BUDDHISM, LAW & SOCIETY

VOLUME 3 • 2017–2018

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GOVERNING THE MONASTIC ORDER IN LAOS: PRE-MODERN BUDDHIST LEGAL TRADITIONS AND THEIR TRANSFORMATION UNDER FRENCH COLONIALISM[1]

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[1] Acknowledgements: Research on which this paper is based was generously sponsored by the Robert H.N. Ho Family Foundation Program in Buddhist Studies. Both researchers received a collaborative research grant for a project entitled "Governing the monastic order. A comparative exploration of traditional *saṅgha*-laws in pre-modern Laos and their transformations under colonialism." We also want to express our gratitude to the institutions that hosted us during our research or facilitated the latter: Thanks to École française d'Extrême-Orient Vientiane and especially Christine Hawixbrock, The Buddhist Archives of Luang Prabang (Dr. Khamvone Boualyphone and his team), Prof. Volker Grabowsky (University of Hamburg), and the Archives nationales d'outremer in Aix-en-Provence. We are grateful for Douanglattana Souphanthong assistance for identifying documents and help with translations. Special thanks to Ben Schonthal, Petra Kieffer-Pülz, Volker Grabowsky, Rita Langer and Michel Lorrillard who all provided insightful comments and undertook meticulous editorial work to get the text into shape. Previous draft versions of this paper were presented by Patrice Ladwig at the Max Planck Institute for Religious and Ethnic Diversity (Göttingen, Germany). Thanks also to Peter van der Veer and all colleagues and friends there for their feedback and ideas.

Abstract: Governing and administering the *saṅgha* has been described as an inherent part of the enactment of Buddhist statecraft in the pre-modern Theravāda world. With the development of modern forms of statehood under colonialism, however, new forms of governing evolved. Focusing on the pre-modern and colonial phases, this article discusses the laws and procedures that were deployed in Laos for governing the *saṅgha*. We first give an outline of the pre-modern laws that concern monks and the order of monks, and in the second part explore how these laws were adapted and modified by the French colonial regime. Despite the introduction of modern forms of governance, we propose that there are also strong continuities to be found. Colonial laws for the *saṅgha* were not simply imposed as legal transplants but were the outcome of complex negotiations between French and Lao leading to an acceptable "hybrid" law that provoked little resistance.

Keywords: pre-modern law, colonialism, Buddhism, Laos, *saṅgha* regulation

Introduction

Throughout the history of Laos—and to a larger extent of mainland Southeast Asia—rulers and monks were not only involved in adapting Indian Buddhism to changing social and political contexts, but they were also involved in establishing a series of legislations, laws and institutional procedures for administering, ruling and reforming the monastic order (the *saṅgha*). As Buddhism and the *saṅgha* were crucial for the political legitimacy of kings in pre-modern Lao principalities, these laws became an essential feature of the enactment of power. Legislators extensively relied on "foreign" religious scriptures, the Pali *Vinaya* in the first place, for establishing legislations. In order to make these institutional reforms and legal measures effective, these laws and procedures often had to be vernacularized, and integrated into local forms of Buddhist statecraft.

Although the transition from pre-modern Lao monarchies to French protectorate (1893–1954) introduced new notions of governance into the legal and religious sphere, we argue that the very idea that the monastic order must be controlled, or even "purified" (Thai *chamra*, Lao *samla*, Pali

visodhana)[2] by political powers was barely modified. Our argumentation builds on Stanley Tambiah's thesis that these restorative and purifying acts—often involving a stricter enforcement of the monastic discipline and establishing new legislations—usually signify that power-holding elites intend to expand their sphere of influence.[3] Although colonialism certainly provoked ruptures in the sphere of law-making (not only with regards to Buddhism), we suggest that despite considerable formal changes colonial legislators drew heavily on their Lao predecessors for initiating religious reforms. Defining the legal status of the *saṅgha* was also part of the French colonial project, which was aiming at enhancing the control of its protectorates. Yet the French had few resources for doing this and therefore very much relied on indigenous legislations already in place.

For exploring the transformation and continuities of laws concerning monks and the *saṅgha* in Laos, and for situating our research in a larger perspective on Buddhist law in Theravāda Southeast Asia, we start with a comparative and selective outline of the laws and texts that were used in Lao territories prior to the colonial period. We here refer to historical documents and manuscripts that concern the monastic order and the Buddhist laity, as well as to accounts by foreign travelers. The following part will then discuss the establishment of new law codes and specifically *saṅgha* regulations under French domination. By using sources from recent archival fieldwork in Laos and France, we will highlight the fact that this was a very gradual process that involved French researchers—first and foremost members of the École française d'Extrême-Orient (EFEO)—colonial administrators, local scholars and Lao rulers.

In terms of comparative law, we argue that we do here not deal with an unmodified and exported "legal transplant" in the sense of Alan Watson as the "moving of a rule or a system of law from one country to another"[4] and simply imposing that system on a population. Instead, we encounter a situation that produced a new, "hybrid law" that was neither purely indige-

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[2] In the following, all terms in Pali will be indicated by (P.), and Sanskrit words with the abbreviation (Sk). Words in Thai and/or Lao will have no distinct marker. All other terms deriving from foreign languages will be marked as such.

[3] Stanley Tambiah, *World Conqueror and World Renouncer. A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge: Cambridge University Press, 1976), 84.

[4] Alan Watson, *Legal Transplants: An Approach to Comparative Law.* 2nd ed. (Athens: University of Georgia Press, 1993), 21.

nous nor colonial.[5] We argue that this "modern" legal apparatus in fact drew heavily on pre-modern, indigenous law, and that its reception was met with little resistance. Lao and French elites actually shared the agenda of modernizing Lao Buddhism along similar lines that were already under way in Cambodia and Siam.

The modernization of law and the associated *saṅgha* regulations—a hybrid of customary law and colonial governmentality—in that sense aimed at the future, and acted as an "index of desired social, political and economic change of what society would like to become," as legal historian David Nelken phrases it.[6] Since the need to control the *saṅgha* had repercussions that reached beyond the direct control of the religious field, we will also situate these law-making processes in their colonial context and refer to changes through modernization, and their implications for practical governance. Crucial for our argumentation is the fact that Lao and colonial authorities drafted legislations and laws that did not presuppose a strict separation of the religious and the secular sphere, but that the status of Buddhism and its institutions were marked by a constant overlap between these domains,[7] which is based on the continuity of a particular idea of rule in which the *saṅgha* is understood as a reservoir of power that legitimizes political actions.

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[5] See Matteo Solinas, "The nature of legal transplants. Inspirations from postcolonial scholarship," *New Zealand Association for Comparative Law Yearbook* 22 (2016): 180.

[6] David Nelken, "Comparatists and transferability," in *Comparative Legal Studies: Traditions and Transitions*, ed. Pierre Legrand and Roderick Munday (Cambridge: Cambridge University Press, 2003), 451.

[7] Since Talal Asad's groundbreaking work, there has been a constant stream of publications that have problematized the secularization narrative that also had an impact on historical research. Recent research has shown that both categories (*i.e.* religious and secular) in many contexts substantially overlap, or indeed constitute each other. Other approaches have explored the hidden traces of religion in seemingly secular configurations like, for example, politics and modern state law. See Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), Peter van der Veer, *The Modern Spirit of Asia: The Spiritual and the Secular in China and India* (Princeton: Princeton University Press, 2013) and Nils Bubandt and Martijn van Beek, *Varieties of Secularism in Asia: Anthropological Explorations of Religion, Politics and the Spiritual* (London and New York: Routledge, 2014) for more recent discussions in relation to Asian religions in general. Although we regularly use the term secular in this text, we want to emphasize that this implies a rather gradual distinction from religious, and not an absolute one.

Governing the *Saṅgha*: General Aspects and Outline of the Pre-Colonial Period

Although there is now an increasing body of research that takes into account the deep legalistic nature of the different Vinayas,[8] and there is a recent resurgence of studies on law in the Theravāda Buddhist world and beyond,[9] we have up to now unfortunately rather little information about Lao legislations and the forms of law to which monks were subject to. Although Yoneo Ishii published a brief and useful overview on Lao law, and Mayouri Ngaosyvathn produced a short text on the sixteenth century "Laws of Khun Borom,"[10] the state of knowledge concerning, for example, Sri Lanka,[11] Burma[12] or Thailand[13] is much more advanced. Epigraphical

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[8] Oskar von Hinüber, "Buddhist Law according to the Theravāda-Vinaya. A Survey of Theory and Practice," *Journal of the International Association of Buddhist Studies* 18, no. 1 (1995): 7–45; Petra Kieffer-Pülz, "What the Vinayas can tell us about law," in *Buddhism and Law: An Introduction*, ed. Rebecca Redwood French and Mark Nathan (Cambridge: Cambridge University Press, 2014), 46–62.

[9] Rebecca Redwood French and Mark Nathan, "Introducing Buddhism and Law," in *Buddhism and Law. An Introduction*, ed. Rebecca French and Mark Nathan (Cambridge: Cambridge University Press, 2014), 1–28.

[10] Yoneo Ishii, "The Thai Thammasat (with a note on the Lao Thammasat)," in *The Laws of Southeast Asia. Volume 1. The pre-modern texts*, ed. M.B. Hooker (Singapore: Butterworth, 1986), 143–203; Mayouri Ngaosyvathn, "An Introduction to the Laws of Khun Borom: An Early Prototype of the Organization of the T'ai Society and Life," in *Thai Law: Buddhist Law. Essays on the Legal History of Thailand, Laos and Burma*, ed. Andrew Huxley (Bangkok: White Lotus Press, 1996), 73–80.

[11] Heinz Bechert, "Theravāda Buddhist Sangha: Some General Observations on Historical and Political Factors in its Development," *Journal of Asian Studies* 29, no. 4 (1970): 761–778; Benjamin Schonthal, *Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka* (Cambridge: Cambridge University Press, 2016).

[12] For example, see John Jardine, *Note on Buddhist Law* (Rangoon: Government Printing, 1882); Emanuel Forchhammer, *The Jardine Prize: An Essay on the Sources and Development of Burmese Law from the Era of the First Introduction of the Indian Law to the Time of the British Occupation in Pegu* (Rangoon: Goverment Printing, 1885, reprint 1953); Gaung U, *A Digest of the Burmese Buddhist Law Concerning Marriage and Inheritance, Being a Collection of Texts from Thirty-six Dhammathats, compared and arranged under the supervision of U Gaung*, 2 Vols. (Rangoon: Government Printing, 1898–1905); Dietrich Christian Lammerts, *Buddhist Law in Burma: A History of Dhammasattha Texts and Jurisprudence, c. 1250–1850 CE* (Honolulu: University of Hawai'i Press, 2018).

sources that could provide more information on earlier periods are also rare in the case of Laos and some neighboring regions.[14] Due to this regrettable state of research, we will in this paper only be able to provide some preliminary information on how rulers and monastic elites established legislations that aimed at disciplining monks as individuals and ruling the *saṅgha* as an institution. It remains to be examined to what extent Lao regulations rest upon the Pali *Vinaya,* or on monastic guidelines composed for the entire community of monks like the Sri Lankan *sāsana katikāvata*s, or on technical terms and concepts contained in other Indian religious texts.[15] What further complicates research is the fact that one has to take into account that even when monks in Southeast Asia formally refer to the *Vinaya,* most of them are not acquainted with its canonical Pali version.[16] Despite the consistent use of Pali (or Sanskrit) technical vocabulary, most laws and regulations—including the monastic ones—are present in vernacular form. One can compensate somewhat for these general gaps in research on Lao Buddhism[17] by taking into account the border of king-

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[13] For example, see Robert Lingat, *Lois siamoises, Code de 1805, Lois diverses* (Bangkok: Presses de l'Assomption 1930); David Wyatt, "Laws and Social Order in Early Thailand: an Introduction to the Mangraisat," *Journal of Southeast Asian Studies* 15, no. 2 (1984): 245–252; Andrew Huxley (ed.), *Thai Law, Buddhist Law: Essays on the Legal History of Thailand Laos and Burma* (Bangkok: White Lotus Press, 1996).

[14] What complicates the situation regarding sources is the fact that the epigraphy of Lan Xang is still largely unstudied, contrary to that of Lan Na or Sukhothai, which gives us some information on legal issues and the organization of the *saṅgha*. Current research conducted by Michel Lorrillard on Lao epigraphy will certainly fill a gap in this domain.

