

Buddhism, Constitutionalism, and the Limits of Law

A Talk Delivered by

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Introduction

When one starts to look comparatively at the constitutional regulation of religion around the world, one notices a curious thing. The secular liberal models that most of us assume to be the norm-- or at least paradigm towards which we should aspire – have a much narrower footprint than might be expected. A large proportion of the world’s constitutions are not secular, but instead give special status and/or protection to a single religion, usually the most populous religion. According to recent data from the Pew Forum, 45% of the world’s basic laws are of this type. That is, virtually one out of every two constitutions in the world today recognizes a favored religion.

Yet, ubiquity doesn’t count for much among law scholars. For many of us who study law in universities, and for most of those who engage in international legal advocacy work, religiously preferential constitutions have a bad name. This bad name comes from an assumption about how these sorts of constitutions work: we assume that, by giving special status to a particular religion, these constitutions give unambiguous legal and institutional advantages to the followers of that

religion. We assume that privileging a given religion in law works to enhance the security, solidarity and wellbeing of that religious tradition in life.

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 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 right groups—have identified this chapter of Sri Lanka's constitution as both proof of - *and* perpetrator of - religious majoritarianism on the island.

There is some truth to this. Religious supremacy clauses, like the Buddhism Chapter of Sri Lanka's constitution, do indicate something important about the relationship between constitutional law and religious majoritarianism. To many readers, they suggest the idea that there is a hierarchy of religions. Moreover, these clauses show traces of the process of constitution-*writing*: the constitutions of Sri Lanka or Malaysia – or, for that matter, Iceland¹– are marked by the sentiments of political elites at the times of their creation. These sentiments *include* convictions that the majority religion should be specially privileged.

However, constitutions—like Buddhists—have multiple lives. They have a *pre-enactment life* as the carefully worded product of elite political negotiation; and a *post-enactment life* as a collection of rules and principles that are thought to guide

¹ The Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State.
This may be amended by law. (Art. 62)

a country's shared political future. They have a *societal life*, in which constitutional language functions as part popular discourse, and a *legal life*, in which constitutional clauses function as technical instruments in official processes of litigation and regulation. Constitutional law functions differently in these different lives.

This talk explores one telling moment in the *post-enactment, legal* life of Sri Lanka's Buddhism Chapter. It highlights a surprising chasm between *the simple meaning* of these clauses and their *actual effects* when used in the context of litigation. It reveals an unexpected disconnect between the *pre-enactment, societal* desires that gave rise to Sri Lanka's Buddhism Chapter and the *post-enactment, legal* outcomes which the Chapter has enabled.

Those who lobbied for special protections for Buddhism in Sri Lanka's Constitution did so into order "to make Lanka's Buddhist people into a strong and unified body (eksat prabala āyatanayak) once again" - after centuries of colonialism. However, contrary to the expectations drafters - and critics - these special protections for Buddhism have not simply supported or enabled Buddhist hegemony on the island. Although litigants have, at times, attempted to use the Buddhism Chapter to justify special treatment for the island's religious majority, a more consequential legacy of the Buddhism Chapter has been its polemical use by *certain* Buddhists to defend the religion against *other Buddhists*.

Thus, rather than simply consolidating "Buddhist interests," constitutional protections for Buddhism have, in many cases, authorized splits among Buddhists. These splits have divided one Buddhist organization against another, one monastic

fraternity (*nikāya*) against another, and have even divided trustees and incumbent monks within a single Buddhist temple.

The stakes of this argument extend well beyond the shores of Sri Lanka. A close look at the Sri Lankan case *not only forces us* to rethink the work done by religious supremacy clauses, it also forces us to rethink the essential difference between so-called secular constitutions and religiously preferential ones. Could it be that when it comes to religion, modern constitutionalism as a *form*—as a set of institutions and practices—is more determinative than the *content and substance* of that form? In other words, is it possible that (as recent critics of secularism remind us) just as a fully religiously neutral constitution is impossible, so too is a fully religious preferential constitution?

