17

On the Familiar Pleasures of Estrangement

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17.1 INTRODUCTION

Anthropological analysis, at any rate the kind that has been emanating from Euro-American departments for the last fifty years or so, is grounded in the discovery of difference. Anthropologists look closely, watch patiently, think critically, and engage in a kind of concentrated musing – what others have more elegantly called "cultivated attentiveness" – all in the hopes of seeing new colors in the rainbow.[1] We are the science, if one cares to use that word, of human specificity. And yet, as much as anthropology trades in human difference, it also delights in sameness. Nineteenth-century anthropologists of the armchair variety, turn-of-the-century fieldworkers of a functionalist persuasion (as well as their structuralist others), postmodernists, and even twenty-first century anthropologists ever so gingerly attempting an ontological turn are all committed to seeing what can, and what cannot, be considered true of humankind writ large. In the face of difference, we are fascinated by similarity.

The chapters in this collection are, therefore, not only a source of incredibly rich insight on the relationship between Buddhism and constitutional law; they are, additionally, the source of a peculiarly *anthropological* pleasure because they offer a charming lesson in the interpretive possibilities of sameness. For those of us who are not scholars of Buddhism and are only very tenuously students of constitutional law, the chapters cast into stark and provocative relief the assumptions that we may carry about the wide swath of Buddhist contexts examined by the chapter authors. What that means, of course, is that the chapters also reveal the assumptions we as scholars carry about ourselves and our own areas of work.

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[1] This phrase comes from the syllabus for a graduate anthropological methods class taught at The University of Chicago in 2015 (Sunder Rajan 2015).

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In the rest of my own short chapter, I will tease out a few moments where the thematic concerns addressed by some of the authors with respect to Buddhism speak powerfully to concerns that have animated the study of *Hinduism* and constitutional law as undertaken by myself and others. I focus on three chapters in particular: Mark Nathan's analysis of monasticism and celibacy in Korea; Richard W. Whitecross' reflections on dual sovereignty in Bhutan; and Krishantha Fedricks' writing on language ideology in Sri Lanka. This selection both is and is not random. I read Nathan's chapter first and was so struck by the way its central concerns resembled issues that I have repeatedly engaged with in my own work on Hinduism in India, that I decided to cast about the series collection for geographical and thematic variety. I landed on the chapters by Whitecross and Fedricks and realized that, together with Nathan's, they constituted an excellent triad. Each of them showed me, thoughtfully but unequivocally, how themes I had only considered with respect to India and Hinduism were applicable and generative far beyond those contexts. As with all anthropological endeavors, my hope is to unsettle assumptions about one thing via an exploration of another. But first, a little background.

17.2 HINDUISM AND CONSTITUTIONAL LAW

What I am about to say certainly does not apply to all Hindus or all Buddhists. But, just as certainly, it *does* capture the way a particularly significant constitutional law system – India's – understands the contours and content of Hinduism. It also seems to capture elements of Buddhism as it is understood by the legal systems of several countries. Two points of divergence between Hinduism and Buddhism seem especially important for the task of regulating them constitutionally.

First, everyday Hinduism is deeply tied to temple worship. There are caveats, of course: not all Hindus worship in temples; those who do so worship for different reasons and at different frequencies; and, finally, both the experience and the perceived merits of temple worship vary widely. Nevertheless, the importance of *darśanam* ("auspicious sight") necessarily makes temples, whether they are roadside altars, pilgrimage centers, or precolonial royal masterpieces, central to the practice of Hinduism. Moreover, Hindu temples are not primarily or even significantly associated with religious elites in the vein of bhikkhus and bhikkhunis – although, again, there are many such elites and many of them are linked with specific temples.

Second, it is difficult to identify stable communities or hierarchies within Hinduism of the sort generally associated with the Buddhist sangha – for the most part. Communities that are generally (and certainly judicially) considered Hindu range from the tens of thousands in the Ramnami Samaj to the tens of millions in the Radha Soami Satsang. The various *matha*s that control many of Indian Hinduism's most venerated temples are nothing if not hierarchical. And castes are both hierarchical and communitarian, even if their membership boundaries and religious bona fides have long been up for debate. Despite these and other

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reasonable caveats, it remains the case that Hinduism writ large lacks a standing religious elite that is hierarchically structured.

Both of these features suggest that the challenges precipitated by "Hinduism and constitutional law" ought to be markedly, albeit not entirely, different from those triggered by the confluence of "Buddhism and constitutional law." And yet, as the rest of this chapter shows, that is not the case. The three chapters I will discuss below demonstrate that, despite these seemingly foundational religious differences between Hinduism and Buddhism (as well as innumerable legal differences between the countries in question), the puzzles to be solved – or not – are in many ways the *same*.[2] That lesson is, in itself, striking in the extreme.

