3

Theorising Constitutionalism in Buddhist-Dominant Asian Polities

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3.1 INTRODUCTION

One of the main research questions of this volume is: Do existing models in the study of religion and constitutional law adequately explain the dynamics of Buddhism and constitutional law in Asia? This might be broken down into two further and somewhat more specific questions, namely, what are the elements of a theory of constitutionalism that have the capacity to explain existing constitutional practice, and on that basis, prescribe certain general norms of constitutional order, in Buddhist-dominant Asian polities?

In giving some preliminary answers to these two questions within the scope of a short chapter, I rely on the following assumptions. I define the empirical context of study as "Buddhist-dominant Asian polities," meaning contemporary states in Asia where Buddhism is a material and salient influence on the law and politics of constitutionalism. This group of countries is both geographically widespread and extremely diverse in terms of its socioeconomic structures, societal and political cultures, and, importantly, its traditions of Buddhism. Notwithstanding those differences, we possess sufficient comparative knowledge in the field of "Buddhism and Law" studies to be plausibly able to work with a set of general propositions about how Buddhism influences constitutionalism. Buddhist-dominant Asian polities are also highly varied in terms of constitutional democracy, representing everything from non-democracies to consolidated democracies, meaning that there is no common concept of analytical constitutionalism through which we can understand their governance and politics. The normative assumptions underpinning the

* Thanks to Rohan Edrisinha, Tom Ginsburg, Andrew Harding, Dinesha Samararatne, and most of all, Benjamin Schonthal, for their penetrating and helpful comments on a previous draft. Many of those comments raise complex and difficult points that require addressing in future work. However, and subject to the customary caveat, I am grateful to these friends for helping make this initial statement of my views more coherent than they were in the original draft.

https://doi.org/10.1017/9781009286022.005 Published online by Cambridge University Press

dominant contemporary discourse of comparative constitutional law, chiefly the assumptions concerning the autonomy and normative superiority of legal norms over other norms, are either inadequate or inappropriate for analysing the constitutional cultures of these countries. As a consequence, mainstream comparative constitutional law has found it difficult to find purchase in these countries as an explanatory framework, a normative philosophy of good government, and as a technology of constitutional design.

Existing accounts therefore do not adequately deal with the key relationships between politics, law, and culture, which produce, legitimate, structure, and limit governing power – in a word, constitutionalism – in Buddhist-dominant Asian polities. These relationships are between, on the one hand, the constitutional forms of legal authority that more or less originate in some version of a Western model, and on the other hand, the formal or informal modes of the exercise of political or public power that more or less derive from Buddhist-infused cultural norms. The first step in the construction of a meaningful theory of constitutionalism for and in this category of polity, therefore, is to be able to provide a descriptive account of this relationship between authority and power, form and function, state and society, institutions and culture.[1] This account must not be distorted by either external substantive normative assumptions (e.g., derived from liberalism) or by a "normativist style" of theorising.[2] In particular, it must not be assumed from the facile resemblance of constitutional forms to Western models that Western values can be used to understand and evaluate their operation. The methodology of theory-building in this first phase thus ought to be descriptive and interpretative, as opposed to normative and prescriptive, so as to achieve two important preliminary aims. The first is to capture, as accurately as possible, the reality of constitutionalism as it is actually practiced in these polities. The second is to provide plausible and explicit explanations of the various dialectic or syncretic ways in which the interaction between Western forms and Buddhist norms gives shape to the practice of constitutionalism. Only once such a satisfactory descriptive account has been developed should we turn our attention to the normative dimensions of a theory of constitutionalism, that is, questions about the nature of power-constraining principles, and the reasons by which they are justified.

This two-step theory-building exercise engages the two distinct bodies of scholarship already mentioned – "Buddhism and Law" studies and mainstream comparative constitutional law – which have hitherto developed along parallel trajectories. Driven mostly by the methodological frames and substantive concerns of religious

[1] I use the term "descriptive theory" here in the same sense and a similar context as John Griffiths (Griffiths 1986).