These questions and this argument hang on my reading of a particular Sri Lankan court case, one heard recently in the island's Appellate and Supreme Courts. The case involved the rather banal question of whether one Buddhist monk should get a driving license. Yet, as I hope to show, this case provides a useful (and I hope intriguing) frame for thinking closely about one way in which religious supremacy clauses like the Buddhism chapter work on the ground.

Facts of the case

In May 2004, a Buddhist monk, Ven Paragoda Wimalawansa Thero, chief incumbent of two small temples, applied for a Driving License in a Colombo office of the Commissioner of Motor Traffic (CMT). Wimalawansa explained that he required a license so that he could more efficiently carry out his regular weekly duties, which involved more than just preaching (*baṇa*) and receiving alms (*dāna*) – the traditional duties of Buddhist monks. Like many other monks in Sri Lanka, Wimalawansa also served in a variety of other roles. He was an assistant principle and lecturer at a college 15 km away. He served as deputy secretary of a regional Buddhist organization. And he also taught at a variety of Buddhist religious schools in the area (*daham pasala*).

Wimalawansa's petition made clear that, while he had used public transportation in the past, but he found it extremely difficult. Of particular frustration 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, or Vinaya, had to be consumed before midday. This time-sensitive practice often clashed with late-running and erratic bus schedules.

Taking matters into his own hands, Wimalawansa had begun to take steps to start driving. He attended driving classes and tried to acquire a car.² In June 2004, he met with an officer of the Commission of Motor Traffic (CMT) to file his application for a driving license. However, he was rebuffed. Monks could not be

² In his petition, the Thera 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' licenses, the other indicated that licensing would be possible provided the Thera received a letter from the Buddha Sasana Ministry. On hearing this news, the Thera wrote a letter to the Ministry and met with the secretary. However, the Secretary explained that he had no power in this matter.

issued with driving licenses, he was told, on account of the government's constitutional obligations to protect Buddhism.

Wimalawansa then filed a writ petition asking the Court of Appeals to compel the officer to issue the license. A ten-year court case followed.

Which Rules? Whose Buddhism?

In general terms, the events of Wimalawansa case mirror those of many legal contests: it began with a particular unresolved grievance; which was then channeled through the courts, where lawyers, judges and litigants construed arguments for and against that grievance in terms of broader abstract, legal principles. What distinguishes Wimalawansa's case for our purposes is the array of parties and issues that became involved. On the one side was a Buddhist monk supported by roughly 15 other monks citing, among other things, the state's constitutional obligations to Buddhism to argue that he *should* be granted a driving license. On the other side were government administrators and *other* Buddhist monks invoking the *same* constitutional obligations to argue that Wimalawansa *should not* be issued with a driving license.

Before moving to consider these arguments, it should be noted that competing interpretations of Buddhism and proper monastic comportment are certainly nothing new in Sri Lanka. Debates about what monks should and shouldn't 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 detailed accounts of

historical controversies (*vādaya*) over how the monks ought to act, dress, eat, preach, etc. In the twentieth century, monks and lay Buddhists began to argue regularly about the appropriateness of *monks* engaging in “worldly” (*laukika*) practices, such as propitiating deities, teaching in public schools, practicing Ayurvedic medicine and doing astrology. As opposed to “other-wordly” *lōkōttara* practices associated with pursuing a better rebirth and, ultimately, *nibbāna*.

This ideal of the serene, cloistered, apolitical monk striving quietly for *nibbāna* is familiar to many of us. However, it did not go unchallenged by monks in Sri Lanka. Sporadically, throughout the twentieth century influential and vocal groups of monks spoke out against what they saw as attempts to use this ideal to limit the influence of monks on society. In one particularly well known episode in the 1940s, monks from one of the island’s largest monastic colleges, Vidyalankara Pirivena, publicly challenged the island’s most powerful politician, D.S. Senanayake, in demanding recognition of monks’ right to participate in politics.³ Since that time, large parts of the Sri Lankan monkhood have asserted their rights to participate fully in many spheres of society: from education, to social work, to being members of parliament.

