

# On Ordaining Bhikkhunīs Unilaterally

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## INTRODUCTION

In an article entitled, “[On the Bhikkhunī Ordination Controversy](#),” Bhikkhu Anālayo makes several points with regard to the validity and desirability of the ordination of bhikkhunīs in the Theravāda tradition at present. Because the article is aimed, in part, at refuting a position I took in *The Buddhist Monastic Code*, volume two (BMC2), I would like to examine the arguments it uses to support its refutation.

The article falls into two parts, the first part considering the validity of attempts to revive bhikkhunī ordination; the second part, the desirability of these attempts. I will treat the two parts separately. However, some basic principles bearing on the question of bhikkhunī ordination will underlie my entire discussion, so for the sake of clarity and emphasis I want to state them at the outset.

### *Basic Principles*

Much of Bhikkhu Anālayo’s article is devoted to proving that the Buddha had a positive attitude toward establishing a Bhikkhunī Saṅgha. This question, however, is beside the point. Obviously the Buddha had a positive attitude toward establishing the Bhikkhunī Saṅgha—it’s hard to imagine that he would have established it against his will—but the real question is: Once the Bhikkhunī Saṅgha had died out, would he have had a positive attitude toward *re-establishing* it? In other words, would he have trusted anyone else to revive it?

The Buddha never spoke directly to this issue, but we can infer from two points in the suttas and the Vinaya that, No, he would not have approved of such an attempt.

a) The first point is that there are no rules at all—or even an implicit suggestion—to provide for the revival of the Bhikkhu Saṅgha when it dies out. We know that the Buddha also had a favorable attitude toward the Bhikkhu Saṅgha, and that he foresaw its eventual demise (see Pr I.3), so it’s not the case

that the idea never occurred to him. If he had wanted to provide for its revival, he could have. But he didn't.

It is easy to understand why: The training of a bhikkhu is not simply a matter of passing along information. It is an apprenticeship, in which the student lives with a trained mentor so as to learn, through daily contact, in person, how the Dhamma is lived (see the protocols in Cv.VIII.11–12). This arrangement also allows the mentor to observe the apprentice-student thoroughly, and to give warnings and instructions as appropriate. The communal life of the Saṅgha also provides the opportunity for senior bhikkhus to observe the behavior of the mentors and their students to make sure that the students' training is up to standard. And it further gives the opportunity for all the bhikkhus to become familiar with one another so that if a dispute arises in the community, they have a good sense of where the dispute came from and how it can most effectively be settled.

Once the Bhikkhu Saṅgha dies out, this apprenticeship lineage dies out as well, and no amount of information about the written Dhamma or Vinaya can revive it. An aspiring bhikkhu who, lacking this living tradition, tried to get his knowledge about bhikkhu life from texts and acted in line with his own understanding of the texts, wouldn't count as "trained." Nor would any bhikkhus taught in turn by him. This seems to be the primary reason why, even though the Buddha knew that the Bhikkhu Saṅgha would eventually die out, he made no provision for reinstating it.

The same principles apply to the idea of reinstating the Bhikkhunī Saṅgha. The Buddha set down no rules to provide for the revival of the Bhikkhunī Saṅgha once it had died out. Even though the Bhikkhu Saṅgha is still extant, the lived tradition of trained bhikkhunīs training new bhikkhunīs is dead. And, as would be the case if the Bhikkhu Saṅgha died out, an aspiring bhikkhunī who, after the disappearance of the Bhikkhunī Saṅgha, derived her knowledge about bhikkhunī life from texts and behaved in line with her understanding of the texts wouldn't count as "trained." Nor would any bhikkhunīs taught in turn by her. At the same time, bhikkhus cannot give new bhikkhunīs the sort of training they need because the bhikkhus' rules forbid them from living together with bhikkhunīs. New bhikkhunīs are thus faced with the prospect of learning only from books or from untrained senior bhikkhunīs.

How could the Buddha have approved of this being done in his name? It's not an act of compassion to the senior bhikkhunīs, who are creating the bad kamma of teaching without being qualified to do so; it's not an act of compassion to the junior bhikkhunīs, who are absorbing the examples set by unqualified teachers; nor is it an act of compassion to the world, subjecting it to teachers who create a

false impression of how a true bhikkhunī should embody the Dhamma in word and deed.

b) The second point: As we will see, Bhikkhu Anālayo argues that our current situation is similar to what prevailed when the Bhikkhunī Saṅgha was first getting started, when there were not enough trained bhikkhunīs to ordain other bhikkhunīs. Because the Buddha allowed bhikkhus to ordain bhikkhunīs unilaterally then, Bhikkhu Anālayo argues, the same allowance must apply now. Thus communities of bhikkhus should feel qualified to ordain bhikkhunīs unilaterally as a way of reviving the Bhikkhunī Saṅgha.

However, the current situation is missing two important factors that existed then: the Buddha and the True Dhamma.

The fact that the Buddha is no longer alive is widely recognized, but the disappearance of the True Dhamma is not. Yet, as SN 16:13 makes clear, from the Buddha's point of view this is precisely what has happened. Now, as that sutta explains, the disappearance of the True Dhamma does not mean that there is no Dhamma at all, simply that counterfeit Dhamma has arisen in competition with it: Think, for example, of the Prajñā-pāramitā (Perfection of Wisdom) Sūtra teachings on the non-arising of Dhammas, and the many counterfeit versions of Dhamma that have arisen as a result. Think also of the many differing versions of the Vinaya that have survived either in living communities throughout Asia or whose texts have been unearthed. And, in the sutta's image, just as the existence of counterfeit money makes people unsure about genuine money, the existence of counterfeit Dhamma makes people unsure about genuine Dhamma.

This point has an important bearing on the advisability of trying to start a Bhikkhunī Saṅgha at this point in time. When the Buddha was alive and the True Dhamma had not yet disappeared, his authority was enough to get the Bhikkhunī Saṅgha on a solid footing, even though the bhikkhunīs could not live under his direct presence and guidance or under the direct presence and guidance of the bhikkhus. But the Buddha has passed into parinibbāna, and no version of the Dhamma is universally accepted as having the authority of True Dhamma now.