[15] Nandasena Ratnapala, *The Katikāvatas: Laws of the Buddhist Order of Ceylon From the 12th to the 18th Century*, critically edited, translated and annotated. Münchener Studien zur Sprachwissenschaft, Beiheft N (München: R. Kitzinger, 1971); Anne M. Blackburn, "Looking for the Vinaya: Monastic Discipline in the Practical Canons of the Theravāda," *Journal of the International Association of Buddhist Studies* 22, no. 2 (1999): 281–309.

[16] Indeed, except in Burma and in some restricted circumstances as in nineteenth century Bangkok, the canonical monastic discipline written in Pali has not, strictly speaking, been fully assimilated by the populations which adopted Buddhism. It was rarely read in its original form, but was rather partly translated, adapted, rephrased and sometimes reinterpreted. This in turn led to the constitution of a large body of texts that could in this sense be defined as "original adaptations."

[17] For an overview of the current state of research and its gaps regarding Lao Buddhism, see Patrice Ladwig, "Buddhism in contemporary Laos: Ruptured histories," in

doms in pre-modern mainland Southeast Asia, which were rather fluid, and which had concepts that traveled extensively. Therefore, the following part will contextualize the Lao case in this broader comparative framework.

As historical research has shown, Buddhism in the region that is today labeled Laos was heavily influenced by Lan Na, present-day Northern Thailand, which was also enhanced by the linguistic proximity between some Tai dialects spoken in these regions.[18] Therefore one can argue from a general perspective that the situation in Lao territories seems to be similar to that of Lan Na, but that there is a significant contrast with the Siamese system in Ayutthaya (1351–1767) and in Bangkok under the Chakri-dynasty (from 1782 onwards). In these kingdoms, state organization was much more centralized, and law became systematized from early on.[19] There is, for example, no equivalent in pre-modern Laos of the *Phrasong Kotmai* ("*saṅgha*-law") that is included in the Siamese Three Seals Code (*Kotmai Tra Sam Duang*) and was issued by King Rama I (1782–1809).[20] Judging from the materials available from neighboring regions, it seems that issuing *saṅgha*-laws was not considered to be one of the major duties of Buddhist kings in most of the smaller pre-modern Northern Thai or Lao kingdoms.[21] The interactions of *saṅgha*, law and kingship played out in a multitude of fields, some of which we will discuss in the following.

From the beginning of the history of the kingdom of Lan Xang (fourteenth century onwards), Lao kings had a certain degree of direct

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The Oxford Handbook of contemporary Buddhism, ed. Michael Jerryson (New York: Oxford University Press, 2017), 274–295.

[18] Michel Lorrillard, "Insights into the diffusion of Lao Buddhism," in *Buddhist Legacies in Mainland Southeast Asia*, ed. François Lagirarde and Paritta Koanathakool (Bangkok: EFEO, Sirindhorn Anthropology Centre), 139–148.

[19] An illustrative example is the inscription 38 of King Ramaraja of Ayutthaya, which promulgates in 1397 a law on servants in the vassal kingdom of Sukhothai. See A.B. Griswold & Prasert Na Nagara. *Epigraphic and Historical Studies* (Bangkok: The Historical Society, 1992).

[20] Allegedly, this regulation relies on older codes from Ayutthaya. See Michael Vickery, "Prolegomena to Methods for Using the Ayutthayan Laws as Historical Source Material," *Journal of the Siam Society,* Bangkok 72 (1981): 37–58.

[21] It must be noted, however, that this code was issued as late as 1805. Before that date, only two decrees are known to specifically address the affairs of the *saṅgha* in Thailand. According to the *Three Seals Code*, these are dating from 1738 and 1774. See David Wyatt, *Studies in Thai History: Collected Articles* (Bangkok: Silkworm Books, 1994), 148.

authority over the monastic order. As in neighboring Sukhothai and in Lan Na, royal patronage in Laos was not only pervasive, but constituent for Buddhism. Religion in Thai and Lao kingdoms did not develop independently from secular institutions of power, but were indeed founded on Buddhism, as the legitimacy of kingship was dependent on its principles. By supporting the *saṅgha*, kings received not only legitimation, but were also able to increase their sphere of influence by creating and controlling monastic networks along trading routes such as the Mekong River.[22]

Epigraphic sources and chronicles show that rulers actively intervened in monastic affairs in Thai-Lao kingdoms by, for example, giving preference to particular monks for *saṅgha* leadership, or by promoting the dominance of certain monasteries. Monasteries were most often built at the instigation of a ruler who donated land to the *saṅgha*, appointed high-ranking monks or gave them honorific titles.[23] Historical evidence suggests that in some instances the rulers ritually conducted the installation of *sīmā* or boundary stones that are used to delineate the sacred space in which the "acts of the order" (*saṅghakamma*) are performed[24] although the *Vinaya* states that such rituals are usually only to be carried out by monks.[25]

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[22] See Prapod Assavavirulhakarn, *The Ascendancy of Theravāda Buddhism in Southeast Asia* (Chiang Mai: Silkworm Books, 2010), 19.

[23] The *Jinakālamālī*, a Pali Buddhist chronicle written in sixteenth century Lan Na, provides a number of examples of temples that were built or restored by kings. It also gives an excellent overview on the role of rulers regarding monastic organization and hierarchy. See N.A. Jayawickrama, *The Sheaf of Garlands of the Epochs of the Conqueror, Being a Translation of Jinakālamālīpakaraṇaṃ of Ratanapañña of Thailand* (London: The Pali Text Society, 1978).

[24] This is, for instance, stated in the first folios of the *Gurupadesa*, a legal text from Luang Prabang (see below). For Lan Na, see the inscription of Mahantaram monastery (face 2), Chiang Mai, dated AD 1491; see Hans Penth et al., *Corpus of Lan Na Inscriptions,* vol. 10 (Chiang Mai: Social Research Institute, 2005), 17–37.

[25] Establishing *sīmā* stones appears to be of crucial importance for rulers and monks, as this issue is repeatedly raised from the fourteenth century onwards up to the modern period. This technical question has been the source of recurring controversies and even schisms within the community of monks in different Thai (and other) centres of power because the validity of the ordination lineages depends on this. While recent publications (see, for example, Petra Kieffer-Pülz, "Translocal Debates and Legal Hermeneutics: Early Pali Vinaya Texts in the Adjudication of Sīmā Procedures, c. 1200–1900 CE," *Buddhism, Law & Society* 2 (2016–2017): 103–158 [2 Buddhism L. & Soc'y 103]) have dealt with monastic codes related to the *sīmā* in ancient Indian and Sinhalese Buddhist traditions, this topic has been little discussed in the pre-modern Thai and Lao context, especially in its relation to power and governance.

Moreover, the *saṅgharājas*, that is, supreme patriarchs, have always been nominated by the rulers in Thai-Lao kingdoms—which is still the case in present-day Thailand.[26] This also shows that the ecclesiastical hierarchy in this area was necessarily dependent on secular authorities, as "the *Vinaya*, or ancient code for monastic behavior, gives no basis for such ecclesiastical structure beyond the simple device of seniority."[27]

Historical sources produced by early European travelers who went to Vientiane in the seventeenth century confirm that kings and the institutions of Buddhist kingship had a crucial influence on the *saṅgha*. The *Relation nouvelle et curieuse des royaumes de Tunquin et de lao* (1666) written by missionary Giovanni Filippo de Marini (from the notes of another missionary, Jean-Marie Leria) highlights the power kings could exercise on the monastic order. He not only states that the King Suriyavongsa (1638–1695) was committed to enforce Buddhist law and Buddhist traditions, but also reports that in relation to monks he "corrects their faults, explains theological problems, resolves disputes, regulates rituals."[28] The travel report by the Dutch merchant Gerrit van Wuysthoff (1641–1642) provides another account of the power the Lao king had over the community of monks in seventeenth century Lan Xang kingdom.[29]

On a general level, this reflects a well-documented pattern of interaction of the *saṅgha* and ruling elites that oscillates between cooperation, competition and at times confrontation.[30] This religious legitimation was

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[26] For some examples in Thailand, see Yoneo Ishii, *Sangha, State and Society. Thai Buddhism in History* (Honolulu: University of Hawai'i Press, 1996), 62.

[27] John P. Ferguson and Ramitanondh Shalardchai, "Monks and Hierarchy in Northern Thailand," *Journal of the Siam Society* 64, no. 1 (1976): 104.

[28] Giovanni F. de Marini, *Relation nouvelle et curieuse des royaumes de Tunquin et de Lao* (Paris, 1666), 417. See also Gregory Kourilsky, *Recherches sur l'Institut bouddhique au Laos (1930–1949). Les circonstances de sa création, son action, son échec* (MA Dissertation, Paris: École Pratique des Hautes Études, 2006), 26.

[29] See Juliette Krieken-Peters, "Van Wuysthoff's Journal in Perspective. The King, the Environment and Lao Buddhism," in *Van Wuysthoff and the Lane Xang kingdom. A Dutch merchant's visit to Laos* (Leiden: Gingko Publishers, 2010), 73–104.

[30] Steven Collins, *Nirvana and Other Buddhist Felicities. Utopias of the Pali Imaginaire* (Cambridge: Cambridge University Press, 1998), 415; Donald Swearer and Somnai Premchit, "The relationship between the religious and political orders in northern Thailand (14th–16th centuries)," in *Religion and Legitimation of Power in Thailand, Laos and Burma*, ed. Bardwell Smith (Chambersburgh: Anima Books, 1978), 20–33. For pre-modern Laos, see the excellent account given in Volker Grabowsky, "Buddhism and Political Order in Pre-Twentieth Century Laos," in *Buddhism, Power,*

also symbolized in religious-political acts that can be understood as a form of ritual government, also at work in other colonial contexts.[31] This form of religious governing is perfectly expressed by the oath ceremony that occurred annually in larger Lao monasteries such as the Vat Sisaket in Vientiane, in which the Buddhist clergy had a crucial role. In these rites, local lords had to ritually proclaim their alliance to the king. During the colonial period, this tradition continued in Laos and was—with some modifications—still practiced in Sisaket monastery, where the oath was given to the Lao king and the French.[32]

Manuscripts and legal cases

The manuscript corpus is obviously one of the most important sources for understanding the pre-modern legal traditions in Laos. We here want to stress that although Lao Buddhism is today identified as belonging to the "Theravāda" tradition, religious texts from Laos by no means conform to—neither are they limited to—the *Tipiṭaka* or Pali literature. As in Khmer and Thai Buddhist literary traditions, monolingual Pali manuscripts represent a small minority. Even these are not always canonical scriptures; they can also be original compositions.[33] A review of existing manuscripts

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and Political Order in Theravāda Buddhist Asia, ed. Ian Harris (London: Routledge, 2007), 121–142.

[31] Arthur M. Hocart, *Kings and Councillors: An Essay in the Comparative Anatomy of Human Society*, ed. Rodney Needham (Chicago: University of Chicago Press, 1970), 35. For the case of colonialism, see Patrice Ladwig and Ricardo Roque, "Introduction: Mimetic Governmentality, Colonialism, and the State," *Social Analysis* 62, no. 2 (2018): 14–18.

[32] Monks had an important role in this rite as they prepared the lustral water that the officials had to drink as a sign of allegiance to the king. See Marcel Zago, *Rites et cérémonies en Milieu Bouddhiste Lao* (Rome: Università Gregoriana, 1972), 330–333 for more details and a short bibliography. Local lords also had to dip their ceremonial weapons into this water. The text of the oath was also written by monks who were officiating at the rite. See Lucien de Reinach, *La Laos*. Edition posthume. Revue et Mis à Jour par P. Chemin Dupontés (Paris: Guilmoto, 1911), 148. Interestingly, this ceremony was maintained after the installation of the French protectorate in Laos but was modified by replacing the Lao (or Siamese) sovereign with the government commissioner. The normal population continued to attend the oath to the Lao king, which was now called "the small oath," while the oath taken by local lords was entitled "the big oath."