In Sri Lanka these ongoing debates over proper monastic conduct have a certain quality of un-resolvability to them -- one that (in part) stems from the fact

³ On February 2, 1946, this group 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.” Rahula, “Appendix II: The Vidyalankara Declaration” (1974).

that there is no single, universally accepted monastic hierarchy on the island. Buddhologists will *not* find this surprising. Until recently, throughout most polities in South and Southeast Asia, the Buddhist monkhood lacked single well-defined monastic institutions, which claimed undisputed authority over Buddhism. The ecclesiastical hierarchies that one sees today in the Buddhist world—e.g. the lama system for Gelugpa monks in Tibet or the council of great monks (*mahatherasamkorn*) in Thailand—are of relatively recent origins, and emerged from histories in which the project of centralizing Buddhist monastic authority always involved acts of coercion and control by rulers -- and were always contested.

Today, a variety of monastic and lay groups in Sri Lanka claim the authority to interpret and act of behalf of Buddhism. The island has three major monastic fraternities, and numerous subfraternities. These various groups are divided along multiple lines. These include strong allegiances to certain monks, particular regional affiliations, control of property and even caste identities.⁴

Also in competition for authority over Buddhism are lay Buddhist organizations and government representatives—the president, the Commissioner of Buddhist Affairs, and others—who also, at times, seem to speak on behalf of Buddhism.

Buddhism Type One: Wimalawansa's Pragmatic Buddhism

⁴ Abeysekara

Opponents of Wimalawansa had a major thing going for them: it would be unusual to see to a monk driving in Sri Lanka. Although Wimalawansa did offer some evidence (a newspaper article) of another driving monk, the fact remained that to date this is uncommon in Sri Lanka.⁵ But was this anathema to Buddhism? Both sides agreed on one thing: *no Buddhist text or inscriptions said anything about motorcars*. Wimalawansa construed this as a good thing. One of the leitmotifs of his submissions was that Buddhism was not a static tradition, but a dynamic one designed to develop, change and accommodate new situations. In one of his most potent expressions of this, Wimalawansa highlighted a well-known passage in the Mahaparinibbana Sutta where the Buddha (on his deathbed) instructs his chief disciple Ananda, that after his passing, the monks should *hold onto the major principles* of monastic life but to “abolish the lesser and *minor* precepts.” (The problem is that, in last hours of his life, the Buddha didn’t specify which were which.) This, Wimalawansa insisted, was the key: the Buddha never intended monastic life to progress unchanged, but to move with society, developing and adapting accordingly; monks’ driving was just that sort of adaptation that the Buddha had in mind.

Among the documents submitted with his petitions, Wimalawansa included personal letter that he had written to the CMT in 2004. In this once-private-now-public document, one sees very clearly this view of Buddhism. In the letter, Wimalawansa insists that “there are some people who *do not* want monks moving forward (*idiriyaṭa yanavā*) with society. What they want is to hold monks back in

⁵ Evidence was submitted that that Buddhist monks drive cars in Malayasia, Singapore the US and elsewhere.

the 6th century while they go into the 21st century.” These people, Wimalawansa argues, do so in the name of defending culture (*saṅskṛtiyak*) and tradition (*sampradāyak*). Yet, Wimalawansa insists, culture and tradition are worldly (*laukika*) in nature and ought not to restrict or determine the behavior of monks. In Wimalawansa’s Buddhism, the purpose of monastic life is not to conserve some past ideal but to constantly guide society according to supreme otherworldly (*lōkōttara*) values. To hold onto some static tradition would not only be inimical to this project of virtuous guidance, it would also inconsistent with the basic principles of the Buddha’s teaching itself, the *dhamma*:

Buddhism teaches primarily that everything is impermanent and changing and that nothing in this world (*melova*) is infinite (*nitya*). [It teaches] that with every moment all things are changing. [It teaches] that the essence (*svabhavas*) of all things is becoming, existing and perishing (*naetivīma*)... No [harm] would come to a monk for driving a vehicle. No evil (*pāpā*) would accrue. There [would be] no violation of the *Vinaya* rules.

Wimalawansa argued that changed circumstances necessitated changed standards of orthopraxy. In the past, he recollects, monks were supported completely by the laity. Today this support has diminished, requiring monks to earn income, perform maintenance around the temple and, in some cases, even cook their own food. Monks like him were no longer simply full time specialists in dhamma, ritual and self-cultivation; they were teachers, administrators, even

occasional chefs. They reluctantly took on *laukika* commitments and those commitments were necessary to sustaining their *lōkōttara* pursuits. Driving a car was not a luxury – therefore - but a much needed tool of the new monastic life.

