

## Introduction

### *Mapping the Buddhist–Constitutional Complex in Asia*

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In 2011, the 14th Dalai Lama Tenzin Gyatso announced his intention to complete a major legal transformation that would redefine the government of the Tibetan community-in-exile. In a speech given from his headquarters in Dharamshala, the world’s most well-known Buddhist monk confirmed that he would be retiring as the political leader of the Tibetan people. That event would catalyze a dramatic constitutional change: from a system based on the “rule by kings and religious figures,” the Tibetan Government-in-Exile was to follow a new Charter that provided for democratically elected leaders, whose authority would be constrained by law (Mills 2018, 155 and passim; see also Brox 2016).<sup>1</sup> The preamble to the new 2011 constitutional text explained that, in spite of the Tibetan people’s willingness to accept the continuation of theocracy, “His Holiness the Dalai Lama decided that the time had now come to complete the process of full democratization and that the Tibetan people should no longer remain dependent on a single individual” (Tibetan Parliament-in-Exile 2011, 2). The chapters of the Charter that followed laid out this vision. The “Tibetan People” would continue to promote “the noble Buddhist faith” and respect the Dalai Lama as “the manifestation of [the bodhisattva] Avalokiteshwara in human form . . . the master of all Buddhist teachings” (Article 17(11); Article 1).<sup>2</sup> But they would also uphold fundamental rights and hold elections, maintain a judiciary and bureaucracy, limit executive power, and follow standardized procedures for promulgating laws. Theocracy, in short, would give way to constitutional democracy.

This episode – which attracted more attention among Tibetologists than among scholars of comparative constitutional law – provides one tantalizing example of the

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<sup>1</sup> A “Constitution for a Future Tibet” had appeared as early as 1963, with another major iteration coming in 1991.

<sup>2</sup> We use the spelling of the original. The more common spelling is the Sanskrit, Avalokiteshwara.

many ways in which Buddhism and constitutional thought have become entangled and interfused in Asian polities, both now and in the past. On the one hand, the event appears to be a clash of categorical opposites: something old and something new, a form of religion and political ordering, a system purportedly designed for ultimate release from the world, and one intent on structuring power within it. On the other hand, the very of idea of having a Tibetan Charter – one that is imaginatively descended from and modeled on a centuries-old system of rule by “the manifestation of Avalokiteshwara in human form” – implies that Buddhist and constitutional thought may in fact share certain things, among them symmetrical commitments to sovereignty, legitimacy, order, and continuity.

This volume examines the interactions of constitutional and Buddhist traditions in historical and contemporary Asia. This introduction makes the case for why this topic is important, and argues that despite surface incongruities, constitutionalism and Buddhism share certain values, even if they differ in their typical institutional forms. We consider Buddhist idioms that speak to constitutional ideals, arguing that the two discourses address common problems of legitimation and constraint that arise in human polities. Further, we demonstrate that the influence of Buddhism on the constitutional politics of contemporary Asia has been substantial. We then situate the various case studies examined in this book in terms of the interaction and intertwining between Buddhism and various examples of constitutions. We conclude with thoughts on how scholars can extend the findings presented here.

### 1.1 WHY BUDDHISM AND CONSTITUTIONAL LAW? EXAMINING THE BUDDHIST–CONSTITUTIONAL COMPLEX

As 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. 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. This play of commonality and difference, integration and separation, is echoed by the volume’s authors, who come from a diverse variety of scholarly disciplines including law, Buddhist studies, political science, anthropology, and history.

The contributions that follow examine the Buddhist–constitutional complex in almost all jurisdictions in Asia that have a large Buddhist population.<sup>3</sup> While accurate estimates are difficult to come by, one can say that there are nearly 500 million Buddhists in Asia belonging to a variety of groups.<sup>4</sup> A majority of citizens in Sri Lanka, Myanmar, Thailand, Laos, and Cambodia follow the Theravāda (“the Doctrine of Elders”) tradition of Buddhism, which they consider to be the oldest and purest form of the religion. Vietnam, China, Japan, Taiwan, and South Korea also have large numbers of Buddhists, although not enough to constitute an absolute majority.<sup>5</sup> Most Buddhists in these countries observe a version of the Mahāyāna (“the Great Vehicle”) tradition of Buddhism, a broad and diverse collection of movements that, unlike the Theravāda tradition, differ widely in their key texts and doctrines. A majority of the population in Bhutan, Mongolia, and Tibet (including the Tibetan diaspora) identify as Buddhists and, for the most part, practice a version of the religion referred to as “the Thunderbolt Vehicle” (Vajrayāna), which originated in India before rising to particular prominence on the Tibetan plateau. Among other things, Vajrayāna Buddhists underscore the importance of esoteric knowledge and the institution of reincarnated monks, known as *tulku* in Tibet.<sup>6</sup>

Although it is difficult to generalize about law, society, or religion across all of these places, we believe these jurisdictions constitute an important and coherent set for comparative consideration. That is because these countries are all settings in which Buddhist communities, doctrines, and institutions have had a formative influence on social and political life, both historically and in the present. To understand the full range of constitutional politics and practice in these places requires familiarity with what Matthew Walton (2016, 4–9) calls the “moral universe” of Buddhism. This universe is grounded in ideas about transmigration and rebirth (*samsāra*), intentional action and its consequences (karma), cosmic truth and righteous teachings (dharma), spiritual awakening and those who have achieved it (buddhas and bodhisattvas). In the same way that Christian theological ideas and legal forms have had a major impact on the development and conception of constitutional law in Europe (Berman 1983; Tierney 1982), Buddhist concepts like these – and others discussed in the chapters that follow – have had an important influence on the development and application of national constitutions in Asia.

<sup>3</sup> Our chapters directly examine all of the countries identified in this paragraph, except for Laos. Taiwan is discussed by Laliberté in Chapter 14.

<sup>4</sup> On these difficulties, see Laliberté in Chapter 14. Our estimates come from [www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/](http://www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/).

<sup>5</sup> According to the Pew Research Center, China is home to roughly half of the world’s Buddhists: [www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/](http://www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/).

<sup>6</sup> Vajrayāna is also understood to be a branch of the Mahāyāna. For those who would like more information about Buddhism and its major divisions, there are a number of good general introductions to Buddhism, among them: Gethin 1998; Harvey 2013; Lopez and Miles 2017; Prebish and Keown 2006; Strong 2002.

These jurisdictions have also given rise to a variety of genres and ideologies of legality that one might call “Buddhist law,” about which more will be said below.

While we do not assert that discussions of constitutional law ought to be shaped by a strong bifurcation between “Asian values” and “Western” ones (Bauer and Bell 1999), we do argue that a full and complete understanding of constitutional law in many parts of Asia demands a fuller understanding of Buddhism. This includes the ways in which declaredly Buddhist rationales, narratives, and textual forms, along with Buddhist clerics and organizations, have shaped how governments, judiciaries, and everyday people understand the nature and purpose of constitutional projects. Moreover, we further insist that a rigorous understanding of Buddhism, particularly since the mid-twentieth century, requires an awareness of how the rise of constitution-based national polities – the most common form of legal–political governance in the world – have affected and often altered how Buddhists conceive their own structures and practices of self-administration. We thus see a conversation between two large historical “normative social practices” (Wallace 2014, 332) that shapes both.

## 1.2 BUDDHISM AND CONSTITUTIONAL LAW TODAY

To date, the kind of two-way conversation our authors present here has been relatively rare, among both scholars of Buddhism and scholars of constitutional law. With some important exceptions, scholars of Buddhism have not engaged with the literature on comparative constitutional law, and vice versa. This lack of scholarly engagement is all the more obvious when one considers the abundance of important scholarship examining the interactions of religion and constitutional law in other jurisdictions, most notably those with majority Christian or Muslim populations.<sup>7</sup>

One should not mistake this academic neglect for a lack of importance. As the chapters in this volume demonstrate, Buddhism plays a major role in Asia’s constitutional cultures. Buddhist monks and lay activists have been central agents of constitutional change, engaging in “Buddhist legal activism” and “Buddhist-interest litigation” throughout the continent (Schonthal and Ginsburg 2016). Monk-led groups like the Bodu Bala Sena (BBS) in Sri Lanka or the Association for the Protection of Race and Religion (Ma Ba Tha)<sup>8</sup> in Myanmar have made legal activism and constitutional politics a key feature of their nationalist agendas (Frydenlund 2017; Walton and Aung Tun 2017–2018; Schonthal 2016b). Political regimes in China, Thailand, Myanmar, Vietnam, and South Korea have mandated

<sup>7</sup> Since 1970, at least thirty-four books have been written looking explicitly at the interactions of Islam and constitutional law, and at least nineteen books that focus primarily on constitutions and Christianity. An even greater body of work has thought to theorize the links between liberal constitutionalism and religion more generally.

