

Woe Unto Ye Lawyers: Three Royal Orders Concerning Pleaders in Early Seventeenth-Century Burma*

by MYINT ZAN**

INTRODUCTION

This Article is a discussion of three Royal Orders of King Anauk Hpet Lun of Burma (Ava as it was then also known) in the early seventeenth century.¹ All of the three royal orders dealt with issues regulating (and reprimanding) *shay-nay* (pleaders/lawyers). In fact the three Royal Orders concerning pleaders were issued on a single day: 23 June 1607 AD. The Royal Orders were proclaimed by King Anauk Phet Lun who was the second king of the Nyaung Yan dynasty, which lasted from 1597 to 1754.²

The “source” where these Royal Orders were found by this author is from the first volume of the ten-volume *The Royal Orders of Burma AD 1598-1885* compiled and translated by Dr. Than Tun, Emeritus Professor of History at Mandalay University, Burma.³

*This article is dedicated to my mother Professor Dr. Myint Myint Khin, a “non-lawyer,” who was among the few persons who expressed surprise, indeed astonishment, that the *shay-nay* (pleaders) existed in early seventeenth-century Burma, if not much earlier, and to the fact that the *shay-nays*’ existence in Burma in ancient times was probably, from a historical and comparative perspective, a very rare phenomenon. My mother had a “real kick” out of the excerpts from the original passages of the royal orders reprimanding lawyers when I first recited and later showed them to her. In appreciation of her interest in the topic and for her support and encouragement regarding my education, research interests, and career, I am pleased to dedicate this article to my mother.

**BA, LL.B (Rangoon), LL.M (Michigan), M.Int.Law (Australian National University), Lecturer, School of Social and Economic Development, University of the South Pacific, Suva, Fiji.

1. Professor Than Tun stated in the first volume of his ten-volume *The Royal Orders of Burma AD 1598-1885* (The Centre for Southeast Asian Studies, Kyoto University, 1983-1990) (hereafter ROB) that the orders that were compiled were those issued during the period when “kings ruled over the Kingdom of Ava which was in size almost equal to the [current] Union of Burma minus the coastal strips of Rakhine and Tennesarim,” xi.

2. The chronology of the kings who ruled Ava during the Nyaung Yan dynasty is in *ibid*, ix-xi.

3. Professor Than Tun produced the Royal Orders which he had researched and compiled for about twenty years in the original Burmese script accompanied by summary or “skeletal” translations of every Royal Order into English. Professor Than Tun’s translations were brief and did not cover every detail of the Royal Orders. This is understandable since the full translation of the Royal Orders would require many elaborations, qualifications, and explanations in historical, linguistic, cultural, anthropological, literary, geographical, political, and religious contexts. The “crux,” though not all the details, of the three Royal Orders of King Anauk Phet Lun concerning pleaders was translated briefly by Professor Than Tun. The

This article is written with the following objectives:

- (1) to discern briefly the existence and extent of the Burmese legal profession in the early 17th century from a comparative perspective,
- (2) to study the mode of operation of the *shay-nay* (pleaders) and its relationship with the king (the state) and the clientele as can be gleaned from the Royal Orders of 23 June 1607,
- (3) to analyse the forms of legal and non-legal discourse, rhetoric and argumentation, and theories of adjudication during the early 17th century in Burma.

THE EXISTENCE OF THE LEGAL PROFESSION IN BURMA IN HISTORICAL TIMES

Writing in 1962, the late Dr. Htin Aung, a Burmese scholar stated that

Under the Burmese kings, the legal profession was not divided into advocates and solicitors, and lawyers were officers of the court. They were known as *Shay-nay*, *shay-yat*, which meant that those 'who stood and stayed in front' because they sat or stood in front of their clients during the hearing of a case. They wore special gowns. They were entitled to a scale of fees based on the value of the suit and they were entitled to sue for their fees. Like lawyers of all countries and all times, they were considered to be talkative, and there is still current a centuries-old Burmese saying that the tongue of a lawyer would not bum even in the fires of hell. Moreover judges in their judgements often remarked that 'The two lawyers had argued at great length because they were very clever, but the issue was quite clear'. It is not known when the Burmese legal profession first came into being, but it must have been well established by the time of Shin Dhammavilasa, because he mentioned that the lawyers were competent to sue for their fees.⁴

According to Dr (Maung) Htin Aung, Shin Dhammavilasa, a Buddhist monk and legal scholar was the author of the "*Dhammavilasa Dhammathat* .. the oldest surviving Burmese law book."⁵ Dr Htin Aung indicated that the monk Shin Dhammavilasa flourished in the era of King Narapasithu who '[i]n the year A.D 1173 became king of Pagan [the first Burmese dynasty which flourished from about AD 1000 to AD 1300].'⁶

Hence according to Dr Htin Aung "the Burmese legal profession was well established" by the late twelfth century or early thirteenth

author of this article has attempted a full translation of the three Royal Orders with the help of a modern *Myanmar [Burmese]-English Dictionary*, a thesaurus, a Burmese encyclopedia (*Swei-Zone-Kyan*), and other literary sources.

4. Maung Htin Aung, *Burmese Law Tales: The Legal Element in Burmese Folklore* (Oxford, 1962), 27. In another (newspaper) article written in 1974, (Dr.) Maung Htin Aung again referred to the Burmese saying of lawyers' tongues not burning in hell. He also mentioned that in the days of the Burmese kings there were three types of law officers: *Kalan-thanbyin* (clerks of the court), *Shay-nay*, *shay-yat* (pleaders/"those who stood and stayed in front"), and *Lay-Hnyin Wut-Lone* (those who are entitled to wear a special dress made of clove) [equivalent of "wearing silk," King's/Queen's counsel]. See Maung Htin Aung, "A Conversation with Princess-Leamed-in-the-Law," Parts I and II in 28 March 1974 and 29 March 1974 issues of *The Working People's Daily* (Rangoon, Burma) 2.

5. Maung Htin Aung, *Burmese Law Tales*, 10.

6. Ibid.

century AD.⁷ But it was an English man not an (ethnic) Burmese legal scholar who—at least to this author—made this remarkable and significant claim concerning the emergence of the Burmese legal profession from a comparative perspective:

In one important aspect Burma makes a special claim to legal attention. It was the only country between Japan and the Middle East to develop a legal profession independently of European influence. The independent emergence of a legal profession has happened at most four or five times in the world: in 5th century BC Greece, in 1st century BC Rome, in the 10th century AD Islamic Caliphate, and in London and Paris in the 13th century. A great deal of argument surrounds the independence of these cases. Were the English and French developments inspired by Islam? Were the Roman developments inspired by Greece? Max Weber has put these questions at the centre of the debate on modernity. ..But Weber's work suffers from the absence of control data: unless we can study a profession which did not facilitate modernity we cannot test Weber's generalisations. Burma provides us with a truly independent case study. But when and where the *shey-ne* (Burmese legal counsellors) evolved is still an open question.⁸

This Article is not intended to trace or discuss the emergence of the Burmese legal profession in detail. These facts or statements of Dr. Htin Aung and Andrew Huxley are mentioned to provide a background in studying the three royal orders partly from a comparative perspective. Against this backdrop it is hoped that a study of the three Royal Orders concerning lawyers, emanating as it were, from a single king on a single day in 1607 in Burma, would be of interest and significance.

A BRIEF DESCRIPTION OF ROYAL ORDERS GENERALLY

Professor Than Tun, the compiler of the royal orders, has himself recounted how the royal orders were written and recorded and how he had arranged to compile and translate them (in a summary and skeletal form).⁹ Than Tun writes that:

The Royal Orders of Burma are instructions made by kings on things that they wanted done and on methods of how they should be done. An order would effect either the whole kingdom, as with a declaration of war, or an individual alone such as freeing him from slavery. Generally, an order deals with one single episode, although there are cases when one order includes several affairs of different kinds, [although the focus of the order may concern an immediate issue which a king wishes to address, in general these orders reveal the social and cultural background of the people.**)

7. Andrew Huxley, a scholar on Burmese law in the Department of Law at the School of Oriental Studies put the emergence of the Burmese legal profession around the late-15th to the early-16th century, though he did not discount the possibility that the *Shay-nay* might have arisen earlier. See Andrew Huxley, "The Burmese Legal Profession, 1250-1885," *Receuil de la Société Jean Bodin*, (July 1993).

8. Huxley, "The Importance of the Dhammathats in Burmese Law and Culture," *The Journal of Burma Studies* (1997) 1, 13.

9. Than Tun, "Observations on the Translation and Annotation of the Royal Orders of Burma," (1988) *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies* 4 (Special Burma Studies Issue), 91-99.

• 10. *Ibid.*, 91.

Than Tun further states that all of the original orders were written in *parabaiks*,¹¹ and all the original copies are now lost. All his compilations were made through copies of the original orders that were rewritten in palm-leaf manuscripts.¹²

It is fortuitously felicitous that all three royal orders concerning pleaders of 23 June 1607 have survived the vagaries throughout the centuries such as those of chance, weather, destruction, and looting to illustrate and reveal to us His Majesty King Anauk Phet Lun's attitudes toward and annoyance with the shay-nay of his times. More importantly the three royal orders help us to gauge the context, milieu, and range of early 17th century Burmese life as regards the regulation of pleaders, appointments and types of judges, instructions to judges given by the king, and about other legal matters.

The Three Royal Orders (Concerning Pleadors) of 23 June 1607

As stated earlier, all three royal orders concerning pleaders were issued on a single day. These royal orders, incidentally were the first ones that were discovered which directly deal with the subject of pleaders, though the earliest royal order that was discovered before 1598—and only two were discovered prior to that date—dealt with the subject of theft and was issued by King Kyawzwa (1235-1249) and was dated 6 May 1249.¹³

In the following discussions the author will first attempt a literal (or almost literal) translation of the three royal orders starting with the shortest and will designate it as Royal Order A. The second and somewhat longer royal order will be Royal Order B, and the last and longest one will be called Royal Order C. In the translation the author's attempt to be "literal" (so as to be faithful to the original text as much as possible) has to be matched with the attempt to make some sense out of the royal orders, a task which is not altogether straight-forward. This is so because even in the original slightly archaic and "royal" Burmese—after all, these original royal orders, as of this writing, are more than 394 years old—the royal orders do not, for the modern Burmese reader, readily lend themselves to a smooth understanding. Than Tun's "summary" translation of all three royal orders appears in the first volume of *ROB*. A full translation and exposition of the terms and expressions that were used in each of the royal orders require explanations and elaborations. This is done in the second (sub) section "Elaborations and Explanations." The author's general

11. *Parabaik* is defined (with an illustration) in the *Myanmar-English Dictionary* (Department of Myanmar language Commission, Yangon Myanmar, 1993), 258, as "n[oun] writing tablet made of paper cloth or metal in the form of accordion folds."

12. *Ibid.*, 91-2. Than Tun continues to describe the difficulties and intricacies of compilation, verification, annotation and translation of these Royal Orders in the rest of his Article.

13. *Ibid.*, 9. As to the transposition of Burmese calendar years to the years in the Christian era, Than Tun stated that he referred to Sir Alfred Irwin's *The Burmese and Arakanese Calendar* for the transposition. *Ibid.*, 94, 98. See also Than Tun, *ROB I*, ix.

commentary and analysis follow in the third sub-section entitled "Analysis and Commentary."

