CONSTITUTIONALIZING RELIGION: THE PYRRHIC SUCCESS OF RELIGIOUS RIGHTS IN POST-COLONIAL SRI LANKA
(Benjamin Schonthal, University of Otago, Religion Programme, Dunedin, New Zealand)

Since the violent end of Sri Lanka’s thirty-year-long civil war in 2008, a growing number of politicians, human rights activists, and scholars have pinned their hopes for a peaceful future on the revision, reinterpretation or ‘restoration’ of law. In spite of the government’s recent heavy-handed manipulations of legal process on the island, experts nonetheless remain confident in the capacity of legal instruments and procedures, if properly constructed and deployed, to mollify the problems of political disenfranchisement and communal strife that led to the outbreak of civil war.

Of the many goals that a reformed legal order is projected to realize, one of the most appealing is the promise that ‘good’ laws adequately enforced will enhance religious freedom and mitigate religious tensions on the island. Since independence, Sri Lankans have witnessed significant social strife, in which religious divisions have played a prominent role. Most recently, this includes simmering tensions between Buddhists and evangelical Christians (which have been escalating since the 1990s) and worrying incidents of violence against Muslims coordinated by new Buddhist nationalist organizations (particularly the Bodu Bala Sēṭhā, or the Army of Buddhist Power). Many inside and outside Sri Lanka read this violence as a breakdown of

1 I am very grateful to Winnifred Sullivan, Beth Hurd, Jonathan Young, Oshan Fernando, Neena Mahadev, Vivian Choi, Asanga Welikala, and Nandini Chatterjee for their very helpful suggestions. All mistakes are, of course, my own.

2 These interventions include a successful, executive-led campaign to impeach the Chief Justice of the Supreme Court and choose her successor, to abolish presidential term limits in the constitution, to expand the statutory power of central government vis-à-vis provincial governments, and other measures.

3 This violence does not just include the island’s well known civil war, but a series of large riots which lead up to it, as well as the horrific violence stemming from two abortive Marxist insurgencies and the state-led counter-insurgency campaigns that followed. It should also be noted that religion’s involvement with civil violence in Sri Lanka is also intertwined with language and ethnicity.
law: the implementation of discriminatory laws, the failure to enforce fair laws, and
the general lack of accountability by the government to ‘the rule of law.’ Therefore,
by reforming law and redeeming legal institutions, it is argued, Sri Lanka might, with
one administrative swipe, produce religious freedom and avert religious conflict.

This attempt at legal reform may seem urgent at the present moment, but it is
certainly not new. Since the 1940s, Sri Lankans have engaged regularly in the
writing, contesting, amending, and debating of laws designed to produce religious
freedom and religious harmony on the island. While the perceived failure of law to
solve religious strife is frequently blamed on the chauvinism of lawmakers and the
failure of legal processes, the history of legislating religion in Sri Lanka cannot be
read simply as a story of bad-faith lawmaking and faulty legal institutions. Sri
Lanka’s religious freedom laws emerged within popularly elected assemblies and
were interpreted by a Supreme Court that, despite its acknowledged faults and
dramatic fall into disrepute of late, has for decades been seen as relatively
independent in matters of religious rights. Sri Lanka’s laws governing religion were
designed with reference to United Nations’ covenants, and they have been invoked
within a legal culture in which public law remedies and protocols of judicial review
are not only available, but widely accessible.

In this article, I argue for a different reading of the history of law and religion
in independent Sri Lanka, one that does not associate the persistence of religious
tension with the breakdown of law, but, somewhat counter-intuitively, with the
‘legalization of religion’ in the first instance. I argue that it is not law’s failure that
adds to intensity of religious tensions on the island, but its Pyrrhic success. Sri
Lanka’s ‘success’ in drafting, ratifying, and deploying legal regimes of religious rights
has led to the further ossification of the very conflicts they were intended to
arbitrate. Through a condensed overview of the history of debating, drafting, and
adjudicating constitutional religious rights in Sri Lanka, I demonstrate how, in
turning to law to resolve religious disputes, Sri Lankans have, in fact, deepened and
hardened the very lines of conflict that those laws were meant to resolve.

