

# Paying through the nose

## Punishment in the Cambodian past and lessons for the present<sup>1</sup>

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**Abstract:** Cambodia is preparing to relive the horrors of Democratic Kampuchea (1975–79) as the surviving leaders of the regime brace themselves for trial. Consensus on what constitutes an appropriate punishment for those responsible for the deaths of millions, however, eludes Cambodians and international observers alike. Until the end of the nineteenth century, punishment in Cambodia usually consisted of fines, enslavement, amputation of the nose or ears, or death. Guilt extended to the entire family of the perpetrator. Incarceration was used to determine guilt or innocence, rarely as a punishment in itself. During the colonial period (1863–1953), the French reinforced the notion of imprisonment as a penalty for crime, already being used in the nineteenth century. Although assimilated into the penal system, the concept of incarceration was no deterrent for criminals – guards frequently allowed prisoners to leave the prison compound in order to attend to personal business. The signing of the Paris Peace Accord in 1991 saw further externally imposed changes implemented by the international community in an attempt to bring the Cambodian penal system into line with recent developments in Western human rights discourse. This paper asks whether Western notions of appropriate punishment can be reconciled with the Cambodian Buddhist tenet of *dharma*, and how the imposition of Western values on the Cambodian penal system, through colonial and more contemporary forms of imperialism, has altered traditional ideas of Cambodian punishment.

**Keywords:** punishment; *dharma*; Cambodia; Khmer Rouge tribunals

Cambodians are burdened with a brutal history of fratricide, medieval-style torture, summary justice, banditry, decapitation, and human-liver eating. . . . Cambodia

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has few socially acceptable outlets for the release of tension and anger and thus, I believe, finds it more difficult than other countries to reconcile its heritage of violence.<sup>2</sup>

The author of this passage, although correct in many of these sensational allusions to justice and punishment in the Cambodian past, displayed a typical Western ignorance of the role that *dharma* plays in determining guilt or innocence and in establishing an appropriate punishment in many Asian contexts. The concept of justice is inextricably linked to the concept of *dharma*. It is difficult for Western peoples to understand the multiplicity of meanings inherent in *dharma*; Robert Lingat commented that *dharma* was 'sometimes wrongly translated by the word law, but actually is quite a different thing'.<sup>3</sup> Sures Chandra Banerji agreed, saying that *dharma* 'is one of those Sanskrit words which defy an exact rendering into English'.<sup>4</sup> The word *dharma* occurs frequently in the Sanskrit and Old Khmer inscriptions of pre-classical (c 230–802) and classical (802–1431) Cambodia.<sup>5</sup> It also proliferates in the *cbpab* and legal instruments of Middle Cambodia (1431–1860). Often translated as 'duty', it is a concept of right action that transcends secular boundaries, involving moral, and therefore spiritual, consequences. Actions carried out in the mundane world have a great impact on an individual's advancement in *samsara*, the cycle of birth and re-birth.<sup>6</sup> An inscription dating from 1001 warned transgressors that 'in this world the king will inflict on them with all manner of punishments, and in the next world they will remain in the thirty-two hells'.<sup>7</sup> Wrongdoers, therefore, are punished twice: once according to prevailing civil tradition and again when they attempt to progress in *samsara*. How does this conceptualization of punishment integrate with modern approaches? Have Cambodian notions of punishment been altered by the inculcation of Western values to the extent that imprisonment has

<sup>2</sup> Prasso, S. (1994), 'Cambodia: a heritage of violence', *World Policy Journal*, Vol 11, No 3, pp 71–77, at p 71.

<sup>3</sup> Lingat, R. (1950), 'Evolution of the conception of law in Burma and Siam', *Journal of the Siam Society*, Vol 38, No 1, p 10.

<sup>4</sup> Banerji, S. C. (1962), *Dharma-sūtras: A Study in Their Origin and Development*, Punthi Pustak, Calcutta, p 1.

<sup>5</sup> Pou, S. (1983), 'Dharma and trivarga in the Khmer language', in Sinha, J. P., ed, *Rtam: Dr Babu Ram Saksena Felicitation Volume*, XI–XV, np, Lucknow, pp 289–297, at p 289.

<sup>6</sup> Lingat, *supra* note 3, at p 10.

<sup>7</sup> K 153, ll. 25–27, in *Inscriptions du Cambodge*, eight volumes (1937–66) [hereafter *IC*], comp and ed by George Cœdès, Imprimerie de l'École Française d'Extrême-Orient, Paris and Hanoi, Vol 5, pp 195–196.

become an acceptable alternative to the so-called 'summary justice' of early Cambodia?

Indian models of punishment found their way to Cambodia through the many merchants and *brāhmaṇa* who travelled to South East Asia over the centuries. The epigraphic record attests to a large number of *brāhmaṇa* residing at the courts of Cambodian sovereigns throughout the pre-classical period (c 230–802); in the late fifth century, for example, Queen Kulaprabahāvātī referred to 'an abode of *brāhmaṇa* in the town of Kurumba'.<sup>8</sup> The sovereigns of early Cambodia held *brāhmaṇa* in high esteem, due to their knowledge of the texts that could consecrate land, access the power of the gods, and provide legitimation for their reigns. Anxious to secure the services of *brāhmaṇa*, men would marry their daughters to them, thus providing a familial basis for support.<sup>9</sup> It was inevitable that concepts of law and punishment would be transmitted to the rulers of South East Asia along with tenets of statecraft and religious ideology. The *brāhmaṇical* legacy in Cambodian concepts of punishment should not be discounted, although perhaps Robert Lingat's description of Manu as the 'sole legislator' was not quite correct.<sup>10</sup> The *Manusmṛti* was not adopted wholesale into a pre-existing Cambodian judicial framework.<sup>11</sup> It appears, however, that early Cambodian and Indian conceptualizations of *dharma* were very similar.

Saveros Pou has described Cambodian *dharma* as having three components: cosmic order, harmony, or balance; secular justice and duty; and the purely religious sense of 'right action'.<sup>12</sup> The notion of cosmic order in punishment is discernible in the practice of applying ordeals to determine guilt or innocence. The *Manusmṛti* advised that persons 'whom the blazing fire burns not, or whom the water does not throw up, or who does not speedily suffer some misfortune, should be regarded as pure'<sup>13</sup> – and therefore, innocent. There are a number of

<sup>8</sup> K 875, verse 3, line 7, in Coëdès, G. (1937), 'A new inscription from Fu-nan', *Journal of the Greater India Society*, Vol 4, pp 112–121.

<sup>9</sup> The Chinese described a fifth-century polity of the Malay Peninsula, subject to 'Funanese' hegemony (the Chinese appellation for the southern part of pre-classical Cambodia) as having over a thousand resident Indian *brāhmaṇa*. The local people gave the *brāhmaṇa* 'their daughters in marriage, so often they do not want to leave'. Pelliot, P. (1903), 'Le Fou-nan', *Bulletin de l'École Française d'Extrême-Orient* [hereafter *BEFEO*], Vol 3, pp 248–303, at p 279.

<sup>10</sup> Lingat, *supra* note 3, at p 12.

<sup>11</sup> The Mons rejected the *brāhmaṇical* ideology of the *Manusmṛti*, but applied its principles for civil purposes. See Lingat, *supra* note 3, at p 16.

<sup>12</sup> Pou, *supra* note 5, at pp 290, 291, 292.