A. Royal Order A

1. *Literal Translation*

His Majesty, the Great and Just King, Lord and Owner of [Subjects'] Lives whose Royal Glory is Colossally Great has issued this Royal Order¹⁴

Those *shay-nay* (pleaders) who under the sole of my royal golden feet:

is desirous to obtain gifts [*fess*] of pickled tea leaves and betel nuts from the clients and appear as pleaders on the [clients'] behalf must as was the case during my Royal Father's reign

*Dress*¹⁵

wear a conical *Khaung-Paung*,¹⁶ carry a cloth-sling bag, carry a cup, and a fan when the pleader appears [in court] on behalf of a client

Fee

For each case, the fee for [literally] moving the feet [visiting the client and appearing on behalf of the client] would be 37 1/2 *ticals* of copper. Let no one, be they receiver or giver of the money ask or give more than this prescribed amount. If this order which has been in existence since my Royal Father's time is violated and more than 37 1/2 *ticals* of silver is asked [by the *shay-nay*] then do not believe that [you] will have the chance to plead your case twice [you will be punished without appeal].

"*Occupational Hazard*": [By the nature of their jobs] the *shay-nay* [one who stayed in the front] *shay-yat* [one who stood in the front] could not be free from (could not help themselves from) breaching the

14. Two out of the three royal orders were introduced by this particular "royal" and—to the egalitarian modem—pompous phrase. If the English translation sounds pompous or awkward, it is due to the fact that the author has literally translated "royal Burmese" into English to convey the grandeur and ambience of the royal order. For an insightful description of the elite vocabulary and usage of Burmese royalty, see Hla Pe, "Burmese Royal Language" in *Burma: Literature, Historiography, Scholarship, Language, Life and Buddhism* (Singapore: Institute of Southeast Asian Studies, 1985), 105-17.

15. The royal order itself did not specifically categorize with headings what pleaders must do or wear. I have inserted them in order to provide a clear delineation of what the king required of the pleaders.

16. Top Head dress some Burmese men wore on formal occasions. The *Myanmar-English Dictionary* above n 11, described *Khaung-Paung* (at p. 62) (*gaun:baun*) as "Myanmar turban."

[Buddhist] precept against telling untruths on a daily basis. Therefore

Restriction: they are not to live inside the city [walls]. Build houses in the same quarters outside the cities and require the pleaders to live [as a group] in a specified place. Officers [of the palace] must make these arrangements.

2. Elaborations and Explanations

“under the sole of my royal golden feet”\ This is royal language indicating or meaning ‘in the royal presence’ or ‘within the jurisdiction of the kingdom’.¹⁷

“gifts of pickled tea leaves and betel nuts”: This may mean small gifts given to the pleaders, or fees. However, since the exact and stipulated amount of 37 1/2 *ticals* of silver was stated as the fee per case, the expression may be merely an analogy for those *shay-nay* who desire to practice their craft in consideration for gifts and remuneration. Htin Aung writes that during the days of the Burmese kings,

[a]fter a court had passed judgement, a dish of pickled tea was placed by an officer of the court before the two parties, and if either party refused to partake of the food, it was a gesture that he was dissatisfied with the judgement, and constituted notice of appeal to a higher court; on the other hand, if both parties ate the pickled tea, it meant that harmony had been restored and the dispute had finally ended.¹⁸

“the fee for ‘moving the feet’ [visiting the client[s] and pleading the case on their behalf]”: The *Myanmar-English Dictionary* in its first edition published in 1993 stated the term *chay-kwa-kha* (*chei gjwa*) as “doctor’s visiting fee”.¹⁹ Hence in modern terms “visiting fees” is used solely for the services of medical doctors. From the royal orders it can be seen that the term was also apparently used in relation to the services of pleaders. It is briefly noted here that the term “golden” (*shwe*) is restricted only for the use of royalty, and specifically kingship, as in “royal golden feet.” It is definitely not used for commoners such as pleaders.

“do not think you will have the chance to argue your case twice”: This phrase is an almost literal translation by this author. Than Tun translates the phrase as *“will be punished without appeal”*.²⁰

*“pleaders could not be free from (could not help themselves from) breaching the [Buddhist] precept against telling untruths*Buddhists are

17. Hla Pe, Emeritus Professor of Burmese at the School of Oriental and African Studies at the University of London explains that “under the golden feet” or “sole” = “in the royal presence” Hla Pe, “Burmese Royal Language,” 112. However, as not all, or even any, of the pleaders were unlikely to appear before the king himself, in this particular context, the phrase “in the royal presence” may not convey the full meaning of “under the sole of my golden feet.” In the context of this particular royal order “within the jurisdiction of the kingdom” may be a more suitable translation.

18. Maung Htin Aung, *Law Tales*, 22.

19. *Myanmar-English Dictionary*, 76.

20. Than Tun, *ROB*, 23.

supposed to abide by five basic precepts in their daily lives. On more formal occasions, Buddhists take the precepts usually in the presence of monks. The taking of the five precepts would take the form of an affirmation stating that: "I pledge (affirm) that I would not (intentionally) take the life of any living being, I pledge that I would not steal, I pledge that I would refrain from telling untruths, I pledge that I would not commit adultery, and I pledge that I would not imbibe intoxicating drinks." Than Tun translates the above phrase simply as "A pleader could not possibly avoid telling lies".²¹ The phrase "on a daily basis" was also left out in the "skeletal" translation provided by Than Tun. The king's statement that pleaders cannot help themselves from telling lies on a "daily basis" (*nait-dine-pin*) is significant in that, on a doctrinal level, all Buddhists are supposed to observe the five precepts strictly. It is clear from the phraseology of the royal order that, at least as far as the precept of refraining from telling untruths are concerned, lawyers are perpetual "sinners": thus the necessity of segregating them from the pale of society (by letting them live only outside the city) and to live together in separate quarters so that the quarters (*a-su a-kwek*) where lawyers lived would have been easily identifiable (and perhaps to be avoided by the laity unless the force of circumstances compelled the would be client or litigants to approach the lawyers for their services).

3 Analysis and Commentary

As far as discerning or identifying the existence or emergence of the profession of *shay-nay* (the legal profession) is concerned, the key phrase in Royal Order A is "as was the case during my Royal Father's reign." From this it is evident that the legal profession in Burma did not arise suddenly during King Anauk Phet Lun's reign. Instead, it is clear that at the very latest the legal profession (the *shay-nay*) existed in Burma a generation or so before the three royal orders of 1607. It appeared that there was a royal order or orders regulating lawyers during the reign of King Anauk Phet Lun's father,²² but that they were lost. Hence Royal Order A conclusively proves that the *shay-nay* in Burma were well established and regulated by the end of the sixteenth century. Andrew Huxley's statement that the latest possible date for the emergence of the legal profession in Burma was 1550²³ is solidly backed by the contents of Royal Order A, dated 23 June 1607.

The phrase that pleaders "could not be free from breaching the

21. Ibid., 22.

22. According to Than Tun, King Anauk Phet Lun's father was King Nyaung Yan, "son of Hanthawady Hsinbyushin," who "made himself king at Ava on 27 July 1597 and died on 28 October 1605," *ibid.*, ix. King Anauk Phet Lun (the issuer of the royal orders under study) was the "son of King Nyaung Yan" who became king on 28 October 1605 and . . . was assassinated on 29 May 1628," *ibid.*

23. ". . . when and where the she-ne (Burmese legal counsellors) evolved is still an open question [f]rom the evidence in the dhammathats themselves I have concluded that when could be any time between 1170 and 1550." Huxley, "The Importance of Dhammathats," 13.

Buddhist precept against telling untruths on a daily basis” is also significant. Even a cursory reading of Royal Order A would immediately lend to the view that the king, like most people throughout his and our times, did not like or take a favourable view of lawyers.²⁴ The dislike of lawyers and their antics became even more clear and were articulated and elaborated in the two subsequent royal orders that he issued on the same day. Nevertheless this author is of the opinion that King Anauk Phet Lun sounded philosophical when he stated that lawyers cannot be free from/cannot possibly avoid (*ma-kin ma-lut*) breaching the fourth Buddhist precept against telling untruths. That was why the author has inserted the phrase “Occupational Hazard” as a heading in translating the royal order. From the wording and nuances of expression in the royal order, I am also of the view that the king seemed resigned to the fact that lawyers breached the Buddhist precept against telling untruths. His Majesty seemed to be of the view that the (daily) breaches of a cardinal Buddhist precept “came with the job” or were inherent in the profession of *shay-nay* as an “occupational hazard.”

B Royal Order B

1 Literal Translation

Starting from the Supreme Court of the palace, in and around the Royal Golden Palace various ministers, secretaries, clerks, officers, mayors, messengers have seen parties from both sides of the case present their arguments [in litigation]

Like in the times of my Royal Father and Royal Brother and up to present times there have been various types of judges who have been appointed [to solve the disputes between the contending parties]

These types of judges are:

- (a) a judge who lives in the city
- (b) a judge who is appointed by the king
- (c) a judge who administers the case with the permission and agreement of both parties [an arbiter]
- (d) an administrative officer who is also a judge
- (e) a judge who adjudicates and gives judgment in the town and village
- (f) a judge who is upright in morality
- (g) a judge who voices smooth and pleasant words
- (h) a judge who knows how cunning the clients from both sides are
- (i) a judge who is thoroughly familiar with the case
- (j) a Brahmin (a Hindu) judge

In the presence of these ten types of judges young pleaders (*shay-nay*) have exchanged [arguments on behalf of] clients from both sides.

It has come to the attention of the Royal Golden Ear that these young

24. Throughout the article, the English words “pleaders” and “lawyers” together with the Burmese phrase “*shay-nay/she-ne*” are interchangeably and synonymously used.

shay-nay have not followed the argumentation exemplified by the ancient, traditional, and well-known types of speech (discourse) which are as follows:

- (i) "sending from upstream" (*jei gu: nja din*)
- (ii) "seizing the paddy sheaf from the root" (*kau ' pin jei ' hli:*)
- (iii) "putting all the goods on the raft and negotiating transport of the goods upstream" (*yei thei phaun zan*)
- (iv) "putting enough rice to fit the pot" (*ou: dan hsan ga '*)
- (v) "grinding again and again until the oil oozes out" (*hsi bu' gjabwei*)
- (vi) "duck and weave as though running away from an elephant" (*hsin hwei. jan shaun*)
- (vii) "cleaning the small trees first" (*taun dhu ja khou*)
- (viii) "a cock's retreat and attack" (*kje' hsou' khu' pji'*)
- (ix) "water strainer" (*jei zi' kaja:*)
- (x) "balancing the pounder" (*khe ' tin maun: nin:*).

These young *shay-nay* do not adhere to these ten different traditional methods of argumentation. Only caring for the monies and gifts [they receive from their clients] these young *shay-nay* have embraced in their hearts what is not in the Scriptures and traditional doctrines. In their arguments the *shay-nay* have discarded these notions of truth and righteousness.

The *shay-nay* should argue their cases only in conformity with ancient doctrines and traditions and say what is truthful or righteous. If they persist [in distorting their cases], officers must prohibit them from doing so. If, after such prohibition, they still continue to engage in their errant ways, then such young *shay-nay* must be given 100 lashes.

