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The Impossibility of a Buddhist State

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Abstract
This article considers the effects of special constitutional prerogatives for Buddhism in Sri Lanka. It argues that, contrary to the expectations of both supporters and opponents, these clauses have not done what they claim to do: they have not enhanced the dominance of Buddhism on the island. Through a detailed analysis of recent legal action, this article demonstrates how special constitutional protections for Buddhism, in fact, aggravate and authorize splits among Buddhists. In making this argument, this article points towards a larger thesis: constitutional provisions designed to ensure the *inter*-religious dominance of one tradition may, under certain circumstances, actually amplify *intra*-religious conflicts over the nature, boundaries, and doctrines of that tradition. This work therefore encourages scholars to rethink the assumed polarity between secular-liberal constitutions and religiously preferential ones. Although opposed in their expressive dimensions, religiously neutral and religiously preferential constitutions may in fact generate similar church-state conundrums. The case of Sri Lanka suggests that, in the same way as perfect religious neutrality is impossible, so too is perfect religious supremacy.

Keywords: Buddhism, law, Sri Lanka, secularism, Constitution

1. INTRODUCTION

Although considered by many to be a defining feature of liberal constitutionalism, religious neutrality is by no means a defining feature of constitutional law as a global practice. Forty-five percent of the world's basic laws recognize one or more "favoured" religions[1] and approximately half of the world's population live under constitutional regimes that give special status and and/or protection to a single religion.[2] In many parts of the world, it is not religiously neutral constitutions that are most common, but religiously preferential ones. This is particularly true in the Buddhist-majority countries of

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1. Pew Forum (2009), p. 60.
2. Hirschl (2010), p. 46.

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Southern Asia, all of which have constitutions that give special status or protections to Buddhism.[3]

Despite the commonness of religiously preferential constitutions, however, analysts frequently approach them as though they were aberrant. For many scholars, what appears most important about these texts is the ways they deviate from the expected secular prototype. This focus on deviance has come at the expense of critical reflection. When it comes to preferred-religion clauses, scholars have too often taken them at their word: they have treated these clauses as though they not only confirm the hegemony of a particular religious group, but also create institutional conditions that will extend that hegemony into the future.

This line of thinking can be seen with particular vim in liberal criticisms of Sri Lanka's Constitution. Chapter Two of Sri Lanka's Constitution, simply entitled "Buddhism," contains a single article that gives to Buddhism the "foremost place" and obligates the state to "protect and foster" the institutions, practices, and teachings of the Buddha, collectively referred to as the *Sāsana*. Since the creation of these constitutional provisions in 1972, a variety of critics—from non-Buddhist politicians, to liberal secularists, to socialists, to international human rights groups—have identified this part of Sri Lanka's Constitution as both proof *and* perpetrator of religious majoritarianism on the island.

There is some truth to this. Majoritarian constitutional provisions, like the "Buddhism Chapter" of Sri Lanka's Constitution, do indicate something important about the relationship between religion and law, although mainly at the moment of constitution-*writing*: the guiding legal charter of Sri Lanka is marked by the sentiments of constitution drafters and lobbyists at the time of its creation. These sentiments include convictions that Buddhism should be supported and secured through law. Specifically, advocates of Sri Lanka's Buddhism Chapter aimed to "restore" to the island a condition of Buddhist solidarity and vitality, which, they claimed, existed prior to the island's colonial incursions. Through special legal protections for Buddhism, they hoped to "make Lanka's Buddhist people into a strong and unified body once again."[4]

However, the goals of constitution drafters should not be confused with the effects of constitutional provisions. Constitutions—like Buddhists—have multiple lives. In particular, they have a *pre-enactment life*, in which they function as aspirational objects of elite political negotiation, and a *post-enactment life*, in which they function as a collection of rules and procedures that are treated as authorized principles for guiding a country's shared political future. Religiously preferential constitutional provisions behave differently during each of these lives. Clauses that are designed to secure the integrity and wellbeing of one religious community may, once enacted as constitutional provisions, become vehicles for throwing that integrity and wellbeing into question.

This has been the case in Sri Lanka. Contrary both to the intentions of those who advocated for the Buddhism Chapter and to the expectations of those who opposed it, special protections for Buddhism in Sri Lanka's Constitution have not simply supported the pre-eminence of Buddhism on the island. Outside of courts, as an element of popular discourse, the Buddhism Chapter may function *expressively* as a banner of Buddhist supremacy; however, inside the island's courts, as an element of law's technical apparatus, the Buddhism Chapter has had a different set of effects. Rather than solidifying a "strong and united body" of Buddhists as legal lobbyists hoped, the

3. See Schonthal & Ginsburg in this volume.

4. All-Ceylon Buddhist Congress (2006 [1956]), p. 367.

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Buddhism Chapter has, in more than one case, aggravated and authorized splits among Buddhists. These splits have pitted one Buddhist organization against another, one monastic fraternity against another, and one Buddhist text against another. Splits have even occurred among trustees and incumbent monks within a single Buddhist temple.

The stakes of this argument extend beyond the shores of Sri Lanka. A close look at the unintended (and counter-intuitive) effects of Sri Lanka's religiously preferential Constitution might suggest a more general trend: constitutional provisions designed to ensure the *inter*-religious dominance of one tradition may, under certain circumstances, actually amplify *intra*-religious conflicts over the nature, boundaries, and doctrines of that tradition. Moreover, the Sri Lankan case might also encourage scholars to rethink the assumed polarity between religiously neutral constitutions (the secular-liberal prototype) and religiously preferential ones. Although opposed in their expressive dimensions, religiously neutral and religiously preferential constitutions may in fact generate similar church-state conundrums. That is, the case of Sri Lanka might indicate that, in the same way as perfect religious neutrality is impossible,[5] so too is perfect religious supremacy.

2. THE CASE OF VEN. WIMALAWANSA

In what follows, I consider the impacts of Sri Lanka's Buddhism Chapter through an investigation of a single court case, involving a Buddhist monk who tried to obtain a driving licence. The matter, although it may seem unremarkable, became an issue of some notoriety in Sri Lanka between 2004 and 2014, the years during which the case lingered in the island's courts, and it continues to be discussed regularly in the Sri Lankan press as this article goes to press. By studying this case, one sees not only why the case became a *cause célèbre*, but also how the language of Sri Lanka's Buddhism Chapter, along with the logic and protocols of constitutional litigation, came to transform a single, isolated affair into a highly acrimonious and highly public dispute over the parameters of proper Buddhism and Buddhist monastic life.

The case in question spanned ten years and involved multiple petitioners and respondents, along with numerous cycles of appeal and reversion from the Court of Appeals to the Supreme Court. The precipitating events were, however, quite straightforward. In May 2004, a Buddhist monk, Ven. Paragoda Wimalawansa Thero, chief incumbent of two Colombo-area temples,[6] applied for a driving licence at the Verahara office of the Commissioner of Motor Traffic (CMT). In an interview, as well in his legal submissions, Ven. Wimalawansa explained that he required a licence so that he could more efficiently carry out his regular ecclesiastical duties. These duties, similar to those of many monks in Sri Lanka, included preaching and receiving alms as well as a variety of other teaching obligations: Wimalawansa was an assistant principal and lecturer at a college 15 kilometres away.[7]

5. Agrama (2012); Sullivan (2005); Hurd (2015); Mahmood (2016).

6. The chief incumbent monk of a temple, or *vihāradhipati*, acts as both the highest ecclesiastical authority of that temple as well as the controller of that temple's assets and property. Wimalawansa declared his status as *vihāradhipati* for two temples: Sri Sakyamuni Vihāraya in Waskaduwa and Sri Jayawardhanaramaya, Wadugoda.