<sup>13</sup> *Manusmṛti*, 8.18, v 115, in *Manusmṛti* (1999), 10 vols, ed, Ganganath Jha, 2 ed, Motilal Banarsidass, Delhi.

examples of this in early Cambodia. Zhou Daguan, a Chinese visitor to the capital of Cambodia, Yaśodharapura,<sup>14</sup> in 1296, related that if,

an object is missing, and accusation brought against someone who denies the charge, oil is brought to boil in a kettle and the suspected person forced to plunge his hand into it. If he is truly guilty, the hand is cooked to shreds; if not, skin and bones are unharmed. Such is the amazing way of these barbarians.<sup>15</sup>

He recounted two further ordeals that occurred during his sojourn in Cambodia. In the event of a dispute, the people concerned would be placed in one of the 12 stone towers that faced the royal palace at Yaśodharapura, ruins of which remain today.

Each of the contestants is forced to be seated in one of the towers, with his relatives standing guard over him. They remain imprisoned two, three, or four days. When allowed to emerge, one of them will be found to be suffering some illness – ulcers, or catarrh, or malignant fever. The other man will be in perfect health. Thus is right or wrong determined by what is called ‘celestial judgement’. Thus is shown the supernatural strength of the God of this country.<sup>16</sup>

It may not be coincidental that a nearby inscription reads: ‘May the gods and goddesses always give heaven and final deliverance to all *muni* [“wise ones”] who practise asceticism here’.<sup>17</sup> The final, and most sensational, example of divine justice witnessed by Zhou Daguan occurred as follows:

Within the Walled City, near the East Gate, a Cambodian man committed fornication with his younger sister. Their skin and their flesh were fused beyond the power of separating them. After three days passed without food, both parties died.

After relating that another Chinese merchant who had lived in the capital for 35 years had known this to occur twice before, Zhou Daguan concluded that ‘it shows how well the Cambodians are policed by the supernatural power’ of their gods.<sup>18</sup>

Further cosmic redress of ‘imbalance’ in early Cambodian society,

<sup>14</sup> I avoid using the term ‘Angkor’ when referring to the capital of Cambodia during the classical period. ‘Angkor’ is a mutation of *nāgara thom*, ‘chief city’. The Cambodians themselves called their capital *Yaśodharapura* or *Yaśodharapurī*, after king Yaśovarman I (889–912), who first established a city at the site.

<sup>15</sup> Zhou Daguan (1992), *Customs of Cambodia*, 2 ed, trans J. Gilman d’Arcy Paul, The Siam Society, Bangkok, p 33.

<sup>16</sup> Zhou, *supra* note 15, at p 33.

<sup>17</sup> K 176, v 1, *IC*, *supra* note 7, Vol 5, at pp 275–277.

<sup>18</sup> Zhou, *supra* note 15, at p 67.

caused by the incorrect observance of *dharma*, was meted out in the next world. Thus many of the inscriptions contain an imprecation warning of the spiritual consequences for transgression. Consignment to hell, and the subsequent inability to progress along the cycle of *samsara*, was the punishment that awaited those who did not conform.<sup>19</sup> The inscriptions of the seventh century are particularly vivid as to what awaited sinners in their fiery destinations:

Slaves, land, betel-nut and other goods given to Bhagavat by his followers, that the wicked, full of insolence, following their avaricious inclinations, attempt to take, will, without the possibility of atonement, be without end in the fires of hell where they will be beaten by minions, their mouths contorted in anger.<sup>20</sup>

Another, dated 673, states that 'he who takes the goods meant for the god will be plunged into twenty-one hells and smitten by the thunder-bolt'.<sup>21</sup> The hell of Raurava seems to have been popular with the epigraphists,<sup>22</sup> although Andhatāmisra was also known,<sup>23</sup> and one inscription invokes 10 hells at once:

Those who remove from here, those who mutilate, the fires of Avīci, Mahāraurava, Raurava, Kumbhīpāka, Vaitaraṇi, Kālasūtra, Taptaka, Druma, Vāluka, Aśtimukha, is where they will be, with their fathers and mothers.<sup>24</sup>

In the mundane world, punishment was seen as a means of reorienting persons who had strayed away from their *dharma*.<sup>25</sup> The role that Cambodian rulers played in the administration of justice seems to have differed very little from the duties of kings as set out in the *Manusmṛti*:

Having duly ascertained the motive and the time and place, and having taken into consideration the condition and the nature of the offence, he shall inflict punishment upon those deserving it.<sup>26</sup>

The court was known as the *vrah dharmādhikaraṇa*, or 'holy court of *dharma*'.<sup>27</sup> As justice was determined solely by the king as an 'auxiliary

<sup>19</sup> K 351, ll 8–9, *IC*, *supra* note 7, Vol 6, at p 191; K 742, ll 8–11, *IC*, *supra* note 7, Vol 5, at p 163; K 143, ll B15–B17.

<sup>20</sup> K 22, v 6, *IC*, *supra* note 7, Vol 3, at p 144.

<sup>21</sup> K 762, v 11, *IC*, *supra* note 7, Vol 1, at p 14.

<sup>22</sup> K 436, C5–C6, *IC*, *supra* note 7, Vol 3, at p 20; K 32, v 6, *IC*, *supra* note 7, Vol 2, at p 138.

<sup>23</sup> K 44, v A5, *IC*, *supra* note 7, Vol 2, at p 11.

<sup>24</sup> K 728, ll 4–5, *IC*, *supra* note 7, at p 83.

<sup>25</sup> Unto Tahtinen (1982), *Non-Violent Theories of Punishment: Indian and Western*, Motilal Banarsidass, Delhi, Varanasi and Patna, p 13.

<sup>26</sup> *Manusmṛti*, *supra* note 13, 8.22, v 126.

<sup>27</sup> K 467, l 4, *IC*, *supra* note 7, Vol 3, at p 220.

of *dharma*,<sup>28</sup> it was important that he be morally correct, hence the addition of the following caveat:

The king, punishing those who do not deserve to be punished, and not punishing those who deserve to be punished, attains great ill-fame and goes to hell.<sup>29</sup>

According to Zhou Dagan, the Cambodian sovereign was accessible to everyone, regardless of their status or the importance of the matter: 'Points of dispute between citizens, however trifling, are taken to the ruler'.<sup>30</sup> Inscriptions attest to this facility.<sup>31</sup> In 1003, a man named Vrahmaputra sought an edict from the king regarding his exclusive right to a certain piece of land; this was granted after various local people had been consulted for their opinions.<sup>32</sup> A fairly extensive judicial machine seems to have operated in early Cambodia. The inscriptions mention a group of people at court in charge of 'reciting the *dharmasāstra*'.<sup>33</sup> Others at court acted as investigators. K 566 related that the king issued an order charging a prince to investigate and re-establish the boundary of some disputed land, and to consult with the village elders about the matter.<sup>34</sup> Local authorities could also act as court officials. In 982, the king issued an order asking a *brāhmaṇa* named Divākarabhaṭṭha to furnish the history of the land called Tampol. Divākarabhaṭṭha took a local guildsman to the *dharmādhikaraṇa* in order that his testimony regarding the land could be heard by the king and his advisers.<sup>35</sup>

Kings were empowered to inflict punishments in four degrees – reprimand, reproach, fine and death.<sup>36</sup> The king as the wielder of *daṇḍa*, 'the rod', is found more frequently in inscriptions of the pre-classical period: *ge ta dap gui ge ta sak gui ge cmer ājñā ge daṇḍa*;<sup>37</sup> *ge ta ckop gui ge ta dap gui ge cmer ājñā ge daṇḍa*.<sup>38</sup> There is little evidence of reprimand or reproach in the Cambodian inscriptions or in Zhou

<sup>28</sup> Lingat, *supra* note 3, at p 11.

<sup>29</sup> *Manusmṛti*, *supra* note 13, 8.22, v 128.

<sup>30</sup> Zhou, *supra* note 15, at p 33.