[Even after such punishment the *shay-nay*] may unreasonably still continue with their illegitimate methods, arguing what is contrary to the letter of the law and thence causing clients who deserve to win their cases to lose and clients who deserve to lose their cases to win. If information about such recalcitrant actions are still heard either through other *shay-nay* or from other sources, officers must [again] warn and prohibit the [recalcitrant *shay-nay*] from doing so. If despite this prohibition such *shay-nay* continue to speak [argue] as they please, then do not think that you [the recalcitrant *shay-nay*] would have the chance to plead your case twice. [You would be punished with no right of appeal.] These young [recalcitrant/incorrigible] *shay-nay*, from either or both sides, must be exiled to a very far place.

2. Elaborations and Explanations

"Starting from the Supreme Court of the palace": The term "Supreme Court" is a translation of the phrase *Hlutyone* from the royal order. Generally the terminology that is used more often is *Hluttaw*, but it could perhaps be stated that *Hluttaw* is a more generic term since, in the days of the Burmese kings, the *Hluttaw* exercised all the powers of a

senate, a cabinet, and a high court. Accordingly its functions were legislative, executive, and judicial.²⁵ Ryuji Okudaira writes that the “Hluttaw, as the high court, tried all important cases, both criminal and civil, and it was also the highest court of appeal.”²⁶ Hence the word *Hlutyone* would appear to narrow down the more generic meaning of *Hluttaw* in that the *Hlutyone*’s particular functions are judicial. Therefore it is loosely translated as “Supreme Court.”

“*Types of Judges*”: The translation of most of the ten types of judges is straightforward but there seems to be a certain ambiguity of meaning regarding (c) which was translated as “an administrative officer who is also a judge” which in the original Burmese was mentioned as *min-tayathugyee*. The word *min*, among others and in context, can mean either “king, monarch, ruler of a state” or “high government official.”²⁷ *Tayathugyee* means judge and therefore, I have translated *min-tayathugyee* as “an administrative officer who is also a judge.” Since item (a) was already translated as “a judge who is appointed by the king,” one trusts that the above translation is closest to the original intended meaning.²⁸

“*ancient and traditional types of speech (discourse)*”: This is a translation of the word *zagarhaung*. Immediately after the use of the phrase, the king identifies the “ten modes of speech (discourse/persuasion)” which according to him is “ancient, traditional, well-known [and accepted].” The ten modes of speech and argumentation with examples or illustrations are:

“*sending from upstream*” (*jei gu: nja din*): This mode of persuasion is defined in the 1993 *Myanmar-English Dictionary* as “n[oun] tactic used in debate, whereby a point is overstated earlier, so that some concession on it can be made later (just as, when crossing a river, one starts at some point upriver from a place opposite of where one wants to land).”²⁹ All the ten modes of persuasion listed in the Royal Order B were explained in volume 3 of *Myanma Sweizone Kyan (MSK)* (“*Encyclopedia Burmanica*”) which was reproduced in a book entitled *Tekatho Zagabyei Kauk-Hnoke-Chet*.³⁰

25. Ryuji Okudaira, “The Burmese Dhammathat” in MB. Hooker (ed.), *The Laws of South-East Asia: The Pre-Modern Texts* (1986), 23, 69.

26. Ibid.

27. *Myanmar-English Dictionary*, 350. See also Hla Pe, “Burmese Royal Language,” 122 for examples of the phrases which use the word *min* and whose meanings denote various types of high level administrative officers.

28. The author would like to thank Ko (“brother”) Aye Cho of Canberra, Australia, who was a tutor in the Burmese Department of Rangoon Arts and Science University in the mid-1980s, for the helpful discussions which I had with him on some of the nuances of meanings of certain phrases in the royal orders. Ko Aye Cho suggested that *min-tayathugyee* can also be translated as “Attorney-General,” but in this instance I have translated it as the more generic “administrative officer who is also a judge.”

29. *Myanmar-English Dictionary*, 393.

30. *Tekatho Zagabyei Kauk-Hnoke-Chet* ([Burmese] *Prose Selections for University [Students]*) (Rangoon, 1965). (hereafter cited as TZK). The article entitled “Zagargyee Hsei Myo” [ZHM](Ten Modes of Speech/Persuasion) appeared from pages 301-12 of the book. All translations are made by the author from the excerpts of the *Myanma Sweizone Kyan* article as reproduced in the book.

In explaining “sending from upstream,” the *MSK* article gives an example of how this form of persuasion works with the following example or illustration:

A long time ago a famous physician named Jivaka wants to operate on the stomach of a rich man's son. The physician wants to anaesthetize [literal translation “put to sleep”] the patient for seven days. The physician asked the patient whether he could “steep” for seven months. When the patient said he could not the physician asked whether he could sleep for six months. When the required seven day sleeping period was reached the patient finally agreed [to be anaesthetized]. Such a mode of persuasion is regarded as “sending [arguing] from upstream.”³¹

“*seizing the paddy sheaf from the roof (kau' pin jei' hli:)*: “way of speaking in which one makes use of an opponent's own words to defeat him, in the manner of a farmer seizing a sheaf of paddy before reaping it with a sickle.”³² In explaining this mode of argument the *MSK* gives the following analogy:

A long time ago a son of a rich man saw another rich man's son carrying an egret. The second rich man's son was carrying the egret which he had shot with an arrow. The first man wanted to get hold of the egret. He therefore claimed that the egret was his and that the egret has deposited a tical of gold each day from its mouth. The second rich man's son (the one who had shot the egret) asked the first person how long was it that the egret has deposited the gold for him in such a manner. The first rich man's son replied that the egret has done that for a year.

Then the person who shot the egret stated that he had a pile of gold in front of his house and that for a year and on a daily basis one tical of gold had gone missing from his pile. The egret therefore was the thief and the owner of the egret was a person who had accepted stolen property. Therefore a year's worth of gold (three viss and sixty ticals) must be compensated by the owner of the egret. Hence the rich man's son who coveted the egret had to compensate the rich man's son who actually had shot the egret. This way of “catching” the other person's statement and arguing thence forth is known as “seizing the paddy sheaf from the root.”³³

It should be noted that this analogy involves litigation, compensation, and arguably a legal topic (dispute concerning ownership of property).

“putting all the goods on the raft and negotiating transport of the goods upstream” (*yei thei phaun zan*): “a gentle but persistent persuasion used as a tactic in debating (in the manner of warping a raft slowly but surely against the current.)”³⁴ The analogy given in the *MSK* of “transportation of goods upstream” mode of speech is elaborate and is only paraphrased here:

When a king sent a message through his envoys to another king he used the term “My Royal Friend” (*a'-swe daw*). The King who received the message was angered that he was addressed thus and threatened to burn the envoys in hot boiling oil if the envoys cannot adequately explain or give an apologia as to why the term was used. The envoys explained to the King that only the Buddhas when they addressed each other and the monks when they addressed each other used the term “Your Royal Elder Brother” (*naung-daw*) or the term “Your Royal

31. Zagargee Hsei Myo (ZHM) in TZK, 301.

32. *Myanmar-English Dictionary*, 14-15.

33. ZHM, 302.

34. *Myanmar-English Dictionary*, 394.

Younger Brother" (*nyi-daw*). They did not call their actual brothers related by blood in those terms. [Apparently the King who received the message wanted to be addressed in those terms.] In a similar manner monarchs do not address other royalty who have not yet become monarchs by the term "My Royal Friend."

Only reigning monarchs address each other by those terms. That was why the king who sent the message used the term "My Royal Friend." The Ministers serving the King who was the recipient of the message was pleased by the envoys' explanation since it covered the form of addresses of Buddhas, monks and also that of the monarchs who owned both the waters and the lands of the realm. Thus arguing subtly with analogies to convey one's message is called (slowly) "negotiating transport of goods upstream."³⁵

From the above analogy it can be seen that conveying one's message with subtlety and a certain degree of flattery can extricate oneself from a very difficult predicament. As the risks and intricacies of negotiating a raft upstream can be fraught with dangers, so can such an argument in the above illustration be fraught with dangers if it is not cleverly and delicately presented.³⁶

"*putting enough rice to fit the pot*" (*ou: dan hsan ga'*): "tactic of expressing oneself in a way appropriate to the situation (just as the right amount of rice should be put into a pot when cooking)."³⁷ The MSK explains this mode of argument as speaking briefly, precisely with one's aim effectively in mind and gives the following explanation:

When the embryo Buddha³⁸ Sovannasama lay in a coma, the King of the Sakyas appeared before his blind parents and asked them whether they want their son to be alive or to get a pot of gold or to gain their eyesight. The aged parents replied [in one sentence] that they want to see their son carrying a pot of gold. Hence because of this precise, effective answer all the parents' wishes were fulfilled. Such a way of effective speaking is termed putting enough rice to fit the pot.³⁹

"*grinding again and again until the oil oozes out*" (*hsi bu' gjabwei*): "tactic used in debate, whereby a point is made exhaustively [repeatedly], just as seasmum seeds are grounded repeatedly in an oil-press."⁴⁰ The MSK explains that just as seasmum seeds have to be grounded repeatedly for the oil to ooze out of them, one should repeatedly emphasise a point one wishes to make under this particular mode of argumentation. It provides the following illustration:

35. ZHM, 303-4.

36. There is a Burmese saying that "for a man the time when he is riding on a raft and for a woman the time when she is giving birth [is fraught with dangers]."

37. *Myanmar-English Dictionary*, 618.

38. *Hpya-Loun*. According to Buddhist tradition, the Buddha went through countless rounds of rebirths before he attained Buddhahood in his final existence. In his last ten lives, he perfected each of the virtues (*parami*) to attain Buddhahood. In this particular incarnation, he was Sovannasama, a son who devotedly looked after his aged and blind parents. One day while fetching water and food for his blind parents, Sovannasama was shot with a poisoned arrow by a hunter. The King of the Sakkya (a heavenly being in Buddhist/Hindu doctrine/mythology) appeared before the parents of Sovannasama and asked the parents the stated question.

39. ZHM, 304.

40. *Myanmar-English Dictionary*, 131.

A King wanted to build a pagoda. The King asked his Minister whether the shaft to hold the umbrella of a pagoda should be made of the bark of a tamarind tree.

The Minister replied that the bark of a tamarind tree is good material for building the shaft to hold the pagoda's umbrella but so was teak. When the King inquired about other materials the Minister repeatedly replied that "teak is also good." Hence by repeating and emphasizing that teak was equally good the King finally built the shaft to uphold the pagoda's umbrella with teak wood. This method of repeating and emphasizing one's point is called "grinding again and again until the oil oozes out."⁴¹

"duck and weave as though running away from an elephant" (hsin hwei. jan shaun): "speech or action to avoid commitment or blame; evasive speech."⁴² The *MSK* explains that when one is pursued by an elephant one, can evade the danger by weaving and ducking. The *MSK* states that in a comparable way, one can, by using deflective speech, save oneself from falling into danger and gives the following illustration:

A Crown Prince once built a monastery. The foundation pillar of the monastery was laid in gold [on the instructions of the Crown Prince] till it reached the earth.

