

Setting an Agenda for the Socio-Legal Study of Contemporary Buddhism•

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Abstract

This introduction to the special issue on Buddhism and law lays out an agenda for the socio-legal study of contemporary Buddhism. We identify lacunae in the current literature and call for further work on four themes: the relations between monastic legal practice and state law; the formations of Buddhist constitutionalism; Buddhist legal activism and Buddhist-interest litigation; and Buddhist moral critiques of law. We argue that this agenda is important for advancing Buddhist studies and for the comparative study of law and legal institutions.

Keywords: Buddhism, constitutionalism, law and society, litigation

1. INTRODUCTION

We are pleased to introduce this special issue of the *Asian Journal of Law and Society*, focused on Buddhism and law. With some 350 million Buddhist adherents around the world, one would think that there would be a large literature on the topic. But, as we explain below, this relationship has been woefully under-studied relative to the legal traditions of other major religions of the world. What studies have been done have for the most part focused on earlier historical periods. Our effort in this regard is to move the ball one step forward with a set of contributions on contemporary Buddhism and law from diverse contexts. Our focus is on developments from the early twentieth century to today.

In Sections 2 and 3 of this introduction, we review the state of the literature and then pose four clusters of questions that together constitute a tentative agenda for a socio-legal approach to Buddhism in the contemporary period. It is our hope that this agenda might serve to stimulate further work and further questions by an array of scholars using different socio-legal methods. We also believe that this agenda has important implications for several

• The authors are grateful to Christian Lammerts, Michael Radich, and the anonymous reviewers for their suggestions. Thanks to Margaret O'Connor for research assistance.

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disciplines outside of the field of law and society, particularly for Buddhist studies and for comparative legal studies more broadly. We reflect on these implications in Section 4, before introducing the articles in the special issue in Section 5.

2. WHY BUDDHISM? WHY NOW? A BRIEF HISTORY OF BUDDHISM AND LAW

The socio-legal study of Buddhism has lagged behind the socio-legal study of other religions. If one surveys the disciplines of theology, religious studies, area studies, history, and law, one will encounter a considerable amount of research related to the topics of law and Christianity, Islam, Hinduism, or Judaism. Compared with this abundance, however, one finds a much smaller body of research concerned with examining the conjunctions of law and Buddhism, and much of that research has emerged only in recent years.

In calling attention to the comparative dearth of socio-legal studies of Buddhism, we are saying something again, rather than saying something new. Over the last three decades, prominent scholars in the fields of Buddhist studies and legal studies have made this point stridently on at least two separate occasions. In 1995, the well-known scholar of Thai Buddhism, Frank Reynolds, compiled a special volume of the preeminent journal for Buddhist studies, the *Journal of the International Association of Buddhist Studies*, dedicated to the topic of Buddhism and law; it was the first edited volume dedicated specifically to the topic. In his introduction, Reynolds pointed out the “primitive and precarious state” of research on Buddhism and law and implored scholars to pursue further work.¹ Reynolds did not come to his conclusions rashly. Rather, he discovered this absence in scholarship while compiling a comprehensive bibliography of Western-language scholarship on Buddhism. In the process, he and his collaborators located only 18 published studies that dealt with Buddhism and law, all of which focused on India and Southeast Asia and most of which, Reynolds describes, “were short essays rather than full-scale studies; and the quality of all but a few was rather dubious.”²

Nearly ten years later, Rebecca French, a trained anthropologist and lawyer, made another public call for research into the intersections of Buddhism and law. Although some work had been done in the intervening years, French described what she saw as a continuing gap in existing scholarship—a virtual “missing discipline.” Reflecting on this fact in a 2004 issue of the *Buffalo Law Review*, French wrote:

Barring the discovery of a trunk full of unknown letters in the attic, the one thing that rarely happens these days, they say to me, is that someone finds a real hole, a gap, a large area of study that sits right in front of us but has never been looked at. This essay is about the possibility of [the study of Buddhist law] being just such a hole There are no established classic texts in this subject matter, no substantial literature, no body of students in M.A. or Ph.D. departments, no conferences, no chairs, no traditional pedagogy, and no academic training programs in either religious studies departments or law schools. There are no professors of Buddhist law here in North America and although I continue to hope, I have yet to find them in Asia or Southeast Asia [sic]. Other than a book I wrote on the Tibetan Legal System, some long articles on Burmese legal history by Andrew Huxley of the School of Oriental and African Studies (“SOAS”) in

1. Reynolds (1995), pp. 1–6.

2. *Ibid.*, p. 3.