[33] In the fifteenth and sixteenth centuries, Lan Na tradition produced an important Pali literature that circulated widely in Laos. A good example of this production is the

in Laos reveals that while the most ancient manuscripts available (sixteenth century) are Pali texts,[34] vernacular language writings progressively replaced Pali to such an extent that from the nineteenth century onwards, the vast majority of texts is actually written in Lao, but interspersed with Pali fragments, sentences or words. These hybrid writings belong to specific categories such as *nissaya*, *vohāra*, *sap*, *anisong* (P. *ānisaṃsa*), *sutmon* (P. *sutta-manta*), *gāthā*, *nithan* (P. *nidāna*), *tamnan* ("chronicles"), and so forth. Actually Pali (or, to a lesser extent, Sanskrit) scriptures are used as a "tool box" of notions, concepts and technical terms,[35] whose main purpose is to connect vernacular writings and local customs to what Steven Collins has aptly termed the "Pali imaginaire."[36] This process also led to the constitution of a large body of legal texts in vernacular languages, including different categories such as *thammasat* (P. *dhammasattha* or Sk. *dharmaśāstra*), *ratchasat* (Sk. *rājasāśtra*), *kotmai* ("laws") or *khong* ("rules," "customs"). Many of them extensively rely on the *Vinaya*, but also on other Pali, and sometimes Sanskrit texts, or even on other Southeast Asian codes of law like, for example, the Mon-Burmese *Dhammasattha*s or *Dhammathat*.

The most distinctive Lao legal texts that specifically concern the *saṅgha* are probably the *khong* ("rules," "customs"), which are written in vernacular interspersed by Pali terms or sentences extracted from the

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Maṅgalatthadīpanī, a voluminous commentary of the *Maṅgala-sutta*, written by the monk Sirimaṅgala in 1524, and which is more popular than many canonical texts. Moreover, many of the numerous Pali recitations that are used in Laos originate from non-canonical sources. The *Uṇhissavijaya-sutta* (or *gāthā*), for instance, derives from a Sanskrit Buddhist tradition (*Cf.* Louis Finot, "Recherches sur la littérature laotienne," *Bulletin de l'École française d'Extrême-Orient* XVII (1917): 174–176).

[34] Most sixteenth century manuscripts found in Laos and the Lao areas of Thailand (its northeastern region) are in Pali. Many of them are *Vinaya* texts. The most ancient manuscript found in Laos, dated CS 882 (AD 1520), is a fragment of the *Parivāra* (PLMP code: 06018504078_00); it is today stored at the Luang Prabang Provincial Museum.

[35] For this "lifting of words" from Pali and Sanskrit into the vernacular, see Justin McDaniel, *Gathering Leaves and Lifting Words: Histories of Buddhist Monastic Education in Laos and Thailand* (Seattle: University of Washington Press, 2008), 125.

[36] Collins, *Nirvana*, 41. For this point on Laos, also see Patrice Ladwig, "The Indianization and Localization of Textual Imaginaries: Theravāda Buddhist Statecraft in Mainland Southeast Asia and Laos in the Context of Civilizational Analysis," in *Anthropology and Civilizational Analysis. Eurasian Explorations* ed. Johann P. Arnason and Chris Hann (Albany: State University of New York Press, 2018), 155–192.

Vinaya or its commentaries. Less extensive than *Vinaya* divisions, these texts were easier to understand for Lao monks and novices, and therefore easier to apply and enforce because their content was adapted to local contexts, norms and social structure. The *khong* genre is, however, heterogenous in term of title and content. Some examples are the *Khong Vat* ("Rules for the monastery"), *Khong kiccha Vinayakam an phikkhu khuan patibat* ("Rules concerning monks' and novices' activities according to the *Vinaya"*), the *Khong pha khong bat* ("Rules concerning the monastic robe and the alms bowl"), and the *Khong palaseuk si tua haeng phikkhu* ("The four *pārājika* of the bhikkhu"). More famous are the "fourteen rules for the Buddhist monk" (*Khong sip si phra song*), which lists the elementary duties of the monks, including residing in monasteries, receiving food in the alms bowl, wearing monastic robes, respecting the 227 rules of the *Pātimokkha*, attending monthly ceremonies and rituals, etc. The last rule of this text, which warns monks against opposing kings or dignitaries coming to the monastery, illustrates the subjugation of monks to secular power.[37]

Apart from the *Khong* mentioned above, it is interesting to note that the legal corpus of Laos often concerns both laymen and members of the *saṅgha*, and thus exemplifies the "substantial agreement between Buddhist monastic law and secular law," as Petra Kieffer-Pülz has put it for early Indian Buddhism.[38] These overlaps are especially apparent in cases where monks are found guilty of a "proper" criminal offense that might, for example, result from the interaction with laypeople. This is, however, a more general phenomenon, as we are dealing with a literary tradition and civilization in which all writings were by definition related to Buddhism. Texts were composed or copied by monks (or people who received a monastic training) and were traditionally kept in libraries in monasteries. Moreover, the script itself that is used for writing manuscripts is called "Tham" (from Pali *dhamma*) which endows both the letters as such and their meaning with a religious dimension.[39] Like in other Southeast Asian

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[37] *Saranukrom Watthanatham Thai phak Isan* vol. 2 [Encyclopedia of Thai Culture. Isan region] (Bangkok, 1999), 644.

[38] Petra Kieffer-Pülz, "What the Vinayas can tell us about law," in *Buddhism and Law. An Introduction*, ed. Rebecca French and Mark Nathan (Cambridge: Cambridge University Press, 2014), 58. For an example, see our short discussion on a text in Lao called *Khadi lok khadi tham* in the next paragraph

[39] Several scripts were in use in Lan Xang and Lao kingdoms, most of them drawing on Northern Thai models (Sukhothai, Fak Kham, Tham Lan Na). Manuscripts, however, are mostly written in Tham Lao script, but are sometimes found in Lao "lay"

kingdoms, and indeed many pre-modern of forms of statehood, religion and secular power were inherently linked to, and constitutive of, each other. Although Frank Reynolds insists on a rather strict distinction of *dharma* as a legal system and various other meanings (*i.e.* cosmological) of the word,[40] we think that the very concept of law in Thai-Lao kingdoms and Theravāda Southeast Asia always carries an ambivalent connotation: It can refer both to a set of legislations (*kotmai* or *kot-labiap*) and to the Universal law (*tham*/*dhamma*).

The *Vinaya* clearly encapsulates both these conceptions, as it is a set of legal regulations, but at the same time also recognized as the word of the Buddha (P. *Buddha-vacana*). Lao legal texts have kept this ambivalent nature over centuries. Therefore, even though Buddhist scriptures, and the *Vinaya* in particular, were at the base of *saṅgha* regulations, one also has to take into account that "secular" regulations seem to have to be used in parallel to judge monks or monastic affairs for cases going beyond the monastery grounds. Legal issues related to the inheritance of a deceased monk, or to sexual intercourse with a laywoman are particularly telling examples which demonstrate that from a practical point of view monasticism and laity cannot be neatly distinguished.[41] Moreover, the mixing of what we today might label secular and religious spheres is also grounded in the fact that ordination in many Southeast Asian Buddhist traditions is

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script (especially tales and narratives). For an excellent review on the history of scripts in Laos, see Lorrillard, Michel. "Écritures et histoire: le cas du Laos." *Aséanie* 22 (2008): 63–84.

[40] Frank Reynolds, "Buddhism and Law—Preface," *Journal of the International Association of Buddhist Studies* 18, no 1 (1995): 3. For further points and references on this, see the discussion on dharma as law by French and Nathan, *Buddhist Law*, 4–5.

[41] Burmese *Dhammasattha* texts also discuss such cases. These are also heavily inspired by the Vinaya, but at the same time they are "calling into question any strict divide between lay and monastic legal spheres." Christian Lammerts, "Genres and Jurisdictions: Laws Governing Monastic Inheritance in Seventeenth-Century Burma," in *Buddhism and Law. An Introduction*, ed. Rebecca French and Mark Nathan (Cambridge: Cambridge University Press, 2014), 183. Arguing somewhat from a more "Indianized" perspective is Robert Lingat "Vinaya et droit laïc. Études sur les conflits de la loi religieuse et de la loi laïque dans l'Indochine hinayaniste," *Bulletin de l'École française d'Extrême-Orient* 30, no. 1 (1937): 415–477. It should also be noted that the *Vinaya* itself makes the distinction between *loka-vajja* (offenses that are condemned by common morality) and *paṇṇati-vajja* (offenses that counter monastic rules) (thanks to Ben Schonthal for having drawn our attention to this distinction).

usually not permanent, but often of rather short duration.[42] One could speculate that this porousness and constant exchange between monastery and society also had repercussions in the sphere of law. Or, as Max Weber labels it, that law carried "the monastic ethos beyond the confines of monasticism."[43]

A large number of Lao legal texts illustrate this interdependence of secular and religious law. One outstanding example is the *Khadi lok khadi tham* (Pali *Gatiloka-gatidhamma*, lit. "worldly cases and *dhamma* cases") that takes cases of monastic discipline as a base for comparing them with laws for the secular order.[44] A similar text is the *Saṅgaha-pakaraṇa*, which is derived from the eponymous Pali commentary attributed to Sāriputta of Ceylon (12th century) but reworded in vernacular and adapted to a local context; this text approaches (what today might be labeled) civil law from the perspective of the Sinhalese monastic code and creates different categories of laws that are matched according to the divisions of the *Vinaya*.[45] Particularly interesting is the *Thammasat Luang*. As a variant of numerous Southeast Asian *thammasat* (*dharmaśāstra*) texts, it has the particularity to be arranged in accordance with the Buddhist five precepts (Pali *pañca-sīla*), each of its five books being dedicated to several legal cases related to one of these precepts (murdering, stealing, lying, adultery and intoxication).[46] Numerous clauses are specifically dedicated to monks. Here again

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[42] In Thai-Lao societies the overwhelming amount of men ordain only for a temporary period. Contrary to Sri Lanka or, to a lesser extent, Burma, Thai and Lao traditions rarely lead to a life-long involvement in monastic affairs.

[43] Max Weber, *Economy and Society. An outline of interpretative sociology*, ed. Guenther Roth and Claus Wittich (Los Angeles/London: University of California Press, 1978), 1172.

[44] Yoneo Ishii, "The Thai Thammasat," 200.

[45] See Samlit Bouasysavat, *Khamphi Ratchasat* [*The Treatise on Royalty*] (Vientiane: Project for the Preservation of Palm-leaf Manuscripts, 1995). The most ancient manuscript of the *Saṅgaha-pakaraṇa* originates from Savannakhet (South Laos) and dated CS 1122 (AD 1760). Albeit rare, Pali versions of the *(Mahā-) Vinaya-Saṅgaha-pakaraṇa* are also to be found in Laos. These occasionally appear under its alternative title, *Pālimuttaka-vinaya-(vinicchaya-)saṅgaha.*

[46] See Alfred Raquez, *Pages laotiennes: le haut-Laos – le moyen-Laos – le bas-Laos* (Hanoi: Schneider, 1902); Mahā Sila Viravong, *Khamphi Phra Thammasat Buhan (Kotmai Buhan)* [The ancient *Thammasat* Law Code] (Vientiane: Comité Littéraire, 1957); Samlit Bouasysavat, *Khamphi Pha Thammasat Luang: Kotmai Buhan Lao* [The 'Great *Thammasat*': Ancient law of Laos] (Vientiane: Project for the Preservation of Palm-leaf Manuscripts, 1993).

the date of its composition is unknown, but the oldest manuscript available suggests that it was written in the seventeenth century or before.[47] Another example is the *Soy Say Kham*, which takes over the terminology of the Pali *Vinaya* (in particular of the *Pātimokkha*) for describing offences committed by monks according to their seriousness (*viz. pārājika* for criminal offense, *āpatti* for standard offense—here slightly departing from the original meaning of the word in Pali), but does not specifically assign religious sanctions, but instead suggests more "common" penalties like fines, or hard labor.[48] The code examines cases such as sexual intercourse by monks, theft, and even the murder of an embryo, that is, abortion.[49] The text also elaborates technical elements that are usually assigned to the *Vinaya*, such as the precise dimensions of monks' residence (*kuṭī*), or the proper method for producing monastic robes (number of pieces of cloth, etc.).

