

## Buddhist Constitutional Battlegrounds

*Using the Courts to Litigate Monastic Celibacy in South Korea*  
(1955–1970)

Mark A. Nathan

### 16.1 INTRODUCTION

On November 24, 1960, at around three o'clock in the afternoon, six young monks (all between the ages of 21 and 35) surreptitiously entered the Supreme Court building in Seoul, South Korea. Upset about a ruling that had been handed down earlier that day, they demanded to see the Chief Justice, but upon learning that he was out, they went to the office of the presiding judge, Ko Chaeho. Although the young monks were told that the presiding judge, too, was not in his office, they barged in anyway, announcing their intention to wait for him. At least some of the monks present that day were familiar with this office, having visited just one day prior with their senior monastic leader, Chǒngdam *sūnim*, who had lectured Ko about the righteousness of their cause. The leader had also apparently warned the judge that if the Court ruled against their side in the pending case, the monks seated before him were prepared to become martyrs for the cause.

Thus, the next day, after delivering a short message explaining their opposition to the Court's ruling, each of them pulled out a knife and, as promised, attempted to disembowel themselves right there in the judge's office. When the crowd of some four hundred Buddhist monks, nuns, and laity who had gathered outside the courthouse to demonstrate heard a rumor that the young monks had killed themselves to protest the decision, they stormed the Supreme Court building. This chain of events resulted in over three hundred arrests, including the six young men who had tried unsuccessfully to commit suicide, as well as Chǒngdam himself, who was accused of orchestrating the events from behind the scenes.<sup>1</sup>

<sup>1</sup> Ninety-three nuns and four laywomen were among those taken into custody. Most of those initially detained were eventually let go, and of the fifty-two who were prosecuted, only twenty-four were ultimately sentenced. This included, it should be noted, the six monks who had disemboweled themselves. Although Chǒngdam was initially taken into custody, the charges against him were dropped and he was even allowed to testify at the trial of the younger monks (Pak 2007).

This incident remains as shocking to learn about today as it was for those hearing about it just over six decades ago when it occurred. Although those protesting at the Supreme Court that day were roundly condemned in the press for their extreme actions, public opinion at the time was decidedly in their favor when it came to the larger goals of their so-called purification movement (*chŏnghwa undong* 淨化運動). The monks who snuck into the Supreme Court building ostensibly to commit *hara-kiri* were part of a minority group of monastics who had sought to restore the vow of celibacy in post-colonial South Korea as a necessary qualification for membership in the Korean monastic order. They had managed to wrest control of the Chogye Order (Chogyejong 曹溪宗) from the dominant faction that permitted monks to marry and eat meat, but only with the heavy support of the president at the time, Syngman Rhee.

This story of married monks and attempted disemboweling may seem like an odd way to start a chapter on Buddhism and constitutional law, but the emotionally charged events described above also involve an important set of legal disputes that help to illuminate the mechanics of Buddhism and constitutional law in Korea. The purification movement has been studied from a wide variety of perspectives, but few studies have fully appreciated what one might call the “clash of constitutions” that lies at its core. Celibacy may have been the most visible theme in the legal battles over control of the Chogye Order, but the court cases and extra-judicial conflicts were not really about celibacy per se. Rather, litigants and judges in these cases focussed instead on the legal justifications for revising the Chogye Order’s own constitution (*chonghŏn* 宗憲) or, by extension, the legality of the meeting or gathering in which these changes were authorized.

Neither the Vinaya, nor any traditional temple regulations that predated the colonial period, represented legitimate sources of authority under the law. The courts were concerned only with the written constitution, rules, and regulations of an organization composed of members who self-identified as Buddhist. At the same time, the Korean courts – guided as they were by their own national constitution – were unwilling to wade into the doctrinal disputes over celibacy due to the provisions contained in Article 12 of the 1948 Constitution that guaranteed freedom of religion and the separation of religion and the state.<sup>2</sup> Ultimately then, the clash between unmarried and married monks – between supporters of monastic “purification” and proponents of the status quo – became a contest over the respective legitimacy of two rival Buddhist monastic constitutions written by and representing the rival factions. And that contest was enabled, even encouraged, by legal mandates stemming from state law.

<sup>2</sup> South Korea’s first constitution was adopted on July 17, 1948. Article 12 reads “All citizens shall enjoy freedom of faith and conscience. No state religion shall exist. Religion shall be separated from politics.”