London and David Engel's current work on injury narratives among Thai Buddhists, this is an immense research area that has no scholarship.³

Like Reynolds, French also came to these conclusions through a process of searching and research. In 1995, she published a monograph on contemporary Tibetan Buddhist legal practices involving research using Tibetan texts and ethnography. In completing her book project and a raft of subsequent articles, French recalls that, on account of the virtual absence of scholarly work on contemporary Buddhist law at that time, she found herself with "few people to talk to."⁴

For both Reynolds and French, the study of Buddhism and law, including the socio-legal study of Buddhism, remained a conspicuous gap in modern scholarship—one that needed explanation. Reynolds speculated that this gap resulted from the persistence of "Orientalist perspectives" on Buddhism within and outside of Buddhist studies. These perspectives rendered Buddhism as an "other-worldly" religion, oriented primarily around self-cultivation, philosophy, and the attainment of awakening or Buddhahood. Swayed by this way of thinking, scholars were reluctant to think of *Dhamma* (a word that can be translated as "law" as well as "teaching") as indicating anything other than cosmic principles of morality and causality; and they tended to focus their attentions on texts concerned with topics such as philosophical speculation, ethical reflection, and the idealized portraits of monastic life. This approach, Reynolds suggested, steered scholars away from serious consideration of the role played by legal codes, regulations, and sanctions within the Buddhist tradition.

French came to similar conclusions. She attributed the absence of Buddhist legal studies to the persistence of other (misguided) assumptions about Buddhism. These included: the assumption that Buddhism did not influence the development of state law; the assumption that Buddhism eschewed comprehensive legal codes; and the assumption that Mahayana and Theravada schools of Buddhism, or various regional forms of Buddhism, were so thoroughly different that one could not productively think about Buddhism and law as a coherent subfield of study.

Since 2004, the study of Buddhism and law has advanced, thanks to a number of important contributions made by a growing cohort of scholars in the fields of law, Buddhist studies, history, anthropology, Asian studies, and other fields. Drawing together the work of many of these scholars, in 2014, Rebecca French and Mark Nathan co-edited an ambitious and important volume, which helped establish a "roadmap" for the study of Buddhism and law.⁵ Their book examined the topic both in historical and regional contexts and from a variety of disciplinary perspectives. Beginning with examinations of Buddhist texts and epigraphy from ancient India, the volume's chapters go on to address Buddhism and law in Southern Asia, Eastern Asia, and Central/Northern Asia; for each region, the volume addresses ancient and modern time periods using textual, material, and ethnographic sources. In addition to their breadth and scope, the chapters also illuminate several types of conjunctions between Buddhism and law: they look at types of Buddhist law (e.g. *Vinaya-s* and *dharmasattha-s*); they consider the influences of Buddhist norms on ancient and modern structures of political regulation; and they look at how polities, ancient and modern, used law to promote

3. French (2004), p. 679.

4. *Ibid.*, p. 694.

5. French & Nathan (2014).

Buddhism and manage the activities of Buddhist monks and nuns. The volume is expansive. Its goal, as stated by its co-editors, is to call attention to the diversity and importance of the subfield and to invite scholars for future study.

3. ADDING TO EXISTING MAPS AND OFFERING NEW AGENDAS

A momentum appears to be growing in the study of Buddhism and law and, we hope, in socio-legal studies of Buddhism. This special volume represents one attempt to keep this momentum rolling, while also helping to add to the important contributions offered by Frank Reynolds, Rebecca French, David Engel, Andrew Huxley, and Jaruwat. Thanks to this work, the subfield of Buddhism and law has gained a greater visibility and mass. More research is being produced. More conferences are being held. However, within this burgeoning subfield of Buddhism and law, some areas of research have received less attention than others. There are gaps within the gaps.

This special volume seeks to define one such sub-gap and begin filling it: the socio-legal study of Buddhism in the contemporary period. By contemporary, we mean the period from the turn of the twentieth century to the present. A disproportionate number of the advances that have been made in the field of Buddhism and law have come from studies of the ancient, pre-modern, and early-modern periods, and from examinations of Buddhist texts and epigraphy relating to the proper (or actual) conduct of Buddhist monks. We owe a significant debt of gratitude to scholars such as Anne Blackburn, Shayne Clarke, Steven Collins, R.A.L.H. Gunawardana, Ann Heirman, Andrew Huxley, Petra Kieffer-Pülz, Christian Lammerts, Gregory Schopen, Jonathan Silk, Oskar von Hinüber, and others for opening these sources to us.⁶ We also have valuable descriptions of Buddhist law taken from the writings of colonial agents.⁷ However, when it comes to the contemporary period, we find less scholarship oriented explicitly towards the legal aspects of Buddhism and the intersections of Buddhism and legal structures.

