



## Vinaya Principles for Assigning Degrees of Culpability

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### ABSTRACT

*The Buddhist literature that goes into most explicit detail on factors affecting degree of culpability in wrong actions is the Vinaya. While this includes material that goes beyond the scope of ethics per se, it contains much of relevance to ethics. Focusing on overt physical and verbal actions, it also has much to say on states of mind which affect the moral assessment of actions: knowledge, perception, doubt, intention, carelessness, remorse, etc.. These factors interact in sometimes complex and subtle ways, and their relevance varies according to the type of action being assessed, rather than being applied in an indiscriminate blanket fashion. The sources used for the article are primarily the Pali Vinaya and its commentary, with some reference to the Milindapañha, Kathāvatthu, and Abhidharma-kośa-bhāṣya when they discuss Vinaya-related matters.*

**T**he monastic code drastically limits the indulgence of desires and promotes a very self-controlled, calm way of life, of benefit to the monks and nuns themselves and an example which “inspires confidence” among the laity (Vism.19). The code is seen to be:

for the excellence of the *Saṅgha*, for the comfort of the *Saṅgha*, for the restraint of evil-minded men, for the ease of well-behaved monks,

for the restraint of the cankers belonging to the here and now, for the combating of the cankers belonging to other worlds, for the benefit of those who lack faithful commitment, for the increase in the number of those who have faithful commitment, for the establishing of the True Dhamma (*saddhamma*–), for following the rules of restraint (*vinayānuggahāya*) (Vin.III.21).

The rules are not so much prohibitions as aids to spiritual training that require those observing them to be ever mindful. By constantly coming up against limiting boundaries, they are made more aware of their “greed, hatred, and delusion,” and so are better able to deal with them. The rules are thus best seen as tools to help transform the mind and behavior. Whereas Vinaya seems to focus on overt physical and verbal behavior, unlike the Abhidhamma, both are complex systems of thought and training. Moreover, an investigation of how the Vinaya rules operate shows that assessment of a monk’s or nun’s mental state is often crucial to ascertaining the extent to which they have committed an offence. This in turn brings to light issues of wider relevance to Buddhist ethics.

#### WHERE KNOWLEDGE IS NEEDED FOR THERE TO BE AN OFFENCE

For a number of monastic rules, there is no offence “for one who does not know (*ajānantassa*).” This certainly applies to the *Pārājika* rules<sup>1</sup> on sexual intercourse, theft, killing a human, and a nun touching a man or going into a secluded place with a man.<sup>2</sup> Thus there is no offence for: (1) a monk who is asleep and unaware when a woman has sex with him (Vin.III.38); (2) a monk who takes something that he does not know belongs to someone else (Vin.III.54 and 58), or a monk who is unaware that hidden in his clothing is a jewel, placed there by a travelling companion, which will thus evade customs tax (Vin.III.62); (3) a monk who gives his alms–food to some other monks for a first taste, not knowing it is poisoned, such that it kills them (Vin.III.80). For the *Pācittiya* offence<sup>3</sup> of killing an animal, there is no actual offence if one mistakes an animal that one fires an arrow at as a non–living object (Vin.IV.124–125). Likewise, for the offence of making use of water while knowing that it contains living beings that will be killed by this, there is no offence “if he makes use of it not knowing that it contains living things” (Vin.IV.125).

#### *Madness and affliction by pain*

Knowledge may be absent not only due to normal ignorance of the facts, but also due to disruption of normal awareness. Thus it is universally the case in the Vinaya that an offence cannot be committed by a “madman” (*ummattaka*). It is also generally, but not always, the case that this is so for one who is “unhinged” (*khitta–citta*).<sup>4</sup> The Vinaya commentary talks of

madness as a medical condition. It explains that one may be temporarily “mad” due to trembling and itching, or permanently mad,

of distorted perception (*vipallatta-saññā*), abandoning moral integrity and concern for consequences, enacting unsuitable conduct; also, mixing (*maddantā*) them up, they do not know heavy and light training rules (Vin.A.269).

It sees those who are “unhinged” as those with “confused (*vikkhitta-*) minds, distorted perception (*vipallatta-saññe*),” due to a *yakkha* frightening them or kneading their hearts. Whether mad or unhinged, a person becomes one who is “entirely forgetful in mindfulness (*mutthassati*), he knows not even fire, gold, dung, or sandalwood, going about mixing up each direction” (Vin.A.270).

As well as madness, the Vinaya takes being “one afflicted with (painful) feeling” (*vedanaṭṭa*) as rendering a person not guilty of an offence. The Vinaya commentary says on this, “one who is afflicted with extreme painful feeling (and) does not know anything, of such a one there is no fault” (Vin.A.270). This knowledge-disrupting state is specified as an exculpatory factor, for example, in all the four main *Pārājika* offences except murder (Vin.III.33, 55, and 100).

#### THE RELEVANCE OF INTENTION

Just as a number of important rules require knowledge of what is going on for there to be an offence, so for many rules there is no offence “if it was unintentional (*asañcicca*).” Thus under the *Pārājika* rules, there is no offence: (1) in sexual intercourse “for one who is not willing (*asādiyantassa*)” (Vin.III.33); (2) in taking someone’s property “for the time being” (Vin.III.55), that is, without the “thought of stealing (*theyya-citta*)” (Vin.III.54), for example in rescuing a lost item (Vin.III.63–64); (3) in killing a human if it was “unintentional...for one not meaning death (*na maraṇādhippāyassa*)” (Vin.III.78); for example, if a stone is accidentally dropped on someone during building work (Vin.III.81); (4) in apparently making a false claim to advanced spiritual states when this is not one’s wish (Vin.III.100), for the offence is when the lie is made “consciously (*sampajāna-*)”, recognizing it is a lie before, during and after saying it (Vin.III.97); (5) and (6) for a nun to touch a man’s torso or go into a secluded place with a man if this is “unintentional” (Vin.IV.215 and 222); or (7) for a nun not to point out a *Pārājika* offence in another if this has the purpose of avoiding contention or a schism (Vin.IV.217). Thus such actions need compliance or relevant intention to be offences.