[2] Loughlin defines the "normativist style" as "rooted in the belief in the ideal of the separation of powers and in the need to subordinate government to law. This style highlights law's adjudicative and control functions and therefore its rule orientation and conceptual nature. Normativism essentially reflects an ideal of the autonomy of law" (Loughlin 1992, 60).

https://doi.org/10.1017/9781009286022.005 Published online by Cambridge University Press

studies, anthropology, sociology, and history, "Buddhism and Law" studies aspire to an emic approach to understanding Buddhist conceptions of law and legal order. Comparative constitutional law, typifying an etic approach, is driven by lawyers and political scientists, with the formalist methodologies characteristic of those disciplines and concerned mostly with structures, institutions, and procedures of political power and legal authority. Even when comparative constitutional law concerns itself with agentic and cultural questions, it usually looks at local specificities from the perspective of certain ideal-typical normative frameworks, which are Western in origin, but are projected now as values of universal application.[3] These two bodies of knowledge, in terms of both methodology and substance, have their strengths and weaknesses as partial accounts of constitutionalism in Buddhist societies, but as noted, they have largely developed without much engagement with each other. In theorising a model of constitutionalism that could have the best potential explanatory and prescriptive value in Buddhist-dominant Asian polities, "Buddhism and Law" studies and comparative constitutional law should therefore be brought into a dialogic conversation.

Such a conversation would have two dimensions. One the one hand, it would draw from the contextual insights of "Buddhism and Law" to answer general questions of constitutionalism posed by comparative constitutional law, and thus contribute to the broadening and deepening of the potential contribution of "Buddhism and Law." On the other hand – and this is what this chapter is mostly concerned with – it would be the beginning of a process of refining the conceptual equipment of comparative constitutional law in two related ways. One would consist of modest and incremental ways of improving current methods of "doing" constitutional comparativism, while the other involves a more fundamental and even radical revaluation of the foundations of the discipline. The more modest challenge would be that, through its incorporation of "Buddhism and Law" insights, comparative constitutional law could become more methodologically and analytically responsive to the normative and institutional specificities of the constitutional cultures of Buddhist-dominant Asian polities. The more radical possibility is that it could be an opportunity to reappraise the prevailing liberal normativity of mainstream comparative constitutional law in a novel way.

This new pathway to reappraisal is presented by a consideration of the dynamic, as opposed to an either/or, relationship between tradition and modernity in Buddhist-Asian societies. Serving as an analogy for revisiting comparative constitutional law's origins in the European Enlightenment, this enables multiple meanings of that intellectual watershed to be rediscovered, in particular, alternatives to the dominant liberal narrative of the Enlightenment as (liberal) modernity's triumph over (illiberal) tradition. Such alternative meanings of constitutional

[3] For this general point being made from the perspective of the case of Buddhism and constitutional law in Sri Lanka, see Schonthal 2016, Chapter 8.

https://doi.org/10.1017/9781009286022.005 Published online by Cambridge University Press

modernity have the potential to pluralise the normative foundations of comparative constitutional law, and to curb liberalism's dominance within its discourse and practice. Some of these alternative meanings of constitutional modernity could make the constraining function of constitutionalism in its normative dimension more consistent with, and less jarring to, the Buddhist-Asian ethos than individualist liberal precepts, without at the same time undermining their constraining function. It would also make the necessary reappraisal of the normative core of comparative constitutional law an inclusive and iterative process between different world cultures.[4]

3.2 BUDDHISM AND LAW STUDIES AND CONSTITUTIONAL LAW

There are a number of insights relevant to constitutional theory-building that might be gleaned from the emergent literature on "Buddhism and Law." Extensively discussed in this literature, albeit not always in ways that directly help the constitutional theorist, are Buddhist ideas of law and dharma, personhood, sovereignty, statehood, political order, collective identity and nationalism, political and territorial space, political ethics, and the relationships between the sangha and laity in general and rulers in particular.