This is not to say that studies do not exist. Indeed, important work has been done sometimes, but not always, under the banner of legal or socio-legal studies. Important studies have examined, such as: the links between Buddhism and legal consciousness in Thailand; the disciplinary practices of contemporary monks and nuns in China, Korea, Japan, Myanmar, Tibet, and Thailand; the history of Buddhist constitutionalism in Sri Lanka and Bhutan; the government control of the sangha in Myanmar, Laos, and Cambodia; and other topics.⁸ Yet, there is much more work to be done on Buddhism and law in the contemporary period, and much to be gained from doing this work. In the remainder of the article, we seek to plot a path forward for future research on the contemporary intersections of Buddhism and law, and to examine why this research is important both for the fields of Buddhist studies and

6. We base this list, as with the reference lists below, primarily on English-language sources. However, many more important studies exist in non-English-language sources, and particularly French, German, and Japanese. Important works from the authors mentioned above include: Blackburn (1999); Clarke (2014); Collins (1998); Gunawardana (1979); Heirman (2002); Huxley (1996); Huxley (2001); Kieffer-Pülz (1997); Lammerts (2013); Schopen (1997); Silk (2008); Von Hinüber (1995).

7. D'Oyly (1975 [1831]); Jardine (1953 [1883]).

8. E.g. Arai (1999); Buswell (1992); Caple (2011); Engel & Engel (2010); Ishii (1986); French (1995); Gutschow (2004); Harris (2013); Holt (2009); Jaffe (2001); Jansen (2014); Kawanami (2013); McDaniel (2012); Pirie (2007); Schonthal (2016b); Seeger (2008); Tin (1993); Whitecross (2013).

comparative law—leaving aside for the moment its importance for many other disciplines. Our intervention takes the form of four distinct areas that we believe are important to investigate, and which have, to date, been under-studied. We thus lay out an agenda for study, taking the form of research questions. As will be apparent, this list is vast.

3.1 Area 1: *Monastic Law and Its Links with State Law*

As indicated above, many of the advances in studies of Buddhism and law have been made in the study of monastic legal practices in the pre-modern period. We have today a rich catalogue of studies that reveal the diversity and detail of monastic disciplinary texts and which use commentaries and epigraphy to complicate the portraits of monastic life contained in those normative texts. However, while scholars are developing an impressive historical knowledge of monastic legal texts and their interpretations, we know comparatively little about the lived practices of monastic law today. There are relatively few published studies that look deliberately and extensively at modern-day monastic legal practices.⁹ This, we propose, remains a key area for study, defined by some of the following the questions: What are the key institutions, practices, principles, concepts, and conundrums of monastic law as a living tradition today? How do the lived practices of monastic law differ from monastic law as understood (or idealized) historically? Is there a gap between formal law and practice inside the monastic social sphere? How have interpretations of Vinaya and other monastic norms changed in modern nation-states? What adaptations have modern-day monks made in the way they assess, adjudicate, and enforce transgressions of monastic norms?

Equally important under this rubric are relationships between state law and monastic law. Throughout the world, Buddhist monks live under state regimes that give different statuses to monastic law. In Thailand, for example, a centralized hierarchy of monks interprets and enforces norms of monastic discipline, with the backing of the government and police. In Sri Lanka, by contrast, no such official *sangha* exists, meaning that monastic fraternities must act without the coercive powers of the state to enforce their decisions. (In some cases, civil courts in Sri Lanka may even overturn decisions of senior monks and monastic tribunals!) In many other places, such as the US, Buddhist monks practise monastic law in a declaredly “secular” legal context and must adapt their practices in yet different ways. In the semi-authoritarian context of China, Tibetan monks adjust their practices to the special context of a one-party state that seeks to co-opt their tradition. Many questions flow from this intersection of monastic and state law: What structures have Buddhist-majority states put in places to regulate, manage, and oversee Buddhist monks? How do these structures differ from those in other places? How have these regulations altered or affected the application of monastic discipline? What happens when there is a conflict between customs or codes of monastic discipline and state legal standards? (For example, what happens when Buddhist nuns in Sri Lanka or Thailand invoke constitutional rights to gender equality to petition for recognition by state agencies or monastic hierarchies?) Is there seepage from state legal practice into monastic practices? How do civil courts and monastic dispute-resolution bodies interact when it comes to intra-monastic disputes over property, temple incumbency, and

