

Buddhist Constitutionalism beyond Constitutional Law

Buddhist Statecraft and Military Ideology in Myanmar

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10.1 INTRODUCTION: BUDDHIST CONSTITUTIONALISM UNDER MILITARY RULE

In Burma/Myanmar, the constitutional regulation of religion has undergone major shifts following the country's successive political transformations from democratic multi-party system to one-party (one man) socialist military rule, to military "law and order" rule, to hybrid regime and "post-dictatorship," and as of February 1, 2021, direct military rule. The constitutional management of religion in Burma/Myanmar has relied upon democratic procedures or been the object of public discussion only for very short periods of time (1948–58, 1960–62, 2011–21). Moreover, due to military rule and the illiberal 1974 and 2008 Constitutions, legal claims and litigation have rarely been a way for politically disempowered actors, such as non-Buddhist religious minorities or Buddhist "deviant" groups, to gain state recognition or support.

With the 2011 political reforms, however, legal debates about religion surfaced again in parliament, as well as in the public sphere. This paper looks at various forms of constitutional practice with regards to religion in Burma/Myanmar, by which I mean "the acts of drafting, debating, implementing and invoking constitutional law" (Schonthal 2016, 11). It should be underlined from the onset that such activism as a form of public practice has – even during the years of political liberalization – been scarce on account of authoritarian, military rule. Exactly how the February 1, 2021, military coup will affect constitutional law in Myanmar remains to be seen, but Buddhist protectionist associations such as the Buddha Dhamma Parahita (formerly known as MaBaTha) issued statements showing strong support for the 2008 Constitution, just hours before the coup. This indicates support to the Tatmadaw (the military) at least among certain leading monks, and more importantly for the

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purpose of this paper, support for the ways in which Buddhism is protected in the Constitution.

“Buddhist constitutionalism” is defined by Benjamin Schonthal (2017, 707) 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*.” Central to Buddhist constitutionalism are questions about how to balance royal/political authority and ecclesiastical authority. This, Schonthal points out, is in contrast to Islamic constitutionalism (which concerns the application of transcendent laws in a man-made legal order), as well as secular-liberal constitutionalism and questions regarding the balance between religious privileges and general religious rights. As this chapter will show, the case of Burma/Myanmar clearly confirms the centrality of questions pertaining to the balance between political and ecclesiastical authority. However, the paper also argues for a broader understanding of Buddhist constitutionalism, which expands the concept beyond the conundrum of political versus ecclesiastical authority, to include a wider range of policies and laws that seek to enact constitutional preferences for Buddhism. This expanded set of pro-Buddhist policies include *prima facie* “secular” civil law and the Penal Code as well. Thus, the key regulatory issue at stake is not only *sangha* affairs, but also the privileging of Buddhism *vis-à-vis* other religions in a wide array of policies and state law. Broadening the concept of Buddhist constitutionalism in this way helps scholars to acknowledge the unwritten or “living” forms of Buddhist constitutionalism that also influence social and political life.

This chapter proceeds in five parts. The first section analyses Buddhist constitutionalism in postcolonial Burma/Myanmar from a historical perspective. The second section analyses Buddhist constitutionalism and its return in the 2008 Constitution. The third section discusses current regulatory contestations between political and ecclesiastical authorities, making the argument that secularism in postcolonial Burma/Myanmar is a function of Buddhist constitutionalism, rather than the result of British colonial policies. The fourth section discusses what I suggest is the protection of Buddhism through “secular” law, focusing on the 2015 “race and religion” laws and religious offense legislation. The fifth and last section analyzes Buddhist constitutionalism as a form of alterity *vis-à-vis* Myanmar’s religious minority communities.

10.2 HISTORICAL BACKGROUND: THE RETURN OF BUDDHIST CONSTITUTIONALISM IN MYANMAR

Inspired by clauses in the Irish Constitution at that time, Burma’s 1947 Constitution included two articles of consequence as it relates to Buddhism: Article 21(1) held that “The State recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union;” Article 21 (4) prohibited the “abuse of

religion for political purposes.” This ambiguity between state protection for Buddhism, on the one hand, and strict separation of religion and politics on the other came to mark Burmese democratic politics in the years to follow.

Independent Burma’s first prime minister, U Nu, had a strong Buddhist revivalist agenda, and the initial few years of democracy witnessed vibrant constitutional debates and activism to promote state protection of Buddhism. The Buddhist constitutional policies of the U Nu era included the Vinasaya Act of 1949 (registration of monks and sangha courts), the Buddha Sasana Council Act (1949), the Pali University and Dhammacariya Act (1950), and the Pali Education Board Act (1952). Monastic associations at the time suggested that Buddhism should be the state religion and opposed freedom of religion. In his 1960 campaign, U Nu called for Buddhism to become the state religion and managed, in August 1961, against strong opposition from Burma’s non-Buddhist minorities, to make Buddhism the state religion (Kyaw Win, Mya Han & Thein Hlaing 2011, 96–102). However, this constitutional amendment was soon to be abolished by General Ne Win, who came to power during the military coup of March 2, 1962.

The first period of military rule (1962–88) represents a radical shift in the constitutional regulation of religion and secularism (as ideology) in Burma. In contrast to U Nu, the Ne Win regime hardly referred to Buddhism, and the 1974 Constitution does not mention any state preference for Buddhism. Furthermore, the 1974 Constitution is strictly secularist in that it states that “Religion and religious organizations shall not be used for political purposes” (Article 156c). It grants equality before the law and religious freedom, but limits those rights with reference to “national solidarity and the socialist social order” (Article 153b, *The Constitution of the Socialist Republic of Burma 1974*). The 1974 Constitution did not offer any form of legislative representation for ethnic groups, but introduced new forms of recognition of ethnic claims, such as “Seven States” and “Seven Divisions” (Crouch 2019).

Ne Win generally turned a blind eye to the issue of regulating the sangha throughout the 1960s and 1970s. However, Buddhism – particularly the sangha – was subject to increased legal regulation from 1980 onwards, in order to control so-called “unruly” monks and subsequently to curb monastic resistance to the regime. In May 1980, General Ne Win’s government convened the Sangha Convention of All Buddhist Gaing for the Purification, Perpetuation, and Propagation of Theravāda Buddhism, and, in the name of “purification,” streamlined the sangha and imposed direct control over its monastic members. Only nine *gaings* (Buddhist sects) have since become officially recognized by the state. Ne Win also formed the State Sangha Maha Nayaka Committee, which oversees the sangha.