The mayor considered that such an action was improper since it amounted to vying with the King [since traditionally only Kings can decorate the entire pillar with gold]. The mayor began to dismantle the gold at the foot of the pillar. The Crown Prince was angry and asked the mayor why he had done so. The mayor did not directly reply to the query but submitted to the Crown Prince that "Your Royal Highness the Crown Prince will become King. If your Royal Highness (RH) decorates the entire pillar with gold before your RH becomes King then the monastery your RH will build when your RH becomes King will be no different from the monastery your RH had built as Crown Prince. In order to preserve the distinction between the monastery your RH built as Crown Prince and which your RH will build as King the lower part of the pillar of the monastery which your RH is building now should be without gold." Because of this evasive speech the mayor's life was spared. Such a method of speech wherein one tries to avoid trouble is called "duck and weave as though running away from an elephant."⁴³

"cleaning the small trees first" (taun dhu ja khau): "tactic used in debate whereby only minor points are made earlier so that the decisive point can be made later to clinch the argument (just as a hillside-cultivator clears underbrush and small trees before felling the large trees)."⁴⁴ The *MSK* explains this mode of argument with the following illustration:

The [embryo Buddha] Mahosada⁴⁵ [a "junior" Minister in the palace] had a debate with another [rival] Minister [who together with three other Ministers, was always plotting for the downfall of Mahosada] concerning whether wealth or wisdom is the nobler virtue. Mahosada initially gave "small" examples which attested to the fact that wisdom is nobler than wealth. Then Mahosada "capped" the argument with the supreme example stating that no wealthy person is, in any

41. ZHM, 305.

42. *Myanmar-English Dictionary*, 139.

43. ZHM, 305-6.

44. *Myanmar-English Dictionary*, 178.

45. Mahosada was also the incarnation of the Buddha in his last ten lives wherein the embryo Buddha fulfilled or "perfected" the ten virtues or "perfections" such as filial piety, perseverance, charity, and wisdom. Just as the life of Suvanasamma (see note accompanying above n 38) exemplified the virtues of filial piety, the life of Mahosada was supposed to exemplify the virtues of wisdom.

way, remotely comparable with the Enlightened, Incomparable Buddha. Hence Mahosada won the debate. This method of argumentation starting from and clearing the small issues and then capping it off with the “big picture” is called “clearing the small trees first.”⁴⁶

“a cock’s retreat and attack” (*kje’ hsou’ khu’ pji*): “emulation of a tactic of a game-cock in a debate or an argument ie to give ground to the adverse views in the opening round and then pounce upon his [sic] [the opponent’s] words later.”⁴⁷ The *MSK* explains that “when a game cock is about to attack it retreats backward for a while and then later strikes. Similarly in this form of argumentation initially the opponent’s points are conceded only to attack later on from a commanding position.”⁴⁸ It gives the following illustration which is summarized and paraphrased in translation:

During the days of the Burmese kings [of the second Kongbaung dynasty circa 18th, early 19th century] parts of the capital were burnt due to the fire started from a Chinese noodle shop. The palace itself was burnt and the damage from the fire started from the Chinese noodle shop owned by a Chinese national was approximately 500 million kyats. The owner of the shop, the Chinese national, absconded and was not apprehended. Soon thereafter the Chinese king sent some envoys bearing gifts for the Burmese king to the Burmese capital. The envoys also carried about 800,000 kyats worth of goods to be sold and traded in the Burmese capital. While the envoys were on their way to the Burmese capital they were robbed by Burmese dacoits inside Burmese territory. When they reached the Burmese capital the Chinese envoys requested that either the Burmese dacoits who robbed them be handed to the Chinese King or that they be compensated to the amount of 800,000 Burmese kyats which were robbed by them. The Burmese Minister attending to this request initially agreed to fulfill the Chinese envoys’ request and asked them to prepare a full inventory of their losses. But the Burmese Minister subsequently requested that the Chinese national who had caused about 500 million kyats of damage to the Burmese capital be apprehended and delivered to the Burmese authorities first. When the Chinese envoys responded that they could not find the Chinese national, the Burmese Minister replied that it would be even more difficult to find the Burmese dacoits who robbed the Chinese envoys since they are many whereas the Chinese culprit was only one.

The Burmese Minister also stated that the damage caused by the Chinese national was very much greater than the Chinese losses, but due to the Burmese authorities’ desire not to spoil the relations between the two countries, they have not asked for compensation from the Chinese authorities. Therefore it appears laughable that the Chinese envoys are demanding compensation for their losses, which, compared to the damage done by the Chinese national to the Burmese capital, was a mere pittance. The Burmese Minister intimated to the Chinese envoys that they should reconsider their demands for compensation. As a result the Chinese envoys withdrew their requests for compensation. This way of argument conceding initially only to make one’s point from a commanding position later is called “a cock’s retreat and attack.”⁴⁹

“‘water strainer” (*jei zi’ kaja*): ‘tactic of anticipating and pre-empting any counterpoint that an opponent might make (comparable to the practice of covering the spout of a vessel before raising out of water to

46. ZHM, 306-7.

47. *Myanmar-English Dictionary*, 41.

48. ZHM, 307.

49. *Ibid.*, 307-10.

prevent spillage).”⁵⁰ The *MSK* gives this example to illustrate this form of argumentation:

Once upon a time four youths and an old man played a game in which they would take turns in telling a story. The “catch” of the game was that the person who first said that he did not believe the story of the narrator would have to become the slave of the narrator. The four youths told preposterous tales in turn which the old man always said that he believed. On the old man’s turn to narrate the story, he stated that he had planted a cotton plant and four cotton buds came out of the cotton plant. Out of the four cotton buds emerged four youths. The old man continued that he had made those four youths his slaves and that those four slaves had escaped from him. “Only now,” the old man said, “I have discovered my escaped slaves” and that “those four are you guys.” “Did you believe my story?” the old man asked the four youths. As a result, the four youths had to become the slaves of the old man. And this was so because either answer would have made them slaves of the old man whether they stated that they believed the old man’s story or not. This way of speaking by pre-empting any response from the opponent case is called “water-strainer” argument.”⁵¹

“*balancing the pounder*” (*khe’ tin maun: nin:*): “non-committal way of speaking (likened to a seesaw lever operating the pestle of a rice pounder).”⁵² The *MSK* explains that neither affirming nor denying the facts of the other person’s speech in a non-committal, ambiguous manner is called “balancing the pounder” and illustrates this mode of argument with the following example:

A long time ago a “scoundrel” / “bad person” (*lu-hsoe*) was arrested by the king’s servants (officers), and they were about to kill the man when the scoundrel stated that he was the nephew of a certain abbot. When the king’s servants took the man to the abbot and asked whether the man they had in their custody was actually his nephew, the abbot pondered this way: “if I said that the man is not my nephew the man will die; if I stated that the man is my nephew I will be breaching the Buddhist precept against telling lies.” Pondering thus, the abbot stated to the king’s servants: “Who says that this man is not my nephew?” The king’s officers dared not ask any more questions and left. As a result, the scoundrel’s life was spared. This way of speaking ambiguously and non-committally is called “balancing the pounder.”⁵³

“*shay-nay have embraced in their hearts what is not contained in the Scriptures and traditional doctrines*”: The Burmese words *taya-zagar* have generically been translated as “scriptures and traditional doctrines” as well “notions of truth and righteousness.” As the king mentioned the “ten different forms of argumentation” in the sentence immediately preceding the phrase *taya-zagar*, it can be assumed that the king was referring to (Buddhist) scriptures and other traditional doctrines beyond those or in addition to the “Ten Methods of Argumentation” which has just been discussed. Royal Order C contains specific instructions to judges to be aware of the deviousness of lawyers. In that order, the king elaborates on his statement that the *shay-nay*’s arguments are in violation of scriptures and ancient traditions.

50. *Myanmar-English Dictionary*, 394.

51. ZHM, 310-11.

52. *Myanmar-English Dictionary*, 60.

53. ZHM, 311-12.

"These young [recalcitrant/incorrigible] *shay-nay*, from either or both sides must be exiled to a very far place": The Burmese word *nge* which is defined as "adj. 1. small; little. 2. young"⁵⁴ appears a few times in the royal order. In fact the word *nge* (young/small) appears as an adjective almost every time the word *shay-nay* is mentioned. I have therefore translated the phrase *shay-nay nge* as "young *shay-nay* / young pleaders." However, the word *nge* "young," might actually have meant more than a reference to pleaders who were actually young in age. It might have been used as a "put-down" word to describe incorrigible or recalcitrant pleaders.

I would like to briefly mention that in modern times advocates who appear in Burmese courts are generally referred to as *shay-nay gyee* ("big/great lawyer"). The insertion of the word *gyee* after the word *shay-nay* adds to prestige, or at least it is intended to create an impression of prestige or "greatness" of the particular lawyer. Hence the king's calling the recalcitrant *shay-nay* as *shay-nay nge* ("young/small pleaders") might have been intended to put the pleaders "in their place." It might not necessarily have meant that all or most recalcitrant *shay-nay* were young. On the other hand, it could be that most practising (and recalcitrant) pleaders during the king's reign were actually young in age and that the older pleaders were less incorrigible in that the older pleaders (who have not retired or have been elevated to the Bench) might not have required a reminder from the king about the punishments they would have to face if they continued to argue in their devious ways. If such an interpretation is adopted, then it might be the case that Royal Order B was intended for those pleaders who were actually young in age.

3 Analysis and Comment

The ten types of judges which the king had mentioned at the beginning of the royal order might not be exclusive. For instance, the type of judge who is (a) a judge who lives in the city, (f) a judge who is upright in morality, (g) a judge who knows how cunning the parties to the case [and their *sha-nay*] are need not necessarily be different persons. Indeed from the instruction to judges contained in the following Royal Order C, it seems that any type of judge who falls into the ten different categories that are mentioned in Royal Order B would need to be aware of the cunning of the clients and their pleaders.⁵⁵ The judge would also need to be upright in morality.⁵⁶

54. *Myanmar-English Dictionary*, 96.

55. For advice given to the judges in the Burmese *Dhammathats* (legal treatises) and the appointment of the oath taken by judges in the days of the Burmese kings, see Maung Htin Aung, *Law Tales*, 22-6.

56. The *Dhammavilasa Dhammathat* for example, listed in detail the terrible punishments a judge would suffer if "he gives a wrong decision even inadvertently" *ibid.*, 22-3. The gendered "he" was used by Dr. Htin Aung in 1962 long before the current trend in legal or academic writings of gender-neutral usage. However it would have been factually—if not politically—correct to have used the word "he" as far as judges in the days of the Burmese

The major portion of the above sub-section "Elaborations and Explanations" has been made on the *Zagargyee Hsei Myo* (ZHM) which the *Myanmar-English Dictionary* translates as "ten ways of speaking with a meaning or with an intention to gain one's aim."⁵⁷ This has been translated by this author as ten modes/methods of speech/persuasion or argumentation, and the king has referred to them, in the royal order, as "ancient and traditional" methods of argumentation. In order to appreciate the forms of argumentation embodied in these ten modes of speech the author has translated and elaborated in considerable detail the analogies or examples from an article in the *Burmese Encyclopedia* which was first published in the 1950s. Yet it is of significance that even in the latter part of the first decade of the seventeenth century these forms or methods of argumentation were considered ancient, traditional, and accepted modes of discourse.

