

Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka. By Benjamin Schonthal. Cambridge: Cambridge University Press, 2016. Pp. 320. \$110.00 (cloth). ISBN: 978-1107152236.

In *Buddhism, Politics and the Limits of Law* Benjamin Schonthal engages with the foundational issues of law and religion, constitutions and conflict. Can a constitutional bargain preserve the peace? And can it protect the sphere of religion when that sphere itself yields to no other authority than its own self-referential self? Schonthal takes issue with the fantasy of a constitutional fix. Constitutions can of course place bounds, protect rights, and offer legal channels to advocate anxieties, grievances, and disagreements. But such legalization of conflict management may well aggravate rather than moderate religious disputes. Schonthal questions the claims made by such proponents of “constitutional theocracy” as Ran Hirschl that constitutional management can diminish religious conflict by absorbing it into the measured trappings of secular law.¹ This argument is typically based on the narrow evidence base of court proceedings, Schonthal holds. If we look at societal effects of law making beyond those privileged arenas, we may encounter some very different dynamics.

Schonthal explores these dynamics in the Sri Lankan context. With Buddhist extremist violence resurfacing in Sri Lanka since the 2009 end of the civil war, a major constitutional crisis unfolding in late 2018, and with recent events in Myanmar fresh in mind, this is surely a timely moment to review this book. Schonthal takes stock of Sri Lanka’s attempt at crafting a postcolonial constitutional settlement to tame the forces of ethnic chauvinism and religious extremism—an attempt to preserve legally protected space for all religions, while also offering pride of place to the Sinhala Buddhist majority community. Counterintuitively, given the twenty-six years of civil war, he concludes that the constitution has not failed. In fact, it has quite successfully managed to penetrate the religious realm. The problem is that these apparent successes have had perverse effects. The victory of constitutionalism is a pyrrhic one.

Sri Lanka’s oft-amended constitutional settlement provides religious protection. It sets boundaries and standards, while leaving some contentious issues deliberately woolly. And it offers channels for the articulation of religious claims, grievances, and anxieties. But in doing so, it has in fact provided a platform for religious conflict that further entrenched positions, fueled antagonisms, and elevated what could have been minor forms of friction to the level of highly politicized national turf battles. Rather than moderating and mediating religious conflicts, Sri Lanka’s constitutional trappings have made these conflicts more intractable and acrimonious. The architecture of constitutionalism has been functional, but this functionality has itself become thoroughly embroiled with the ethno-political majority-minority issues underpinning the civil war.

Schonthal offers an excellent contribution to debates on constitutionalism and conflict management, with detailed reflections on an infrequently cited and somewhat counterintuitive case. After all, Sri Lanka has long had enviable development indicators; largely functional state institutions; a vibrant electoral culture, media, and civil society; and a long history of cultural and religious mixture. However, it nevertheless descended into a ravaging, protracted armed conflict. Schonthal’s book offers a carefully written historical analysis of how constitutional provisions in such a contested multi-ethnic context produce unintended outcomes, how attempts to regulate religion

1 Ran Hirschl, *Comparative Matters: Renaissance of Comparative Constitutional Law* (New York: Oxford University Press, 2014).

conjure up paradoxes and counterforces, how litigation lends itself to deepened antagonism, and how the law may offer religious extremism buoyancy rather than boundaries.

The gist of this argument is much in line with his earlier work in this journal and will not come as a great surprise to scholars of Sri Lanka.² The main value of the book lies in the beautifully written accounts of the legal dynamics of apparently marginal disputes. It was from these “micro-histories,” for which there would have been little place in his 2014 summary article, that I gained new insights. And it is through these accounts that Schonthal navigates—with much needed nuance—the complicated and contested terrain within the triangle of Buddhism, the state, and conflict in Sri Lanka. After all, much of the scholarship on this topic leans in either of two directions. On the one hand, there is a small but impressive body of work on Sri Lanka’s constitution—its evolution, innovations, and shortcomings. But this work rarely reaches beyond the arena of legal proceedings and formal politics. We learn little about how all this affects the society in which it is embedded, and it is often suggestive of the tempting, but erroneous, thought that all would be well if only we could fix the architecture of the state and its constitutional foundation. On the other hand, there is a voluminous body of work on Sinhala Buddhist nationalism and the ethno-political conflict. This scholarship also discusses the constitution, but typically does so as a routine affirmation of the problematic nature of a state beholden to Sinhala nationalism. This does not do justice to the many ambiguities and contradictions involved.