Attempts to effectively act on the Vinasaya Act from 1949 had failed during the early years of Ne Win’s rule as part of its secularist orientations (Tin Maung Maung Than 1988). *Vinaya* transgressions were only to be dealt with within each monastic lineage, or *gaing*. Without a state-backed supra-*gaing* structure in place, no rulings regarding heresy (*adhamma*) could be made. It was not until 1980 that a specific

legal system to deal with *vinaya* cases came into place at the national level, as will be discussed in detail later.

The 1988 democratic uprising eventually led to the collapse of the socialist regime, only to be replaced by direct military rule (1988–2011): first through the State Law and Order Restoration Council (SLORC) and later by the State Peace and Development Council (SPDC). The new junta abandoned a socialist ideology altogether, and the SLORC/SPDC made “law and order” its new slogan, which did not imply the rule of law, but rather subsuming law *into* order. In this period, a new hierarchy of judges, comprised of bureaucrats and administrators, resurrected a system marked by non-independence and “unrule” of law. As Cheesman (2015) points out, in contrast to the Ne Win years, soldiers were no longer necessary in the courtroom as the civilian judiciary was fully subordinated to military interests.

From 1988 to 2008 the country was ruled without a constitution, but in the same period the military was preoccupied with drafting a new constitution, making the drafting process of the 2008 Constitution one of the longest constitution-making exercises in the world (Crouch 2019, 27). The drafting of a new constitution was part of General Khin Nyunt’s 2003 document, “Roadmap to a Discipline-Flourishing Democracy.”¹ The constitution-making process was isolated from public debates, and submissions from ethnic groups regarding language rights and customary laws were ignored (Crouch 2019). To what extent Buddhist monks and laypeople outside of the military were active in pushing the constitution-makers for constitutional protection of Buddhism remains unclear. What is clear, however, is that the Buddhist protection clause (Article 361, 2008 Constitution) is taken verbatim from the 1947 Constitution. One explanation for the return of Buddhist constitutionalism relates to military reorientation after the 1988 violent crackdown on the student movement and pro-democracy monks. The regime needed to repair its relations to the sangha through its so-called *saya-dayaka* (monk-donor) program, which eventually resulted in a state-sponsored Buddhist nationalist ideology (Schober 2011). However, reducing monastic-military relations to pure strategy would be to ignore the fact that the military is largely comprised of Buddhists and that monks serve as “military chaplains,” consoling soldiers and boosting their morale, for example during the 2017 massive violence against the Rohingya population in Rakhine. Thus, understanding the importance of Buddhism to the military needs to move beyond mere instrumentalism.

10.3 SECULARISM AS A FUNCTION OF BUDDHIST CONSTITUTIONALISM

The highly controversial 2008 Constitution institutionalized a military state in Myanmar, enabling the role of the military in governance. It contains three

¹ Matthew Walton (2017, 167–74) has argued that the concept of discipline-flourishing democracy is connected to Buddhist principles of unity and discipline, but also fears of anarchy.

meta-principles: non-disintegration of the Union, non-disintegration of national solidarity, and the perpetuation of sovereignty (*Basic Principles*, 2008 Constitution). The military treats the 2008 Constitution as a sacred object – insisting on faithfulness to the Constitution itself – and resists all attempts at constitutional reform. This raises some interesting questions about ideology, rituals, and materiality with regard to the 2008 Constitution. First, in saying that it is sacred, I refer to the fact that it is treated as a self-referencing text, the authority of which lies within its status as a foundational charter for military rule – a document that, for the military, ought not to be changed. Second, members of parliament are obliged to make an oath (which is outlined in Schedule Four of the Constitution itself) to “uphold and abide by the Constitution,” and by that, pressurizing MPs to be loyal to military ideology as enshrined in the Constitution. The material book is used in this oath-making ritual in parliament (for military and civilian MPs alike), as a way for the military to ensure loyalty to its ideology. This explains Aung San Suu Kyi and the initial refusal by her party, the National League for Democracy (NLD), to partake in the Oath ritual in 2012.

As a political document that enshrines the authoritarian ideology of the military state, it would be an understatement to say that the 2008 Constitution has received strong criticism. The 2008 Constitution is the site of contestation between the military, the ethnic minority parties, and the NLD, and constitutional reform has been first priority for the NLD. Not surprisingly, therefore, after the February 1, 2021, military coup, protesters have been tearing apart or burning the material book in public, and later posting images of such events on social media, as a sign of their commitment to end military rule.

Put simply, the principle of non-secession and self-determination is controversial for the ethnic minorities and their political parties and Ethnic Armed Organizations (EAOs), while the role of the military in politics has been the main issue of contestation for democracy activists in majority population areas. Importantly, however, the question of Buddhist constitutionalism is, as we shall see, one that has been avoided in public debate, but simmers under the surface.

The 2008 Constitution is a mix of ideas from the 1947 Constitution, the 1974 Constitution and the post-1988 military ideology. Put another way, it draws on colonial legality, socialist legality, and military legality. Importantly, it focuses on duties rather than rights, which affects the ways in which religion is regulated. In the following, I will identify what can be regarded as “Buddhist” in the 2008 Constitution, identifying four sites of Buddhist constitutionalism in the text: religious privilege, morality, temporality, and, counterintuitively, secularism.

First, there is the privileged, but not necessarily preeminent, status given to Buddhism as a religion. Article 361 grants Buddhism a special position as the majority religion, which is taken almost verbatim from the 1947 Constitution (Article 21 [1]). Article 362 “recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into

operation of this Constitution.”² In this way, the Constitution balances Buddhist constitutionalism on the one hand, and the recognition of Christianity, Islam, Hinduism, and Animism and, as discussed below, secularist orientations on the other.

Second, Chapter 1, “Basic Principles of the Union,” lists as a state responsibility that “The Union shall strive for youth to have strong and dynamic patriotic spirit, the correct way of thinking and to develop the five noble strengths” (Article 33). This is a reference to the Buddhist principle of *pañcabalāni* (“five strengths”): faith (*saddhā*), energy (*virīya*), mindfulness (*sati*), concentration (*samādhi*), and wisdom (*paññā*). This is, in fact, the only explicit reference to Buddhist principles in the entire Constitution. It is an article that cannot be missed as it not only imbues the text with a certain Buddhist quality, but even more importantly, explicitly makes it a state obligation to foster new generations of Buddhist citizens. This emphasis on Buddhist virtues is not present in the 1947 and 1974 Constitutions.³

Third, as in the Thai and the Sri Lankan constitutions, Buddhist constitutional privilege in Myanmar is also shown in the preference of the Buddhist calendar. Referring to the approval date of the Constitution – the tenth waxing day of Kasone 1370 M.E. (“May 29, 2008, CE” in the official English translation) – the text situates the political community with reference to Buddhist historiography. The Burmese Buddhist calendar is used in all legislation, in addition to a range of other social settings, including the press statement announcing the 2021 military coup. Burmese Buddhist temporality is also present in the 1947 and the 1974 Constitutions, and for the latter, it is the only reference to Buddhism.