Among the ten modes of argumentation, the "seizing the paddy sheaf by the root" and "water strainer" methods arguably deal with the most "legal" issues. "Paddy sheaf" seems to deal with such legal issues as false accusation, theft, and acceptance and retention of stolen property. "Water strainer," the ninth method of argumentation deals with slavery and wagering contracts.⁵⁸ The similarity of the methods employed by the protagonist (and successful) speakers in the examples that were given in "seizing the paddy sheaf by the roof" and "water strainer" is also notable. Other analogies or examples that were given in illustrating the ten modes of argumentation involved such personages as the Buddha or the Buddha's former lives and relationships involving patron-client relations such as those of physician-patient, king-minister, crown prince-mayor and abbot-laity (king's officers).

It is also strongly arguable that at least a few of the examples or illustrations of these ten modes of speech/argumentation can be said to involve trickery, subterfuge, the utterance of half-truths/ non-truths, or at least ambiguous statements, even perhaps dishonesty, or at the very least, "legalistic" reasoning—in the uncomplimentary sense of the words.⁵⁹

kings were concerned. In his work which was published in 1962, Dr. Htin Aung stated that the Princess Leamed-in-the-Law ... is the heroine of all the [Burmese] law tales. . . . She was, of course a fictitious personage, although a woman "headman" or a woman arbitrator, or a queen meting out justice was common in Burmese society. However, existing records show that, in spite of the social and legal equality of Burmese women with Burmese men, there has been no instance of a woman serving in the *Hluuawor* on a King's Bench. Ibid., 22.

The same could be said of the paucity if not non-existence of the Burmese women *shay-nay* in the days of the Burmese kings. However in the 20th century, the late Daw Phwar Hmee, Dr. Htin Aung's sister-in-law (wife of the late Dr. Htin Aung's elder brother, the late U Myint Thein who served as the third Chief Justice of independent Burma from 1957 to 1962) became the first Burmese woman barrister in 1925. See Myint Zan, "Obituary: U Myint Thein, MA, LLB, LLD" *Australian Law Journal* (1995), 225.

57. *Myanmar-English Dictionary*, 100.

58. As for the validity or other wise of wagering contracts in different contexts under Burmese law, see Maung Htin Aung, *Law Tales*, 33.

59. It is also remarkable or noteworthy that perhaps the most legalistic of the two illustrations from the *MSK* that of the "seizing the sheaf from the roof" and "water strainer" is also arguably the trickiest of the examples given.

It is reiterated here that these illustrations of the ten modes of persuasion were taken from an article written by the compilers/editors of the *Burmese Encyclopedia* in the 1950s. Most of the examples given in the 1950s publication of the *Swe Zone Kyan* were from Buddhist *Jataka* stories (stories dealing with the previous lives of the Buddha) and apocryphal stories concerning ancient kings and princes. Hence there is no reason to believe that if examples of these ten modes of speech were to be given by a group of editors in a “publication” (in *parabaik*, or palm leaf manuscripts) of the early 1600s, they would in any significant way be different from those of the 1950s.

King Anauk Phet Lun considered all these ten forms as “legitimate” ways of argument, established forms of speech, and acceptable methods of discourse. This would be so especially among the Burmese elite - perhaps not necessarily limited to those of the lawyers* in the early seventeenth century. By enumerating the ten methods of discourse in Royal Order B, His Majesty appeared to be “showing off” his knowledge, even his erudition. The ten methods of argumentation might have been “well-established” even in those days. However they must have been known, comprehended and utilised only by a handful of elite especially in those days.⁶⁰ Yet these arguments and/or modes of discourse were considered legitimate and so long as the *shay-nay* adhered to these modes of argument the King probably would not need to issue the Royal Order. Therefore one can only guess at the types of trickery/special pleading and other shenanigans the *shay-nay* of King Anauk Phet Lun’s days were using in their arguments as to incur His Majesty’s displeasure. The lawyers’ devious and persistent ways were such that the King clearly threatened incorrigible and recalcitrant lawyers with severe punishment.

Three concluding observations could be made in relation to the punishment provisions of Royal Order B. It is notable that at least in this particular royal order those who were authorised not only to mete out punishment but also to prohibit and warn the *shay-nay* when unacceptable, illegitimate arguments were being made by them were not judges but the *wuns* who are the various administrative officers. This fact is perhaps partly explained by the fact that in the next Royal Order C judges were the “targeted audience.” Since the King has warned the judges of the wiles and trickery of the *shay-nay* he might have felt that the duty to punish the offending *shay-nay* should be those of the *wun* - the administrative officers rather than the judges.

60. In the late 1990s when this author first read Royal Order B in volume 1 of Than Tun’s *Royal Orders of Burma*, I knew the full meaning of only three or four methods of argumentation among the ten enumerated. Ko Aye Cho (above n 28), even though he had a bachelor’s degree in Burmese and had taught Burmese for a few years at Rangoon University, knew or could explain to me only about four of five of them. One wonders how many among Burma’s current Advocates (those who can practise law in all courts including the present Burmese Supreme Court) and Higher Grade Pleaders (those who can practise in courts except the current Burmese Supreme Court) could enumerate—much less know about in full detail—the ten modes of argument mentioned in the royal order.

Secondly it can be noted that punishment for what Than Tun's termed as "contempt of court"⁶¹ was 100 lashes and "exile for the second offence."⁶² Punishment of "one hundred lashes" for a first offence by a pleader is no joke. It can therefore be inferred that "exile" to "a far-off place" would incur even more severe discomfort to the pleader concerned than that of one hundred lashes.

Finally the Royal Order mentioned that if the *wun* (officers) heard about the young (recalcitrant) pleaders who continued in their devious ways of arguments either through other pleaders or other sources, these young (recalcitrant) pleaders on either or both sides must be punished. This brings a curiosity to mind as to whether there was an informal network of "pleaders/informers" who informed for profit, advantage, professional jealousy, or even (perhaps in very rare cases) out of a sense of professional responsibility. It can however be quite safely presumed that even though the legal profession of *shay-nay* thrived during the times the royal orders were issued, there was no modern equivalent of a bar association or lawyers' guild which regulated the profession and which had even a rudimentary code of conduct and powers of punishment against its errant members. As is evident from both Royal Orders A and B, the regulation of professional conduct and the punishment for any breaches thereof seemed exclusively to belong to and operated by the machinery of the state as emanated through the royal orders of the king.

3 Royal Order C

1 *Literal Translation*

His Majesty, the Great and Just King, Lord and Owner of [Subjects] Lives whose Royal Glory is Colossally Great has issued this Royal Order⁶³

When clients appeared before the judges to contest their cases judges [and clients] must follow these procedures:

Clients from both sides must speak the truth. Clients from both sides must be examined and interrogated properly by the judge. Only through such examination can the judge be able to discern the winning and losing causes in connection with the case. Examination of the witnesses must be made according to the [methods mentioned in the] *Dhammathats*. The [testament/depositions] of clean [reliable] witnesses must be taken upon their affirmation and promise [that they were speaking the truth]. The

61. Than Tun, *ROB*, 22.

62. Ibid. The expressions are taken from Than Tun's two-paragraph and three-sentence summary translation of Royal Order B. I have translated the relevant phrase more literally as 'must be sent to a very far place.'

63. This opening of the royal order was missing in Royal Order B. It might be that Royal Order B was actually delivered by an administrative officer or that the scribes who copied and recopied it might have inadvertently left out or forgot to copy the opening lines.

judge after carefully examining the parties, weighing the testimony of the decent/clean [reliable] witnesses, ought to be able to decide properly who wins or loses the case.

As for the various arguments and legal doctrines and rules which are being argued back and forth among the parties reference should be made to the *Dhammathats* [to determine their applicability to the case]. [Judges should be aware that] the rules that are laid down in the *Dhammathats* were made in the context of the time and places [when the *Dhammathats* were written].

But ye [some] judges are more keen to obtain the costs of the suit (kunbo) and also to get gifts for the judges' use/consumption. Accordingly these judges decide cases which are not in conformity with established traditions and Scriptures.

[Due to the costs of litigation], [some of our subjects] the people, the villagers are in a situation where they had to spend more on repairing the goods than the price they had paid at the time they bought the goods. [The costs of repairing the goods is more expensive than the price of the goods. 'The cure is worse than the disease'. The costs of litigation are more expensive than the benefits gained from it].

One of the reasons for this situation is due to the pleaders. When judges critically analyse and dig deep into the cases to arrive at the truth they are hindered in their work by the pleaders who verbosely made their arguments exaggerating, willy-nilly insisting, marginalizing (under-emphasizing), omitting and hiding [to present their cases in a favourable light]. Cannot We say that [by these actions] the shay-nay have baked and roasted the hearts and lungs of judges? Should not the judges be aware of this fact? [The fact that the wiles of the shay-nay are such that they can indeed bake and roast the hearts and lungs of the judges- should be aware of by the judges.]

Because most of the litigants are simple folks such as farmers [in litigating their cases] they do not even know how to start to prepare their cases in the first place and to conduct them properly. If these litigants have to argue the cases all by themselves defeat for them would have been assured from the start of the game [litigation], [These poor folks] have their cases to make yet they do not know how to state them. [The predicament of these poor folk are such that] they are like dumb persons who are unable to narrate their dreams. For [such simple folks] even if they tell the truth that would not have been sufficient for them to win the case. Only when assistance is sought there is a likelihood of winning the case. Hence the [opportunity] arose for the shay-nay to make a profit. [The services of the pleader have to be sought by the poor folks]. [Once a pleader is hired, is it not the case that] whatever the client wants to say have to be said through the pleader?

A good [competent] shay-nay who has set his heart on the rules contained in the *Dhammathats* would know whether he will win or lose the [legal] battle he is about to wage. If he loses the case the [good] pleader

would try to minimize the consequences and effects of losing the case on his poor (hsin-yei-thar) clients. When he concedes defeat [before a judge] a good pleader would plead with the judge to minimise the detriments which his clients would suffer.

Only such lawyers who are aware of these facts and who have such an attitude [towards the client and the courts] can truly be called lawyers. [Through such acts and attitudes of such pleaders] the judge would also know the true facts of the case. *Shay-nay* who do not act thus can even cause damage to the welfare of the [Buddhist] religion, the welfare of the people and the monks. If [bad] pleaders are allowed to play havoc [through their devious ways] it would be akin to allowing property to be openly robbed from a museum [located] in the center of the kingdom. [To avoid such chaos] whenever a client appears with a pleader, the judge must restrain the pleader and interrogate the clients so that the true facts can be discerned and judgment accordingly given.

This Royal Order must be written down and copied by the judges. Judges must always refer to this Royal Order as a walking staff and due obeisance must always be accorded to it [due adherence to the Royal Order must always be made.]

This order is issued through [Minister] Zaytapura and is written and sent to the judges.

2 *Elaborations and Explanations*

Of the three royal orders discussed here, Royal Order C has been the most difficult to translate. Due to the fact that it was written more than 392 years ago, the meaning of some sentences and usages are unclear. Hence there may be some imprecision in the translation in a few places. If the literal translation needs to be further explained, it is done in square brackets. Words that are added for the sake of easier understanding of the text but which did not actually form part of the royal order in its original text are also given in square brackets.