7. Interview with Ven. Wimalawansa Thero, 14 December 2014. He was Assistant Principal and Lecturer in Buddhist Civilization and Computer Studies at the Moratuwa Maha Vidyalaya, having acquired a number of advanced degrees, including a PhD, in order to do this.

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He also served as deputy secretary of a regional Buddhist organization[8] and taught at a variety of Buddhist Sunday schools (*daham pasal*).

Wimalawansa explained that, while he used public transportation regularly, he found it extremely difficult. Particularly frustrating was the fact that, as a monk, he was required to be at the temple for his only meal of the day, which, according to monastic law, had to be consumed before midday. This time-sensitive practice frequently clashed with late-running and erratic bus schedules. Taking matters into his own hands, Ven. Wimalawansa took steps to start driving himself. He attended driving classes and tried to acquire a car.[9] He even participated in a small Colombo-area monastic group called *Ape Urumaya* ("Our Heritage"), which was dedicated to addressing difficulties among monks including helping them get driving licences.[10] In June 2004, he met with an officer of the CMT to file his application for a driving licence, but was rebuffed; the officer explained that Buddhist monks could not be issued with driving licences.

Ven. Wimalawansa's legal submissions describe how, upset by the officer's decision, he returned to his temple and drafted several letters to the CMT officer protesting the refusal. When the officer failed to reply, Ven. Wimalawansa returned to the CMT office and requested to meet with the acting Commissioner of that office. Court records show that, after speaking with Ven. Wimalawansa, the acting Commissioner agreed to receive the monk's application on one condition: the Commissioner would first seek advice from the Ministry of Buddhist Affairs, the government officer charged with assisting temples and supporting Buddhism on the island. Consenting to this arrangement, Ven. Wimalawansa wrote three letters to the Ministry arguing passionately that obtaining a driving licence did not violate Buddhist teachings. Yet the letters failed to convince the Commissioner of Buddhist Affairs, who instead asked for an opinion from an island-wide monastic council consisting of senior Buddhist monks.[11] That council concluded that it was inappropriate for monks to obtain a driving licence. The Commissioner of Buddhist Affairs relayed the decision to the CMT, who relayed it to Ven. Wimalawansa. The monk's licence application would be refused. Buddhist monks, he was told, were not supposed to drive because doing so would violate traditional standards of monastic comportment. Therefore, by granting him licence, the office would be contravening the state's constitutional obligation to protect Buddhism.

3. WHOSE RULES? WHICH BUDDHISM?

In general terms, the events of the *Ven. Wimalawansa* case mirror those of many legal contests: it began with a particular grievance, which was then channelled through the courts, where lawyers, judges, and litigants construed arguments for and against that grievance in terms of broader abstract, legal principles. Of note in Ven. Wimalawansa's case is the array

8. The *śāsanarakshaka balamaṇḍalaya* (The Buddhism Protection Council) in Kalutara.

9. In his petition, the Thero explained that he had told the then-Principal of the Moratuwa Vidyalaya about his plans, who approached two separate deputy Commissioners of Motor Traffic on his behalf: one indicated that Buddhist monks were not eligible for drivers' licences, while the other indicated that licensing would be possible provided the Thera received a letter from the Buddha Sasana Ministry. On hearing this news, the monk wrote a letter to the ministry and met with the secretary. However, the secretary explained that he had no power in this matter.

10. Interview with member of Ape Urumaya, Ven. Bodagama Seelawimala Thero, Malabe, 14 December 2014.

11. Samasta Lanka Sāsanārakṣaka Maṇḍalaya (the All-Lanka Buddhism Protection Council).

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of parties and issues that became involved. On the one side was a Buddhist monk supported by roughly 15 other Buddhist monks citing, among other things, the state's constitutional obligations to Buddhism to argue that he should be granted a driving licence. On the other side were government administrators and other Buddhist monks invoking the same constitutional obligations to argue that Ven. Wimalawansa should not be issued with a driving licence.

That monks would argue with each other over the standards of Buddhism and monastic comportment is not surprising. Debates about what monks should and should not do have a long history on the island, as well as in other parts of the Buddhist world. A variety of Pali and Sinhala sources provide accounts of historical controversies (Sinhala: *vādaya*) over how the community of monks, the *sangha*, ought to act, dress, eat, preach, chant, and engage with texts.[12] In the nineteenth and twentieth centuries, Sri Lankan monks and lay Buddhists argued regularly about the appropriateness of monks engaging in "worldly" (*laukika*) practices, such as propitiating deities, teaching in public schools, practising Ayurvedic medicine, and doing astrology. Sri Lanka's colonial and, later, independent governments enacted a series of ordinances to regulate monks' abilities to acquire and alienate property. By issuing these ordinances, they aimed to prevent monks from treating monastic property as a source of wealth, while encouraging them to focus their energies on contemplation, preaching, and "other-worldly" (*lōkōttara*) affairs—those things associated with gaining a better rebirth and, ultimately, enlightenment.[13] Major reports on Buddhism produced in the 1950s by government and civil society groups eulogized this *lōkōttara* monastic ideal and devoted entire sections to outlining legal and institutional devices for preventing monks from participating in employment, politics, and other *laukika* matters. Since 1931, in fact, the state has enforced the barrier between monastic and secular vocations both ways: Sri Lankan law makes it a criminal offence for any person who has not been ritually ordained as a monk to wear orange monastic robes.[14]

This ideal of the serene, cloistered, other-worldly monk striving quietly for enlightenment did not go unchallenged. Throughout the twentieth century, influential and vocal groups of monks spoke out against what they saw as attempts to limit the influence of monks on society. In one important episode in the 1940s, monks from one of the island's most important monastic colleges publicly challenged the most powerful politician at the time, D.S. Senanayake, in demanding recognition of monks' right to participate in politics as lobbyists, campaign volunteers, and even (in some cases) political candidates.[15] Since that time, Sri Lanka's monks have asserted their rights to participate in almost all spheres of

12. Malalgoda (1976); Blackburn (2001).

13. Enlightenment is the common translation of the Pali word, *nibbāna*, the more precise meaning of which is "blowing out" or "extinguishing."

14. The exact term is to "hold himself out to be" a monk. Art. 42 of the Buddhist Temporalities Ordinance No. 19 of 1931. There have been legal debates on precisely who is a monk, e.g. *Saranajothi Thero v. Dharmarama* (1959) 61 NLR 76.

15. On 2 February 1946, this group, from Vidyalankara Pirivena, drafted a public declaration, called the "Declaration of the Vidyalankara Pirivena," which blamed "invaders from the West, who belonged to an alien faith" for popularizing the idea that the affairs of the *sangha* and the affairs of the nation should be kept distinct. Rejecting the idea that monks should stay aloof from politics, the document insisted: "We, therefore, declare that it is nothing but fitting for bhikkhus to identify themselves with activities conducive to the welfare of our people—whether these activities be labeled politics or not—as long as they do not constitute an impediment to the religious life of a bhikkhu." See Rahula (1974).

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society: from education, to social work, to politics. Since 2004, a number of robed monks have served as members of Sri Lanka's parliament.