The attempts at reviving the Bhikkhunī Saṅgha are, themselves, an illustration of this last point. Scholars arguing for the revival of the Theravāda Bhikkhunī Saṅgha cite passages from the canons of many non-Theravāda traditions in order to discredit passages in the Pāli Canon that would stand in the way of such a revival, often taking both the Pāli and the non-Pāli passages out of context and ignoring or dismissing passages—again, from both Pāli and non-Pāli sources—that contradict the points they want to make. This has the cumulative

effect of calling not only the Theravāda, but also all Buddhist traditions into question, and making the choice of what counts as Dhamma simply a matter of personal preference or one's own cultural norms. In a well-trained community, this tendency can be counteracted by living with a well-trained teacher; but in a community without such a teacher—and that would include all the Bhikkhunī communities at present—there is nothing to check this tendency at all.

Without a single, clear, authoritative True Dhamma to guide a revived Bhikkhunī Saṅgha, it cannot get off to a solid start. And again, establishing a poorly-trained Bhikkhunī Saṅgha based on questionable Dhamma is not an act of compassion for anyone. Instead of providing an environment conducive for gaining the noble attainments, it would put obstacles in their way.

Further, given that we live in a period where the True Dhamma has to co-exist with counterfeit Dhamma, we have to be especially careful to examine our own reasons for choosing one version of the Dhamma over another, scrutinizing our motives again and again to make sure that they are honest and sincere. When we have found what, in our best attempts at honest evaluation, appears to be a living tradition of True Dhamma, we have to protect it from being mixed with other, outside values, both for the sake of our own practice and for the sake of those who will come after. This means not allowing extrinsic values to enter into the way we interpret the Dhamma and Vinaya that provide the basis for our training.

To turn now to Bhikkhu Anālayo's article.

#### THE ARTICLE : PART ONE

The discussion in the first part of the article centers on the relative status of the three rules concerning bhikkhunī ordination given in the Cullavagga, which states that they were promulgated in this order:

First, there is the statement of the principle in the sixth *garudhamma*, or rule of respect:

a) "Only after a female trainee has trained in the six precepts for two years can she request Acceptance [full ordination] from both Saṅghas. This rule is to be honored, respected, revered, venerated, never to be transgressed as long as she lives." — Cv.X.1.4

Then there are the two rules formulated specifically to cover the ordination of bhikkhunīs: The first was formulated in response to a question by Mahāpajāpati as to how bhikkhunīs could be ordained, given that there was no Bhikkhunī Saṅgha to ordain them in line with the sixth rule of respect. The Buddha's rule:

b) "I allow that bhikkhunīs be given full Acceptance by bhikkhus." — Cv.X.2.1

Later, as the procedure for Acceptance came to include some embarrassing questions, and female candidates were too abashed to answer them in the presence of the bhikkhus, the Buddha formulated this rule:

c) "I allow that one who has been given full Acceptance on one side and purified (of the 24 obstructing factors) in the Bhikkhunī Saṅgha be given full Acceptance in the Bhikkhu Saṅgha." — Cv.X.17.2

### *Preliminaries*

In BMC 2, I argued that because the formulation of the rule in Cv.X.17.2 is an amendment of the rule in Cv.X.2.1, it automatically rescinds the rule in Cv.X.2.1. This is in line with the principle observed throughout the Vinaya: that when a rule has been amended, all earlier formulations of the rule are automatically rescinded. In other words, the rule allowing a Bhikkhu Saṅgha unilaterally to ordain bhikkhunīs is no longer in force.

Bhikkhu Anālayo proposes to refute this position, but first he makes some remarks about the methodology he will use in making his refutation. After that, he sets forth his general understanding of how rules in the Vinaya as a whole should be interpreted. Only then does he set forth his argument. Both his methodology and his general understanding of Vinaya provide a necessary foundation for his argument, and because both points raise questions, I will have to address them first.

### *Legal Reading vs. Historical-critical Reading*

In setting forth his methodology, Bhikkhu Anālayo states that he will apply a "legal reading" to the first part of his article, as opposed to the "historical-critical reading" he proposes to apply in the second part. He draws a bright line between the two ways of reading the texts, explaining the difference this way:

"A legal reading attempts to understand legal implications, a historical-critical reading attempts to reconstruct history through comparative study. Both ways of reading have their proper place and value, depending on the circumstances and particular aim of one's reading the *Vinaya*."

He doesn't explain what particular aims might be appropriately served by these two different kinds of reading, but he expands on his concept of "legal reading" in these words:

"In the first part of the present article I will be examining the legal question, consequently my discussion will be based solely on the description given in the

Theravada *Vinaya*, irrespective of the historical likelihood or otherwise of this description.”

His assertion that issues of historical likelihood are irrelevant to this kind of reading is especially important here, because he has argued in other articles—such as “Women’s Renunciation in Early Buddhism: The Four Assemblies and the Foundation of the Order of Nuns”—that the *garudhammas* were probably formulated much later than Mahāpajāpatī’s ordination, and that the canonical account of her ordination cannot be trusted. Here, though, as we will see, his argument in part one of his article absolutely requires accepting the canonical account that the *garudhammas* were formulated prior to the other rules on *bhikkhunī* ordination. If he hadn’t defined the rules of discussion for this part of his article so as to exclude issues of the Canon’s historical accuracy, his earlier position—which he has not renounced—could be used against his argument here.

Still, despite his efforts to limit the field of discourse here, I will show below that even when we accept the Canon’s chronology as authoritative—as is only right in the absence of any decisive evidence otherwise—Bhikkhu Anālayo’s argument in part one still doesn’t stand.

### *Vinaya as Case Law?*

Bhikkhu Anālayo begins his legal reading of the rules concerning *bhikkhunī* ordination with a general principle on how to interpret the rules in the *Vinaya*:

“*Vinaya* law is in principle case law. The various rules which according to the *Vinaya* have been promulgated by the Buddha come in response to a particular situation (the only exception being the *garudhammas*). As with any case law, a study of the significance of a particular ruling requires an examination of its narrative context. This narrative context, independent of its historical accuracy, determines the legal applicability of the respective rule.”

This is simply not true: neither with regard to the *Vinaya*, nor with regard to the promulgation of the *garudhammas*.

- First, it’s a mistake to say that *Vinaya* law is in principle case law. “Case law” is a term developed to describe one particular way that law has developed in the West, where the authority to establish laws has been apportioned somewhat arbitrarily among different types of institutions—such as legislative authorities, judges, and administrators—in different ways.