However, simply to have an intention without acting on it in any way does not constitute a breach of any monastic rule.<sup>5</sup> The Pali Vinaya com-

mentary, the *Samantapāsādikā*, gives no examples of an offence whose origin (*samuṭṭhāna*) lies only in *citta*, but only of those whose origin lies in body and *citta*, speech and *citta*, all three, just body, or just speech.<sup>6</sup> Thus when a monk saw a valuable garment and “the thought of stealing arose (*theyya–cittaṃ uppādesi*),” but he then regrets this, “There is no fault, monk, in the arising of a thought (*cittuppāde*)” (Vin.III.56). Once a bad intention is put into effect, though, the nature of the offence is proportional to the steps taken in this. Thus if a monk has decided to steal something, “If he touches it, there is an offence of wrongdoing. If he makes it quiver, there is a grave offence. If he moves it from the place, there is a *Pārājika* offence” (Vin.III.54).<sup>7</sup>

The Vinaya defines an offence done “intentionally (*sañcicca*)” as one “committed knowingly (*jānanto*), consciously (*sañjānanto*), purposefully (*cecca*)” (Vin.III.73).<sup>8</sup> On this the Vinaya commentary, as regards murdering a human, says:

“knowingly” (means) knowing “(this is) a living being”; “consciously” (means) being conscious that “I deprive it of life”; “purposefully” (means) having designed and determined (*cetevā pakappetvā*) by means of the intention of killing (*vadhaka–cetanā–vasena*) (Vin.A.437).

### ***The impact of doubt and error***

Now the above implies that an “intentional” action must always be done “knowingly,” yet this is not exactly so. In regard to killing an animal, the full *Pācittiya* offence may need to be done “intentionally, knowingly,” but it is still the lesser offence of “wrongdoing” if a monk, when he fires an arrow at something: (1) has some uncertainty that it is living; or (2) wrongly thinks that it is a living being when it is not; or (3) thinks it is not living, but is unsure of this (Vin.IV.125). Here, absence of full knowledge is a mitigating factor, but the intention behind the act still makes it a partial offence. Only when there is no uncertainty in mistakenly perceiving the living target as non-living does the lack of knowledge entirely remove the possibility of an intention to kill, so that there is then no offence at all.

Even in the case of rules that do not require intention for the rule to be broken, it is still a wrongdoing for a monk to *think* he is breaking them when he is not, as with drinking a non-intoxicant that he thinks is an intoxicant (Vin.IV.110), paralleling (2) above.<sup>9</sup>

### ***The impact of partial error or partial ignorance***

If one intentionally digs a “pitfall” “without a purpose (*anodissa*)”, but thinking that it will kill some being or other, it is still a *Pārājika* offence if

a human being falls into it and dies, if only a wrongdoing when an animal dies (Vin.III.76). Here, there is an intention to kill, in ignorance of exactly who or what might die by one's act, and the nature of the offence is determined by the contingent fact of the kind of being that ends up dying.<sup>10</sup>

According to the Vinaya commentary, this is even the case where someone plans to kill an animal but inadvertently kills a human instead. It cites the case of a monk who plans to kill a ram once it is dark. Later he kills what he thinks is the ram, but in fact is a human who has laid down, under a cloth, in the place where the ram had previously been. This is counted as a *Pārājika* offence and, if the victim was one of the monk's parents, or an Arahāt, as an act "of immediate effect (*ānantariya*)," definitely leading to hell in the next life. In explanation, the commentary says, "from the existence of the intention (*cetanāya atthibhāvato*), 'I (will) kill this thing (*imaṃ vatthuṃ māremīti*),' he is a murderer (*ghātako*), he commits an act with immediate effect and commits an act entailing defeat" (Vin.A.444). The *Kathāvatthu* (593) denies that one commits an "act with immediate effect" "unintentionally (*asañcicca*)," but the Vinaya commentary sees *any* intention-to-kill as sufficient: it need not be an intention to kill a parent or Arahāt. Likewise, an act "with immediate effect" is committed by a man who deliberately kills a thief who turns out to be his father (Vin.A.445).

On the other hand, if a person is lying unseen under a pile of straw, and a monk accidentally kills them by plunging a sword into the straw, to clean the sword, there is no offence, even if an Arahāt is killed: "due to the non-existence of a murderous intention (*vadhaka-cetanāya abhāvato*), he neither commits a karmic act (*kammaṃ*) nor an offence (*āpattiṃ*)" (Vin.A.445). If a monk intends to kill a parent or an Arahāt but ends up killing another person, or an animal, it is not an act "with immediate effect," even though there is a "harsh intention (*cetanā dāruṇā*)," but a *Pārājika* or *Pācittiya* offence, as is appropriate (Vin.A.445).

Thus while the presence of intention is a crucial matter for many offences, the gravity of the offence is modified upwards or downwards, relative to the nature of the intention, by the nature of the being that is affected by the action.<sup>11</sup> If one plans to kill a living being, and the killing is carried out, any error or ignorance as to the nature of the being killed may make the action a more weighty one, and *not* be a mitigating factor.

The opinion of the *Abhidharma-kośa-bhāṣya* is different from the above, though. It holds that it is not an "act of immediate effect" if a person kills his mother when he mistakes her for another person he had intended to kill (AKB.IV.103d). However, in saying that there is no such offence if a man also kills his father when he (intentionally) kills a mosquito on him

with an axe, the Pali tradition might agree. In such a case, the death must surely be an accident, as a mosquito cannot be mistaken for a man. Yet on the above commentarial logic, all that is needed for the death to be an act of immediate effect is *some* intention to kill. Nevertheless, the man actually does kill the being he intended to kill — the mosquito — , so the death of the father could be seen as an unfortunate, accidental side-effect: “collateral damage” in modern parlance, albeit of a reckless act.

***Recklessness, carelessness, and avoiding foreseeable harm***

Generally speaking in the Vinaya, an action which requires intention for it to be an offence is no offence at all if there *is* no bad intention. Moreover, as Andrew Huxley has shown (1995), the *Kurudhamma Jātaka* (J.III.366–381) emphasizes the idea that, at least in a lay context, unintended harm to others should not be counted against one, and it is not wise to agonize over such matters. Nevertheless, in a few Vinaya cases, behavior of a reckless nature is condemned. When a monk sits down hard on some rags on a chair, killing a young boy underneath them, he is not guilty of a *Pārājika* offence, as he meant no harm, but is guilty of a wrongdoing, for “monks should not sit down on a seat without noticing (*appaṭivekkhitvā*) [what they are doing]” (Vin.III.79). Likewise, when some monks, in fun, throw a stone down Vultures Peak, and it ends up killing a man, they are guilty of a wrongdoing (Vin.III.82).