Debates over proper monastic conduct persist in Sri Lanka, in large part, because there is no island-wide ecclesiastical body with the power to determine or enforce monastic discipline for all monks. Sri Lanka has no single, unanimously accepted monastic hierarchy, a national *sangha*, which might act as the final arbiter for Buddhist orthodoxy. Scholars of Buddhism will not find this entirely surprising. For most of Buddhist history, the ideal of a stable and centralized ecclesiastical hierarchy was achieved only incompletely and only through the heavy-handed efforts of powerful kings who, through a mixture of patronage and coercive power, worked to preferentially support one "pure" group while branding others as heterodox. Even in those cases, however, reform movements and other challengers continued to exist. The few national monastic hierarchies that one sees in the contemporary Buddhist world—such as the council of great monks (*mahathera-samakhom*) in Thailand—are of relatively recent origins. These hierarchies also emerged from (and continue to depend upon) acts of coercion and control by the state designed to prevent schism and deny legitimacy to other monastic groups who claim their own forms of autonomy and authority.[16]

In the Buddhist-majority countries of Southern Asia today, Sri Lanka's *sangha* remains more decentralized than most, containing many different claimants to Buddhist authority. Unlike the government of Thailand (and, to a lesser extent, the governments of Myanmar Cambodia and Laos), the Sri Lankan government has failed in its efforts to create a single, national council of monks representing all sects. Nor has it standardized or codified any of the many written and oral codes of conduct (*katikāvata*) to which the island's monks adhere.[17] A variety of monastic and lay groups in Sri Lanka claim the right to interpret and act on behalf of Buddhism. Among those with the broadest credibility are the two chief monks of the island's oldest monastic fraternities (the Malvatu and Asgiri branches of the Siyam Nikaya), located in Kandy, the site of the island's last Buddhist kingdom. These two *mahānāyaka-s*, or great leaders, control a disproportionately large number of the island's temples and temple-lands.[18] They also appear regularly in the newspaper consulting with politicians, civil society leaders, and other monks over matters of Buddhism. Yet monks often challenge their authority. In the last 200 years, dissatisfied monks have developed many new semi-autonomous chapters (*pārśava*) within the Asgiri and Malvatu branches of the Siyam Nikaya. Others have broken away from the Siyam Nikaya entirely to form new monastic fraternities.[19]

A variety of competing interests and interpretations of Buddhism define this decentralized monastic constellation. Principles of division include strong allegiances to particular senior monks, regional affiliations, and even caste identities.[20] Also in competition for authority over Buddhism are lay Buddhist organizations who claim for themselves the right to interpret

16. Tambiah (1976); McDaniel (2013).

17. There have been attempts in the past. Even now, at the time of writing, there exist attempts to standardize and give official legal status to the codes of conduct for each of the major monastic fraternities by way of Katikavata Act. A draft of this law was introduced to parliament on January 12, 2016 and has generated enormous controversy among monks and politicians.

18. *Vihārasthāna hā bhikṣūn vahansē saṃgaṇanaya* ("Census of Bhikkhus and Temples"), 2012. Obtained by the author from the Department of Buddhist Affairs in 2013.

19. On the development of these alternative monastic fraternities generally, see Malalgoda, *supra* note 12. On challengers within the Asgiri branch of the Siyam Nikaya, see Abeysekara (2002), pp. 174–94.

20. Abeysekara (1999).

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the texts of Buddhism directly.[21] Finally, there are government representatives—the president, the Commissioner of Buddhist Affairs, and others—who also at times speak and act on behalf of Buddhism.

In drafting the Buddhism Chapter, Sri Lanka's constitutional designers tried to accommodate the non-hierarchical nature of Buddhist authority by giving Buddhism the "foremost place" rather than calling it the "state religion." Where "state religion" (S: *rajyāgama*) seemed to imply substantial government power over Buddhism, the phrase "foremost place" eschewed any indication of where the proper sources of Buddhist authority lay. Drafters agreed to the phrase largely as a way to help sidestep contentious disputes among law-makers and lobbyists over how much authority, if any, the state ought to have over Buddhism and Buddhist monks.

4. BUDDHISM #1: VEN. WIMALAWANSA'S PRAGMATIC BUDDHISM

In making his petition, Ven. Wimalawansa was challenging certain conventions. Buddhist monks did not normally drive cars in Sri Lanka[22] and Buddhist texts said nothing about driving licences. Neither fact deterred him. In interviews and legal submissions, Ven. Wimalawansa argued for the necessity of adjustment and change within the Buddhist tradition. Buddhism, he argued, was not a static entity, but a dynamic one designed to develop and accommodate new situations. Defending this position in a written submission filed in 2008, Ven. Wimalawansa highlighted a well-known passage in the Pali story of the Buddha's death and attainment of final *nirvana* (or "extinguishing"), the *Mahaparinibbana Sutta*. In that story, the Buddha, on his deathbed, instructs his chief disciple, Ananda, as follows: after his passing, the monks should *hold onto the major principles* of monastic life but to "abolish the lesser and *minor* precepts."[23] However, the Buddha never specifies which principles are which. According to Ven. Wimalawansa, this is precisely the point: the Buddha never intended monastic life to progress unchanged, in frozen form, oblivious to or segregated from technological and cultural changes in society. Rather, Ven. Wimalawansa argued, the Buddha intended that monastic life should move *with* society, developing and adapting accordingly. Monks' driving, he suggested, was just that sort of adaptation that the Buddha had in mind.

Among the documents submitted with his petitions, Ven. Wimalawansa included a personal letter which he had written to the CMT in 2004. In this document, now a matter of public record, one sees very clearly this progressive view of Buddhism. In the letter, Ven. Wimalawansa insists that "there are some people do not want monks progressing forward (*idiriyaṭa yanavā*) with society. What they want is to hold monks back in the 6th century while they go into the 21st century."[24] These people, Ven. Wimalawansa argues, do so in the name of defending culture (*saṅskṛtiyak*) and custom (*sampradāyak*). Yet he describes culture and custom as

21. E.g. Kemper (1978), pp. 212–35.

22. Although Ven. Wimalawansa adduced some evidence (a newspaper article) of another driving monk, the fact remained that to date this was an anomaly in Sri Lanka. Evidence was submitted that Buddhist monks drive cars in Malaysia, Singapore, the US, and elsewhere.

23. Emphasis mine. Written Submission from Petitioner-Respondent Ven. Dr Paragoda Wimalawansa Thero in *SC 84/2007 (SC/Sp.LA/ 240/2007, CA Writ. App. 1978/2004)*, submitted on 23 January 2008, p. 2.

24. Letter Submitted as Evidence (P4) from Ven. Dr Paragoda Wimalawansa Thero to Commissioner for Motor Vehicles, dated 1 December 2004.

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worldly (*laukika*) in nature and therefore disconnected from, rather than binding on, *lōkōttara* vocation of monks.[25] Monks, Ven. Wimalawansa urges, must remain above culture and custom in order to help guide society towards what is good (*yahapat*). Ven. Wimalawansa reports that true monks eschew custom and culture for broader concerns with good and bad (*honda naraka*), virtue and vice (*yahapata ayahapata*), and what is to be done and not to be done (*kaḷa yutta nokaḷa yutta*). Ven. Wimalawansa expressed an understanding of Buddhism in which monks helped to transform society and culture; in this project, minor monastic rules and customs could be subordinated to the heroic pursuit of larger, other-worldly (*lōkōttara*) goals.