One of the first lessons is that understanding constitutionalism in the Buddhist world demands a comparative methodology that is contextual, which is to say, an approach that looks at the interplay of positive law and other informal types of law in the context of history, politics, culture, and society (French and Nathan 2014, 17–24). For this reason, it is also necessarily a multidisciplinary endeavour. A comparative methodology that focuses only on formal law or institutions, or one that looks at constitutional structures that resemble Western models through Western normative values or animating conventions alone, is likely to result in heavily misleading conclusions. Of course, even in fully modern constitutional systems of positive law, scholars understand that there is more to constitutionalism than the formal laws of the system (Ferejohn, Rakove, and Riley 2010, 10–11). But the difference here is that constitutionalism involves an interplay between laws, rules, norms, practices, and modes of behaviour that emanate from at least two fundamentally different cultural sources – the Western and Buddhist traditions – and often more than two sources depending on the "cultural packages" accompanying legal transplantation through which the given Buddhist-dominant legal system has historically taken shape (French and Nathan 2014, 22 n. 6).

In terms of traditional comparative law methods, the approach that perhaps has the greatest relevance for constitutional law is the idea of legal transplants,

[4] For similar observations from the perspective of the related field of comparative political theory, see Walton 2017, 20–21. See also Moore 2016.

https://doi.org/10.1017/9781009286022.005 Published online by Cambridge University Press

because this permits study not only of how legal concepts are transmitted between different polities, but also examines "the role of power, legitimacy, and authority in their transmission" (French and Nathan 2014, 21). French and Nathan note the prevalence of studies concerning what appear to be "private law" in the Buddhist world, but they underscore a caution that is especially important for constitutional law: " … a subject for investigation is the degree to which the public-private dichotomy enshrined in Comparative Law discourse is of heuristic value in Buddhism, and also whether or not these putatively universal constructs are too culturally and historically determined to be useful" (French and Nathan 2014, 19–20). This is a point that holds true across a much broader set of issues in constitutional law than simply the public/private divide. Similarly, legal history is a field that contributes much to our understanding of constitutional law by helping us gain a better understanding of law in the past, explaining the role of law in history, and in these ways giving us a more complete understanding of the present (Harding 2021, 1–3).

In terms of substance, Buddhism is directly and extensively concerned with questions of social, political, economic, and legal order; its concerns and its regulatory ambitions are not just otherworldly (French and Nathan 2014, 14 n. 6). In "Buddhism and Law" studies, the idea of law includes the modern conception of a legal system as the body of binding rules governing a polity, conceptions of justice underpinning those rules, and the institutions and procedures for its creation and execution as well as adjudication under those rules. However, as French and Nathan pertinently add, " … law also includes other practices, such as … the social customs, practices, and rules that constitute a form of social control for the maintenance of the group; and … social manners, customary practices, etiquette, and general behaviours regulating silence, speech, and interaction" (French and Nathan 2014, 13–14). This clearly underscores the expansive notion of "law" in Buddhist societies, and this is salient for determining the province of constitutionalism in both the descriptive and normative sense.

Buddhist law operates in a diffuse, fragmented, pluralistic, overlapping, and syncretic way, which must be understood on its own terms. Comparison with other systems of religious law in world history may help in appropriate cases (e.g., law within the Ottoman empire, which functioned in similarly plural and dialectical ways over a large and heterogenous territory). But other comparisons (e.g., with the canon law of medieval Europe) may lead to misleading conclusions, such as the equation of the strength and coherence of the legal system with qualities such as centralisation, codification, and institutionalisation. As French and Nathan argue, "The Buddhist tradition has always been known for its wide diversity in terms of its vast store of sacred texts and different canons, multiple buddhas and bodhisattvas, and accommodation to local beliefs and worldviews" (French and Nathan 2014, 14). This pluralistic, open-ended, and adaptable character of Buddhist law is not a weakness or a marker of incoherence but the very source of its vitality. It is one

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reason why Buddhism has been both able to form the basis of historic state-formation in so many societies in such a geographically vast and culturally diverse expanse across Asia, and continue to influence the legal systems and political processes of these countries today (French and Nathan 2014, 15). Yet at the same time, this fundamental pluralism is what also explains why there has never been a unified object called "Buddhist law" in the same sense as Islamic law, Jewish law, or canon law.