<sup>31</sup> K 697, ll B11–B21, *IC*, *supra* note 7, Vol 7, at p 96.

<sup>32</sup> K 696, ll B22–B27, *IC*, *supra* note 7, Vol 5, at p 205.

<sup>33</sup> Pou, *supra* note 5, at p 291.

<sup>34</sup> K 566, ll A1–A18, *IC*, *supra* note 7, Vol 5, at p 183.

<sup>35</sup> K 262s, ll 1–11, *IC*, *supra* note 7, Vol 3, at pp 111–112.

<sup>36</sup> *Manusmṛti*, *supra* note 13, 8.22, v 129.

<sup>37</sup> 'Those who steal from here, those who remove from here, those who disobey the *ājñā*, will be punished'. K 90, lintel and north footing ll 1–7, *IC*, *supra* note 7, Vol 5, at p 26.

<sup>38</sup> 'Those who levy a fee here, those who steal from here, those who disobey the *ājñā*, will be punished'. K 940, ll 10–11, *IC*, *supra* note 7, Vol 5, at p 73.

Daguan's accounts. Deprivation of inheritance may have been a form of 'reproach' in connection with social transgressions; an inscription warned that women of a particular sacerdotal family would not be entitled to their inheritance should they be taken as *anak khloñ* by people of 'low *varṇa*'.<sup>39</sup> Deprivation of the right to inherit property and sacerdotal responsibilities was equivalent to the inability of *brāhmaṇa* in India to participate and officiate in rituals, having undergone tonsure. As in many societies, compensation, through the payment of fines,<sup>40</sup> appears to have been the most common method of punishment for crimes against other citizens,<sup>41</sup> but few details have been preserved in the inscriptions. A tenth-century inscription does speak of a fine in the form of a 'pair of cattle', should certain people be found guilty of lodging a false claim.<sup>42</sup> Enslavement, however, seems to have been the most common form of punishment in early Cambodia. Although the term 'slave' in the Western sense is probably inappropriate, there is no doubt that these people were not free, as they could be exchanged for land and goods.<sup>43</sup> Almost everyone, except the very poor, had 'at least a dozen' slaves at the end of the thirteenth century.<sup>44</sup>

According to Manu, there were seven categories of slave: those captured in war, those exchanging labour for food, those born to other slaves in the house, those bought, those given in gift, those whose parents were slaves, and those who were slaves 'by punishment'.<sup>45</sup> Most of these seven categories existed in pre-classical and classical Cambodia, although Ian Mabbett concedes only that there were 'ways in which an individual could become a slave after freedom in earlier life', as compelling evidence of 'judicial enslavement' is not well substantiated for Cambodia.<sup>46</sup> Slaves seem to have had ties to people rather than places,<sup>47</sup> contrary to Mabbett's assertion that 'slaves and fields go together'.<sup>48</sup> People with particular talents might find themselves employed

<sup>39</sup> K 444, ll B2–B4, B7–B9, *IC*, *supra* note 7, Vol 2, at pp 62–68.

<sup>40</sup> Tahtinen, *supra* note 25, at p 81.

<sup>41</sup> Zhou, *supra* note 15, at p 33.

<sup>42</sup> K 71, ll 1–13, *IC*, *supra* note 7, Vol 2, at p 55.

<sup>43</sup> K 493, line 20, *IC*, *supra* note 7, Vol 2, at p 149.

<sup>44</sup> Zhou, *supra* note 15, at p 21.

<sup>45</sup> *Manusmṛti*, *supra* note 13, 8.68, v 415.

<sup>46</sup> Mabbett, I. W. (1983), 'Some remarks on the present state of knowledge about slavery in Angkor', in Reid, A., ed, *Slavery, Bondage and Dependency in Southeast Asia*, University of Queensland Press, St Lucia, Queensland, London and New York, pp 44–63, at p 53.

<sup>47</sup> K 1, lines 1–6, *IC*, *supra* note 7, Vol 1, at p 30.

<sup>48</sup> Mabbett, *supra* note 46, at p 48.

in cooking, weaving, spinning or playing musical instruments<sup>49</sup> Male and female slaves undertook similar roles in the service of the temples, cooking, manufacturing palm-leaf books, brewing perfumes,<sup>50</sup> dancing, singing and playing musical instruments.<sup>51</sup> Female singers, dancers and musicians received elegant names such as Vasantamallikā and Rohiṇī.<sup>52</sup> Some female slaves were given names that translate from the Old Khmer to 'Born-for-love',<sup>53</sup> 'She-who-laughs-for-penis' and 'She-who-eats-penis', although it is unclear whether these were due to the characters of the persons so named or a reference to the acts they performed. If the latter, there is evidence to suggest that sexual duties were not universally popular: K 856 records a female slave known as 'Penis-hater'.<sup>54</sup> Male slaves also received names of this type, such as 'Catch-him-if-you-want-him' and 'Mischievous-penis'.<sup>55</sup> It seems fairly clear that slaves of this type were those born into slavery, however, as the Manu dictum that 'by labour shall the debtor make good what is due to the creditor, if he is of the same or of a lower caste'<sup>56</sup> could not require such retribution from free persons.

Manumission was possible, although it is not clear whether this was achieved only upon fulfilment of duties required as part of the punishment or as a merit-making exercise on the part of the slave owner. Mabbett has suggested that 'slaves' donated to temples for fortnightly services could return to their own activities in their 'off' fortnights, their temple services representing 'some degree of obligation falling short of total possession'.<sup>57</sup> Total manumission did exist, however. Female slaves designated *ku* who were attached to temples could be freed. K 666 documents the release of a female slave, Prabhāsomā, 'with her sons and

<sup>49</sup> K 134, lines 14–17, *IC, supra* note 7, Vol 2, at pp 92–94; K 138, line 13, *IC, supra* note 7, Vol 5, at p 19; K 557e, lines 1–2, *IC, supra* note 7, Vol 6, at p 22.

<sup>50</sup> K 238, ll B4–B6 (left), *IC, supra* note 7, Vol 6, at pp 119–122; K 105, l 25, *IC, supra* note 7, Vol 6, at pp 183–186; K 832, v 10, *IC, supra* note 7, Vol 5, at pp 91–95.

<sup>51</sup> K 221, ll 15–17, *IC, supra* note 7, Vol 3, at pp 57–61.

<sup>52</sup> K 557e, line 3, *IC, supra* note 7, Vol 6, at p 22; K 66, line 12, *IC, supra* note 7, Vol 2, at p 53.

<sup>53</sup> K 74, lines 5, 6, *IC, supra* note 7, Vol 6, at p 18.

<sup>54</sup> Vickery, M. (1998), *Society, Economics, and Politics in Pre-Angkorian Cambodia: The 7<sup>th</sup>–8<sup>th</sup> Centuries*, Center for East Asian Cultural Studies for UNESCO, Tokyo, p 250.

<sup>55</sup> Vickery, *supra* note 54, at p 250; Jacob, J. (1979), 'Pre-Angkor Cambodia: evidence from the inscriptions in Khmer concerning the common people and their environment', in Smith, R. B., and Watson, W., eds, *Early Southeast Asia: Essays in Archaeology, History, and Historical Geography*, Oxford University Press, New York and Kuala Lumpur, pp 406–426, at p 412.

<sup>56</sup> *Manusmṛti, supra* note 13, 8.31, v 177.