Another interesting example of the interaction of kingship with the organization and control of the monastic order is given in the *Gurupadesa*, which describes (according to its first folios) the meeting of nine high-ranking monks of Luang Prabang at Visun monastery, which was under royal patronage. Among the issues addressed, there are several that pertain to the relationship between the monastic order and secular administration. For instance, the text states that when building a temple, specific provisions regarding land and taxation must be recorded and made known to the authorities of the kingdom. Moreover, the text elaborates that the aim of the meeting was to reflect on a series of rules (*upadesa*) concerning the monastery and its internal regulations. The topics debated refer to the installation of *sīmā* or boundary stones, the clothing of monks, the *kaṭhina* ceremony (involving the giving of robes), the days of *uposatha*, and even to tree planting within the monastery precinct. Here the argumentation relies extensively on canonical and postcanonical scriptures, primarily the

[47] Mahā Sila Viravong, *Khamphi*, 10.

[48] For a transcription into modern Lao, see Samlit Bouasysavat, *Soy Say Kham* [The '*Soy Say Kham*' Law] (Vientiane: Project for the Preservation of Palm-leaf Manuscripts, 1992).

[49] Here probably also referring to the making of powerful amulets and other objects that harness the power of the embryo.

Vinaya, but also on other texts such as the *Petavatthu* and the *Visuddhimagga*.[50]

French accounts of Buddhist law prior to the colonial period

Up to now scholars have not known very much about how these types of laws were implemented and handled in actual juridical practice. However, several French travelers who visited Laos before, or shortly after the institution of the French Protectorate (1893), attest to the fact that many of these traditional legal texts were still in use at this time. The *Thammasat Luang* received special attention from French travelers and colonial officials. It was subsumed and partly translated into French as the *Code de Vientiane* or *Code de Luang Prabang*.[51] According to Tournier,[52] Picanon,[53] Raquez[54] and Reinach,[55] this text was still applied in courts in several regions of Laos at the turn of twentieth century, and Louis Finot noticed that a copy was stored and probably still used in the court in Luang Prabang in 1914.[56] Gosselin[57] noticed that the *Thammasat Luang* was part of the curriculum for novices in monasteries, and that it continued to be copied during the first decades of the twentieth century. Due to its importance, it served as a major source for the first law reforms initiated by the French (which we will discussed in detail below). The *Soy Say Kham* must also have been in use until the end of the nineteenth century, because there are numerous copies of it in manuscript collections that date from this

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[50] Gregory Kourilsky, "The *Gurupadesa*. Legal Concerns in Luang Prabang (Laos)," paper presented at the *Third International Pali Studies Week*, EPHE-EFEO, University Paris-Sorbonne, June 11–14, 2018.

[51] Raquez gives us a description and partial translation of the "Code de Vientiane" in his *Pages laotiennes*, 403–436. He states that Colonel Tournier ordered some Lao scholars to translate the whole text. Unfortunately, we were unable to find this translation in the archives. The National Library of France has a manuscript of a 'Code of Luang Prabang' annotated by hand by Auguste Pavie (mss 215, Laotien 4), which appears to be another version of the *Thammasat Luang*.

[52] Colonel Tournier, *Notice sur le Laos français* (Hanoi: F.H. Schneider, 1900), 54.

[53] Eugène Picanon, *Le Laos français, avec carte politique de l'Indo-Chine* (Paris: Augustin Challamel, 1901), 104.

[54] Alfred Raquez, *Pages laotiennes,* 403.

[55] Lucien de Reinach, *Le Laos*, 239.

[56] Archives de l'École française d'Extrême-Orient P 7. "Finot cahier de départ du courrier EFEO Hanoi pour 1914."

[57] Capitaine Gosselin, *Le Laos et le protectorat français* (Paris: Perrin, 1900), 180.

period. Sources from the early colonial period also show that the monastery was the place were witnesses, accompanied by attorneys and clerks, had to take an oath before attending court, which was still the case at the beginning of the twentieth century.[58] Colonial documents also attest that monks who committed offenses could be brought to justice before civil courts after having been forced to disrobe.[59] Aymonier relates several cases of monks who had sexual intercourse with laywomen or with *mae si* (non-ordained nuns, Thai: *mae chi*), which were judged by the *chao* or the chief of the village (*pho ban*) who condemned them to a fine.[60]

As outlined in the preceding paragraph, French accounts of Lao legal traditions were already available before and at the beginning of the colonization of Laos. However, efforts to do research on Lao law in general, and Buddhist laws and regulations dealing with the *saṅgha* in particular, became far more concentrated once the French started to reform the legal system with the aim of introducing a new body of law codes in Indochina.

Law, Religious Reforms and *Saṅgha* Regulations during the Colonial Period

After the occupation of Cochinchina (1862), Cambodia (1863), and then Tonkin and Annam (1883), Laos became a French protectorate in 1893, and was therefore the last country to be added to an entity called *Indochine française*. Since the split of the Kingdom of Lan Xang at the turn of 18th century, the Lao principalities that subsequently arose were small and fragile. Therefore, these soon felt under the domination of their neighbors, especially Siam at first. Vientiane became a vassal of Bangkok before the destruction of the city in 1827 by the Siamese army in response to a local revolt. Then a forced resettlement campaign followed that relocated many ethnic Lao to Siamese territories. The southern Lao territories were even-

[58] See Etienne Aymonier, *Voyage dans le Laos*, vol. II (Paris: Ernest Leroux, 1897), 183 and Alfred Raquez *Pages laotiennes*, 184–186. French sources show that in Luang Prabang it was a custom to perform an oath in the temple in order to attest one's land property rights. At a time when there was obviously no cadastral measurement or land registration titles, the temple as place where the oath took place seem to have crucial legal functions. See "Procès verbal de prestation de serment" (dated 7 June 1928), Archives nationales d'outre-mer, Aix-en-Provence, Laos G3.

[59] Lucien de Reinach, *Le Laos*, 148.

[60] Etienne Aymonier, *Voyage dans le Laos*, vol. I (Paris: Ernest Leroux, 1895), 174.

tually ruled by the expanding Siamese state for several decades. Only Luang Prabang remained as a kingdom until the end of 19th century, but again under the control of Siam. Given this situation, it was easy for the French to present themselves as "rescuers" of the Lao people and turn a "reshaped Laos" into a border zone and buffer state between the expanding British empire and the kingdom of Siam. It remained the most underdeveloped region of Indochina[61]—a "colonial backwater," as Geoffrey Gunn has called it.[62]

By 1896, the French had succeeded in establishing regimes of indirect rule in Cambodia and Laos, and started to sponsor and partially revive Buddhism by restructuring and revitalizing monastic education,[63] and by renovating Buddhist temples and monuments.[64] With the research of EFEO showing that Buddhism was once the cradle of Lao civilization, and that the *saṅgha* had a crucial role in legitimizing the power of kings, part and parcel of French mission in the colonial apparatus[65] was to enhance

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[61] For studies of colonialism in Laos, see Martin Stuart-Fox, "The French in Laos, 1887–1945," *Modern Asian Studies* 29, no. 1 (1995): 111–139 and the relevant sections the latest general history of Laos by Grant Evans, *A Short History of Laos: The Land In Between* (London: Allen & Unwin, 2002), 39–92). For a larger overview of the position of Laos in Indochina, see the seminal study of Pierre Brocheux and Daniel Hémery, *Indochina: An Ambiguous Colonization 1858–1954* (Berkeley: University of California Press, 2009).

[62] Geoffrey C. Gunn, *Rebellion in Laos: Peasant and Politics in a Colonial Backwater* (Boulder: Westview Press, 1990).

[63] On monastic education, see Gregory Kourilsky, "The Institut Bouddhique in Laos: Ambivalent Dynamics of a Colonial Project," in *Theravāda Buddhism under Colonialism: Adaption and Response*, ed. Thomas Borchert (London: Routledge, 2018); Søren Ivarsson, *Creating Laos: The Making of a Lao Space Between Indochina and Siam. 1860–1945* (Copenhagen: NIAS Press, 2008).

[64] For the architectural works of École française d'Extrême-Orient and the renovation of temples and the most important relic shrine of Laos, see Patrice Ladwig, "Imitations of Buddhist Statecraft: The Patronage of Lao Buddhism and the Reconstruction of Relic Shrines and Temples in Colonial French Indochina," *Social Analysis* 62, no. 2 (2018): 98–125.

[65] The agendas of the members of École française d'Extrême-Orient were indeed very diverse, and some of its members like Paul Mus later on revealed a strong anti-colonial bent. See Susan Bayly, "Conceptualizing Resistance and Revolution in Vietnam: Paul Mus' Understanding of Colonialism in Crisis." *Journal of Vietnamese Studies* 4, no. 1 (2009): 192–205; David Chandler, "Paul Mus (1902–1969): A Biographical Sketch," *Journal of Vietnamese Studies* 4, no. 1 (2009): 149–191. However, EFEO closely cooperated with other units in the colonial administration, and its employees were paid

the understanding of the "high-cultures" and civilizations of Laos, and thereby enhance and economize colonial rule.[66] Due to the fact that the French tried to set up a low-cost public schooling system based on monasteries, the measures primarily focused on the educational facilities of the Lao and Khmer Buddhist *saṅgha*, and it was deemed necessary to set up new institutions of training for Buddhist monks in both Cambodia and Laos.[67] Therefore, the first direct French action regarding the *saṅgha* in Laos was the opening of a school for monks ("École normale des bonzes") in Vientiane in 1909, which was aiming at training future teachers in "Western methods." After the publication of a royal decree in 1911[68]—initiated by the colonial regime—several *Écoles des pagodes* officially opened in Vientiane, Luang Prabang, Savannakhet and Paxe.

Despite the limited success of these schools, this can be seen as a start of a series of initiatives that targeted monastic training in Laos. The content and methods of training were no longer in the hands of monasteries alone but had to conform to certain colonial policies. Gifted Lao monks were sent for education to Phnom Penh, where on 24th of November 1914 the *École de Pali* was founded by royal decree and renamed *École Supérieure de Pali* in 1922. It had "the aim of developing the theological studies of Buddhism through a rational teaching of the sacred

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from the general budget of Indochina. See Pierre Singaravélou, *L'École française d'Extrême-Orient ou l'institution des marges (1898–1956), Essai d'histoire sociale et politique de la science coloniale* (Paris: L'Harmattan, 1999) on EFEO's role in the colonial project.

[66] Here the classical nexus of colonial knowledge production and the enactment of power becomes apparent. Already in 1901, the linguist Michel Bréal writes to EFEO director Louis Finot "that there is a need to know the basis of ideas and beliefs of a population which from now on is subject to the authority of France." Michel Bréal à Messieurs les Commissaires du Gouvernement, 1901. Archives de l'École française d'Extrême-Orient. However, research on the "tribal populations" of Laos was in this phase of colonialism not the task of EFEO. Colonels and local administrators were responsible for this.

[67] See Penny Edwards, *Cambodge: The Cultivation of a Nation,* 1860–1945 (Honolulu: University of Hawai'i Press, 2007), chapter 8 on the Cambodian case, and Gregory Kourilsky *Recherches sur l'Institut*, 64f.; and Soren Ivarsson *Creating Laos*, 93f. on the creation and restructuring of Lao Buddhist curricula under French colonialism in Laos. More information on the resistance to these modernization efforts is given in the part that discusses the notion of governmentality in relation to the bureaucratization of the religious field.

[68] Royal decree n. 10, 18 March 1911.

languages Pali and Sanskrit,"[69] and was supposed to become a center of learning for monks from Laos and Cambodia who in the past would go to Bangkok for their higher studies. In the following decades, these *Écoles de Pali*—that took over the *Écoles de pagodes*—opened in Vientiane, Luang Prabang, and then throughout Laos (see image 1 in the annex).

The sponsorship of, and interest in Lao Buddhist affairs by the colonial regime and French researchers (mainly linked to the EFEO) was obviously not only based on the objective production of scientific knowledge, but heavily influenced by practical considerations deriving from colonial governmentality. Similar to the case of India described by Bernard Cohn,[70] the collecting of information and knowledge about those that were to be ruled was an important part of the colonial project. Finot, at that time director of EFEO, pronounced in his opening lecture at the Collège de France in 1908 a clear stance regarding the link between research and colonial rule:

> It is on the observation of those different facts, not on abstract principles, sentimental effusions, and humanitarian sentences, that a real native policy can be shaped, which must be firm, wise and methodical, and can ensure the future of our colonies.[71]

For the French, this native policy was based on concepts of indirect rule, which in colonial ideology was considered a "unique form of rule far superior to the colonial regimes of Britain and other Western powers because of its supported basis in spirituality, and its supposed responsiveness to the culture and worldview of native peoples."[72] Due to afore-mentioned destruction of Vientiane in 1827, the occupation of Lao territories by the Siamese, and a very weak central Lao state administration, the Lao kings who ruled under French colonialism—King Sakharine (1895–1904) and King Sisavang Vong (1904–1959)—were by and large supporting this

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[69] Anonymous, "Documents administratifs," *Bulletin de l'École française d'Extrême-Orient* 22, no. 1 (1922): 424.