<sup>8</sup> In 2018, the group renamed itself the Buddha Dhamma Charity Foundation.

the creation of constitution-like charters for Buddhist groups, in large part as ways to preempt any political and legal activism on the part of would-be Buddhist activists (Borchert 2020; Kyaw 2019; Larsson 2020; Liu 2020; Nathan 2018). Even in Japan, where strong expressions of religious identity are generally frowned upon in politics, the Buddhist organization Soka Gakkai has exerted a disproportionate influence on constitutional negotiations, largely through its affiliated political party Komeito (McLaughlin 2021).

Today, six of the seven Buddhist-majority countries in Asia (Myanmar, Sri Lanka, Thailand, Cambodia, Laos, and Bhutan) grant Buddhism special status or recognition in their constitutions, using a wide variety of formulae.<sup>9</sup> Article 9 of Sri Lanka's Constitution, for example, gives to Buddhism the "foremost place" and obliges the government to "protect and foster the Buddha Sāsana." The Constitution of Cambodia makes Buddhism the "religion of the state" and includes the country's two chief monks in its "Royal Council of the Throne," charged with choosing the monarch.<sup>10</sup> Bhutan's Constitution describes Buddhism as the "spiritual heritage of Bhutan" and makes it a matter of state policy to promote a society "rooted in a Buddhist ethos and universal human values."<sup>11</sup> Even socialist Laos revised its constitution in 2003 to provide that "the State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilizes and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people."<sup>12</sup> The 2017 Thai Constitution remains one of the most verbose on the topic, declaring not only that the king must be a Buddhist (sect. 7) but that the state should "support and protect Buddhism and other religions," which it glosses in the following way:

In supporting and protecting Buddhism, which is the religion observed by the majority of Thai people for a long period of time, the State should promote and support education and dissemination of *dharmic* principles of Theravada Buddhism for the development of mind and wisdom development, and shall have measures and mechanisms to prevent Buddhism from being undermined in any form. The State should also encourage Buddhists to participate in implementing such measures or mechanisms. (sect. 67)

Visible in this paragraph are references to Buddhist history, soteriology, and political philosophy which have fed into Thailand's political culture and continue to define

<sup>9</sup> Of majority-Buddhist countries, only Mongolia does not mention Buddhism in its Constitution, perhaps because it was drafted in 1991 immediately following seventy years of Soviet domination.

<sup>10</sup> Art. 43. and Art. 13, respectively. Cambodia's constitution also obligates the state to "promote and develop Pali schools and Buddhist institutes," Art. 68.

<sup>11</sup> Art. 3.1 and Art. 9.20, respectively. In addition, Art. 2.1 provides that the King must be a Buddhist and Schedule 1 provides for Buddhist symbols in the national insignia and flag.

<sup>12</sup> Const. Lao People's Democratic Republic (1991, rev. 2003), Art. 9. See Bui (2021).

it in the present. In Thailand, as in other places, Buddhism remains closely bound up in the design, interpretation, and politics of constitutional law and practice.

### 1.3 MAPPING THIS VOLUME

The chapters that follow present the landscape of the Buddhist–constitutional complex in Asia. Given the relative absence of such mapping to date, the areas and topics we identify ought to be considered, for the most part, initial forays; broad areas of study that invite further exploration by scholars. The intellectual cartography undertaken here was conducted collaboratively between January and May 2021, in the midst of the Covid-19 pandemic, as part of an online workshop series in which all of the contributing authors participated, along with other scholars who generously contributed as discussants and commentators.

As a group, we explored a broad range of questions: 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? Although the workshop series was, to the best of our knowledge, the first one dedicated to the topic of Buddhism and constitutional law, this intellectual endeavor would not have been possible were it not for the important foundations in the study of Buddhism and law laid down by other scholars, many of whom participated in the workshop and others who crowd the texts and bibliographies of the pages to follow.<sup>13</sup>

In the remainder of this introduction, we present a preliminary conceptual framework for the broader mapping of the Buddhist–constitutional complex. In the next section, we look to the orienting terms of our inquiry, Buddhism and constitutional law, which are themselves the subjects of perpetual definitional contestation. While we do not claim to resolve these contests, we nevertheless hope to give some sense of how these terms are used and inflected by the authors of this volume, and by Buddhist actors on the ground. Doing so requires that we disaggregate our binary into four, including two “-isms” and two forms of law: Buddhism and Buddhist law, and constitutionalism and constitutional law. After developing this framework, we next situate the various contributions in terms of this broad matrix.

<sup>13</sup> In addition to the authors whose names appear in this volume, other contributors and commentators are mentioned in the acknowledgements.

#### 1.4 BUDDHISM AND CONSTITUTIONAL LAW: SETTING THE TERMS

At first glance, the conjunctive phrase “Buddhism and constitutional law” seems to suggest the coming together of two different sets of institutions, persons, ideas, and practices: some associated *prima facie* with Buddhism (such as monasteries, monks, meditation, and merit-making) and others with national constitutions (such as laws, legislators, and litigation). The field of view is, of course, more complicated than this, given the many definitions and referents associated with each of the terms as well as their inconsistent and variable use in different contexts.

Things get even messier when one projects the topic back into history. Somewhat confoundingly, premodern “Buddhist” texts do not speak about “Buddhism,” but about a variety of other topics, including the dispensation (*sāsana*), the teaching (dharma), the words of the Buddha (*buddhavacana*), and other matters. “Constitution” does not fare much better. Even granting that “constitution” is a modern legal category, D. Christian Lammerts points out in his chapter that the types of Buddhist law that we would instinctively want to call constitutional *avant la lettre* do not appear to have been conceived as a distinct, separate domain of law in the same way that constitutional law is in the Western legal tradition. The laws that pronounce on institutions, processes, and offices of governance are not elevated as a separate body of “higher law” but are rather integrated with a miscellany of other matters: rules about witchcraft, tolls, taxes, rituals, bathing, animals, ordeals, and many others. The mass of “law-stuff” (Llewelyn and Hoebel 1941) in the premodern polities of Asia is far more variegated than that found in any modern rational–legal code.

The categorical challenges we struggle with here are similar to those that French and Nathan (2014) struggled with in their path-breaking volume *Introduction to Buddhism and Law*, where they also noted instability and dissensus around the categories contained in their title. An original intellectual sin – for some anyway – inheres in their volume as it does in ours: to speak of “Buddhism” or “law” as though they were coherent objects spanning regions and epochs is to imply a misleading consistency encompassing what can be highly disparate textual, ritual, and philosophical traditions.

What gives us some comfort, however, is that we scholars are not the only ones generalizing. As the subsequent chapters reveal, the legal and discursive fiction of a singular dispensation is one shared by most of the actors described in this volume. The protagonists in these chapters speak about a coherent community, lineage, and scriptural tradition associated with the Buddha, even if they mean very different things. To examine the Buddhist–constitutional complex is, therefore, both to rely on and transgress designations: to look for constitutions within fields designated as Buddhist; to look for Buddhism in fields designated as constitutional; and to attend carefully to how such acts of designation affect the lives of persons in particular places and times.

For those unfamiliar with Buddhism, we offer some preliminary details, concededly as generalizations, which might help frame the chapters to come. For those unfamiliar with constitutional law, we undertake an equally cursory overview.

## 1.5 BUDDHISM

As noted above, Buddhism constitutes one of the largest religions in Asia, and roughly 7 percent of the global population identifies with it. As with all religious traditions, Buddhism entails a range of different practices, some of which bear little similarity to each other. Nevertheless, a set of core ideas can be found in most manifestations. As the name suggests, all forms of Buddhism aver the existence of a special set of beings who discover the laws of the cosmos and, through so doing, become buddhas (literally, “awakened ones”). Some versions of Buddhism, particularly the Vajrayāna, identify many different buddhas who are thought to populate the universe at any one time. Other versions, such as Theravāda, underscore the extreme rarity of buddhahood and focus primarily on the central importance of a single historical buddha, an ancient South Asian prince named Siddhartha Gautama, who is credited with teaching the truths he discovered to humankind. This is the figure to whom we refer when we use the definite article and a capital B, *the Buddha*.