17.3 MONASTICISM AND CELIBACY IN KOREA

In his chapter, Mark Nathan uses a longstanding dispute over monastic celibacy to argue that South Korea's modern constitutional framework opened up spaces for disagreement over Buddhist institutions, rather than having a consolidating, stabilizing, or homogenizing effect, as we might have expected. In November 1960, a group of young monks stormed into the Supreme Court and threatened to commit suicide because the Court had not definitively supported their side in a battle over whether Korea's national Chogye Order mandated monastic celibacy. Rather than ruling on this core issue, the justices relied on procedural reasons to send the case back to a lower court (where the protestors' pro-celibacy side had won). Indeed, despite repeated and contentious litigation, Korean courts never actually made a determination as to the religious necessity of monastic celibacy. As Nathan observes, they remained unwilling to wade into doctrinal disputes and were "concerned only with the written constitution, rules, and regulations of an organization composed of members who self-identified as Buddhist" (2022).

Self-governance within a framework of intense state oversight is, as Nathan argues, a characteristic feature of Foucauldian governmentality, and it is a thread that runs through the historical period he discusses. The Temple Ordinance published in 1911 by Korea's colonial Japanese government comprised just seven short articles, and it required Korean monastics to formulate the laws that would govern their own behavior as well as the procedures by which their leaders would be chosen. These temple laws were, however, subject to the colonial government's approval, and as such they became an important avenue for indirect state involvement in the reshaping of Korean Buddhism. In 1926, for instance, revisions that won Japanese approval "removed celibacy from the list of required qualifications to assume the duties of abbot, which seemed to open the door to legal recognition of monastic marriages" (Nathan 2022). Because the colonial approach both *depended on* and *reinforced* the appearance of Korean Buddhist autonomy in matters of religious life, disputes over

[2] Readers should note that I use the authors' own transliterations of non-English terms.

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religious practice – including over the issue of monastic celibacy – became disputes over which religious faction had the authority to issue behavioral mandates, rather than disagreements over which practice better reflected Buddhist tenets.

I confess that what initially drew me to this chapter was its focus on religiously motivated celibacy. For the last ten years, my own work in India has centered on the Hindu temple at Sabarimala, Kerala, whose presiding deity, Ayyappan, is most famous for being a permanent celibate who is unable or unwilling to receive fertile women devotees. But the dynamics that Nathan explores – of state involvement under cover of religious autonomy, and of state involvement that facilitates (rather than erases) uncertainty and contestation – were also immediately recognizable to me, as indeed they would be to any student of religion-state relations in India. Like so many other public Hindu temples, Sabarimala is subject to intense and statutorily mandated state oversight that is often presented as, and sometimes actually is, the product of citizens' preferences. Similarly, although there is no organizational constitution at play in the women's entry dispute, an earlier phase of the dispute required courts to determine "who had the power to revise ... the rules of governance": the temple's chief priest, its advisory committee (a non-governmental body of local elites), or governmental overseers (Nathan 2022; Das Acevedo 2018).

There is, to be sure, a key difference: namely, the willingness of Indian courts to wade enthusiastically into religious doctrinal waters. Scholars disagree about whether or not these forays reflect indigenous or foreign interpretive styles, about whether they are democratically defensible given the unelected nature of the judiciary, and even about whether they negate India's ostensibly secular character – but there is little disagreement over whether or not Indian courts do, in fact, pronounce on the validity of religious beliefs and practices (Das Acevedo 2013; Dhavan 2001; Fuller 1988; Galanter 1971; Mehta 2005; Smith 1963). At various points during the women's entry dispute, for instance, Indian courts have declared both that Sabarimala's ban on women is an "essential" aspect of Ayyappan worship (making it eligible for more robust constitutional protections) and that it is a non-essential aspect of Hinduism that gives way to other constitutional guarantees of equality and non-discrimination (Das Acevedo 2020).

But what Nathan's chapter makes beautifully clear to outsiders like me, aside from the similarities and differences I've just described, is that we may need to reexamine our often too-quick assumptions about the traditions and countries we study. Scholarship on religion-state relations in India has generally rationalized extensive state involvement in the management of Hindu temples by pointing to the lack of religious hierarchy and congregational identity within Hindu tradition. If the state *didn't* step in, this thinking goes, there would be no one to coordinate resources, resolve disputes, or pursue reforms. While Nathan's chapter on Buddhism in Korea does not by itself unravel this way of understanding Hinduism in India, it does – given the existence of religious hierarchy within most iterations of Buddhism and

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the importance of the sangha – suggest that we may need to more carefully examine its explanatory power.