Fourth, parallel to the constitutional privileges discussed above, the 2008 Constitution expresses a specific secularist orientation by referring to a remarkably strong separation between “religion” and “politics.” Some of these articles are similar to the two previous constitutions, while other articles are new to the 2008 Constitution, expanding on existing principles of institutional differentiation between “religion” and “politics.” Chapter 4, the “Legislature,” Article 121, specifies who is disqualified for election to the Legislature, listing (among many others) persons who receive support from foreign religious organizations (Article 121g), persons who convince others to vote or not vote based on “religion for political purpose” (Article 121h) and members of religious orders (Article 121i). In addition to banning parliamentarians from using religion for electoral purposes, Chapter 8, “Citizen, Fundamental Rights and Duties of the Citizens,” bans the abuse of “religion” (however defined) for political purposes among citizens *generally*

² The 1947 clause includes an important “some”: “The State also recognizes Islam, Christianity, Hinduism and Animism as *some* of the religions existing in the Union at the date of the coming into operation of this Constitution” (italics added), opening up for the existence of other religions not mentioned in the text.

³ In the 1947 Constitution, the focus is on health and working capacity “to strengthen the defensive capacity of the State” (Article 39). Cultivating citizens’ morality is not mentioned here.

(Article 364). Any action that sows enmity between religions and races is considered unlawful (Article 364).

On elections and voting rights, Chapter 9 (Article 392a) states “members of religious orders” do not have the right to vote, which is primarily interpreted as Buddhist monks and nuns, as well as Catholic fathers and nuns, but in practice this is a field open for negotiation, and one might add, corruption. Ordained members of the Catholic Church are disenfranchised, the Muslim ulema are granted voting rights, and Protestant, Evangelical, and Baptist ministers are, depending on local context, sometimes entitled to vote and sometimes not. The rationale behind these distinctions is less than clear, but as the Constitution specifically states “members of religious orders” it is reasonable to argue that the distinctions in voting rights depend, at least in part, on officials’ perceptions about how organized a group is – and perhaps how closely it resembles sangha organizational structures. As such, this can be read as an example of a Buddhist formatting process of non-Buddhist institutionalized religion.

The principle of separation between “religion” and “politics” is further elaborated in Chapter 10, “Political Parties,” which specifically prohibits political parties from directly or indirectly receiving funding from a religious association (Article 407c), and furthermore, that a political party is not allowed continued existence if it is found guilty of “abusing religion for political purpose” (Article 407d). In case of violation, the party’s registration shall be revoked. This provision is further developed in the Political Parties Registration Law No. 2/2012, 6(d) which prohibits political parties from writing, speaking, and campaigning in a manner that will instigate conflict or violence among religious and ethnic groups or individuals. Articles 121 and 407 are new to the 2008 Constitution, indicating how the Tatmadaw military foresaw how religion could be a mobilizing factor in parliamentary elections.

How are we to understand this particular conceptual division between the “religious,” the “secular,” and the “political” expressed in Myanmar’s three constitutions? It is my contention that in the case of postcolonial Burma/Myanmar, secularism was not separate from Buddhist constitutionalism, but rather a function of it. This likely echoed British legal distinctions between the “religious” and the “secular” that undergirded colonial policies. However, this path dependency might also predate British colonial policies of secularism: a key point in Theravāda Buddhist political ideology is a formal divide between the state and the monastic order.⁴ With the introduction of modern political systems, this has been interpreted in different ways. Sri Lanka introduced universal suffrage as early as 1931, and

⁴ For example, as expressed in the *Samantapāsādikā*, Buddhagosa’s famous *vinaya* commentary, about monks not serving in royal office. Such boundary-making between monastic and political spheres does of course not imply that monks have *not* served as close advisors to kings, but, noticeably, that authoritative sources in *vinaya* jurisprudence have valued institutional differentiation and considered it to be an issue of regulatory importance. I thank Jens Borgland for this reference.

accordingly the monks gained civil and political rights on a par with all other citizens (Schonthal 2016). This is completely different from the situation in Myanmar (and Thailand), where Buddhist monks and nuns are deprived of their political rights. The ostensible reason is to cohere with a Theravāda Buddhist political paradigm, namely that there should be a formal separation between the monastic order and political power. Translated into modern democratic language, lawmakers have justified these provisions as *protecting* the order from political participation. This kind of logic goes back to 1946 when monks in Burma were formally disenfranchised, after strong pressure from the monks themselves (Larsson 2015).

The 2008 Constitution reads “members of religious orders,” which means that monks and nuns do not have the right to vote, form political parties, stand for election, or sit in parliament. Melissa Crouch (2019, 62) argues that this reflects “the Tatmadaw’s concern that Buddhist monastic authority is a rival center of power that needs to be constrained in the military-state.” Myanmar’s half-million monks and nuns comprise a significant base of would-be voters, and it is easy to jump to the conclusion that this rule was introduced either by British colonial powers due to their secularist preferences, or by the later military regime in order to restrict monastic “political activities” and hence curb regime resistance. In this way, the question of monastic disenfranchisement represents a political paradox. On the one hand, it points to the privileged status of Buddhism within the Myanmar state. On the other hand, it represents a very strict form of secularism, with certain obvious illiberal consequences of depriving particular groups of their basic social and political rights. Importantly – and this is a point to which I shall return in more detail later – this particular form of secularism or even the use of “secular” law is not inimical to Buddhist constitutionalism. It can rather be seen as a function of it.

Leaving the question of secularism aside for a moment, what exactly does the preferential treatment of Buddhism mean in the Burmese context? It should be noted that the Constitution does not grant Buddhism the status of state religion, but as I argue in an earlier article (Frydenlund 2017), Article 361 as well as post-1988 reorientations toward Buddhist symbols and institutions indicate that the state has become a *de facto* Buddhist state. State policies in support of religion have their support in Article 363, which says that “[t]he Union may assist and protect the religions [*bathathathanamyar*] it recognizes to its utmost.” Clearly, this implies state support for all recognized religions, but as shown below, what it means in reality is heavy state support for specific forms of Theravāda Buddhism.