<sup>57</sup> Mabbett, *supra* note 46, at p 50.



grandsons' at a ceremony celebrating the establishment of a *līṅga*.<sup>58</sup> Judith Jacob also found some pre-classical references to slaves paying their debts and gaining their freedom.<sup>59</sup> Adhir Chakravarti has discerned evidence of manumission wherein persons who were once slaves were incorporated into a *varṇa* owing fealty to a patron.<sup>60</sup>

Corporal punishment was reserved for the non-elite in early Cambodia. Mutilation was reserved for lesser crimes, and involved 'cutting off the feet or hands, or amputation of the nose'.<sup>61</sup> This punishment is in keeping with the Manu maxims that 'whatever limb the low-born man hurts a superior person [with], such a limb of his shall be cut off'<sup>62</sup> and 'By whatever limb the thief operates against men, that shall the king take off, by way of retribution'.<sup>63</sup> It is not clear what offence could be perpetrated using the nose, but this was apparently a common method of dealing with slaves who transgressed. K 132 relates that a slave, *si Varuṇa*, ran away from the cult of the Rāgaguhā.<sup>64</sup> When caught, the religious and civil administrators of the area cut off his nose and ears and offered him and his mother and father into the service of the *kanlonī kamratenī añ*.<sup>65</sup> Zhou Daguan stated that a runaway slave who was recaptured would have a distinctive tattoo in blue ink placed upon his face; 'moreover, an iron collar would be fitted to his neck, or shackles to his arms or legs'.<sup>66</sup> Amputation of the nose and tattooing of the face were obvious indicators of slave status.

Punishment by vice may be a Cambodian alternative to beatings 'with a rope or a split bamboo' as advocated in Manu,<sup>67</sup> as Zhou Daguan remarked that 'punishment administered by light or heavy bastinado' was unheard of in Cambodia.<sup>68</sup> Placing the head, hands and feet into a vice and applying pressure seems to have been a prevalent method of punishment – both for the administration of corporal punishment and as a means of exacting agreement to pay fines or return property. Zhou Daguan related that cuckolded husbands would have the lover's feet

<sup>58</sup> K 666, line 3, *IC*, *supra* note 7, Vol 5, at p 45.

<sup>59</sup> Jacob, *supra* note 55, at p 413.

<sup>60</sup> Adhir Chakravarti (1978), *The Sdok Kak Thom Inscription, Part 1: A Study in Indo-Khmer Civilization*, Calcutta University Press, Calcutta, p 168.

<sup>61</sup> Zhou, *supra* note 15, at p 33.

<sup>62</sup> *Manusmṛti*, *supra* note 13, 8.41, v 279.

<sup>63</sup> *Manusmṛti*, *supra* note 13, 8.44, v 334.

<sup>64</sup> K 231, ll 1–6, *IC*, *supra* note 7, Vol 3, at pp 72–75.

<sup>65</sup> K 231, ll 7–13, *IC*, *supra* note 7, Vol 3, at pp 72–75.

<sup>66</sup> Zhou, *supra* note 15, at p 21.

<sup>67</sup> *Manusmṛti*, *supra* note 13, 8.62, v 299.

<sup>68</sup> Zhou, *supra* note 15, at p 33.

‘squeezed between two splints of wood till the pain grows unendurable and he surrenders all his property as the price for liberation’.<sup>69</sup> A woman, *me* Ayak, in conjunction with four men, sold land that was not lawfully their own. Upon the discovery of the fraud, the men and Ayak had their heads and feet placed in a vice and squeezed as punishment. Two of the men died.<sup>70</sup> The parents of *me* Ayak, upon hearing of their daughter’s offence and subsequent punishment, ‘frightened, ran off to hide’.<sup>71</sup>

It appears that the guilt of one family member extended to the entire group, as is prescribed in Manu:

The king shall strike like thieves those who provide fire, offer food and supply arms and lodging, as also those who abet their escape.<sup>72</sup>

Entire families were enslaved together. We have already seen evidence of three generations of a family being set free, the debt having been cleared.<sup>73</sup> During the reign of Yaśovarman I, a woman named *me* Nem bought a *tai*, a ‘female slave’, named Kantén. Ownership of Kantén ‘was given until her death, likewise that of her children and grandchildren’.<sup>74</sup> The ancestors of those consigned to hell in the afterlife were also condemned with their descendants, often ‘for the duration of the sun and the moon’,<sup>75</sup> and often going back seven generations.<sup>76</sup>

Those who lay waste to this, seven generations of their forefathers and foremothers will be punished as for the five great crimes in the fires of Raurava;<sup>77</sup>

Those who steal, those who appropriate this, with their seven generations of foremothers and seven generations of forefathers will go to the fires of Atiraura and Mahāraurava, like those who have committed holy murder.<sup>78</sup>

According to Manu, kings should ‘carefully suppress the unrighteous by three modes – by imprisonment, by enchaining and by various forms of immolation’. Furthermore, they should ‘establish prisons all along

<sup>69</sup> Zhou, *supra* note 15, at p 33.

<sup>70</sup> K 158, v A27, B31–B32, *IC*, *supra* note 7, Vol 2, at pp 97–113.

<sup>71</sup> K 158, v A27, B31–B32, *IC*, *supra* note 7, Vol 2, at pp 97–113.

<sup>72</sup> *Manusmṛti*, *supra* note 13, 9.38, v 278.

<sup>73</sup> K 666, line 3, *IC*, *supra* note 7, Vol 5, at p 45.

<sup>74</sup> K 158, ll C8–C16, *IC*, *supra* note 7, Vol 2, at pp 97–113.

<sup>75</sup> K 885, l 13, *IC*, *supra* note 7, Vol 5, at p 151; K 878, ll 14–15, *IC*, *supra* note 7, Vol 5, at p 89; K 417, v 8, *IC*, *supra* note 7, Vol 2, at p 49; K 659, ll 31–32, *IC*, *supra* note 7, Vol 5, at p 144; K 726, A2, *IC*, *supra* note 7, Vol 5, at p 76.

<sup>76</sup> K 388, b1–b8, *IC*, *supra* note 7, Vol 6, at p 75; K 878, ll 14–15, *IC*, *supra* note 7, Vol 5, at p 89; K 51, ll 18–19, *IC*, *supra* note 7, Vol 5, at p 15; K 139, l B15, *IC*, *supra* note 7, Vol 3, at p 177; K 561, v 4, *IC*, *supra* note 7, Vol 2, at p 40.

<sup>77</sup> K 127, ll 19–20, *IC*, *supra* note 7, Vol 2, at p 90.

<sup>78</sup> K 154, l A16–A18, *IC*, *supra* note 7, Vol 2, at p 124.

the public road, where the suffering and disfigured offenders might be seen'.<sup>79</sup> Yet imprisonment seems to have been very rare in Cambodia before the eighteenth or nineteenth century. Although Zhou Daguan commented that thieves, when caught in the act of stealing, 'may be imprisoned and tortured',<sup>80</sup> it seems that this was permissible in the extraction of confessions only, a prelude to the actual punishment by fine, mutilation or enslavement. Matters involving the sovereignty of the king seem to have been the only offences for which imprisonment was prescribed, and then less as a punishment than a security measure. Zhou Daguan related that the king in power at the time of his visit to Yaśodharapura had obtained the throne through his wife, the daughter of the incumbent, stealing the golden sword of office and giving it to her husband, thus depriving her brother of the succession. 'This brother strove to stir the soldiery to revolt, but the prince, hearing of this, cut off his brother-in-law's toes and threw him into a dark dungeon'.<sup>81</sup> The only other incidence of imprisonment in Zhou Daguan's account again relates to the security of the incumbent king:

Those who caught a glimpse of the King were expected to kneel and touch the earth with their bows. Failing to perform this obeisance, which is called *sun-pah*, they were seized by the masters of ceremonies who under no circumstances let them escape.<sup>82</sup>

Obviously, those who refused to recognize the sovereignty of the usurper king would do less harm in prison than at large.