One of the most important lessons for constitutional theorising that emerges from this brief survey is thus the theme of pluralism. Within Buddhism's unity is a rich pluralism of contextualised expressions. The theme of inherent pluralism is salient in both analytical and normative terms. In the analytical sense, it tells us that constitutionalism in Buddhist societies ought not be constructed on overdetermined positivist categories. Similarly, strong analytical regimes of separation – between domains such as law, politics, culture, and society, or state and religion, or state and society, or the public and the private, or the individual and the collective – would also be inadvisable in building descriptive theory in these contexts. Likewise, the distinctive nature of legal authority, political power, and the forms of their interactions in Buddhist Asia raise questions about how theoretical frameworks on law and religion built with primarily the Abrahamic monotheistic religions in mind might work in this region.[5]

In the normative sense, the inherent diversity of both the Buddhist world and Buddhist traditions appears to offer a rich empirical and ideational basis for developing metaconstitutional theories (or foundational political theories) for constitutional order and constitutional design. Given the centrality of the themes of pluralism and syncretism to the formation of these theories, they moreover promise to take shape in ways that are very different to the Western European and North American historical and cultural contexts from which monistic and centralist theories that currently serve comparative constitutional law have emerged.[6] In particular, we should note that the sociological pluralism of the type we must account for in the Buddhist world has little to do with the value pluralism of Western liberalism, and likewise, the syncretic character of its various constitutionalisms is both a cause and consequence of a historical experience with modern state-formation that is fundamentally different to that of the West. Put another way, plausible constitutional theory for Buddhist-dominant polities cannot be constructed through the prism of Enlightenment liberalism, and its principles of individualism, voluntary choice, and its various regimes of separation.

[5] See e.g., Hirschl and Shachar 2018. The authors persistently refer to Hindu and Buddhist *nationalisms*, that is, a modernist form of political mobilisation, in order to fit these two Asian religions into their framework of competing orders.

[6] For recent explorations of these themes of pluralism and syncretism in relation to African and Confucian constitutionalisms, see Gebeye 2021 and Bui 2017.

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3.3 COMPARATIVE CONSTITUTIONAL LAW AND BUDDHIST-DOMINANT ASIAN POLITIES

As is well-established, comparative constitutional law developed in a succession of waves as a result of major global events, such as the response to the horrors of World War II, decolonisation, and the third wave of democratisation beginning with the collapse of Latin American dictatorships in the 1970s through to the fall of the Soviet bloc in the 1990s. It has now become a self-sustaining interdisciplinary academic field as well as a community of practice, through the linkages between international development policy and constitution-building as an instrument of democratisation and conflict resolution in the global south. In the post-Cold War period, when comparative constitutional law saw its greatest expansion, it has also undergone several phases of rapid discursive evolution, with new challenges superseding older concerns and new information technologies assisting comparativism in multiple ways. For example, a major shift has been from the comparative study of specific subjects within municipal constitutions to the comparative study of general themes of constitutionalism (Tushnet 2018, 1–11). More recently, scholars have noted a "global south turn" in the field, to which we will return in a moment.

One thing about comparative constitutional law that has remained stable and constant throughout this period of exponential growth is its core set of normative precepts, and an institutional design heuristic that is intended to realise those goals. The latter includes democratic elections, constitutional bills of justiciable rights, strong-form judicial review, the separation of powers, fourth pillar institutions, and other institutional devices for constraining power and protecting the rule of law. This normative-institutional core has been defined by the values of liberal constitutionalism, also theorised as "liberal constitutional democracy" (Ginsburg and Huq 2018, 9–15), "the postwar paradigm" (Weinrib 2006, Chapter 4), and "structural-liberalism" (Dowdle and Wilkinson 2017, 17–20). Heavily influenced by the American and French encounters with Enlightenment thought, the normative dimension of the core can be said to encapsulate the following theses. I present these theses here in a highly abstracted and stylised form, with some sacrifice of historical complexity and nuance for the sake of analytical clarity.