## 16.2 PRELUDE TO THE PURIFICATION MOVEMENT: TEMPLE LAWS AND MONASTIC MARRIAGES IN THE COLONIAL PERIOD

The origins of the above events can be traced to the period of Japanese colonial rule (1910–1945), when clerical marriages among Korean monks became normalized and increasingly common. Korean monks who may have had wives or concubines, and sometimes families, could certainly be found prior to Japan's colonial takeover of Korea, but such relationships were usually kept secret. Exposure to Japanese Buddhism in the late nineteenth and early twentieth centuries, however, introduced the idea that monks could legally marry. Clerical marriage in Japan had been decriminalized in 1872 during the early years of the Meiji period (1868–1912). In Korea during the mid-1920s, celibacy was removed from the requirements necessary to become the abbot of a temple according to Korean own temple laws (*sabōp* 寺法), which were then approved by the government-general.<sup>3</sup> The colonial government claimed the sole legal power to approve or certify revisions to the temple laws, but did not assert the power to enforce (or, conversely, to abrogate) the Vinaya precepts that ostensibly underpinned monastic conduct. These powers had been formalized through the creation of the Temple Ordinance (*sach'allyōng* 寺刹令) in 1911, after the start of colonial rule, as a way for the Japanese government-general to regulate the entire Korean monastic community.<sup>4</sup> This law mandated the creation of temple laws, which were legal rules laying out the administrative authorities and regulations to be observed by monks living at a particular temple. When the long-standing desire to create a centralized monastic order finally brought about the creation of the Chosŏn Pulgyo Chogyejong in 1941, a constitution (*hōn* 憲) for the monastic order (*chong* 宗) that superseded the individual temple laws was written, which set out the qualifications to become a monk or a temple abbot, as well as other positions within the monastic order.<sup>5</sup> However, with no way to adjudicate the propriety or impropriety of allowing monks to marry and eat meat based on the Vinaya or other sources of Buddhist law, court rulings in this matter necessarily revolved around the issue of who had the power to revise the monastic order's constitution (*chonghōn*) and whether the actions taken to do so were in accordance with the organization's own governing procedures.

Discussions of law and Buddhism during the Japanese colonial period (1910–1945) typically begin (and often end) with a discussion of the Temple Ordinance (*sach'allyōng*) mentioned above. Studies of colonial-era Korean Buddhism have

<sup>3</sup> Kue-jin Song has persuasively argued recently that the colonial government's approval of these changes to the temple regulations was granted reluctantly in response to the growing presence of married Korean monks and demands for change (Song 2019).

<sup>4</sup> The Temple Ordinance was promulgated as Law No. 7 on June 3, 1911 (Meiji 44).

<sup>5</sup> Disputes over the monastic constitution and attempted revisions led to further strife in the 1990s, although by that time authoritarianism had given way to democracy in South Korea and the number of monastic orders had multiplied significantly.

comprehensively traced the law's broader implications for the exercise of state power and colonial control over the Buddhist community, and the practical impact of the law on Buddhism has been widely examined. The law itself, though, is actually rather short, consisting of just seven articles, only five of which actually contain substantive content. Briefly, the Temple Ordinance required government approval for the disposal of any temple property (Article 5), for merging, relocating, closing, or renaming temples (Article 1), and for any activities taking place at temples and monasteries other than those specified by this law (Article 2).<sup>6</sup> In addition, Article 4 mandated the appointment of an abbot (*chujji* 住持) to act as the legal representative of the temple. The abbot had to assume responsibility for administrative duties, including managing all property and assets of the temple, and for carrying out ceremonies and rituals at the temple. Article 3 stipulated the creation of temple laws (*sabōp*), which had to be officially approved by the Japanese governor-general, and these regulations not only detailed the relationship between head or main monasteries (*pōnsan* 本山) and branch temples (*malsa* 末寺), but also set forth the necessary qualifications for becoming an abbot.<sup>7</sup> These temple laws came to play an important role in the question of clerical marriages during the colonial period since the revisions approved by the government-general in 1926 removed celibacy from the list of required qualifications to assume the duties of abbot, which seemed to open the door to legal recognition of monastic marriages.<sup>8</sup>

In addition to these seven articles, the Temple Ordinance also came with a set of enforcement rules that further spelled out the legal regulations and rules to which monasteries and temples would be subjected.<sup>9</sup> The enforcement rules mainly elaborated on the third and fourth articles of the Temple Ordinance concerning, respectively, the temple laws, especially the head-branch temple structure, and the role and duties of the abbot as the legal representative of a temple. Article 1 stated that the temple laws must explicitly address the procedures for selecting and replacing an abbot or otherwise handling a vacancy in the post, but Article 2 gave the ultimate power to decide who would serve as abbot to the colonial state, negating the independence that Article 1 seemed to promise. In the case of the thirty head monasteries (later increased to thirty-one), the abbot had to be approved

<sup>6</sup> A copy of the law (in Korean) can be found in Yi [1918] 2003, 249–51.

<sup>7</sup> The last two articles of the law merely spell out the penalties for the failure to comply with the law (Article 6) and empower the government-general to enact any further provisions as needed (Article 7).

<sup>8</sup> In fact, as Jeongeun Park has convincingly shown, the temple laws did not actually determine the legality of monastic marriages. Her careful study of the archives demonstrates that household registers, which the Japanese had instituted in 1909, were the actual avenues that monks used to gain legal recognition for their marriages, often under their secular names (Park 2016; Park 2017, 131–63).