The death penalty does not seem to have been popular with Cambodian rulers. Zhou Daguan related that even 'in cases of great seriousness' criminals were not put to death in ancient Cambodia by strangulation or decapitation, as was the case in China; instead, they were taken outside the West Gate of Yaśodharapura, where 'a ditch is dug into which the criminal is placed, earth and stones are thrown back and heaped high, and all is over'.<sup>83</sup> However, there is nothing in the inscriptions commemorating the execution of criminals, although perhaps, given the purpose of the stelae, this is not unusual. Inability to proceed in *samsara* was of far graver consequence, even when the identities of perpetrators were known:

<sup>79</sup> *Manusmṛti*, *supra* note 13, 9.38, v 288.

<sup>80</sup> Zhou, *supra* note 15, at p 33.

<sup>81</sup> Zhou, *supra* note 15, at p 74.

<sup>82</sup> Zhou, *supra* note 15, at pp 72–73.

<sup>83</sup> Zhou, *supra* note 15, at p 33.

The people that led the servants of the *kamraten jagat* to leave are consigned to hell for ten thousand *kalpas*, the town being thus ruined.<sup>84</sup>

The true punishment lay in the next world, not that of the present.

The middle period of Cambodian history (1431–1860) saw the advent of Theravāda Buddhism as the religion of the Cambodian elite, although the shift away from brāhmaṇical religions had been occurring gradually in Cambodia for some time.<sup>85</sup> At first this added only a thin veneer of Buddhist beliefs to Cambodian culture. Whereas a king had previously sought to legitimize his reign through the identification with Śiva (or, in one case, Viṣṇu),<sup>86</sup> he now proclaimed himself a *bodhisattva*.<sup>87</sup> The role of the king as intermediary between mundane and celestial worlds was unchanged. *Brāhmaṇa* continued to occupy court positions throughout the middle period and into the twentieth century, despite the steady adherence to Buddhism of most subsequent sovereigns. Brāhmaṇical architecture and sculpture were converted for Buddhist ceremonies. Thus in the fifteenth century, a reclining Buddha was carved into the rear of the Baphuon temple at Angkor,<sup>88</sup> a temple originally constructed to house the golden *liṅga* that represented the sovereignty of Udayadityavarman II (r 1050–1066).<sup>89</sup>

*Dharma*, from this period, began to be perceived in the sense of ‘the Law of the Buddha’ and the ancillary body of ethics with which it is associated, or the pursuit of individual morality through ‘right conduct’.<sup>90</sup> *Cbpab Koan Chao* described those ‘that have *dharma*, those that adhere to the texts’ as ‘delicious fruit’.<sup>91</sup> Those that strayed from the path of *dharma*, as in the preceding periods, ‘when they pass into the next world, will be plunged into the fires of *niraye-narak* and

<sup>84</sup> K 518, II D1–D9, *IC*, *supra* note 7, Vol 2, at p 75.

<sup>85</sup> Harris, I. (nd), ‘Cambodian Buddhism: its history and practice’, unpublished manuscript, p 33.

<sup>86</sup> Jacobsen, T. (1999), ‘Buddhist flesh, Hindu bones: the legitimation of Jayavarman VII’, honours thesis, University of Queensland, p 34.

<sup>87</sup> Reynolds, F. E. (1989), ‘Sacral kingship and national development: the case of Thailand’, in Kitagawa, J. M., and Cummings, M. D., eds, *Buddhism and Asian History*, Macmillan, New York, pp 100–110, at p 100; Watson Andaya, B. (1978), ‘Statecraft in the reign of Lü Tai of Sukhodaya (ca 1347–1374)’, in Bardwell Smith, ed, *Religion and Legitimation of Power in Thailand, Laos, and Burma*, ANIMA Books, Chambersburg, PA, pp 2–19, at p 13.

<sup>88</sup> Rooney, D. (1999), *Angkor: An Introduction to the Temples*, Odyssey, Hong Kong, p 161.

<sup>89</sup> Jacobsen, *supra* note 86, at p 21.

<sup>90</sup> Pou, *supra* note 5, at p 292.

<sup>91</sup> *Cbpap Koan Chao*, v 17, in Pou, S., and Jenner, P. N. (1977), ‘Les cpāp’ ou “codes de conduite” khmers III: *cpāp kun cau*’, *BEFEO*, Vol 64, pp 167–215, at p 184.

experience suffering'.<sup>92</sup> The king, although possessing *dharma* in abundance, was also controlled by it.<sup>93</sup> The people under his rule were at the mercy of the king. Many of the *cbpab* seem to have been written for the instruction of kings:

O majesty, revered protector, greater than all, of royal qualities, head of the land, king who is supreme, first, and unequalled! Use your wisdom, use your knowledge, in making your decisions. Be swift to reprimand the destructive, evil ones.<sup>94</sup>

O great king, first among all, powerful, with supernatural qualities, please follow, in the *cbpab gambir*, this collection of traditions. May you be so inclined!<sup>95</sup>

At least one king of the middle period seems to have taken these admonitions to heart: in 1693, King Jai Jeṭṭhā III (r 1677–1695),

profoundly afflicted by the sentiment of justice, wishing to avoid in the future all possible troubles, and desiring, above all, not to harm his people,

composed a law code known as *Kram Srok*, 'law code of the country'.<sup>96</sup> The first three articles of this law set out the supremacy of the king in judicial matters, defined the standard sum to be paid in compensation or penalty, and stated that the punishment levied against nobles and ordinary people would be proportional to the gravity of the crime committed.<sup>97</sup> Other middle-period kings revised extant law codes. In 1723, a king revised the *Kram Khon Sala*, 'Law code for judicial process'.<sup>98</sup> King Ang Duong (r 1848–1860) revised both the *Kram Lakkhana Prohmotont*, 'Law code of the punishments of Brāhma' and *Kram Viveat*, 'Law code concerning disputes' in 1853.<sup>99</sup>

The king continued to be perceived as the ultimate avenue of justice. He was described as being 'ten degrees above his nearest contemporary'.<sup>100</sup> Prisoners found guilty of capital crimes were to be conveyed to the court, where the king himself would pronounce the sentence and

<sup>92</sup> *Cbpap Koan Chao*, v 63, in Pou and Jenner, *supra* note 91, at p 189.

<sup>93</sup> Tahtinen, *supra* note 25, at p 9.

<sup>94</sup> *Cbpab Trineti*, vv 20–21, in Pou, S., and Jenner, P. N. (1981), 'Les cpāp' ou "codes de conduite" khmers VI: *cpāp Trineti*', *BEFEO*, Vol 70, pp 135–193 at p 160.

<sup>95</sup> *Cbpab Trineti*, v 23, in Pou and Jenner, *supra* note 94, at p 160.

<sup>96</sup> *Kram Srok*, in Leclère, A. (1898), *Les codes cambodgiens* (2 vols), Vol 1, p 89.

<sup>97</sup> *Kram Srok*, articles 1–3, in Leclère, *supra* note 96, Vol 1, at pp 89–90.

<sup>98</sup> This king was either Ang Im (r 1710–22 and 1729–30) or his son Saṭṭhā (r 1722–29 and 1730–36). *Cbpab Khon Sala*, preamble, in Leclère, *supra* note 96, Vol 2, at p 31.

<sup>99</sup> *Kram Prohmotont*, preamble to article 2, in Leclère, *supra* note 96, Vol 2, at p 347; *Kram Viveat*, preamble to article 1, in Leclère, *supra* note 96, Vol 2, at p 451.