The American and French revolutions and consequent constitutional foundings represented the historical paradigm shift of social and political organisation from tradition to modernity (or as the shift is sometimes described, from hierarchy to equality, status to contract, religion to reason). Premodern society was a source of human misery. By the application of human reason and human will, however, society and indeed human nature was radically reconstructed so as to ensure liberty, equality, and fraternity for all. Human beings possess the vast power to destroy and recreate society on a total scale. The constitutional modernity so created is underpinned by two key principles. First, constituted authority is legitimate only to the extent that it is based on the general will of the people. Second, the moral basis of

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any obligation of obedience to authority, which necessarily involves some restriction on individual freedom, is that it is self-imposed. Only the individual can decide what these self-imposed limits are, based on the individual's own exercise of reason. Any other restraint emanating from existing legal, political, social, and especially religious structures of the community in which the individual lives, lacks the legitimacy required by constitutional modernity.

The philosophy of liberal constitutionalism therefore is based on a historical mindset that sharply and favourably distinguishes modernity from whatever form of order that was present before. It reproduces a sociological worldview of individualism, a normative commitment to individual choice based on the voluntary will, a rejection or at least a subordination of any conception of natural or cosmological order as a legitimate basis of constitutional order, and a set of institutional commitments geared to the protection of individual liberty rights as the main end of constitutionalism. Moreover, constitutional liberalism, as a variant of Enlightenment thought, casts its normative principles as universal precepts applicable to the whole of humanity. This represented a rejection of the premodern notion of the constitution as the expression of the identity of specific politico-cultural communities, or broadly, the concept of the "body politic" (Collingwood 1942, Chapter XXIV) in classical Western political theory, or the synecdochical polities bound by ritual idioms in premodern Buddhist states (Nissan and Stirrat 1990, Chapter 2).

The success of liberal constitutionalism within the American experience, together with the global geopolitical position of the United States in the post-World War II and post-Cold War era, made it possible for a theory otherwise contingent on time, place, and culture, to be projected as the basis of a universal theory of constitutionalism.[7] Liberal constitutionalism's universality, of course, has always been a contested claim within and without the Western tradition (Dowdle and Wilkinson 2017, n. 21). The unevenness of democratisation in Buddhist-dominant Asian polities immediately demonstrates at least one of the sources of contestation, namely, that the universalist blueprint struggles to gain traction in societies where there is a powerful existing source of values and ideas of selfhood. Indeed, it would have been surprising if liberalism's individualist principles had gained more traction in Buddhist societies, where constitutional ordering is cosmological and karmic rather than rationalist and secular. Bluntly put, on the Buddhist view of the nature of social life and of political obligation, the legitimacy and acceptance of constitutional arrangements are not dependent on individual reason and will (although in the Buddhist democracies these will have a place in constitutional politics and law), but on other fundamental concepts of the moral universe, and on the Buddha's teachings on the human

[7] The migration of Western constitutional ideas to the non-Western world of course began in the earlier colonial era, but the transmission of constitutional liberalism through the expansion of comparative constitutional law is the unique product of the formally non-imperial era of American global dominance after 1945.

https://doi.org/10.1017/9781009286022.005 Published online by Cambridge University Press

nature and the nature of political authority (Schonthal 2016, n. 4; Walton 2017, n. 5; de Silva-Wijeyeratne 2013).