Buddhism Two: His Opponents' Traditional Buddhism

Those who opposed Wimalawansa offered a different vision of Buddhism, one that drew a rigid line between the lifestyle of monks and that of laity. Some of these opponents filed written submissions in the case, including the CMT and CBA, as well as two important groups of senior monks. Among the most assertive, however, were the documents filed by the lay trustees, or Dayaka Sabha, of Wimalawansa's own temple (although, Wimalawansa denied that they were indeed bona fide trustees).

The crux of Dayaka Sabha's position can be seen in a letter to the Minister of Buddhist Affairs, which they submitted as evidence. The letter implores as follows:

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 behavior (*ākarsanīya aevatum paevatum*) that Buddhist monks gain the faith (bhaktiya), loving respect (*gauravādaraya*), faith and admiration (*pahan sita*) 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 losing the confidence (*pahan bava*) they had for them.⁶

In purposeful and direct contrast to Wimalawansa, the trustees asserted that the key to Buddhism's survival on the island was not its adaptability, but the enduring relationships between monks and laity. These relationships were, in turn, based on a fragile reciprocity: laypeople patronized monks only to the extent that monks were able to exude calmness, equanimity and indifference to the world—qualities that were hard to embody behind the wheel.

This understanding of Buddhism was also underscored by a group of six senior scholar-monks who intervened against Wimalawansa. In their letter, they acknowledged Wimalawansa's argument that there was no specific rule against driving motor vehicles. However, they countered, in the absence of this particular prohibition did not mean that monastic life should be accommodated to modern technology. Rather, they argued, one ought to consider the matter of driving licenses in light of another broad principle that ran centrally through the entire monastic disciplinary tradition: the concern with eliminating any negative public image of monks in society. In fact, for them, keeping and maintaining the respect of the laity was perhaps *the key* organizing principle of Buddhist monastic life itself!

⁶ R6

Citizen or Bhikkhu?

Of course, Wimalawansa's case was not simply a matter of Buddhist law. Had this been this case, it might have been addressed by one of the island's monastic tribunals or executive committees that normally hear complaints and make rulings about monks' behavior within individual monastic fraternities. These rulings are not normally enforceable by the state, unless they involve the control of temple property in which case the initial monastic decision may be appealed or reheard by civil courts (happy to talk about this).⁷

The Wimalawansa case was different. It involved not only questions concerning the interpretation of Buddhism, but questions concerning the links between Buddhist law and the constitution. What was the legal status of Buddhist law and Buddhist monks on the island? 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 that authority? Buddhist monastic life employs elaborate rituals, habits of dress and codes of conduct to distinguish monks from laity. Sri Lankan statute law even makes it legal offense to “pass oneself off as a monk.” Yet, did the state have a right or obligation to enforce the distinction between monk and laity within a constitutional framework that *also* espoused equality under the law?

⁷ in accordance with a specially designed statute (called the Buddhist Temporalities Act) and a special stream of Sri Lankan case law called Buddhist Ecclesiastical 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 Sri Lanka, e.g., monks who are found guilty of criminal offenses must disrobe before going to prison. That is, they must re-become citizens before undergoing penal sanctions. From the 1940s to the early 1970s, through most of the Buddhist world (although not Sri Lanka), Buddhist monks (and in some cases nuns) were banned from voting.⁸ 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, everyday citizens.

Was Wimalawansa a monk or a citizen? Wimalawansa's case generated opposing answers to that question. In his submissions, Wimalawansa made 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 deprived of rights given to other citizens:

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 respectfully state that just because I am a monk I cannot be prevented from enjoying my rights guaranteed to me by the legislature of this country....

⁸ These policies remain in place in Myanmar and Thailand today, with reversals having occurred following periods of Communist rule in Laos and Cambodia {Larsson 2014}.

