

# Journal of the International Association of Buddhist Studies

Volume 18 • Number 1 • Summer 1995

## **Buddhism and Law**

FRANK REYNOLDS

Buddhism and Law—Preface 1

OSKAR VON HINÜBER

Buddhist Law According to the Theravāda-Vinaya  
A Survey of Theory and Practice 7

ANDREW HUXLEY

Buddhism And Law—The View From Mandalay 47

REBECCA REDWOOD FRENCH

The Cosmology of Law in Buddhist Tibet 97

GEORGES DREYFUS

Law, State, and Political Ideology in Tibet 117

Books Received 139

FRANK REYNOLDS

## Buddhism and Law—Preface

The study of religion and law is a field that has, up to this point, been dominated by studies focused on the western traditions. Theologians and religious scholars have lavished a great deal of attention on the development of religious and religiously influenced law in the Jewish, Christian, and Islamic contexts. Theologians, religious studies scholars, and legal historians have explored in great depth the emergence of modern secular law from the Christian legal traditions in late medieval Europe. And scholars of many different types have devoted a great deal of energy to the study of religion and law issues generated by the new forms of relationship between Church and State that have developed in the modern West, particularly in the United States.

In contrast, the study of religion and law issues outside the West has been very limited; and the studies that have been carried out have often been skewed by the use of inappropriate Church and State models imported from the study of western traditions. There have been a few treatises by scholars from non-western areas, some very interesting studies in the Orientalist tradition, and a smattering of history of religions and anthropological studies that have generated new ways of formulating relevant categories. Overall, however, the pickings have been very slim.

Several years ago Lawrence Sullivan (Director of the Center for the Study of World Religions at Harvard) and I (in my role as Program Director of the Institute for the Advanced Study of Religion at Chicago) decided that there was a need to address religion and law issues in a new, more globally oriented manner. Thus we initiated an on-going Chicago / Harvard project on "Religion, Law, and the Construction of Identities." Over the past three years the project has been guided by a core group of scholars composed of a roughly equal number of historians of religion, legal scholars and anthropologists who specialize in the study of a wide variety of religious and legal traditions. With the advice, consent, and active cooperation of the core

group, the project has already sponsored or co-sponsored several international conferences of various kinds. For example two conferences have focused directly on theoretical and methodological issues; a third has been devoted to an exploration of "Islam, Law and the Construction of Identities in South and Southeast Asia"; a fourth has been devoted to "Religion, Law and the Construction of American Identities" (revised versions of the papers are to be presented once again at the upcoming national meeting of the Law and Society Association, and will be published in a 1996 issue of *Numen*); and a fifth—funded by the Numata Foundation—has taken as its topic "Buddhism and Law in India, Southeast Asia and Tibet."<sup>1</sup>

This issue of *JIABS* is perhaps the most immediately tangible result produced thus far by the Numata-funded "Buddhism and Law" conference that was held at the University of Chicago in March, 1994.<sup>2</sup> Three of the papers that are included are revised versions of presentations that were made at that conference. The remaining paper was written by a participant (George Dreyfuss) who responded to my request to develop comments that he had made in several of the conference sessions.<sup>3</sup>

It was almost fifteen years ago—in the course of working on a *Guide to the Buddhist Religion* (an extensive bibliography of western-lan-

---

1. In August, 1995 the project will sponsor a plenary panel on "Religion, Law and the Construction of Identities" at the quadrennial meeting of the International Association of the History of Religions that will take place in Mexico City. Papers will focus on relevant religion and law issues in ancient Rome, in Latin America (both in the past and in the present), in the United States (in Supreme Court cases regarding Hasidic Jews and in trials involving Native American rights), and in the historical development of the People's Republic of China.

2. I would like to take this opportunity to thank the Numata Foundation for approving this special use of funds which are normally reserved for the support of an annual, one-term appointment for a Visiting Professor of Buddhist Studies. Among the individuals who deserve special thanks for making the conference a success are Paul Griffiths, Steven Collins, and Nicholson Collier. Profs. Griffiths and Collins assumed primary leadership roles, and Nicholson Collier (a graduate student in Buddhist studies) ably administered the details.