Schonthal eloquently brings these two strands together. He meticulously reviews the way constitutional provisions were drafted, debated, and revised. But he also provides a detailed and well-narrated discussion of what happens when the legislative ink has dried: how some of these provisions took on a life of their own, how they were deployed in specific legal disputes, and how they produced lasting discursive outcomes. Crucially, his gaze goes beyond the annals of law. After all, some of the biggest impacts of constitutional contentions took shape irrespective of the legal outcome. Some cases were withdrawn, petered out, or were rejected in court, but the highly public campaigns around them had major and enduring effects.

This duality method—scrutinizing both the drafting of the constitution and its social and political outcomes—is reflected in the structure of the book. Part one, based mostly on archival research, discusses the history of Sri Lanka’s constitution making, starting with the postcolonial ambitions of the 1948 “Soulbury” Constitution through to the “Republican” Constitutions of 1972 and 1978. The latter remains in force, be it with major amendments. More specifically, in part one Schonthal unravels the way these drafting processes dealt with two principal paradoxes of religion and constitutionalism: how to constitutionally protect religion without simultaneously subjecting it to the worldly forces of state politics, and how to lay sovereign foundations that reflect the predominant composition of a newfound nation that sees itself besieged, without succumbing to majoritarianism. Schonthal reviews Sri Lanka’s postcolonial engagement with these questions on the basis of three competing paradigms, respectively of a preventive (forestalling adverse religious legislation), protectionist (securing religion as a fundamental right), and promotional nature (obliging the state to protect Buddhism). The three chapters in part one discuss how successive constitutional drafters (like legal scholar William Jennings in the 1940s and secular Marxist Colvin de Silva in the 1970s) sought to navigate these competing paradigms; how advocates of Sinhala Buddhist and Tamil positions (like G. P. Malalasekara and G. G. Ponnambalam, respectively) intervened in these debates;

2 Benjamin Schonthal, “Constitutionalizing Religion: The Pyrrhic Success of Religious Rights in Postcolonial Sri Lanka,” *Journal of Law and Religion* 29, no. 3 (2014): 470–90.

and how the resulting constitutional bargains reflected the political agendas of the national leaders of the time (D. S. Senanayake, Srimavo Bandaranaike, and J. R. Jayawardena).

The central culmination point of these deliberations is the Buddhist chapter to the constitution, created in 1972 and amended in 1978. This chapter stipulates the infamous phrase of protecting the “foremost place” of Buddhism in Sri Lanka, which continues to be a central bone of contention. Schonthal rejects the common reflex of interpreting this as a Buddhist victory imposing its own supremacy on a multireligious county. The constitutional text itself was in fact consciously ambiguous and avoided more radical alternatives, such as declaring Buddhism the state religion. And it was deliberately counterbalanced by fundamental rights and protections for all faiths. He concludes part one with the diagnosis that the Buddhist chapter was “a successful constitutional settlement, one that leveraged the power of ambiguity and ‘incompleteness’ to produce a multivalent language of compromise over religion” (145).

In the second half of the book Schonthal matches this meticulous historiography of constitutional drafting with a discussion of its actual effects within and beyond the legal arena. It draws on a combination of archival work, perusal of public media and political statements, and field work on the basis of interviews. It is in the three chapters of part two that the central argument of pyrrhic constitutionalism comes out in starkest relief. On the basis of “micro-histories,” Schonthal convincingly substantiates his argument that the law perversely aggravated rather than moderated conflict. Each of these accounts starts out with an apparently marginal issue about the rightful place and boundaries of Buddhism, centered on such basic dilemmas as whether a monk should be allowed to obtain a driver’s license or allowed to practice as an attorney of law; whether a monk should stand up to pay respect to a judge or vice versa; and whether proselytization and conversion are religious rights or threats to it. Each of these dilemmas percolates into the legal arena and spawns fierce national debates in which rival camps draw on the same legal texts to substantiate opposite positions. After all, the legal imperative of protecting the Buddhist order of things could be served by monks’ not driving a car (sheltering them from worldly pollutions) or by their ability to do so, thus enabling them to serve more people and reach those constituencies unable to pay for transportation.