9. Analyses of these practices are often part of, but not necessarily the focus of, broader discussions of contemporary monastic life. Important in this respect are the works mentioned in the footnote above as well as many others.

other matters? How do various legal systems define the jurisdictional divisions between monastic affairs and civil or lay affairs?

3.2 *Area 2: The Formations of Buddhist Constitutionalism*

Buddhism also has important role in contemporary constitutional law. Every Constitution in the Buddhist-majority countries of Southern Asia gives to Buddhism some form of special status or recognition. Sri Lanka's Constitution awards Buddhism the "foremost place" and obligates the state to "protect and foster the Buddha's teaching" (Article 9). Bhutan's Constitution (Article 3) states that "Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance" and also grounds state development policy in Buddhist ideals.¹⁰ It further requires the king to be a Buddhist (Article 1). Thailand's Constitution of 2007 also requires that the head of state, the king, be a Buddhist (Section 9) and obliges the state to "patronise and protect Buddhism as the religion observed by most Thais for a long period of time [as well as] other religions" (Section 79). It also grants to all citizens liberty to profess, observe, and worship their religion (Section 37). Cambodia's Constitution of 2008 declares Buddhism to be the "the state religion" and requires the state "disseminate and develop the Pali schools and Buddhist institutes," and also insures rights to freedom of worship and belief (Articles 43 and 68). Even the Lao People's Democratic Republic, a declaredly socialist state, has amended its Constitution to recognize Buddhism: Article 9 now reads:

The State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilises and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people. All acts creating division between religions and classes of people are prohibited.¹¹

As one of the authors has argued elsewhere, one finds within Southern Asia a particular template of constitutional law, if not a fully elaborated prototype, that might be called Buddhist constitutionalism.¹² In some cases, such as Bhutan and Thailand, this draws on traditional notions of Buddhist kingship; in all cases it tends to focus on the regulation of religious institutions.

A number of important questions flow from the phenomenon of Buddhist constitutionalism. What effects have Buddhist constitutionalism had on the practice of Buddhism and other religions in these countries? How have legal systems balanced (or not) these special prerogatives for Buddhism with other legal guarantees of equality under the law or religious freedom? What histories stand behind these constitutional guarantees for Buddhism? What kinds of divisions—among Buddhists or between Buddhists and non-Buddhists—are evident in debates about Buddhist constitutionalism?

Even in constitutions that seem to give Buddhism minimal or no recognition or justiciable protections, such as those of Myanmar or Mongolia, the constitutional status of Buddhism has been an important object of political debate and played key roles in justifying attempts to protect Buddhism through statutes, ordinances, and administrative

10. Art. 9(20) ("The State shall strive to create conditions that will enable the true and sustainable development of a good and compassionate society rooted in Buddhist ethos and universal human values").

11. Const. Lao PDR, Art. 9 (amended 2003).

12. Schonthal (2016c).

actions.¹³ Campaigns to make Buddhism the “state religion” have played influential roles in the histories of Southern Asia, and continue to do so today in Thailand, Bhutan, Sri Lanka, and Myanmar. What are the political and religious impacts of ongoing debates over legal protections for Buddhism in constitutions or basic laws? How do the politics and histories of “constitutional theocracy” in Buddhist-majority states differ from those in other places?¹⁴

3.3 Area 3: *Buddhist Legal Activism and Buddhist-Interest Litigation*

The phenomenon of Buddhist constitutionalism indicates an important fact about the intersections of Buddhism and law in the contemporary period. Buddhist monks and Buddhist lobby groups are active and effective legal agents. In the contemporary period, Buddhists have regularly used state law to advance what they consider to be Buddhist interests. Constitutional law is one outcome of, and reference for, this process. However, Buddhist constitutionalism is, perhaps, a specific and analytically distinguishable mode within a more general pattern of Buddhist legal activity. This broader activity takes two forms: lobbying law-makers to create, amend, or repeal legislation that is perceived to affect Buddhism; and the use of litigation and existing laws to compel the state to protect particular aspects of Buddhism from perceived threats. For the purposes of clarity, we refer to the first process as Buddhist legal activism and the second as Buddhist-interest litigation.¹⁵