I do not intend to suggest that legal reform always takes corrosive forms in all
contexts and all places. Indeed, one can point to many examples where lawmaking

4 While not seen as exercising independent judgment in all issues, when it comes to decisions involving
individual fundamental rights and religion, Sri Lanka’s courts, particularly its Supreme Court, have been seen
as relatively neutral arbiters. Udagama, “The Sri Lankan Legal Complex and the Liberal Project: Only Thus
Far and No More” In Fates of Political Liberalism in the British Post-colony: The Politics of the Legal Complex. Edited
by T C Halliday, L Karpik and M M Feeley. New York: Cambridge, 2012; Marga Institute, Social Image of the
Stiftung, 2005 96. This must be read alongside: International Bar Association. Justice in Retreat: A Report on the
has succeeded in producing progressive social change or has helped to ameliorate conflicts among individuals and groups. Instead, I insist that religion presents a particularly troubling object of regulation for law, on account of the secularist assumptions at the foundation of the modern legality, on account of the hazy institutional, social, and phenomenological boundaries of religion and on account of the fact that the “freedom” of religion appears to connote different things for different people. Disagreements over the nature of religion and religious freedom appear particularly deep in postcolonial contexts like Sri Lanka where the push for legal independence (self-rule) coincided quite closely with the widespread recognition and condemnation of the cultural and institutional damage done to local religions by colonial administrators and missionaries. Thus, for much of the twentieth century, in Sri Lanka, as in India, Burma, and elsewhere, the idea of freedom of religion has been applied not only in reference to the usual set of individual rights of belief and worship generally associated with liberalism but to the imagined liberation-cum-rehabilitation of non-Christian religious communities and traditions—Buddhism, Hinduism, or Islam—from the perceived depredations of colonialism.

In constitutionalizing religious freedom, Sri Lankans have tended to espouse two arguably irreconcilable goals: the special restoration and protection of the majority religion, Buddhism, and the equal protection of individual religious beliefs and worship practices for all Sri Lankans. Those who designed Sri Lanka’s constitutional religious rights imagined themselves as representing and reconciling both views, holding both demands together in the ‘productive ambiguity’ of legal rhetoric. Sri Lanka’s lawmakers were certainly sensitive to the tensions between the two visions of religious rights when they crafted the most significant statement of religious rights on the island, Chapter Three of Sri Lanka’s constitution entitled ‘Buddhism’ (drafted first in 1972 and then altered in 1978), which states:

**Article 9** The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

Rhetorically, the prerogatives for Buddhism do not trump fundamental religious rights but stand in a kind of tense traction. The first part of Chapter II elaborates


governmental obligations to give Buddhism a privileged status (“the foremost place”) and “protect and foster” the religion’s teachings, institutions, and adherents (the Buddha Sasana). The second part conditions the state’s commitment to supporting Buddhism with the guarantees that all individuals will have “freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice” (Article 10) and that they will have freedom to “manifest” religion in “worship, observance, practice or teaching” in a group or alone, in public or private (Article 14(1)(e)). 6 Neither part is given any distinct legal priority: the state’s duties to protect Buddhism and the state’s duties to guarantee religious rights are both ‘entrenched’ sections of the constitution and very difficult to amend. Both parts form a key part of religion-related jurisprudence on the island, although claims regarding fundamental religious rights are justiciable directly by Sri Lanka’s Supreme Court.

Yet, the Pyrrhic success of religious rights stems from an unavoidable friction between the processes of making and actualizing law in Sri Lanka, and in other democratic contexts. The very ambiguities of language which are required to bring into nominal (rhetorical) agreement the diverse visions of religious freedom held by drafters come to sanction and strengthen the divisive agendas of interpreters. In the first movement of legalizing religion—lawmaking—the drafters of law collude in the submerging or obfuscating of major points of friction between opposing visions of religious rights. In the second movement of legalizing religion—interpreting law—actors use the vague language of legal rules to further legitimate and deepen those very disagreements. As such, the constitutionalization of religious rights does not so much set the terms for proleptic agreement, as many legal theorists (and Sri Lankan law-makers) have assumed. Rather, the constitutionalization of religion further entrenches the terms of dispute by reifying and legitimating the fixity of religious identities, concealing the internal heterogeneity of religious communities, and mediating the relationships between these now-static legal subjects through an absolutist and agonistic language of competing rights and duties. Where champions of the rule of law insist upon law’s ability to sublimate social strife—transmuting clashing bodies into clashing arguments—in the case of religious freedom in Sri Lanka, law demonstrates the opposite effect, making arguments clash such that bodies are inclined to follow.