<sup>9</sup> The *Sach'allyōng sihaeng kyuch'ik* (寺刹令施行規則), Law No. 84, was promulgated on July 8, 1911. Comprised of eight articles in total, it contained additional rules and regulations that were needed for the actual implementation of the law. Both the Temple Ordinance and its enforcement rules took effect on September 1 that same year.

directly by the governor-general, while the branch temples could obtain the consent of provincial officials when filling the post. The remaining articles dealt mostly with matters pertaining to the position of abbot.

Article 3 of the Temple Ordinance instructed the thirty “head temples” to compose “temple laws,” which were designed to cover a wide range of monastic operations and activities related to the structure, organization, offices, and finances of the head monasteries and their branch temples.<sup>10</sup> The laws appear to have been based in part on the sectarian regulations and temple laws found contemporaneously in Japan, and they generally follow a similar pattern of 13 chapters and roughly 100 articles.<sup>11</sup> Jeongeun Park points out, however, that through “a clever blend of Korean Buddhist practices and Japanese Buddhist customs,” the Korean temple laws were largely accepted by the Korean Buddhist community. Park further posits that the laws “successfully stabilized the entire Korean Buddhist monastic community on the heels of the Japanese annexation of Korea” (2017, 146). Unlike the laws and regulations for many Japanese Buddhist institutions at the time, however, the early iteration of temple laws adopted by Korean monasteries explicitly stated that individuals who marry or eat meat are not eligible for bhikkhu (*pigu* 比丘) ordination or for taking the bodhisattva precepts.<sup>12</sup> This was a problem mainly for those monks who sought higher positions within the monasteries, such as the abbot, because they were more closely scrutinized; even those who were empowered to vote in the elections for abbot had to have received bhikkhu ordinations. Nevertheless, the colonial state retained ultimate supervisory powers over the temple codes because the ratifying of those laws required the approval of the governor-general.

After being exposed around the turn of the twentieth century to the practice of marriage among Buddhist clerics in Japan, some within the Korean Buddhist community wanted to permit Korean monks to enjoy similar opportunities (Jaffe 2001). For many progressive-minded Korean monks, Japanese Buddhism at the time seemed to represent a modernized form of the religion, which should be emulated to strengthen their own tradition and secure its place in contemporary society. As early as 1910 the monastic reformer Han Yongun expressed strong support for clerical marriage when he submitted formal petitions on two separate occasions to

<sup>10</sup> The legal adoption of the temple laws was contingent, of course, on the approval of the governor-general. The first monastery to submit a set to the colonial authorities and receive approval was Haein-sa on July 2, 1912, and most others followed the same basic template (Kim 2003, 53).

<sup>11</sup> The Japanese temple laws and sectarian regulations were apparently consulted by a bureaucrat named Watanabe Akira who worked for the government-general in order to generate a rough draft, which was then sent to the abbots of the thirty main monasteries in Korea. For more on this matter, see Han 2006, 127–28, and Park 2016, 89–91. For the process leading to the adoption of temple laws and regulations among Japanese Buddhist schools and sects in the late nineteenth century, see Ikeda 1998.

<sup>12</sup> The language regarding marriage and meat-eating can be found in Chapter 8, Article 58 of the temple laws, a copy of which is reproduced in Yi (Yi 2003, 284–85).

the Japanese authorities, asking them to remove any restrictions on monks and nuns that would prevent them from marrying.<sup>13</sup> Han even appended the text of these petitions to his *Treatise on the Restoration of Korean Buddhism* (Chosŏn Pulgyo yusillon 朝鮮佛教維新論), published in 1913, where he further explained his position on the topic of monastic or clerical marriages. From a practical point of view, Han feared that maintaining the precepts on celibacy would hinder the modernization and reform of Korean Buddhism, leading to a steady decline in the number of people willing to join the monasteries. He also argued that it would make it exceedingly difficult for monks to effectively carry out propagation (*p'ogyo*), further jeopardizing the future viability of the religion in the peninsula.<sup>14</sup>

These types of arguments in favor of clerical marriage did not result in any changes to the laws and regulations governing the monastic community during the first decade of colonial rule. Yet they did bear fruit in the following decade.<sup>15</sup> In October 1926 the governor-general approved the revised temple laws that had been submitted by some abbots of the head monasteries, thereby lifting the restrictions on certain monks needing to have bhikkhu ordinations, namely the abbots themselves. The reality on the ground, of course, is that a good many monks were already married by this time, and some even had families of their own. According to some estimates, roughly half of all monks were married during the mid-1920s (Kim 2014, 213).<sup>16</sup> By the end of the colonial period in 1945, a clear majority of Korean monks had taken advantage of the relaxed rules to find marriage partners.

Despite being a small minority, a committed core of mostly senior monks sought ways to restore the vow of celibacy to its rightful place among the Vinaya precepts required for ordination, and many of these individuals were affiliated with the Sŏn hagwŏn (Sŏn Study Center). This important organization was formed in the 1920s as a conservative, practice-oriented monastic organization that operated independently of the colonial-recognized Dual Sŏn-Kyo Order of Korean Buddhism (and later from its successor, the Chogye Order). It served as the institutional base for the

<sup>13</sup> An English translation of both of these petitions can be found in Tikhonov and Miller 2008. Hwansoo Kim points out that, even though this seems early, Han was actually the second Korean known to have submitted petitions to the Japanese seeking permission for monks to marry, although he was the first to do so from within the monastic community as a monk (Kim 2012, 265).