Buddhist legal activism has become increasingly common in recent years. In Sri Lanka, a political party consisting almost entirely of Buddhist monks have introduced to parliament bills designed to make Buddhism the state religion, to limit Buddhist conversions to Christianity, and to prevent the sacrifice of animals in Hindu and Muslim rituals. In Myanmar, Buddhist monastic groups have succeeded in pressuring the government to introduce a series of laws—targeted primarily at the country’s Muslim population—that “protect race and religion” through limiting interfaith marriages, religious conversion, and restricting family sizes (see Crouch’s article in this volume). Buddhist lobbyists in the Indian state of Maharashtra are pushing for the creation of a separate Buddhist Marriage Act similar to those in force for Muslims, Sikhs, Christians, and Hindus in India.¹⁶ Why have Buddhist groups turned to law-making as a vehicle for advancing Buddhist interests? How do recent instances of Buddhist legal activism differ from historical instances? Are there clear trails of legal borrowing that characterize Buddhist law-making efforts in different contexts? How has the increased use of legislation by Buddhist groups changed the configurations of Buddhism and politics in these countries?

Buddhist legal activity is happening in the courts as well. In Sri Lanka, for example, one finds a well-established culture of Buddhist-interest litigation, in which particular lay Buddhist groups, headquartered in Colombo, use the courts (and often the Supreme Court) to protect a variety of Buddhist objects (temples, teachings, texts, images) from a variety of purported threats (non-Buddhist communities, government agents, heterodox monks,

13. Debates about the status of Buddhism in Burma’s first Constitution eventually led to the social unrest in which the military regime of Ne Win rose to power; Smith (1965). In Mongolia, although the 1992 constitutional text does not mention Buddhism directly, a law purporting to protect the principal position of Buddhism led to a major case before the Constitutional Court in 1994. See Odonkhuu (2014), pp. 177–85. While the Court struck some provisions of the law, the special position of Buddhism was upheld as being a reflection of Mongolia’s traditions.

14. Hirschl (2010).

15. On both in Sri Lanka, see Schonthal, *supra* note 12.

16. DNAIndia.com (2015).

international clothing retailers).¹⁷ It is difficult to make comparisons with other countries, as there appear to be no detailed studies of this type of behaviour in other places. Nevertheless, Buddhist-interest litigation certainly exists. One sees this in matters of Buddhist marriage law in Myanmar (about which Crouch writes in this issue). A different form of such litigation concerns intra-Buddhist conflicts that spill over into the courts, such as in the cases against new Buddhist groups in Thailand such as Santi Asoke and *Dhammakaya*.¹⁸ Presumably, similar types of Buddhist-interest litigation are happening in other regions as well and, if trends in Southern Asia are any indication, may be presumed to be on the rise.

3.4 Area 4: A Buddhist Moral Critique of Law

The description above might give the reader the impression that Buddhists' use of state law ought to be understood acts of *realpolitik*—attempts to leverage the authority of state legal institutions to benefit Buddhist interests. However, such an impression would be incomplete and, in many cases, misleading. One of the most important intersections of Buddhism and law in the modern world pertains to the efforts of Buddhist leaders to offer moral critique and opposition to existing legal structures and regulatory regimes. While these critiques often leak over into forms of legal activism and Buddhist-interest litigation, they often start in a variety of other forms: writing, preaching, and various forms of protest. To the extent that these critiques and this activism have as their ultimate aim a more general transformation of laws and policies, they constitute an important point of conjunction between Buddhism and law in the modern world. One can point to several prominent movements of this type: B.R. Ambedkar's Dalit Buddhist movement in India; A.T. Ariyaratne's Sarvodaya Sramadana movement in Sri Lanka; Siamese activist Sulak Sivaraksa's International Network of Engaged Buddhists; the tree ordination movement in Thailand; the Dalai Lama's various critiques of Chinese policies; and many others. How have these groups mobilized Buddhist doctrines, monks, and institutions in ways that lead to legal change?