Although Buddhists venerate a variety of buddhas and other advanced beings on the path to buddhahood (called bodhisattvas), they will also affirm the importance of *the Buddha* as the awakened teacher who is closest to us in space-time, having lived “only” 2,500 years ago in the vicinity of what is today the Indian state of Bihar and Southern Nepal.<sup>14</sup> During his eighty years of life, the Buddha delivered a series of sermons explaining how the universe worked and how humans ought to behave. Those teachings – collectively referred to as the dharma – are thought to contain, in an abbreviated form cognizable by humans, the key truths of the cosmos (also referred to as the dharma), which might be (inadequately) summarised as follows:

The cosmos, and all things in it, are guided by cycles of creation and destruction. Sentient beings similarly undergo countless cycles of birth, life, and death in an ongoing process called *samsāra* (literally “wandering”). One’s journey through *samsāra* is not random but determined by volitional actions (karma) that one undertakes. Those who undertake meritorious actions will gain benefits including rewards in this and/or future lifetimes, while those who act immorally will suffer more. These cycles of rebirth and re-death, while they contain many pleasurable things, must in the final analysis be understood to be painful or stressful because even the greatest pleasures are ultimately temporary and impermanent. Therefore

<sup>14</sup> This is true for most, but not all, traditions of Buddhism. In particular, Pure Land Buddhism, a form of Mahāyāna, tends to focus its devotions on a different Buddha named Amitābha, who is imagined to be “close” in other ways. On Pure Land Buddhism generally, see Yu (2014).



one's ultimate goal should be to exit the cycle of *saṃsāra*. By following the teachings of the Buddha one can move toward nirvana, the ultimate “extinguishing” of one's rebirth in *saṃsāra*, in this lifetime or in a future life.

Beyond these core principles, tremendous variation exists. In the Theravāda tradition, for example, the goals of Buddhist practice tend to be the achievement of a better rebirth through meritorious actions (which include everyday moral conduct as well as acts of donation to build Buddhist monuments or support monastics). The progressive improvement of one's rebirths and strict adherence to the dharma, it is thought, will lead ultimately to nirvana. Mahāyāna traditions of Buddhism, by contrast, often emphasize the nearer-term achievement of bodhisattva-hood, a process of awakening in which one vows to defer individual nirvana in order to help other sentient beings attain salvation.

In all schools of Buddhism, the journey toward a better rebirth or awakening requires a combination of moral practices and techniques of mental cultivation. In many, but not all, traditions, these are thought to be most fully embodied in the community of monks and nuns (the sangha) who “go forth” from the normal life of a layperson and are ritually reborn as “sons and daughters of the Buddha.”<sup>15</sup> In Southern and Himalayan Asia, Buddhist monks tend to be celibate; practices vary in Northeast Asia in this regard. On entry into the sangha, monastics are, at least in theory, expected to follow special rules which tend to be based on the code of monastic law called the Vinaya Piṭaka (“the Basket of Discipline”), which contains rules of monastic conduct and organization that are considered to have been originally enunciated by the Buddha.<sup>16</sup> In most traditions of Buddhism, fully-ordained monks (*bhikkhus*) and nuns (*bhikkhuni*s) are charged with preserving the Buddha's entire dispensation of teachings, practices, and material artifacts such as relics and temples. They are therefore regarded as embodiments of and authorities on the Buddha's legacy.

## 1.6 BUDDHIST LAW

Although notions of law and legality appear throughout Buddhist traditions, there is no single phrase in premodern Buddhist texts that perfectly approximates the

<sup>15</sup> While there is a long and vibrant history of Buddhist nuns in Asia, the status of Buddhist nuns (*bhikkhuni*) today differs according to the schools of Buddhism, national policies, and local communities. There is a large literature on Buddhist nuns in modern Asia, including (Arai 1999; Cheng 2006; Heirman 2011; Kawanami 2013; Mrozik 2009; Salgado 2013; Seeger 2018).

<sup>16</sup> Although often referred to in the singular, the Vinaya Piṭaka has survived from the ancient period in six relatively complete versions, preserved in the languages of Pali, Sanskrit, Chinese, and Tibetan. Three of these versions are used by Buddhist monastics today: the Dharmaguptaka Vinaya predominates in China and Taiwan; the Mūlasarvāstivāda Vinaya recensions are used by monastics following Tibetan and Mongolian traditions, and the Pali Vinaya is used in the Theravāda sanghas that predominate in Southern Asia. It is worth noting that the practical importance and/or presumed centrality of the Vinaya differs among forms of Buddhism and monastic groups. On the history and variety of Vinaya texts see (Clarke 2015; Liu and Andrews 2017; Heirman 2007; Kieffer-Pütz 2021–2022).

English collocation “Buddhist law.” The absence of such a phrase in emic discourse does not mean, however, that Buddhists failed to produce written codes and institutions that claimed to uphold and implement the teachings of the Buddha. The very idea of dharma – a term that encompasses both the law of the cosmos and the instructions of the Buddha – suggests the possibility of pairing transcendent and human injunctions in ways similar to those observed in European legal history. In the same way that lawmakers in early-modern Europe claimed to align the law of God and the law of man, or natural law and temporal law, so too did lawmakers in Asia claim to align dharma and temporal law.

How law actually worked to influence behaviour in historical Asia, dharmically or otherwise, is a vast topic for which we have little reliable evidence. What we have are various types of prescriptive texts. In his chapter, Lammerts identifies three interlacing “environments of ‘Buddhist law’” operative in pre-colonial Southeast Asia. The first is *vinaya*, a term that, as used by monastics, refers not only to the rules of the Vinaya Piṭaka, but to the larger corpus of monastic regulations that sits around it, including so-called monastic constitutions that have served as guiding legal charters for monastics living in Sri Lanka, Tibet, and South Korea (Jansen 2018; Kaplan 2016; Schonthal 2021a; B. Sullivan 2020). The second environment is *dhamsasattha*, a genre of legal treatises apparent in mainland Southeast Asia from the second millennium, which provided rules and jurisprudential principles for kings, judges, and other “good persons” responsible for resolving disputes (Baker and Phongpaichit 2016; Ishii 1986; Lammerts 2018). The third environment is *rājasattha*, royal orders that claimed to align worldly rule with Buddhist principles (Huxley 1997; Prasert Na Nagara and Griswold 1992; Zan 2000).

For Lammerts, all three environments are forms of Buddhist law because

[e]ach entails a distinct relation between what may be called “Buddhism” and “law.” Certain general features common to these environments include: 1) (usually) a form of material embodiment and circulation in writing; 2) an orientation toward the authority of a foundational, preternatural, text (the speech of a buddha, a cosmic treatise, or the speech of a king); and 3) a rationale or jurisprudential logic whereby the normative program of such legalism is imagined to have the capacity to enable or perpetuate, via different mechanics, the religion of Buddhism itself.

Although Lammerts applies this analysis only to the premodern polities of Southeast Asia, the framework could be extended further to encompass other genres of law in the contemporary period and other parts of Asia. By the terms of Lammerts’ definitions, many of the national constitutions described earlier in this introduction would also qualify as “Buddhist law,” as would the many types of statutes and administrative ordinances used in contemporary Asia to regulate Buddhist monks or protect Buddhist pilgrimage sites (Schonthal 2017–2018).

It is important to note that, in many contexts, the question of whether a given law qualifies as “Buddhist” is itself contested. One of the most striking examples of this

can be seen in debates about the Buddhist character of the laws issued by the seventh-century Tibetan king Songtsen Gampo. Scholars disagree as to whether or not the body of laws promulgated by the putative founder of Tibet were originally conceived as embodying Buddhist principles. Some, such as Fernanda Pirie (2017, 406), insist that the earliest laws of Tibet were “not linked in any significant way with Buddhist principles” at their inception, but were retrospectively understood as such as part of an ideological project in the tenth and eleventh centuries to provide moral certainty in an era of political chaos. Others, such as French (1995), along with a variety of Tibetan jurists and scribes, prefer to read the legal archives of Tibet in a strongly Buddhist light.