When someone is killed as an unfortunate and unforeseeable result of an action, though, there is no offence at all. This is so when someone dies, perhaps of breathlessness, after a rough and tumble in which others tickle him (Vin.III.84), or a person is accidentally killed when someone drops a stone on him during building work (Vin.III.81). Such actions are unintentional and can be seen to only involve carelessness, not actual recklessness. For a number of rules, it is actually specified that there is no fault if the action is “unintentional, for one who lacks mindfulness (*asatiyā*), not knowing.” Here, being “without mindfulness” would seem to refer to being “absentminded” or perhaps “careless.” This no-fault clause applies in the case of: (1) the monks’ *Saṅghādisesa* offence of physical contact with a woman (Vin.III.126), and similar nuns’ *Pārājika* offences on contact with a man (Vin.IV.215, 222); (2) the *Pācittiya* offences of digging the ground, destroying vegetable growths, sprinkling with water known to contain life, and killing a living being (Vin.IV.33, 35, 49, and 125); and (3) many of the *Sekhiyā* rules (Vin.IV.186–207).

Carelessness, or lack of mindfulness, also seems relevant to dreaming. Where an intention occurs in a dream, even though it is “acted” on, this is insufficient for there to be any kind of offence. Thus dreaming of

having sex is not an offence (Vin.III.39) and “intentional (*sañcetanikā*) emission of semen, *except* during a dream, is an offence requiring a formal meeting of the *Saṅgha*” (Vin.III.112).<sup>12</sup> This is after some monks go to sleep, and then sleep “with confused mindfulness, without clear comprehension (*mutṭhassaṭī asampajānā*).” It is surely these factors, which make the dreamer have insufficient awareness to know what he is doing, which render the intention insufficient in nature for there to be an offence. This is even though, according to the *Kathāvatthu* (617–618), dream consciousness is not all ethically indeterminate (*abyākata*), but can be unskillful or skillful.

In spite of the above cases, poor mindfulness does not always excuse a person, particularly regarding matters where intention is not needed for an offence to take place. In the *Parivāra*, one of the ways that a monk might fall into an offence is “through confusion of mindfulness (*satisammosā*)” (Vin.V.102 and 194).<sup>13</sup> The commentary cites as an example “not realizing how many nights have passed” (Vin.A.1376), with the Thai monk Vajirañāṇavarorasa helpfully explaining this as referring to absent-mindedly keeping honey for longer than the allowable seven days (1969, p. 17). In such cases, the American Theravādin monk Thanissaro says:

There are...acts with damaging consequences that, when performed unintentionally, reveal carelessness and lack of circumspection in areas where a person may reasonably be held responsible. Many of the rules dealing with the proper care of communal property and one’s basic requisites fall in this category...the minor rules that do carry such penalties may be regarded as useful lessons in mindfulness (Thanissaro 1994, pp. 24–25).

The question of carelessness and foreseeable consequences is particularly relevant to medicine. If a monk gives treatment or medicine to an ill monk and the latter dies, there is no offence if he “did not mean to cause his death (*na marañādhippāyassā ti*)” (Vin.III.82). Nevertheless, it is a wrongdoing if a woman dies after a monk gives her a medicine intended to make her fertile, or not fertile (Vin.III.84). In the first of these latter cases, the commentary implies that the monk did not know how to give any medicine that would help in stabilizing the fetus, but gives a medicine leading to death all the same (Vin.A.469; cf. Bapat Hirakawa 1970, p. 329). The commentary goes on to say that the monk will commit a wrongdoing if he acts as a physician to anyone other than other monastics, or close relatives. This makes it clear that the offence is one of inept prescribing which, additionally, tarnishes the reputation of the *Saṅgha*.

What implications might the above cases have for the modern sce-

nario of a doctor having to give a terminal patient increasing doses of pain-killer which he foresees will kill the patient, but where his intention is only to ease the pain? Damien Keown argues that this is acceptable by Buddhist ethics, due to its emphasis on intention, irrespective of any result one may foresee as the side-effect of one's action (1995, p. 175). Given that the intention is not to kill, the doctor's action would not be a *Pārājika* offence for a monk. Nevertheless, if he can foresee that death will result from his action, this might be a wrongdoing for a monk, due to the element of recklessness.

A passage which might imply that the doctor was completely free of fault is found in the *Milindapañha* (165–167). This deals with the issues raised by the Buddha giving a sermon (A.IV.128–135) at the end of which sixty monks of wrong view vomit blood, though others benefit from it. The *Milindapañha* holds that the Buddha's intention was to bring benefit to his audience, and that the monks vomited blood "simply on account of what they did themselves" (165), so that the Buddha is faultless. Nevertheless, as the *Milindapañha* elsewhere sees the Buddha as omniscient, knowing everything (Miln.267), would not its author(s) have expected the Buddha to know that some, at least, in his audience would vomit blood, even if not being able to precisely predict who?<sup>14</sup> Accordingly, the *Milindapañha* could be seen to imply that there is no fault even in a case where there is foresight of future harm, if there is no intention to harm.

What, though, of actions which inadvertently kill living beings other than human beings? In the above passage, the *Milindapañha* (166) says that to accidentally crush worms while crushing sugarcane for its juice is not blamable. This is unproblematic in the case where one does not know or suspect that the sugarcane contains worms. The nearest case to this in the Vinaya is *Pācittiya* 20, on sprinkling clay or grass with water known to contain living beings (Vin.IV.49, cf. 125). Here, being absentminded leads to there being no fault (as previously said), as does ignorance that the water actually contains life, but doing the act when one is not sure that the water does not contain life is an act of wrongdoing. In this case, suspicion that an action may kill something means that it is blamable to a degree. Thus foresight that an action would kill something, even if this is not the intent, would certainly make such an action a wrongdoing, at least for monks and nuns. This would imply, I suggest, that one reason a monk should not drive a car is that insects will be inadvertently killed, a very predictable result, at least in hot climates or on hot days.



