessant that he/she was telling the truth and that the confessor was revealing their genuine motivations. Implicit in this exchange was the need for the confessor to establish to his or hearers that that the confessant also believed in the confessors explanations (Foucault 1993: 211 fn. 28).

Secondly, there is another level within the 'examination' or the 'clinical procedure' offered by the recitation of the confession ritual in the context of the Pātimokkha recital. This is that the confessor had to frame their action into the appropriate legal category as a means of bringing awareness to their actions and so that they should see the action as an offence. Thus by this process the confession enhanced the subjects own diagnostic examination.

³ *Shorter Oxford English Dictionary* (1973:395).

⁴ See A. V. 292. See also Attwood (2008); Gombrich (2006, 108).

This process aided the confessor's self-examination and promoted his or her own consequent self-regulation (Prado 2000: 99). This type of examination was consequently a form of self-discipline as it involved self-scrutiny, self-evaluation, about the conduct of a monastics life, thus inviting consequent avowal, inspection, evaluation, and self-regulation (Rose 1999: 245).

This subjective process has a third aspect in that it forced the penitent to search through the inexhaustible linkages related to sensuality and sexual desire, so to unravel the web of desire and ignorance as to his/her mental condition. In other words, the penitent must 'be forever extending as far as possible the range of their thoughts however insignificant and innocent this may be' (Foucault 1999b: 195).

Fourthly, should the confession pertain to sexual behavior, however widely conceived, this type of conduct represented a rich area for religious experience and transformation. Confessions about the body and its desires serve as an index to character, individuality and the ability of a monastic to forge their own subjectivity).

The recitation works on other levels as it disburdens and sets a person free at the same time the recitation creates a bond of meaning where individual wrongdoers are brought into line and social relationships. The recitation of the Pātimokkha has 'a work like ability to transform and bring into the listeners mind something that was not there before'.

How does Buddhism see sexual desire? Sexual desire was regarded in early Buddhism as a subset and as a special case of *kāmaccanda* or sensual desire generally. What was 'productive' about the power relations between the confessor and the confessant was that sensual desire was linked to sexual desire.⁵ Sexual desire, rather than being repressed, could thus be transformed into Enlightenment.

Thus, discipline on the 'productive body' produces knowledge about the body, the self and the power relations in which it was implicated. As Faure⁶ argues the facing of sexual and sensual desire represents a 'pivoting' (*Skt. parāvṛtti*) moment in that by confronting sexual energy transformation occurs (Faure 1998: 4).

Conclusion

Engler recently canvassed the notion that western dharma practitioners need to deal with the different forms of western conditioning (issues of identity, sexuality, career ideals etc.), as part of their development (Engler 2003:42-47). While this paper does not canvases at length these various issues, I see students as experiencing internal conflict, which may be labeled as the 'legal conditioning' of students as 'professional subjects, common in western forms of entrepreneurial culture. The process of overcoming this form of identity limitation and the openness to read texts in a different way may help students find new ways to understand religious/ legal texts found in indigenous cultures and religious legal systems. I itemize two areas where these factors emerge.

Firstly, some scholars have argued that even with the demise of the influence of religion, the category retains its uncontested and 'pretheoretical' privilege. In other words, students still carry around Christianity's essential terms even though they may see themselves as non-Christians (Balaganadhara 1993: 284-5).

Buddhist narratives might start with the situation of the primal conditions of ignorance, its consequent suffering, moving on with the intention of awakening,

⁵ One view on the Buddhist notion of desire is that 'desire' is not limited to sexual desire as sexual desire is assimilated in all forms of sensual desire. For instance, carnal desires are associated with hunger and thirst or more exactly the eating of meat and drinking alcohol. Consequently, non-desire implies not only chastity, but vegetarianism and sobriety (Faure 1998: 17-18).

⁶ While Faure may be writing on issues contained within Yogacara philosophy his analysis is appropriate here, see Glassman (2003:764).

culminating into the insight of emptiness of all conditioned existence and the liberation of all sentient beings (Payne 2006:48). This sequence may easily be framed into the movement in Christian terms from creation and fall to redemption. While this journey may be similar, in Buddhist experience my point is not to deny the universal parallels involved in the unfathomable human journey for meaning, but rather the dangers of not seeing each cultural journey in terms of its own experience.⁷

Secondly, many law students understand law as being based on the values within our modern form of culture, on such ideas of self-hood⁸ and the centrality of the notions of 'authority' and 'obedience'. Davis advises, as a corrective, that this approach to law 'is hopelessly exceptional, limited historically to recent centuries and geographically by and large to European countries and their current and former colonies' (Davis 2007:243).

Some of these assumptions (ideas of self, sexuality identity, and 'career institutionalization') limit students in the context of legal institutions which produce professionally skilled legal identities. As vocational discourses, become normalized: students accept these fixed forms of identity not because they are compelled but because it is normal to do so and to fail to do so would be abnormal' (James 2004: 604-5; Ball 2007).

⁷ Katz contends that mystical experience found in various world religions of the world are different from one another because the cultural contexts in which they arise are different see Katz (1978); Nagatomo (2002).

⁸ Anthropologists have shown that the idea of an autonomous, atomistic individual is not reflected in many indigenous cultures where the model is relational and one of mutual dependence. Gell (1998) for instance speaks of 'distributed personhood'.

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