Two chapters in this volume reflect on this debate and its implications. Martin Mills, whose perspective leans toward that of Pirie, characterizes the post-hoc Buddhicizing of Tibet’s founding laws as a kind of “constitutional mythology” underwritten by hidden Buddhist virtues. According to this mythology, even those forms of royal law that seem to contradict the dharma are actually “skilful means” for governance, virtuous “tricks” that embody a deeper dharmic quality which is invisible to untrained individuals.

In her chapter, Berthe Jansen comes at the question of Tibetan law’s Buddhist quality from another angle. Writing about monastic constitutions (*bca’yig*), she demonstrates that even this ostensibly most religious form of law cannot be understood in the absence of royal law. The texts reflect clear mutual influences. Monastic law always existed in the shadow of royal law, and temporal authorities frequently asserted jurisdiction in cases of serious crimes. She notes that “the very fact that various Indic Buddhist normative sources emphasize the sangha’s legal autonomy is exactly because it was regularly being challenged.” At the same time, monks did enjoy a good deal of both legal and practical autonomy, far more than did ordinary Tibetans.

### 1.7 CONSTITUTION, CONSTITUTIONAL LAW, CONSTITUTIONALISM

In the same way that Buddhism and Buddhist law implicate an unruly collection of referents, so too does the constitution have its own sets of semantically generative terms. The core term, *constitution*, itself is subject to multiple definitions. Modern usage emphasizes the importance of writing, focusing on a document or set of documents that declares the identity of a given community, organizes its structures of governing power, defines foundational norms, and authorizes further acts of rulemaking. Understood in this way, constitutions may be said to exist across a broad sweep of times and places. More narrowly understood, the term constitution ought to be reserved for the basic laws of nation-states that developed from the late eighteenth century onward. In this volume we keep both denotations in play: holding the definitional door ajar such that the term constitution refers both to

the various types of foundational law used to regulate premodern polities and Buddhist monasteries, as well as to modern national constitutions, depending on usage (e.g., Schonthal 2021b).

We take a similarly accommodative stance toward the status of writing and the long-standing question of whether the term constitution ought to apply only to written codes or whether it might refer more generally to the broader congeries of written and unwritten rules and durable norms that exert strong influences on polities over time. Scholars frequently distinguish between the “large-C” constitution, which is the formal text that is now a feature of most countries, and the “small-c” body of broader norms and practices that actually structure political and legal behaviour. The latter might include formal rules, embodied in statutes and rules of legislative procedure, but also unwritten norms. We find all these usages implicated in the chapters that follow. While a written code, such as that which governs the Chogye monastic order in Korea, might exemplify a form of constitutional writing, our authors also analyze formative and perennial ideals that shape political culture, such as the ideal of *barami* in Thailand, which links political power to moral perfection and karmic consequences.

Linked to the idea of constitutions is the idea of *constitutionalism*. Constitutionalism, most agree, denotes the normative ideal that rulers should be constrained by a consistent set of norms, embodying commitment across time. Such commitments and limitations, scholars have argued, make political life possible by providing structures for joint action (Holmes 1995). Limited government is, in the modern conception, good government. The particular values associated with constitutionalism vary with the analyst, but generally involve some notion of human dignity or liberty.

*Constitutional law* is central to the practice of modern constitutionalism, reflecting the importance of legal constraint of government. The famous British jurist Albert Venn Dicey (1907) had a capacious definition of constitutional law as “all rules which directly or indirectly affect the distribution or the exercise of the sovereign power of the state.” This definition seems to allow for informal or unwritten rules, of the kind embodied in every religious tradition. More narrowly, one might define constitutional law as the understanding of a constitution generated by lawyers and judges in the course of practices of adjudication and interpretation. So understood, many premodern Buddhist polities did not have constitutional law, but others may have had some analogs. After all, the idea that rulers should be limited by law may appear in many other cultural artifacts: philosophy and storytelling, ritual and art.

As this discussion suggests, we deploy a range of terms that specify the phenomena classified as constitutional. For our purposes, constitution refers to the fundamental norms of society, whether embodied in writing or other unwritten norms. Constitutionalism refers to the idea that these norms constrain the exercise of power. And constitutional law is the use of legal forms to express either of these concepts.

We use the adjective constitutional in purposefully broad ways, to suggest a link with one or more of these phenomena.

As should now be apparent, our approach is squarely within the tradition of what Hirschl (2014) calls comparative constitutional studies. That is, we do not focus strictly on the domains of the written constitution, or the disciplinary perspective of law. Rather, we understand constitutions broadly as a set of social practices that are best approached through interdisciplinary inquiry. At the same time, we distinguish constitutionalism as a value-imbued theory of normative constraint, that has powerful resonance in our era.

### 1.8 BUDDHISM AND CONSTITUTIONS, PAST AND PRESENT

Although this volume invokes the terms constitution and constitutionalism in deliberately broad ways, we are also cautious about reading contemporary categories back into history. That is because the terms Buddhism and constitutional law, even interpreted in the broadest sense, also seem to implicate a variety of other terms which do not travel very well when applied to the past, especially across geographical contexts. These categories include things like “religion,” “state,” and “secular” (Asad 2003; Day 2002).

The reverse direction of chronological travel should also be treated with care: what does it mean to invoke ancient Buddhist motifs, imagery, and ideals – such as the notion of *dharmarāja* or righteous kingship – in a contemporary context? Can we assume that these terms carry with them their older connotations, or should we think of them as rhetorical shells whose meanings owe more to the present than to their glossing in earlier manuscripts? As our workshop discussions revealed, thinking across the modern–premodern divide is always a delicate dance of difference and identity. Indeed, as David Engel reminded the workshop in his comments, the story is even more complex than that, given that there are many variants of the premodern just as there are “multiple modernities” (Eisenstadt 2000).

As with the Buddhist–constitutional complex, the inquiries into past also evoke complex patterns of similarity and difference. Consider for example one of the most basic binaries that inhere in many of the chapters that follow: the binary between something like religion and something like politics. Given recent critiques of secularism and the category of religion (Agrama 2012; Hurd 2015; W. F. Sullivan et al. 2015), as well as a recognition that the modern state has deeply theological origins (Bourdin 2010; Nelson 2010), one might be justified in feeling sceptical of inquiries that look for conjunctions between something like a religious and political domain prior to modernity. And yet, one does find a variety of terms and discourses within the premodern world that appear to carve similar discursive divisions in their imagination of society. Premodern Buddhist polities did not have a doctrine of secularism per se, but they drew on other logics of separation that, in various places and times, could be used to cleave apart domains of authority associated with the Buddha’s commands and those associated with monarchs.

Ideas of virtuous kingship are important in this regard because they frequently implicate a distinction between two kinds of activities: those necessary for ensuring social order and justice in a given polity and those necessary for protecting and upholding the Buddha's teachings. In the Pali sources that influenced Theravāda Buddhist thought, for example, one finds a distinction between the "wheel of the dharma" (*dhamma-cakka*) and the "wheel of power" (*āṇā-cakka*), both of which were necessary for a well-functioning society, but which monks and kings were imagined to embody respectively (Gokhale 1969; Reynolds 1972).<sup>17</sup> Similar distinctions – for example, between the "orders of the king" and the "orders of the Buddha" – were also taken up throughout Southern Asian polities over time, often in the context of discussions about righteous rulers (Ladwig and Kourilsky 2017–2018; Larsson 2016; Schonthal 2021a). Two of the most common terms of praise ascribed to rulers – "wheel turner" (*cakravartin*) and "righteous king" (*dharmarāja*) – only make sense because they fuse otherwise juxtaposed notions of temporal and otherworldly authority, royal power, and moral restraint. In this sense they appear to incorporate, if only implicitly, quasi-constitutionalist ideas of normative limitation on the actions of the monarch in the service of cosmic law.

On the Tibetan plateau, one finds a similar contrast between *chos* and *srid*. *Chos* implicated the timeless laws of dharma, while *srid* referred to the rules issued by kings and other powerful elites, which governed relations in this lifetime (Cüppers et al. 2004; Reugg 2014). The system of religio-political control by lamas came to be known as the *chos srid gdan* or "dual system" that united *chos* and *srid*, in a manner not dissimilar to the ideal *dharmarāja* (a title also used to praise Tibetan monarchs).