For example, legislative authorities write and promulgate statutes. This is called statutory law.

Judges, when passing judgment on individual court cases dealing with issues for which no legislative authority has set down a statute, make decisions relying on general principles of justice or fairness. These decisions and legal principles establish precedents that generally *bind* later courts to decide the same way in similar cases. Over time, legal principles are established by distilling them from the collected decisions of many judges. This system of binding legal precedents, known as *stare decisis*, together with the body of legal principles arising from it, is known as case law.

The executive branch of the government, when required by statutes to carry out a particular duty, will establish administrative procedures for doing so. This is administrative law.

Depending on how the state is organized, these different sources of law have varying levels of weight and authority, and the laws and precedents they establish are treated in different ways.

In the Vinaya, however, there is only one authority for establishing the rules: the Buddha. And as we look at the various ways he establishes the rules, we find that he functions in all three ways: promulgating statutes, adjudicating cases, and establishing administrative procedures. Because the Buddha acted as legislator, judge, and administrator all in one, this means that the rules in the Vinaya cannot be classed by which type of authority promulgated them.

It also means that the Buddha, if we view him in terms of a Western paradigm, could take on many roles all at once. For instance, even when he was acting as administrator, setting down procedures, there is no clear line dividing his statutory-like rules from his administrative-like rules. They all have the same force. When acting as judge, he not only adjudicated specific cases, assigning penalties for specific individuals in line with pre-existing statutes (this is the role of judges in the West when statutes apply); he also established rules, in impersonal terms, to expand his judgments into new territory beyond the facts of the immediate cases. In Western law, these rules would be called *dicta*. Because judges in Western law do not have the same legislative authority as legislators, their *dicta* have no binding authority as precedents. In other words, they have no legal force. But because the Buddha was the sole legal authority, his *dicta*-like rules have the full force of law and are no different in this regard from his rules that are more similar to the Western concept of statutes.

There is a common misunderstanding that because the Buddha established the Vinaya rules in response to specific cases and incidents, the Vinaya has to be regarded as case law. But that is to misunderstand what “case law” means.

Even in Western law, just because a law is established in response to a particular case does not make it case law. Legislatures also promulgate statutes in

response to particular cases. For instance, suppose a high-ranking government official is shot, and in the aftermath of the shooting the legislature passes a law to control the sale of guns. The legislature is not deciding the guilt or innocence of the suspect in the shooting; it is simply trying to prevent similar incidents in the future. At the same time, if the law is worded so as to apply to the sale of all guns, a person who buys a gun in defiance of the law to shoot his wife cannot claim that the law does not apply to him on the grounds that, because the law was written in response to the shooting of a government official, it should apply only to guns bought with the purpose of shooting another government official. The instigating case does not play a determining role in the interpretation of the law at all.

Now, it's a risky business to apply concepts derived from Western law when explaining how the Vinaya is to be interpreted and understood. The paradigms are too dissimilar to allow for principles from Western law to be applied wholesale to the Vinaya rules. After all, the Vinaya is a set of rules adopted by a community that people join voluntarily, unlike a civil society, and only the Buddha had the authority to promulgate and amend rules (see the origin story to Nissaggiya Pācittiya 15), unlike civil society, where legal authorities can keep changing the laws indefinitely. At the same time, the Vinaya has its own principles for interpreting and applying its rules in ways that have no parallels in Western law. At most, when trying to understand the Vinaya, we can draw parallels with Western law for the sake of clarifying patterns in the Vinaya. But we must be careful at all times to let the Vinaya itself set the pattern for how its rules are to be interpreted, and not let principles from Western law override the Vinaya's own patterns.

When we look at the patterns actually set by the Vinaya, we can see four obvious reasons for why it's a mistake to say that Vinaya law is in principle case law.

1) The Sutta Vibhaṅga, when explaining the rules of the Pāṭimokkha, states under every rule that the offense assigned by the rule in the Pāṭimokkha does *not* apply to the original offender. Instead, it applies only to future cases: all bhikkhus and/or bhikkhunīs from that time on. If we were to make an analogy with Western legal terms, this follows the pattern of statutory law, not case law.

2) The Khandhakas, in the sections on disciplinary transactions (Cv.1; Mv.IX), do contain a few cases where the Buddha creates a punishment and imposes it on the bhikkhu(s) whose behavior instigated the punishment. However, in all but two of those cases, his ruling is then followed by long explanations, phrased in impersonal terms, defining other possible situations in which the same transaction can be imposed, how the bhikkhu(s) on whom it is imposed should

behave, etc. In many instances, the situations in which the transaction can be imposed have very little relationship to the instigating case. See, for instance, the list of possible conditions for imposing censure on a bhikkhu (Cv.I), many of which have little relationship to the original case. All of this follows the pattern of statutory and administrative law, not case law.

Even the two exceptions to this pattern don't resemble case law. They are the brahma-punishment inflicted on Channa (DN 16; Cv.XI.1.12; Cv.XI.1.15) and the information transaction inflicted on Devadatta (Cv.VII.3.1–3). In neither instance does the Buddha provide rules or principles for how these disciplinary transactions might be applied in other situations. In this sense, his punishments might resemble precedents for case law. But in neither instance does the Canon or the Commentary suggest that these disciplinary actions should actually be taken as precedents for future decisions by the Saṅgha. This means that even these two exceptional rulings—which, it might be argued, are the closest analogues in the Vinaya to the Western concept of case law—had no tradition similar to case law built up around them.

3) The Vinaya provides no basis for the principle of *stare decisis*, or binding precedent, the core principle of a system of case law. If there were, later Vinaya interpreters would be bound to follow the decisions of earlier Vinaya experts, resulting in the evolution and expansion of the Vinaya, and the establishment of new Vinaya rules. In fact, this principle of following the decisions of one's teachers without reference to the original Vinaya was rejected by the Second Council (Cv.XII).

4) Unlike a judge in a case law tradition, a Vinaya expert is not working without a body of established statutes. The rules, which are similar to statutes, are there. The Vinaya expert's role is simply to decide how those rules are to be applied in particular cases. His decisions cannot in any way rescind the rules or create new ones. This is similar to the role of a judge where a body of statutory law applies.