3. In addition to the four scholars whose papers are included in this issue, there were a number of other participants who made major contributions to the success of the occasion. Those who presented a paper or gave a formal response to a paper included Yoneo Ishii (Southeast Asian area studies specialist), Michael Aung Thwin (Southeast Asian history), Charles Hallisey (history of religions) and David Engel (law).

guage articles and books on Buddhism) that I first came to realize the dearth of first-rate modern scholarly research on the Buddhism and law topic. Much to my surprise, I found that—despite a considerable investment of extra effort—my collaborators and I could identify only eighteen published items that had dealt with the subject from a viewpoint that took the specifically legal aspects of law seriously into account. All eighteen items concerned India and Southeast Asia; most were short essays rather than full-scale studies; and the quality of all but a few was rather dubious.<sup>4</sup>

The reasons are perhaps not hard to discern. From the kind of Orientalist perspectives that developed in the early phases of Buddhist studies, *true Buddhism* was not a religion that had a strong legal component. To be sure the Buddhist term Dharma could be, and often was, translated as “Law.” But “Law,” when it was used as a translation for Dharma, was used with cosmic, philosophical, and/or ethical connotations that were never associated—in any really intrinsic or crucial way—with legal systems or codes.

The early Orientalist scholars developed interpretations that placed the emphasis on the Buddha (the Teacher) and the Dharma (as characterized above), rather than the Saṅgha (the Buddhist community, especially the monastic community) and the way in which the community was organized and regulated. To make the same point in a slightly different manner, the focus of scholarly attention was on sūtras and philosophical texts rather than on community-directed vinaya texts and their commentaries. The notion that the vinaya and vinaya commentaries constituted the textual locus of a specifically legal system that might be of crucial Buddhological importance was never seriously entertained.

In addition, the notion that true Buddhism was an other-worldly contemplative religion, or—in less extreme formulations—a religion concerned with individuals but not with issues of social, political, and economic order, created a situation in which the study of Buddhist secular law was given even less attention than the study of monastic law. The Buddhological community as such was hardly aware either

---

4. The most interesting items that we were able to identify were several excellent articles by Robert Lingat. Though the Lingat essays are now somewhat dated, they still contain material and insights that are important for those interested in the topic. For the specific references see Frank Reynolds (with John Holt and John Strong), *Guide to the Buddhist Religion* (Boston: G. K. Hall, 1981) 238-239.

of the presence of Buddhist secular law or the influence of Buddhism had had on the legal systems in the countries where the *sāsana* had been established. In Buddhist countries that were colonized (notably but not exclusively in Burma), European administrators could not avoid encountering Buddhist secular law. But, given the presuppositions concerning Buddhism that they brought to the study of this secular law, they saw it as an import from Hinduism that was Buddhist only in the sense that it had been given a Buddhist frame and purged of some of its most obvious Brahmanic, caste-oriented elements.

Happily, during these past fifteen years, many of these barriers to understanding have begun to break down, and very serious scholarship on Buddhism and law issues (both monastic and secular) has begun to develop in a variety of quarters. However scholars working in this new arena of Buddhist studies scholarship have been very few; and they have been widely separated from one another, both in terms of discipline and in terms of geography. Hence the convening of an international conference seemed to be a desideratum of the first order not only for the globally-oriented "Religion, Law and the Construction of Identities" project, but also for the advancement of a small but significant trajectory of research within Buddhist studies itself.

A preliminary, rather unsystematic survey of research presently being done on Buddhism and law suggested that it would be best to focus this first Buddhism-focused conference on the Hinayāna / Theravāda traditions of South Asia and Southeast Asia, and the Mahāyāna / Vajrayāna traditions of Tibet. Given this decision, it is not surprising that the four papers included in this issue fall into two loosely correlated pairs.

The first set of two papers deals with the Hinayāna / Theravāda legal traditions that were developed in South and Southeast Asia. Oscar Von Hinüber (a Buddhologist) examines the monastic legal system that can be discerned in and through early South Asian vinaya texts associated with the regulation and governance of the monastic order; and Andrew Huxley (a legal scholar with a great sensitivity to the Buddhist dimensions of his data) describes the tradition of Theravāda secular law that can be culled from the study of Dhammathat and related legal texts that were ubiquitous in the immediately

pre-modern period in Burma, Thailand, Cambodia, and Laos.<sup>5</sup>

The second pair of essays deals with the Buddhist-oriented legal tradition that developed in Tibet in the centuries prior to 1959. George Dreyfuss (a Buddhologist) provides an important background study of the intermeshing of Tibetan Buddhism and the pre-modern polity in Tibet. With this background established, Rebecca French (a legal scholar and anthropologist who has done extensive field work in Tibetan communities) hones in on the distinctively Buddhist character of the legal sensitivities, codes, and practices that were established and nurtured within the pre-modern Tibetan polity.<sup>6</sup>