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

The submissions of Wimalawansa - and the monks who wrote in support of him - put forth a particular view of the link between monastic norms and state law. The two were distinct; and monks, by virtue of their simultaneous status as clerics and as citizens, were subjects of both. Yet, the jurisdictions were separate. State officials—who were lay people—could not claim authority to enforce monastic law. At the same time, they could not deny monks' status and rights as citizens and subjects within state law. Monastic law and Buddhist norms were therefore doubly out of bounds to government agents. On the one hand, those agents had a positive duty to uphold impartially all state laws. On the other hand, government agents had no authority to pronounce on Buddhist monastic law.

Wimalawansa's opponents concurred that state law and monastic law were distinct; yet they refused the idea that one could choose which one applied. Monks, they insisted, were always *primarily* subjects of monastic law. A letter from the four head monks (*mahānayaka-s*) of the island's four largest fraternities explained this position through analogy to the work of judges and lawyers: just as judges and lawyers were bound by particular stringent professional codes of conduct which did not apply to ordinary citizens, so too were monks subject to their Vinaya rules. Or,

as another group of senior monks put it: “The *laukika* path [of human rights law] is one thing The *lōkōttara* path [of Buddhist monastic law] is another.”

The Court’s Decision

The culture of constitutional law invites argumentation, but it also limits it. In the Wimalawansa case those limits involved agents (who would and would not be allowed to argue), discourse (what those parties were allowed to argue about) and time (how long those parties were allowed to argue for). The most important temporal limit to the Wimalawansa case was the eventual judgment given in March of 2014 by a unanimous two-judge bench of the Court of Appeals. In the judgment, the court came down decisively and emphatically against Wimalawansa’s application. The logic of judgment to a large extent underscored the arguments of Wimalawansa’s opponents: the court agreed that the state had constitutional obligation to protect the uncorrupted (*nirmala*) Buddhism of Sri Lanka and it affirmed the idea that the state ought to enforce certain parts of monastic law. As it related to the question of monks’ identities as citizens versus their identities as representatives of Buddhism, the court clearly indicated that monks had different civil and legal obligations, rights, and statuses to those of lay people.

In a particularly strong flourish, the judge wrote that: “a Buddhist Monk cannot do and should be prohibited from doing any and every act, done by a layman, in his daily routine life.”⁹ And that, “the life of a Buddhist Monk in its pure form, is incompatible with lay life.”

⁹ p. 27 of the decision

The court's judgment may have provided a temporal endpoint to matter; but it also generated new lines of tension. One reason for this is that, in deciding the matter, the court, by necessity, exercised its own authority to speak for Buddhism. In legitimating his judgment, Justice Gooneratne (writing for the court) asserted his own interpretations of Buddhist texts, norms and ideas.

In the end, therefore, the judgment of the court embodied a position that neither monastic party endorsed: that of state agents speaking on behalf of Buddhism; of powerful *laukika* voices acting as the interpreters and defenders of the requirements of a *lōkōttara* life.

Conclusion

Jacques Maritain, one of the architects of the Universal Declaration of Human Rights, famously quipped that the drafters of the declaration agreed on its contents, *but only* on the condition that no one asked them about why they agreed. That is, Declaration drafters could agree on abstract principles but not on the meaning of, or rationale behind, those principles. The same could be said about drafters of religious supremacy clauses in most parts of the world: those who incorporate special protections for religion into constitutions see this as a good thing, even if they didn't all agree on what it is they are protecting.

From one perspective this is nothing new. Law does this all the time: people disagree about the meanings of freedom, equality, neutrality and a variety of others primary constitutional goods. Judges and legislatures interpret the meaning of those terms over time, to suit the times. The inevitable ambiguity of language is, in

many cases, managed or limited through the hermeneutical discipline of *stare decisis* and/or the guidelines set by the interpretations sections of laws.

However, when it comes to religious supremacy clauses, the problem is not simply one of ambiguity. More precise wording or interpretations will not resolve the issue. There is a conundrum at the heart of religious supremacy clauses in constitutions. On the one hand, these clauses claim to secure the protection and primacy of particular religion - which is to say a particular set of institutions, authorities, texts and practices. Yet it does so through mechanisms that perform the primacy of another set of institutions, authorities, texts and practices, those of state-legal authority. State-legal authority therefore always projects itself *simultaneously* the arbiter *and* violator *of* religious authority. The institutions and practices of constitutional law can never fully handoff responsibility for religion to religion. Thus, inevitable disputes over religious orthodoxy end up simultaneously (also becoming) disputes over religious autonomy.