### *The Status of Origin Stories*

However, rather than continuing to dwell on how to interpret Vinaya in line with Western legal theory, a more fruitful line of inquiry would be to see whether the Vinaya itself follows the principle that Bhikkhu Anālayo tries to draw from characterizing Vinaya law as case law: i.e., that “narrative context, independent of its historical accuracy, determines the legal applicability of the respective rule.” In simple language, he is saying that the origin story explaining the events leading up to the rule governs the way the rule should be interpreted and applied.

The question is: Does the Vinaya itself follow this principle as a universal principle in interpreting the rules? And the answer is: No.

Even though every rule has an origin story describing the events leading up to the promulgation of the rule, it's rare for the origin story to act as the determining factor in explaining how the rule is to be applied. In most cases, the explanatory material in the Canon doesn't cite material from the origin story. Instead, the explanations apply the rule to situations, described in impersonal terms, far beyond the case that the origin story describes. The first rule in the Pāṭimokkha, Pārājika 1, is a typical example. This is the rule forbidding sexual intercourse. Even though the origin stories describe only incidents of heterosexual sex, the explanatory material in the Sutta Vibhaṅga makes clear that the rule applies to all sorts of intercourse—anal, oral, and genital—heterosexual or not.

Even in the rare cases—such as Pācittiya 12—where the Sutta Vibhaṅga cites a passage from the story in its explanation of the rule, it goes well beyond the origin story in detailing, in impersonal terms, the range of possible situations to which the rule does and does not apply. Similarly, as noted above, the Khandhakas are not bound by the origin stories when defining how to apply the rules it contains. Thus there is no basis for saying that it's a universal principle in the Vinaya for the origin story to determine the legal applicability of the rule.

There are even instances where the rule doesn't address the events mentioned in the origin story at all. The origin story to Pārājika 4, for example, tells of bhikkhus who make false claims about *one another's* superior human states in hopes of getting food that they will then share. The Buddha, in the story, strongly criticizes their actions. The rule he formulates, however, simply forbids a bhikkhu from making false claims about *his own* superior human states, something that none of the bhikkhus in the origin story did. Neither the rule nor its interpretation in the Sutta Vibhaṅga mentions the case of bhikkhus making claims about one another's attainments.

Similarly with Pācittiya 8, which covers making true claims about superior human states to unordained people. Again, the bhikkhus in the origin story make true claims about *one another's* superior human attainments to householders, but the rule simply forbids the act of making a true claim about such states to unordained people, without mentioning whether it's forbidding claims made about one's own attainments or about the attainments of others. Then the analysis of the rule, as developed in the Sutta Vibhaṅga, simply mentions cases in which a bhikkhu makes true claims about *his own* attainments. The events in the origin story—bhikkhus making true claims about one another's attainments—

aren't even mentioned, nor are they mentioned in the later commentaries to the rule.

The fact that the Sutta Vibhaṅga doesn't give the origin stories a determining role in interpreting the rules is shown even more decisively in Nissaggiya Pācittiya 4. The origin story tells of a bhikkhu who, staring at the genitals of a bhikkhunī who is his former wife, ejaculates and soils his robe. He asks her for some water to wash the robe, and she offers instead to wash it herself. This event is then reported to the Buddha, who asks the bhikkhu if he got the bhikkhunī to wash the robe, and he admits that he did. The Buddha then formulates the rule forbidding a bhikkhu from getting a bhikkhunī unrelated to him—i.e., unrelated by blood—to wash his used robe.

However, the non-offense clauses in the Sutta Vibhaṅga to the rule specifically state that there is no offense for the bhikkhu if an unrelated bhikkhunī washes his used robe without having been told to do so. Now, nowhere in the origin story did the offending bhikkhu actually tell the bhikkhunī to wash the robe. She washed it after offering to do so herself, without being told. Thus the non-offense clauses are not based on the origin story at all. Further, the Commentary asserts that the allowance in the non-offense clauses covers not only cases where a bhikkhunī washes a bhikkhu's used robe without his saying anything, but also cases where she offers to wash it and he gives his explicit consent. In other words, as the rule was eventually explained in the Sutta Vibhaṅga and the Commentary, the origin story was not taken as a guide in its interpretation at all. The passage in the origin story describing the bhikkhu's action as an instance of getting an unrelated bhikkhunī to wash his robe was ignored. As a result, the rule has been interpreted in a way that specifically does *not* apply to the events in the origin story.

This shows that the tradition—beginning with the Canon itself—did not see the origin stories necessarily as determining factors in the interpretation of the rules.

Thus, Bhikkhu Anālayo's contention—"As with any case law, a study of the significance of a particular ruling requires an examination of its narrative context ... [which] determines the legal applicability of the respective rule"—does not apply to the Vinaya. As the above examples make clear, the opposite is true: It would not be in line with the Vinaya's own principles to make the narrative context of the origin stories determine how the rules are to be interpreted.

The only interpretive role that the tradition *has* consistently assigned to origin stories deals, not with how the rules should be interpreted and applied, but with whether the rules are still in force. When there are different versions of a particular rule, the origin stories make clear which version(s) came earlier and

which came later. In every case, the latest version repeals and replaces any earlier versions and—unless the latest version directs otherwise—the earlier versions are no longer in force.

### *The Argument*

Nevertheless, Bhikkhu Anālayo insists that the origin stories to Cv.X.1.4, Cv.X.2.1, and Cv.X.17.2 determine how these rules should be interpreted. And, directly contrary to positions he has stated in other articles, he insists in this article that we take the Theravāda Vinaya at its word that the principles established in Cv.X.1.4 were formulated before the rules in the other two.