In most cases the legal verdict reflects the power asymmetries of Sri Lanka’s religious and political landscape, but interestingly these outcomes are rarely the definitive climax of the debate. In fact, court judgments are often surpassed by public disputation and campaigns that set the stage long before and after the verdict. The monk attorney wins his case but is then unable to practice in court due to technical objections about proper attire. The monk aspiring to drive loses his case, but his supposedly triumphant opponents feel at a loss, too: they resent having had to accept a state judge’s intervention into a quintessentially doctrinal matter of monastic life. And the famous “anti-conversion bill” promoted by a party of Buddhist monks meets a court judgment that equivocates the key issues. The bill then moves into oblivion because of its rupturing effects within the Sinhala Buddhist community. The antagonism over conversion and the constitutional place of Buddhism persist with some vigor, but the source of the whole debate—the allegation of forced or unethical conversion by evangelical churches—is never legally investigated: no forcibly converted person is ever brought to the limelight. Litigation does not clarify the problem, and it does not adjudicate, let alone resolve, the dispute; it merely provides a screen to project moral anxieties, emotions, and religious discord.

Schonthal’s micro-histories complement the existing scholarship on public contentions over religion and its boundaries in Sri Lanka. On a more critical note, some of this scholarship remains uncited. One would have expected a reference to Neena Mahadev’s work on the conversion debate

and competing reform movements within contemporary Sri Lankan Buddhism,³ to the work of Jonathan Spencer and his colleagues on the convoluted religious landscape and religious leadership in the war-torn east of the country,⁴ or to the doctoral research by Iselin Frydenlund on the role of Buddhist monks during the peace process and its unravelling in the 2000s.⁵ More generally, there is remarkably little discussion in Schonthal's book about the evolution of Sri Lanka's civil war, the highly internationalized peace efforts and Sinhala Buddhist discomfort with this, and the profound consequences of the militarized end of the war in 2009. The government victory over Tamil separatism is discussed in passing, almost as an afterthought, on the last pages of the book. Neither is there much discussion of the turbulent events after the Indian Ocean tsunami of 2004, which spawned a wide range of religious dynamics and a major surge of international activity on Sri Lankan soil. All of this would arguably have provided relevant contextual background to the debates and micro-histories that Schonthal describes. At the same time, his focused and methodical treatment of the pathologies of constitutional debate give the book a strong sense of purpose, a rich narrative style, and an analytical tread without too many detours.

This enables the reader to easily tie together the diverse legal disputes and see the overall pattern that litigation does not have a moderating effect and that it does not result in constitutionally backed conflict resolution. Instead, it gives sometimes quite persnickety matters of limited intrinsic significance to the welfare, harmony, and spirituality of Sri Lankan society a platform to escalate into ferociously divisive debates, with extremist positions that routinely draw on constitutional language to underline the unwavering nature of their stance. Importantly, Schonthal's argument shows that these dynamics have not only done harm to Sri Lanka's religious minorities and fueled the dynamics of civil war, but they have also infringed on the moral boundaries of the Buddhist monastic order, ruptured the Buddhist laity, and fragmented the Sinhala majority community. There are not many winners to Sri Lanka's constitutional engagement with Buddhism.

This is ironic, Schonthal concludes, because Sri Lanka in fact has a long and continuing tradition of everyday mixture and compromise among diverse religious communities. Contradictions and frictions between these constituencies are circumnavigated or dissolved with apparent ease. Although there have of course been contentions also, diverge religious groups rub shoulders at joint pilgrimage sites, Hindu oracles attract devotees of all kinds, Islamic Sufi sects borrow from Hindu neighbors, devout Buddhists mix tradition and modernity and tend not to mind an occasional bumper sticker with Ganesh or Jesus. The constitutional settlement has not secured peace and harmony by creating protective bounds in this multicultural terrain. It has amplified the voices of radical proponents and intolerant puritans who take issue with the fuzzy boundaries, adaptations, and compromises of everyday faith in Sri Lanka.

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- 3 Neena Mahadev, "Conversion and Anti-conversion in Contemporary Sri Lanka: Pentecostal Christian Evangelism and Theravada Buddhist Views on the Ethics of Religious Attraction," in *Proselytizing and the Limits of Religious Pluralism in Contemporary Asia*, ed. Juliana Finucane and R. Michael Feener (Singapore: Springer, 2014), 211–35.
 - 4 Jonathan Spencer, et al, *Checkpoint, Temple, Church and Mosque: A Collaborative Ethnography of War and Peace* (London: Pluto, 2015).
 - 5 Iselin Frydenlund, "Canonical Ambiguity and Differential Practices: Buddhist Monks in Wartime Sri Lanka" (PhD diss., University of Oslo, 2011).