17.4 DUAL SOVEREIGNTY IN BHUTAN

In his chapter on Bhutan, Richard W. Whitecross argues that the Dual System implemented in Bhutan by the Zhabdrung, Ngawang Namgyal (d. 1651), and further entrenched by the 2008 Constitution, has had unexpected and not always positive consequences. The Zhabdrung himself embodied both religious (*chos*) and secular (*srid*) authority but he separated these two aspects of his authority among his subordinates – most relevantly, between a secular regent (the *Druk Desi*) and a chief abbot (the *Druk Je Khenpo*). This Dual System "functioned reasonably well until the last quarter of the eighteenth century when the rivalry emerged between the regional governors who vied for the post of *Desi*" (Whitecross 2022, 7). The 2008 Constitution, which was largely the achievement of Bhutan's Fourth King but only came into force during the reign of his son, the Fifth King, simultaneously embraces and resists the Dual System.

On the one hand, the 2008 Constitution provides, for the first time, that the Dual System will be embodied in the person of the monarch (Whitecross 2022). Whitecross notes that "[t]he coronation rituals created for the enthronement symbolically presented the monarch as the legitimate successor, the Zhabdrung," who was, it should be remembered, the last ruler of Bhutan to personify both forms of authority. More explicitly, Article 2(2) of the Constitution states that the Dual System "shall be unified in the person of the [king] who, as a Buddhist, shall be the upholder of the [Dual System]."

At the same time, the Constitution takes significant steps to separate religious and secular authority because of the drafters' belief that "ethnic and religious differences are the main causes of problems in this world" (Whitecross 2022). Article 3(1) calls Buddhism the country's "spiritual heritage," rather than its state religion. Article 3(3) obliges "religious institutions and personalities" to ensure "that religion remains separate from politics" and even declares that "[r]eligious institutions and personalities shall remain above politics." And finally, there is no formal role for the Zhung Dratshang (Central Monk Body) within any central governing bodies, as had been the case since 1953. Thanks to these provisions, Whitecross argues that the 2008 Constitution has led to a decidedly "un-dual" outcome, which is "the exclusion of religious practitioners from engaging in local level politics" (2022).

Once again, there are plenty of similarities with the Indian – and specifically, Hindu – context. A primary and well-documented worry of India's constitutional framers was that "left to itself, religion could permit orthodox men to burn widows alive on the piers [sic] of their deceased husbands … coerce indulgence in social evils like child marriage or even crimes like human sacrifice … or relegate large sections of humanity to the sub-human status of untouchability and inferiority"

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(Bhagwati 2005, 43). Likewise, India still formally – although the hollow formality of this statement is becoming every day more extreme – lacks an established state religion. At the same time, and apart from political developments that have made India a Hindu state in all but name, the Constitution accords considerable cultural and legal dominance to Hinduism over other religious traditions. It identifies India by a name, *Bharat*, with largely Hindu connotations; it authorizes reforms respecting Hindu temples that are widely understood to have been motivated by a desire to consolidate Hindu identity and prevent an exodus of Dalit Hindus through conversion; it includes the prohibition of cow slaughter among its non-justiciable Directive Principles; and, perhaps most unambiguously, it treats Buddhism, Jainism, and Sikhism as legally equivalent to Hinduism.[3]

Notwithstanding these considerable similarities between the Bhutanese and Indian contexts, what is most striking to me about Whitecross' study is the way in which it acknowledges, even *embraces*, the inescapable ambiguity of the Dual System of sovereignty. For some time now I have been arguing – and I think the "women's entry" dispute demonstrates – the extent to which India's Constitution reflects allegiance to two very different visions of democratic sovereignty. Many of the Constitution's more striking elements reveal an understanding of sovereignty as something that is shared between citizens and the state; conceptualizing sovereignty this way "enables the state to undertake the kind of broad and often unpredictable reforms required to construct a more equitable society" (Das Acevedo 2016, 579–580). At the same time, and often within the very same constitutional articles, India's charter also promises traditional liberal protections that are predicated on the state's obligation, as a mere agent of citizens' (wholly owned) sovereign authority, to stay out of various spheres of activity. What other commentators have discounted, I've argued, "is the possibility that this tension is an intentional and productive feature of Indian constitutionalism writ large (and by extension, of Indian democracy) rather than being accidental, pathological, or specifically about religion" (Das Acevedo 2016, 579). Even as it explores the unintended consequences of the Dual System, Whitecross' chapter encourages us to take seriously the tensions baked into it in both its original formulation by the Zhabdrung and its interpretation in the 2008 Bhutanese Constitution.

17.5 LANGUAGE IDEOLOGY IN SRI LANKA

Krishantha Fedricks' chapter argues that the religio-political Mahamevnāwa movement is shaped by a Sinhala-centered language ideology in a way that is responsive to both nationalist and constitutionalist idioms. Since its establishment in 1999,

[3] Constitution of India, Art. 1(1) ("Bharat"); Art. 48 ("cow slaughter"); Art. 25, Explanation II (regarding Buddhism, Jainism, Sikhism). On the Hindu nature of India's constitution see Singh (2005).