While these kinds of arrangements do not conform to modern categories of the religious and the secular, they nevertheless suggest some awareness that monastic and monarchical authority come from different and analytically separable sources. Moreover, twentieth-century lawmakers and politicians have used these terms to justify policies that aim to separate those activities thought to be proper to Buddhism from those which are thought to be proper to statecraft. In mainland Southeast Asia, for example, the distinction between *dhamma*- and *āṇā-cakkas* has been used to rationalize monks' denial of the right to vote or to hold public office (Larsson 2016), about which more will be said below. Similarly, Tibetan lawmakers drew heavily on the binary of *chos* and *srid* to translate the idea of secularism in the context of recent debates about the Charter of Tibetans-in-Exile (Brox 2010 and 2012).

In at least one case, the dharmic principle of *anicca* or impermanence has been used as a resource to undermine temporal law. Perhaps rationalizing his country's continuous constitutional turnover since 1932, the late King Rama IX of Thailand characterized constitutions as impermanent human creations, subject to replacement as conditions demand (Harding 2007). This illustrates another kind of

<sup>17</sup> See also Collins' (1998, 473–4) important remarks on the relative rareness of this pairing in Pali literature.

common rhetorical move, which is to characterize the formal constitution as a foreign, Western form, to be distinguished from the true and eternal dharma.

### 1.9 BUDDHIST CONSTITUTIONALISM?

Given that Buddhism and constitutional thought both draw upon categories that distinguish more-than-worldly authority from merely-worldly authority, idealised systems of order (dharma, rule of law) from practical acts of governing, the question then becomes how are these things brought together in particular forms of governance and legal texts? Put another way, what does it mean to both accommodate and align the wheels of dharma and power, or *chos* and *srid*, in a *constitutional* mode?

One way to talk about this merger in the context of national constitutions is to use the language of *Buddhist constitutionalism*, a formula that implies a purposeful comparison with other variants, such as secular or Islamic constitutionalism. The phrase also implies that there is something distinctive, vis-à-vis other constitutional variants, about the history and orientation of such a project. In an initial definition, Schonthal described Buddhist constitutionalism as

attempts to use written constitutions and other basic laws to organize power in ways that protect and preserve Buddhist teachings and institutions, especially the institution of Buddhist monasticism, the *sangha*. (2017, 707)

According to this definition, what links together the various contemporary constitutional projects in Buddhist-majority states is two things: an impulse to safeguard Buddhism in general, and a concern with the sangha in particular. Schonthal argues that a defining feature of this kind of constitutional project is the question of “properly structuring the relationship between governing elites and Buddhist monks – each of whom have, historically, claimed special responsibilities and authority for the protection of the religion” (2017, 708).

An advantage of this formulation of Buddhist constitutionalism is that it acknowledges the kinds of entanglements that emerge between what we moderns would call religion and public law (Hirschl 2010). It defines the project in active terms, as a set of undertakings designed to generate, implement, or expand the promotion of Buddhism through, in this case, national constitutions. Such a definition admits, even normalizes, the possibility of monks engaged in law-making, or reincarnated *tulku* (such as the Dalai Lama) serving as heads of state. Yet, for some, it directs attention too strongly toward certain Buddhist authorities, namely the sangha, rather than others, such as lay elites or Buddhist political theory more generally.

Khemthong Tonsakulrungruang (2020) has argued that the study of “Buddhist constitutionalism” ought to take more seriously the profound influence and strategic deployment of Buddhist notions of karma and dharmic kingship on political behaviour in Thailand. He argues that one should view the constitutional history of Thailand as reflecting a contest between *two* forms of constitutionalism, a

Buddhist constitutionalism that has roots going back to the thirteenth century, and a liberal democratic version that emerges with the 1932 revolution (see also McCargo 2004). From this perspective, a modern project of Buddhist constitutionalism might mean imbuing the constitution with normative values associated with the dharma and trying to secure a righteous ruler who will act in accordance with internalized norms of appropriate restraint. Empowering a wise ruler rather than constraining a bad one thus serves as the focal point for Buddhist constitutionalism.

In her chapter, Eugénie Mériéau also notes the amalgamated structure of Buddhist constitutionalism in Thailand, albeit from a different angle. Examining the history of constitution-making in Siam/Thailand from 1932, Mériéau demonstrates the deep interfusion of Buddhist and European ideas of sovereignty, kingship, law, and constitution that make up the country's constitutional monarchy. This "bricolage" of legal authority (see also, Mériéau 2021) did not so much evolve naturally as through careful design. As Mériéau shows, Thailand's early constitutionalists, such as Pridi Banomyong, purposefully merged evolving theories of Thai constitutionalism with traditional notions of Buddhist kingship and ritual authority. Indeed, they went so far as to encourage the ritual, symbolic interpretation of the physical constitution as a sacred text akin to the Buddhist canon. Read through this history, the notion of Buddhist constitutionalism takes on an entirely new valence, in which the union of the two terms suggests not so much the support of Buddhism through constitutional measures, as the acts of grounding, rationalizing, and legitimating the entire edifice of the modern constitution itself within the framework of Buddhist cosmology and morality.

Yet another example of the way in which conjoined Buddhist and liberal logics can animate constitutional practice can be seen in the chapter by Richard W. Whitecross, who examines the relationship of Buddhism and national constitution-making in Bhutan. According to Whitecross, the "dual system of governance" established by Bhutan's theocratic founder, Zhabdrung Ngawang Namgyal, established a conceptual separation between religious and temporal power. When Bhutan produced its first written constitution in 2008, constitutionalizing the monarchy and introducing elections for the first time, the drafters reached back to the Zhabdrung's ideas to imbue the Himalayan kingdom with a Buddhist mantle. At the same time, they removed monks from having a direct role in governance, leading to a number of unintended consequences and a degree of popular unease about the constitutional status of Buddhism in this deeply religious country.

Iselin Frydenlund further expands the semantic range of Buddhist constitutionalism. Examining the evolution of constitutional law in post-independence Myanmar, she calls attention to the broader ambit of Buddhist constitutionalism beyond explicit concessions given in the constitutional text. In Frydenlund's view, state support for Buddhism can also be entrenched constitutionally through statutes, unwritten norms, and more subtle rhetorical genuflections to the preeminence of



Buddhism, such as the calendrical conventions used in Myanmar's laws, which record the dates of legislation with reference to the birth of the Buddha. More provocatively, Frydenlund finds the presence of Buddhist constitutionalism in legal language and practices that purport to separate religion from politics in impartial ways. The very forms of secularism enacted by Myanmar's constitution, she argues, give preferential treatment to Buddhism by carving up "secular" and "religious" issues in ways that indirectly advantage Buddhist groups or adopt Buddhist perspectives on the proper role of religious clergy in voting, campaigning, and holding public office, and other political processes. Even attempts at separation cannot escape the deeply Buddhist political idiom of the majority population. As she notes, though, these practices of Buddhist statecraft have been challenged by ethnic and religious minority communities in Myanmar. The 2021 military coup ushered in a new period of contestation in this regard, as the democratic opposition adopted a new "Federal Democracy Charter" that declared an end to Buddhist constitutional privileges, while the military junta has positioned itself as the protector of Buddhism.

#### 1.10 DIRECTIONS OF INFLUENCE: BUDDHIST CONSTITUTIONALISM AND CONSTITUTIONAL BUDDHISM

There is little question that Buddhist texts, institutions, and ideals have influenced the design, interpretation, and practice of constitutional law in contemporary Asia. As noted, similar arguments have long been made about Christianity in the European context by scholars such as Harold Berman and Brian Tierney. They and others argued even more explicitly that constitutional thought in the West, and the liberal constitutional tradition more generally, grew out of Christian theological principles and acts of ecclesiastical reformation in medieval Europe. Less well studied, both in Europe and in Asia, are the effects of "constitutional practice" (Schonthal 2016a, 11) – by which we mean the various, often high-profile, acts of drafting, implementing, and interpreting contemporary constitutional law – on the practice and institutional organization of Buddhism.