[70] Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, N.J.: Princeton University Press, 1996).

[71] Louis Finot, "Les études indochinoises," *Bulletin de l'École française d'Extrême-Orient* 8, nos. 1–2 (1908): 222.

[72] Susan Bayly, "French Anthropology and the Durkheimians in Colonial Indochina," *Modern Asian Studies* 34, no. 3 (2000): 595.

process. French indirect rule, and the colonial politics of association,[73] explicitly called for the "retention of native institutions."[74] Law in general, but also laws regarding the *saṅgha* in particular, were implicated in these policies.

Colonial research and the production of a hybrid law

Paradoxically, French attempts to modernize law in its colonial dominions were in Laos undertaken earlier than in Cambodia and Vietnam. In those countries, new codes were only promulgated—after years of work, interruption and redirections—in 1920 and 1930 respectively. Even in Siam, where the ruling Chakri dynasty attempted to reform its legal apparatus from the very beginning of the nineteenth century, this modernization process of the religious sphere happened later. With the help of French and through the cooperation with other foreign experts, Siam promulgated a proper civil law only in the mid-1920s, basing them in part on the 1805 *Three Seals Code* (Th. *Kotmai Tra Sam Duang*) which, it was assumed, contained the ancient laws of Ayutthaya.[75] By contrast, in Laos, a set of regulations—gathering a civil law, procedure law and penal law—was elaborated by a French magistrate[76] and imposed throughout Laos as soon as 1908.

From the very first phase of implementation of new legal codes, the colonial regime made more concerted efforts to take traditional Lao law into consideration. When, in April 1898, judicial taxes were implemented, Résident supérieur Tournier ensured that it was done accordingly to the law and customs of Vientiane.[77] In late 1918, the lawyer Général Lafontan

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[73] See Oliver Le Cour Grandmaison (ed.), "De l'Assimilation à la Politique d'Association," in *La République Impériale. Politique et Racisme d'État* (Paris: Fayard, 2009): 107–211.

[74] Raymond Betts, *Assimilation and Association in French Colonial Theory* (London: Columbia University Press, 1961), 107.

[75] For the modernization of law in Siam with reference to marriage, divorce, and modernization, see Tamara Loos' excellent study, *Subject Siam. Family, Law, and Colonial Modernity in Thailand* (Ithaca, N.Y.: Cornell University Press, 2006). The creation of a modernized law system in Siam represents especially interesting differences and parallels to the Lao case. The country was never directly colonized but assimilated many modern legal notions through a collaboration with foreign scholars and administrators.

[76] Namely M. Sallé, who was president of the court in Saigon, Vietnam.

[77] Lucien de Reinach, *Le Laos*, 240.

de Goth arrived in Laos and proceeded to visit all provinces of the country. The aim of this research was to produce a legal corpus that was taking into account traditional Lao law, while also introducing new, "occidental" notions. A colonial report from 1920 elaborates:

> M. Lafontan de Goth (…) has visited successively all the provinces in Laos. He stayed for longer periods in those where he could find a rich and abundant documentation. Both projects of law codes I had communicated to you result from his inspection, which he had been carrying on during 15 months. The establishment of these documents were followed by long and careful—and also essential—investigations regarding the customs in various parts of the Lao country. The aim was both to harmonize local customs with each other, and also with Western conceptions. The work that is submitted to you actually constitutes an attempt to merge different (and sometimes contradictory) elements of the tradition, and to include everything from the modern legislation that was found to be compatible with the mentality, mores, conceptions and culture of the Lao population.[78]

The successive versions of the Lao *Code civil* and *Code pénal* established by the French between 1908 and 1945 (which have been back-translated into Lao from the French) reveal that colonial legislators worked together with Lao scholars.[79] The codes that were implemented in 1928 were—according to French colonial sources—based on research collaboration with "the Chao Maha Oupahat (the viceroy, P. *mahā-uparāja*), the members of Ho Sanam (the assembly of ministers), the governor of Bassac (Champassak) and the most experienced and conversant commissioners in Lao affairs."[80] Legislators were also aware of the strong customary and juridical differences between ethnic Buddhist Lao and non-Buddhist ethnic minorities such as the Hmong ("*Meo*") and autochthonous Mon-Khmer groups ("*Kha*") that made up roughly half of the population of Laos.[81]

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[78] Le Résident Supérieur au Laos à Monsieur le Gouverneur Général de l'Indochine. April 7, 1920. Archives nationales d'outre-mer, Aix-en-Provence, GGI 65577.

[79] These "modern" law codes are of particular interest as they contain a lot of vernacular and Buddhist notions, illustrating that the colonial administration paid particular attention to traditional customs and pre-colonial law. Several printed colonial law codes also contain numerous handwritten annotations in Lao and French, which reveal a process that is constituted by negotiations between scribes, authors and legislators (both French and Lao) in fixing the content of these laws.

[80] Le Résident Supérieur au Laos à Monsieur le Gouverneur Général de l'Indochine. April 7, 1920. Archives nationales d'outre-mer, Aix-en-Provence, GGI 65577. The translations given in brackets is ours.

[81] The Résident Supérieur also asked Général Lafontan de Goth to what extent it would be possible to "codify the customs of the Kha and Meo people" because "the indige-

These points show that the arrival of French colonialism in Laos did not put an end to a long process of transmitting and adapting laws. The colonial regime did not simply aim at implementing a "legal transplant," which (in the sense of legal historian Alan Watson) would be defined as the imposition of a French, modern legal apparatus based on the model of a secular and centralized notion of law.[82] On the contrary, the French actually had a serious interest in local conceptions of traditional law as it was an important element for establishing of indirect rule. The laws that emerged from this encounter were neither French nor Lao, because "in the colonial context, neither colonial norms nor indigenous traditions survive; both give way to an entirely new way of doing things and perceiving meanings which is peculiar to each colonial situation."[83] A new legal tradition, a third space that is peculiar to the specific contact situation, was therefore created. This emerging legal tradition was part and parcel of indirect rule and was supposed to enhance the effectiveness of the French colonial administration.

Furthermore, these colonial policies were only gradually established, and the production of new regulations and laws stretched over several decades. Although the organization of an "indigenous" justice system was set up as soon as 1895—that is, only two years after the installation of the French Protectorate on Lao territory[84]—and a series of laws, decrees and orders concerning court services had been promulgated in 1904,[85] the French first decided that local and traditional laws should remain in force in Laos as in other parts of Indochina.[86] Both French and Lao sources

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nous people of that race demanded with the greatest insistence to obtain permission to judge themselves according to their own habits and customs" (Le Résident Supérieur au Laos à Monsieur le Gouverneur Général de l'Indochine, April 7, 1920. Archives nationales d'outre-mer, Aix-en-Provence, GGI 65577).

[82] Alan Watson, *Legal Transplants*, 21–22.

[83] Matteo Solinas, "The nature of legal transplants," 207.

[84] "Organisation de la justice indigène," decree by General Governor, 30 September 1895, in Gabriel Michel, *Code judiciaire de l'Indo-Chine: lois, décrets et arrêtés concernant le service judiciaire et applicables par les cours et les tribunaux de l'Indo-Chine* (Hanoi: Schneider, 1912).

[85] Pierre-Bernard Lafont, *Bibliographie du Laos, tome 1 (1666–1961)* (Paris: EFEO, 1964): 128.

[86] For instance, a decree signed in 1864 stated that, in Annam, the traditional Vietnamese law governs cases and disputes that involved Indigenous and Asian people in this country. See Albert Detay. *Les sociétés commerciales indigènes en Indochine*. (Paris: Marcel Giard, 1933): 12.

attest to the fact that French administrators were involved in legal cases only at provincial levels for criminal offenses and appeals, while minor cases were autonomously treated by canton or village headmen. Even in the provincial courts, justice was delivered according to local codes of law and had to take into consideration cultural specificities among different ethnic groups. In all cases, however, French authorities reserved the right to examine and review the judgments.[87]

The first set of "national" regulations—gathering civil, procedure and penal law—was introduced only on 2nd of May 1908. Prepared under the auspices of the French magistrate M. Sallé, and first edited in a volume printed in Hanoi. This legal corpus was then translated in Lao and re-inscribed on a palm-leaf manuscript the following year and sent to Lao officials in order to be applied throughout the country. Although sets of Lao printing characters had been made in France since 1904, printing techniques had not reached Laos yet—the first Lao books were printed only in 1931.[88] What is more, manuscripts were the traditional materials for legal texts in Laos, and thus would have less likely lead to rejection from local people.

The reception and implementation of these codes were, despite all these precautions, very mixed. According to colonial administrators, they were well received by Indigenous who "preferred the arbitration [from the French] than that of local judges."[89] But a note from 1920 by a colonial officer concluded that the preparation work that was carried out for this first legislation was on a general level acceptable, but that "their work was unfortunately too hasty, and because of that reason very insufficiently prepared and studied, presenting considerable lacunae and numerous errors."[90] A general document on the implementation of these laws also looked for the causes of this failure. The report states that although Laos had a complete set of law codes now, there was a lack of resources, and especially no qualified and literate staff to care for the implementation because the country had been ravaged by wars and many educated people had left or had been deported to Siam. Language and translation problems

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[87] See Michel Lorrillard, Khamsy Kinoanchanh, Kéo Sirivongsa (eds.), *Tamnan Mueang Khamthong Luang doy Upahat Baphoi* (Vientiane: École française d'Extrême-Orient, 2010): 278; Lucien de Reinach, "Le Laos," 238–239.

[88] Gregory Kourilsky, "L'institut bouddhique," 55–56.

[89] Lucien de Reinach, *Le Laos*, 240.

[90] Le Résident Supérieur au Laos à Monsieur le Gouverneur Général de l'Indochine, April 7, 1920. Archives nationales d'outre-mer, Aix-en-Provence, GGI 65577.

were also mentioned in the same document: "The Lao language has a poor vocabulary, especially in juridical terms," the report complains, and further elaborates that "words in Pali and Siamese are too often employed instead of Lao ones, making the texts obscure and incomprehensible for the indigenous"[91]—a comment that actually denotes some unawareness of Lao manuscript and writing culture, which very much relies on this kind of linguistic hybridity (see above).

On their side, Lao sources occasionally give information on how the introduction of these laws was locally received. Probably because most of them originated from ruling classes, they display no particular hostility towards French legal reforms. According to a southern Lao chronicle, the *Tamnan Khamthong Luang*, the king of Luang Prabang "agreed with the newly composed laws." The author of this very chronicle, who was a Lao dignitary (*uparāja*), was himself involved in the enactment of French laws in the southern provinces.[92] Another chronicle from Muang Sing, which was the main city of a Lue principality, reports that the French condemned certain practices (such as human bondage) and legal conceptions (such as punishment of culprits' siblings), and that local rulers expressed compliance towards the new legal provision on these matters.[93]

In some peripheries of Laos, however, the situation was different. Indeed, the arrival of colonialism was sometimes understood in millennial terms. Since the eighteenth century, these peripheries had been scattered with millennial movements that rose up against local overlords and the Siamese. This produced a whole series of revolts and a rich Buddhist mil-

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[91] Rapport à Monsieur le Gouverneur Général de l'Indochine, Vientiane, December 13, 1923. Archives nationales d'outre-mer, Aix-en-Provence Laos G3.

[92] Michel Lorrillard, Khamsy Kinoanchanh, Kéo Sirivongsa (eds.), "*Tamnan mueang khamthong luang*," 277–278. This text is a unique historical chronicle, especially given the fact that we have very few chronicle-style sources for Laos. It was composed between 1880 and 1920 by a Lao civil servant and provides a unique window into local perceptions. As the author, the *uparāja* of Khamthong Luang principality, was both working for the Siamese, and later for the French in the southern regions of Laos, it also contains some interesting information on the introduction of new laws and directives that were introduced in Laos under foreign rule. This chronicle has been recently translated in English (Peter Koret and Maha Kaew Sirivongsa, *The History of Kham Thong Luang. A Translation and Study of an Early Twentieth Century Lao Poem* (Middletown, Delaware: Broken Handle Press, 2018).