Constitutional forms may be imposed, borrowed, or imported from the West, but this does not mean either that these societies have also collectively converted to the liberal normativity that liberalism assumes to be the essential condition of constitutional modernity, or that the adoption of Western constitutional forms denotes a clean rupture between traditional and modern constitutionalism. Rather, the more accurate depiction would be that tradition and modernity in relation to constitutionalism are not two counterposed elements separated by time and distinctive normative conceptions of legitimate order, but are coeval, coterminous, and coexisting elements of a longer and continuing story of historical evolution (Welikala 2017). Buddhist-dominant Asian polities had different encounters with the West in the age of Western imperialism; some were, and some were not, colonies. But while the Western influence did transform the legal forms of constitutionalism in virtually all of them, it did not create or fundamentally reconstitute the modern *culture* of constitutionalism.

Of course, this experience has not been unique to Buddhist Asia, and the challenge posed by the clear dissonance between the normative assumptions of the current paradigm of comparative constitutional law and the realities of democratisation in the global south has led to a "Southern turn" in the scholarship (Dann, Riegner, and Bönnemann 2020, 3). This work is still developing, but recent contributions broadly fall into either rejectionist or accommodationist attitudes about liberal constitutionalism, with a number of different types of argument within each category. Rejectionist views are of three types (Dann, Riegner, and Bönnemann 2020, chapters 2–5). The two strongest forms of rejectionism are the arguments that hold that liberal constitutionalism's association with either colonialism, or colonialism's successor paradigm of "classical modernist" (Smith 1998, Chapter 1) post-colonial nation-state building, makes it inappropriate wholesale for the post-colonial world. The key objection here is to the assumed superiority of the Enlightenment conception of modernity and progress that underpinned both paternalist colonial constitutional development and post-colonial classical modernism. The somewhat softer form of rejectionist arguments are those that question if the Western cultural and historical particularities, which are the inseparable context of liberal constitutionalism's successful operation, render it inapplicable to non-Western conditions. This is a type of amendatory critique that may blend into accomodationism, provided its analytical concerns are satisfactorily met. Accommodationist accounts argue for the relevance and retention of liberal constitutionalism in the global south, either through a "re-imagining" of substantive liberal values from a global south perspective (Roux 2021), or through a "self-reflexive" style of constitutionalism (Dowdle and Wilkinson 2017, n. 21). Accommodationist accounts, as Dowdle and Wilkinson put it, are about constitutionalism " … *beyond* liberalism, not *against* liberalism" (Dowdle and Wilkinson 2017, 1).

All these views have their explanatory and normative value, although perhaps the rejectionist accounts are less persuasive overall than the accommodationist ones.

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Despite being based on valid considerations of justice and dignity of former colonial peoples, the rejectionist approach can nevertheless be seen as too binary to form the basis of a satisfactory account of constitutional contexts in which the reality is not, and ought not to be, defined by an either/or choice between democratic and some other form of constitutionalism, but as a dialectical or syncretic relationship between the two. As noted before, both the descriptive and prescriptive tasks of constitutional theory are defined by this reality in Buddhist Asia. Thus, while the accommodationists offer more to this undertaking, a characteristic feature of their work is the acceptance of the dominant Franco–American interpretation of the Enlightenment and the consequential substantive model of modern liberal constitutionalism that is the legacy of their revolutions. This interpretation reifies liberty and reason, as outlined above, but it ignores a central dimension of the intellectual debates of the Enlightenment, namely, social and political virtue.

Himmelfarb characterises this body of Enlightenment thought as the "sociology of virtue," counterposed to the two other strands she labels the "ideology of reason" and the "politics of liberty" (Himmelfarb 2008, 3–22). This strain of Enlightenment thought focuses empirically on sociological and historical traits of societies, and normatively on social virtue and political morality, for its account of modern constitutionalism. Less preoccupied with the evils of religion as well as less enamoured with the potency of human reason, this style of constitutionalism foregrounds the innate human capacities for moral conduct as the basis of a statecraft of limited politics, scepticism, prudence, and accommodation, and values tradition and organicism alongside reason and liberty. It opposes revolution and holds that constitutional statecraft was primarily about the management of human imperfection.