For example, the Department for the Promotion and Propagation of the Sasana, under the Ministry of Religious Affairs and Culture (MoRAC) reaffirms the constitutionally protected right of religious freedom but gives economic and administrative priority to Buddhism as the majority religion. The Ministry also appears to favor Buddhism over other religions in the higher education sector, as seen in state funding of the State Pariyatti University and the International Theravāda Buddhist

Missionary University. In addition, the Ministry coordinates Buddhist missionary activities in the name of *thathana-pyu* or “the dissemination of *sāsana*,” which has been an essential political project of the Myanmar state since the 1990s (Kawanami 2021). The most controversial aspects of the missionary politics relate to missionary activities in ethnic minority areas dominated by non-Buddhist religions and has been a long-standing concern for Christians in the Chin and Kachin States.

MoRAC is also responsible for dealing with sangha matters, in consultation with the State Sangha Maha Nayaka Committee often referred to as the MaHaNa – a state-sponsored monastic body that oversees the sangha. Despite its focus on Buddhist affairs, the MoRAC also oversees affairs relating to religious minorities. However, a mapping of attitudes toward the nature of the state and its regulation of religion in Myanmar found that representatives from religious minority communities felt marginalized in relation to the Ministry in terms of protection in territorial disputes with Buddhist monks, access to information, and, above all, with regards to financial support (United Institute of Peace 2021). Such minority grievances raise questions of Buddhist constitutionalism as a form of exclusionary politics that has effects on majority–minority relations. This point will be discussed toward the end of this chapter.

10.4 “PURIFYING” THE SANGHA THROUGH “HYBRID” LAW

Similar to Thailand, but different from Sri Lanka, Buddhist constitutionalism in Myanmar implies heavy regulation of the monastic order. In Thailand, Schonthal (2017, 715) notes “crises relate to the integration or expulsion of Buddhist groups from an official national monkhood,” while in Sri Lanka they relate to “deep disagreements over the proper sources of Buddhist authority.” Comparing Burma/Myanmar to Thailand and Sri Lanka, it becomes clear that in spite of instances of monastic resistance to the military regime (e.g., 1988 and 2007) – or as in specific cases of contestation discussed below – a combination of the military state, laws regulating the sangha and the centralized organization of monks in Myanmar inhibit large conflicts *within* Buddhism, or between the state and the sangha. There are important exceptions to this general trend, however, and questions persist about the integration or expulsion of groups from the state-sanctioned sangha. Disagreements over Buddhist authority also occasionally arise.

As discussed below, with state patronage of Buddhism comes heavy regulation of the sangha. In the following, I analyze two recent examples of contestation over what is considered “proper” monastic behavior: the first case shows how the Penal Code is used to enforce monastic judgments in cases of non-acceptance of the monastic court’s ruling; the second case illustrates the friction between state monastic authorities and certain monks with regard to definitions of the “political.” Such cases sometimes imply a principled resistance to heavy sangha regulation *per se*, but they can also point to political difference, or specific issues of contestation.

10.4.1 *The Vinicchaya Court System*

Under British colonial rule, the monastic community retained a relative degree of autonomy in overseeing its internal affairs. It was not until 1980, under the rule of General Ne Win, that a state-level judiciary would oversee monastic affairs. With the establishment of the Buddhist state court system (called *Vinicchaya*), the state has acquired a highly effective means to uphold specific notions of Theravāda Buddhist orthodoxy and orthopraxy. The court has absolute authority in doctrinal matters and constitutes a particular Buddhist legal culture that shapes and formats Buddhist thought and practice in decisive ways. In these courts, monks may be charged with heresy (*adhamma*) and malpractice (*avinaya*) under the jurisdiction of the MaHaNa. Between 1981 and 2017, twenty-one cases were brought before the state Vinicchaya committee, of which three concerned monastic misconduct, and the rest hinged on the degree of misrepresentation or false understanding of Buddhist doctrine. All of the accused have been found guilty (Janaka and Crosby 2017, Kawanami 2021).

With few exceptions, those convicted have accepted the court's decisions. In the two cases where the accused have refused to accept the verdict, the 1990 Law Relating to the Sangha Organization has also been at the regime's disposal. This law states that anyone disobeying the Vinicchaya Court can be sentenced with up to three years imprisonment. Another legal instrument at hand to ensure compliance is the Penal Code, especially Sections 295–298, on “religious offense.” So far, this has only been applied in the most recent Vinicchaya Court case, namely the Mopyar case. The monk, U Nyana (often referred to as U Mopyar, a reference to his sky-blue outfit), had been found guilty in 1983 of making false superhuman claims – a charge which, according to the *vinaya*, requires expulsion from the order. Later, he was accused of having established a new *gaing*, based on his particular “doctrine of present action.” Based on a ruling from 2011, the Mopyar *gaing* was officially outlawed by the state on the grounds that U Mopyar taught *adhamma*, or “wrong teachings” (Kawanami 2021). His teaching, which appeared to negate karmic logics of reward and retribution, seems to have been of particular concern to the monastic guardians of Theravādin orthodoxy. When U Mopyar did not comply with the rulings of the Vinicchaya Court, a recommendation was sent from the court to the Ministry of Religious Affairs, and he was charged under Sections 295 and 295-A of the Penal Code for acts “intended to offend religious feelings,” in this case insulting Buddhism. Critics even claimed his activities were an attempt to destroy Theravāda Buddhism. U Nyana was also charged under Section 5(e) and 5(j) of the 1950 Emergency Provisions Act for behavior deemed to be a threat to national security, under which he was sentenced to a further twenty years imprisonment (Kawanami 2021, 21). In 2016 MaHaNa reconfirmed its stand on the Mopyar group as being an illegal sect and both MaHaNa and MaBaTha stated that U Nyana was an internal enemy (*thathana atwin yanthu*) of Myanmar Buddhism (Kawanami 2021, 22).

As shown by the Mopyar case, secular state law can function as a “back-up” resource when specific Vinicchaya Court regulations fail to regulate “deviant” behavior. The Buddhist court system in Myanmar is mostly a legal mechanism for the conservative and largely “apolitical” sangha hierarchy to uphold specific notions of purity and orthodoxy, within a defined sphere of elite textual specialists (*pariyatti* monks). The driver of this system is the wish to protect the *sāsana* from impurity and corruption, based on a specific form of Buddhist scriptural fundamentalism unique to Myanmar. Furthermore, state mechanisms for the legal regulation of religion, both religious and secular, are potential tools for the exercise of political power.