[93] Volker Grabowsky, "Introduction to the History of Müang Sing (Laos) prior to French Rule: The Fate of a Lü Principality," *Bulletin de l'Ecole française d'Extrême-Orient* 86 (1999): 270.

lennial literature.[94] The *Tamnan Khamthong Luang* links the early colonial occupation of Laos with the demise of Buddhism:

> I am only fearful that *ubat* (inauspicious happenings) will occur in Laos in the future because the [French] have come to rule over the land of Laos in many places, destroying [the Buddhist] religion. [They] do not have faith in it. Hard-headed and arrogant, they do not listen to the *dharma* of the Buddha. The religion has reached the later period of its era.... At that time, evil people will come to govern [the land]. Tax will be collected from monks and novices.[95]

Although the chronicle furthermore reports that some colonial officers showed no respect for Buddhism, mistreated Buddhist monks,[96] the French did not set up larger Christian missionary programs, did not collect taxes from monks or intended to destroy Buddhism. By judging from the archival material available, these colonial policies did not provoke open resistance among leading Buddhist monks or the population in general, at least in urban areas. After the millennial rebellions in the peripheries more or less disappeared with the progressive "pacification" of Indochina, the French tried to stabilize their rule, and in this context modified and extended versions of the *Code civil*, *Code pénal* and *Code de procédure* were promulgated by decree and published in 1928. These were first only valid for Luang Prabang, but were subsequently implemented in Laos as a whole.[97] A Law school ("Ecole pratique de droit et d'administration laotienne") was opened in Vientiane in the same year[98] and twenty scholarships were given to Lao students for studying law and other subjects.[99] The production of legislations, decrees and amendments continuously

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[94] See Peter Koret, "Past, Present and Future in Buddhist Prophetic Literature of the Lao," in *Buddhism, Power and Political Order*, ed. Ian Harris (London: Routledge, 2007), 146.

[95] Peter Koret, *The History,* 378.

[96] The chronicle gives several descriptions of the bad behavior of French officers towards Buddhism and monks that are deemed inappropriate and blasphemous. Peter Koret and Maha Kaew Sirivongsa, *The History,* 274–275, 367.

[97] Robert Lingat, *Les régimes matrimoniaux du Sud-Est de l'Asie: essai de droit comparé indochinois. Tome second, Les droits codifiés* (Saïgon: EFEO, 1955), 12–13.

[98] Arrêté du Gouverneur général d'Indochine, 10 July 1928. See *Recueil général de la législation et de la réglementation de l'Indochine* (Hanoi: Imprimerie d'Extrême-Orient, 1938), 326.

[99] Rapport à Monsieur le Gouverneur Général de l'Indochine, Vientiane, 13th of December 1923. Archives nationales d'outre-mer, Aix-en-Provence Laos GGI 65577.

increased from the 1930s onwards until the end of the colonial period, in the mid-1950s.

Colonial law, monks and **saṅgha** *regulations*

Most of the above-mentioned law codes address juridical matters pertaining to the laity such as divorce, theft, homicide, inheritance and so forth. Yet some parts of them also directly concern monks or monasteries. The Penal Code of 1928 includes a chapter that is specifically dedicated to monks—Chapter X, titled "Special sanctions regarding infractions committed by monks." Interestingly, the report that introduces the new regulations also refers to this section and elaborates that the passages "especially concerning monks have conserved the traditional dispositions of their respective customs" and that they "correspond to ideas that are still deeply rooted (in the population)."[100] This chapter states, for example, that a monk who is found guilty of a criminal offense must disrobe (art. 75). Articles 76 and 78 outline that monks who ordain or disrobe without the proper legal and ritual procedures defined in the *saṅgha* regulation can be punished with a prison sentence. Like traditional codes of law such as the *Soy Say Kham*, the art. 77 of the penal code excludes monks from the *saṅgha* who have sexual intercourse with a woman, and additionally condemns them to a prison sentence or a fine. A later decree from 1943[101] and subsequent editions of the penal code lists the precise terms and conditions for exclusion from the monastic order in case monks are found guilty of a criminal offense such as murder, assault and battery, theft, arson, adultery and "non compliant" sexual intercourse, and witchcraft.

Some articles are also concerned with the behavior of lay Buddhists towards monks. A woman found guilty of having a relationship with a monk is condemned to a prison sentence and/or a fine (art. 77). The same punishment is valid for a woman who commits adultery while her husband is ordained (art. 175). The murder of a monk is considered heavy enough to ensure the death penalty like in cases of parricide and matricide. However, legislators were aware that, due to the difference between French and Lao legal traditions, the new code might not allow to deal with certain

[100] Circulaire. Le Résident Supérieur p.i. au Laos à Messieurs les Commissaires du Gouvernement au Laos et le Commandant du 5è Territoire Militaire à Phongsaly. Objet: Application de la nouvelle législation laotienne, Vientiane, June 16, 1928. Archives de l'École française d'Extrême-Orient.

[101] Arrêté du Gouverneur général, June 2, 1943.

cases in practice. In this case, judges would have to exercise their own reasonable judgment and use other appropriate texts (art. 2). Colonial sources attest that this situation was not unusual, as Laos was heavily decentralized, and split in diverging regional and administrative units.

Although some clauses included in these new codes of law were concerned with monks, most of these were not directly related to the Buddhist order as such. However, more specific regulations pertaining to the *saṅgha* as an institution were about to be established. Because Buddhism had an important role in the potential mobilization of political resistance, and in the enhancement of the public education system, the colonial regime also took a strong interest in the general administration of the *saṅgha*. The role of EFEO was crucial in this reorganization of Buddhism, and the creation of these regulations were very much dependent on the research of scholars such as Louis Finot and Suzanne Karpelès.[102] The first document that can be considered as an embryonic version of future *saṅgha* regulations was issued in 1913 for the monasteries in Luang Prabang.[103] The appointment of a commission of monks for elaborating a new regulation for the Buddhist order in the royal city in 1924 can be seen as a decisive step towards integrating the *saṅgha* into the French colonial project.[104] Made upon—according to French sources[105]—a request from the Ministry of Cults, this commission was created in order to "restore the status of the clergy, and to ensure the perpetuation of regular cults, and the preservation and restoration of pagodas." The practical side of this reorganization was also spelled out, and the *saṅgha* was from now on supposed to "to develop religious schools for the intellectual development of the people."[106]

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[102] See Pierre Singaravélou, *L'École française d'Extrême-Orient*; Gregory Kourilsky, *Recherches sur l'Institut*; and Patrice Ladwig, "Imitations of Buddhist Statecraft."

[103] We were unable to find a full version of this document, but the 1928 regulation (see further below) was based on this precursor and reveals that it was issued as a Royal decree, n.13, on 21st of February 1913.

[104] Decree of 11th June 1924. See "Chroniques, Laos" *Bulletin de l'École française d'Extrême-Orient* XXIX (1929): 522.

[105] Archives de l'École française d'Extrême-Orient, "Rapport du Secrétaire de l'Institut à la séance d'inauguration de la section laotienne à Vientiane – 18 février 1931."

[106] "Chronique, Laos," *Bulletin de l'École française d'Extrême-Orient* XXIX (1929): 522–530.

Furthermore, Suzanne Karpelès (1890–1968), a member of the EFEO who played a major role in Cambodia with regard to Buddhism,[107] undertook a revision of articles of this new regulation. In her eyes, the original regulation was "taking too much liberty regarding the prescriptions contained in the *Vinaya*."[108] This clearly reflects the view of orientalist scholarship in this period, which considered Buddhism only through the prism of canonical scriptures and perceived local customs and vernacular Buddhism as a sign of degeneration. It is only on 10th of March 1928, however, that a specific decree regarding the *saṅgha* in Laos was issued by the French colonial authorities. In its preliminaries, this *saṅgha* regulation affirms its continuity with the new civil and penal codes that had been promulgated in the same year. A Royal ordinance (*phra ratcha ongkan*) signed by King Sisavang Vong was issued on 1st of May 1928, imposing a *saṅgha* regulation specific to the Kingdom of Luang Prabang, which still enjoyed a certain autonomy in French Indochina.[109] Another *saṅgha* regulation was issued in Luang Prabang in 1942, this time made available only in Lao (*Phra ratcha onkan vang labiap song*).[110] This text was reedited in 1944 for amending a series of articles after two royal decrees were issued.[111]

The 1928 regulation can be considered a foundational document of the French colonial governance of Buddhism, as it served as an example for subsequent regulations that do not depart very much from this document in terms of content. It contains around 50 articles organized in 10 chapters dealing with the *saṅgha* hierarchy, the recruitment of religious leaders, the duties of monks and novices, the admission to the Buddhist Order, identity cards for monks, movements of monks in and out of the country, construction and restoration of religious buildings, etc.[112] The Lao

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[107] See for example Penny Edwards, *Cambodge*, chapter 4. See also Khing Hoc Dy, "Suzanne Karpelès and the Buddhist Institute." *Siksācakr* 8–9 (2006–2007): 55–59.

[108] "Chronique, Laos," *Bulletin de l'École française d'Extrême-Orient* XXIX (1929): 518.

[109] Luang Prabang was more autonomous than other parts of Laos, which were more dependent on Vientiane. For the regulation, see Royal decree n. 29, May 1, 1928. This royal ordinance was abrogated in 1931 and replaced by an amended regulation (issued by a new Royal Decree n. 14, April 1, 1931). See *Bulletin administratif du Laos* (1931): 468. We have not been able to find this amended regulation.

[110] BAD–04.0057 [Buddhist Archives of Luang Prabang].

[111] Royal decree n. 4, January 11, 1944, and Royal decree n. 50, June 28, 1944.

[112] The French decree is reproduced in *Bulletin de l'École française d'Extrême-Orient* XXIX (1929): 522–530. The Royal ordinance (n. 29 of May 1, 1928) was published

and French compiling this regulation were most likely inspired by the Siamese example, as both EFEO scholars and Lao monks who studied in Bangkok must have been aware of the reforms that had been undertaken in Siam in 1902 with the Sangha act.[113] These regulations required that every temple had to report to the government the number of monks living there and the infractions committed by novices or *bhikkhu*s. Moreover, according to these regulations, an official document (*sanya*) had to be carried by every monk, on which was indicated the dates and place of residence and important movements (art. 34) (see image 2 in the annex).

Even the ordination process was supposed to be changed: It required some specific knowledge from the candidates, such as the *dasasīla* (ten precepts) for the novice *pabbajjā* ordination, and other Pali texts for the higher ordination, or *upasampadā*. Moreover, anyone intending to ordain as a monk or a novice was obliged to obtain authorization from the secular administration, which alone had the authority to deliver the official papers needed for ordination (art. 28, 29). Interestingly, the certificates that were issued for the ordination or promotion of monks were bilingual French-Lao (see image 3 in the annex). Other articles also highlight the fact that monks who were found guilty of criminal offences were to be judged according to secular law and at the penal court (art. 42). However, probably due to reasons of lack of funding in such a peripheral colony, the French did not create a specific court exclusively specialized in religious matters: Lao monasteries were free to solve legal cases according to the *Vinaya* or their own rules, but they had to refer to the secular administration in certain circumstances, for instance for initiating the exclusion of a monk from the *saṅgha*. In cases of criminal offenses, the guilty person had to disrobe before going to court (art. 43), and thus appeared there as a layman, and not as a monk. These measures make evident that monks were not only "renouncers" (*pabbajitā*) as described in canonical scriptures, but in the legal sense outlined above also full members of society. As such, they were, like in Burma (for instance in cases related to divorce), "simul-

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independently in Luang Prabang in 1928 (BAD–02.0044 [Buddhist Archives of Luang Prabang]).