According to his interpretation here, Cv.X.1.4 sets out the general principle, as the sixth garudhamma, that bhikkhunīs should receive Acceptance (*upasampadā*) in both Saṅghas. Cv.X.2.1 was formulated when there were no bhikkhunīs. Thus, he insists, if we use the narrative context to determine the applicability of the rule, we must regard this rule as showing how the principle should be applied during all times when there is no Bhikkhunī Saṅgha to give Acceptance: A Bhikkhu Saṅgha may ordain bhikkhunīs unilaterally. Cv.X.17.2 was formulated when there *was* a Bhikkhunī Saṅgha, so again, according to Bhikkhu Anālayo, if we use the narrative context to determine the applicability of the rule, we must regard this rule as showing how to apply the principle at all times when there *is* a Bhikkhunī Saṅgha: A Bhikkhu Saṅgha may ordain bhikkhunīs only after the bhikkhunīs have been ordained in a Bhikkhunī Saṅgha. Thus, contrary to the principle observed everywhere else in the Vinaya, in which an amended rule replaces the earlier version of the rule, Bhikkhu Anālayo concludes that Cv.X.17.2 is not a replacement of Cv.X.2.1. Instead, Cv.X.2.1 (the rule for unilateral ordination) is a relaxation of Cv.X.1.4, meant to be applied in situations in which there is no Bhikkhunī Saṅgha to ordain new bhikkhunīs. In this reading, Cv.X.17.2 (the rule for double ordination) is simply a statement of how to proceed when there *is* a Bhikkhunī Saṅgha, and was not meant to repeal or replace Cv.X.2.1.

Thus, Bhikkhu Anālayo concludes from this reading, Cv.X.2.1 is still in force, allowing bhikkhus to ordain bhikkhunīs unilaterally, and thus to revive the Bhikkhunī Saṅgha after it has died out.

This reading, however, as I have shown above, imposes a foreign standard for interpreting the rule, ignoring a principle observed throughout the Vinaya.

At the same time, it fails to recognize two specific parallels in the Vinaya itself showing how the Buddha handled similar cases.

*The Buddha's Legislative Principles : The Status of the Garudhammas*

The first parallel concerns all eight garudhammas. Bhikkhu Anālayo is right in observing that the garudhammas simply set out principles. None of them have the status of a training rule (*sikkhāpada*). This point is shown by the fact that, in the first cases where a bhikkhunī engaged in behavior going against any of the garudhammas, the Buddha did not treat the case as a violation of an already-existing rule. Instead, he used it as the instigation for setting forth a training rule, either a *pācittiya* or a *dukkāṭa*, which was applied in most cases to the bhikkhunīs. (In one instance—that of a bhikkhu bowing down to a bhikkhunī in defiance of the first garudhamma—the Buddha set forth a *dukkāṭa* for the bhikkhu (Cv.X.3).)

As I explained in BMC2, the apparent purpose of this procedure was that only with a *sikkhāpada* in place was there a mechanism for getting the offender to confess his/her offense. And only when the offender had confessed the offense could the penance for breaking a garudhamma be imposed.

This approach to formulating training rules related to the garudhammas also provided the opportunity for the compilers of the Sutta Vibhaṅga to supply word-commentaries, “wheels,” and non-offense clauses for each of the relevant *pācittiya* rules, thus determining precisely what did and did not count as an infringement of the relevant garudhammas.

The key point that Bhikkhu Anālayo's analysis seems to miss is that, in formulating rules in response to the first infringement of the garudhammas, the Buddha was behaving not as a judge, adjudicating specific cases. Rather, he was acting as a lawgiver creating statutes. This is shown by the fact that the rules carrying a *pācittiya* penalty did not apply to the first offender in each case. Even in the case involving *dukkāṭas* for bhikkhunīs (Cv.X.20), there is no mention that the bhikkhunīs whose misbehavior instigated the rules—they tried to initiate disciplinary transactions against bhikkhus—were to have the penalty imposed on them. The Buddha simply stated in impersonal terms that all such actions are invalid, and then set down the rules assigning *dukkāṭa* penalties for such actions in the future.

As for the rules set forth in Cv.X.2.1 (unilateral ordination) and Cv.X.17.2 (double ordination), these were not established in response to wrongdoing, so there were no first offenders. Instead, when the Buddha was asked how to proceed in ordaining bhikkhunīs, he established rules for procedure, and in the case of the rule for double ordination, he followed the rule with a detailed description of how the procedure should be carried out from that time forward. This is the pattern, not of case law, but of administrative law. So it's a mistake to

treat these rules as if they were simply instances of the Buddha's adjudicating specific cases.

*The Buddha's Legislative Principles : Two Old Rules Not Rescinded*

The second parallel concerns a principle the Buddha consistently followed in amending rules. In every other case where he amended an already existing rule but wanted to keep both the pre-existing version and the amended version in force, he was careful to delineate the conditions to which the amended version applied, so that the pre-existing version would still be in force in all other situations.

To assert that the Buddha did not want Cv.X.17.2 (the rule for double ordination) to rescind Cv.X.2.1 (the rule for unilateral ordination), but forgot to limit the conditions under which Cv.X.17.2 would apply, is to assert that he was thoughtless and careless.

To get a sense of the Buddha's care in amending rules concerning ordination, we can look at two instances where he explicitly amends a rule so that it fits only certain circumstances and is clearly meant not to rescind or replace the previous statement of the rule. These instances show how he would have acted if he had intended Cv.X.17.2 (the rule for double ordination) *not* to rescind Cv.X.2.1 (the rule for unilateral ordination).

a) The first instance concerns the quorum needed for giving Acceptance to bhikkhus.

In Mv.I.31.2, the Buddha sets the requisite quorum at ten:

“(A candidate) should not be given Acceptance by a group of fewer than ten. Whoever should (so) give Acceptance: an offense of wrong doing. I allow that (a candidate) be given Acceptance by a group of ten or more.”—Mv.I.31.2

Later, in response to a request by Ven. MahāKaccāna, the Buddha relaxed the number needed to meet the quorum in outlying districts:

“I allow in all outlying districts Acceptance by a group with a Vinaya expert as the fifth.”—Mv.V.13.11

Then in Mv.V.13.12 he gave a clear definition of what qualified as an “outlying district.”

b) The second instance is shorter, but it shows the absolute minimum in how a new version of a rule should be worded so as not to rescind the previous version of the rule. This instance concerns the second ordination of a bhikkhunī, in the Bhikkhu Saṅgha.

