As the first comprehensive study of Buddhism and law in Asia, this interdisciplinary volume challenges the concept of Buddhism as an apolitical religion without implications for law. *Buddhism and Law* draws on the expertise of the foremost scholars in Buddhist studies and in law to trace the legal aspects of the religion from the time of the Buddha to the present. In some cases, Buddhism provided the crucial architecture for legal ideologies and secular law codes, while in other cases it had to contend with a pre-existing legal system, to which it added a new layer of complexity. The wide-ranging studies in this book reveal a diversity of relationships between Buddhist monastic codes and secular legal systems in terms of substantive rules, factoring, and ritual practices. This volume will be an essential resource for all students and teachers in Buddhist studies, law and religion, and comparative law.


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BUDDHISM AND LAW

An Introduction

EDITED BY

REBECCA REDWOOD FRENCH

MARK A. NATHAN
To Frank E. Reynolds
for his lifelong work in the field
and his steadfast commitment to establishing
Buddhism and Law as an accepted academic pursuit
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The genesis of this volume lies in several workshops and conferences that took place over the past decade. The first, “Locating Law in Buddhist Societies,” was held in June 2004 by the Baldy Center for Law and Social Policy of the University at Buffalo Law School. Organized by Rebecca French and David Engel, the workshop brought together scholars from a range of disciplines whose work focused on different areas of Asia. The attendees included José Cabezón, Leslie Gunawardena, Andrew Huxley, Brian McKnight, Mark A. Nathan, Frank Reynolds, and Winifred Sullivan. In addition to the participants, we would like to extend our gratitude to Lynn Mather, Director of the Baldy Center at the time, who generously supported the workshop, and to the staff who helped make it a success.

At the conclusion of the workshop, plans were made to follow up with a more formal conference organized around some of the themes identified in the discussions that had taken place. The result was an international conference in March 2006 at the Rockefeller Foundation’s Bellagio Study and Conference Center in Bellagio, Italy, organized by Rebecca Redwood French where scholars from around the globe presented papers and engaged in discussions on Buddhism and Law related to several topics: how to think about Buddhist law, modern Buddhist nationalism and law, textualism, theft, and religious institutions and the state. Among those who attended were several scholars who had participated in the previous workshop and many who were new to the project, including Timothy Brook, José Cabezón, Bernard Faure, Leslie Gunawardena, Andrew Huxley, James Ketelaar, Petra Kieffer-Pulz, Justin McDaniel, Ryuji Okudaira, Frank Reynolds, Peter Skilling, Winifred Sullivan, Vesna A. Wallace, and Richard W. Whitecross. Some of the papers in this volume resulted from drafts prepared for the Bellagio conference. We thank all those who participated and the Rockefeller Foundation and the Baldy Center for funding the conference.
Preface

The third conference, “Law, Buddhism, and Social Change: A Conversation with the 14th Dalai Lama,” was held later that year in conjunction with the visit of His Holiness the Dalai Lama to the State University of New York at Buffalo. In a remarkable and noteworthy event, Rebecca French brought together a group of distinguished scholars who posed questions to the Dalai Lama on the relationship between Buddhism and law. This was followed the next day by several panels: “The Buddha as Lawgiver: Monastic and Secular Communities,” “Social Change and Buddhism: Buddhism’s Effect on Different Legal Systems in Asia,” and “Social Change and Conscience, Self and Society.” Transcripts and several of the papers prepared for this event were published in 2007 as a special issue of the Buffalo Law Review, vol. 55. Enormous thanks goes to His Holiness the Dalai Lama, who has long been a supporter and mentor for research and writing on the topic of Buddhism and law. This conference was also responsible for bringing the subject of Buddhism and law to the attention of Kate Brett, who was then the Religion Editor at Cambridge University Press.