In Ven. Wimalawansa's vision of Buddhism, clinging to static conventions not only undermined the project of virtuous leadership; it transgressed the basic principles of the Buddha's teaching itself, the *dhamma*. In his original letter to the Commissioner of Motor Vehicles written in 2004, he asserts:

> In the present era, a monk driving a vehicle is not contrary to the dhamma (*dharma virōḍha*). Nor is it against the code of monastic discipline (*Vinaya*). In fact, [not permitting it] would contravene dhamma and Vinaya. The teaching of the Buddha is a based on the principles of the *trilakṣana* [the three marks of existence]. Buddhism teaches primarily that everything is impermanent and changing and that nothing in this world is permanent. [It teaches] that with every moment all things are changing. [It teaches] that the essence (*svabhāva*) of all things is becoming, existing and perishing …. A monk will not lose [his] monkliness (*bhikśutvaya*) for driving a vehicle. No evil (*pāpā*) would accrue. There [would be] no violation of the Vinaya rules.[26]

In his letter, Ven. Wimalawansa points out that the Buddha, himself, emphasized the inevitability of change. Like all things in the world, the monk reasoned, monastic discipline (Vinaya) was also subject to change. Drawing upon Vinaya texts, Ven. Wimalawansa argued that the Buddha had asked monks to reject only four particular types of activities: the major *pārājīka* offences of the Vinaya, which normally lead to a monk's expulsion from the order. These serious offences include sexual impropriety, killing a person, stealing, and improperly claiming spiritual attainments. Other guidelines for monastic conduct, the letter implied, could be changed and re-evaluated with changing times.

Ven. Wimalawansa's written submissions presented Buddhism as a pragmatic tradition, a realistic philosophy (*yathārtha darśanaya*) that recognized the need to be flexible in light of changing realities. This pragmatic understanding of Buddhism appeared prominently in another letter that Ven. Wimalawansa wrote to the Commissioner of Buddhist Affairs, which he submitted as evidence. Here, Ven. Wimalawansa argued that changing technological conditions necessitated changing approaches to thinking about Buddhist orthopraxy. For monks to survive in the contemporary age, they had to adopt modern ways of life. In the past, Ven. Wimalawansa insists, monks were supported completely by the laity. Today this support had diminished, requiring monks to earn income, perform maintenance around the temple, and, in some cases, even cook their own food.[27] Ven. Wimalawansa argued that it

25. On the significance of the terms *laukika* and *lōkōttara*, see Holt (1991), pp. 3–26.

26. Letter Submitted as Evidence (P4) from Ven. Dr Paragoda Wimalawansa Thero to Commissioner for Motor Vehicles, dated 1 December 2004.

27. The idea of monks cooking their own food is a particularly provocative one insofar as the defining act of Buddhist monastic life is, in fact, begging for food. The Pali term used for monk, *bhikkhu*, literally means one who "desires a share," meaning one who begs.

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was these modern-day burdens that required his being able to drive. Monks like him were no longer simply full-time specialists in *dhamma*, ritual, and self-cultivation; to sustain themselves, they had to work as teachers, administrators, even cooks. They reluctantly took on *laukika* commitments and those commitments were necessary to sustaining their *lōkōttara* pursuits. According to Ven. Wimalawansa, for ordinary monks living in ordinary Buddhist temples—temples without the wealth and resources of the island's *mahānāyaka*-s—driving a car was not a luxury, but a practicality.

Ven. Wimalawansa's petition gained backing from a variety of monks and Buddhist laypersons from around the island. He submitted letters from these supporters to the court as evidence. In one letter, the head monk of one Buddhist "protection" association argued that monks' driving constituted a logical next step in a series of historical progressions through which monks adjusted their lives to modern technology. When motor cars were first imported, he recalled, people debated whether or not monks should be allowed to ride inside them; today, monks frequently ride in them. He also pointed out that similar debates had taken place decades ago over the question of whether televisions should be permitted at Buddhist monasteries; today they are common. In both cases, new technologies changed monastic life and had become regular features of modern monastery life. Those features helped modern-day monks manage their busier schedules.[28] Along with other supporting letters from monks, the head monk's letter implored the court to look outside the customs of Sri Lanka: monks in other modern countries—Malaysia, Singapore, and the US—regularly operated automobiles.

Many of Ven. Wimalawansa's supporters defended monks' driving on economic grounds. One letter from Ven. E. Sumanasiri Thero, the senior monk and principal of a monastic training centre (*pirivena*) near Kurunegala, argued that, by denying monks the ability to drive cars, the Sri Lankan state was, in fact, placing a greater financial burden on local Buddhist communities. Lay Buddhists were forced to pay costly car-hire fees in order to transport monks to their residences for rituals.[29] Ven. Sumanasiri argued that, even when the temples owned cars as part of their monastic property, the cost of employing a driver was often prohibitively expensive, meaning that some of those vehicles were not used.[30] The texts of supporting letters and legal submissions indicate that these economic reasons weighed heavily on the minds of those who supported Wimalawansa. Interviews with the Buddhist monks who joined Wimalawansa's case as co-petitioners confirmed this further: in their eyes, driving licences might be unnecessary for monks living in wealthy monasteries, but they were essential for monks at less prosperous temples.[31]

5. BUDDHISM #2: OPPONENTS' TRADITIONALIST BUDDHISM

Ven. Wimalawansa's submissions evoked a vision of Buddhism as an adaptive religion, which, while oriented around certain core principles, accommodated and responded to the

28. Letter Submitted as Evidence (P22) from the *Mahiyangana Śāsanārakvidence (P22) from* (Mahiyangana Board of Authority for the Protection of Buddhism) to Ven. Wimalawansa Thero, 27 July 2005.

29. Letter Submitted as Evidence (P25) from Ven. E, Sumanasiri Thero, 23 November 2004.

30. Letter Submitted as Evidence (P20) from Ven. Mahakumbukgollawe Rathanapala Thera, 14 October 2004.

31. Interview with Ven. Diyagama Somarathana Thero, 14 December 2014, Hokkandara; Ven. Bodagama Seelawimala Thero, Malabe, 14 December 2014.

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changing conditions of modern society. Ven. Wimalawansa's opponents cast Buddhism in different terms. Their submissions portrayed Buddhism as a more structured tradition, which was defined by an opposition between worldliness and other-worldliness (*laukika* and *lōkōttara*) and a strong contrast between lay and monastic life. These ideas appeared clearly in the legal briefs filed by the multiple parties who served as respondents to Ven. Wimalawansa's petition. These parties included the CMT and the Commissioner of Buddhist Affairs (represented by the Deputy Solicitor General) as well as two important groups of senior monks and the council of lay trustees, or Dāyaka Sabha,[32] of one of Ven. Wimalawansa's own temples.[33]

For those who opposed Ven. Wimalawansa, driving monks posed a serious threat to the purity and continuity of Buddhism in Sri Lanka. In a letter to the Minister of Buddhist Affairs, submitted as evidence, the lay trustees of Ven. Wimalawansa's temple implore:

> Honorable Minister, the only place in the entire world where Buddhism exists in its uncorrupted (*nirmala*) form is here on this tiny island; [therefore] care has to be taken by Buddhists [here] to keep this uncorrupted form of Buddhism for a very long time. It is mainly because of their restrained and calm demeanor (*saṅsun iriyav*) and their attractive behaviour (*ākarṣanīya aevatum paevatum*) that Buddhist monks gain the faith (*bhaktiya*), loving respect (*gauravādaraya*), faith and admiration (*pahan sita*[34]) of the Buddhist people. If this ultimate bond (*uttarītara baendīma*) between the Mahasangha (great community of monks) and lay people is strained, then without a doubt the supreme status of Buddhism would topple in no time. If the Mahasangha begin to drive vehicles, then there is a risk of the lay people loosing the confidence (*pahan bava*) they had for them.[35]

The letter presents the state's constitutional duties to protect Buddhism as duties to maintain a pure tradition—a tradition that was "uncorrupted" (*nirmala*) in Sri Lanka alone. In purposeful contrast to Ven. Wimalawansa, the trustees asserted that the key to Buddhism's survival on the island was not its adaptability, but the continuity of enduring bonds between monks and laity. These bonds were, in turn, based on fragile relationships of exchange: monks earned the respect and admiration of laypeople by virtue of their ability to exude calmness, equanimity, and disciplined detachment from the world[36]; the laity gained merit and wisdom by supporting monks. In this vision of Buddhism, other-worldly (*lōkōttara*) and worldly (*laukika*) concerns existed in a relationship of tension. Worldliness threatened the *sangha* and this, in turn, put the reciprocity between the *sangha* and the laity, which was the basis of Buddhism, in peril. Rather than Buddhism guiding and responding to changes in society, Buddhism—particularly the pristine Buddhism of Sri Lanka—was something to be preserved in a pure form in the face of a changing society.