In Cv.X.17.8, the Buddha states that, after a bhikkhunī has received her first ordination, in the Bhikkhunī Saṅgha, the bhikkhunīs should take her immediately to a Bhikkhu Saṅgha for her second ordination:

“Taking her immediately, have her approach the Bhikkhu Saṅgha, have her arrange her upper robe over one shoulder, have her bow down to the bhikkhus, have her sit kneeling, have her raise her hands palm-to-palm over the heart, and have her request Acceptance.” — Cv.X.17.8

Later, when a famous courtesan received her first ordination, word got out that she would be traveling through the forest for her second ordination, and rogues infested the way. Learning of this, she sent a messenger to the Buddha, asking what to do. He gave an allowance that, instead of following the instructions in Cv.X.17.8 and going to her second ordination herself, she could send a messenger to the Bhikkhu Saṅgha in her stead:

“I allow, bhikkhus, for Acceptance to be given also [*api*] through a messenger.” — Cv.X.22.1

This statement of the rule is followed by the transaction statement to be used in this situation, and the statement indicates the conditions for using a messenger: There are obstructions. Now, because Mv.II.15.4 and Mv.IV.15.7 contain a standard list of ten obstructions, and because no different obstructions are mentioned in connection with this rule, the implication is that the same ten apply in this case.

These instances are similar in that, in both cases, there are clear indications that the new formulation of the rule is not meant to rescind the previous version of the rule. These indications show that the new formulation applies only under certain extenuating circumstances, and yet in neither case does the origin story carry the burden of determining what those circumstances are.

The two instances differ simply in how extensively they convey the message that they are not meant to rescind the preceding rules. In Cv.X.22.1, the indication in the rule is economical: the single word, “also.” However, there is an additional indication in the corresponding transaction statement, in its reference to obstructions. Now, because “obstructions” are explained elsewhere in the Vinaya, these minimal indications are enough to convey the fact that the new formulation of this procedure supplements, rather than replacing, the earlier one. Cv.X.22.1 can be used when the extenuating circumstances apply. When they don’t apply, the first formulation of the rule, at Cv.X.17.8, is to be followed.

In Mv.V.13.11–12, though, the indications are more explicit. The extenuating circumstances are mentioned as part of the rule, and then immediately explained in detail because “outlying district” is nowhere else defined in the Vinaya.

Given the pattern set by these two examples, we would expect that if the Buddha had meant Cv.X.17.2 (the rule for double ordination) to apply only in cases where there is a Bhikkhunī Saṅgha, and for Cv.X.2.1 (the rule for unilateral ordination) not to be invalidated, he would have included some sort of indication in the rule-statement in Cv.X.17.2 that that was the case. But he didn’t. Furthermore, given that the exemption of there “being a Bhikkhunī Saṅgha” or “not being a Bhikkhunī Saṅgha” is nowhere else defined in the Canon, he would have followed the example set in Mv.V.13.12, adding a passage after the rule explaining exactly what those terms meant. In other words, he would have answered questions such as these: Does “no Bhikkhunī Saṅgha” mean fewer than five bhikkhunīs at all in the world? Or only within one’s country? Or only within a certain radius? But he didn’t. He didn’t even put the word “also” in the formulation of the rule.

So, because the Buddha placed no limiting condition on Cv.X.17.2, answered none of the questions about what “no Bhikkhunī Saṅgha” would mean, and didn’t even say “also” in the wording of the rule, we have to conclude—assuming that he was not sloppy or careless in formulating his rules—that he meant Cv.X.17.2 (the rule for double ordination) to automatically rescind Cv.X.2.1 (the rule for unilateral ordination), in line with his common pattern throughout the rest of the Vinaya. In other words, bhikkhus are no longer permitted to ordain bhikkhunīs unilaterally.

### *The Speed Limit Simile*

Bhikkhu Anālayo concludes the first part of his article with a simile to illustrate what he thinks he has accomplished with his argument: A person regularly drives from one town to another on a highway connecting the two towns. At first the speed limit is 100 km/h, and then it is reduced to 50 km/h. The person, assuming that this new speed limit applies to the entire highway, has to drive at no more than 50 km/h even though the earlier speed limit was not explicitly rescinded.

Later, however, he learns that the new speed limit applies only to the area within the destination town, and not to the highway leading to it. Thus he is now free to drive at 100 km/h on the highway.

Similarly, Bhikkhu Anālayo says, members of the Bhikkhu Saṅgha may have been right in not ordaining bhikkhunīs when they thought they weren’t allowed

to do so, but they should now feel free to ordain bhikkhunīs unilaterally given his argument that they can.

Actually, this is a poor simile for what he has done in making his argument. A more accurate simile would be this: The authorities—who govern both the town and the highway—lower the speed limit on both the highway and the town to 50 km/h. A stranger comes along and tells the man that, because the speed limit was lowered after an accident in the town, the lower speed limit applies only within the town, and that the authorities were simply penalizing the speeding individual who caused the accident. Therefore the man should be free to drive 100 km/h on the highway.

However, the man reads the new law and learns that it does not specifically restrict the range of the new speed limit only to the town. Nor was it a judgment against an individual defendant. It was an ordinance passed by the legislative authorities with jurisdiction over both the town and the highway, superseding the previous speed limit. Thus the man wisely concludes that the new speed limit applies to the highway as well, and continues to drive at 50 km/h both on the highway and in the town.

In other words, after the Bhikkhunī Saṅgha died out centuries ago, bhikkhus at the time were right in realizing that they were not authorized to start a new Bhikkhunī Saṅgha by ordaining bhikkhunīs unilaterally. We at present—if we take the Vinaya as our guide—have to come to the same conclusion.

### *Are the Garudhammas Anomalous?*

- One more point on part 1: As noted above, Bhikkhu Anālayo states, in passing: “The various rules which according to the *Vinaya* have been promulgated by the Buddha come in response to a particular situation (the only exception being the *garudhammas*).” And as I further noted, this statement is not true with regard to the promulgation of the *garudhammas*, so I would like to discuss that point here.

The *garudhammas* were formulated in response to particular situation: a request to start a Bhikkhunī Saṅgha.

However, this sort of situation is apparently not the sort of “particular situation” that Bhikkhu Anālayo has in mind. In the article entitled, “Women’s Renunciation in Early Buddhism: The Four Assemblies and the Foundation of the Order of Nuns,” he uses instead the term “corresponding case.” From the lack of any corresponding cases for the *garudhammas* in the origin story of Mahāpajāpatī’s ordination, he argues that the story cannot be trusted. Thus, he

concludes, the garudhammas were probably not formulated when she went forth, and in all likelihood came much later. His reasoning:

“[S]uch a promulgation would violate a basic Vinaya principle, according to which rules are only set forth when a corresponding case has arisen. The gurudharmas [*sic*: this is the Sanskrit version of the term] are the only instance that does not accord with this Vinaya principle, making it more likely that they were promulgated at a later time and then added to the account of the foundation of the order of nuns.”