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Mahamevnāwa has founded seventy branches within Sri Lanka as well as international outposts in countries like the United States, India, Germany, England, and Dubai. The movement is both nationalist and transnationalist. On the one hand, Mahamevnāwa challenges the liturgical primacy and sonic sacredness of Pāli, and it also embraces popular aesthetic and religious forms to a degree that is unusual within "mainstream nationalist monastic politics" (Fedricks 2022). On the other hand, Mahamevnāwa is intentionally transnational in its orientation and technologically diversified in its methods, so much so that Fedricks considers it to be "the first televangelist Buddhist group in Sri Lanka" (2022). Similarly, the movement is both constitutionalist and anti-constitutionalist. Its faith in the power of correct language and form, like its emphasis on a philosophical orientation or set of principles – the *dhamma* – as a guiding charter for the true Buddhist state, means that Mahamevnāwa incorporates the foundational premises of constitutional law within its own structure and strategy. At the same time, the movement is firm in its disavowal of secular constitutions and its critique of monastic participation in politics, on the grounds that both have led to the decline of Buddhism in contemporary Sri Lanka.

Fedricks' inversion of the usual question – how religion impacts law – is familiar and familiarly productive to anyone studying the impact of constitutional law on Hinduism in India. The Indian Supreme Court's religious freedom jurisprudence is regularly applauded or derided (or both) for its construction of a Hinduism that coheres remarkably well with the Constitution's more progressive impulses. In the mid-twentieth century, for instance, some of the Court's most famous adjudicative efforts argued that, properly understood, neither Hindu texts nor Hindu principles required that temples absolutely exclude Dalit individuals from their premises; instead, what they required was "insignificant participation" on par with many other Hindu constituencies. More recently, the Supreme Court held that neither the tenets of Ayyappan worship nor those of Hinduism as a whole require the exclusion of women aged ten to fifty from Sabarimala's premises. "It is a universal truth," wrote Chief Justice Dipak Misra in 2018, "that faith and religion do not countenance discrimination" – because, in the end, he said, "[a]ll religions are simply different paths to reach the Universal One" (*Indian Young Lawyers Association* v. *State of Kerala*, at para. 4). Scholars of Indian religious freedom jurisprudence, myself included, have thus become accustomed to pointing out how, to paraphrase Fedricks, "notions of constitutional law find their way into [Hindu] institutions" (2022).

But what is striking is that Fedricks begins his account with a brief history of ethnolinguistic nationalism before he ever gets to constitutional law, and even after discussing constitutional concerns he returns to language ideology as it is marshalled by Mahamevnāwa. The bidirectional nature of this dynamic is just as evident in the Indian context: Chief Justice Misra's comment about different paths riffs off a well-known line from the *Ṛg Veda* that was arguably mistranslated by Swami

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Vivekananda, and that now makes cameo appearances in both legal and popular discourse with such frequency that it is impossible to accurately parse the direction of flow (Doniger 2014, 18). What Fedricks' chapter reminds us of, in other words, is not simply the value of occasionally fronting law as subject rather than object in conversations about religion and constitutionalism, but the need to always remember the chicken-and-egg nature of that relationship.

17.6 CONCLUSION

As I began by suggesting, the chapters in this volume offer a rare opportunity: the chance to learn substantively about a fascinating new area of interdisciplinary legal scholarship while also learning, thematically and analytically, about one's own. For the anthropologist who seeks difference, there is nuanced, granular analysis that teases out the unique dimensions of both Buddhism and constitutionalism as they manifest across several contexts. And for the anthropologist who delights in sameness, there is an invitation, subtly different in each chapter but present in them all, to consider how these lessons about a particular religious tradition (and several countries) are also lessons about *other* traditions and *other* countries.

For the scholar of comparative constitutional law – who is, after all, one of the primary readers of this volume – these chapters offer a distinct yet related provocation: how are the chapters' shared points of emphasis, Buddhism and constitutionalism, best thought of? Is it Buddhism *and* constitutional law, Buddhism *as* constitutional law, or even the preposition-free *Buddhist constitutional law*? Too often, comparative constitutional law scholarship has rested on the easy assumption that what is being compared is most relevantly thought of in political and geographic terms – the nation-state – and, consequently, that the third of these formulations is best: American constitutional law versus Indian constitutional law, and so on. That assumption may always have been problematic, but it is now even less defensible given the rapid ascendance of movements that are populist, transnational, and very often ethnoreligious in nature. By troubling the premise that the objects of comparison and analogy in comparative constitutional law are easily identifiable, these chapters open up a space for thinking more creatively about the intersection of religion and law.

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