This understanding of Buddhism gained support from an influential group of six senior scholar-monks who had written to the Commissioner of Buddhist Affairs condemning

32. Petition of D.P. De Silva, F.T. de Silva, A. W. de Silva, and W.P. de Silva in CA Writ 1978/2004, 19 July 2005.

33. This point was disputed in the case. Ven. Wimalawansa denied that they were indeed trustees.

34. This phrase echoes the Pali word *pasāda*, an important term with definitions ranging from happiness, to faith, to confidence, to emotional attachment, to joy. Thank you to Asanga Tilakaratne for pointing this out to me.

35. Letter Submitted as Evidence (R6) from D.P. De Silva, F.T. de Silva, A. W. de Silva, and W.P. de Silva to Min. of Buddhist Affairs, 18 October 2004.

36. One of the senior monks (*Mahānāyaka*) who opposed Ven. Wimalawansa explained to me in an interview that monks' behaviour ought to be *hikmīma*, meaning disciplined, tamed, restrained. Interview 20 December 2014, Colombo.

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Wimalawansa's petition (which had, by this time, gained widespread public notoriety). All of the monks were chief prelates or deputy-chief prelates, *mahānāyaka*-s and *anunāyaka*-s, of particular monastic fraternities. They were also board members of one of the most important and prestigious Buddhist projects on the island: the publishing and critical editing of the Pali Tipitika, the "three baskets" of wisdom that form the core of Theravada Buddhism's textual tradition. The board members wrote both as senior monastic figures and as recognized authorities on monastic comportment, or Vinaya (which formed one of the three baskets of wisdom). In their letter,[37] the board members acknowledged Ven. Wimalawansa's argument that there was no specific rule against driving motorcars. However, they countered, the absence of this particular prohibition did not mean that monastic life should take up all the conveniences of modern technology. Rather, they argued, one ought to consider the matter of driving licences in light of another broad principle that ran centrally through the entire Vinaya corpus: the concern with eliminating any negative public image of monks in society. Thus, they argued:

> [*Vinaya* rules] were assigned as a result of popular displeasure over the unsuitable conduct [*nogaeḷaepena kriyā*] of monks in society. Public displeasure created by these actions can be seen in many of the background stories in the Vinaya precepts. For example, in [phrases such as the Pali] "*Manussa ujjhayanti*" [the people were angry], "*Kheeyanti*" [they were frustrated], "*Vipachenti*" [they were irritated]. These days, as well, a Buddhist who is devoted to the Sasana wouldn't approve Buddhist monks' driving. In elaborating the precepts for monks, Lord Buddha took into consideration several social criteria (*samāja nirṇāyaka*) Among these, there are ten reasons highlighted within the Vinaya Pitaka. Included among these are the following two: please[38] (*paehaedīma*) those [laity] who are not pleased and [please] further those who are already pleased ("[Pali] *appasannānaṃ vā pasādāya, pasannānaṃ vā bhīyobhāvāya*").[39]

As with the above letter from the Dāyaka Sabha, the Tipitka Board's letter highlighted not only the importance of conserving long-standing conventions of monastic conduct, but the signal importance of monks' duties to conduct themselves in ways that please and impress the laity. If the Dāyaka Sabha warned that driving monks would breach the reciprocity between laity and the *sangha*, the Tipitaka Board made an even stronger claim: keeping and maintaining the respect of the laity was one of the *key* organizing principles of the Vinaya Pitaka itself. Therefore, driving monks threatened not only individual rules, but the entire spirit and purpose of monastic law. Allowing monks to drive would not only damage the status of the *sangha* in society; it would fragment Buddhist life and, in so doing, create the conditions for "various forces" (*vividha balavēga*) to rise up (*naengenavā*) against Buddhist society.[40]

37. Letter Submitted as Evidence (R12) from Tripitaka Compilation Board to Commissioner of Buddhist Affairs, 16 November 2006.

38. Also: to gladden, render happy; to induce trust and affection in someone or something.

39. Letter Submitted as Evidence (R12) from Tripitaka Compilation Board to Commissioner of Buddhist Affairs, 16 November 2006. In this quotation, all translations in brackets are added by the author; all other translations and Pali phrases outside of the brackets (including those in parentheses) are included in the original.

40. The logical links between monks' reputation and their driving are somewhat obscure in the petition itself. However, in an interview from December 2014, one member of the Tipitika Board explained the link in terms of the requirements of bodily comportment for monks. In his explanation, a defining feature of monastic life is its emphasis on decorum and its forbidding of behaviours such as running, dancing, gobbling food, touching women, etc. He saw driving in this light: "Let it be anywhere in the world, monks driving is unacceptable and wrong. Monks should have discipline (*hikmīma*). When a monk gets a license and starts to drive his disciplines would all be gone. If any damage happened to the tire for instance, the monk has to fix that which in turn is a mark of no discipline …. Acceleration,

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6. CITIZEN OR BHIKKHU?

Ven. Wimalawansa's case was not just a matter of Buddhist law. Had this been the case, it might have been addressed by one of the island's monastic tribunals (*adhikaraṇa sabha-s*) or executive committees (*karaka sabha-s*) that normally hear plaints and make rulings about monastic behaviour for individual fraternities. These intra-fraternity rulings are not normally enforceable by the Sri Lankan government unless they involve the control of temple property,[41] in which case the initial monastic decision may be appealed or reheard by civil courts. Civil courts then adjudicate those cases in accordance with a specially designed statute (called the Buddhist Temporalities Act) and a special strand of Sri Lankan case-law called Buddhist Ecclesiastical Law.[42]

Ven. Wimalawansa's case was different. It involved not only questions concerning the interpretation of Buddhism, but questions concerning the links between Buddhist law and constitutional law. If Buddhist authority resided with monks—a point on which both sides appeared to agree—what role did state agents (in this case, non-monks) have in enforcing Buddhist norms? Buddhist monastic life employs elaborate rituals, habits of dress, and codes of conduct to distinguish monks from laity. Sri Lankan statue law even makes it legal offence to "pass oneself off as a monk." How did the monk-lay distinction fit with a constitutional framework that *also* espoused equality under the law?

The question of whether monks are considered citizens for the purposes of state law has occupied Buddhists throughout the world. The question arises in reference to a variety of issues. In Theravada-majority countries,[43] all of which give special constitutional status to Buddhism, special laws often apply to the education, finances, and registration of Buddhist monks. In Sri Lanka, for example, monks who are found guilty of criminal offences must disrobe before going to prison. That is, they must become normal citizens again before undergoing penal sanctions. From the 1940s to the early 1970s, throughout most of the Buddhist world (although not in Sri Lanka), Buddhist monks (and in some cases nuns) were banned from voting.[44] Two countries—Thailand and Myanmar—still enforce this rule today. In designing these laws, political elites posited a necessary opposition between the legal status of monks and that of normal citizens. As U Nu, the former prime minister of Burma, succinctly put it, "a [monk] is not like a man"; his concerns ought not to be with exercising his rights as a citizen, but with "self-purification … discipline and penance"—activities which do not sit easily alongside the world of political engagement.[45]

Was Ven. Wimalawansa a monk or a citizen? Ven. Wimalawansa's case generated opposing answers to that question. In his submissions, Ven. Wimalawansa made it clear that his status as a monk was distinct from, but did not nullify, his status as a citizen. He argued that monks were both clerics *and* citizens; therefore, they ought not to be burdened more than other citizens nor deprived of rights enjoyed by other citizens:

(F'note continued)
breaking, changing a tire are occasions where monks losing their disciplines. In Sri Lanka monks are highly respected and once you sit on a driving seat that is very inappropriate." Interview, 20 December 2014.