All of this seems to have intensified after the 2011 political liberalization, when the term *adhamma* replaced the term *micchaa ditthi* (“wrong views”). Kawanami (2021, 19) observes that compared to *micchaa ditthi*, *adhamma* is a broader and more politically loaded term, and that “any particular religious viewpoints that are regarded as threatening to law and order have been called *adhamma* as a means of de-authenticating and discrediting them.” In this way accusations of and prosecutions for heresy remain tools of the state policy of *ngyeinwut piya-ye* (law and order). Thus, Vinicchaya court cases (as well as religious offense cases discussed below) show how the legal regulation of religious offense, blasphemy and heresy have served both religious and political interests.

10.4.2 MaBaTha: Testing the Limits for “Political” Engagement

Given the specific, legally inflected distinction between religion and politics in Myanmar, Buddhist associations such as MaBaTha – which since the 2011 political liberalization have been particularly active in the public sphere – need to avoid possible allegations of “doing politics.” As discussed above, the task of overseeing and deciding on appropriate monastic behavior lies with the MaHaNa, including to what extent monastics are involved in “politics.”⁵ While constitutional articles that prohibit monastic engagement in *formal* politics (such as monastic disenfranchisement, non-eligibility for parliament, or being members of political parties) are clear-cut, other aspects of constitutional secularism (such as Article 364) are polysemantic fields open for contestation and negotiation. As the MaBaTha case discussed below indicates, what is deemed by MaHaNa as *adhamma*, or political activity largely depends upon the views of the current government. The case began with the 2013 MaHaNa ruling against a loosely organized monastic network called “969,”⁶ which can be seen as a forerunner to MaBaTha. Or to be precise, MaHaNa banned

⁵ The 1990 Law does not specifically consider what constitutes “politics,” and it remains unclear if monks have been convicted for “doing politics,” and if so under what provisions. Rather, activist monks can be charged with allegations of state defamation, religious offense, or under emergency laws.

⁶ The 969 refers to the nine qualities of the Buddha, the six of the Dhamma, and the nine of the Sangha, which together constitute the “three Jewels of Buddhism.”

the *political* use of the 969 symbol, as well as the creation of formal organizations associated with the symbol, but did not ban the 969 symbol itself, nor did it judge the teachings of 969 as *adhamma*.

With the entry of the NLD into office in 2016, the ties between the government and MaBaTha loosened. Likely responding to the preferences of the newly elected political leaders, MaHaNa reduced its previous support for MaBaTha by denying them formal recognition as a lawful monastic organization (Walton & Tun 2016). In 2017, after allegations of anti-Muslim hate speech, MaHaNa banned Ashin Wirathu from public speaking and preaching for one year. The decision was made a few days after Ashin Wirathu had publicly expressed support for the assassination of Myanmar's leading constitutional lawyer, U Ko Ni, a Muslim. A few months later, MaHaNa ruled that the "MaBaTha" name was not in compliance with the 1990 Sangha Law and ordered all MaBaTha signs and symbols be removed (while stopping short of condemning the organization or its activities). While most MaBaTha groups accepted the enforced rebrand and simply continued their activities, the chapters in Mandalay and the Karen State refused, arguing that MaBaTha was not an official sangha organization, and thus did not breach the 1990 Sangha Law. Read one way, the MaBaTha–MaHaNa disputes in 2016–17 might suggest that monks are less regulated compared to those in, say, Thailand. Yet it is important to note that this semi-independence is more contingent upon political context than on legal flexibility: under USDP rule the MaHaNa supported MaBaTha and its campaign for the so-called race and religion laws, while it limited MaBaTha once the NLD came into power. As previously noted, MaBaTha monks supported MaHaNa in banning the Mopyar sect. Clearly, then, the contestation between MaHaNa and MaBaTha is more about manoeuvring shifting political landscapes than resistance to high levels of state regulation per se.

10.5 DEFENDING BUDDHISM THROUGH CIVIL LAW AND THE PENAL CODE

So far, I have analyzed some of the ways in which state obligations to protect Buddhism have resulted in heavy sangha regulation. In the following sections, I move to other areas of state law such as civil law and the Penal Code, which appear to be based on principles of secularism and equality between ethnic and religious groups (a kind of *de jure* egalitarianism). However, as I will argue below, even these forms of "secular" law have increasingly been used as legal tools for Buddhist protectionist actors, which can be seen as attempts at legally locking in Buddhist claims to the state. Or put differently, they can be seen as acts of Buddhist statecraft.

Understanding how nominally secular law can be used to enact Buddhist constitutionalism is particularly important given the restricted space for constitutional practice in Myanmar: the Constitution's provisions have not been the subject of

constitutional adjudication; there are very few Constitutional Tribunal decisions; access to the tribunal is highly restricted; and the protection of rights via petition in the Supreme Court is highly circumscribed (Crouch 2019). Therefore, there is very limited space for taking Buddhist grievances to the higher judiciary. Under military rule, public law is weak and the possibilities for Buddhist interest litigation or legal activism curbed. Certainly, the Vinicchaya Court is important for sangha regulation and doctrinal issues, but it was not until the years following the 2011 political reforms, that Buddhist activists could engage in public legal activism to secure the *sāsana* beyond Vinicchaya courts. In the following, I analyze two forms of Buddhist legal activism in secular state law, which aim at securing the *sāsana* in lay Buddhist society.

10.5.1 *The 2015 Race and Religion Laws*

The early years of political liberalization (2011–15) witnessed a marked rise in Buddhist nationalism. In 2015 this resulted in the passing of a package of four laws, referred to as the “race and religion laws,” which sought to regulate marriages between Buddhist women and non-Buddhist men, to prevent forced conversion, to abolish polygamy and extra-marital affairs, and to promote birth control and family planning in certain regions of the country.⁷ Mobilization of MaBaTha was key to passing the legislation, and their declared motivation for legal activism was the protection of Buddhism, particularly against the alleged “Islamization” of Myanmar and claims of violations of religious freedom for Buddhists, predominantly Buddhist women (Frydenlund 2017).