***Compassionate motivation***

An action's intention is not as such the same as its motivation. Damien Keown expresses this distinction well when he says that motive concerns the ultimate aim of an action, while intention concerns its more immediate goal, an objective on the way to attaining an ultimate aim. Thus one who kills to attain an inheritance has the motive of attaining money, and also the intention to kill (1995, p. 62).

This raises the question of whether a compassionate motivation excuses an action that would otherwise break a precept, as can be the case in Mahāyāna “skillful means” scenarios. On this, the Pali Vinaya presents some relevant cases. If a monk releases a trapped animal so as to steal it, it is a *Pārājika* offence, but there is no offence if he does so out of compassion, with no intent to steal (Vin.III.62). This is an interesting case as it hinges on the vision either of animals-as-property or of animals-as-sentient-beings. In all other relevant cases, compassionate motivation is not a mitigating or exculpatory factor in an offence. Thus:

- it is an offence to ordain a person who is condemned to death by the civil authorities (Vin.I.75 and IV.225–226);
- it is a *Pārājika* offence for a monk to successfully incite an ill monk to suicide, or a family to bring a badly mutilated relative to death, or an executioner to kill a condemned man quickly (Vin.III.79, 86 and 86).

In the latter group of cases, the problem is that the actions still have death as their immediate aim, or intention.

As to whether *lack* of compassion can lead to an offence, the most relevant Vinaya cases are ones where an omission to act is an offence. The Vinaya commentary describes these as training rules that “originate in non-action (*akiriyato*)” (Vin.A.270). However, offences so classified are not in the form of actions one *should* perform, from compassion. Examples are:

- standing to overhear other monks arguing, which is *akiriya* if one just stays where one is, and does not move so as to listen (Vin.A.879, on Vin.IV.150);
- laying aside a robe, donated during *Vassa*, for longer than the period till the next *Kāṭhina* celebration (Vin.A.729, on Vin.III.261), an offence which can arise by failing to do something about a previously laid-aside robe.

The Thai monk Vajirañāṇavarorasa cites, as an offence by omission, *Pācittiya* 84 (Vin.IV.163), describing this as an act of not keeping safe a layperson's possessions left in a monastery (1969, p. 15). However, the commentary does not classify this as an *akiriya* action (Vin.A.882), and the Vinaya simply says it is an offence to pick up valuables, except if this is in a monastery or house to lay them aside for the owner; it does not actually

say that a monk *should* pick up the valuables.

***Carrying out intentions through the medium of others***

If a monk gets someone else to do a wrong action for him, this does not generally excuse the action. If a monk “enjoins (*āṇāpeti*)” another person to steal, or to kill a human being, this is already an act of wrongdoing, as a step has been taken to effect an unskillful intention. It becomes a *Pārājika* offence for both parties once the theft or murder has been carried out (Vin.III.53 and 75). If the instigator is remorseful (*vippatisārī*) about his order before it is carried out, he needs to tell the other person of this to avoid a *Pārājika* offence for himself if the deed is done (Vin.III.54 and 75).

If orders of this type are changed or confused by the instigated person, however, this affects the nature of the action: (1) if the instigated person knows who is to be killed, but kills someone else, it is a *Pārājika* offence for him alone; (2) if the instigated person mistakes the identity of who he has been told to kill, it is a *Pārājika* offence for him alone if he kills the person he wrongly takes to be the target; (3) yet it is still a *Pārājika* offence for him and the instigator if he changes the misunderstood order and kills the person originally intended by the instigator (Vin.III.75).

The same principles apply in the case of theft (Vin.III.53). In these scenarios, change to and confusion of the order only makes the instigator innocent of a *Pārājika* offence if, due to matters beyond his control, the deed does not end up being carried out on its intended target.<sup>15</sup> Nevertheless, if an order to kill a specified person is passed down a specified chain of command, the original instigator is not guilty of a *Pārājika* offence if the person he gives the order to changes the remaining chain of command, even though the specified person is killed.<sup>16</sup> Here the crucial matter seems to be that the second person in the chain changes the route to the act, even though the originally intended person ends up getting killed. Nevertheless, collective guilt applies when a group of monks decide to steal some particular goods. All are guilty of a *Pārājika* offence even though only one carries out the actual theft (Vin.III.64).

**REMORSE, GUILT, AND REGRET**

In the Vinaya, whenever a monk does a deed that he thinks is, or might be, an offence, it is said “*tassa kukkucam ahoṣi*”: he had remorse, he felt uneasy, he had a guilty conscience (e.g., Vin.III.34). This is so whether or not, on raising the issue with the Buddha or other Vinaya expert, he turns out to have committed an offence.

The term *kukkucca* is elsewhere used as part of the term for the fourth

hindrance, *uddhacca–kukkucca* (e.g., D.I.73), “restlessness and worry,” and the PTS *Pali–English Dictionary* says *kukkucca* means “bad doing, misconduct, bad character” or “remorse, scruple, worry.” As “guilty” can refer to both a state of action and a state of mind, “guilty conduct” or “guilt” also seem close to the meaning of *kukkucca*. As an unskillful mental quality that may occur in hate-based consciousness, the *Visuddhimagga* says on *kukkucca*:

The vile (*kucchita*) that is done (*kata*) is villainy (*kukata*). The state that is *kukkucca*. It has subsequent regret (*pacchānutāpa*–) as its characteristic. Its function is sorrow about what has and what has not been done. It is manifested as remorse (*vippaṭisāra*–). Its proximate cause is what has and has not been done. It should be regarded as a kind of slavery (Vism.470).