This conundrum both initiated and concluded the Wimalawansa case. Wimalawansa treated the idea of a government official (a lay person) pronouncing on the orthodoxy of his (a monk's) actions as an attack on Buddhist autonomy and authority. Similarly, senior monks who opposed Wimalawansa may have received a favorable ruling by the Appellate Court; but the very logic and interpretive license shown in that ruling ultimately undermined their claims of independence and authority over Buddhism.¹⁰

¹⁰ comment: relevance in court?

What Hussein Agrama says of “secular doctrine” one could say analogously for doctrines of religious supremacy: just as “secular power” continuously provokes and entangles us 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 us with questions *they* claim to resolve: questions about the conditions of—and possibilities for—the primacy of Buddhism or other religions. Put differently, the very constitutional clauses used to signal a particular religious supremacy by drafters, provide the conditions under which that terms of that supremacy may be constantly questioned and fought over.

Let me be clear, the particular contours of the Wimalawansa debate were not generated because of law. As stated above, debates over Buddhism—its nature, orthodox interpretations and proper structure of authority—have been visible in Sri Lanka for centuries.

However, while the terms of the debate pre-exist legal action, the framework of legal action is not simply a rehashing of the debate. The format of most constitutional legal action—in which petitioners face off against respondents in an agonistic struggle over remedies using abstract constitutional principles—amplifies the rigidity of disputes and the firms up lines of opposition. Participants in the Wimalawansa case lined up, by necessity, for 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, a process that quickly eroded or *obscured* previously existing

terrains of compromise or coordination, such as litigants' shared commitment to protecting monastic autonomy.

The context of legal action is also unique in that, unlike debates that take place in newspapers or parliament, litigation (particularly constitutional litigation) is especially poorly suited for acknowledging the various social, economic and political dimensions of Buddhist monasticism – dimensions which played a central role in this case. Wimalawansa's actions were, in many ways, a protest against economic and social inequality in the sangha. Wealthy, senior monks did not need to drive cars, W told me, because they all have chauffeurs. Moreover, they lived in the prime, centrally-located temples. By contrast, he lived in a relatively poor temple on the outskirts of Colombo, where he struggled to cope with the rapidly rising cost of living and diminishing lay support. Wimalawansa's actions were, in this frame of reference, not only about driving but about his feelings of alienation and injustice vis-à-vis the island's monastic elites. These defining features of W's situation, however, were sifted out of the discussions through the process of constitutional analysis -- and transmuted into broad, abstract, general claims about what Buddhism is and how the state ought to protect it.

My conclusions here—to the extent that they make sense—extend and link arguments that have been made within with the domains of critical legal studies and recent scholarship on secularism. Scholars such as Stuart Scheingold, Mary Ann Glendon and others have highlighted the disruptive and even corrosive effects of American rights discourse and litigation on social stability and cooperation.

Hussein Agrama, who I referred to above, has characterized secular doctrine as a

regime of endless normative provocation—provocations that provide an excuse for expanding the ambit of state authority. In other words, the problems that law generates, it solves by recourse to more law.

To link these two arguments is to make an even more controversial argument about the relationship between constitutional law and religion, one which I make in my book: more than simply amplify disagreement and provoke contestation, constitutional privileges for religion may even have a tendency to generate their opposites. The solutions become the problem. I call this process pyrrhic constitutionalism.

When it comes to constitutional law in Sri Lanka, politicians “victory” in introducing special protections for Buddhism into the constitution, have been pyrrhic victories. In multiple cases, including this one, constitutional protections for Buddhism have produced undesirable consequences for Buddhists-- *both* the winners *and* the losers of litigation!! Buddhist supremacy clauses 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 long-standing, ambient differences of opinions among monks into public, high-profile, high-stakes, agonistic conflicts over Buddhist orthodoxy and orthopraxy. Favoring 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” Buddhist constitutional supremacy has confirmed the impossibility of so doing.