[113] The duty to carry identity cards, for example, was not "invented" by the French. The Siamese King Rama the First (1782–1809) had established a compilation of Royal decrees (*Kotmai phra song*) which forced monks to carry an ID with them. See Aye Kyaw, "The *Sangha* Organization in Nineteenth Century Burma and Thailand" *Journal of the Siam Society,* Bangkok 72–1 (1984): 166–196.

taneously subject to two jurisdictions whose authority in any particular instance is determined by the class of practices in question."[114]

An important element of these regulations was the consolidation of the religious organization and its hierarchies: every temple was placed under the direct responsibility of an abbot, who was placed under the order of the "parish" monk (*chao khana*), the latter depending himself on the head of the "diocese" (*chao ratcha khana*).[115] Here again, this reorganization echoes the Siamese centralized monastic system that was imposed by the Saṅgha Act of 1902. In this system, the hierarchy of the *saṅgha* roughly corresponds to the secular administrative divisions henceforth applied in Siam.[116] In the Lao case, however, the top of this hierarchy was not occupied by a *saṅgharaja* ("sovereign of the community," or the head of monks) anymore, as in the past, or as in Siam, but by the French Commissioner of Government (art. 1, 2 and 3). In other words, the *saṅgha* could in theory from now on be governed by the colonial administration, which was empowered to approve or disapprove all important events within the monasteries, such as ordination, nomination or revocation of an abbot.[117] From a general point of view, we have not found any evidence for the actual use of this wide-ranging power of decision-making, but this reorganization clearly reflects that modern forms of colonial governmentality had an important impact on Lao Buddhism. The increasing bureaucratization through the introduction of certificates and formalized procedures, but especially the directives related to passports for, and the counting of monks reflect some of the basics that Michel Foucault and others have described with the notion of governmentality.[118] They can be seen as

[114] Christian Lammerts, "Genres and Jurisdictions," 189.

[115] It is interesting to note that the French here used Catholic administrative categories for translating Lao units of administration. See also the bilingual promotion certificate reproduced in the annex.

[116] See Yoneo Ishi, *Sangha, State and Society. Thai Buddhism in History* (Honolulu: University of Hawai'i Press, 1996), 71.

[117] This latter point distinguished the French decree from the Royal ordinance, as the monks of Luang Prabang remained under the orders of the *saṅgharaja* (art. 2).

[118] See Michel Foucault's classical formulation of governmentality as the "art of government" which in Europe progressively evolved after the eighteenth century and relates to the strategies that are employed for the management of the state, its population and the economy. Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978* (New York: Palgrave Macmillan, 2007), 108. For the specific case of colonialism, see the elaborations by David Scott, "Colonial Governmentality" *Social Text* 43, no. 3 (1995): 191–220.

being part of larger processes in modernity related to the introduction of population management, health politics, bureaucratization and statistics, "rational" law and the general disciplining of the society.[119] However, beside these major changes of the traditional organization of the Lao *saṅgha*, there were also important continuities: A typical example is the tax exemption for monks (art. 34), which corresponds to traditional notions.

The general introduction of these modern forms of governing in the sphere of law, and, the need to rule the *saṅgha* in the French colonial system was also grounded in the assertion that certain heterodox forms of Buddhism were at the basis of millenarian revolts that troubled the French over several decades, especially in the early phase of colonialism. Both in Cambodia[120] and Laos,[121] we witness several uprisings that are inspired by the belief in the future Buddha Maitreya. These revolts were lead by "men of merit" (Khmer: *neak mian bon*; Lao/Thai: *phu mi bun*) who based their teachings and agitations on a rich body of popular literature and oral narratives that describe the end of the current age and the rising of a righteous king who will re-install order. Controlling the *saṅgha* as an organization was therefore one measure to prevent the formation of these movements. Moreover, French colonial governmentality also intended to use monasteries as an educational resource. Temples were in the pre-modern era the only place where one could obtain a basic education in reading and writing. Due to the fact that the establishment of a public school system in Laos and Cambodia was deemed too expensive, the colonial regime implemented a plan that was supposed to turn temples into public schools (see image 4 in the annex). The training of monks as teachers, and their administrative integration into this system, caused some bewilderment and defec-

[119] Approaches that use governmentality as an encompassing notion in colonial studies have also been subject to critique, especially in anthropology. See, for example, Peter Pels, "The Anthropology of Colonialism: Culture, History and the Emergence of Western Governmentality," *Annual Review of Anthropology* 26, no.1 (1997): 163–183.

[120] See Ann R. Hansen, *How to Behave: Buddhism and Modernity in Colonial Cambodia (1860–1930)* (Honolulu: University of Hawai'i Press, 2007), 55.

[121] See François Moppert, *Mouvement de résistance au pouvoir colonial français de la minorité proto indochinoise du plateau des Bolovens au Sud-Laos 1901–1931* (Ph.D Dissertation, Université de Paris VII, 1978) and Patrice Ladwig, "Millennialism, Charisma and Utopia: Revolutionary Potentialities in Pre-modern Lao and Thai Theravāda Buddhism," *Politics, Religion & Ideology* 15, no. 2 (2014): 308–329.

tion at the beginning, and was therefore bureaucratically reinforced.[122] The *saṅgha* increasingly became an institution that had to be controlled, both in terms of organizational structure and religious content of teachings. Both points were more or less directly acknowledged in an anonymous note from 1928 that discusses the regulations set up by the French, Buddhist monks and the *assemblée consultative indigène* for the monastic order in Laos:

> This regulation has the aim of revitalizing the cults that have fallen out of use, the control of monks and novices, the conservation of temples, and the development of temple schools which are the basis of primary education for the natives.[123]

After the end of Second World War, and to respond to stirrings of independence, the colonial administration was reshaped in order to create larger administrative units and leave more autonomy to the local population. Concerning religious affairs, Laos already had a Ministry of Cults (*kasuang thammakan*) for two decades, which was now in charge of *saṅgha* administration, including Buddhist educational institutions. This ministry issued, for instance, a directive on Buddhist education in 1950, which included a religious curriculum for Pali schools (now called *hong hian pariyatti tham*, as in Thailand).[124] Subsequently, other regulations and

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[122] As part of their training as teachers, monks were supposed to study math in larger temples in Vientiane, for example. This forced modernization is in the afore-mentioned chronicle from southern Laos understood as a deviation from Buddhism. The author also mentions the modern sanctions to be expected in case of non-obedience, namely taxation: "The French have come to rule and order them to study math. The French give no thought to the dharma that the Buddha preached.… If they do not teach children in the manner prescribed by the French, they are to pay tax. Together with work exemption money as if they were laypeople." Peter Koret, Chapter One, 68.

[123] Le Résident Supérieur au Laos à Messieurs les Commissaires du Gouvernement au Laos et le Commandant du 5^{e} territoire militaire, Phongsali. Vientiane, March 12, 1928. Archives de l'École française d'Extrême-Orient.

[124] BAD–02-0133 [Buddhist Archives of Luang Prabang]. This introduction of examinations has interesting parallels to the Burmese case, for example. While monastic examinations sponsored by kings offered monks access to higher levels of education since at least the seventeenth century in Burma, there was a larger hiatus after the fall of Mandalay in 1886. After a phase of unrest and consolidation, the British Government reintroduced Pali examinations in 1895. On this basis, well-trained monks received higher monastic titles. See Juliane Schober, "Colonial Knowledge and Buddhist Education in Burma," in *Buddhism, Power and Political Order,* ed. Ian Harris (London: Routledge, 2007), 57. This practice continues today in Thailand, where the King honours and sponsors monks with the best Pali grades.

amendments were implemented, such as a "regulation for the Buddhist clergy in the kingdom [of Laos]" (*labiap song haeng phra ratcha anachak*) published by royal decree in 1951. It is noteworthy that the latter is actually a faithful reproduction of the French *saṅgha* regulation that had been issued in 1928.[125] Like under French colonial rule, the top of the religious hierarchy was occupied by a "lay administrator," which in the 1951 regulation was the Minister of Cults, and under earlier French rule the *Résident supérieur*. This minister was from now on responsible for the government policies related to Buddhism, although he was strictly speaking not in charge of any "cult."[126] Shortly before the independence of Laos from France was declared, a directive forbidding monks to reside in forests—which refers to the old practices of "austerities" (P. *dhutaṅga*)—was issued.[127] In terms of control, this is a particularly interesting example: Although many Theravāda Buddhist traditions are marked by a certain divergence between "forest dwellers" (P. *araññavāsī*) and "village dwelling monks" (P. *gāmavāsī*), the prohibition to reside in the forest and practice *dhutaṅga* can be seen as also a clear sign for establishing a higher degree of control. Forest monks (Lao *pha thudong*; P/Sk. *vraḥ dhutaṅga*) have often attracted large followings and have throughout the history and Laos and Thailand challenged the orthodoxy of religious centers.[128]

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[125] This is obvious when comparing this decree (reproduced in Keovong Pathoumxad, "Organisation du clergé Bouddhique," *France-Asie* 116/118 (1956): 328–337) with the 1928 French *saṅgha* regulation.

[126] See Phouvong Phimmasone, "L'organisation du bouddhisme au Laos." *Bulletin des Amis du Royaume du Laos (Aspects du bouddhisme lao)* 9 (1973): 121–129.

[127] Directive n. 222 signed by Minister of Cults, 8 August 1953 (BAD–12-2-1953.040 [Buddhist Archives of Luang Prabang]).

[128] Similar to forest monks in Sri Lanka, the *pha thudong* of Laos and Thailand "embody the ideals of asceticism and moral purity which are constitutive of the *Saṅgha*" Michael Carrithers, *The Forest Monks of Sri Lanka: An Anthropological and Historical Study* (Delhi: Oxford University Press, 1983), 139). They are ideal figures of the cultivation of virtue and purity and therefore represent extremely virtuous role models. Due to their purity and other-worldliness they have at times recruited large followings. See, for example, Charles F. Keyes, "Millennialism, Theravāda Buddhism, and Thai Society," *Journal of Asian Studies* 36, no 2 (1977): 283–302 and Stanley Tambiah, *The Buddhist Saints of the Forest and the Cult of Amulets* (Cambridge: Cambridge University Press, 1984) for the political implications of these traditions in Thailand. See also Patrice Ladwig, "Haunting the state. Rumors, spectral apparitions and the longing for Buddhist charisma in Laos," *Asian Studies Review* 37, no. 4

Colonial archives are full of plans and blueprints that intend (or pretend) to engineer a better, healthier and more productive society often subsumed under the label of "modernization." However, they rarely give scholars information about the reception of these plans in society or among specific groups. In this case, regarding laws concerning the control of monks and the administration of the *saṅgha*, it is also difficult to know to what extent these new rules were actually applied and followed. However, it is doubtful that they were rejected by leading members of the Lao *saṅgha*. Beyond our point on the hybridity of colonial law, we think that one major reason why this modernization of Buddhist law and institutions was met with very little resistance is grounded in the fact that there were substantial overlaps of interest between the different stakeholders of these law reforms, and subsequent *saṅgha* regulations.

What were these common points of interests of EFEO scholars such as Louis Finot or Suzanne Karpelès, colonial administrators and monastic elites in Laos? Khmer and Lao monks who aspired for a higher career in the *saṅgha* usually went to study in Bangkok before and during the early colonial phase in Indochina. There, modernizing reforms had already been developed in Siam under King Mongkut (reign 1851–1868) and Chulalongkorn (reign 1868–1910). These reforms were not driven by a colonial power but were largely rooted in the strong desire of Siamese kingship to modernize the country, including its religious organizational structures. These reforms entailed new rules for the monastic order, a purification of Buddhist scriptures with a stronger emphasis on Pali and Sanskrit, a devaluation of "superstitious" and local practices in favor of a textual, "authentic" Buddhism, and so forth. Hence, Lao and Khmer monks who went to study there were already exposed to these reforms. For Cambodia, Ann Hansen attests that "Finot's own scholarship on Buddhism … was deeply resonant with Siamese and Khmer modernist aims of purification and practices connected with authentication, translation, and scripturalism."[129] Himanshu Ray suggests a similar line of argumentation and states that French research efforts regarding manuscript culture in colonial Cambodia "were paralleled by indigenous movements to purify and reform

(2013): 509–526, for the absence of such charismatic Buddhist traditions in contemporary Laos.

[129] Ann R. Hansen, *How to Behave,* 128.

Southeast Asian Theravāda Buddhism."[130] The situation in Laos was indeed very similar, but was lagging behind the modernization that his western and southern neighbors experienced.