41. Schonthal (2014).

42. For a very helpful collection of these cases, see Weerasooria (2011).

43. This list includes Myanmar, Thailand, Laos, Cambodia, and Sri Lanka.

44. These policies remain in place in Myanmar and Thailand today, with reversals having occurred following periods of communist rule in Laos and Cambodia. Larsson (2015); see also Larsson's contribution in this volume.

45. Nu (1954), pp. 91–2. This quote was suggested to me by Larsson, *ibid*.

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> I state that I applied to the Commissioner of Motor Traffic in the capacity of a Sri Lankan citizen for a driving license and not as a Buddhist Monk. I state that if the Petitioners were concerned about Damma [sic] and Vinaya being violated by me by obtaining a license then they should take steps regarding me continuing to be a monk urging the same before appropriate [monastic] authorities …. I respectfully state that just because I am monk [sic] I cannot be prevented from enjoying my rights guaranteed to me by the legislature of this country … by way of the Motor Traffic Act. I further state that the Petitioners or any other authority has no right whatsoever to deprive me of my rights that has been granted to me by the legislature of this country …. I state there is no law in Sri Lanka to cancel a driving license obtained by a Buddhist Monk [either] before becoming a monk [or] consequent [sic] to him becoming a monk. Therefore I reiterate that I have been deprived of my rights.[46]

In Ven. Wimalawansa's view, monks interacted with state services and state laws such as the CMT not as representatives of Buddhism, but as citizens like anyone else. In Ven. Wimalawansa's estimation, to be treated only as a representative of the island's protected, "foremost" religion was to be held to an unfair (and extra) standard of scrutiny.

This argument about the legal status and identity of Buddhist monks appeared clearly in the submissions made by Ven. Wimalawansa's monastic and lay supporters. A letter from Ven. Dankande Bodhiwansa Thero, director of a social work organization and chief incumbent of a temple near Colombo, accused the CMT of violating Ven. Wimalawansa's "human rights"[47] and pointed out that there is no separate category of persons in law for Buddhist monks. The letter also called attention to the fact that, since 2004, Sri Lankan monks had served as members of parliament. A letter from another senior monk argued that "a monk too is a citizen of this country and he is subjected to all the laws of this land," including requiring him to pay taxes on income.[48] A supporting letter from a police Sargent from Kandy further made the point: as a law enforcement officer, he assured the court that no special legal limitations applied to monks or other religious leaders when it came to the operation of motor vehicles.[49]

According to the submissions of Ven. Wimalawansa and his supporters, monastic norms and state law were distinct; and monks, by virtue of their simultaneous status as clerics and citizens, were subjects of both.[50] Yet, these submissions suggested, the structures of law were separate, not overlapping. State officials—who were lay people—had no authority to defend or enforce monastic law. They also had no right to deny monks' rights as citizens and subjects within state law. When monks approached agents of state authority (such as the CMT), they did so as unmarked citizens, not as subjects of a special type. Those agents were, therefore, required to treat them as they would any other citizen and not apply extra burdens to them.[51] Monastic law

46. Submission filed (in English) by Ven. Dr Paragoda Wimalawansa Thero in CA 1978/2004, 27 February 2006, Par. 10.

47. Letter Submitted as Evidence (P23) from Ven. Dankande Bodhiwansa Thero to Ven. Wimalawansa Thero, 1 July 2005.

48. Letter Submitted as Evidence (P25) from Ven. E, Sumanasiri Thero to Ven. Wimalawansa Thero, 23 November 2004.

49. Letter Submitted as Evidence (P26) from N.W.A.R.M.U.E.L. Weerasanghe to Ven. Wimalawansa Thero, 29 October 2004.

50. As one of Ven. Wimalawansa's co-petitioners put it in an interview: lay people only register once with the government (as citizens), but monks register twice—once at birth (as citizens) and once when they are ordained (as monks). Interview with Ven. Diyagama Somarathana Thero, 14 December 2014, Hokkandara.

51. "It is respectfully submitted that the Petitioner maintains that it is not the task of the courts to decide the matters pertaining to Vinaya as it is outside the domain of Court. The Motor Traffic Act should not be interpreted in light of Vinaya Pitakaya, which would be a very dangerous approach." Written Submission of Ven. Paragoda Wimalawansa Thero, CA 1978/2004, dated 24 February 2014, p. 25.

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and Buddhist norms were therefore doubly out of bounds to state agents according to these submissions. Not only did state officials have a positive duty to uphold impartially all state laws; they also had no authority to pronounce on the activities of Buddhist monks or the principles of Buddhist doctrine. In this way, Ven. Wimalawansa's position touched on a variety of hallowed principles for jurists and monks: for jurists, it spoke of nondiscrimination, equal enforcement of law, and rights of citizens; for monks, it spoke of clerical autonomy and the idea that Buddhist law ought to be the province of monks rather than bureaucrats.

Ven. Wimalawansa's opponents concurred that state laws and Vinaya laws ought to remain separate, yet they refused the idea that one could choose which one applied. Monks, they insisted, were always *primarily* subjects of Vinaya because Vinaya and state laws were not parallel systems of law, but overlapping ones. When it came to the conduct of monks, Vinaya laws were the primary structures of regulation; fundamental rights guarantees did not nullify Vinaya obligations. A letter from the four head monks of the island's four largest monastic fraternities explained this position through analogy to the work of judges and lawyers: just as judges and lawyers were bound by stringent professional codes of conduct, which did not apply to ordinary citizens, so too were monks subject to Vinaya rules.[52] The senior monks of the Tipitaka Compilation Board took a similar approach, arguing that the matter of monks driving cars fell firmly within the jurisdiction of monastic law, not national or international human rights. "The *laukika* path [of human rights law] is one thing," they wrote, "the *lōkōttara* path [of Buddhist monks] is another."[53] There was no conflict of laws. Vinaya rules, alone, applied to matters of monastic comportment, not domestic or international law.

Where state law did come into play, in the senior monks' estimation, was in the obligation under the Buddhism Chapter of the Constitution to protect the standards and rules of Buddhism. The four senior monks contended that the state had a clear constitutional obligation to countervail what were obviously the "anti-Buddhist activities (*śāsana virōdha kriyā*)" of Ven. Wimalawansa. The Tipitika Board argued that, if the CMT ignored the conventions of Buddhist monastic law and treated Ven. Wimalawansa as it did all citizens, he would be undermining his constitutional obligation, as an officer of the state, to protect Buddhism because he would be "making un-Buddhist and un-monastic conduct into [something] approved by law itself" (*aśāsanika aśrāmaṇika kriyāva sammata karīma nītiyen ma*)![54]

7. THE COURT'S DECISION

Final judgment on Wimalawansa's case came in March 2014. The verdict was handed down by a unanimous two-judge bench of the Court of Appeals. In the judgment, written by Justice Anil Goonaratne, the court rejected Ven. Wimalawansa's application in strong and decisive terms.

