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Buddhism and Comparative Constitutional Law

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A Review of *Buddhism and Comparative Constitutional Law*

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Buddhism and Comparative Constitutional Law. Edited by Tom Ginsburg and Benjamin Schonthal. Cambridge: Cambridge University Press, 2022, xx + 384 pages, ISBN 978-1-00-928604-6 (hardback), \$125.00, 978-1-00-928601-5 (e-book), \$125.00, 978-1-00-928602-2 (open access PDF): <https://www.cambridge.org/core/books/buddhism-and-comparative-constitutional-law/36B349A13BAFF639EC6E737A9C9FB186>.

As someone who has dedicated most of his postdoctoral research efforts to Buddhist approaches to Law, Politics, and Public Ethics, I received the news of the publication of this volume with genuine thrill and the proposal to write a book review with reasonable caution. As an academic genre, book reviews constitute a complex minefield, not uncommonly deriving into empty laudations which add little to the introductory information contained in the flap or back cover of the book, on one extreme, or, on the other extreme, a juicy opportunity to indulge in lengthy—and sometimes aggressive—diatribes expressing one’s position on the matter at hand. On top of that, edited volumes typically include a wide range of topics addressed by very diverse authors, making it practically impossible

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for a single scholar to claim authority over all of them and thus provide meaningful commentaries.

In order to try and avoid such perils, while hopefully providing something useful to potential readers, I will (1) very briefly describe the structure of the book; (2) reflect upon the conceptual coherence of the volume as expressed in its title and introduction, and in relationship with the pieces included; (3) try to assess the content and novelty of the individual contributions falling within my area of expertise, i.e., the Himalayas; and finally, (4) include a reflection regarding the suitability of the book to continue, promote, and solidify the subdiscipline at hand.

1.

The book, which originated in a series of workshops hosted by the University of Chicago in 2021, starts with a preface by Rebecca French, a pioneer in the study of Tibetan Law and a well-known promotor of Buddhism and Law Studies, who celebrates the ground-breaking inclusion of “ideas of constitutionality” to the field (xv). It is followed by an introduction by the two editors, much focused on conceptual challenges, choices, and distinctions. The book is then divided into five parts. Part I, “Religious and Political Underpinnings,” includes two works that develop the conceptual ideas of the introduction, trying to provide a more comprehensive approach to Buddhism and constitution/constitutionalism, one more historically oriented and focused on Southeast Asia, with the other taking a broader and prescriptive angle on contemporary Asian polities. The body of the volume consists of geographically oriented approaches to “Himalayan Asia” (Part II), “Southern Asian” (Part III), and “Northern and Northeastern Asia” (Part IV), while the final section of the book offers “comparative perspectives” with other religions (Part V). Contributors present different academic backgrounds, showing a balance between anthropologist and religious studies scholars on the one hand and legal scholars on the

other, although probably only a minority can be formally regarded as constitutional law scholars.

2.

The introduction is significantly entitled “Mapping the Buddhist-Constitutional Complex in Asia,” where “Buddhist-Constitutional Complex” is an expression coined by the editors to convey the scope of the volume. Conceptual caution is here displayed surrounding the intended meaning of constitution and constitutionalism, which are understood in very broad and comprehensive terms, thus including, for example, premodern “foundational law,” (12) monastic regulations (*ibid.*), and “ideas of normative limitation on the actions of the monarch in the service of cosmic law” (14). It is, therefore, an innovative approach to the constitutional realm, which despite the editors’ claim of being placed “squarely within . . . constitutional studies” (13), is at odds with the common understanding of “Comparative Constitutional Law” found in law schools’ syllabi and law journals. Some papers do, of course, fit with this conventional approach, namely, those directly addressing contemporary constitutional provisions in Bhutan (chapter four), Thailand (chapter nine), and Vietnam (chapter thirteen). Yet, the orthodox understanding of Constitutional Law typically excludes premodern and scattered normative instances (such as precolonial Southeast Asia in chapter two or Tibetan imperial law in chapter five), social and political activism (such as the anti-Pāli linguistic initiatives of monks in Sri Lanka in chapter seven, or the public influence of unelected bodies in Thailand based on the notion of *barami* in chapter eight), and to some extent, ordinary legislation (regulations on Lamaism in inner Mongolia in chapter fifteen). These are all fascinating topics with relevance to the public sphere, and many of them occur in the broad context of constitutional frames, but they hardly belong to Constitutional Law scholarship and rarely take a comparative approach.

These conceptual concerns are further explored in Part I, where D. Christian Lammerts, after contesting the commonplace of the righteous king and the *Dharma* as a higher principle of justice as “not, in fact, operative *constitutional* or even *legal* concepts according to the attested vocabularies of the legal history itself” (38; emphasis in original), proposes the historical existence in Southeast Asia of three “environments of Buddhist law”: *Vinaya*, *dhammasattha*, and *rājasattha*, in a complex relationship with each other (39). Despite this proposal, and, although he admits that previous scholars of reference like Robert Lingat never used the term “constitutionalism” (37), he later insists on the need to abandon the “monogamous marriage of constitution and ‘state’ . . . as well as, relatedly, the dissociation of constitutional law from other types of law” (52) in order to study constitutional aspects and norms in Buddhist law (53).