<sup>14</sup> In addition to these practical reasons based on social concerns, Han also tried to support his position with appeals to doctrine. Philosophically, Han pointed to the doctrine of *sasa muae* 事事無碍 (unimpeded interpenetration of all phenomena) to argue that the difference between celibacy and marriage does not exist at the absolute level of truth. For a discussion of both lines of argument, both the practical and philosophical, in Han's writings, see Buswell 1992, 27–30.

<sup>15</sup> For a discussion of other arguments and viewpoints put forward in favor of clerical marriage within the Korean Buddhist community prior to the 1926 revision of the temple laws, see Park 2016, 149–62.

<sup>16</sup> Jeongeun Park's estimate of the ratio of married to unmarried monks at the famous monastery Tongdosa in 1926, based on historical documents relating to an investigation conducted by the Japanese colonial authorities, shows similar parity (Park 2017, 153).

celibate faction of Buddhist monks for the remainder of the colonial period, and it was also pivotal, organizationally speaking, for carrying out the purification movement after liberation (Taehan Pulgyo Chogyejong Kyoyug'wŏn 2001, 195–200).

### 16.3 THE UNCONSTITUTIONAL LONGEVITY OF THE TEMPLE ORDINANCE AFTER LIBERATION

After liberation from Japanese rule, the Korean people soon learned that they would not immediately be given the right to govern themselves. In the southern half of the peninsula, where the Americans established a military government (USAMGIK) to rule the country, one might reasonably have expected them to eliminate the Japanese laws regarding religion, especially onerous ones like the Temple Ordinance that so blatantly infringed the religious rights and freedoms of the monastic community. Unfortunately, that turned out to be a false assumption. The law was never overturned during the period of American military rule that ended in 1948. This is perhaps less surprising when we consider the fact that the Americans mostly left the Japanese legal system intact in order to facilitate the daunting task of running a country about which they knew next to nothing (Hahm 1996, 70; Henderson 1991, 139). The Pacific Command (AFPAC) under General MacArthur gave vague assurances to the Korean people in Proclamation No. 1, promulgated the day before the commander of USAMGIK and his troops landed in Korea, about protecting their “personal and religious rights” (Cho 2013, 153; Kim 2007, 301). This was followed about a month later with the public announcement of Ordinance 11, which eliminated various laws regarding the Japanese emperor, Shintō shrine worship, and related matters, as well as containing in Section II a blanket repeal of all laws that “would cause discrimination on the grounds of race, nationality, creed or political opinion” (Henderson 1991, 140).

The Temple Ordinance, however, was not among those laws that were explicitly struck down. The following month, Ordinance 21, issued on November 2, stipulated that “all laws which were in force, regulations, orders, notices or other documents issued by any government of Korea having the force of law as of August 9, 1945, will continue in force until repealed by [a] competent authority” (Henderson 1991, 139). Beginning with this declaration, the Temple Ordinance, which gave state actors a degree of control over internal monastic affairs, would remain in force throughout the period of American military occupation and beyond.

Although the American military government claimed to be upholding the principle of religious freedom in Korea, the Buddhist and Christian communities were treated very differently by the state, and there was very little doubt about which group was favored.<sup>17</sup> Christmas, for instance, was designated a national holiday in

<sup>17</sup> As Don Clark notes, “Koreans understood the Americans to be promoting a package of democracy, capitalism and Christianity in their country” (Clark 2004, 24).

October 1945, despite the fact that Christians represented only a small fraction (perhaps two to three percent) of the total population at that time (Cho 2013, 155; Kim 2007, 307). The Buddha's birthday, by comparison, did not become a national holiday in Korea until thirty years later in 1975 (Kim 2011, 237). Other examples could be cited, but most important, as long as the Temple Ordinance remained in effect, the Buddhist monastic community would be subject to government oversight and interference through the imposition of legal constraints that did not apply to Christian organizations. The Temple Ordinance clearly gave the Americans a powerful tool that enabled them to keep a watchful eye on Buddhist temples and monastic leaders and to exercise substantial control over them. At the same time, the American military government relied heavily on native Koreans who could speak English, which disproportionately favored Christians who had been educated in mission schools, where English language instruction was guaranteed.<sup>18</sup> The unfairness of maintaining the colonial-era law that regulated the Korean monastic community was repeatedly emphasized.