Examination of the witnesses must be made according to the [methods mentioned in the] Dhammathats: Htin Aung explained in detail the oaths witnesses had to take, the dangers that would befall and the curses that are contained in the *Dhammathats* against those witnesses⁶⁴ who did not speak the truth and the punishments that the king could mete out to those who bore false testimony.⁶⁵ Htin Aung stated that these oaths and curses that would befall false witnesses are mentioned in the *Dhammathats*.⁶⁶ He also mentioned the stipulations in the *Dhammathats* about the methods to be followed in examining the witnesses and the places where the oath of the witnesses could be taken.⁶⁷ What sort of

64. Maung Htin Aung, *Law Tales*, 32.

65. *Ibid.*

66. *Ibid.*, 28

67. *Ibid.*, 29.

witnesses are reliable and who are less so, the varying degrees of importance that is to be accorded to eye-witnesses, hearsay evidence and documentary evidence according to the *Dhammathats* are also discussed.⁶⁸ In relation to the meaning of *Dhammathat*, Htin Aung stated that

the very term *Dhammathat* was derived from the Hindu *Dharmashastra* which meant 'treatise on law.'⁶⁹

Andrew Huxley elaborated that *Dhammathats* were "not legislation," nor "codifications of law," "certainly not religious texts" but were

the core of a literate system, and their rules did not change dramatically from the twelfth to the nineteenth century. Readers who are familiar with classical Roman and modern American law can picture the *dhammathat* as a genre halfway between Gaius' Institutes and an American Restatement of Law.⁷⁰

*The [testament/depositions] of clean [reliable] witnesses must be taken upon their affirmation and promise [that they were speaking the truth]'. It should be stated that the exact equivalent of the word "taking oath" (kya-kyein) cannot be found in Royal Order C. Instead the word gati-gawut (promise, affirmation) appeared in the royal order. In the context of early 17th-century Burmese language usage the meaning of the words "kya-kyein" (take oath/swears on oath) might have been the same or was similar to "gati-gawut". If it was so, then it is likely that the witnesses in the lawsuits would have to affirm that they were speaking the truth through the oath-taking processes that were described by Htin Aung.⁷¹ However, from the wording of the royal order itself, it is not absolutely clear whether judges are required to make the witnesses swear on oath that they were speaking the truth. Moreover there did not appear to be a clear delineation between the testimony of the clients themselves and those of the witnesses. The royal order initially mentioned that the judge must ensure that those "two sides" who have "journeyed to his presence" (i.e. who had arrived before the judge) spoke the truth. It also stated that the "two sides"—the royal order in this part did not mention the words "client"/"litigant" (*ah-hmu-thei*), though the word was mentioned and the command that the clients must be questioned (*mae-myan*) was repeated at the end of the royal order—must be interrogated/examined *sitt-kyaww* (by the judge). Hence a literal and sequential reading of the royal order would indicate that the clients must be examined/questioned by the judge and (later) the witnesses (*thet-thay*) must be "made to affirm" their statements.*

68. Ibid., 30-32.

69. Ibid. A former student of the late Htin Aung, the late Dr Maung Maung stated that the writings in the *Dhammathats* consist of "rules which are in accordance with custom and usage and which are referred to in the settlement of disputes relating to person and property. They are not codes of law in the strict sense, and there is wide variance among them in content and quality, but they reflect the social customs of the day, and expound rules of wisdom as guides for kings, ministers, and judges to rule by and for the people to live by." Maung Maung, *Law and Custom in Burma and the Burmese Family* (1963), 28.

70. Andrew Huxley "Burma: It Works But is it Law" 27 *Journal of Family Law* (1988-89) 23,24.

71. See text and notes accompanying notes 64-67.

The royal order mentioned that such questioning of clients and witnesses must be taken “according to the *Dhammathats*.” The *Dhammathats*, as Htin Aung has stated, included the taking of oaths of witnesses. If the *Dhammathats* predating the year 1607—the year the three royal orders were issued—did mention the methods of oath-taking by clients and witnesses, then both the clients and witnesses would probably have to take the oaths prior to their testimonies before the judges. This could be so notwithstanding the fact that the modern Burmese equivalent of the word oath (*kyan-kyein*) was not specifically mentioned in this royal order.

[Judges should be aware that] the rules that are laid down in the Dhammathats are made in the context of the time and places [when the Dhammathats were written]: This phrase could perhaps also be translated as ‘judges should be aware of the fact that (since) the rules in the *Dhammathats* were made in different times and places adjustments and adaptations of the rules stated in the *Dhammathats* might be necessary to give proper judgment under current circumstances. Huxley has argued that such adaptations and adjustments of the rules that are laid down in the (earlier) *Dhammathats* took place among later *Dhammathat*-writers.⁷² In a single sentence in the middle of a royal order, King Anauk Phet Lun reiterated the high regard he had for the rules in the *Dhammathats*. At the same time, the king stated that the rules of the *Dhammathats* need to be applied appropriately and if need be, readjusted and adapted to fit the circumstances. Than Tun translated this particular phrase as:

A Judge should use the Dhammasat [*Dhammathat*] to determine the punishment though he should remember the fact that there are the differences of time and place between the case cited as an example in the code and the case for which he would now be giving a judgement.⁷³

Than Tun also explained as a “Note” at the end of the translation that “although the Dhammasat is an important manual for Judges, this order gives them the power of discretion in applying it to any case that they are trying.”⁷⁴

But ye [some] judges are more keen to obtain the costs of the suit [kunbo] and also to get [gifts] for the judges’ use/consumption. Kunbo is defined by Okudaira as

the costs of the suit [which] were payable according to the direction of the court.

The general rule was that the losing party paid one-tenth of the value of the suit, and that *Kunbo* should not be charged exceeding one tenth of the total suit.⁷⁵

Apart from the *Kunbo*, the royal order also contains a phrase which literally translates as “to get [gifts] for the judges” use/consumption. It is noteworthy that the royal order did not specifically mention that the judges who took bribes would be punished as Royal Order B had threatened

72. Huxley, above n. 8, 9.

73. Than Tun, *ROB*, 24.

74. *Ibid*, 25.

75. Okudaira, “The Burma *Dhammathat*,” 75.

incorrigible pleaders with punishment.⁷⁶ The 13th-century *Dhammavilasa Dhammathat* however mentioned that a judge who gave “a wrong decision” could be expected to face “eight dangers” or “ten classes of ‘pains,’”⁷⁷ and perhaps the king felt that, in this particular royal order, he did not need to mention them.⁷⁸

3 Analysis and Commentary

As it was stated at the end of the order, Royal Order C was specifically directed to judges (*tayar-thugyee*)⁷⁹ From this royal order, one can derive or deduce a few postulates or at least a few educated guesses about a variety of factors concerning the “legal scene” in early 17th-century Ava as it was known at that time.

The king’s instruction that the clients from the two sides should be interrogated or examined by the judge would perhaps point to the fact that judges do have a role to play in questioning or examining clients. This can be contrasted with the modern common law (in contrast to civil law) adversarial system where the judge plays a relatively passive role.⁸⁰ Indeed it could be tentatively generalized that the Burmese judges of the early 17th century are also required to play an “inquisitorial” role as far as examining the clients is concerned. At stated at the end of the Royal Order C, the judges are also required to “halt” the pleaders from (deceiving the court) and to arrive at the truth.⁸¹ The fact that the judges are

76. However the royal order of King Thalun who succeeded King Anauk Phet Lun and dated 25 April 1639 stated that: “Allow trial by ordeal only when evidence is not available; never allow it as a favour to one party who might bribe the judge; in fact bribery is not tolerated.” Than Tun, *ROB*, 117.

77. Maung Htin Aung, *Law Tales*, 22-3.

78. For a translation by Htin Aung of a “Letters patent appointment] of a Judge” in March 1866 -more than 250 years after this particular royal order- see *Ibid.*, 24-5. For the “oath of office” taken by this particular judge who was appointed under letters patent and the “Covenant” that was signed by this judge, see *ibid.*, 25-6.

79. A literal translation of the Burmese word (*tayar-thugyee*) means a “great and just person or a village head who is (also) a just (person).”

80. See, for eg, the following observation of the late Lord Denning in describing the “non-interventionist role of the judge” in the common-law system;

In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens we believe, in some foreign countries. Even in England, however, □ judge is not a mere umpire to answer the question “How’s that?” His object above all is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role. *Jones v National Coal Board* (1957) 2 QB 55,63.

81. Exactly three hundred Fifty years after King Anauk Phet Lun’s royal order that the judge should strive to obtain the truth, Lord Denning in the case of *Jones v National Coal Board* (*ibid.*) stated the objective of the trial and the task of the judge in the same lofty terms. There may be some differences between His Majesty and His Lordship as to the role of the advocate in helping or hindering the judge arrived at the truth. King Anauk Phet Lun did not view the role of the “advocate” in this regard as being disruptive and dishonorable all the time though. The King seemed to believe that there was room for improvement since he did subsequently state and elaborate on the qualities a true *shay-nay* should possess.

required to interrogate the clients and a similar requirement is not mandated for the witnesses is also of some interest. It might be that the judges' inquisitorial role' is not merely directed towards "reaching at the truth" but also perhaps with the intention that such questioning might lead the two parties to restore harmony and accord between them.⁸²

The second and third paragraphs of the royal order⁸³ revealed King Anauk Phet Lun's theory of adjudication. Examine the clients from both sides, let the decent and reliable witnesses speak the truth after taking their affirmations (oaths), then weigh the evidence and consider the case carefully. If these steps are taken, the judge would be able to decide who ought to win or lose the case. From the perspective of the early 21st century, the king's theory of adjudication may seem "simplistic" at this stage. The next few sentences of the royal order, however, revealed that His Majesty's judicial philosophy was not so orthodox and unsophisticated.

King Anauk Phet Lun, though his Minister Zaytapura,⁸⁴ briefly expounded on the value and utility of the *Dhammathats*. The royal order stated that in deciding cases the *Dhammathats* must be referred to. At the same time, the king reminded the judges that they should be aware that the rules that were laid down in the *Dhammathats* were made in the context of the times and places (of composition of the *Dhammathats*). Even though this statement was made in about two sentences in the middle of the royal order, Than Tun considered it significant and has included this statement in his summary translation. In addition Than Tun also inserted a note explaining that this royal order gives "the power of discretion to judges."⁸⁵

On a more modern note, can we—employing the term of the American realist movement which mainly flourished in the early to mid-twentieth century—describe Anauk Phet Lun as a "fact sceptic"⁸⁶ or "rule

82. See, for eg., Maung Htin Aung, *Law Tales*, 24.

83. All the three royal orders that were (in pages 190, 191 and 194-5 respectively) of *ROB* above note 1 were in a single paragraph. I have translated them in separate paragraphs for easier reading and reference.

84. Of course there is no way of verifying whether King Anauk Phet Lun actually wrote or composed the three royal orders himself. 23 June 1607 would have been a busy day at the palace as far as the proclamation of royal orders was concerned. Apart from the three discussed here, two other royal orders were also issued on that same day. One dealt with population count and census-taking in the palace environs (translated in *ROB*, 21) and the other mainly dealt with inter-group marriages among entertainers of the palace (translated in *ROB*, 23-4.) It is unlikely that King Anauk Phet Lun himself composed all of them. It was probably written by the royal scribes after the king made his wishes known. But even if the scribes wrote the letters of the royal orders, the substance and the ideas would (essentially) be that of the king. Even if the ideas were not entirely the king's, he must have comprehended and approved the ideas contained therein. This would be so especially in the case of Royal Orders orders. Even if the palace scribes wrote the royal orders, the intellectual caliber and sophistication of the king is indeed impressive since it was ultimately the king who approved the insightful expositions of the royal orders.