*Kukkucca* is closely related to *vippaṭisāra*, which I. B. Horner sees as “remorse,” but as literally “strongly remembering something against [one-self].”<sup>17</sup> The latter is seen as something that a follower of the Buddha wishes to avoid, by abstaining from bad conduct (S.IV.320). While guilt and remorse are seen as consequences of misconduct which may lead on to improving one’s ways, they are not themselves skillful states. Indeed, the Arahāt is said to be without *kukkucca* (S.I.167), and there is reference to cankers (*āsavās*) that are “born of *vippaṭisāra*” (A.III.166). Moreover, in the *Parivāra*, one way that a person may come to fall into an offence is from being *kukkucca–pakatattā* (Vin.V.102) or *kukkucca–pakatatā* (Vin.V.194).<sup>18</sup> I. B. Horner, in the *Book of the Discipline*, translates these phrases, respectively, as “being scrupulous by nature” and “from ordinary bad conduct.” Nevertheless, the phrases, which appear in identical contexts, are likely to be closer in meaning, perhaps something like “from a guilty nature,” such that there is reference to doing an act in bad conscience.<sup>19</sup>

This meaning is suggested by Vin.I.131 and its commentary. Here some monks commit a wrongdoing by reciting the *Pāṭimokkha* though others from their local *Saṅgha* are absent:

Thinking, “Indeed, it is allowable for us to carry out the observance, it is not unallowable for us,” they, acting from a guilty nature (*kukkucapakatā*), carry out the observance and recite the *Pāṭimokkha*.

The commentary says, here:

As one overcome by desire is called “of a desirous nature” (*yathā icchāya abhibhūto icchāpakato ti vuccati*), thus having earlier made an ascertainment (*sanniṭṭhānaṃ*), at the time of acting they are overcome by guilty conduct (*kukkuccena*) through the unallowable being seen and reckoned as allowable, being of a guilty nature (*kukkucca–pakatā*) (Vin.A.1065).

Vajirañāṇavarorasa sees the term *kukkucca-pakatat(t)ā* as meaning, “done with doubt but done all the same,”<sup>20</sup> and Thanissaro Bhikkhu also says, “acting out of uncertainty; that is, not being sure if an action is proper, but going ahead with it anyway (1994, p. 25).” Nevertheless, the Vin.I.131 case above comes after one of monks reciting the *Pāṭimokkha* when they are “in doubt (*vematikā*),” so acting *kukkucca-pakatā* appears not quite the same as this. It seems to refer to guilty self-deception, fooling oneself that what one is doing is right, but not quite believing this and thus feeling guilty.<sup>21</sup>

If there are problems with guilt, honest regret seems to be skillful. The importance of regretting a bad action is seen in the refrain:

In the discipline of the Noble Ones, this is growth: whoever having seen a transgression (*accayaṃ*) as a transgression, makes amends for it according to the rule (*yathā-dhammaṃ paṭikaroti*), he attains restraint (*saṃvaram*) in the future.<sup>22</sup>

Accordingly, a vital part of monastic discipline is a monk’s acknowledgment to another monk that he has digressed from a training-rule.

#### BLAMABLE BY THE WORLD AND BY ORDINANCE

The monastic rules are said, specifically, to guide the first aspect of the three-fold training: “training in the higher morality (*adhi-sīla-sikkhā*), training in the higher thought (*adhi-citta-*), training in the higher wisdom (*adhi-paññā-*)” (Vin.III.24). Nevertheless, the monastic code covers much besides the primarily moral concerns of the five lay precepts. In this regard, a distinction is made in the *Milindapañha* between that which is “blamable by (or in) the world” (*loka-vajja*) and what is “blamable by ordinance” (*paññatti-vajja*). It explains the first as the ten “ways of unskillful action” (*akusala-kamma-pathā*), those of the three forms of wrong action, four forms of wrong speech, and three forms of wrong thought (e.g., D.III.269). It takes *paññattivajja* actions as whatever is unfitting for renunciants, but not blamable (*anavajja*) in lay-people, such as eating at the wrong time, injuring growing vegetation, or playing in water; though it sees both categories as types of “defilement” (*kilesa*) (Miln.266).<sup>23</sup> Thus actions “blamable by ordinance” are those on which the Buddha ordained rules for monastics in areas not already within lay ethics.

The distinction is taken up in the Vinaya commentary (e.g., Vin.A.228), which says that the monastic rules are all on *paññattivajja* actions,<sup>24</sup> except for rules which are only broken when the person knows what he is doing (*sacittaka*) and acts with an unskillful *citta*, which makes it a *loka-vajja* rule (Vin.A.228).

Of the ten precepts of a novice, the *Khuddakapāṭha* commentary takes

the last five as on *paññattivajja* matters. The first five, including avoiding non–celibacy, are seen as on deeds which are always done with an unskillful *citta* and are “blamable by nature” (*pakati–vajja*), a seeming synonym for *lokavajja* (Khp.A.24). The Vinaya commentary agrees that sexual intercourse is a “blamable by the world” (Vin.A.228); even though it is not against the five lay precepts. One might wonder that sexual intercourse is seen as blamable “by the world” *if done by renunciants*, but the Vinaya commentary simply says “as it is committed due to attachment (*rāga–vasen’eva*), it is a *lokavajja*. ... As it is committed with a greed–*citta*, it (involves) an unskillful *citta*” (Vin.A.271).<sup>25</sup>

As regards the subject of the fifth lay precept, on taking intoxicants, it is notable that different opinions existed as to whether this was blamable “by the world” or “by ordinance.” In the Theravāda tradition, it is “blamable by the world” even though a person need not know what they are doing (*acittaka*) in order to break it (Vin.A.860). The *Abhidharma–kośa–bhāṣya* (AKB.IV.34d) records that monks specializing in Vinaya held, with the Theravādins, that it is “blamable by nature,” that is “by the world.” Those specializing in Abhidharma said that it is only blamable by nature when taken by a person whose mind is defiled, as when an amount is drunk which the person knows will be intoxicating, but not if a small amount is taken as a remedy, in a quantity that he knows will not be intoxicating. They held that alcohol is forbidden even to ill monks only because the inebriating effect of a given amount of drink may vary. Thus breaking the fifth precept is, as such, only blamable by ordinance, but not by nature. The author of the *Abhidharma–kośa–bhāṣya* agrees with this position, seeing the precept as a support for heedful vigilance (AKB.IV.29.a–c). Similarly, the Mahāyāna commentator Jinaputra held that drinking alcohol is blamable by nature only when done with a defiled thought; otherwise, it is blamable by ordinance as a guard against carelessness leading to other offences (Tatz 1986, pp. 321–322).