52. Letter Submitted as Evidence (R11) Letter to Commissioner of Buddhist Affairs from the following four Mahānāyakas: Thibbaṭuwawē Śri Siddhartha Sumaṃgalābhidhaana Mahānāyaka Sthavira of the of the Malwathu Maha Vihāraya; Udugama Ratanapāla Buddharakkhitābidhāna Mahānāyakas Sthavira of the Asgiri Maha Vihāraya; Davuldena Ñanissara Uttarītara Mahānāyaka Sthavira of the Amarapura Mahā Nikāya; Wevaeldeṇiyē Medhalaṃkarābidhāna Mahānāyaka Sthavira of the Rāmañña Mahā Nikāya.

53. Letter Submitted as Evidence (R12) from Tripitaka Compilation Board to Commissioner of Buddhist Affairs, 16 November 2006.

54. *Ibid.* This was, of course, the starting point of the conflict to begin with: the officer at the CMT deferred the decision about Ven. Wimalawansa's licence application to the Commissioner of Buddhist Affairs because of concerns over his constitutional obligations to protect Buddhism—a posture that recognizes both the distinctiveness of Buddhist and state law and the need for the second to buttress the first (see below).

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The logic of judgment reflected the arguments of Ven. Wimalawansa's opponents: the court agreed that the state had a constitutional obligation to protect the uncorrupted (*nirmala*) Buddhism of Sri Lanka, and it affirmed the *dicta* of the *mahānāyaka*-s (senior monks) and the Tipitika Board. It also upheld the idea that the state ought to enforce Vinaya prohibitions. As it related to the question of monks' identities as citizens versus as representatives of Buddhism, the court clearly indicated that a monk's civil and legal status was different to that of a layman.

The court's decision aligned with the asymmetries of power that formed the backdrop of the case. Although a variety of monastic and lay supporters backed Wimalawansa's petition, the idea of driving monks was opposed by government officials (represented by the Attorney General) and by some of the island's most influential monastic leaders. Moreover, Ven. Wimalawansa was a single monk of limited means (his attorney took the case pro bono) challenging a long-standing *status quo*. In its opinion, the court validated the arguments of Ven. Wimalawansa's opponents in decisive language, even insisting, in one particularly strong flourish, that "a Buddhist Monk [capitalized in the original] cannot do and should be prohibited from doing any and every act, done by a layman, in his daily routine life."[55] The opinion portrayed monastic life as not just different from lay life, but "inconsistent to [sic] that of a lay person."[56] For the court, perhaps even more than for the Tipitika Board or the *mahānāyaka*-s involved in the case, "the life of a Buddhist Monk in its pure form, is incompatible with lay life."[57] If Ven. Wimalawansa was not prepared to live in that way, the court insisted, "it is better [for him] to give up robes."[58]

The court's judgment provided a temporal endpoint to legal dispute, but it also generated new lines of tension. One reason for this is that, in deciding the matter, the court exercised its own authority to speak for Buddhism. In legitimating his judgment, Justice Gooneratne (writing for the court) referred partially to the letters written by the senior monks against Ven. Wimalawansa's petition, but he also relied heavily on two other types of sources: scholarship and case-law from former Sri Lankan Supreme Court judges and his own interpretations of Buddhist texts. In his use of these varied sources, Justice Gooneratne displayed confidence in his role as interpreter of Buddhism. Gooneratne's opinion discussed Buddhist philosophy and offered exegeses of the doctrine of the "middle way."[59] Drawing upon a book by a former Sri Lankan justice, C.G. Weeramantray, called *Tread Lightly on the Earth*, Justice Gooneratne wrote about the importance of morality, wisdom, and mental cultivation. Analyzing nearly 20 lines from the Digha Nikaya as well as three long sets of verses from the Dhammapada, the judgment considered the meaning of the Buddha's eightfold path.[60]

55. *Venerable Paragoda Wimalawansa Thero and Others v. Commissioner of Motor Traffic* (2014), unreported. Judgment with author, p. 27. This inconsistency was glossed further by quoting the dissenting opinion in the *Sumana* case referred to above: "The life of a Monk, as laid down by the Buddha, is thus at complete variance with that of lay life. The spirit and flavour of the Dhamma is one of renunciation of giving up worldly affairs, and strenuous exertion for the development of virtue and mental developments. And it is in the secluded and monastic life as a monk that the Dhamma can be practiced to the full .... The institution of the Sangha was established by the Buddha as have [sic] for those who wish to get away from lay life and who need the optimum conditions for pursuing the arduous life of virtue, meditation and wisdom demanded by the Teaching. A person who enters the Order should be mindful of this change of status and recall this difference as often as possible." *Ibid*., pp. 19–20: per Wanasundera J. vide Rev. Sumana Thero's case 2005 (3) SLR, 390.

56. *Ibid*., p. 27.

57. *Ibid*., p. 27.

58. *Ibid*., pp. 27–8.

59. *Ibid*., p. 21.

60. *Ibid*., p. 22.

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The result was that, in the end, the court's decision (its form, content, and authorial voice) seemed to contradict certain core convictions of all the parties involved in the matter: it placed a layperson in the position of explaining Buddhist doctrine to monks; it positioned a *laukika* institution as an authority on the requirements of a *lōkōttara* life.

The fault was not Gooneratne's. Almost all of the legal experts with whom I spoke described Justice Gooneratne as a respected and serious judge and a pious Buddhist.[61] While his judgment indulges in certain flourishes of Buddhist scholarship, it also reflects the predicament in which the court found itself: constitutional litigation placed Gooneratne, writing for the court, in the position of acting as a Buddhist expert. Buddhism Chapter litigation forced the court to arbitrate a dispute between two groups of monks with distinct interpretations of the tradition. This fact was not lost on those who won the case. Even the most outspoken critics of Ven. Wimalawansa, the lay trustees associated with one of his temples, felt considerable discomfort with the outcome. The following is an excerpt from a group interview conducted nine months after the verdict:

> Q: Do you see any problem with the court [in its decision] telling a monk [Ven. Wimalawansa] what to do?
>
> A: We are terribly hurt by this. We don't like any member of the laity, the court or even the king telling monks what to do. In this regard monks should behave in such a way that avoids such circumstances. It is a mark of disgrace for monks. Within the social hierarchy monks occupy the highest position, even above the king. There is even a story of a Samanera (novice monk) who sat on the king's throne …. [Monks] are not given this type of respect at the courts; they are treated as lay people.
>
> Q: You went to court to protect Buddhism. But going to court is also a threat to Buddhism because it allows the judge to act as an authority over Buddhism?
>
> A: Yes, we agree with you. That's what we said. But we had to go to court because of this monk's misconduct. Monks should behave in such a way that prevents them from going to court. [However] Ven. Wimalawansa should have at least sat in the front row. He did not even do that. We were the ones who sat in the front row of the court and he sat behind us. We didn't like this …. At the same time we needed to protect the [Buddha] Sasana as well.[62]

The interview excerpt reveals the exasperation felt by participants on account of deep incongruities among the goals and effects of litigation. Pursuing constitutional protections for Buddhism generated disconcerting dilemmas of authority and orthodoxy for the Buddhists involved in the case. By using law to protect certain features of Buddhism, participants ended up violating other features Buddhism. It did not matter who won the case. Both sides would have faced inevitably the same double-bind.

8. CONCLUSION: THE IMPOSSIBILITY OF PROTECTING BUDDHISM

Jacques Maritain, one of the architects of the United Nations' Universal Declaration of Human Rights, reputedly quipped that the drafters of the Declaration agreed on its contents only on the condition that no one asked them about why they agreed.[63] That is, they could

61. Ven. Wimalawansa was not as confident. He voiced distinct concern about the politicization of the courts under the Rajapaksa regime and felt had made up its mind before even hearing the evidence, based on the unusually rushed timeframe from the final hearings to the eventual judgment. Letter from Wimalawansa to Author, 14 August 2015.