Moral critique of law is not restricted to those pushing for social change. In Thailand, the king himself has drawn on the Buddhist idea of impermanence to explain and perhaps justify Thailand's constitutional instability; laws are mere human creations.¹⁹ And the Buddhist moral critique of law also exists at the local, even individual, level. The recent work of David and Jaruan Engel shows how northern Thai victims of injury often reject the tort-law framings offered to them by civil courts, preferring to think about and manage the experience of injury through tradition customary ideas about karma, spirits, and danger.²⁰ The Engels' work gestures towards another important direction of inquiry: the area of legal consciousness. How do Buddhist ideas, conceptual schema, and worldviews intersect with those of state law? Does one displace the other? If not, what sorts of melding does one see? How do Buddhist notions of justice, causality, merit, and restitution feed into or merge with those espoused by judges, law-makers, jurists, law professors, and credentialed legal experts?

17. Schonthal, *supra* note 12.

18. Mackenzie (2007); Scott (2009).

19. Handley (2006), p. 434; Harding (2007).

20. Engel & Engel, *supra* note 8.

4. THE SIGNIFICANCE OF THIS AGENDA

We believe that the four areas above constitute important and productive areas of scholarship for socio-legal studies of Buddhism in the contemporary period. Progress in these areas requires a range of methodologies and expertise, from historical, linguistic, and textual acumen to ethnographic fieldwork, to experience working with legal archives. Given the multiple areas and disciplines that converge on these issues, the success of this agenda depends perhaps upon the willingness of scholars situated within a particular domain (anthropology, law, Buddhist studies, etc.) to work outside of their comfort zones and to collaborate with colleagues outside of their fields. Nevertheless, we believe that the benefits of such work are enormous.

Given the large number of questions we have posed and the small number of available answers, it might go without saying that socio-legal inquiry into Buddhism and law is necessary and important. As scholars of Buddhism and law, respectively, we turn our attention to reflecting on these advantages from the perspective of our given fields.

4.1 Why this Agenda Is Significant from the Perspective of Buddhist Studies

From one perspective, socio-legal studies of Buddhism in the contemporary period are of obvious value to Buddhist studies: more research on Buddhism is a good thing. Approached in this way, the value of this research agenda appears all the more obvious because it aims to address gaps in scholarship. After all, sub-gaps in the study of Buddhism and law are also sub-gaps in the broader field of Buddhist studies.

However, there are also less obvious, but equally important, reasons for pursuing this research agenda, which extend beyond the considerations of scholarly coverage and the additive value of new information. Of these, we want to highlight two reasons here: one, socio-legal approaches to contemporary Buddhism offer valuable frames for understanding lived Buddhism; two, socio-legal approaches offer new ways to think about and wrestle with the important problem of essentialism in Buddhist studies.

One of the dominant trends in the study of Buddhism over the last several decades has been the focus on Buddhism as a lived practice, deeply entangled with and constituted by other domains of life. While it is beyond the scope of this article to survey these works here, we can say that most of these works concern themselves with reassessing, critiquing, and, in some cases, debunking many of the assumptions about Buddhism's "other-worldly" nature described by Reynolds and French above. Challenging the idea that Buddhism is purely a philosophical tradition concerned with self-cultivation and enlightenment, scholars have called attention to larger and more complex repertoires of practices in which Buddhists engage. Those repertoires include worshipping local deities, practising incantations, using protective talismans, participating in millenarian movements, and many other things.²¹ Scholars have also challenged assumptions about Buddhism's quietistic and irenic character by looking at the roles of Buddhist ideas and monks in projects of political nationalism, war, and ethnic chauvinism.²²

21. E.g. Gombrich & Obeyesekere (1989); McDaniel (2013); Rozenberg (2010).

22. E.g. Harris (2001); Jerryson & Juergensmeyer (2010).

The socio-legal study of Buddhism has the potential to contribute significantly to this ongoing project of critiquing Orientalist assumptions in Buddhist studies and more comprehensively exploring the textures of lived Buddhism. This is because socio-legal studies offer a particularly valuable perspective on how Buddhist actors, practices, and institutions become active in and respond to politics, technology, violence, economics, and other things. One can gain very precise information about how Buddhist actors use state institutions to their advantage, or how specific conceptions of Buddhist doctrine filter into the political arena by looking at legal sources, such as the transcripts of law-making bodies, the submissions of Buddhist-interest lawyers, or the decisions of judges. Similarly, by looking closely at the ways in which contemporary monks interpret and implement specific monastic rules (or not), one gains detailed insights into the ways that particular features within contemporary life affect or challenge practices of monastic discipline, on a small-scale and practical level.²³ Socio-legal studies of Buddhism, in this way, provide scholars with a concrete and contained context, as well as a helpful archive, for further critiquing and the assumptions of Buddhism as an “other-worldly” religion and further analyzing Buddhism’s deep embeddedness in contemporary structures of power, inequality, desire, status, gender, and many other things.