One example can be found in Krishantha Fedricks' chapter on Sri Lanka, which highlights how features of constitutional law – its histories, principles, and "linguistic ideologies" – influence the ways in which Buddhism is practiced and understood within a new Buddhist movement on the island. Drawing on his expertise in linguistic anthropology, Fedricks identifies both a conceptual symmetry and a historical continuity between two linguistic ideologies. The first is a "Sinhala-only" ideology that gained momentum in the decades following independence and which led to making Sinhala (rather than English or Tamil) the dominant language in Sri Lanka's 1972 and 1978 constitutions. The second is a "vernacularising" ideology that has been championed by a popular new Buddhist movement in Sri Lanka called Mahamevnāva and which led to Sinhala (rather than Pali) being the preferred language for Buddhist religiosity by that group. This reformist movement,

Fedricks insists, takes inspiration from provisions in Sri Lanka's constitution when creating its own manifestos, which underscore the ultimate goal of creating a transnational *gautama buddha rājya*, or Buddhist state.

Similar vectors of influence, running from national constitutions to Buddhist groups, can also be observed in Japan. Though the country has a long and rich history of engagement with Buddhism (dating back to the "Constitution" of Prince Shotoku of 604 CE), Buddhists in modern and contemporary Japan have operated under two constitutional regimes that marginalized their activities (Thomas 2016). The Meiji Constitution of 1889 enabled the wartime government to prioritize Shintō, while the postwar constitution reacted to that by institutionalizing a very strong separation of church and state. In his chapter on the topic, Levi McLaughlin demonstrates the strong social and cultural impacts that Japan's 1947 Constitution has had on the self-presentation and institutional organization of Buddhist groups. Using two case studies – one looking at the activities of Buddhist clerical training and humanitarian aid programs and the other tracking the development of the highly influential lay Buddhist group Soka Gakkai – McLaughlin stresses the strong social and legal impacts that Japan's modern constitutions have had on the activities of Buddhist organizations. Attention to the nation's constitutions has caused Japan's Buddhists to reorient, revise, and even reconceive their activities in ways that demonstrably conform to constitutional prohibitions against mixing religion with state.

So influential has Japan's Constitution been, that McLaughlin even proposes an alternative pairing of Buddhism and constitutional law from the forms described above: rather than a form of *Buddhist constitutionalism*, which seeks to align state law with Buddhist goals, Japan constitutes a case of *constitutional Buddhism*, the deliberate aligning of Buddhist organizations and activities with a national constitution. Religious organizations have themselves become constitutionalized, as institutional imaginaries flow from state to society (McLaughlin 2019). This illustrates powerfully our theme of mutual interdependence and construction.

### 1.11 FURTHER ENTANGLEMENTS IN THE BUDDHIST–CONSTITUTIONAL COMPLEX

We do not wish to give the mistaken impression that the only way to conceive of the relationships within the Buddhist–constitutional complex is as vectors of influence running one way or the other, with either Buddhist elements influencing the practice of constitutional law or constitutional prototypes shaping the practice of Buddhism. In many cases the dynamics of influence and integration are more complicated than this, as our designation of the Buddhist–constitutional complex implies. Rather than one domain defining the other, Buddhism and constitutional cultures codevelop and coconstitute each other. For example, in his chapter on Cambodia, Ben Lawrence examines the intermeshed histories of the country's two

major Buddhist monastic bodies, the Thammayut and Mahanikay, through the various ways in which those divisions were recognized or occluded in constitutional texts from 1947 onwards. The 1947 Constitution, which appointed the patriarchs of each sect to the Council of the Throne, suggested a balance between the elite and royally affiliated lineage of the Thammayut sect (which had been imported from Siam) and the more populous, home-grown Mahanikay, to which more than 95 percent of monks claimed affiliation – a balance that seemed consequential in the waning days of French influence. When the same arrangement reemerged in the 1993 constitution following periods of control by the military, Khmer Rouge, and Vietnamese, it did not signal equality between the two sects, but rather, competition. By recognizing the two patriarchs in the constitution, lawmakers contributed to hardening sectarian identities, while at the same time obscuring the de facto dominance of the larger and politically connected Mahanikay. In this way, the effects of constitutional provisions were, as Lawrence tells us, “contingent” on complex histories of politics, alliances, elections, and occupation.

A different version of the intermeshing of national and monastic constitution-making can be seen in Mark Nathan’s chapter, in the form of what might be called a double clash of constitutional orders: a clash, on the one hand, between the constitutions of South Korea’s secular state and those of the country’s Buddhist monastic orders; and a clash, on the other hand, between the monastic constitutions of celibate and non-celibate monks within the Chogye order. It is notable that all of these texts were classified using the same word for law, *hon*. The clashes may be more apparent than direct, yielding an impression of disharmony or incompatibility that was mobilized by different parties at different times. Nevertheless, the story Nathan tells – which culminates in an attempted ritual disembowelling on the grounds of the Supreme Court – reminds readers of the overlapping and nested lines of tension that can develop *between and among* forms of state law *and* Buddhist law, national constitutions, and monastic constitutions.

In his chapter on Thailand, Khemthong Tonsakulrungruang reminds readers that, while monks often play important roles in South and Southeast Asian politics, the influence of Buddhism on constitutional politics extends well beyond the impacts of the sangha. Remarking on the sudden rise and influence of unelected “watchdog agencies” in Thai political culture, Khemthong asks why these elitist, conservative, and anti-democratic institutions have been allowed to flourish and, for many, appear to be legitimate. His answer points to a particular concept that has been underlying Thai Buddhism for centuries and which has been usefully appropriated in modern Thai politics. The notion of *barami*, or moral perfection, Khemthong argues, undergirds popular culture in Thailand and feeds into a conservative political mentality that aligns tradition, morality, hierarchy, elitism, and Buddhism with good governance and Thai-ness. At the same time, the doctrine also seems to align democracy, popular sovereignty and free debate with foreignness, Western imperialism, and political chaos. In Khemthong’s estimation, Thai-style

democracy is *dhammacracy*, a philosophy of governance rooted in the idea that, by virtue of their past karmic merit, a small group of powerful elites has the moral authority to rule over a broader population of less meritorious, less virtuous, less capable people. It is this “*barami*-based” political philosophy, he argues, that explains the elite-centric shape of Thai constitutional culture from 1997 onward.

These analytical and descriptive accounts also have normative implications. Acknowledging a contrast, even an incommensurability, between models of liberal constitutionalism which emanate from “the West” and forms of Buddhist normativity and legality endemic to Asia, Asanga Welikala calls for the creation of alternative models of constitutionalism that might have more global purchase (see also, de Silva Wijeyeratne 2013). These new models, argues Welikala, would have more fidelity to normative and descriptive dimensions of constitutional practice in Asia. They would have to draw both from the fields of “Buddhism and law” and comparative constitutional law to think of alternative paradigms that “could make the constraining function of constitutionalism in its normative dimension more consistent with, and less jarring to, the Buddhist–Asian ethos.”

#### 1.12 THE CONSTITUTIONAL REGULATION OF SĀSANA AND SANGHA

Looking at these diverse case studies, it is clear that the Buddhist–constitutional complex in Asia is both similar to and different from the intermeshing of religion and constitutions in other parts of the world. One point of distinction is the understanding of precisely what is being protected when constitution drafters obligate the state to protect “Buddhism,” or, as it is commonly referred to in South and Southeast Asia, the Buddha *sāsana* (the “instructions of the Buddha”).<sup>18</sup> One legal commission in Sri Lanka, for example, glossed the term *sāsana* as referring to the following:

the Buddha, the nine other-worldly truths (*dhamma*-s) discovered by the Buddha, the complete teaching of the Buddha (*dhamma*), the jewel of the monks, the limb of Buddhist temples together with forest hermitages and meditation centres, bodhi trees, stupas, image houses, relic palaces, monastic preaching books and [other] books, meeting houses for monks, fields and properties that belong to temples, Buddhist education, the shrines to important deities endowed by Buddhist kings (*devalaya*), female renunciants (*silmātā*-s) and their sanctuaries, the lay persons who have gone to the triple gem for refuge, Buddhist literature, culture and civilisation, Buddhist festivals, processions (*perahæra*), offerings and customs, Buddhist principles (*pratipatti*) and ethics (*ācāra dharma*), as well as those things like this that are basic to [the Sāsana’s] cultivation. (Government of Sri Lanka 2002, 15)

<sup>18</sup> On the complexity of the term *sāsana* see Carter (1993).

As one can see in this example, those who draft and interpret laws designed to protect Buddhism, *qua sāsana*, often understand it in different terms than US Supreme Court justices would understand “religion.” More than a set of beliefs and practices held by individuals congregating voluntarily as a “church,”<sup>19</sup> the *sāsana* explicitly denotes a broad range of ideas, texts, objects, institutions, properties, and practices. In short, it is a capacious term interpreted, in many cases, as covering the entire ideal and material legacy of the Buddha and his followers.