85. See text and notes accompanying above note 74.

86. See, for eg., Hilare McCoubey and Nigel D. White, *Textbook on Jurisprudence* (1993), 194-96.

sceptic”⁸⁷ It would sound a bit out of place (and time) to classify or categorize retrospectively and a *posterori* the king’s judicial philosophy.⁸⁸ The *Dhammathats*, though not “religious texts,” are “suffused with Buddhist ethics.”⁸⁹ Nevertheless, the fact that even in the early 17th century, such “texts” of the earlier centuries could be adapted according to the circumstances of the “modern times” attested to the comparatively novel, perhaps even radical, nature of such a judicial philosophy. The king’s royal order throws an interesting sidelight to the non-religious (in the “Abrahamic” sense of the word “religious”) nature of the *Dhammathats*.⁹⁰

It should also be reiterated here that *Dhammathats* are not legal judgments—they are mainly textual expositions of law. In classical Burmese law, there was a separate genre which is very roughly comparable to case law and precedent. This case law existed in the form of collection of judgments called *Hpyathtons*⁹¹ However at least some of the *Hpyathtons* were apocryphal or legendary, though some of them are compilations of actual judgments,⁹² the latest of which was given in “A.D. 1814, that is some ten years before the first Anglo-Burmese war.”⁹³ Okudaira writes that

The *Hpyathtons* must have had some influence on the interpretation of the *Dhammathats* through the decisions of the judges but, in actual reported decisions, a precedent was seldom cited. In this respect, the *Hpyathtons* do not seem to be used as authoritative documents in Burmese law.⁹⁴

The king’s exhortation to the judges that the rules laid down in the *Dhammathats* might need to be adapted to fit with the changed times cannot be profitably analogised with the doctrine of precedent of the British common law. The *Hpyathton* (collection of decisions) played a much less important role than the *Dhammathats* in Burmese law. The *Hpyathton* also played a much less important role in Burmese law than case law or precedents did in the (English) common law. Moreover the *Hpyahton* were not precedents as it is understood in the common-law sense. Neither

87. See for eg Ibid, 196-8.

88. A similar classification or categorization vis-a-vis Burmese law and modern jurisprudential/literary theories however has been done by another author. Huxley has described the *Dhammathat* compilers as “exemplary postmodernists.” Huxley, above n. 8, 9.

89. Huxley, “*Is it Law?*”, 24.

90. For purely religious or religion-based systems of law, such “adaptations” of (religious) legal “texts” could pose complicated problems. For the intricacies involved in interpreting and developing a modern Islamic commercial law system by (subtly) adapting the stipulations that are contained in the religious texts of more than a thousand years ago see Judith Thomson, “Developing Financial Law in Conformity with Islamic Principles: Strict Interpretation, Formalism or Innovation?” *Deakin Law Review* (1999-2000), 77.

91. See, for eg., Okudaira “The Burmese Dhammathat,” 35-7. See also Htin Aung, *Law Tales*, 38-9.

92. Okudaira, *ibid.*, 35-6.

93. Htin Aung, *Law Tales*, 39.

94. Okudaira, “The Burmese Dhammathat,” 37.

the role of the *Dhammathats* nor those of the *Hpyathton* therefore can be equated or analogized with those of case law and doctrine of precedent in the common law.

Around the middle of the royal order, the king (or the royal scribes who wrote it) begin to adorn it with literary expressions or rhetorical devices such as those of a proverb (*zagabon*), an adage (*hso-yoe*), a prosody (*alin ga*), a simile, or a parable (*u. pama*). The first such rhetorical or literary device is used when the king mentions that some of his subjects (the villagers) were in a situation where they had to spend more on repairing the goods than on the price they had paid at the time they bought the goods ("the cure is worse than the disease"). The original text *ahpho-htet-letkha-kyee* can be described as either an adage or a proverb. It is an excellent description of the predicament the poor clients⁹⁵ had had to face when at least, at times, the costs of litigation exceeded those of the benefits that might be gained and the remedies that might be obtained at the end of the law suit.

The next rhetorical expression can be found in the sentences that state:

Cannot [We say that] [By these actions] the *shay-nay* have roasted and baked the hearts and lungs of judges? Should not the judges be aware of this fact in their hearts?

In the original Burmese, the king uses the interrogatory form of speech. The royal "We" (*ngar-doe*) is not mentioned in the royal order and has been inserted for the smoothness of translation. Of course the "baking and roasting" of the "judges' hearts and lungs by the lawyers" were metaphorical expressions and for that matter very vivid ones too. Translating directly from the Burmese, this particular expression can perhaps be described as a "prosodic simile" (*u pama alinga*).

The other rhetorical terms in the royal order are expressions that deal with the nature of the lawsuit and litigation. In stating the ignorance and

95. Hla Pe in his book, *Burmese Proverbs* (London: John Murray, 1962), has listed a similar, though not identical, saying as a Burmese proverb. At page 61 under the heading "The World" and the sub-heading "Incongruity," there appeared the translated proverb "The price of the hook (goat) is greater than the price of the elephant" with the brief explanation "[t]he accessories cost more than the main item."

The king's concern for the clients seemed to be mainly about "poor" (money-wise) clients since the royal order specifically mentions villagers (*ywa-thar*) and *sinyethar* (*hsin-ye-thar*) which can be literally translated as "poor people." Okudaira describes the term *sinyethar* together with the synonymous term *Athi* as 'owners of rice fields, lands, gardens, boats, etc.'. Okudaira, "The Burmese Dhammathats" 77. Of course there would have been rich (*tha-gywe*, *tha-htay*) clients who litigated too, but the king's concern was mainly about the poor or at least less well-to-do members of the society. The king's understandable dislike of lawyers was evident through all the three royal orders. Royal Order C gave us a glimpse of the King's compassionate and humanitarian spirit. Compare the King's concern about the poor and the costs of litigation for the poor (together with his dislike of lawyers) in the 1607 Royal Order with this statement published in early 2001 and made by a former Attorney-General of the Australian state of New South Wales as cited in Hon. Jeff Shaw, 'Former Attorney General reflects on the practice of Law in the new century,' 10 *ALSA (Australian Law Students' Reporter)* (Summer 2001), 6. Shaw states that "Lawyers as a class are not loved. On the contrary we are met by considerable scepticism...there is substance in the view that legal advice and litigation can be beyond the means of ordinary and average citizens."

96. *Myanmar-English Dictionary*, 293.

unpreparedness (for litigation) of the poor litigants, the royal order stated that “if these litigants have to argue the cases all by themselves defeat for them would have been assured from the start of the game [litigation].” The word *pwe* literally translates as “public function, communal event, mass celebration, festival,”⁹⁶ but in the context the word “game” might be a more proximate or appropriate translation. A few sentences later, the royal order mentions the word *sitt* which in its most used meaning is “war”⁹⁷ but in its context can perhaps be more appropriately translated as “battle.” This expression can be found in the sentence “A good [competent] *shay-nay* who has set his heart on the rules contained in the *Dhammathats* would know whether he will win or lose the [legal] battle he is about to wage.” Hence both in literary and descriptive terms the litigation process has been at least implicitly compared to a (war) game⁹⁸ and a battle.⁹⁹ The use of these terms can best be described as a simile or an example (*u pama*).

The exposition that “[the predicament of these poor folk are such that] they are like dumb persons who are unable to narrate their dreams” is not an example—like the “baking and roasting the hearts and lungs of the judges”—devised by the king. It is a Burmese adage (*hso-yoe*) or proverb (*zagabon*).¹⁰⁰ Again it is a very apt description of the predicament—indeed the sense of disempowerment or helplessness—the poor (*hsin-ye-thar*) litigants faced when they became entangled -wittingly or unwittingly in the judicial process. All of the *hsin-ye-thar* who became involved would have been unlettered in the law. At least a few of them would have been illiterate. The expression is in the form of a double negative. Even persons who have their full faculties would experience difficulties in recounting and narrating their dreams in a coherent manner. For a dumb person, the impossibility of the task is inherent and is entrenched. *Hsin-ye-thar* who are unlettered in the law would experience comparable—though obviously not identical—difficulties in stating their cases before

97. Ibid., 118.

98. Three hundred sixty years after the Royal Order of 1607, a similar sentiment and expression was used in describing the litigation process (although of a very different time and place). See A. S. Blumberg, “The Practise of Law as Confidence Game,” *Law and Society Review*, (1967) 15. It is being claimed that the article “has become a classic in socio-legal studies.” Stephen Bottomley & Stephen Parker, *Law in Context* (Second Edition, 1997), 135. The insightful comments, observations concerning lawyers, the litigation processes, and gem of other information embodied in the royal orders convinces this author that the three royal orders are also, in their own ways, “classics.”

99. Compare, for e.g., A Sarat and W.L.F. Flestiner, “Law and Strategy in the Divorce Lawyer’s Office” 20 *Law and Society Review*, (1986) 93. See also D. Kornstein, *Kill All the Lawyers? Shakespeare Legal Appeal* (1994), 77-8, for the contention that the casket “game” in the play, *The Merchant of Venice*, is a metaphor for the uncertainty of litigation.

100. Hla Pe (above note 95, 22) mentioned a similar proverb “Giving a good dream to a dumb person” under the heading “Human Characteristics” and sub-heading “Futility,” He mentioned that it could be compared with the saying “like a dumb person dreaming in his sleep.” Hla Pe also stated that it is a Thai proverb and gives the explanation of the proverb as “He cannot repeat [narrate/communicate] [about] the dream.” Ibid.

the judge by themselves. Hence the need to hire the articulate, suave lawyers to “narrate their dreams” (make their cases).

The statement that “if [bad] pleaders are allowed to play havoc [through their devious ways] it would be akin to allowing property to be openly robbed from a museum [that is located] in the center of the kingdom” is also of interest. The author’s interpretation of this simile will be briefly elaborated here. The museum and the property (exhibits) contained in the museum located at the center of the kingdom are the rules (of wisdom) contained in the *Dhammathats* and in other Buddhist Scriptures. The (bad) lawyers are like the thieves who “rob the museum in open day light.” The king seemed to be inferring that if the lawyers were given a free hand, they would “rob” the *Dhammathats* of their value by twisting and misrepresenting the rules and statements that are embodied in them. It would be somewhat similar to the saying “The Devil can cite Scripture for his own purpose” notwithstanding the differences in the contextual, cultural, and religious milieu in which this statement was made.

It is true that in the earlier part of the royal order the king reminded the judges of the need to be aware of the different times and places in which the rules in the *Dhammathats* were laid down. But a judge adapting a *Dhammathat* rule to fit the circumstances of a particular case would not have amounted to and should not be described as robbery. A *shay-nay* totally misrepresenting the rules by (in the words of the royal order itself) “exaggerating, willy-nilly insisting, marginalizing (under-emphasising), exaggerating, omitting and hiding” can perhaps be described as “openly robbing” the wisdom contained in the “museum” of *Dhammathats* and scriptural wisdom.