To support his contention in the first sentence here, he cites Vin III: 9,28. The passage he cites, however, offers no support at all for what he is trying to say. Instead of talking about “corresponding cases,” it quotes the Buddha as saying,

“Sāriputta, as long as any specific conditions that provide an opportunity for *āsavas* have not appeared in the Saṅgha, the Teacher does not formulate a training-rule or set forth a Pāṭimokkha for his disciples.”

The Buddha then goes on to say that these conditions will not appear in the Saṅgha as long as it has not achieved greatness in terms of longevity, in terms of being widespread, in terms of material gains, or in terms of its body of learning. What this means is that the Buddha did not commit himself to waiting until *āsavas* had already arisen in the Saṅgha before he promulgated rules. And he certainly did not commit himself to waiting for members of the Saṅgha to misbehave before he promulgated corresponding rules. Many origin stories, such as the one for the rules establishing the kaṭhina (Mv.VII), report no wrongdoing at all. If the Buddha saw that a condition conducive to *āsavas* had arisen, he was free to promulgate a rule to nip the problem in the bud. And the garudhammas fit precisely under this principle. When Mahāpajāpatī, together with a large number of Sakyan women, requested permission to go forth, it was a sign that the Saṅgha had achieved greatness. It was an appropriate time to establish the conditions under which he would grant their request.

We might pause here to ask a few questions about consistency: Given (1) that Bhikkhu Anālayo defines Vinaya law as case law, and the applicability of case law as being determined by the narrative context behind each law, “independent of its historical accuracy”; and given (2) that bhikkhus and bhikkhunīs are supposed to live by the Vinaya, the first question is: What practical aim is served by adopting a historical-critical approach to discredit the narrative context of the garudhammas, as he does in this earlier article?

The second question is: Given that he takes a position in that article directly contradicting the position he takes in part one of his more recent article, what is the relationship between the aims served by the two articles?

## THE ARTICLE : PART TWO

In part two of “On the Bhikkhunī Ordination Controversy,” Bhikkhu Anālayo applies what he calls a historical-critical reading of many different Buddhist canons to arrive at what he thinks the Buddha actually thought and did with reference to the founding of the Bhikkhunī Saṅgha.

The argument in this part of the article falls into three sections: (a) trying to show that the Buddha had a solely positive attitude toward the founding of the Bhikkhunī Saṅgha, (b) arguing from that that he would be favorably disposed to the revival of a Bhikkhunī Saṅgha in the present; and (c) arguing that the revival of such a Bhikkhunī Saṅgha is actually conducive to the long life of the teaching.

However, the example he sets in the way he uses evidence to support his arguments severely undermines his case.

### *The Buddha’s Attitudes toward Bhikkhunīs*

a) In the first section of part two, several varying accounts of the founding of the Bhikkhunī Saṅgha, from different canons, are discussed. Many versions are compared, and in each case only certain parts of the versions are accepted, and the rest rejected. One argument is actually based on the backward method of taking a passage from the Pāli commentaries to call into question a passage from the Pāli Canon.

In all cases, the basic argument for choosing among these passages boils down to this: We know from many Pāli sutta passages—such as DN 16, DN 29, DN 30, and MN 73—that the Buddha spoke favorably about instituting a Bhikkhunī Saṅgha. Thus, in line with the Great Standards (*mahāpadesa*) set forth in DN 16—that a teaching attributed to the Buddha should be accepted only when it is consistent with the suttas and Vinaya—we should accept only those passages, in any of the canons or commentaries, indicating that the Buddha had a totally positive attitude toward the establishing of a Bhikkhunī Saṅgha. Any passages in which he is represented as having reservations about the establishing of the Bhikkhunī Saṅgha therefore have to be rejected as later interpolations.

This way of applying the Great Standards is harder than hard to take seriously. It is tantamount to saying that, because the Buddha obviously wanted to start a Bhikkhu Saṅgha, any negative remarks about bhikkhus attributed to him anywhere in the Canon have to be regarded as bogus. Or that because the Buddha saw that professional soldiers would go to hell if killed when trying to kill others in battle (SN 42:3), any positive reference to soldiers in battle as

models of behavior for the monks—as in AN 5:75–76—have to be regarded as later interpolations.

There is nothing inconsistent in seeing the Buddha as a realist rather than an ideologue. In other words, he could hold a nuanced view, seeing that there would be both pros and cons to his founding a Bhikkhunī Saṅgha. The major benefit would be that women, if they could obtain the going-forth, would be capable of obtaining the noble attainments. The major drawback would be that if women outnumbered men in the Saṅgha, the holy life he founded wouldn't last long. He chose to pursue the benefits while at the same time trying to minimize the drawbacks by instituting the garudhammas and other rules specifically for the governance of the Bhikkhunī Saṅgha.

To insist, however, that the Buddha could have only totally positive or totally negative things to say about the founding of the Bhikkhunī Saṅgha, and to dismiss out of hand any passage that is not totally positive, is not called the historical-critical method. It's called cherry-picking the evidence.

### *The Buddha on the Revival of the Bhikkhunī Saṅgha*

b) As I pointed out in the Introduction, even if we take for granted that the Buddha wanted to found a Bhikkhunī Saṅgha, it does not follow that he would be in favor of the reinstating of that Saṅgha now that it has died out. He established monastic life as an apprenticeship, carried out in a communal setting. When there is no longer a community of living, well-trained mentors who can oversee the apprenticeship of new monastics, the living tradition is dead, and cannot be revived simply by consulting texts. What we have now instead is a situation in which new bhikkhunīs are faced with the prospect of learning only from books, from untrained senior bhikkhunīs, or from bhikṣuṇīs trained in non-Theravādin traditions that treat teachings such as those found in the Prajñā-pāramitā Sūtra as authoritative. At the same time, the senior bhikkhunīs—living in an age where counterfeit Dhamma is widely available, and the True Dhamma has thus disappeared—are free to choose their Dhamma according to their preferences, with no genuinely trained bhikkhunīs to hold them in check.

