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Book Review

Buddhism and Comparative Constitutional Law

Tom Ginsburg and Benjamin Schonthal (eds)

Cambridge University Press (2022)

404 pp., ISBN-13: 978-1009286046

Reviewed by *Andrew Harding**

From Rebecca French's colourful, context-setting preface to this book, one phrase stands out for me:

For cultures that precede modern constitutional law, developing a legal cosmology means presenting the rules, categories, and practical building blocks that structure legal reasoning and actions in a particular society or government as well as their interrelations, historical locations, and creative use.¹

Thus, a book about Buddhism and comparative constitutional law has to confront many issues that do not arise only or especially with regard to Buddhism, as well as many that do. French's statement can after all be applied also to Hinduism, Islam, Judaism, Chinese legal traditions, customary law of various kinds, and of course the European traditions of civil law and common law. For this reason, a book on this subject is highly intriguing, and fills a yawningly large gap in the literature. It also fills that gap extremely well, and will be the foundation for much work of great interest in future.

I recall that during the 1990s, when research assessment first raised its ugly head in England, there was a real problem in classifying the work of a scholar such as

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¹ Tom Ginsburg and Benjamin Schonthal (eds), *Buddhism and Comparative Constitutional Law* (Cambridge University Press 2022) xv <<https://doi.org/10.1017/9781009286022>>.

the late Professor Andrew Huxley,² whose role in the foundation of this subject of Buddhist law should not be underestimated (and indeed Rebecca French in her preface does not). Those in the UK assessing legal scholarship said Huxley's work was not about law, but religion; those assessing religious studies said his work was not about religion but about law. It seemed the only person in the UK qualified to assess Huxley's research was Huxley himself. This problem did not arise with regard to work in law plus any other religion—in Islamic law, for example. The contradiction inherent in this dilemma is fully explored and explained in this book. There is, as the contributors, consistently point out, nothing inappropriate about the juxtaposition of Buddhism and law, even in constitutional contexts.

This book is nonetheless a large undertaking, as there was little in the way of previous literature or even conceptual framework on which to rely. It therefore engages with many questions of definition, especially, what counts as “law”? What exactly is Buddhism, especially when we speak of law? What, on the other hand, exactly is law when we speak of Buddhism? What is the basis of comparison, and with what does one compare? What counts as “constitutionalism”? How does one engage, methodologically, with comparison in this field?

The book will itself now inevitably become a building block for other developmental enterprises in the field, usefully listed by the late Professor Frank Reynolds (in French's account of the seminal 2006 conference in Bellagio, the first international conference on Buddhism and law) as follows:

[A] basic, introductory text explaining the field; a source volume with short translations of the important texts; a scholarly network of excellent academics and scholars; a journal for the development of articles on the topic; a bibliography divided into appropriate categories with annotations of every entry; and a series of books on the topic of Buddhism and Law.³

Of these, several have in fact been accomplished over the last 17 years. Rebecca French herself, with Mark Nathan, has provided an introductory text, an edited work, *Buddhism and Law: An Introduction* (Cambridge University Press 2014)⁴ with 20 chapters (in fact rather more than an introduction) as well as founding a journal, *Buddhism, Law and Society*, based at the University of Buffalo, which commenced in 2015. The scholarly network of scholars is firmly established, as the present volume proves. This network is also evidenced by special issues of the *Asian Journal of Law and Society* (issue 3(1) in 2016, on “Buddhism and law”), and *Buddhism, Law and Society* (volumes 3 in 2017–18, and 7 in 2021–22, on “Monastic Governance in South and Southeast Asia, and Epigraphic Evidence on Patronage” and “Social Contexts of

² See Andrew Huxley (ed), *Thai Law, Buddhist Law: Essays on the Legal History of Thailand, Laos and Burma* (White Orchid Press 1996).

³ Ginsburg and Schonthal, *Buddhism and Comparative Constitutional Law* (n 1) xiv–xv.

⁴ Since this review is for those interested in Thai legal studies, it may be useful to note that this 2014 book contains a chapter (9) by Andrew Huxley, “Pali Buddhist Law in Southeast Asia,” which deals with Buddhist law in Thailand and several adjoining regions.

Buddhist Monasteries in Medieval South and Southeast Asia,” respectively). This book continues the fulfilment of the prescribed book series. The project of advancing the sub-discipline is in fact well under way, and hopefully Thai scholars will contribute even more than they have done to it (two chapters of the present book, by Khemthong Tonsakulrungruang, and Eugénie Mérieau, respectively, deal with Thailand).