Anti-Colonial Religious Freedom: The 1948 Constitution and its Discontents

Perhaps the most common law-related diagnosis for religious conflict in Sri Lanka is that both visions of religious freedom described above are not equally

6 The special status of Buddhism is further qualified by Article 12 of the constitution, which guarantees that
legitimate. That is, the awarding of special protections and status for the majority religion is understood to be inherently unfair and therefore incompatible with a just legal order. While principles of secular liberal constitutionalism require that the state remains neutral toward the differing religious convictions of its citizens, such principles tend to downplay the deep impact of colonialism on religious and political life in postcolonial states. While not the only challenge for Buddhism prior to 1948, colonial occupation did affect Buddhist life on the island in profound and often troubling ways. New protocols for the administration of Buddhist temples, the alienation of temple property, changes to the island’s traditional structures of political power, and tacit support for Christian missionizing all worked to undercut structures of support that sustained Buddhist monks and laity. By the nineteenth century, Buddhist monastic institutions had lost much of the political influence and revenue they had once enjoyed. Buddhist monks and laity publically condemned these losses; by the mid-nineteenth century, they had begun to form organizations and political lobbying groups aimed at ‘reviving’ Buddhist life on the island. By the 1930s, these Buddhist revivalists regularly asserted their claims in the form of demands for special state protections or rights for Buddhists and Buddhism. They also began mixing demands for legal protections with demands for self-rule, linking anti-colonial nationalism in Sri Lanka to the rehabilitation of Buddhism.

If the restoration of Buddhism provided one major type of demand for religious rights in the late-colonial period, a second type was characterized by the demand for “fundamental rights” for all religions. This type of demand also had an anti-colonialist flavor to it. Sri Lanka’s independence constitution was not the product of a popular constituent assembly or constitutional congress, as in India. Rather, the document that would become the guiding charter for self-rule in 1948 was definitely influenced by outgoing Crown administrators, who, in missives to the island in the early 1940s, specified a series of conditions that the new charter would have to “satisfy” in order to be accepted as the basis for the transfer of power.7 Although not explicitly stated, it was understood by British legal specialists at the time that, when it came to the protection of citizens’ rights, including rights to religious worship, the Crown would look unfavorably on the integration into new constitutions of American-style lists of (fundamental) rights.8 As one influential British constitution-maker of the period put it, “[A]n English lawyer is apt to shy

---

away from [Fundamental Rights] like a horse from a ghost.” Beginning in 1943, a duumvirate consisting of a powerful Sinhalese politician and a British constitutional lawyer began to draft what would become the island’s independence constitution, deliberately omitting a bill of rights. In response, several of the island’s younger, more nationalistic politicians scribed their own shadow-constitution, which conspicuously included eight distinct paragraphs of fundamental rights, including “freedom of religion.”

The demand for Buddhist rights and the demand for fundamental religious rights both rejected an assumption implicit in what would become the 1948 Constitution. The 1948 charter implied religious freedom as a naturally occurring state, a kind of de facto condition that one arrived at if one could simply strip away government influences from the religious lives of citizens. Thus religious freedom was to be protected by restricting the actions of politicians. Section 29(2) dictated that Sri Lanka’s new parliament “Shall make no law” that will:

(a) Prohibit or restrict the free exercise of any religion; or
(b) Make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or
(c) Confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or
(d) Alter the constitution of any religious body except with the consent of the governing authority of that body; Provided that in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.

Here religious rights were negative rights, prohibitions on the actions of parliamentarians so that they did not encroach on religion. As intended by its drafters, Section 29(2) tried to remove religion from governance, so that each would flourish in the absence of the other.

Proponents of Buddhist rights and general fundamental religious rights both rejected this premise that religious freedom was a negative liberty, naturally occurring, provided one could guarantee religions’ freedom from the intervention by the state. For the advocates of Buddhist rights, the independent state had an obligation to actively intervene in the rehabilitation of the majority religion and to provide a regime of ‘affirmative action’ that would lead to the repair of Buddhist monasteries, monks, and temples and would restore Buddhism’s prestige among the

---

laity. Buddhism, they argued, did not exist in a state of de facto freedom but a state of de facto decay, which was the direct result of four-hundred years of colonial damages. These demands were laid out systematically, initially in a letter to the island’s first prime minister and then later in a report. Both documents were produced by the All-Ceylon Buddhist Congress or ACBC, a lay Buddhist activist group that, by the early 1950s, had gained prominence as the island’s leading organizational body lobbying for Buddhist interests.10 In these documents, the ACBC elaborated a list of constitutional and statutory provisions that the state ought to integrate into the newly independent legal system to positively improve the condition of Buddhism. These included provisions to help monastic fraternities gain legal recognition and the establishment of a government Buddha Sasana Council that would organize and coordinate state efforts to “extend to Buddhism the same patronage as was extended to it by Sinhalese rulers of old.”11