This variance of opinion on the fifth precept may be related to the fact that drinking alcohol is not included in “wrong action” or the ten “paths of unskillful action.” Moreover, none of the *Pārājika* offences relate to it, whereas with the first four of the five lay precepts: (1) serious breach of the precepts on killing and lying, respectively the first aspects of right action and right speech, are *Pārājika* offences: murdering a human and lying about spiritual attainments; (2) moderate breach of the precept on theft is a *Pārājika* offence; and (3) any willing sexual intercourse, which need not even break the precept on sensual misconduct, is a *Pārājika* offence.

**OFFENCES COMMITTED WHEN THE MIND IS IN A SKILLFUL STATE**

The *Parivāra* of the Vinaya refers to falling into (some) offences whether in a skillful, indeterminate (*abyākatta-citta*) or skillful state of mind (Vin.V.207; see also Vin.A.271).<sup>26</sup> Among the *Pācittiya* rules, those which may be broken when the mind is in any of these three states include nos. 56–59 (Vin.IV.115–121), for example:

- on lighting a fire to warm oneself, when one is not ill and there is no good reason (Vin.A.862);
- on using a new robe without disfiguring it slightly (Vin.A.863).

Each of these actions is classified by the commentary as being a *paññattivajja* one. As John Holt says: “Many of the [*Pācittiya*] offences were the direct result of a *bhikkhu* not being aware of the implications of his act that had been performed with absolutely no evil or wrongful intent” (Holt 1981, p. 99). He cites *Pācittiya* no.6, on a monk lying down on a bed for the night under the same roof as a woman (Vin.IV.20), a rule made after Anuruddha quite innocently did this and had to rebuff the amorous advances of the lady of the house. Here Holt says:

Evidently, the point of these stories is to emphasize the potentially dangerous context that a *bhikkhu* has allowed himself to fall into. Again, this reflects the preventative nature of the disciplinary code (Holt 1981, p. 99).

**OFFENCES COMMITTED WITHOUT AWARENESS (*acittaka*)**

The Vinaya commentary classifies the above *Pācittiya* offences (nos. 56–59 and 6) as still being faults if done “without thought/awareness” (*acittaka*; Vin.A.863–864 and 750). This term appears first in the *Parivāra* (Vin.V.125 and 207), along with its contrasting term *sacittaka*, both as terms applied to an “offence” (*āpatti*). The commentary explains: “Where one commits an offence only when one is with *citta*, that is *sacittaka*; where one commits an offence (even) when one is without *citta*, that is *acittaka*” (Vin.A.270). In the *Parivāra* passages, it is said that one might fall into an offence with or without *citta*, and “rise from it (*vuṭṭhāti*),” that is, put it behind one, either with or without *citta*. The commentary explains:

Beginning with lying down together [i.e., *Pācittiya* no. 6], falling unintentionally (*asañcicca*) into an offence which is blamable by ordinance (*paññattivajjam*), he falls into it without *citta* (*acittako*); acknowledging it (*desento*), “he rises from it with *citta*.” Whatever one falls into intentionally (*sañcicca*), “he falls into it with *citta*” (*sacittako*), rising from it by covering over as with grass, “he rises from it without *citta*” (Vin.A.1380).

Here the explanation of rising from an offence without thought/awareness alludes to a passage where a method of settling a dispute that becomes heated is for both sides to acknowledge fault without specifying what their fault was (Vin.II.87).

This makes clear that the relevant thought/awareness relates to knowing what one is doing, and does not relate to awareness that there is a rule on a certain matter. Once a rule has been made, ignorance of it is no excuse for breaking it. Thus one of the ways that one may fall into an offence is “through ignorance (*aññānatā*)” (Vin.V.102 and 194). Moreover, the *Milindapañha* holds that to do an action not recognizing (*ajānato*) that it is plainly immoral makes this a particularly wicked act (Miln. 84 and 158), as argued in my paper on “Criteria for Judging the Unwholesomeness of Actions in the Texts of Theravāda Buddhism.”

The *Parivāra* also uses the terms “an offence where acquittal is related to perception (*āpatti saññā-vimokkhā*)” and “an offence where acquittal is not related to perception (*āpatti no saññā-vimokkhā*)” (Vin.V.116). The commentary explains these, respectively, as *sacittaka* and *acittaka* offences (Vin.A.1321), or as one “which has the factor (*-aṅgaṃ*) of *citta*” or which lacks it (Vin.A.270). The slight difference of emphasis in the terms *saññā* and *citta*, here, are perhaps shown in the commentary’s discussion on the first *Pārājika* rule, willing sexual intercourse (Vin.III.22, with III.33):

From being free (of fault) due to the non-existence of the perception of sense-pleasure (*kāma-saññā*) relating to sexual union (*methuna paṭisamyuttāya-*), it is where acquittal is related to perception. “There is no offence for one who does not know, (or) is not willing” (*anāpatti ajānantassa asādiyantassa-* Vin.III.33) (means) one commits an offence only when one has a thought of sexual intercourse (*methuna-citten"eva*) (Vin.A.271).

This suggests that *saññā* relates to how one classifies an action — here, seeing intercourse as pleasurable — while *citta* relates to awareness of what is going on (for example, not being asleep, Vin.III.38) and mental affirmation of this.<sup>27</sup>

The Thai monk Vajirañāṇavarorasa explains, “A rule is broken *acittaka* if the Vinaya makes no mention of ‘purposefully’ (*sañcicca*), or ‘knowingly’ (*jānaṃ*) as factors which need to be present for a particular offence to be committed” (1969, p. 14). An example he cites (1969, p. 13) is *Pācittiya* 51, against drinking intoxicants, where the offence is committed even if one thinks that an intoxicant that one drinks is not an intoxicant (Vin.IV.110).<sup>28</sup>

CONCLUSION

We can thus see that the Vinaya, while focusing its attention on acts of body and speech, takes great account of the agent's mental states in assessing his or her actions. Relevant factors in this are the presence or absence in the agent of: knowledge, correct perception of a situation, doubt, intention, or carefulness, and sometimes underlying motive.