In addition to being regarded as an abstract and collective noun, Theravāda Buddhists also understand the *sāsana* in a more personalistic and concrete sense: like all things in *samsāra*, the *sāsana* is also finite, subject to degeneration and decline and predicted to vanish within the next 2,500 years (Nattier 1991; Turner 2014). In this frame of reference, constitutional mandates to protect the *sāsana* are not simply attempts to prevent damage to an otherwise stable dispensation, but calls to extend Buddhism’s existence over time, by actively defending the Buddha’s fragile legacy against anything that might hasten the decline that is already underway.

Another point of distinction is the tendency to use constitutional mandates to promote Buddhism as a pretence for inhibiting Buddhist monks from intervening in politics. As mentioned above, the Constitutions of Myanmar, Thailand, Laos, and Bhutan prohibit Buddhist monks from voting or holding public office, in order to protect them from the supposedly profaning impact of politics on what should be a purely “religious” vocation circumscribed by the rules of *vinaya* (Larsson 2015). Although similar restrictions were abandoned in Cambodia, Buddhist monks there have launched pressure campaigns encouraging the government to reintroduce such measures (Lawrence 2022). Analogous dynamics can be found throughout colonial and postcolonial Asia (Streicher 2021a; Brac de la Perrière 2021). This kind of logic, which urges separation of religion and politics in the name of protecting the former against the latter, is, of course, familiar to historians of American constitutional law: similar rationales appear in Madison’s “Letter to the Danbury Baptists.” The universe of Buddhist constitutionalism, however, gives the separation of sangha and state its own kind of virtuous patina (Frydenlund 2016; Streicher 2021b).

Claims of separation notwithstanding, projects of statecraft in Asia, both old and new, have often engaged in reforming and regulating Buddhist monks. The records left by kings who ruled in premodern Sri Lanka, Myanmar, and Thailand celebrate the monarchs’ role in “cleansing” the sangha of impious monks and restructuring the remaining clerics as an orderly, centralized hierarchy (Bechert 1970; Tambiah 1976). As Daigengna Duoer’s chapter on early twentieth-century Inner Mongolia reminds us, Japan’s imperial government undertook similar projects of monastic manipulation under the sign of purification, using lama education programmes and clerical organizations to reshape the Tibetan and Mongolian clergy in ways that

<sup>19</sup> On “church” as a legal category in US jurisprudence as well as debates over the corporate imagination of religion, see W. F. Sullivan (2020).

cohered with reformist understandings of Buddhism popular in Japan at the time.<sup>20</sup> The region of Inner Mongolia was the site of contested political authority, exposing monasteries to the regulatory approaches of Japan, the Republic of China and, less directly, theocratic government and subsequently communism that took hold in Outer Mongolia.

Leninist governments by definition seek to penetrate all social institutions, but they vary in their particular approaches to doing so. As Ngoc Son Bui demonstrates, the Leninist government of Vietnam has sought to draw legitimacy from Buddhism, while of course coopting and regulating its institutions. The Charter of the Buddhist Sangha of Vietnam mimics constitutional forms while providing a structure for governance of Buddhist institutions. It is, in this sense, an instrument producing constitutional Buddhism of a particular type. As compared with other Leninist regimes, the Vietnamese government has a softer regulatory approach (in part because of the important role of Buddhist institutions in resisting the government of South Vietnam during the Vietnam war), as well as a generally reformist orientation of the government within a one-party framework. But there is no doubt that Buddhist institutions play a subservient role to state-building needs.

The apogee of such attempts might be seen in the various regulations for Buddhist monks promulgated by the People's Republic of China (PRC). With Buddhism the dominant faith among the country's Tibetan and Mongolian minority populations, it was perhaps inevitable that the Chinese Communist Party (CCP) would seek to control and coopt it. But the CCP has been particularly aggressive in recent years, as it has tightened controls over every aspect of Chinese society. One of the mechanisms directed at Buddhist institutions has been the establishment of the Buddhist Association of China, described in detail in the chapter by André Laliberté (see also, Liu 2020). He notes that the Buddhist Association plays both an internal regulatory role as well as one involving external representation. As China has been stymied in acquiring a leadership role in global Buddhist organizations, it has launched its own World Buddhist Forum, in part to accomplish diplomatic goals of bringing Taiwan back into the national fold. This Buddhist diplomacy reflects the seemingly complete subservience of Buddhist institutions to national goals as defined by the Leninist Party-State. Viewed through the prism of contemporary Vietnamese and Chinese laws, then, the modern Buddhist–constitutional complex can be seen not only as touching discourses and imagery that moralise state power, but also those that seemed to routinize, regularize, and reform monastic power.<sup>21</sup>

<sup>20</sup> A similar drive to reform monastic education and forms of knowledge are visible in early modern efforts by kings to edit and compile the collection of texts that can be considered “the word of the buddha,” *buddhavacana* (Lammerts 2018, 137–78).

<sup>21</sup> Understood this way, the political-cum-religious institution of the reincarnate lama, popular throughout Tibet and Mongolia, might be seen as a perfect synthesis of both inclinations: the spiritualizing of statecraft and the etatization of monasticism.

### 1.13 IDEALS AND ACTUALITIES IN CONSTITUTIONAL HISTORIES

As is always the case in comparative constitutional studies more generally, investigations of Buddhism and constitutional law must reckon with the distance between what texts say and what humans do, between the ideals of constitutionalism written down and the actual realities about which those ideals claim to speak. In his workshop comments, Mark McClish pointed out that we have no evidence that the pious duties of the king listed in ancient Indian *dharmaśāstra* texts actually functioned as limitations on royal power. Despite a long history of scholars underscoring the moral limits placed on rulers by “sacred” norms and brahmins, the actual behaviour of rulers in premodern India remains an open question. Similar questions were raised by Lammerts, who cautioned scholars against assuming that ideologies of virtuous kingship that appear in early Buddhist texts – notions of *dharmarāja*, *cakravartin*, or bodhisattva – necessarily constrained the behaviour of kings in practice. We simply do not know. Those who are interested in finding premodern forms of Buddhist constitutionalism, Lammerts suggests, should not be spellbound by the images of dharmic kingship that appear throughout Buddhist studies and contemporary politics in Southern Asia, but look for more direct evidence about how law-making actually worked on the ground.

Of course, many legal historians find themselves wrestling with similar dilemmas. Generally speaking, legal archives provide an abundance of normative sources such as codes, court records, and juristic writing that explain what *ought* to happen, but comparatively few sources that help scholars evaluate whether people actually do what the texts demand. Therefore, it is impossible to know whether the various ideals of limited rule laid out in Buddhist texts ever translated into actual constraints on the powerful. Here, methodological concerns found in legal history, in Buddhist studies, and in constitutional studies converge. In recent years, the field of comparative constitutional studies has become increasingly attentive to the deviations between rule-of-law ideals and political actualities (Hirschl 2014). Ideas of illiberal or autocratic constitutions – which have become increasingly relevant to constitutional studies and the current world order – evince a similar scepticism about the relationships between rules and outcomes (Ginsburg and Simpsen 2014). They highlight the ways in which textual norms not only deviate from human actions but may in fact serve as ideological cover for the very opposite types of behaviour. This methodological parallax between Buddhist and constitutional studies casts important light on our attempts to locate Buddhist constitutionalism in history. The textual ideals on which scholars rely may serve more as propaganda than guardrails on power.