Among these laws, the Religious Conversion Law is of particular interest because it makes explicit reference to the Constitution. The final version of the Conversion Law does not have a preamble, but a preamble contained in its second draft version gives a clue of the rationale behind the law. That draft preamble repeats the language of Article 34 of the Constitution on freedom of religion, but states that there is a need for transparency and a system in place to ensure the right to freedom of religion and the freedom to choose and convert to another religion. A repeated aim is to ensure that change of religion is according to the individual’s “own free will.”⁸ A set of formal procedures and an application process supposedly guarantees converts free will, including an interview with a committee to ensure that the applicant has a free conscience. Compared to the first draft, the final law contains a more developed religious freedom discourse, in which the stated aim is not to ban conversion, but to secure freedom from coercion. This is also evident in the fact that

⁷ Control of Population and Health Care Law No 28/2015; the Religious Conversion Law (Conversion Law) No 48/2015; the Myanmar Buddhist Women Special Marriage Law No 50/2015 (Marriage Law); the Monogamy Law No 54/2015.

⁸ “Religious Conversion Law (draft).” On file with author.

the law allows for persons to declare allegiance to atheism, or no-religion (*bathame*), thereby explicitly stating for the first time one's right *not* to have a religion (Frydenlund 2018).

With the exception of the Marriage Law (which distinguishes between "Buddhist" and "non-Buddhist"), the language of the "race and religion laws" refers to "religion" (*batha*) in the neutral, which means that the laws apply to all Myanmar citizens, regardless of the religious identity given in one's National Identity Card. Given the political-legal context and the rationale given by MaBaTha itself, the laws were clearly made to protect Buddhism, but their generic language makes them seem applicable to all citizens. As with the monastic disenfranchisement discussed above, supposedly secular laws do not always ensure impartiality and neutrality with regard to state regulation of religion. They can also be effective means for protecting religious privilege.

10.5.2 *Protecting Buddhism from "Offense"*

Compared to the monastic courts discussed above, cases involving lay people – Buddhist or non-Buddhist – with regard to "religious offence" fall under the Penal Code and are usually dealt with in general state courts (as the Mopyar case illustrates, however, a case can also move from the monastic court to the general court.) Such "religious offense" legislation was introduced by the colonial state to ensure interreligious harmony between its subjects as it sought to protect the religious feelings of *all* citizens.⁹

Since 2011, charges of religious offense against lay people have become another important form of *sāsana* protection (Frydenlund 2019). In particular, two cases of religious offense have made national headlines in recent years, both passed after strong mobilization by MaBaTha.¹⁰ The first case involved a dual British/New Zealand citizen, Phil Blackwood, and two Burmese citizens, Tun Thurein and Htut Ko Ko Lwin. All were found guilty in 2015 of "insulting religion" for a psychedelic bar advertisement depicting the Buddha wearing headphones and accompanied by the text "Bottomless Frozen Mararita [sic] K 15000." On the eve of December 9, 2014, Blackwood posted the ad on Facebook to promote cheap drinks at the V Gastro Bar in Yangon. The ad went viral, and after having received several complaints, he removed the image and posted an apology. Following

⁹ The Penal Code contains five sections pertaining to "religious offence": 295. Injuring or defiling place of worship, with intent to insult the religion of any class; 295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs; 296. Disturbing religious assembly; 297. Trespassing on burial places etc.; 298. Uttering words etc. with deliberate intent to wound religious feelings.

¹⁰ Only weeks after the Htin Lin Oo verdict in June 2015, the MaBaTha at its annual conference in Insein published a twelve-point statement in which they demanded blasphemous (*pyit mhar saw kar thaw*) attacks against monks to be stopped (Fuller 2016).

complaints made by MaBaTha, the police took action. Only hours later the three were arrested and sent to prison, charged under the Penal Code, Sections 295 and 295-A. According to the judge, who heard the case in the Bahan Township Court, Blackwood's apologies in court did not remove his guilt of having "intentionally plotted to insult religious belief" (Kyaw Phyo Tha 2014). The judge deemed, moreover, that Blackwood should have known that this would hurt Buddhist feelings and sentenced the three men to two and a half years in prison with hard labor.

The second case was against the writer and NLD activist, Htin Lin Oo, who gave a speech at a literary festival in Chaung-U Township in Sagaing Division in 2014. In this speech, he criticized the use of Buddhism to promote discrimination. Shortly afterwards, a ten-minute edited video appeared on social media, causing outrage among MaBaTha monks. He was charged by the Chaung-U Township Court, after a complaint was filed against him by township officials, under Sections 295-A and 298. In his speech Htin Lin Oo pointed out that the Buddha was not Burmese, not Shan, not Karen, nor did he belong to any of Myanmar's national races. He stated, "if you want to be an extreme nationalist and if you love to maintain your race that much, don't believe in Buddhism." The speech concluded by stating that "Our Buddhism is being destroyed by these people wearing robes".¹¹ He was acquitted of the charge of "wounding religious feelings," but found guilty of the charge of "insulting religion." He was sentenced to two years in prison, then released, but was among the first to be sentenced again after the 2021 military coup.

In both cases, MaBaTha monks attended the public spectacles outside the respective courtrooms – something that would have been unthinkable just a few years before. During military rule, judicial proceedings were held in secret. There were closed trials and no coverage of cases in public media, particularly from the 1980s onwards. Yet the conjuncture of economic and political liberalization, as well as a new media reality, created new spaces for monastic engagement in public life, including legal activism. Although press freedom was still under heavy pressure, court cases were again reported in the media. From the MaBaTha point of view, race and religion legislation and blasphemy cases were tools that could be used to protect the *sāsana* and ensure that the state acted as a guardian of Buddhism.

10.6 CONTESTING BUDDHIST CONSTITUTIONALISM

So far, I have made the argument that Buddhist constitutionalism in Myanmar has produced a specific form of secularism through the process of legally defining religion in particular ways. I have also argued for the need to address Buddhist constitutionalism beyond the constitutional text in order to capture how a wide range of policies and

¹¹ You Tube clip, www.youtube.com/watch?v=opiWM3c_5sg.

legal practices promote Buddhism in particular ways. This calls for a differentiation between explicit and implicit forms of Buddhist constitutionalism. In the following section, I will analyze the practice of Buddhist constitutionalism in the context of massive humanitarian crisis, ethnic cleansing, and civil war. Again, as discussed above in regard to the *prima facie* secular and egalitarian quality of the Penal Code and the “race and religion laws,” I would like to emphasize the need for the study of Buddhist constitutionalism to go beyond sangha-political controversies and systematically analyze the effects of Buddhist constitutional practices upon interreligious relations and ethnic minorities.