Buddhist leaders from around the country made repealing the Temple Ordinance a priority when they gathered at the first national monastic conference (*chŏn'guk sŭngnyŏ taehoe*) which was held after liberation on September 22 and 23, 1945 and headed by Kim Pŏmnin (Kim 2011, 213–14). All thirty-one head temples under the Japanese system were asked to send representatives, and all but a few in the northern half of the peninsula did so.<sup>19</sup> At the gathering, steps were immediately taken to eliminate this head-branch temple system and to abolish the temple laws since they were both deemed colonial creations. In place of these governing structures, the Buddhist leaders set out to erect a more centralized monastic order (*chongdan*) that used a type of parish system (*kyoguje* 教區制) with a central administrative affairs office (*ch'ongmuwŏn*) at T'aego-sa, the headquarters monastery, that would oversee various regional offices (*kyomu*) in the provinces (Kim 1997, 102–3). They also formed a Central Assembly (*chung'ang chonghoe*) which met in early 1946 and passed a constitution for the order. Although a monastic constitution was technically created when the monastic community received permission to establish a temple headquarters of the newly renamed Chogye Order in 1941 during the late colonial period, the one created in 1946 was the first to be drafted free from state interference. Despite the fact that the current constitution of the Chogye Order is considered a revision of an original passed in 1962 (for reasons that will be discussed), the 1946 monastic constitution was the basic template that was later revised during the course of the purification movement.

The continued existence and enforcement of the Temple Ordinance, however, remained a major obstacle to fully implementing these institutional changes and other reforms. Kim Kwangsik has noted that multiple requests for the repeal of this

<sup>18</sup> This fact has led some to refer to USAMGIK as the “interpreters’ government” (Clark 2004, 24).

<sup>19</sup> Of the seventy-nine invitees to the conference, sixty were actually present (Kim 2006, 24).



law in the summer of 1946 were all ignored. He also points out that in March of the following year, the Order formally submitted a written petition to the newly created South Korean Interim Legislative Assembly (SKILA), and its demands even received the backing of twenty-five of its members (Kim 2011, 214–15). Although this body unanimously passed a piece of legislation on August 8, 1947 that would have abolished the Temple Ordinance – not to mention other Japanese laws regarding religion – and created in its place a temporary law dealing only with the protection of Buddhist property, the American military government refused to approve it (Kim 2007, 304; Kim 2011, 215; Mun 2011, 224).<sup>20</sup> Thus, despite their best efforts, Buddhist leaders within the Chogye Order never managed to convince the Americans to do away with the Temple Ordinance, which remained in effect when Syngman Rhee took over from the Americans at the helm of a new government in 1948, giving him undue powers to intervene in the internal affairs of the Buddhist monastic community.<sup>21</sup>

#### 16.4 THE BATTLE OVER CELIBACY AND CONTROL OF THE CHOGYE ORDER

Not long after the conclusion of the Korean War, President Syngman Rhee (Yi Süngman), the first president of the Republic of Korea (ROK), in power from 1948 until he was forced out by the people in 1960, began issuing a series of presidential messages or specifically “admonitions” (*yusi* 諭示), that were highly critical of clerical marriage among the Buddhist monks in Korea. These public statements are widely seen as sparking the purification movement that quickly consumed much of the time and energy of the Buddhist community for the rest of the 1950s and into the 1960s. Rhee’s motivations for wading into this matter are opaque and his sincerity may be questionable, but the impacts of his actions on Korean Buddhism are profound and undeniable.<sup>22</sup>

<sup>20</sup> The USAMGIK, of course, exercised veto power over SKILA. While the former issued 352 ordinances from its inception through to August 1948, when the Republic of Korea (ROK) came into existence, this quasi-legislative body managed to pass a mere twelve laws during its year and half in operation, none of which were particularly significant (Henderson 1991, 140).

<sup>21</sup> Land and Buddhist property rights were central to this issue. Kim Kwangsik points out that there were 857 Japanese Buddhist temples or propagation stations, 593 of which were located in the South. Although initially the rights to manage these temples were given to the Korean monastic community (the Sōn Hagwōn and then the Chogye Order’s *ch’ongmuwōn*), in 1947 this policy changed and the Americans took direct control of the Japanese Buddhist temples (Kim 2011, 218–19).

<sup>22</sup> In addition to the oft-noted fact that Rhee was a devout Christian who wanted to see South Korea become a majority Christian country, there were possible political calculations at work in his actions. In 1954, Rhee could have been looking ahead to the upcoming elections, and among his opposition in the National Assembly were several married monks who had won local elections.

After the Korean War ended, stories began circulating about President Rhee's visits to various Buddhist temples. In one case, he claimed to have seen women's undergarments hanging out to dry; in another anecdote, he supposedly witnessed a Korean monk with not one, but two wives! It was also rumored that he encountered a monk who had studied in Japan for a long time and who had a Japanese wife, alongside written placards of praise for the Japanese emperor. True or not, these stories served to conveniently illustrate the main thrust of Rhee's rhetorical attack on the married monks.<sup>23</sup> Rhee cast the practice of monastic marriage as a vestige of Japanese colonialism, which amounted to a corruption of traditional Korean Buddhist monasticism, and he bemoaned the lack of morality and patriotism among these monks. Therefore, he instructed married monks (and their wives, of course) to vacate the precincts of Buddhist temples and to turn over the running of the Chogye Order and its temples to the monks who adhered to the vow of celibacy. It is important to keep in mind what a bold statement this must have been: at the time of his first public pronouncement on this issue in 1954, celibate monks constituted an estimated ten percent of the total number of Korean monks and controlled not even one monastery in all of Korea.