<sup>100</sup> *Kram Srok*, article 1, in Leclère, *supra* note 96, Vol 1, at pp 89–90.

oversee the execution.<sup>101</sup> Provincial governors, unable to judge a matter, were to:

send a detailed report to the capital, after which it will be taken to the king who will judge or resolve the matter according to the governor's report, or who will send a special commissioner to rule on it.<sup>102</sup>

As in the preceding periods, a large number of elite persons at the court and in the provinces were involved in the administration of justice. The first book of *Cbpab Khon Sala* is devoted to setting out which officials are responsible for handling different genres of grievance.<sup>103</sup> Governors had a judicial assistant entitled *dhammīya*.<sup>104</sup> These assistants were no doubt necessary in the investigation of matters brought before the court. There were three kinds of process handled by the judicial courts: *Nintar*, requiring thorough investigation of circumstances and interrogation of witnesses; *chenda*, judged according to the testimony and statements of both parties concerned; and *thvear chenda*, determined according to written law.<sup>105</sup>

Kings admonished their governors and judges to act with *dharma*.<sup>106</sup> Failure to obey the king in this respect could lead to one of 10 categories of punishment, ranging from the payment of a fine to death.<sup>107</sup> Ang Duong issued the following edict to his officials in 1860:

He must always practise *dharma*, frequently perform good works, and never commit evil. He must avoid the pursuit of wealth, so that when he must judge a matter, there is no fear that he will seek to enrich himself by deviating from justice, and conform to the books *Preas Thommasath* and *Eyntapheas*; he must also live his life according to *dharma*. . . . If he habitually drinks *arak*, he must cease; finally, he must always be on guard against insensibility.<sup>108</sup>

The legal instruments of the middle period contain very exact descriptions of the amount to be levied in specific cases. People found guilty of fornication, for example, were to be punished with a fine four times the usual penalty; they must also pay a fee to the Royal Treasury.<sup>109</sup> Towards the end of his reign, King Ang Duong revised previous laws

<sup>101</sup> *Kram Prohmotont*, in Leclère, *supra* note 96, Vol 2, at p 313.

<sup>102</sup> *Kram Srok*, article 84, in Leclère, *supra* note 96, Vol 1, at p 110.

<sup>103</sup> *Cbpab Khon Sala*, articles 1.1–1.16, in Leclère, *supra* note 96, Vol 2, at pp 31–35.

<sup>104</sup> *Kram Srok*, article 96, in Leclère, *supra* note 96, Vol 1, at p 113.

<sup>105</sup> *Cbpab Khon Sala*, article 3.1, in Leclère, *supra* note 96, Vol 2, at pp 38–39.

<sup>106</sup> *Cbpab Khon Sala*, article 3.1, in Leclère, *supra* note 96, Vol 2, at p 39; *Kram Chor*, article 2, in Leclère, *supra* note 96, Vol 2, at p 295.

<sup>107</sup> *Kram Chor*, article 2, in Leclère, *supra* note 96, Vol 2, at p 296.

<sup>108</sup> *Kram Chor*, article 4, in Leclère, *supra* note 96, Vol 2, at pp 302–303.

<sup>109</sup> *Cbpab Khon Sala*, article 4.6, in Leclère, *supra* note 96, Vol 2, at pp 43–44.

on this matter;<sup>110</sup> he also added a list of fines to be paid for insulting people, according to their social class.<sup>111</sup> The law codes were similarly explicit as to the varieties of criminal and categories of crimes, of which transgressions against the king or Buddhist monasteries or images were by far the most serious.<sup>112</sup>

Summary justice was permitted by the middle-period law codes under certain circumstances.<sup>113</sup> A husband who surprised his wife and her lover was entitled to kill them both without repercussion. If, however, the husband was aware that his wife had a lover, or if she had left him and gone to live with a relative, and the husband discovered them together, he 'may not kill them, but bring a suit against them'.<sup>114</sup> Similarly, anyone who:

makes his way, armed, into a place in order to steal, if he is surprised by the proprietor, may be killed by him without incurring any penalty. But once he is taken and arrested, the proprietor does not have the right to kill him; he must take his complaint to the functionaries charged with receiving accusations. If the man is not armed, he must be apprehended, not killed, then it must be determined whether or not he is in possession of an object that comes from the building where he was found. The examination concluded, the judge will condemn him, in conformity with the law, to pay compensation (if he is free), or increase his price of manumission (if enslaved).<sup>115</sup>

The death penalty was usually only levied by the king, and in matters of great seriousness, such as murder in the commission of another crime. If the householder was not killed or badly hurt, however, the perpetrator would be beaten, the goods returned, and compensation exacted for those that could not be found. If the perpetrator paid four times the worth of the goods, he could avoid corporal punishment altogether.<sup>116</sup> Beatings and tattooing remained standard punishments for slaves that committed crimes.<sup>117</sup> Free persons and the elite might be shackled for between one and three months, enslaved, have a finger amputated, or their teeth filed to indicate their guilt.<sup>118</sup> Imprisonment, at least until

<sup>110</sup> *Kram Chor*, article 3, in Leclère, *supra* note 96, Vol 2, at pp 296–302.

<sup>111</sup> *Kram Viveat*, article 3, in Leclère, *supra* note 96, Vol 2, at pp 463–464.

<sup>112</sup> *Kram Chor*, articles 1.1 and 1.2, in Leclère, *supra* note 96, Vol 2, at pp 287, 289–290.

<sup>113</sup> *Kram Chor*, article 2, in Leclère, *supra* note 96, Vol 2, at p 296.

<sup>114</sup> *Cbpab Khon Sala*, article 4.9, in Leclère, *supra* note 96, Vol 2, at p 45.

<sup>115</sup> *Kram Srok*, article 99, in Leclère, *supra* note 96, Vol 1, at p 114.

<sup>116</sup> *Kram Srok*, articles 85 and 86, in Leclère, *supra* note 96, Vol 1, at p 110.

<sup>117</sup> *Cbpab Khon Sala*, article 4.5, in Leclère, *supra* note 96, Vol 2, at p 42.

<sup>118</sup> *Kram Prohmotont*, article 1.35, in Leclère, *supra* note 96, Vol 2, at p 332; *Kram Prohmotont*, article 1.29, in Leclère, *supra* note 96, Vol 2, at p 328.

the eighteenth century, seems to have been a temporary measure until guilt or innocence was determined.<sup>119</sup> By 1853, however, imprisonment was being used as a punishment in itself:

If someone administers poison to another in order to rob or defraud them, the guilty person will pay a fine and be incarcerated and set to work on public works until the victim has recovered their health. If the victim is permanently incapacitated or dies, the guilty person will be condemned to prison without the possibility of parole and sentenced to hard labour.<sup>120</sup>

During the French colonial period (1860–1953), the laws of the middle period were codified and ‘improved’ according to the French legal perspective. Prisons were dismantled and rebuilt of more durable materials; the French were horrified to find Cambodian prisons ‘open hangars of wood or bamboo covered with leaves’.<sup>121</sup> Imprisonment, although increasingly common during the colonial period, was nevertheless not viewed as a punishment in itself. It was always possible to purchase one’s freedom by paying the Cambodian judicial officials or prison administrators. Those who could not afford to do so faced years in the construction of public works, but were frequently allowed out by the guards to attend to family business such as funerals.<sup>122</sup>

The principal social responsibility of the Cambodian elite continued to be the administration of justice.<sup>123</sup> Corruption seems to have been fairly prevalent, particularly in the 1930s. The chief of the judicial court in Kompong Speu was under investigation for ‘not observing his duties with complete impartiality’.<sup>124</sup> The members of two villages in Kompong Thom collectively sent a complaint to the head of the Sûreté regarding their dissatisfaction with the head of their local court:

Sam Om, head of the justice tribunal at Prek Po, does not fulfil his duties with the complete impartiality required. As the magistrate, he charges a fee from the people he is required to judge, suits that are copied by his son Om Yim. Matters are judged in favour of his clients.... With the aid of a man named Ham who lived in Prek Po, he has amassed around 1,000 piastres... We are very displeased with the state of things and ask that inquiries be made of Sam Om, his son Om

<sup>119</sup> *Cbpab Khon Sala*, article 4.6, in Leclère, *supra* note 96, Vol 2, at p 44.