What can we extrapolate from this for the present? Himmelfarb gives us a descriptive and empiricist model of constitutionalism that tracks the descent of certain aspects of the present's constitutional arrangements to alternative, more primordial, sources of human nature. She also suggests an underlying concept of social consent to constitutional arrangements, but this is organic rather than rationalist. The longevity of the constitution (*qua* body politic) and its deep social acceptance exist in a symbiosis; and it is this symbiosis that invests the constitution with legitimacy. The constitution, in this reading, is the whole body of legal and political rules and moral principles that authorise the institutions of government and regulate the relationship between government and society. No sharp distinctions are drawn in this conception between the political, social, and cultural spheres of life.

If this should raise understandable concerns that the model favours established patterns of hierarchical social, economic, and political power that are inimical to the interests of individuals, minorities, and vulnerable social groups, it would be important to emphasise that this model of constitutionalism as an ideal type also, crucially, integrates the function of principles derived from reason and the common good in its normative dimension. The role of objective reason and a notion of the common good are critical here, as this is what distinguishes this model from one based solely

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on the ascriptive demands of the dominant religion or ethnicity – as one might find in the context of the ethnic and religious pluralism of Buddhist-dominant Asian polities, or in the latent traditions of the pre-democratic past that have mutated into modern forms of authoritarianism, or in the other hierarchical structures that adversely affect non-dominant groups and individuals. A model of constitutional modernity of this type, it can be argued, is more consistent with the empirical realities that constitutionalism encounters in Buddhist-dominant Asian polities than a model based on reason and revolution. Its organicism can readily embrace the cosmological ordering of the Buddhist world. Its traditionalism enables ancient traditions of Buddhist societies to be treated with respect, rather than with the derision of tradition that often accompanies liberalism's reification of individualism and rationalism.

But how does it function as a constitutionalism of limitation on power and authority? Buddhist political ideas are primarily about enabling virtuous rule, and its principles of limitation rely primarily on moral suasion (the *dasa-rājadhamma* being the exemplary device). These techniques are more often than not inadequate for the purposes of disciplining the vast power of the modern state. While therefore it is clear that law must have a meaningful role in disciplining politics, and the institutional means of operationalising this function can look very similar to those of liberal constitutionalism, the crucial difference is the way in which the principle of limitations is normatively justified. Unlike liberal constitutionalism, the organic conception of constitutionalism Himmelfarb foregrounds is not concerned with remoulding state and society in the image of its ideal conception of the good. The idea of limits here serves *not* a transformative, *but* a preservative purpose, although preservation may require prudent and proportionate reformation. Concerned primarily with maintaining peace, order, and good government, this model of constitutionalism strives to ensure that the constitution is not instrumentalised in favour of this or that substantive conception of the good, whether that is liberal constitutionalism, or monistic ideologies (such as nationalism and authoritarianism) in plural societies, which may be contrary both to modern democratic values and the inherent pluralism of the Buddhist tradition. The constitution, rather, remains fundamentally a procedural framework that enables the peaceful co-existence of multiple and competing conceptions of the good, albeit within the "moeurs"[8] of the particular Buddhist society to which it gives political and legal expression.

3.4 CONCLUSION

This brief outline of the makings of a theory of constitutionalism in and for Buddhist-dominant Asian polities of course leaves many questions yet unanswered.

[8] Ibid. 5. By 'moeurs' de Tocqueville meant the "habits of the mind" and the "habits of the heart" that make up "the whole moral and intellectual state of a people."

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Further research would be needed to more fully theorise the foundational, normative, and institutional aspects of this model. However, what I hope I have achieved through these brief reflections is to underscore the point that liberal constitutionalism is neither the sole nor even an essential basis for constitutional democracy. If that premise is accepted, then complementary pathways for constructive scholarship open up, which may give us a better model of constitutionalism for Buddhist Asia, and via greater epistemological self-awareness, the regeneration of comparative constitutional law on more plural and inclusive foundations.

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