Advocates of fundamental rights, who came from all of the island’s religious communities, viewed the arrangement of religious rights in Section 29(2) as expressing far too passive a relationship between the state and the enforcement of religious and civil rights. What was needed, they argued, was a discrete bill of rights that would enunciate the state’s positive obligations to uphold individual and group freedoms, to enhance religious liberty through government action. In their shadow constitution, religious freedom was defined as follows:

Freedom of conscience and the free profession and practice of religion, subject to public order and morality, are hereby guaranteed to every citizen. The Republic shall not prohibit the free exercise of any religion or give preference or impose any disability on account of religious belief or status.12

This alternative draft constitution amplified the range of religious liberty by treating religious expression, belief, and practice as positive rights to be guaranteed by the government and by prohibiting all representatives of “the Republic”—not just the legislature—from discriminating on the basis of religion or from limiting the free exercise of religion.

Although these two types of demands for religious rights had their roots in different anti-colonial movements and had their basis in differing assessments of religious freedom, both demands enjoyed a certain degree of popularity among

11 All Ceylon Buddhist Congress (ACBC), Buddhism and the State, 3.
prominent public figures for much of the 1950s and 1960s, expressing as they did widely held sentiments about the nature of religion and the government's ideal relationship to it. Key among public figures was Sri Lanka’s third prime minister, S.W.R.D. Bandaranaike, an elite Oxford-educated lawyer with deep sympathies both with Buddhist populism and liberal human rights.13 Like many politicians at the time, Bandaranaike presented the reform of religious rights as an anticolonialist proposition: to replace the 1948 Constitution was to eliminate from Sri Lanka all traces of colonial influence, insofar as the document was tainted by colonial collaboration. Once in office, Bandaranaike parlayed the two alternative visions of religious rights into two large government initiatives. On the one hand, he convened a Joint Select Committee for the Revision of the Constitution, which he charged with, among other things, generating a constitutional chapter on fundamental rights, including religious rights.14 On the other hand, he appointed a government Buddha Sasana Commission and mandated that it investigate the demands made by the All Ceylon Buddhist Congress for special Buddhist legal privileges.15

Although the Select Committee on the Constitution and the Buddha Sasana Commission both produced a list of recommendations for legal change, Bandaranaike was unable to leverage either in the form of discrete legal initiatives. By the time the reports were completed, Bandaranaike’s leadership within his coalition had been compromised; in 1959 he was assassinated. Nevertheless, Bandaranaike’s initiatives served as important milestones in the development of religious rights in Sri Lanka, insofar as it was during his government that the call for fundamental religious rights and the demand for special legal Buddhist prerogatives became mainstream political demands, such that in the 1960s, the agendas of both commissions were taken up by the island’s two major political parties, Sri Lankan Freedom Party (SLFP) and the United National Party (UNP). Bandaranaike’s widow, Sirima Bandaranaike, who took over the leadership of the SLFP in 1960, promised in her first election manifesto that she would pursue fundamental religious rights and Buddhist prerogatives: she would work to create a republican constitution which included a section of fundamental rights, and she would implement the

suggestions of the Buddha Sasana Commission. She reconfirmed this in the SLFP policy statement from November 1964, but folded the two objectives into one:

In addition to steps taken by the late Mr. S.W.R.D. Bandaranaike’s Government of 1956, and by the present Government to give Buddhism its proper place in the country as the religion of the majority and at the same time guaranteeing complete freedom of worship to all religions, my Government proposes to place before you legislation which will guarantee this proper place to Buddhism.

Similarly, the island’s major opposition party, the United National Party or UNP, insisted in its election manifesto from 1965:

While restoring Buddhism to the place it occupied when Lanka was free and Kings ruled according to the Dasa Raja Dharma (Ten Buddhist Principles) we shall respect the rights of those who profess other faiths and ensure them freedom of worship.

In 1967 the UNP-led government even reappointed a Joint Select Committee on the Revision of the Constitution to complete the investigations that had begun under Bandaranaike’s government, including the drafting of a constitutional chapter on fundamental rights.