It is hard to imagine that the Buddha would approve that this be done in his name. It's not an act of compassion to the senior bhikkhunīs, who are creating the bad kamma of teaching when not qualified to do so; it's not an act of compassion to the junior bhikkhunīs, who are getting trained by unqualified teachers; nor is it an act of compassion to the world, exposing it to teachers who create a false impression of how a true bhikkhunī should embody the Dhamma in word and deed.

### *Disrespect for the Dhamma*

c) Bhikkhu Anālayo, however, argues that we would benefit from a revived Bhikkhunī Saṅgha—even in these straitened circumstances—in order to keep the Dhamma alive. Yet, as noted above, the example he sets in the way he presents his arguments severely undermines his case.

The conclusion he aims to prove is this:

“[I]t seems clear that an order of *bhikkhunīs* is desirable and an important asset in order to prevent the decline of the Buddha’s teaching.”

To arrive at this conclusion, he cites several passages from the suttas, most importantly those stating collectively, in his words, that the “decline of the teaching” can be prevented when the members of the four assemblies behave respectfully toward the Buddha, Dhamma, Saṅgha, the training, concentration, one another, heedfulness, and “being helpful (to one another).” The suttas he cites to support this point include SN 16:13, AN 5:201, AN 6:40, and AN 7:56. (I would differ with his translations of the terms in quotation marks—“teaching” should be “True Dhamma [*saddhamma*]”; “being helpful (to one another)” should be “hospitality [*paṭisanthāra*]”—but that is not central to my argument.) For example, he states with reference to SN 16:13,

“Other discourses more specifically address what prevents the decline of the teaching. According to a discourse in the *Saṃyutta-nikāya*, such a decline can be prevented when the members of the four assemblies, including *bhikkhunīs*, dwell with respect for the teacher, the Dhamma, the Saṅgha, the training, and concentration. Here the *bhikkhunīs* actually contribute to preventing decline, rather than being themselves its cause.”

However, if Bhikkhu Anālayo had given more complete citations from SN 16:13, AN 5:201, AN 6:40, and AN 7:56, it would have been clear that they do not support his conclusion that the *mere existence* of an order of *bhikkhunīs* would help prevent the decline of the Buddha’s teaching. For example, from SN 16:13:

“These five downward-leading qualities tend to the confusion and disappearance of the True Dhamma. Which five? There is the case where the bhikkhus, bhikkhunīs, male lay followers, & female lay followers live without respect, without deference, for the Teacher. They live without respect, without deference, for the Dhamma... for the Saṅgha... for the training... for concentration. These are the five downward-leading qualities that tend to the confusion and disappearance of the True Dhamma.

“But these five qualities tend to the stability, the non-confusion, the non-disappearance of the True Dhamma. Which five? There is the case where the

bhikkhus, bhikkhunīs, male lay followers, & female lay followers live with respect, with deference, for the Teacher. They live with respect, with deference, for the Dhamma... for the Saṅgha... for the training... for concentration. These are the five qualities that tend to the stability, the non-confusion, the non-disappearance of the True Dhamma.”

As the second paragraph shows, the determining factor as to whether the True Dhamma will or will not survive has nothing to do with the existence or non-existence of bhikkhunīs. It has everything to do with whether the members of the Buddha’s following—whatever their status—treat the Dhamma, etc., with respect. The other suttas cited make the same point.

Now, to quote Dhamma out of context to create a false impression, as in Bhikkhu Anālayo’s argument, is in and of itself an act of disrespect for the Dhamma. With this sort of argument, what kind of example is he setting for a revived Bhikkhunī Saṅgha? Is he helping to promote one that will live with respect for the Dhamma, or without? And if a Bhikkhunī Saṅgha is founded on disrespect for the Dhamma, how could it provide an environment conducive for reaching the noble attainments, whether in its members or anyone else?

This issue is also raised by an argument earlier in the article, in which he dismisses the Buddha’s forecast that, given the founding of the Bhikkhunī Saṅgha, the True Dhamma would last only 500 years (Cv.X.1.6). Bhikkhu Anālayo states that this forecast has not come true: Even after 2,500 years, the teachings are still available. Thus the narrative reporting the forecast cannot be accepted as true.

However, as I pointed out in BMC 2, the survival of the True Dhamma is not simply a matter of the brute survival of the teachings. SN 16:13—ironically, the same sutta Bhikkhu Anālayo cited above—states that the True Dhamma is said to have disappeared when “counterfeit Dhamma” has arisen, just as money disappears when counterfeit money appears. As I explained in the Introduction, this means that even though genuine money is still available, people who have been fooled by counterfeit money don’t know what to trust. In the same way, when counterfeit Dhamma appears, people don’t know which Dhamma is True and which isn’t. Because the Prajñā-pāramitā teaching of the non-arising of dhammas is directly opposed to the Buddha’s teaching on the arising and passing away of all fabricated dhammas, it counts as counterfeit Dhamma. And because it arose approximately 500 years after the Buddha passed away, the forecast in Cv.X.1.6 is remarkably prescient. We live in a period where the True Dhamma, as an undoubted guide, has disappeared.

I made this point clearly in BMC 2, in connection with the point that Bhikkhu Anālayo tried to refute in part one of his article, but he has chosen to write as if it

hadn't been made. If he respected the Dhamma but disagreed with the message in SN 16:13, he would have given reasons for disagreeing. But he didn't. So again, what sort of example is he setting for the Bhikkhunī Saṅgha that he would like to reinstate?

Given that we live in an era where the True Dhamma has disappeared, when scholarly bhikkhus feel free to adopt mutually contradictory positions to serve various aims, and to cherry-pick the Dhamma and Vinaya as they like, taking it out of context and so showing disrespect for the Dhamma, it's hard to say that we live in a time where a reinstated Bhikkhunī Saṅgha could be founded in a way that would actually help with the survival of the Dhamma or the nurturing of the noble attainments.

### *The Crippled Elephant*

Bhikkhu Anālayo ends his article with another analogy: The religion is like an elephant with three sound legs (the bhikkhus, the male lay followers, and female lay followers) and one crippled leg (the bhikkhunīs). The reinstating of the Bhikkhunī Saṅgha, he says, would heal the crippled leg and allow the elephant to walk easily.

But again, the analogy is inaccurate. A more accurate analogy would be this: The religion is like an elephant with a severed leg. A doctor wants to reattach the leg, even though it has long been dead, and his tools for doing so are contaminated. If the operation goes forward, it will hasten the elephant's death.