The socio-legal study of Buddhism also offers a more specific advantage for Buddhist studies (and also religious studies)—one linked to the field’s anxieties over essentialism, the inappropriate reifying or defining of Buddhism in terms of certain (often historically and contextually contingent) categories.²⁴ An attentiveness to law requires sensitivity to acts of classification and definition. Legal reasoning—in the domains of state law as well as monastic law—involves the deliberate reduction of complexity to particular categorical claims. In studying Buddhist legal processes, then, one studies not simply the intersections of large, fluid entities, namely “Buddhism” and “law,” but the history of attempts to define and assess the boundaries of those entities and to place them in relationship to each other. In so doing, the socio-legal study of Buddhism provides a productive way to examine as well as to critique essentialism in the study of Buddhism. Socio-legal approaches tend to examine the processes through which legal agents (e.g. judges, lawyers, senior monks) deploy particular definitions of Buddhism for the purposes of specific disputes or court cases. These approaches also consider fully the political, social, and financial effects that follow from those definitions and the act of classifying a particular group or object as part (or not part) of Buddhism. In this way, socio-legal studies of Buddhism help to reframe the problem of essentialism by treating the act of essentializing as an activity that Buddhists engage in themselves, even if it seems analytically unsound from the perspective of scholars. The socio-legal study of contemporary Buddhism calls attention to the fact that essentializing is *itself* part of lived Buddhism; it is an activity that takes place regularly in courtrooms and monasteries. A socio-legal approach to the study of Buddhism therefore helps to

23. This is not to say that monasticism and codes of monastic discipline (such as *Vinaya*) are *sine qua nons* for the practice of Buddhism. There are contexts such as Yunnan, Nepal, and some traditions of Buddhism in Japan where full monasticism remains a virtually defunct institution and/or where *Vinaya* is not a key referent of monastic life. We are grateful to Christian Lammerts for reminding us of this important fact.

24. Examples from Buddhist studies include debates about the definitions of Buddhism assumed in studies of “Buddhism and violence” as well as those assumed in the categories of Buddhist modernism or “Protestant Buddhism.” Abeysekara (2002); Blackburn (2010).

reframe the act of essentializing Buddhism a topic of study itself—an important feature of Buddhist life.

4.2 *Why this Agenda Is Significant from the Perspective of Comparative Law*

Here we say a little more about why the importance of this research agenda from the point of view of comparative legal studies. We should make clear as an initial point that such justification within the field may not be needed. As one of us argued in a different context, there is merit within comparative law of simply describing and understanding law and legal institutions in all their forms.²⁵ Knowledge is “capable of being its own end”²⁶ and taking a legal system or legal phenomenon on its own terms is a valuable end of its own. From this point of view, we might seek to study Buddhist law simply “because it is there.”²⁷

But there also may be more instrumental reasons to understand the contemporary relations between Buddhism and law. There is a growing interest in the interaction of law and religion as two distinct and powerful means of social ordering.²⁸ The Western legal tradition, it has been often argued, emerged out of and remains coloured by Christian religious legal forms and, as this tradition spread around the world, it encountered different normative orders with their own logics and repertoires. Both the initial emergence of modern law and its spread have led to different configurations of law and religion, with the state more or less displacing religious law in some parts of the world but not in others. Understanding the variations in these configurations, and the pathways that lead to difference, will help us understand the phenomenon more completely, and provide insights into the sources and structure of legal ordering.

One of the questions laid out in our agenda above is a very live one in comparative constitutional scholarship, namely the role of borrowing. To what extent has the nascent phenomenon we have identified as Buddhist constitutionalism drawn from other traditions and their engagement with modern legal form? In particular, constitutional Islamization—itsself a blending of forms—has produced a repertoire of norms and practices that are available for borrowing across religious lines.²⁹ Obviously different doctrinal traditions will constrain or facilitate such borrowing. But this leads to a kind of comparative law of religious-constitutional interaction which may have significant scholarly payoffs.