Despite the constitutional guarantees separating religion from the state, Rhee was able to utilize his authority under the Temple Ordinance to justify his intervention into the internal affairs of the monastic community. Because the law was not abolished during the period of American military rule after liberation, Rhee could use this powerful legal tool to maintain control over the monastic community. Eventually, the Supreme Court invalidated certain parts of the law and its accompanying enforcement rules, but this did not take place until 1956, and even then, the justices did not strike down the law entirely.<sup>24</sup>

The disputes over control of the Chogye Order and its temples initiated by Rhee would eventually turn not only litigious, but also violent.

## 16.5 CONTENTIOUS DEBATES AND RIVAL CONSTITUTIONS

The minority of unmarried monks argued against clerical marriage by drawing both on religious grounds and appeals to tradition. By not following the precepts outlined in the *Four-Part Vinaya* that had been used in Korea traditionally, which clearly prohibited sexual activity as a major transgression, they argued that the monastic

<sup>23</sup> These stories are recounted in Kang and Pak 2002, 208–9. Some or all of them may be apocryphal since they appear to be uncorroborated, as far as I can tell, but their veracity cannot be discounted nor dismissed out of hand.

<sup>24</sup> The parts that were challenged in court and overturned concerned the legal requirement to obtain government approval for the selection of abbots to individual monasteries. This had been perhaps also the most damaging and widely opposed provision of the Temple Ordinance during the colonial period. The decisions in these cases are found in Supreme Court Judgment on March 30, 1956, 4288 Haengsang 21 and Supreme Court Judgment on April 20, 1956, 4289 Hyöngsang 1 (Taehan Pulgyo Chogyejong Ch'ongmuwön 1996, 25–27).

community had become corrupted. Syngman Rhee's intervention, however, added a strong undercurrent of nationalist arguments to the debate, assigning blame for the supposedly degenerate state of Korean Buddhism to the corrupting influence of Japanese Buddhism and the legacy of colonialism. In response, the married faction "argued that they practiced *taejung Pulgyo* (Buddhism for lay people) and modern Buddhism" (Park 2007, 135). In other words, they maintained that monks who married could better understand the everyday lives of the laity and thus were better suited to carry out propagation. They also claimed that if they were not monks, then neither were the unmarried monks since they did not adhere to the entire Vinaya either. Although the leadership of the Chogye Order attempted to make concessions by offering to give the celibate monks possession of some monasteries, the unmarried faction forged ahead with its plan to cleanse the order completely of married monks.

To this end the celibate monks convened their own first national conference at the Sōn Hagwōn in August 1954, at which they resolved to revise the order's constitution. The revised constitution, which reinstated celibacy as a necessary qualification for ordination and maintaining one's status as a monk, would be adopted at a second national conference held in late September of the same year (Mun 2011, 245–53). The unmarried monks were steadfast in their refusal to recognize married clerics as legitimate members of the monastic order, insisting instead that they be classified simply as lay people or as a special group of (lay) Dharma protectors (*hobōp chung* 護法衆).<sup>25</sup> The married monks had earlier that summer already revised their own constitution, passed in 1946, presumably to legally identify two types of monks – those that maintained the vow of celibacy as well as those that entered into marriages – as both belonging to the order (*chongdan*).

President Rhee continued to periodically issue presidential messages supporting the unmarried monks and denouncing the married clerics, with his second appearing on November 4, 1954, after the unmarried monks had produced and passed their revised version of the order's constitution at their first two monastic conferences (*Sinmun ūro pon Han'guk Pulgyo kŭnhyōndae sa* 1995, 185–87). The impasse between the two sides soon sparked violent confrontations in the temples as well as litigation in the courts, and Rhee issued yet another *yusi* on November 19 (*Sinmun ūro pon Han'guk Pulgyo kŭnhyōndae sa* 1995, 188). The Rhee administration directly intervened at the ministerial level, bringing the leaders of each faction together repeatedly for face-to-face meetings to seek a resolution. At one of these meetings on December 22, 1954, held at the National Police Headquarters, representatives of the two sides were presented with a document outlining the government's basic position on the dispute and containing a concrete proposal for how to resolve it. Of particular interest is the assertion that the married clerics should

<sup>25</sup> Park 2007, 136; *Tong'a ilbo*, September 10, 1954 (*Sinmun ūro pon Han'guk Pulgyo kŭnhyōndae sa* 1995, 185).

be classified as propagation monks, which is very close to the position taken by the married monks who had already revised their constitution in accordance with this same basic approach:

The monastic order is composed of two groups, ascetic monks and propagation monks. The ascetic monks, constituting celibate monks and nuns, and monastics of more than 10 years after making a divorce, should concentrate on one or two practices in the following five practices: (1) the preservation of precepts, (2) the practice of Seon [Sōn meditation], (3) the chanting of the titles of Buddhas and Bodhisattvas, (4) the reading of scriptures, and (5) the chanting of spells. They should live and practice Buddhism in the praxis compounds, follow the teachings of the Seon patriarchs, and obey the monastic rules. The propagation monks should preserve the ten precepts and can practice Seon, chant the titles of Buddhas and Bodhisattvas, read scriptures, or chant spells. They are also able to accomplish the mission of Mahāyāna Buddhism by dedicating themselves to propagation, education, and social affairs and to take charge of all administrative and accounting affairs. (Mun 2011, 267)

