

Preface

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To understand the context of the current volume, it is necessary to return to the early discussions of Buddhism and Law. It began at the Bellagio Center on Lake Como, a sixteenth-century convent restored with exquisite taste in modern Italian design, where a group of scholars came together in the summer of 2006 for the first International Conference on Buddhism and Law. I arrived early in Italy to help set things up. Soon, the participants began to arrive from all around the globe: Leslie Gunawardena from Peradeniya University in Sri Lanka appeared, as did Bernard Faure from New York City. Ryuji Okudaira came in from Japan; José Cabezón and Vesna Wallace took long flights from Santa Barbara, as did Tim Brooks from Vancouver, and Frank Reynolds from the University of Chicago. Winni Sullivan, a theorist in religious studies, now at Indiana University, arrived, as did Richard Whitecross, a specialist on Bhutan. Andrew Huxley came from SOAS in London, Justin McDaniel, who worked in Laos, and Michael Thamtai came from Thailand. To round the conference off, Peter Skilling and Petra Kiefer-Pülz, two famous Pāli scholars, arrived from Thailand and Germany, respectively. For a week, in these beautiful halls filled with up-to-date electronics and technology, an ever-ready staff, and plentiful workspaces, the group engaged in intense and enjoyable discussions about the role of the Buddha, the different variants of the Vinaya, the problems with translation, the environment of law schools, the intersection of Buddhism and politics in different nations, and the place of Buddhism in different academic contexts. And slowly, they began discussing a possible roadmap for the new discipline of Buddhism and Law within the purview of Religion and Law, Religious Studies, Comparative Law, International Law, Asian Studies, and Buddhist Studies.

Throughout the conference, the participants were aware of misconceptions in the scholarly community about the nature of Buddhism and Law. The first was the misunderstanding in Western scholarship that Buddhism as a religion had not been a significant legal or political influence in any Asian country in which it predominated historically or presently. A second common misunderstanding was that the

Vinaya had been translated as “the book of discipline” in Western languages, which resulted in legal scholars assuming that it was not “law.” Andrew Huxley, who worked in Myanmar, spoke of the colonial powers in Asia that had discarded and “disappeared” most secular Buddhist and Buddhist-influenced law codes. A fourth misconception was what constituted “religious influence on a legal system.” While scholars well understand the Christian roots of legal policies in most Western states, the influence of Buddhism on Buddhist states in Asia over the past two millennia is often seen as “cultural” and not religious.

The most interesting day of that initial meeting was the last, when the group finally turned to what was needed to develop the field. The group spoke about the possibility of this project, and the obvious difficulties with it. Winni Sullivan started out by saying provocatively that, maybe, there was “no hole to fill.” She argued that the academic discipline of Religion and Law simply disregarded most religions outside of Christianity or, at times, Judaism, so perhaps it was no different for Buddhism. Andrew Huxley, with his sonorous, booming voice, interrupted to contradict, stating: “Arguing there is *no hole* is not right! There surely is a hole. Just look at the growth of Hindu Legal Studies, Islamic Legal Studies. The first professorship of Islamic, Hindu, and Jewish Law began in 1840 at Oxford University.” The group then launched into a lively discussion on what Buddhist law was. Several points become clear. Participants agreed that if one can say that the United States, for example, is a Christian nation, then we can say that many of the current and historic societies of Asia are Buddhist-influenced societies and nations. The role of karma in legal decisions was “a way of justifying things,” Bernard Faure said. Michael Thamtai added that “there is no difference between going to litigate and a karmic explanation. They act together, karma is also used in the sense of ‘let’s be compassionate to him.’”

One scholar cautioned that “Law in the West” was not a good contrast, because there is no unitary generalization available for what “the West” means, and then others presented a series of basic questions about the relationship between religion and law. Native American religions came up as did Muslims in Myanmar; the *adat* legal system of Southeast Asia; the situation of stateless persons; “the rule of law” in China, whether or not the notion of the “rule of law” is fundamentally hostile to Buddhism; and many other topics. While wide-ranging, exciting, and difficult at times, the conversation was always based on deep personal experience, as well as scholarly insight. As for the idea of justice, Peter Skilling provoked a lot of laughter with his example of Aṅgulimāla, a famous disciple of the Buddha, who began his life as a criminal with a necklace of fingers from his victims. Peter asked, “Was he just beyond justice?” Frank Reynolds summed up the week of conversations with a list of what was needed to establish the new discipline. He outlined the following components: a basic, introductory text explaining the field; a source volume with short

¹ All quotations come from the author’s notes from the 2006 conference.

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.

The present volume, *Buddhism and Comparative Constitutional Law*, skillfully edited by Tom Ginsburg and Benjamin Schonthal, is just what Frank Reynolds ordered. Engaging the scholars who have gathered together to form a Buddhism and Law network over the last sixteen years, then adding several comparative lawyers and scholars from other fields, they have assembled one of the first edited volumes on a specific and compelling topic in Buddhism and Law. Some large themes emerge as one reads the chapters, which have been central problematics of this field since the Bellagio Center conference years ago, and remain important issues for further research, such as the nature of Buddhist legal cosmologies. 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. In this way, Buddhist concepts of law, legality, legal consciousness, legal history, and legal theory fit into ideas of government and citizenship. In each of these essays, the reader can detect the dynamic way in which Buddhism sits as a foundational backdrop for the legal cosmology of the society. This is the first time in which ideas of constitutionality, both modern and historical, have been seriously approached by Buddhist and Asian experts, and this volume will be a cornerstone in the development of the field for many years to come.