Knowledge may: (1) relate to whether a rule exists on a matter, though ignorance of this is no excuse. Moreover, if a sane person does an evil action while not recognizing it as plainly immoral, this makes it a particularly wicked act; (2) be of the kind of being that an intentionally harmful action will end up affecting, where ignorance is no excuse, and may lay one open to a very serious offence, as when a pit is dug to kill some being, and ends up killing a human; (3) be of the nature of the specific being or thing that one's action is aimed at, where ignorance often does excuse, as when one takes something not knowing it belongs to someone else; (4) be of whether one's action will have a harmful effect, where also ignorance may excuse, at least in part, as with using water where one wrongly thinks that any beings in it will not be harmed by this;<sup>29</sup> (5) be in the form of awareness of what one is doing, where unawareness may or may not be an excuse.

Doubt as to the nature of the being or thing affected by an action is only a partial excuse. Accordingly, perception, if uncertain, is a partial excuse, but if plain wrong, it *may*: (1) make something which is not otherwise an offence into an offence, as when a monk fires an arrow into an inanimate object, but misperceives it as an animal: here the misperception allows a murderous intention to exist; (2) lead to committing a more serious offence than one intended to, as with killing one's father when one thought one was killing a ram: here the misperception magnifies the impact of an already existing murderous intention.

Intention is required for some offences to be committed, but not for others, and where it is, its impact will be dependent on one's knowledge, doubt, and perception regarding the facts of the situation. Even in cases of offences that require no intention to be committed, a wrongdoing is done if one intends to commit the offence, but does not actually do so due to a misperception. As intention is not required for some offences to be committed, these may even be committed with a skillful or indeterminate state of mind.

Some offences are excused if done absentmindedly, while others may be committed even if done through poor mindfulness, and particularly if done recklessly. Sometimes the underlying motive excuses, as with releasing a trapped animal out of compassion, not to steal it, or not pointing out



someone's *Pārājika* offence so as to avoid a schism. A relatively good motive does not excuse, though, when someone is intentionally killed.

In regard to actions carried out through someone else:

— the instigator and agent have an equal level of guilt if the agent ends up doing what he was told to do: even if the agent mistakenly thinks he is changing the target of the action, for example he mistakes “Kill X” for “Kill Y” and then decides to kill X “instead”;

— where the agent kills someone other than the instigator intended, the instigator does not commit a *Pārājika* offence, but only a wrongdoing;

— where a murder is carried out as a result of an order being passed down a specified chain of command, the original instigator is not guilty of a *Pārājika* offence if the chain of command is changed, even if his intended victim is still killed.

Here, a person's responsibility for an ordered action is more open to dilution when the order is passed down a chain of command, rather than being directly given to the agent of the action. However, in the case of a group of monks engaged in a collective plan, all share the guilt of the first to carry out the plan, and responsibility is not diluted.

As regards guilt and remorse, while these may play a part in a person changing their ways, they are not, as such, seen as skillful states, though healthy regret is more positively assessed.

In these various matters, the Vinaya judgement in the case of offences “blamable by the world” seem also to be of direct relevance to lay ethics, while those on offences “blamable by ordinance” generally go beyond this. It is notable, here, that the categories of “unskillful action” and “monastic offence” may differ in their application in the following cases:

— an unskillful state of mind that is not put into effect in body or speech is not a monastic offence;

— those monastic offences which can be carried out when a person lacks awareness, which might be done even by a person in a skillful state of mind.

While some monastic rules thus go beyond the ambit of lay ethics, they still aim to facilitate the undermining of the greed, hatred, and delusion that are the root of unskillful actions, whether for lay people or monastics.

### **Notes**

<sup>1</sup> Which entail permanent expulsion from the *Saṅgha* if broken.

<sup>2</sup> Vin.III.33, 62, 78; Vin.IV.215, 222.

<sup>3</sup> No. 61. A *Pācittiya* rule involves “expiation” if broken.

<sup>4</sup> Vin.III.33 for a case where this is so; Vin.III.78 and Vin.IV.125 for cases where it is not so. That *khittacitta* is sometimes omitted from the exculpatory cases may be because it was seen as a synonym for *ummattaka*, so that both terms did not need to be given. On madness and being “unhinged,” see also M.II.108, J.III.514–19, Miln.220–21.

<sup>5</sup> “*Āpatti* is not committed in the mind, that is, only thinking that ‘I shall do this and that.’” (Vajirañāṇavarorasa 1969, p. 12). Nevertheless, there is one view, which if expressed persistently in speech, is an offence: that sense–pleasures are no “stumbling–block” (Vin.IV.135, cf. M.I.306).

<sup>6</sup> As made explicit in the commentary on it, *Vimati–vinodanī* 125, on Vin.A.270 (Bapat and Hirakawa 1970, p. 207).

<sup>7</sup> A “grave offence” (*thullaccaya*) and an “offence of wrongdoing” (*dukkata*) are of course lesser offences than a full *Pārājika* offence.

<sup>8</sup> Also Vin.III.112 and Vin.IV.290; also at Vin.IV.124, in the explanation of *sañcetanika*. Cf. Vin.III.74, on one who “deliberately and purposefully” incites someone to suicide: “‘deliberately (*iti–citta–mano*):’ as the thought (*cittam*), so the mind (*mano*), as the mind, so the thought. ‘Purposefully (*citta–samkappo*):’ perceiving (*–saññī*) death, intending (*–cetano*) death, desiring (*–ādhippāyo*) death.”

<sup>9</sup> It is also a wrongdoing to drink a non–intoxicant when one is not sure that it is a non–intoxicant, paralleling (3) above. The same type of judgments are given in relation to spending the night under the same roof as “a woman” (Vin.IV.20). Note that, at Vin.IV.110, the full offence is committed if one drinks an intoxicant while thinking it is a non–intoxicant.

<sup>10</sup> Likewise, if one intends to kill a person, it is still a *Pārājika* offence if one mistakenly kills one person instead of another (Vin.III.85).