Although this compromise would have technically allowed married monks to remain in the order, the proposal further specified that the so-called propagation monks had to remove their families from temple grounds and that any private homes within the boundaries of the temple should either be removed or taken over by the temple, but only after financially compensating the married monks (Mun 2011, 268). The government's proposal was completely rejected by the three representatives of the celibate monks who were present at the meeting, and the conflict, violence, and court battles continued unabated. Lay Buddhists and the general public for the most part supported the celibacy faction, and with public opinion on their side and the president's office exerting pressure on lower-level ministers and possibly the courts, the celibates eventually gained the upper hand and took control over most of the Buddhist temples in the country.

## 16.6 CONTROVERSIES AND THE COURT

The controversy continued into the following year as more seizures of temples, more frequent and intense fighting, and more lawsuits in the secular courts dominated the news. There were further meetings between the two sides and efforts by government officials and agencies to mediate the dispute. By the summer of 1955, however, the unmarried monks were ready to hold another national conference for celibate monastics. This time they wanted explicit government authorization for their gathering, allowing them to ostensibly establish a legal basis for a newly revised monastic constitution that placed power in the hands of those who had received the traditional bhikkhu ordinations and to reinstitute celibacy as a condition for monkhood. Two conferences were thus held in quick succession in the first two weeks of August, with a newly revised constitution created at the first, which would then be

passed and confirmed at the second. Government officials from the Ministry of Education who were present at the conference could thus grant approval and permission for the celibate faction's version of the monastic constitution, their selection of executive and administrative officers, and their control over the appointment of abbots to the country's roughly 1,000 temples (Mun 2011, 296–97; Park 2007, 238).

In terms of the subsequent court battles that eventually came before the Supreme Court on that day in late November 1960, the central legal question the Court had to consider was whether this celibate monastic conference was, in fact, authorized and sanctioned in accordance with the rule of law. The only reason this fact mattered at all was because of the monastic constitution that was passed that day: the changes to the Chogye Order constitution, if approved by the courts, would legally establish a definition of monkhood that excluded married individuals.

The situation remained tense, however, and the married monks did not willingly step aside. Nor, for that matter, did the celibate monks have enough qualified monks to complete the takeover of every Buddhist temple in the country. Accommodations were eventually made to allow some of the married monks to resume their positions at many of the smaller temples and monasteries. The married faction also refused to hand over the management of key business interests and corporations affiliated with the Chogye Order. However, the lower courts eventually validated the monastic conference, thus approving the celibates' revised constitution and handing power to the unmarried faction of monks, which they maintained through the remainder of the 1950s.

In April 1960, facing growing protests over political corruption and his government's widespread human rights abuse, Syngman Rhee was forced to resign from office. His departure reignited the internal conflict within the monastic community, as unmarried monks lost their most important backer and the married monks sought to retake many of the temples they had previously lost, often through force. With the Supreme Court set to rule later that year on the case concerning the government's recognition of the national conference of unmarried monastics in August 1955, tensions were extremely high. The non-married faction continued to demonstrate to publicly press their case, with the Ven. Ha Dongsan, who was the Supreme Patriarch of the celibate faction of monks, even leading a procession of demonstrators to the Supreme Court while sitting cross-legged on the roof of an automobile. As noted earlier, while the ruling merely sent the case back to a lower court, it was interpreted as favorable to the married monks since they had prevailed in the pending case.

#### 16.7 LEGAL AFTERLIVES UNDER PARK CHUNG HEE

While that case was pending, a new political leader emerged, and the new regime that came to power in May 1961 following a military coup took immediate steps to quell

the disorder that had engulfed the monastic community by forcing the two sides to come together and form a “unified order” (*t’onghap chongdan* 統合宗團) in early 1962.<sup>26</sup> The new leader, Park Chung Hee, moved fairly quickly to push through a new law to replace the colonial-era Temple Ordinance, which had remained in effect for more than a decade and a half after liberation from Japanese rule. Less than six months after the married and unmarried monks were forced to come together and create the unified order, Park repealed the Temple Ordinance and replaced it with the Buddhist Property Management Law (*Pulgyo chaesan kwalli pŏp* 佛教財產管理法) in May 1962.<sup>27</sup> While the long-overdue elimination of the despised colonial-era Temple Ordinance was certainly welcomed by the Buddhist community, its replacement unfortunately followed many of the former law’s precedents.<sup>28</sup> Despite being challenged in court on constitutional grounds, the Supreme Court held in 1969 that the Buddhist Property Management Law did not violate the constitution and its guarantee of religious freedom and neutrality toward religion, a dubious verdict that some legal scholars and others have repudiated.<sup>29</sup> After democratization in 1987, this law was finally replaced with the Traditional Temple Preservation Law (*Chŏnt’ong sach’al pojon pŏp* 傳統寺刹保存法) which went into effect in late May the following year with the promulgation of its accompanying enforcement rules. It has remained in place since that time.<sup>30</sup>