The phrase stating that “instruction to the judges that the Royal Order must be treated as a walking staff to be used constantly” is the final simile in the royal order. The inference is that without the instructions contained in the royal order, the judges would not be able to “walk” (i.e. administer justice) and give proper decisions. Through the royal order, the king made it clear that only by referring to the royal order as a “Judges’ Manual” and constantly used as a “walking staff” could the fair administration of justice ensue.

Finally the observation of the king as regards a good or true lawyer—which perhaps was the only (comparatively) positive comment His Majesty had to say about them—warrants some comments. Only if the lawyers who knew the winning or losing game (strategy) (a possible reference to legitimate forensic skills) and those lawyers who when they lost their cases tried to minimize their detriments against their clients (instead of exaggerating, willy-nilly insisting, etc.) and those who helped the judge to arrive at the truth can be called “[true] lawyers,” King Anauk Phet Lun states. It would seem to the author that the King is mentioning forensic skills (knowledge of the law, legitimate forms of argumentation, effective strategy to represent and argue the case on behalf of the clients), helping the court (or) the judge arrived at the truth (being a good officer of the court) and concern for the clients in minimizing the detriments the

client would face (compassion) are the qualities which His Majesty would like to see in the *shay-nay*.¹⁰¹ In a word the king seemed to be emphasizing that the lawyers should develop qualities of “competence,” “conciliation,” and “compassion.” From the tone, tenor, and contents of all the three royal orders, it is evident that most of the *shay-nay* did not fulfill those expectations or requirements.¹⁰²

King Anauk Phet Lun who issued these three royal orders was “assassinated on 29 May 1628”¹⁰³ and his brother Thalun succeeded him. King Thalun “held his coronation on 28 August 1633.”¹⁰⁴ On 24 June 1634—exactly 27 years and one day after the issuance of Royal Order B during King Anauk Phet Lun’s reign—the same Royal Order B was reissued with exactly the same words.¹⁰⁵ By 1634 a new generation of “young lawyers” (*shay-nay nge*),¹⁰⁶ who were the target of both Royal Orders of 1607 and 1634, must have emerged. The new king would have seen that (most) of the new *shay-nay* had not changed their antics and that they were engaging in the same dubious if not devious practices of their earlier elder ‘brethren’ during his Royal Brother’s reign. Hence King Thalun might felt it necessary to reissue the royal order of his predecessor. To slightly paraphrase the Biblical saying: “one King passeth away and another cometh but the devious lawyers and their practices is passed on from one generation (of lawyers) to another.”¹⁰⁷

CONCLUSION

In two Biblical passages that appeared in quick succession, lawyers were reprimanded not once but twice by Jesus Christ himself. Part of the title of this article is, of course, taken from those passages.

101. For a comparative perspective of the development, state and the mode of the legal profession in medieval Europe see James Brundage, “The Medieval Advocate’s Profession” 6 (2) *Law and History Review*, (1988) 439. For an account of the legal profession of England mainly in the 16th century—only one or two generations earlier than the times the royal orders were issued—see David Ibbeston, “Common Lawyers and the Law Before the Civil War,” 8 (1) *Oxford Journal of Legal Studies*, (1988) 312.

102. Compare the sub-section entitled “Educating Cultured Lawyers” (a late 20th century document), in the chapter on “Lawyer’s Culture” in Kathy Laster, *Law as Culture* (1997), 339-43.

103. Than Tun, *ROB*, x.

104. *Ibid*.

105. *Ibid*, 216. Than Tun reproduced the Royal Order of 24 June 1634 in the original Burmese and at a different page from that of the Royal Order B of 23 June 1607. Than Tun annotated and cross-referenced the “recycled” second royal order with the words (in English) “See also the Order of 23 June 1607.”

106. See text accompanying and following above n 54. But compare this Burmese proverb translated by Hla Pe above note 95, 38: “Let the doctor be old and the lawyer be young.” Hla Pe mentioned this proverb under the heading “Human Behaviour” and the sub-heading “Ageing.”

107. The original passage in *Ecclesiastes* 1: 4-6 is “One generation passeth away and another cometh but the earth abideth forever.”

Luke 11: 45 and 46

One of the lawyers answered him [Jesus] "Teacher, in saying this you reproach us also". And he said, "Woe to you lawyers also! for you load men with burdens hard to bear and you yourself do not touch the burden with one of your fingers."¹⁰⁸

And again at Luke 11: 52:

Woe to you lawyers! for you have taken away the key of knowledge; you did not enter yourselves, and you hindered those who were entering.¹⁰⁹

This author came across these sayings only after all of the above sections have been written. The author is of the opinion—and is impressed by the fact—that at least on a general basis the Biblical sayings and the points made about lawyers by King Anauk Phet Lun can be compared if not analogized.

A similar or comparable point about lawyers "load[ing] men with burdens" was made by King Anauk Phet Lun when in Royal Order C he mentions—using a Burmese proverb—the irony of the costs of litigation exceeding the remedies and benefits that might be obtained. The "load" or burden that poor "men" (*hsin-yei-thar*) faced when they became involved in litigation seemed to have attracted the concern of King Anauk Phet Lun. Also, the king, in no unmistakable terms, laid at least part of the blame for this "burden" that befell the poor on the lawyers.

The Biblical statement that "lawyers had taken away the key of knowledge" and had 'hindered those who were entering' is also instructive. These statements can be analogized with the "museum" analogy in Royal Order C. In that Royal Order the King in effect warned that if the lawyers (of early 17th century Burma) were to be given a free rein they might well "robbed" or misused traditional (Buddhist) Scriptures and the wisdom contained therein (exhibits in the museum) in a reckless, arbitrary and self-serving manner. As stated earlier the King also seemed to have believed that the *shay-nay* if left unchecked could lead the judge astray (from the truth) and "hindered" him in the search for the truth pertaining to the case at hand.

These interpretations of the author may be an attempt to "bridge" the cultural (Judeo-Christian and Buddhist-Burmese) and "time" (of about 1,600 years) divide between the Biblical passages and Anauk Phet Lun's royal orders. Yet even if the attempt to analogize the two passages and the three Royal Orders are "stretched," the manifest criticisms—indeed the reprimanding—of the lawyers in both documents that are made 1,600 years apart, across different cultures, is striking.

Needless to say, King Anauk Phet Lun never had the chance to read (in translation) the particular Biblical passages quoted above. The Bible was translated into Burmese by the American Baptist missionary Adoniram Judson from the 1820s to 1840s—more than two hundred

108. Luke 11:45, 46 (RSV).

109. Luke 11:52 (RSV).

years after Anauk Phet Lun's Royal Orders.¹¹⁰ Yet Anauk Phet Lun seemed to be echoing similar (or) comparable views about lawyers as expressed by Jesus in the Bible. Considering the significantly different times and cultures in which these statements are made the similarities of views—almost of expressions—are indeed impressive.

It is also even more fortuitous and remarkable that in the same year of 1607 when Anauk Phet Lun was warning lawyers that they would face the punishment of 100 lashes and thereafter exile to a “far off place” if they continued on with their devious arguments¹¹¹ and that the judge must, if needs be, halt the lawyers from “willy-nilly insisting, marginalizing (under-emphasizing), exaggerating, omitting and hiding,”¹² William Shakespeare (in the role of Timon of Athens) was expressing his displeasure against lawyers thus:

Crack the lawyer's voice
That he may never more false title plead,
Nor sound his quilllets shrilly.>

110. It should however be said that Judson did not translate the word “lawyer” in Luke 11:45-6 and 11:52 as “shay-nay” but as “kyan-tat.” (*The New Testament in Burmese*, Translated by Rev. A. Judson, D.D., 97 The 1993 *Myanmar-English Dictionary* did not include the meaning of the word *kyan-tat* but defined *kyan* as “treatise; thesis” (*Myanmar-English Dictionary*, 35). *Kyan-tat* can therefore be defined as “treatise-writer”/“person who knows or is learned in the treatises.” Of course whether the *shay-nay* of King Anauk Phet Lun's time in Burma and the “lawyers” during the life-time of Jesus are “lawyers” conforming to all the attributes and characteristics of a “legal profession” can be debated. Huxley, quoting Max Weber (Huxley above n. 8), did not include ancient Palestine during Christ's time as a place where an “independent legal profession” emerged. Yet notwithstanding this, the fact that the word “lawyers” is used in the Bible would perhaps point to the fact that both the “lawyers” of Jesus' time and the *shay-nay* of King Anauk Phet Lun's reign would in an essential way belong to a similar if not the same profession as those of present day lawyers. Evidently the details and mode of function of lawyers nowadays would be very different from those of the early 17th century and at the start of the Christian era but in generic terms they could be argued to have belong to the same “profession” of present day lawyers. Compare Kathy Laster's statement (above note 101, 322, under a section entitled “The Lawyers We Deserve”) that “[l]awyer[ing] may well be the second-oldest profession, but it is a diverse occupation. What is defined as legal work and who may perform it is dictated by a mixture of historical, economic and cultural factors.”

111. See Royal Order B.

112. See Royal Order C.

113. *Timon of Athens*, Act IV, Scene iii, 155-57. Cited in Harold Bloom, *Shakespeare: The Invention of the Human* (1999), 596. Bloom states that “[a]ll of us doubtless respond to the denunciations of the crooked lawyer... (597). According to Bloom, Shakespeare wrote the play *Timon of Athens* in the years 1607-8 (xv). Shakespeare would in all probability not know that “Burma” or Ava (as it was then also known) existed. Likewise, Anauk Phet Lun would also probably not know that there was such a place called England. Yet in virtually the same year of 1607—and totally unbeknownst to each other—King Anauk Phet Lun of Burma and William Shakespeare of Stratford-upon-Avon, used their considerable literary skills and expressed, in their own languages, very similar sentiments about and attitude towards lawyers.

Also in *Henry VI*, a play written in 1589-90, there is the famous sentence of “The first thing we do let's kill all the lawyers” [*Henry VI, Part One*, Act IV, Scene ii. 71] This passage was written by Shakespeare about seventeen years before Anauk Phet Lun threatened to punish recalcitrant lawyers (“crack the lawyers' voice”) with one hundred lashes. About

The Bible and Shakespeare's works are some of the classics of Western literature where unflattering comments about lawyers can be found. The fact that such *canonical* writings contain unfavorable sentiments and views about lawyers could perhaps lend further credence to the fact that "hostility to lawyers seems to transcend space and time."¹¹⁴

"Hostility to lawyers" and ways and means of "curbing" and regulating their conduct can also be discerned in the royal orders of King Anauk Phet Lun that are discussed in this article. Aspects of Burmese legal history and the legal profession during those times were also discussed and analyzed—at times from a comparative perspective. It is hoped that the fair amount of information that is conveyed and analyses that have been made on these topics as well as those on Burmese literary expressions and usages, rhetorical methods and argumentation, have been of interest and benefit for the readers.

twelve years before Anauk Phet Lun, in Royal Order A, threatened punishment of those lawyers who asked for a fee of more than 37 1/2 ticals of silver, there appeared this passage by Shakespeare in *Romeo and Juliet* which was written around 1595-96:

.. Prick'd from the lazy finger of a maid;
And in this state she gallops night by night
Through lovers' brains and then they dream of love;
O'er courtiers' knees, that dream on curtsies straight;
O'er lawyers' fingers who straight dream on fees.
[Act I, Scene iv. 70-4],

114. Laster, above n. 105,321.