Historically, several of Burma’s insurgencies are related to the question of Buddhist constitutionalism. Both the formation of the Kachin Independence Army and the Chin rebellion can be seen as direct responses to the 1961 amendment to make Buddhism the state religion (a move that was overturned by the military following its 1962 coup). Even among non-Bamar ethnic groups that are majority Buddhist, such as the Shan, the 1961 efforts to make Buddhism the state religion were seen as counter to the Panglong Agreement and so resisted. Therefore, peace negotiations and religious constitutionalism are two closely related questions, at least as seen from an ethnic and religious minority point of view.

As previously discussed, the military is concerned with presenting itself as the protector of the *sāsana*. For example, at the third Advisory Forum on National Reconciliation and Peace in Myanmar in NayPyiTaw on November 14, 2019, the Commander-in-Chief of Defense Services, Senior General Min Aung Hlaing, explicitly reminded the multireligious audience of the fact that Buddhism has a special position in Myanmar. General Hlaing said:

Despite the fact that every country around the world has citizens of different religions, all of them pay heed to the religion which is practiced by the majority in the country. Cultural evidence suggests that religious beliefs in Myanmar date back to Pyu Period, the most ancient period of the country. Pagodas in Bagan are testimony to the fact that Theravāda Buddhism has been practiced by the majority since Bagan Period, the first Myanmar Empire in AD 11. And there are also comprehensive historical records that the majority of Myanmar citizens have wholeheartedly embraced Buddhism in successive periods. Only after Myanmar fell under colonial rule, followers of Christ and other religions have increased. (Global New Light of Myanmar 2019, 59)

In this speech Hlaing clearly privileges Buddhism over other religions, while at the same time degrading other religions as non-indigenous, colonial newcomers. Simultaneously, the military is building up its Buddhist networks, through sangha donations and ritual celebrations. As MaBaTha experienced restrictions under NLD rule, the military has reinvigorated organizations like the Young Men’s Buddhist Association (YMBA) in order to expand the fields of Buddhist-military interaction. For example, at one YMBA event only two months prior to the coup, the leading

MaBaTha monk, Insein Sayadaw, participated in Buddhist functions together with Hlaing. Hlaing also made large donations to Insein Sayadaw in the same period.

For decades, the need for decentralization and a federal structure has been claimed by democracy activists, EAOs, and international actors as the way to peace and democracy. As discussed in detail below, from the EAOs' perspectives, this new federal state is to be secular, thereby respecting the principles of the 1947 Panglong Agreement. This is also in line with Christian (political) theologies among Christian ethnic minority communities such as the Chin, Kachin, and Karen, which hold a secular state as a prerequisite and a *sine qua non* in a future federal and democratic state. Rooted in the Christian (often Baptist) theological notion of the separation between religious and political powers, Myanmar's proponents of Christian political theology dismiss calls for a Buddhist state as extreme, even if they show limited understanding of the historical background and colonial grievances of Buddhists who make such calls.¹²

Demands for a secular state were in fact granted in the 2015 National Ceasefire Agreement (NCA). Given the strong support among Myanmar's religious majority for Buddhist constitutionalism, it is rather surprising that the NCA did not attract much attention, as it offered a totally new vision on the relationship between religion and state. Section 1(e) of the NCA, which was first signed by the Thein Sein government and eight EAOs on October 15, 2015 (with two more joining on February 13, 2018) sought to "establish a secular state based on the principle of the separation of religion and state in order to avoid abuse of religion for political interests."¹³ The explicit mention of "separation of religion and state" was novel and went against Article 361 of the Constitution. In 2016, the newly formed NLD government took a new initiative to end decades of armed conflict. This process, called the Union Peace Conference, was mostly known as the "Twenty-first Century Panglong," an explicit reference to the famous 1947 agreement between the Burmese government under Aung San and the Shan, Kachin, and Chin peoples. While building on the 2015 NCA, the Union Peace Conference was intended to be more inclusive and to transform the military state into a democratic federal state. Again, the question of state regulation of religion resurfaced, if not in public debate, then at least among those involved in the peace process. The "secular state" clause in the 2015 NCA was, however, changed in the Union Accord Part III which was signed on August 21, 2020. Here, clause three reads the purpose as: "To establish a nation where there is no misuse of religion for political purpose and where politics and religion are separated from each other" (Global New Light of Myanmar 2020, 10). This is more in line with the 2008 Constitution, but the reasons behind this semantic shift remain unclear. It will also be a point for new negotiation if a peace process recommences if – or when – the civil war-like situation across the country

¹² Frydenlund, fieldnotes, 2018.

¹³ https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf.

since 2021 ends. If it does, one of the challenging issues is state regulation of religion at the sub-national level. One proposal that appears to have been accepted as part of the peace process is for states/regions to draft their own constitutions, which has been a key demand since the 1960s (Crouch 2019). How religion will be dealt with at the sub-national level needs to be discussed as demands for religious privileges at regional level are likely.

As previously noted, religious minority communities have, since the late 1940s, worked for a secular constitution. Due to military rule, the political space for debates on the constitutional regulation of religion have been almost non-existent. However, under the NLD government (2016–21) the 2019 constitutional amendment process provided new opportunities for political parties to discuss the issue. “The Union of Myanmar Constitution (2008) Amendment Joint Committee” comprised representatives from the ruling NLD, the military, the USDP, and ethnic minority parties, and by July 2019 they had received thousands of recommendations. However, the NLD, which chaired the committee, confirmed the constitutional recognition of the five religions (Buddhism, Christianity, Islam, Hinduism, and Animism), but did not discuss other religion clauses at all.

By contrast, members from ethnic minority parties suggested changes. For example, the Shan National League for Democracy (SNLD) and the Mon National Party (MNP) suggested deleting conditions of public order, morality, health, and other provisions of the Constitution that limit the right to freedom of religion. They suggested that freedom of religion should be absolute, and no conditions be imposed on it. The Ta’ang (Palaung) National Party called for the inclusion of a subsection to declare that the Union of Myanmar would be a secular state. The SNLD also suggested entirely removing Article 360, which restricts the right to religious freedom as granted in Article 34. The SNLD, together with the Zomi Congress for Democracy (ZCD), proposed to remove Article 361 (granting Buddhism a special position). The ZCD further advocated for deleting Article 362 which names Christianity, Islam, Hinduism, and Animism religions recognized by the state and replacing it with this: “Every citizen has the right to profess any religion of his or her faith.” The SNLD and the Pa’O National Organization (PNO) wanted to oblige the state to assist and protect the religions it recognizes by suggesting removing the phrase “to its utmost” from Section 363, which seems to enable the state to give an excuse in cases of inability to protect and assist the religions.¹⁴