<sup>120</sup> *Kram Prohmotont*, article 1.37, in Leclère, *supra* note 96, Vol 2, at pp 332–333.

<sup>121</sup> Moura, J. (1883), *Le royaume du Cambodge* (2 vols), Ernest Leroux, Paris, Vol 2, p 295.

<sup>122</sup> Moura, *supra* note 121, Vol 2, at p 294.

<sup>123</sup> Moura, *supra* note 121, Vol 2, at p 289.

<sup>124</sup> Envoi to the Judicial Counsellor in Phnom Penh from the Resident of Kompong Speu province, 4 August 1935, Fonds du Residence Superieure au Cambodge [hereafter RSC] 1151.



Yim and the one named Ham so that they may be punished according to the law.<sup>125</sup>

A district chief attempted to intimidate an entire village of people regarding recent thefts from their local monastery, telling them that anyone who complained would be imprisoned.<sup>126</sup> Jean Moura related that those found guilty in court who,

with the help of gifts, succeed in gaining the favour of the great officials...are assured of recovering their freedom no matter the enormity of their crime.<sup>127</sup>

Offences against the king, such as a liaison with a woman of the palace or the attempted appropriation of the king's property, were still viewed as the worst possible offences in the colonial period.<sup>128</sup> The death penalty was levied for these crimes. This was doubtless behind an attempt to remove a court official in 1936, which alleged that he had not only transacted liaisons with four women of the palace, but had stolen money and used property belonging to King Monivong (r 1927–41):

It is stated that Nuon secretly had sexual relations with a girl in the court, *kanchao* Neang Ouk, that the two lovers lay together in the king's lodge at Kdat, at the villa of His Majesty at Thmat Pong, and at the palace; that he amused himself with the *khun* Neng Dak May and was heard to say 'Have you already forgotten the time we were together in His Majesty's boat?'; that he has been, outside, married to two other *kanchao* named Neang Khim and Neang Noy whom he secured with the money of His Majesty; that Nuon has stolen money from the King and currently has a house worth 1,700 piastres and a car.<sup>129</sup>

The death penalty was also used in cases of murder into the 1930s. On 16 June 1934, three Cambodian women were sentenced to death for murder of the concubine of the district chief in Beng Lovea, Kompong Thom province on 15 November 1929. Another person involved in the commission of the crime, Nguyen Van Huong, was sentenced to 20 years' hard labour without possibility of parole.<sup>130</sup>

Despite the 'modernization' of the Cambodian judicial and penal system during the colonial period, Cambodians continued to seek redress

<sup>125</sup> Envoi No 1381/IP to the head of the Sûreté, 16 September 1935, RSC 5715.

<sup>126</sup> Attachment to Envoi No 171 to Monsieur le Delegue du Protectorat, 21 January 1938, RSC 17593.

<sup>127</sup> Moura, *supra* note 121, Vol 2, at pp 294–295.

<sup>128</sup> Moura, *supra* note 121, Vol 2, at p 224.

<sup>129</sup> Attachment to Note confidentielle No I265–IP to the Résident Supérieure au Cambodge, RSC 17593.

<sup>130</sup> Deuxième session de la Cour Criminelle de Phnom-Penh pour 1934: Audience du 16 juin 1934, RSC 23162.

as they had before. Debt continued to be settled privately; for example, a 14-year-old girl was placed in the service of the governor of Stung Treng for an indeterminate period in order to work off the 300 piastres that her parents owed.<sup>131</sup> Official justice was first sought from the local court, then, if satisfaction was not obtained, from the provincial governor. In the 1880s a 15-year-old girl whose father had been murdered travelled to the provincial court in Battambang in order to bring suit against the murderers. The judge felt that leniency was required as the killers believed that the girl's father was a sorcerer who had killed their father through magic. He ordered the killers to pay a hefty fine to the girl in compensation. Unsatisfied, she refused the money and went to the governor of Battambang in order to demand that the murderers be put to death. The governor complied.<sup>132</sup> The last resort of those seeking justice continued to be the king, although the Résident Supérieure du Cambodge was sometimes approached in the same manner. A man brought a suit against another who had attempted to kidnap his adopted daughter. Not content with the efforts of the local judiciary, he brought the matter to the attention of the Résident Supérieure in a letter, concluding 'I prostrate myself at your feet and pray that you will look into the matter'.<sup>133</sup> This is the same language Jean Moura used to describe those approaching King Norodom (r 1863–1904): 'The Cambodians do not speak to him without prostrating themselves'.<sup>134</sup>

There are few major differences between punishment in the colonial period and in Cambodia today. It remains the inalienable right of every Cambodian to request an audience with the king in order to seek his favour or his counsel. Until his abdication, King Norodom Sihanouk (r 1941–55 and 1993–2004) continued to be perceived by many Cambodians as the repository of knowledge and justice. In December 2002, the king 'granted a meeting' to villagers who did not know what to do about logging in their area.<sup>135</sup> Although ordinary people continue to bring complaints to court and are satisfied,<sup>136</sup> they seem to have little

<sup>131</sup> Letter No 146 to the Résident Supérieure du Cambodge from M. Rabourdin, Résident of Stung Treng, 20 August 1909, RSC 12858.

<sup>132</sup> Pavie, A. (1999), *The Pavie Mission Indochina Papers 1879–1895, Vol. 1: Pavie Mission Exploration Work: Laos, Cambodia, Siam, Yunnan, and Vietnam* [1901], trans Tips, W. E. J., White Lotus, Bangkok, p 118.

<sup>133</sup> Letter to the Résident Supérieure de la République Française au Cambodge, 29 March 1922, RSC 5715.

<sup>134</sup> Moura, *supra* note 121, at p 222.

<sup>135</sup> Michael Coren and Lon Nara (2002), 'King weighs in to forestry fracas', *Phnom Penh Post*, 6–19 December 2002, p 1.

<sup>136</sup> 'Police Blotter', *Phnom Penh Post*, 27 April–10 May 2000, p 14.

faith in the impartiality of the police and judiciary. The United Nations General Assembly has noted with concern the ongoing problem of corruption in the Cambodian justice system.<sup>137</sup> The special category of police responsible for carrying out arrests at the order of the courts 'has long been known as one of the most rogue armed forces in Cambodia'.<sup>138</sup> It is perhaps not surprising therefore, that summary justice is again reigning supreme in Cambodian society. Not a day goes by wherein someone is not beaten,<sup>139</sup> mutilated with acid<sup>140</sup> or killed,<sup>141</sup> in what the police describe as a 'revenge attack'. Compensation is also managed outside of the courts. A man arrested for attempted rape was released after he paid one million riels to the girl as compensation for 'mental damage'.<sup>142</sup>

Yet what compensation can be sufficient redress for the lives of those Cambodians, estimated at nearly two million, who died during the time of Democratic Kampuchea? On 6 June 2004 the Cambodian government and the United Nations finally reached an agreement on the establishment of a tribunal to prosecute the leaders of Khmer Rouge. This will be the sixteenth attempt since 1979 to bring the leaders of the regime to justice. There are a host of reasons to explain the failure of earlier attempts, including:

disputes over the legitimacy of various Cambodian regimes; irregularities in the various legal proceedings; lack of institutionalised accountability mechanisms; failure to obtain custody of the accused; failure to obtain jurisdiction over the accused; capricious selection of persons to be prosecuted; considerations of 'national reconciliation'; financial corruption; superpower politics; regional politics; domestic politics; and general lack of political will to enforce international law on these matters.<sup>143</sup>

The Cambodian People's Party has been accused in the regional press of 'foot-dragging' on the issue, giving impetus to the resolution of the

<sup>137</sup> United Nations General Assembly, 58th Session, section 117b, article III.2.