The papers and ideas herein have been presented by both the co-editors and the authors at many venues over the last ten years, and while it is not possible to name them all, we would like to thank all of the presenters, participants, and discussants for their intellectual engagement with the ideas as they have greatly enriched this volume. We would like to acknowledge all of the editors and staff who worked on the volume at Cambridge University Press, particularly Kate Brett, Anna Lowe, Laura Morris, and Alexandra Poreda, for their help and encouragement with the project. We are additionally grateful to the Rockefeller Foundation, the Baldy Center for Law and Social Policy, as well as the numerous scholars who acted as anonymous readers for the volume and patiently helped with editing and suggestions. Several research assistants – Gretchen Frank, Katie Grennell, Chloe Hall, Anne Rosenbaum, and Rob Vanwey – helped with footnotes and initial editing. Josh Coene was instrumental in helping shape the volume by doing extensive final edits and checking, even though the topic was far from his area of scholarly expertise (the history of prisons). Linda Kelly has been a superb help with transcripts and typing. Nancy Babb of the UB Law library worked tirelessly on the index while mastering words in several foreign languages. We would also like to thank Walter Hakala, Devonya Havis, Teri Miller, Drorah Setel, Winnie Sullivan, Vesna Wallace, and Richard Whitecross for reading and commenting on drafts of the Introduction. Clara Redwood deserves special mention for using her computer skills to create the maps and Peetie Van Etten and David Engel for the contribution of their photographs.
Preface

Rebecca French would like to thank her family and, of course, her two daughters, Emo and Clara Redwood, who have turned into perfectly wonderful young adults while she was working on this book. She would also like to extend her deep thanks to her mentors, each of whom has contributed in his and her own way to this book, including Donald Chisum of UW Law; Leopold Pospisil, Stanley Weinstein, Harold Conklin, and Mirjan Damaska of Yale; Bob Thurman at Columbia; Gyatso Tsering and Thupten Sangye of the LTW&A; the late Michael Aris, Bill Alford and Jordan Lama at Harvard; Michael Walzer and the late Clifford Geertz at the IAS; Frank Reynolds of UC; the late Hugh Richardson in Fife; Stephen D. Smith and Karma Lekshe Tsomo now at the University of San Diego; and Dzogchen Ponlop Rinpoche. She is also grateful for the continuing support of Kristen Van Ausdall, Nancy Black, Susan DeReimer, Devonya Havis, LaReine Hungerford, Isabel Marcus, Teri Miller, Mia Morabito, Drorah Setel, as well as attendees of the Friday night potluck dinners.

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Finally, we want to remember our friend and colleague, Leslie Gunawardena, who passed away in November 2010 at the age of seventy-three. He brought both a keen intellect and an infectious smile to our discussions at the conferences leading up to this volume, and his untimely death cut short his important work on Buddhism and law.
Abbreviations

A Aṅguttara Nikāya
Abhidh-k-bh Abhidharmakośa-bhāṣya edited by P. Pradhan (Patna: Kashi Prasad Jayaswal Research Institute, 1967)
BL British Library
D Dīgha Nikāya
Derge The Sde-dge Mtsul-par Bka’-gyur, a facsimilie edition of the 18th-century redaction of the Si-Tu Chos-kyi-byun-gnas.
Dhs Dhammasaṅgani
Divy Divyavadāna edited by P.L. Vaidya (Darbhanga: Mithila Institute, 1959)
Ja Jātaka; Viggo Fausbøll (ed.), The Jātaka together with its Commentary, 7 vols. (London: Trübner, 1877–1897)
M Majhima Nikāya
Mil Milindapañha
MPS Mahāparinirvāṇa-sūtra edited by E. Waldschmidt (Berlin: Akademie Verlag, 1951)
NL National Library of Myanmar
Pālim Vinayasāṅgaha-atthakathā-pāṭh (Yangon: Pyi Gyi Mundyne, 1954)
Ps Papañcasudani
Abbreviations

S  Saṃyutta Nikāya
Spk  Sārattappakāsini
Sp-t  Sārattadīpani, 3 vols. (Yagon: Buddhāsānasamāmiti, 1960)
Sv  Sumāṅgalavilāsini
T  Taishō shinshū daizōkyō (Tokyo: Taishō Issaikyō Kankōkai, 1924–1932)
Tikap  Tikapattthāna
UBhS  U Bo Thi Manuscript Library, Thaton
UCL  Universities Central Library, Yangon
Vjb  Vajirabuddhi-tīkā. (Yagon: Buddhāsānasamāmiti, 1960)