<sup>11</sup> Likewise, the nature of the offence depends on the degree of its effect. In digging a pit for a man to fall into and die, it is a wrongdoing to dig the pit; if the man falls into it, a grave offence if he thus suffers pain, and a *Pārājika* offence if he dies (Vin.III.76). Also in regard to theft, the action is a *Pārājika* offence, grave offence or wrongdoing according to the value of what is stolen (Vin.III.51). As regards the being stolen from, the Vinaya says that there is no offence in “taking what belongs to animals,” such as the remains of a kill (Vin.III.58). Moreover, at least as regards morality, if not monastic precept, a theft is seen as worse according to the virtue of the person stolen from (Asl.98).

<sup>12</sup> An exception is thus made to the previous rule after some monks have had wet dreams and they ask, “Is this intention permitted?” The Buddha says “Monks, this is an intention (*esā cetanā*), but that (offence) does not apply (*sā ca kho abbohārikā*).” As explained by Vin.A.488, on *abbohārikan*

at Vin.III.91, the term means “it does not belong to the business and is not a form of offence.”

<sup>13</sup> The *Milindapañha* affirms that an Arahāt, while he is incapable of doing an action “blamable by the world,” such as breaking one of the five lay precepts, he may find that he has done an action which is blamable only for monastics (*paññattivajja*: see below), though without being “confused in mindfulness (*satisammoso*),” due to lacking knowledge (*ajānanto*) on some factual matter. Examples of rules he might thus come to break are: eating at the wrong time (Vin.IV.85), injuring growing vegetation (Vin.IV.34), and playing in the water (Vin.IV.112) (Miln.266–67). However, of these offences, the second is excused by lack of knowledge (and by lack of mindfulness), while only the first and third is not so excused, and so might be counted as an offence for a mindful Arahāt lacking in some knowledge!

<sup>14</sup> Note that in the *Suttas*, the Buddha is only seen to have the higher knowledges, when he chooses to use them, not to know everything all the time, and not, as such, to know the future (M.I.482).

<sup>15</sup> Likewise if a murder is ordered when the instigator makes a certain sign, or at a specified time, the instigator only commits a *Pārājika* offence if the murder is done on that signal, or at that time (Vin.III.78).

<sup>16</sup> Vin.III.75, with a parallel for theft at Vin.III.53. The interpretation of this was aided by Thanissaro 1994, p. 59.

<sup>17</sup> *Book of the Discipline*, Part I, 171, note 3.

<sup>18</sup> At Vin.A.1339 (on Vin.V.133), *kukkuccayakatatā*.

<sup>19</sup> The term *pakata* means “by nature,” with *pakatatā* meaning “by the state of (his) nature” and *pakatattā* “from (his) natural self,” sometimes in the sense of from natural virtue (Vin.II.6).

<sup>20</sup> “*Bhikkhus* who doubt whether in doing such and such a thing they will break a rule but nevertheless continue (with that action) carelessly, if in fact their actions are against some rules, then the penalty for them will be in accordance with the base but if there is no offence, a *dukkata* (wrongdoing) must arise due to ‘doing with doubt but doing all the same’” (1969, p. 17).

<sup>21</sup> The *Parivāra* (Vin.V.133 and 184) says that a Vinaya expert is said to be a “point of reference (*paṭisaranam*) for *kukkucca-pakatānam*.” Horner translates the phrase “those who are affected by scruples,” though “those of bad conscience” keeps closer to the meaning as argued above.

<sup>22</sup> Vin.II.192; Vin.IV.18–19; D.III.55; S.II.127–8, 205.

<sup>23</sup> Nevertheless, even for murdering (Vin.III.78), for one who is the “first doer (of an offence)” (*ādikammika*), before a monastic rule is made on the matter, there is never any monastic punishment laid down in the Vinaya (e.g., Vin.A.373 and 502), at least on the occasion of the offence. This is so

even for Sudinna, who causes the first rule (against sexual intercourse) to be made, he being “the first–doer of many wrong things (*akusalānaṃ dhammānaṃ ādikattā pubbaṅgamo*)” (Vin.III.21; and see Vin.A.270). This seems to be on the legal principle that one cannot be punished for breaking a law that has not yet been made — even when the act is clearly immoral.

<sup>24</sup> At Vin.A.1319, these terms are used, respectively, to explain the *Parivāra*’s “offence with the description of being blamable (*sāvajja–paññatti āpatti*)” and “offence with the description of being non–blamable (*anavajja–paññatti āpatti*)” (Vin.V.115).

<sup>25</sup> Of course, for a monk, one bound to celibacy, to have sex is particularly bad — he goes to hell (Vin.III.20–21). He may never be re–ordained, though a person who first disrobed, “disavowing the training and declaring his weakness” before having sex, may be re–ordained (Vin.III.23).

<sup>26</sup> Vin.II.91 (cf. Vin.V.106) holds that a “legal question arising from offences (*āpattādhikaraṇaṃ*)” may only be unskillful or indeterminate, not skillful. The first type relates to when “a transgression is committed knowingly, consciously, deliberately (*jānanto, sañjānanto cecca*),” the second to when a transgression is committed “not knowingly, not consciously, not deliberately.” This does not mean that an offence cannot be committed with a skillful mind, but that raising a legal question on whether a specific action is an offence is not done with a skillful mind (as is apparent from other nearby passages). Nevertheless the passage acknowledges that it is less problematic to question whether an action is an offence if it is one that is an offence even if committed unknowingly.

<sup>27</sup> The *Milindapañha* (p. 158), though, relates an offence being one “where acquittal is related to perception” to “one who does not know” being innocent.

<sup>28</sup> Vin.A.860 sees this as “where acquittal is not related to perception, with (no need for) awareness (of what one is doing), blamable by the world.” Mental engagement comes back into play, though, when a monk drinks something non–intoxicating that he thinks is (or might be) intoxicating, for this is still an offence, albeit the lesser offence of “wrongdoing” (Vin.IV.110).

<sup>29</sup> Vin.IV.125: while the exculpatory summary here only says, “There is no offence if he makes use of it not knowing it contains living beings, knowing that it does not contain living beings, knowing that they will not die from this use,” it is earlier said, “‘That contains living things’ means: if knowing (this), he makes use of it knowing that ‘they will die from (this) use,’ there is a *Pācittiya* offence.” This implies that not knowing that they will die may be an excuse — though perhaps still ending up with a wrongdoing.

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