Among the various benefits of interdisciplinary inquiries into the Buddhist–constitutional complex are the potential sharing of approaches and techniques for thinking about the work of normative texts in the world, beyond the question of

whether textual ideals are accurate or reliable indicia of human behaviour. As several scholars in this volume and at the workshop pointed out, the study of constitutions across cultures, geographies, and histories can sensitize scholars of both Buddhism and law to manifold ways in which the rhetoric of normative texts may be interpreted or used: to hide acts of domination, or justify rebellion, or to elevate the importance of one group (e.g., monks or judges) above others (e.g., kings or presidents). At the same time, these kinds of studies should also remind legal historians that, even as pure ideals, legal codes and concepts also influence actors on the ground, even if not in the injunctive way suggested by texts themselves. As Fernanda Pirie urged in her comments, premodern forms of law were not always meant to be practical and enforceable, in the way we understand today. Legal texts are also cosmologies, narratives, ideologies – all which are, themselves, actors in history.<sup>22</sup>

#### 1.14 COMPARATIVE REFLECTIONS

In what ways is the nexus of Buddhism and constitutional law distinctive vis-à-vis other religio-constitutional arrangements, beyond the particularities of *sāsana* and sangha mentioned above? Mills, in his chapter on Tibet, identifies a “core soteriological distinction” between Buddhism and Abrahamic traditions which he sees as essential to legal thinking. In Buddhist traditions, the personal morality of law-makers, mostly kings, is integral to the legitimacy of law. This is different, he insists, from the monotheistic faiths, which underscore the divine origin of proper law that exists apart from the individual.

Of course, Buddhist polities also had a theory of transcendent law, dharma, that would ideally constrain the behaviour of humans. As with notions of divine law in Christian or Islamic traditions, the consequences for transgressing dharmic principles were, in the first instance, soteriological. Those who flouted dharma risked a variety of unpleasant outcomes: the prolonging of *samsāra*, an inferior rebirth (as an animal or hungry ghost), even a reincarnation in hell. While some readers might want to dismiss these threats as imaginary, one can nevertheless assume that for many Buddhists the cosmic laws of dharma are understood to be no less “real,” and perhaps more reliable, than the laws of kings or countries (Engel and Engel 2010).

Buddhism has likely shaped the expression and exercise of power in other ways as well. Whether or not premodern kings or contemporary politicians actually altered their behaviour out of concern for dharma’s laws, the idea that rulers should govern in dharmic ways has undoubtedly provided ideological parameters for the normalization and presentation of political authority. As with other religious traditions, rulers in Buddhist-majority polities take pains to advertise their fidelity to local expectations about the nature of moral rule (Blackburn 2017; Holt 1996; Schober 2011).

<sup>22</sup> On the “legal cosmology” of Tibetan Buddhists, see French (1995).



Critics and reformers may also appeal to the laws of dharma to call for political change (Bowie 2014; Ladwig 2014). Sulak Sivaraksa (2007), for example, has invoked dharma as a source of principles of justice to guide judges and as a grounding for substantive freedoms of thought, speech, and action, as well as the notion of equality before the law. Similarly, the Dalai Lama (Gyatso 1999) draws on dharmic principles of liberality, forbearance, and non-violence to support arguments of complementarity between Buddhism and liberal democracy. These programmatic efforts are important, especially as they inform political projects like that of the Tibetan exiles laid out at the beginning of this introduction. In all of this, the Buddhist–constitutional complex looks very much like the Islamic– or Christian–constitutional complex. It contains a set of resources (discourses, texts, ideals, ritual scripts) that might be used to express or contest power using a Buddhist grammar, and that can be deployed in conversations about governance.

What other distinctions might one make? The final section of this volume offers comparative reflections from scholars of religious legal traditions outside Buddhism. Deepa Das Acevedo points to a number of instructive similarities and differences in the ways that constitutional law and religion interact in Buddhist-majority settings and the Hindu-majority jurisdiction of India. Despite certain dissimilarities between Buddhism and Hinduism as religious traditions, Das Acevedo finds in Bhutan, Korea, and Sri Lanka points of profound resonance with India. Like that of Bhutan, India's Constitution also encodes ambiguity, even inconsistency, into its treatment of the majority religion, suggesting both separation and integration of religion and state. As in Korea, India's judiciary both avows and violates the autonomy of religious communities and encourages (rather than resolves) religious disputes. And, much as in Sri Lanka, state-legal idioms and ideals in India work to shape religious institutions and practices. The Indian judiciary's willingness to wade into intra-religious disputes is instructive for the relationships among state and religion uncovered in this volume.

At the same time, one finds strong similarities with religio-legal histories in other parts of the world, including Europe and the Middle East. Richard Helmholz, one of the foremost experts on medieval canon law, offers a number of reflections on the similarities between Christian law, Buddhist law, and constitutional law. Pointing to the distinct legal status of clerics in canon law, for example, he suggests a striking complementarity between “the benefit of clergy” in medieval Europe and the distinct status and various prerogatives accorded to Buddhist monks and nuns in premodern and modern Asia. Helmholz also identifies several principles of canon law that seem consonant with constitutionalism in the sense of limits on governing power and protections of individual rights. These incipient constitutional principles include the (partial) freedom of conscience for believers, protections against self-incrimination, and biblically derived notions of common welfare rights. The juxtaposition with Buddhism is illuminating, for one does not see the same obvious incorporation of substantive norms into constitutional law in the modern period.

Instead, one might conclude that Buddhism's influence has been at the level of the unwritten small-c constitutional norms that structure the exercise of power. The medieval Church in Europe promoted and benefited from the development of its own legal personality, which had powerful spill-over effects in Western legal development. We do not know about the same process in Asia. We do know, however, that Buddhist monasteries could hold property and had internal jurisdiction over at least some crimes committed by the members of the sangha (Gunawardana 1979; Jansen 2018; B. Sullivan 2020). This raises the question of the limits of state power in dealing with monastic institutions, as well as what the conceptions of proper temporal authority were.

In a similar vein, Clark Lombardi explores the chapters from the perspective of Islamic law. In contrast with both Christianity and Buddhism, the Muslim world lacks a separate class of people who follow their own legal code. The *ulama*, or community of scholars, plays an important role in articulating the law and staffing positions in the legal system, but it is not subject to a distinct set of rules. The moral code and the law itself is, in principle, the same for everyone, but its source in revealed scripture means that human beings only have partial access to it. The tools developed for elaboration of the law in the Islamic tradition led, in practice, to diverse and multiple human interpretations through legal institutions. This pluralism, which is a defining feature of Islamic law, raises similar questions to those observed in Buddhist legal settings: Whose voices are considered probative on correct practice? How does one distinguish questions that are open to plural interpretations from those for which uniformity is required? Lombardi speculates on myriad cross-religious comparisons and divergences that may emerge as the field of Buddhism and comparative constitutional law evolves.

## 1.15 CONCLUSION

Rather than concluding inquiry into the Buddhist–constitutional complex, the contributions in this volume only begin to open up the field. The comparative reflections in the final section of the book perhaps confirm the point made by French and Nathan (2014) that the Buddhist legal tradition is less consolidated as an object of study than are those of other religious traditions. The internal pluralism of the Islamic legal tradition, for example, was ultimately constrained by the legal character of the Qu'ran, and the consolidation of the legal tradition by the jurists operating in subsequent centuries. As Hallaq (2004) has argued, these jurists formed the essential connecting tissue between state and society.

Buddhist polities, by contrast, routinely demonstrate the impact of the transcendent law on human governance, constitutional and otherwise, even if they do not attribute to the Buddha himself positive legislation binding upon all humans. Dharma could inform the laws made by rulers and the decisions made by judges. In certain times and places (though not universally), dharma itself was even

imagined as a cosmic legal system (*dhammasattha*) readymade for implementation by the virtuous (Lammerts 2018). Nevertheless, in all cases dharma required meditation and modulation in its application to the sociopolitical sphere; and these modes of application, although they often drew on common repertoires (the *dhammarāja* ideal, the dual system, and so on), also included creative elaborations particular to a given place and time. The Buddhist–constitutional complex has, in this way, been as creative as it has been influential. To be sure, some scholars have noted inherent tensions between aspects of the Buddha’s teachings (e.g., on non-violence), on the one hand, and statecraft (e.g., warfare), on the other, implying that dharmic kingship was equal parts ideal and impossibility (Collins 1998, 414–96; Zimmerman 2006). This might have meant that, compared with Christianity and Islam, the “law” of dharma might be less convincing as a rationale for social ordering, given that rulers had to claim not only that they upheld the dharma but that they themselves were the embodiments (karmically and otherwise) of its virtue. But viewed from the broad socio-legal perspective offered in this volume, the “law” of dharma has clearly had an impact on social ordering as great as the laws of *shari`a* or Torah.

More can be said about the Buddhist–constitutional complex, and much more will be illuminated in the chapters that follow. Whether or not the terrain of Buddhism and constitutional law has similar contours to other areas of comparative constitutional studies we cannot yet say. As a field-in-the-making, we only hope that this rough guide will encourage and enable others to go further.

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