

The Constitution and Religion

Buddhism and Comparative Constitutional Law. By Tom Ginsburg & Benjamin Schonthal. Cambridge, UK: Cambridge University Press, 2023. 300 pp. Hardcover \$125.00
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The entanglements between constitutional law and religion have garnered scholarly attention in recent years. For instance, in his book—*Constitutional Theocracy*—Ran Hirschl offers the systematic analysis of the complex relationship between “principles of theocratic governance and the global spread of constitutionalism.”¹ Other authors endeavour to explain the defining features of “Christian constitutionalism” and “Islamic constitutionalism”—their efforts involve comprehensive evaluations of how Christianity and Islam interface with the constitutional structure of the state.² What had been missing until 2023 was an analytical and critical scholarship approach on the engagements between constitutionalism and Buddhism—an issue that is a central theme of Tom Ginsburg and Benjamin Schonthal’s new edited volume, *Buddhism and Comparative Constitutional Law* (BCC). The volume brings together 19 chapters by scholars of comparative constitutional law and religious studies on research on “the Buddhist-constitutional complex” (p. 3).

Apart from the introductory chapter, the BCC is organized in five parts. The first part comprises two chapters by D. Christian Lammerts and Asanga Welikala, respectively, seeking to assess “precolonial Buddhist constitutionalism” (p. 37) and to “outline . . . the makings of a theory of constitutionalism in and for Buddhist-dominant Asian polities” (p. 67). From the second to the fourth parts of the volume, the authors analyze various ways in which constitutional law and Buddhism are intertwined in three geographical groups of Asian countries with a significant number of Buddhist adherents: Himalayan Asia (Bhutan and Tibet), Southern Asia (Cambodia, Myanmar, Thailand, Sri Lanka), and Northern and North-East Asia (China, Japan, Mongolia, South Korea, and Vietnam). Each geographical area observes different schools of Buddhist teaching, respectively Vajrayana, Theravada, and Mahayana.

In terms of substance, the BCC elucidates two main ways of how constitutional law and Buddhism are intertwined with each other: (1) influencing and (2) co-developing and co-constituting. The term “influence” refers to how “one domain [defines] the other” (p. 18). The chapters on Bhutan, Myanmar, Tibet, and Thailand epitomize the influence of Buddhism over the design of a constitutional structure, possibly precipitating the distortion, improvisation, and indigenization of Western ideals, including constitutionalism and the rule of law (pp. 74, 216, 162, 195). At the same time, some case-studies such as Japan and Sri Lanka exemplify the impact of a constitutional framework on reorienting Buddhist liturgies and organizations based on the separation between the state and religion (pp. 150, 241–2, 264). Apart from their mutual influences, other case-studies elucidate various manners in which “Buddhism and constitutional cultures codevelop and coconstitute each other” (p. 18). The chapters on China, Mongolia, and Vietnam, for instance, evince that the governments may use Buddhism as “its soft power,” while subjecting it and the mobilization of its adherents to the socialist constitutional framework (pp. 282, 295–6, 321–2). South Korea, in contrast, unfolds how the co-development of constitutionalism, especially the principle of secularism and Buddhism, can “[open] spaces for intense disagreement [within a Buddhist order]” (p. 339). Together, the above ways of interrelation provide a comprehensive picture of “Buddhist constitutionalism” defined by Schonthal as the

¹ Hirschl (2010), p. 2.

² E.g. Rivers (2010); Grote & Röder (2012).

Buddhist-integrated approach to constitutional arrangements.³ In the fifth part of the BCC, the non-Buddhist perspectives, including Hindu, Abrahamic, and Islamic perspectives, are offered as “comparative reflections.” The included three chapters draw their similarities and differences on the following issues: the patterns of the religio-constitutional interface (Chapter 17), the legal and constitutional status of clerics (Chapter 18), and the status of the adherents (Chapter 19).

In general, the chapters in the BCC are informative, thought-provocative, and well researched. Another of their strengths is their interdisciplinary disposition, which invites readers, both specialist and non-specialist, to capture different approaches on how Buddhism qua a religion and a political ideology shapes the function and interpretation of constitutional norms and practices as well as how the latter reorients the former (pp. 18, 23). Additionally, the fifth part of the volume is intrinsically useful for readers to gain deeper insights into different facets of the Buddhist-constitutional complex through the comparative lens of “other religio-constitutional arrangements” (p. 24). However, there are two points with which the volume could have more extensively engaged.

First, Ginsburg and Schonthal define “constitution” broadly as “the fundamental norms of society, whether embodied in writing or other unwritten norms” (p. 12). Put differently, the volume centres on how such norms operate alongside Buddhism. This fails to capture the flip side of Buddhism constitutionalism, which is the suspension of constitutional law—a phenomenon that lies at the core of the concept of “the state of exception” (SoE) advanced by a famous German jurist, Carl Schmitt. According to Schmitt, every state possesses core values that embody political unity.⁴ Constitutional norms can be suspended in times of crises in which the core as such is imperiled.⁵ In some jurisdictions covered in the volume, notably Myanmar and Thailand, Buddhism is embedded as a core ideal that constitutes the backbone of their unity. The Burmese military and the Thai royalist-conservative elites even deployed Buddhism to justify a military coup, violating constitutional norms and paving the way for the establishment of an autocratic regime under the cloak of Buddhist moralism. However, the three related chapters fail to theorize how the Buddhist concept of Karma plants the seeds of the SoE within both constitutional orders.⁶ The study of the SoE would undoubtedly broaden the scope of comprehending the “limit” of Buddhist constitutionalism.

Moreover, it would be interesting to explicate the status of Buddhism in different constitutional orders based on the legal philosophical positions. Such jurisprudential-based explication can be applied to develop the “spectrum” of Buddhism constitutionalism that might be modelled based on the following considerations. By declaring Buddhism as “the spiritual heritage of Bhutan” in Article 3 of its Constitution, the Bhutanese case exemplifies how Buddhism is elevated to the status of natural law or a transcendental law with which a constitutional order must comply. In contrast, the chapters on the communist states of Japan, South Korea, and Sri Lanka suggest the superiority of a written constitution qua positive law to Dhamma. Meanwhile, in Myanmar and Thailand, Buddhism can serve as a gauge for determining when positive constitutional norms can be switched off and even transcended.

Despite its shortcoming, the BCC still provides the most detailed analysis to date of the impact that Buddhism as religion and political ideology has had on constitutionalism and vice versa. It, without doubt, helps advance the studies of constitutional theocracy and comparative constitutional law. Future studies can apply its theoretical arguments as a springboard for analyzing how and the extent to which some elements of Buddhist constitutionalism are and might be integrated into constitutional arrangements of countries

³ Schonthal (2017), pp. 706–7.

⁴ Schmitt (2007), pp. 27–8.

⁵ Schmitt (2004), p. 10; Loughlin (2010), p. 210.

⁶ See Leelapatana (2021), p. 221.

in which Buddhism has existed as the second largest, traditional, or officially recognized religion such as Indonesia, Malaysia, Nepal, and Russia.⁷

Reviewed by Rawin LEELAPATANA
Chulalongkorn University, Bangkok, Thailand

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⁷ Hirschl (2014).