Conclusion

In the first part of this article we gave a more general outline of the laws and jurisdictions monks and laypeople were subject to prior to the colonial phase. We stated that there was a substantial overlap between secular and religious law, and that Lao kings and ruling elites had a significant influence on the *saṅgha*. In the second part we explored how French colonial officers, researchers of the EFEO, and Lao scholars and scribes reworked parts of these laws during the French occupation of Laos. We argued that the French did not simply impose or transfer a foreign body of secular state laws (Watson's "legal transplant") to Laos but were involved in a complex process of negotiation and adaptation. Contrary to many popular perceptions of colonialism as a pure system of oppression, foreign domination and exploitation, we here advance a perspective that emphasizes the hybrid nature of these laws located between traditional Lao customary law, and the demands of modern colonial governmentality. Although it must be acknowledged that French colonialism was all but benevolent, and that it certainly entailed violence, ruptures and resistance,[131] it appears that in the field of religion and law making we encounter a rather specific version of what Balandier[132] has called a "colonial situation," which points to the distinctiveness of various spheres in a colonial system. In this particular field we argued that a clear distinction between indigenous law and a French colonial secular state law imposed on a colony is not applicable. Rather, what we deal with here is what in postcolonial studies has been described with the term "hybridity." With reference to legal comparison in

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[130] Himanshu Ray, "Archaeology and Empire: Buddhist Monuments in Monsoon Asia," *Indian Economic and Social History Review* 45, no. 3 (2008): 425.

[131] See Geoffrey Gunn, *Theravadins, Colonialists, and Commissars in Laos* (Bangkok. White Lotus Press, 1998) for a Marxist inspired, more conflict-oriented view of Lao colonialism. See also Arnaud Lonchampt, *Le système judiciaire et carcéral du Laos (1904–1939)* (MA Thesis, Université d'Aix-Marseille, 2015) for an excellent work on prisons and at times more violent forms of French colonialism in Laos.

[132] Georges Balandier, "La situation coloniale: approche théorique," *Cahiers Internationaux de Sociologie* 11, no. 1 (1951): 44–79.

the context of (post-)colonial law, Matteo Solinas outlines that "cultural norms in colonial contexts are peculiar to each contact situation and they do not qualify as colonial nor indigenous 'in disguise'. Hybrid culture is more than the result of the fusion of features of colonial and indigenous background. It is a new creation in its own right."[133] Mimetic processes, or, as Charles Hallisey has put it, "intercultural mimesis," simultaneously produces similarity and difference, and therefore something new.[134] This hybrid nature of colonial laws was one of the main reasons why it was met with rather little resistance.

Moreover, with reference to the reforms carried out in Cambodia and Thailand, we argued that some parts of the Lao social and monastic elite actually welcomed the reforms initiated by the colonial regime with the help of EFEO and its research staff. These developments of the religious-legal sphere under colonial rule were understood as being part of a necessary modernization process that was already on its way in neighboring countries. As David Nelken has discussed with reference to legal change and the exchange between systems of law: "Most legal transfers are imposed, invited, or otherwise adopted because the society, or at least some groups or elites within that society, seek to use law for the purposes of change."[135] With Lao elites and monks being involved in the drafting of these colonial laws and regulations, these reforms seem to have been well-received in the Lao *saṅgha* because they were emulating similar developments in Cambodia and Thailand.[136] Although some millennial movements in southern Laos continued to trouble the French until the 1930s,[137] and

[133] Matteo Solinas, "The nature of legal transplants," 180.

[134] Charles Hallisey, "Roads Taken and not Taken in the Study of Theravāda Buddhism," in *Curators of the Buddha: The Study of Buddhism under Colonialism*, ed. Donald Lopez (Chicago: The University of Chicago Press, 1995), 31–61. For a more general account of mimesis beyond Buddhism in the context of colonialism, see Patrice Ladwig and Ricardo Roque, "Introduction: Mimetic Governmentality."

[135] David Nelken, "Comparatists and transferability," 457.

[136] Ironically enough, French policies towards Buddhism were first criticized for neglecting Laos for the benefit of Cambodia. The Lao responsible for the Institut bouddhique regularly complained to the administration about the scarcity of funds to run programs and projects, and pointed the resource imbalance in favor of Phnom Penh, which truly received the majority of the attention from the French. See Gregory Kourilsky, "The Institut bouddhique in Laos," 176–177.

[137] These mainly took place on the Bolaven Plateau in southern Laos and involved a great proportion of "animist" minorities.

Cambodian monks became involved in anti-colonial activities,[138] the situation in Lao *saṅgha* as an institution remained—at least on an official level—rather quiet. From the limited, partially elite-oriented perspective we could develop from our sources, it looks as if the legal and organizational modernization of the Lao *saṅgha* was successful, and that the practical use of Buddhism and its institutions as a reservoir of the legitimation of power indeed enhanced colonial rule. The implications of these policies towards religion were clearly outlined in a letter by the Résident Supérieur of Laos to the General Governor of Indochina in February 1931 regarding the opening of the Buddhist Institute in Vientiane:

> The new inauguration of the Buddhist Institute has drawn a lot of attention among the Lao on both sides of the Mekong river. They have participated with visible satisfaction in these rites that for them were something new; they were quite surprised that we take such great interest in the free practice of Buddhist cults, in the intellectual education of monks and in the restoration of old temples ruined by time or the hands of man. […] It is beyond doubt that these actions have really touched the spirit of the population […] On the other hand, we will also draw benefits from this for our authority and our prestige among religious groups. This will also assure the impact of our political and moral actions. It is in the Buddhist clergy where we find our best allies in the fight against Soviet propaganda.…[139]

However, the effects of these policies did not last forever, and the situation changed radically with the coming of the postcolonial phase. With the end of World War II, and the French refusal to grant Laos independence, the threats posed by communism that were mentioned in the source quoted above became very real. Just after the country gained independence in 1954, Laos was drawn into the Cold War, and the political neutrality of the *saṅgha* turned into outright resistance and turmoil. From the late 1950s, and throughout the 1960s, the relationship of the *saṅgha* to political elites underwent a tremendous shift that became especially visible in discussions

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[138] In Cambodia, the anti-French feelings crystallized during the "Umbrella war" (1942), which happened after the colonial administration disrobed and imprisoned two Khmer monks accused of spying for the Japanese enemy. See *Prawath sankhep Puttha-sasana bandit. The Buddhist Institute, a Short History* (Phnom-Penh: The Buddhist Institute, 2005).

[139] Le Résident Supérieur au Laos à Monsieur le Gouverneur Général de l'Indochine (Direction des affaires politiques), Hanoi. Object: Inauguration de l'Institut bouddhique, Vientiane, le 23 février 1931. Archives de l'École française d'Extrême-Orient.

regarding the role of monks in politics.[140] Like aspiring rulers in the premodern and colonial phase, the communist *Pathet Lao* recognized the potentials of Buddhism in their quest for legitimacy,[141] and they even managed to convince parts of the Lao *saṅgha* to join the revolutionary movement in the so-called "liberated zones" in north-east Laos.[142] When in 1975 Laos came under communist rule, it were mostly these monks who took over the leadership of monastic affairs and initiated another chapter in the postcolonial history of Lao Buddhism.[143] After an initial period in which Buddhism was repressed, the revolutionaries quickly rehabilitated Buddhism, and firmly integrated the administration of the *saṅgha* into the communist party state. Despite all changes, the new rulers of Laos essentially continued the policy whose groundwork had already been established by Lao kingships and reinforced under colonial rule.

[140] We found numerous documents from this historical phase that discuss this question. Especially the communication of the Ministry of Religion is here revealing because some proponents advanced that monks should be involved in politics and be able to vote, while others demanded a strict neutrality of the *saṅgha* in political questions. See BAD–12-2-1963.104 and BAD–12-2-1963.084 [Buddhist Archives of Luang Prabang] for two examples for these discussions inside the Ministry of Religion and the Lao *saṅgha* in the early 1960s.

[141] See Patrice Ladwig, "'Special operation pagoda'. Buddhism, covert operations and the politics of religious subversion in Cold War Laos," in *Changing Lives in Laos: Society, Politics and Culture in a Post-Socialist State* ed. Vanina Bouté and Vatthana Pholsena (Singapore: Singapore University Press, 2017), 81–108.

[142] Patrice Ladwig, "Prediger der Revolution: Der buddhistische Klerus und seine Verbindungen zur Kommunistischen Bewegung in Laos (1957–1975)," *Jahrbuch für Historische Kommunismusforschung* 15 (2009): 181–197.

[143] We intend to write another article on this phase and can here only allude to these developments.

Annex



Image 1 (EFEO_LAO22553). École française d'Extrême-Orient member Suzanne Karpelès, the Résident supérieur of Laos (Jules Bosc), and a group of monks at the inauguration of the Monastic Library in Vat Sisaket, Vientiane, on February 18, 1931.



Image 2 (EFEO_LAO20950_4). Unknown French official posing with a monk teacher and his pupils. The description of the image reads: "Renovated monastery school at Ban Boung Phao in 1935. Before the state took care of schooling, Lao children received a great part of their education in the monastery. The novitiate allowed young boys to acquire a religious culture."

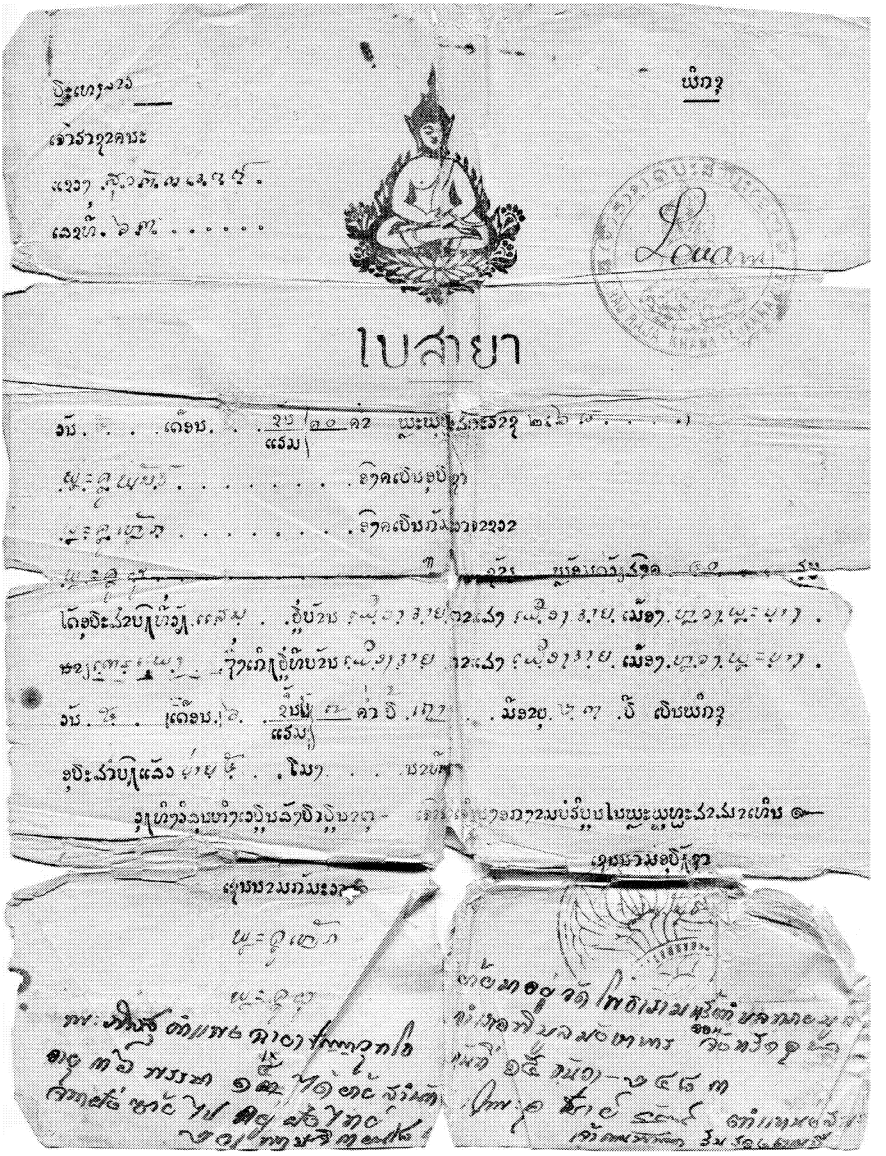


Image 3 (BAD–12-2-1943-0002 [Buddhist Archives of Luang Prabang]). An ID-card (bai sanya) for monks from 1943 indicating name, birth date, place of residence and travels.



Image 4 (BAD-C2420R.EAP [Buddhist Archives of Luang Prabang]). A bilingual French-Lao certificate for promoting a monk to the position "head of the diocese" (chao ratcha khana). Here, the Venerable Kham Fan is promoted to this position in Luang Prabang on 26th of August 1943.

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