During the 1950s and 1960s, while the topics of religious rights and religious freedom were increasingly common foci for political discourse, the protections for religion listed in Section 29(2) were not major instruments of litigation. During this period, when questions of Buddhism did enter the courts, they did so in the form of disputes between Buddhist monks, generally over succession to the office of chief incumbent of temple or over control of monetary property and assets. Tensions between the two views of religious freedom certainly manifest in politics;

---

21 For a helpful survey of these cases see W. S. Weerasooria, Buddhist Ecclesiastical Law (Colombo: Postgraduate Institute of Management, 2011).
however, the relationship between Buddhist protections and general religious rights remained fluid, very much in question and open to contest and debate. Politicians and religious leaders on all sides argued about the precise relationship between Buddhist prerogatives and fundamental rights. Moreover, and more interestingly, advocates of both visions of religious freedom engaged in heated debates within their own camps regarding precisely what Buddhist rights and fundamental rights should entail, with deep lines of fissure emerging particularly within the Buddhist side. This is not to say that tensions did not exist among religious communities; indeed they did. Yet, religious rights and religious freedom law were not used in courts as instruments for legitimating or contesting claims about the relative status of Buddhism vis-à-vis other religions or the necessity of equal religious rights vis-à-vis special Buddhist protections.


For many Sri Lankans in the late 1960s and early 1970s, implementing a legitimate ‘rule of law’ and a legitimate scheme of religious rights and freedoms implied the replacement of the island’s ‘illegitimate’ 1948 Constitution with a new, ‘autochthonous’ one, composed by elected officials and consisting of clauses that were drafted exclusively by Sri Lankan politicians. Indeed, there was tremendous public support when the (SLFP-led) coalition government, the United Front, having won a landslide victory in parliamentary elections of 1970, convened the elected parliament as a Constituent Assembly and announced its intent to draft a constitution that would “build a nation ever more strongly conscious of its oneness amidst the diversity imposed on it by history.” The revision of religious rights was high on the agenda, and by January 1971 the drafting committee had presented to the Constituent Assembly its most succinct statement of religious policy, Draft Basic Resolution Three (DBR 3). It read:

In the Republic of Sri Lanka, Buddhism, the religion of the majority of the people, shall be given its rightful place, and accordingly, it shall

---


be the duty of the State to protect and foster Buddhism, while assuring to all religions the rights granted by basic Resolution 5(4).

According to DBR 3, the demand for Buddhist rights was to be addressed by placing positive obligations on the state to “protect and foster” it and by awarding it a special status, one glossed in the locative idiom, the “rightful place.” At the same time, demands for positive fundamental religious rights were to be acknowledged by including in DBR 5(4) guarantees that

Every citizen shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or to adopt a religion or belief of his choice, and the freedom, either individually or in community with others in public or private, to manifest his religion or belief in worship, observance, practice and teaching.24

If the rights for Buddhism were made to echo the election manifestos of the SLFP, the scheme of general religious rights and freedoms was borrowed verbatim from section 18 of the 1966 International Covenant on Civil and Political Rights of the United Nations, to which Sri Lanka was a signatory.

In the minds of the new constitution’s lead draftpersons, the intent behind DBR 3 was simple. The resolution sutured together the two dominant demands regarding religious rights emerging from Sri Lanka’s citizens: the demand for special rights for Buddhism and the demand for fundamental religious rights. The architect of the Constitution, Colvin R. De Silva, summarized it as follows:

It was after very careful consideration that the particular mode of reference to religions and Buddhism in particular was arrived at in respect of Basic Resolution 3. It is intended, and I think in all fairness it should be so stated, that the religion Buddhism holds in the history and tradition of Ceylon a special place, and the specialness thereof should be recognized in the Resolution. It was at the same time desired that it should be stressed that the historical specialness, the traditional specialness and the contemporary specialness which flows from its position in the country should not be so incorporated in the Constitution as in any manner to hurt or invade the susceptibilities of those who follow other religions in Ceylon or the rights that are due to all who follow other religions in Ceylon. It is for that reason that, first of all, into the Resolution stating the place being assigned to
Buddhism there was incorporated the reference to fundamental rights, Basic Resolution 5(iv)…[which] ensures as a fundamental right to all religions those rights which they should have, namely, the complete freedom of observing one’s religion and taking it to others also. …*It is after very careful thought* that every single word has been introduced into the Resolution, and, much as I would like to state that I yield to none in my respect for all religions which all peoples in this country and elsewhere follow, I would earnestly urge that any efforts to change the language or the content of what is a very carefully expressed Basic Resolution may result in, shall I say, some kind of unanticipated unbalancing of what is a very balanced Resolution.\(^{25}\)