62. Group interview with Dayaka Sabha, Waskuduwa, 14 December 2014. Mr D.P. de Silva speaking.

63. As cited in Glendon (2001).

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agree on particular principles but not on the meaning of or rationale behind those principles. The same could be said about drafters of the Buddhism Chapter: those who incorporated special protections for Buddhism into the Constitution saw this as a good thing, even if they did not agree on precisely what they were protecting. The problem is that vague consensus around abstract principles works only as long as those principles remain abstract. Once they are defined in courtrooms, the very same words that serve as signs of agreement become sources of interpretive competition.

From one perspective, this is nothing new. Law generates these conundrums all the time: people disagree about the meanings of freedom, equality, neutrality, and a variety of other constitutional principles. Judges and legislatures interpret the meaning of those principles over time, to suit the times. The inevitable ambiguity of language is managed or mitigated through the interpretive discipline of *stare decisis* and, in some cases, statutory definitions.

Yet, religion, or Buddhism, is not quite the same as abstract ideas like equality or freedom. Religion and Buddhism suggest not simply aspirational social conditions, but a shifting amalgam of institutions, ideas, persons, texts, properties, practices, and customs. In short, they imply things both abstract and concrete. Unlike freedom or equality, legal, religious, and popular discourses treat Buddhism (and, often, religion) as an agent: an observable thing in the world that, like a citizen, can be acted upon, harmed, or protected. As used by parties in the *Ven. Wimalawansa* case, Buddhism has a distinct solidity to it, a flavour of personhood, with all the complexities that implies.[64]

When it comes to special constitutional protections for religion, the problem is not simply one of semantic ambiguity and competing interpretations. A more general dilemma stands at the heart of special constitutional protections for Buddhism or other religions. On the one hand, these clauses claim to secure the protection or primacy of one set of (religious) institutions. On the other hand, they do so using mechanisms that perform the supremacy of another set of (state) institutions. Religiously preferential constitutions purport to create an arrangement of mutual support between presumptively separable elements. However, this support can never be perfectly achieved because, in constitutional regimes, state-legal authority constitutes itself not only as that which protects religious authority, but as that which defines it: if constitutions announce the state as protector of religion, constitutional courts require the state to define the nature of the religion to be protected. In mirror fashion, claimants to religious authority justify their status within and autonomy from these state-legal regimes by asserting a privileged access to alternative sources of knowledge and power—sources that, by definition, exist outside of the nation-state. Therefore, in the absence of pure and uncontested theocracy—a very rare feat—constitutional protections for religion cannot but transgress certain features of religious membership, authority, or practice. In enforcing constitutional protections for religion, states can never hand off responsibility for religion to religion: in protecting and empowering (what they determine to be) legitimate representatives of religion, state agents necessarily transgress the very claims of autonomy and authority on which those representatives depend.[65]

64. That idea that Buddhism is an agent that has its own "life" is not entirely an artifice of law. This idea can be found within Theravada Buddhist textual traditions. The most common equivalent for Buddhism in Pali and vernacular Theravada texts is *Sāsana*, a term that refers to the entire dispensation of the Buddha, his entire doctrinal and material legacy. Buddhist texts describe that dispensation as having its own finite lifespan in the world. Over the great spans of cosmic time, the Sasana comes into and out of existence much like a human life. Sources differ on how long the lifespan is, but 5,000 years is a common figure. Turner (2014).

65. Even in Islamic constitutional cases where e.g. shari'ah is recognized *as a or the source* of law, it is on the authority of the *constitution* that such an assertion rests!

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This conundrum both initiated and concluded the *Ven. Wimalawansa* case. Ven. Wimalawansa treated the idea of a government official (a layperson) pronouncing on the orthodoxy of his (a monk's) actions as an attack on Buddhist authority and autonomy. Similarly, those Buddhists who opposed Wimalawansa may have received a favourable ruling by the Court of Appeals, but the very logic and interpretive licence shown in that ruling ultimately undermined their claims of independence and authority over Buddhism. This caused some of the winners in the case to feel harmed by the logic and assumptions that undergirded the decision.

In this way, religiously preferential constitutions are no different than secular ones. What Hussein Agrama says of "secular power" one could say analogously for religiously preferential legal regimes.[66] Just as secular power continuously provokes and entangles states and citizens with the very questions of definition it claims to resolve (namely questions of the line between religion and politics), so too do religiously preferential constitutional orders provoke and entangle states and citizens with the questions *they* claim to resolve (questions about the conditions of—and possibilities for—the state protection of Buddhism or other religions). Put differently, the very constitutional clauses used to secure the integrity of Buddhism provide the conditions under which that integrity is constantly rendered under threat. Protecting Buddhism in constitutional law, while it may announce a particular hierarchy among religions, also generates conditions for sharp contests over the boundaries of membership, orthodoxy, and authority.

Let me be clear: the particular contours of the Ven. Wimalawansa debate were not generated because of law. As stated above, Buddhist monks and laypersons have disputed the principles of Buddhism for centuries. Debates over Buddhism pre-exist legal action. However, the framework of legal action is not simply a rehashing of long-standing debates. The format of litigation—in which petitioners face off against respondents in an agonistic struggle over remedies—amplifies the rigidity of disputes and the firms up lines of opposition. Participants in the *Ven. Wimalawansa* case lined up, by necessity, for Ven. Wimalawansa's vision of Buddhism or against it. Once the motors of legal action began revving, each side gripped more tightly to their vision and engaged in a point-counterpoint methodical rejection of the other's position. This process *obscured* previously existing principles of compromise or co-ordination, such as litigants' shared commitment to protecting the autonomy and authority of Buddhist monks to pronounce on ecclesiastical matters.

Litigants also produced a range of new and ramified arguments as the case progressed. This self-multiplying quality of legal argumentation can be seen in the fact that, by the end of the affair, Ven. Wimalawansa offered a number of rationales for why he should be granted a driving licence, some of which came to conflict logically. For example, at the beginning of the case, Ven. Wimalawansa insisted that he needed to drive in order to fulfil his religious obligations to minister, teach, and conduct Buddhist rituals; to refuse him a licence was therefore to limit Buddhism through limiting the work of Buddhist monks. Yet, as the case progressed, Ven. Wimalawansa seemed to undermine this argument in stressing a differing claim: he insisted that his application to the CMT was not made as a monk, but as a generic citizen; the refusal, therefore, violated his generic fundamental rights.[67] Inconsistencies such

66. Agrama, *supra* note 5.

67. Thanks to Jolyon Thomas for pointing out this particular inconsistency.

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as these are not faults of constitutional (and legal) argument, but regular features of them: to win a case, litigating lawyers routinely offer as many arguments as possible related to as many legal principles as possible, in a buckshot attempt to influence judges and juries. Thus, legal arguments not only deepen and sharpen debates; in many cases, they also project debates into ever broadening terrains of disagreement, locking litigants in competition on multiple fronts.

When it comes to protecting Buddhism in Sri Lanka, the effects of constitutional litigation have undermined the goals of constitution-making. Legally successful attempts to use the Buddhism Chapter to protect Buddhism have had undesirable consequences: they have contributed to the fracturing of solidarity among Buddhist groups and to the undermining of monastic authority. In the process of fostering Buddhism, constitutional agents have transformed low-intensity, ambient differences of opinions among monks into public, high-stakes, agonistic conflicts over Buddhist orthodoxy and orthopraxy. Favouring Buddhism in law has provoked and intensified many of the problems it was meant to resolve. Rather than "mak[ing] [Sri] Lanka's Buddhist people into a strong and unified body (*eksat prabala āyatanayak*) once again," constitutional practice has confirmed the ostensible impossibility of so doing.

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