Everyone who has been involved in the conference is all-too-aware of the primitive and precarious state of studies of Buddhism and law. We recognize that a great deal of background research and analysis must be done before we will be able to speak with confidence about broad-scale patterns, or to enter—with really adequate information, and truly tested and refined interpretive perspectives—into serious and detailed comparative discussions. Therefore we are very cognizant of our need to identify and to cooperate with other Buddhist studies and legal studies scholars who may be interested in these issues not only in India, Southeast Asia and Tibet, but in other Buddhist and Buddhist-influenced contexts as well.

As the Chicago / Harvard "Religion, Law and the Construction of Identities" project proceeds, we intend to maintain, within our large-

---

5. This South / Southeast strand of the Buddhist tradition has been—so far as I have been able to determine—the one that has been given the most attention by contemporary scholars interested in Buddhism and law issues. For example, Gregory Schopen has recently published—in this journal—a directly relevant essay on South Asian tradition entitled "The Monastic Ownership of Servants or Slaves: Local and Legal Factors in the Redaction History of Two Vinayas" (17.2 [1994]: 145-174). Another highly relevant Schopen essay entitled "Monastic Law Meets the Real World: a Monk's Continuing Right to Inherit Family Property in Classical India" has been accepted for publication by *History of Religions* and will appear late in 1995 or early in 1996. As far as the more recent Southeast Asian tradition is concerned, my own essay on "Dhamma in Dispute: The Interactions of Religion and Law in Thailand" recently appeared as the lead essay in a "Special Issue on Law and Society in Southeast Asia," *Law and Society Review* (28.3 [1994]: 433-451)

6. French's essay provides a tantalizing glimpse of the approach she takes and the material she covers in her superb, ground-breaking book on *The Golden Yoke: The Legal Cosmology of Buddhist Tibet* (tentative title) that will be published in late 1995 or early 1996 by Cornell University Press.

scale comparative framework—a strong Buddhist studies component.<sup>7</sup> The kind of questions that will be asked within the context of this larger project are questions that should pose a challenge and opportunity for Buddhist studies scholars to explore relatively untouched Buddhism and law issues. What are the various connotations (cosmic, ecclesiastical, secular, etc.) of Dharma as “Law”? And their relation to more specifically legal notions of law? What can we learn about the religious and legal dimensions of Buddhist monastic law through a more legally sophisticated study of vinaya texts and commentaries? What can we learn about the influence of Buddhist presuppositions and categories embedded in various dimensions of the secular law in Buddhist dominated polities? What about the tensions and interactions among Buddhism, Buddhist-influenced legal systems, and colonial or European-influenced legal systems during the 19th and early 20th centuries? How can we understand the present modes of intensive interaction between Buddhism and Buddhist law on the one hand, and ethnic identities and the laws of modern nation states on the other? Thus there are questions of great historical interest; and there are also closely related question that are of immediate contemporary relevance as well. These are questions that cry out for exploration by a community of cooperating scholars that includes a significant number of individuals who bring with them a wide range of disciplinary skills and area studies expertise.

On behalf of Professor Sullivan and myself, and of all of those who participated in the “Buddhism and Law” conference, I want to thank Donald Lopez, the Editor of *JiABS*, for providing this forum for the publication of a selected set of conference and conference-related papers. It is my hope and expectation that this issue of the journal will contribute to a heightened consciousness of the importance of the interface between religion and law in general; and of the many interactions between Buddhism and law in particular. And to the further coalescence and expansion of a community of scholars interested both in formulating the fundamental issues more clearly, and in pursuing these issues with greater energy and precision.

---

7. The search for funding for this long-term project continues. At the moment we are gratified by the fact that the University of Chicago has been awarded a major grant by the Mellon Foundation to implement a year-long faculty / advanced graduate student seminar on the topic that will be held during the 1996-1997 academic year. Other grant applications are pending.