A starting point for discussion of the ways in which “Buddhism and constitutional thought have become entangled and interfused” (page 2), is precisely that an uninformed perception of their relationship would suggest that Buddhism’s rejection of the mundane means these two traditions could never in fact become entangled. Perhaps such perception has inhibited discussion of Buddhism and constitutional law before this book. However, the book shows that such perception is misplaced and outdated. This entanglement, beyond the immediate subject matter, offers, moreover, scope for further comparison and speculation (see, for example, Asanga Welikala’s intriguing chapter 3) and in this connection it is pleasing to note that, moving beyond the specifics of Buddhist entanglement, the three closing chapters of the book in part five deal with anthropology (Deepa Das Acevedo, chapter 17), canon law (Richard Helmholz, chapter 18), and Islamic law (Clark Lombardi, chapter 19).

The book, following an extremely useful and carefully considered introductory chapter by the editors, is organised into five parts. The first deals with religious and political underpinnings. The second, third and fourth parts divide the subject geographically, with chapters on Himalayan Asia (three chapters on Bhutan and Tibet); Southern Asia (five chapters on Sri Lanka, Thailand, Myanmar and Cambodia); and Northern and Northeastern Asia (five chapters on Japan, Vietnam, China, Mongolia and South Korea).

The title “Buddhism and Comparative Constitutional Law” poses the question, what is the implication of that elusive but pregnant word “and”? The editors answer this question as follows: “Although we speak of Buddhism and constitutional law, in many ways, it is more accurate to talk about our object of investigation as the Buddhist—constitutional complex, an object that can connote both a singular amalgamation as well as a hybrid of distinct components.”

Further,

[a]s a collective project, this volume takes a twofold approach to the study of Buddhism and constitutions. It examines their nexus as a coming together of disparate traditions and as the integration of complementary ones. It considers the effects of constitutional discourse, institutions, and ideas on the practice of Buddhism and it examines the influence of Buddhist principles, actors, and rationales on the conception and practice of constitutional law. At the same time, the contributors to this volume also reveal that the spaces, discourses, and authorities associated with Buddhism are not always as foreign to those of constitutional thought as one might expect. . . . Buddhist and constitutional thought may in fact share certain things, among them symmetrical commitments to sovereignty, legitimacy, order, and continuity. . . . [We argue] that the

two discourses address common problems of legitimation and constraint that arise in human polities.⁵

Necessarily, an inter-disciplinary approach is required and the contributors, who are all notable and accomplished, are drawn not just from the ranks of legal scholarship, but also those of Buddhist studies, political science, history and anthropology.

The book engages with a very broad range of questions that unpack the word “and”: what have been the roles of Buddhist monks, activist groups, and other religious actors in influencing constitutional changes? In what ways might constitution-making processes transform the practice and institutions of Buddhism in Asia? Do existing models in the study of religion and constitutional law adequately explain the dynamics of Buddhism and constitutional law in this region? How do Buddhist-inspired interpretations of public law differ from those of other interpretative traditions? Are there links across borders in the region, either in terms of borrowed concepts or religious networks, that shape constitutional thought and action? What historical antecedents and Buddhist doctrinal principles help us predict or understand these trends?

One obvious problem is that Buddhism does not contain terminology precisely equivalent to “law” or “constitution.” This work is not daunted by this challenge, in the editors’ expression, “holding the definitional door ajar,” which in comparative law is an essential means whereby one does not get trapped in a definitional system-specific cul-de-sac. This attitude is also taken to the word “Buddhism,” which the editors point out has “an unruly collection of referents.”

This “pluralistic, open-ended, and adaptable character of Buddhist law,” Asanga Welikala (pages 61–62) observes in his intriguing chapter 2,

is not a weakness or a marker of incoherence but the very source of its vitality, and the reason why Buddhism has been both able to form the basis of historic state formation in so many societies in such a geographically vast and culturally diverse expanse across Asia, and continue to influence the legal systems and political processes of these countries today. . . . Yet at the same time, this fundamental pluralism is what also explains why there has never been a unified object called “Buddhist law” in the same sense as Islamic law, Jewish law, or canon law.

As a result of such open-ended framing, we find ourselves here on an exciting road of discovery. The questions posed in this volume are as hard to frame as they are to answer. Much thought, though, has been given to the definitional aspect of the book, and the careful framing of the book is consistently carried through in the various national contributions.

This book does a splendid job in taking the subject a long way forward than a mere introduction. It also adds a great deal to our understanding of constitutional law

⁵ Ginsburg and Schonthal, *Buddhism and Comparative Constitutional Law* (n 1) 2.

in general, breaking down the West-centric matrix that still defines much of the subject of comparative constitutional law.

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* **Indexing Thai names.** "Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies." *The Chicago Manual of Style* (17th edn, University of Chicago Press 2017) §16.85.