Park’s forced alliance between the two factions failed to completely quell the unrest and discord, and feeling disadvantaged by the new arrangement, the married monks once again turned to the secular courts to resolve the issue. Once again, the courts failed to address the necessary qualifications for monkhood and the question of celibacy, and concentrated instead on matters pertaining to the rules and regulations regarding the number of people needed to validate and certify decisions made by the administrative leaders of the organization. In the end, though, after they had lost the last of their court appeals in 1969, the leaders of the married faction broke away and formed a separate order, officially named the T’aego Order of Korean Buddhism (Han’guk Pulgyo T’aegojong 韓國佛教太古宗).<sup>31</sup> Other Buddhist orders

<sup>26</sup> For more information about the origins of the *t’onghap chongdan*, see Kim 2002, 338–39.

<sup>27</sup> Law No. 1087, promulgated on May 31, 1962.

<sup>28</sup> For instance, it was established through non-democratic means under authoritarian rule; it applied exclusively to Buddhist temples and organizations, requiring them to register with the appropriate ministry (Article 6); it made disposal of temple property subject to prior government approval (Article 11); and it enabled close government supervision of the Buddhist community.

<sup>29</sup> Supreme Court Judgment on December 23, 1969, 69 Ta 1053. See Taehan Pulgyo Chogyejong Ch’ongmuwŏn 1997, 29. For a discussion of the constitutional issues surrounding this law, see Yŏn 1987.

<sup>30</sup> Law No. 3974, November 28, 1987. The law has undergone numerous revisions, beginning in 1993. See Korean Law Information Center, [www.law.go.kr/](http://www.law.go.kr/) (last accessed July 29, 2022).

<sup>31</sup> The T’aego Order remains the second largest Buddhist order in Korea today. Despite the formal schism, litigation involving the T’aegojong and Chogyejong did not end in 1970 as the two monastic orders continued to fight in court over temples, property, and assets.

were formed and also gained legal recognition in the 1960s under the Buddhist Property Management Law; each of these possessed the right to determine whether monks needed to adhere to a vow of celibacy or could get married in order to become a member.

## 16.8 CONCLUSION

While much more could be said about the historical episodes described above, the details show clearly the complex entanglements of Buddhism and constitutional law in Korea, both historically and in the present. At issue was not one type of constitution but two – state constitutions and monastic constitutions – which themselves existed in various relationships fraught with tensions. During the Japanese colonial period, the Temple Ordinance required that each head temple create its own set of rules and regulations, known as temple laws, to govern individual monasteries. These temple laws, while notionally autonomous, were nonetheless open to state intervention, and that dynamic gave rise to one sort of tension between monks and state authorities. After the advent of American military rule on the peninsula and continuing after the creation of a South Korean state, these constitutional tensions took a slightly different form. Where the constitution for the Republic of Korea mandated a separation between state and religion, the constitutional conflicts among rival factions of Chogye monks drew state leaders and courts into the fray.

Through all of this, notions of Buddhism and state authority were not resolved or stabilized but multiplied and were increasingly contested. Rather than narrowing or “stabilizing” discourses around internal governance and administrative regulation of the monastic community, these nested constitutional conflicts opened up new spaces for intense disagreement and instigated an internal schism among monks and lay Buddhists alike. At the same time, constitutional guarantees of religious freedom and separation of church and state forced the Supreme Court to sidestep any determination about the Vinayic propriety disputes of allowing monks to marry – ultimately the Court sidestepped the matter, sending the dispute back to a lower court on technical, procedural matters.<sup>32</sup> In other words, the Court could not pronounce on the content of monastic constitutions, but only on the question of who had the right to amend or draft them. In fact, one of the biggest differences between the colonial and post-colonial contexts may have been the greater judicial recourse that was available to members of the monastic community in the 1950s and 1960s, as well as the litigiousness that came to characterize the purification movement as a result. While Buddhist actors were able to use colonial courts to press certain claims relating to internal monastic disputes, these judicial avenues were

<sup>32</sup> For similar examples of civil courts evading substantive questions of Vinaya or Buddhism civil course in Sri Lanka, see Schonthal 2017–18.

highly constrained under colonial authorities. The establishment of the Republic of Korea and its constitutional guarantees of religious freedom and the separation of religion and the state, on the one hand, allowed for increased judicial recourse on the part of Buddhist actors, but on the other hand, it simultaneously restricted the ability of the courts to adjudicate doctrinal disputes, including whether monks had to take a vow of celibacy to be considered monks.

The case of the purification movement in Korea highlights an important aspect of Buddhism's interlinking with constitutional law in Asia. Not only does it highlight the significance of history, sectarianism, and change in national constitutions, but it also calls attention to the importance of non-state constitutions – Buddhist monk constitutions – in the legal, political, and religious histories of this complex part of the world.

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