However, the NLD, the USDP, and the military bloc in parliament did not touch these constitutional sections relating to religion in their recommendations made to the committee, or in draft bills separately submitted. Therefore, questions about the

¹⁴ “Proposals by Political Parties, Groups and Independent Representatives for (Constitutional) Amendment, Deletion, and Additions,” circulated by the Office of the Pyidaungsu Hluttaw to members of parliament on July 15, 2019, 15. Quoted in United Institute of Peace (USIP) report 2021, unpublished.

constitutional regulation of religion did not arise when the bills were debated in parliament. Except those few ethnic parties that suggested changes, questions concerning constitutional regulation of religion did not reach the broader public. A notable fact is that the NLD claimed no official stance on religion, although there has been widespread support among NLD members for Buddhist constitutional privileges (Laird 2020). The lack of interest shown by the military MPs, the USDP, and the NLD in discussing Buddhist constitutional privileges in parliament, demonstrates the broad consensus at the time among the Bamar Buddhist majority about Buddhist constitutionalism. When minorities have worked to raise this question in formal politics, the Bamar Buddhist political elites – including both the military and the NLD – have chosen to lay the issue to rest.

10.7 CONCLUSION: BUDDHIST CONSTITUTIONALISM IN A MILITARY STATE

Secularism as an ideology of the military state (1962–2011) lost its ground as the military sought to legitimize its rule through Buddhist symbols and structures. This process had already begun in the post-1988 period, but was amplified, I suggest, with the 2008 Constitution and during the years of political liberalization and semi-civilian rule (2011–16, 2016–21). The first period under the rule of the USDP allowed for Buddhist legal activism in the public sphere. In alliance with the USDP and the military, Buddhist pressure groups engaged in Buddhist lawmaking, not with the aim of having religious laws govern the state (as a form of constitutional theocracy), but to protect Buddhism from internal and external threats. This, I contend, is a form of Buddhist statecraft, anchored in constitutional preference for Buddhism. But could the claim be made that Myanmar is a Buddhist state? Seen from a strictly legal perspective, the answer is no. The Constitution neither holds Buddhism as the religion of the state (as in Cambodia), nor does it say anywhere that the head of state must be Buddhist (as in Thailand). Nonetheless, *in practice* the head of state must be Buddhist, and as the military has refashioned itself as the protector of Buddhism, spreading its protective wings over Buddhist legal activism, it can be argued that Myanmar is a *de facto* Buddhist state.

Perhaps the most salient and under-appreciated feature of Buddhist constitutionalism in Myanmar is its distinct form of secularism, which I suggest, also privileges Buddhism in ways that are not always acknowledged. In fact, to understand how the military state has shaped Buddhist constitutionalism, one must start with two important observations: first, what might be called “Buddhist secularism” (focused on a strict separation between religion and politics rooted in Buddhist political ideology) has served military interests. This is testified by the amplification of such distinctions in the 2008 Constitution compared to the 1947 and the 1974 Constitutions. Second, the military state has granted limited space for constitutional jurisprudence, for example to clarify what Buddhist constitutionalism might imply.

The 2015 “race and religion laws,” which caused massive protests among religious minority communities and human rights groups alike, were never heard at the Constitutional Tribunal (a constitutionally recognized forum for all constitutional disputes¹⁵), to assess their coherence with rights to religious freedom. Even the Myanmar Commission of Human Rights avoided assessing the case as it was considered too politically sensitive (Frydenlund 2017). In both ways, this supposed absence of religion from law and politics has, in fact, advantaged Buddhism.

The practice of limited constitutional jurisprudence in an authoritarian state also suggests that we need to expand the study of Buddhist constitutionalism beyond constitutional law, to include its implicit or unwritten forms. Conceptionally, this bears some affinity with the notion of a “living constitution” like we find in China (Xin He 2014), indicating the importance of context and practice beyond the written text. Such implicit forms point to a larger constitutional complex of policies, laws, courts, and legal practices aimed at acting out the constitutional preference for Buddhism. For example, the Vinicchaya courts are not mentioned in the Constitution, but can be seen as “constitutional statutes,” that is, as “sets of foundational, basic laws that structure the relationship between monks and rulers” (Schonthal 2018, 6). If we broaden the notion of constitutional statutes beyond monastic regulatory concerns to include state Buddhist missionary policies, Buddhist civil laws, religious offense legislation, and Buddhist interest litigation, we will be able to capture Buddhist constitutionalism as an extensive form of Buddhist statecraft.

The 2021 military coup brought about a new twist to the state–religion nexus in Myanmar. After the coup, elected members of parliament formed the Committee Representing Pyidaugsu Hluttaw (CRPH), which on April 16, 2021, formed the National Union Government (NUG). The NUG claims to be the only legitimate government of Myanmar and includes representatives from the NLD and ethnic minority parties. It represents a new cross-ethnic and multireligious political force against the military. The military, through its State Administration Council (SAC), declared the shadow government illegal.

Just prior to the formation of the NUG, the CRPH “annulled” the 2008 Constitution and declared a “Federal Democracy Charter.” In relation to the historically contentious position of Buddhist constitutionalism, the charter states that the Federal Union shall practice a political system that has separation between politics and religion. In the English version of the document, the word “secular” is used, while in the Burmese version it reads “a political system not based on religion.” Although not explicitly expressing that the state should be religion-neutral, both the Burmese and the English versions of the text indicate the end of

¹⁵ From 2011 to 2018 the Tribunal only published decisions in thirteen cases, none on religious matters.

constitutional preferential treatment of Buddhism.¹⁶ The military for its part declared in May 2021 – through its new puppet organization the YMBA – General Hlaing to be a bodhisattva, thereby confirming the aim of creating a Buddhist-military state. In a televised speech on August 1, 2021, General Hlaing extended emergency rule to August 2023 and declared himself the thirteenth prime minister of Myanmar. In that speech, he explicitly presented SAC rule as pro-Buddhist (in contrast to the previous NLD rule), and importantly, as being in line with the religious clauses of the 2008 Constitution (Global New Light of Myanmar, 2021). Thus, while democratic forces work toward a more inclusive Myanmar, the military will stand as the protector of Buddhist constitutionalism, making it an integral part of military ideology as enshrined in the 2008 Constitution.

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¹⁶ "Federal Democracy Charter Part I," *Declaration of Federal Democracy Union*, 2021, 5. Available at <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf>. For more on religious responses to the coup, see Frydenlund et al., 2021.

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