Likewise, a propositional or prescriptive rather than descriptive disciplinary approach is adopted by Asanga Welikala in his “Theorising Constitutionalism in Buddhist-Dominant Asian Polities” (chapter three), where he advocates an “organic conception” inspired by Himmelfarb as a more suitable model than liberal Constitutionalism for Buddhist-dominant Asian polities since it can “readily embrace the cosmological ordering of the Buddhist world” (67). He finally considers the Constitution as “fundamentally a procedural framework that enables the peaceful co-existence of multiple and competing conceptions of the good, albeit within the ‘moeurs’ of the particular Buddhist society to which it gives political and legal expression” (ibid.). The approach, thus, seems to ultimately exclude human rights as a core constitutional element and liberal approaches as fundamentally non-Buddhist, while being seemingly more in line with the proposals advocating their rejection as a Western imposition and favoring an alternative local grounding based upon the so-called “Asian values” of social development, order, and harmony. This approach was popularized in the 1990s by former Singapore Prime Minister Lee Kwan Yew and criticized by Buddhist leaders such as the Dalai Lama (“Buddhism, Asian Values, and Democracy”; “Human Rights and Universal

Responsibility”). It is, therefore, probably better read and treated as one possible—rather than “the”—model for Buddhist constitutionalism.

3.

As for the specific content and novelty of individual contributions, as stated above, I shall restrict myself to the section on the Himalayas. Here, Richard W. Whitecross’s chapter on Bhutan provides both a concise, clear, and updated historical account of the political journey and transformations from a seventeenth-century Vajrayāna Theocracy leading to the current 2008 Constitution, as well as an analysis of the content of the constitutional provisions dealing with Buddhism, relying on the comments of drafter Sonam Tobgye. The author’s central thesis states that, although Buddhism is not the official State religion and the Central Monk Body is not part of the Government, the Constitution and the coronation rituals newly render the monarch an “embodiment of the Dual System,” a “successor of the Zhabdrung,” “a Buddhist king,” thus making a case for a Buddhist Constitution (90). Such a thesis stands as the running leitmotif of a previous piece of local scholarship not considered by the author: Sonam Kinga’s *Polity, Kingship and Democracy: A Biography of the Bhutanese State*, whose final chapter is significantly entitled “Coronation of a Chakravartin,” wherein this *dharmarāja* status seems to be understood not as a new element introduced by the Constitution but rather as an institutional explication of existing and prevailing political and sociocultural beliefs. Whitecross also advances further considerations based upon ten interviews conducted with Bhutanese citizens during the Covid-19 pandemic, resulting in the core idea of the Constitution reinforcing the Buddhist halo of the king as granter of *kidu* (“well-being” of the people) in times of need, along with the interdiction of political participation of religious figures spurring “decline of religious practice” and abandonment of religious roles to engage in politics (90-93). The small sample, absence of methodological explanation of the interviews, and lack of consideration of other

relevant factors (modernization, internet access, etc.) invite us to take such conclusions with prudence.

Martin A. Mills's paper revisits the topic of Tibetan imperial law, namely the emic consideration of Songtsen Gampo as the foremost establisher of the law based upon the ten virtuous actions and as means to tame the wild Tibetans under the *Dharma*. The main thesis, which rejects the connection with the Indian lineage and takes the notion to be a result of the progressive Buddhist sacralization of the royal figure for legitimizing purposes, has been previously defended with varied nuances by many scholars, such as Fernanda Pirie, Brandon Dotson, Toni Huber, Per Sørensen, and Lewis Doney, many of them referred by the author. However, Zuiho Yamaguchi's insistence on the impossibility of the virtuous actions and the corresponding sixteen rules as an actual foundation of any operating legal system (*A Study on the Establishment of the T'u-fan Kingdom*, ch. 6) is not taken into account. The novelty here dwells on the use of the *Avataṃsaka Sūtra* as a hermeneutic device to explain the lack of need for actual connection with preexisting Indian texts when the king is considered an embodiment of the ten virtues (111) and, arguably, taking the seeming lack of correspondence between royal regulations and Buddhist principles as an instance of skillful means or, following a Gelugpa historian, a "trick" (119-120).

The last chapter in the Himalayan section is a paper by Berthe Jansen exploring the reciprocal influences of "Tibetan Buddhist Monastic Constitutional Law and Governmental Constitutional Law." The author presents an overview of the *status quaestionis* on the historical development of lay codes developed from the eleventh century (*zhal lce*) as well as monastic codes (*bca' yig*), her matter of specialty. Conceding that there is no hard proof of the actual judicial implementation of such lay codes, she argues that the constant update of their content talks about their legal relevance (129). At the same time, the relationship with monastic laws, part of an ongoing project of the author, would so far suggest reciprocal use and shared penmanship by educated monastics (131). Finally, the

work addresses the degree of legal autonomy of monasteries, which appears to be high, operating primarily as their own jurisdiction, typically exempted from taxes, and being only intervened occasionally for “political or sectarian reasons” (133-135). The title of this section is phrased as a question—“Monastic Constitutional Law?”—and rightfully so, since the described scenario is representative of the feudal or premodern legal model precisely against which constitutionalism emerged and developed.

4.

As a final reflection on the book’s contribution vis-à-vis the subdiscipline at hand, let me begin by pointing out that interdisciplinary research is as much cherished in principle as one of the pinnacles of contemporary academia, as it is arduous to put into practice effectively. The education in multiple fields required from the researchers and the relatively small space created by overlapping different disciplines tend to lead to a niche situation where very few scholars can meaningfully contribute, and potentially interested academics prefer to observe the “exotic” subfield from a distance. In this regard, the present volume manages to expand the number and profile of researchers approaching the intersection between Buddhism, politics, and law and provides access to a wide range of topics with updated introductions for newcomers while enjoying the hard-to-achieve visibility associated with a major publishing house. It is, thus, an important “conversation-keeper” in the footsteps of previous edited works such as Harris’s *Buddhism and Politics in Twentieth-Century Asia* or French and Nathan’s *Buddhism and Law: An Introduction*.

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