Finally, by understanding the interaction of law and Buddhism, we will be able to gain a much richer grasp on a part of the world that has heretofore been somewhat peripheral in comparative legal studies. Buddhism is the dominant religion in middle-sized and small countries in South and Southeast Asia—a region far (both physically and metaphorically) from the European core where the modern field of comparative law began.³⁰ If we dare to theorize from Asia, we might find new frames and ways of thinking about other countries and legal phenomena.³¹

25. Ginsburg (2010).

26. Newman (1858).

27. *Ibid.*

28. Hirschl, *supra* note 14.

29. Ahmed & Ginsburg (2014).

30. Hirschl (2015).

31. Comaroff & Comaroff (2012).

5. PUSHING THE BALL FORWARD

The articles in this volume offer important contributions to the socio-legal study of Buddhism, covering some of the areas proposed in our agenda.

Writing on Thailand, Tomas Larsson uses prohibitions on monastic activity to explore the legal construction of the divide between Buddhism and the earthly realm. He demonstrates that restrictions on political activity remain robust, whereas the commercial realm has seen a blurring of the divide between the *sangha* and society. This illustrates how state law in Thailand has attempted to construct and define the normative parameters of monastic life. This activity and this example represent powerful instances of the first of our proposed areas, understanding the relations between monastic and state legal orders.

This theme is also apparent in Schonthal's contribution, which also develops the notion of Buddhist constitutionalism. As in Thailand, Sri Lankan courts and monks struggle with defining the boundaries between "worldly" and "other-worldly" realms as it relates to the activities of Buddhist monks. Focusing on a paradigm case in which a monk sought to obtain a driver's licence, Schonthal elaborates on the different lenses through which competing groups view the constitutional protection of Buddhism and the proper conduct of Buddhist monks. He points out that attempts to entrench protections for Buddhism in the constitution have, perhaps counter-intuitively, exacerbated tensions *within* the tradition. He goes on to theorize the broader conceptual implications of his findings.

Jolyon Thomas's piece also wrestles with the themes of Buddhist constitutionalism and the relationships between state and religion, as well as illustrating our theme of Buddhist legal activism. Thomas goes back to early-twentieth-century Japan, when the country's leaders struggled with the constitutional relations between religion and state. The Meiji Constitution imported various European concepts that required articulation and internal adjustments within religious communities, brought to a head with the government's formulation of a Religions Bill. Examining internal Buddhist discourse debating the merits of various arrangements, Thomas examines a set of actors who were profoundly concerned with their legal status, and actively engaged in trying to influence legislative debates, as they wrestled with multiple concepts of religious freedom.

David Engel's contribution involves the use of religious idiom in Thailand's fierce political struggle of recent years. Focusing on a single incident in which an old blood-curse ritual was deployed in a mass demonstration against the government, he shows how Buddhism shapes action even without the individuals concerned necessarily being aware of it. Crucially, the incident illustrates the local variation in what is considered acceptable Buddhist practice, with the blood curse reflecting rural, Northern ideas as against the more rationalized, statist Bangkok vision of appropriate ritual. The blood-curse ritual was being used as a kind of moral critique.

Melissa Crouch's article considers the intriguing phenomenon of Burmese Buddhist law—a type of state-recognized family law found only in Myanmar, and a type of law about which very little has been written. Drawing upon overlooked legal records, Crouch highlights the disconnections between the benign portrait of Burmese Buddhist law as it is imagined by Burman Buddhists (particularly in the recent culture of legal activism and Buddhist-interest litigation there) and the actual effects of Burmese Buddhist law on the lives of women living in Myanmar. Crouch also documents the construction of Burmese Buddhist

law in opposition to other forms of religious family law (initially Hindu law and later Islamic law) from the colonial period to the present, showing the shortcomings and limitations in these comparisons.

Collectively, these contributions demonstrate the deeply interdisciplinary nature of socio-legal studies generally, and the socio-legal study of Buddhism in particular. The contributors to this volume come from a variety of disciplines: law (Crouch, Engel), religion and Buddhist studies (Schonthal, Thomas), and political science (Larsson). At the same time, the methodologies adopted by these scholars bring together historical and ethnographic techniques on a set of shared themes. Despite ranging broadly in terms of geography and temporal context, the articles illustrate a common set of tensions as Buddhists wrestle with the complexities of modern legal life, while also rethinking and reconceptualizing the regulatory traditions of Buddhism itself. In contrast with a traditional view of Buddhism as a quiescent, other-worldly religion distant from the interests of legislatures and courts, Buddhists are active agents in and objects of contemporary processes of making, deploying, and interpreting law. We hope this volume will contribute to a better understanding of these processes and greater interest in researching them.

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