<sup>138</sup> Marcher, A., and O'Connell, S. (2000), 'Rainsy in Paris takes cudgel to French', *Phnom Penh Post*, 26 May–8 June, p 2.

<sup>139</sup> 'Police Blotter', *Phnom Penh Post*, 26 May–8 June 2000, p 14; 'Police Blotter', *Phnom Penh Post*, 17–30 January 2003, p 12.

<sup>140</sup> 'Police Blotter', *Phnom Penh Post*, 26 May–8 June, 2000, p 14.

<sup>141</sup> 'Police Blotter', *Phnom Penh Post*, 26 May–8 June 2000, p 14; 'Police Blotter', *Phnom Penh Post*, 31 January–13 February 2003, p 12; 'Police Blotter', *Phnom Penh Post*, 14–27 January 2005, p 14.

<sup>142</sup> 'Police Blotter', *Phnom Penh Post*, 27 April–10 May 2000, p 14.

<sup>143</sup> Etcheson, C. (1999), 'Two decades of impunity', *On the Record SEAsia*, Vol 5, Part 4, Website: [www.advocacynet.org/news\\_view](http://www.advocacynet.org/news_view).

political stalemate in the country since the July 2003 elections.<sup>144</sup>

The international community has long advocated that the trials be held under international law for crimes against humanity. This is partly in response to concerns regarding the impartiality of the Cambodian judiciary. Few judges in Cambodia have had any legal training and most have ties to the ruling political parties.<sup>145</sup> It is also a reaction to the increasing global prevalence of genocidal regimes. As Gianfranco dell'Alba, an Italian Member of the European Parliament, said in 2002:

The time has come here to end impunity for the most heinous crimes. Victims cannot wait any longer.<sup>146</sup>

Western scholars and monitors of Cambodia concur that the trials are necessary, if only to bring closure to the ugliest chapter in Cambodian history.<sup>147</sup>

It would appear that most Cambodians are in favour of the tribunal. A survey carried out in January 1999 found that 80% of respondents wanted the tribunal to go ahead.<sup>148</sup> The Documentation Centre of Cambodia, known as DC-CAM, is run by a team of dedicated Cambodians committed to the discovery and preservation of evidence against the Khmer Rouge. Cambodian artist Hen Sophal paints graphic pictures of Khmer Rouge atrocities he witnessed as a child, and is adamant that the leaders of Democratic Kampuchea should be brought to justice:

I want the Khmer Rouge tribunal to be taken seriously. All former Khmer Rouge leaders should stand trial. Second, I want to remind old and young Cambodians of the Pol Pot regime. I want them to remember their anger against the Khmer

<sup>144</sup> Phelim Kyne (2001), 'Bones and justice: KR law languishes in limbo', *Phnom Penh Post*, 27 April–10 May 2001; Associated Press, 15 July 2004 (distributed by camnews@cambodia.org); Goldston, J. A. (2004), 'Khmer Rouge in the dock', *Korea Herald*, 7 June 2004.

<sup>145</sup> Goldston, *supra* note 144.

<sup>146</sup> 'Quotable quotes for 2002', *Phnom Penh Post*, 20 December 2002–2 January 2003, p 15.

<sup>147</sup> Chandler, D. (2003), 'Coming to terms with the terror and history of Pol Pot's Cambodia (1975–1979)', in Prager, C. A. L., and Govier, T., eds, *Dilemmas of Reconciliation: Cases and Concepts*, Wilfrid Laurier University Press, Waterloo, Canada, pp 307–326, at pp 320–321; Ghitis, F. (2004), 'An eye for an eye? From the killing fields of Cambodia to the ongoing ethnic conflict in Kosovo', *Chicago Tribune*, 11 July 2004; Goldston, *supra* note 144; Hawk, D. (1986), 'International human rights law and Democratic Kampuchea', *International Journal of Politics*, Vol 16, No 3, pp 3–38, at p 4; McGrew, L. (1999), 'A tribunal for the Khmer Rouge? The Cambodian people must be consulted', *On the Record SEAsia*, Vol 5, Part 4, Website: [www.advocacy.net.org/news\\_view](http://www.advocacy.net.org/news_view).

<sup>148</sup> McGrew, *supra* note 147.

Rouge as well as attract the attention of the whole world...And third, I want to educate young Cambodians who did not live during Pol Pot times.<sup>149</sup>

Many Cambodians born after 1979 have only a vague grasp of the implications of the tribunal, as the Democratic Kampuchea period is not taught in Cambodian schools. Others – those who lived through the Khmer Rouge years – prefer not to remember many of the details. For Aki Ra, a Cambodian man in his thirties, the past:

is almost too terrible to revisit for him. He describes it as a national scar, saying it's too dangerous to open...But a moment later he says many people are angry and something should be done about the period's death and suffering.<sup>150</sup>

Some have spent decades effacing the images of those years from their minds, and find the prospect of the tribunals disquieting. Political leaders in Cambodia today have advocated forgiving and forgetting and have only reluctantly acquiesced to international demands for 'justice'.<sup>151</sup>

Western observers may wonder how it could be so easy for Cambodians to 'forget' the outrage perpetrated against them by their own people. The answer, of course, is that they have not forgotten, but many are reluctant to face memories that shock and distress, or, in some cases, acknowledge that their neighbour, their brother-in-law, or they themselves may be responsible for atrocities. Others do not believe that the range of punishments available to those meting out justice in the genocide tribunals fits the crimes with which the defendants are charged. According to what is customary in Cambodian history, murder is expiated through the death of the perpetrator; yet this is not appropriate in considering the Cambodian genocide. Imprisonment will not constitute a genuine punishment, as most of the accused are of advanced years and will not be physically capable of performing hard labour.<sup>152</sup> Mutilation and beatings will not be available as punishments. Financial compensation is out of the question. In real terms, there can be no expiation for a crime of this magnitude in the mundane world, yet the duality of past Cambodian conceptualizations of punishment provides for both redress and ambivalence, wherein transgressors are punished once in this world in line with prevailing law, and again as they attempt

<sup>149</sup> Marcher, A., and Sotheacheath, C. (2000), 'Artist paints legacy of Pol Pot and the KR', *Phnom Penh Post*, 26 May–8 June 2000, p 16.

<sup>150</sup> Ghitis, *supra* note 147.

<sup>151</sup> Chandler, *supra* note 147, at p 321.

<sup>152</sup> A number of Cambodians I have spoken to about the tribunals have said that they believe that the prisoners will either buy their way out of prison or 'live like they are in a hotel' because of their ability to bribe officials.

to move through the cycle of birth and rebirth, when their lack of merit, through committing evil acts, will preclude them from advancement. In other words, one view is that the true rebalancing of cosmic order and personal *dharma* will occur on the celestial, not the mundane, plane.<sup>153</sup> At the same time, there are some who doubt the efficacy of the judicial system and prefer to take more immediate, extra-judicial measures in the name of justice. Still others believe in due process following Western models. Continuity in Cambodian perceptions of punishment and justice can be found not in senseless and sensational violence actualized in summary fashion, but in a plurality of perspectives, built upon tradition and informed by individual personal experience.

<sup>153</sup> Tahtinen, *supra* note 25, at p 105.