Although it exhibited the silver-tongued confidence of a long-time parliamentarian and senior legal practitioner, De Silva’s statement was not cynical political salesmanship. As a declared secularist, criminal lawyer, historian, critic of fundamental rights theory, and prominent member of the anti-colonial Left in Sri Lanka, De Silva was a known critic both of Buddhist rights and fundamental religious rights, and he could not be impugned for indifference to popular demands. Indeed, a review of the drafting documents seems to confirm a good faith, if at times slightly heavy-handed, effort to represent and reconcile these positions. De Silva deliberately rejected the more pointed demands that the constitution include a clause requiring that the island’s prime minister and heads of the armed forces would be Buddhists. He also conceded that the constitution could not declare Sri Lanka a secular state, on account of the broad support for Buddhist protections among Sri Lankan citizens.

Despite the fact that the Constituent Assembly was popularly elected and despite the fact that the drafting committee calibrated their draft charter to reflect public demands, the debates over the language of DBR 3 and DBR 5(4) seemed only to evade important questions about the relationship between Buddhist rights and general religious rights and, in particular, to avoid scrupulously those issues that would “unbalance” the equivocal language of DBR 3, by either amplifying Buddhist prerogatives or fundamental rights protections. That is, despite calls by assembly members for greater clarification regarding the scope and relative priority of Buddhist protections and general religious rights, the imperatives of legal production—i.e. the need to appeal to a majority of legislators—prevented serious investigation into the nature of the proposed relationship.


In general, the debates on DBR 3 were oriented around three proposed amendments. Each amendment sought a particular clarification of the DBR; and each was opposed by members of the United Front, including De Silva himself. One amendment was proposed by the opposition United National Party (UNP). The UNP insisted that the first part of the resolution be strengthened so as to render plainly the state’s commitments to Buddhism. Therefore they proposed that DBR 3 be amended

In the Republic of Sri Lanka, Buddhism, the religion of the majority of the people, shall be inviolable and shall be given its rightful place, and accordingly, it shall be the duty of the State to protect and foster Buddhism, its rites Ministers and its places of worship, while assuring to all religions the rights granted by basic Resolution 5(4).

Adding these words, the UNP leaders argued, would give greater specificity and legal force to the Buddhist prerogatives listed: Buddhism would be further distinguished as not simply one religion out of many similar ones, but as a tradition with a unique historical and institutional legacy. The added words, taken from a treaty signed between the last Buddhist kingdom and the British, would signal the state’s aims of restoring to Buddhism the status that it enjoyed during the ancient kingdoms on the island.

A second proposed amendment came from a Muslim member of the ruling coalition who requested that DBR 3 be disambiguated so that it was clear that Buddhism was not the only religion given recognition by the state:

In the Republic of Sri Lanka, Buddhism, the religion of the majority of the people, shall be given its rightful place and accordingly, it shall be the duty of the State to protect and foster Buddhism, while assuring to Hinduism, Islam, Christianity and all religions the rights granted by basic Resolution 5(4).

26 These phrases were taken from the Kandyan Convention of 1815, a treaty signed between Kandyan nobles and British officials which while ceding sovereignty of the kingdom to the King of England, made certain provisions for the protection of Buddhism. The amendment invokes parts of section 5 of the convention which reads: “The religion of the Boodho, professed by the chiefs and inhabitants of these provinces, is declared inviolable and its rites, ministers, and places of worship are to be maintained and protected.” "The Kandyan Convention (Proclaimed the 2ND of March 1815).” In Colebrook Cameron Papers. Edited by C.G. Mendis. London: Oxford University Press, 1956

In this proposed revision, Buddhism’s special status was further modulated by the assertion that Hinduism, Islam, and Christianity also had important roles in national life. Thus, what was emphasized was Buddhism’s status as *primus inter pares*, the preeminent member of a cohort of equally protected religious traditions.

The most significant objections, however, came from the largest Tamil party on the island, the Federal Party, who represented Tamil-speaking Hindus and Christians and who, in the context of the Constituent Assembly, claimed to speak for all major Tamil political groups. For the Federal Party, DBR 3 appeared to be not a balancing of Buddhist priorities with general religious rights, but a privileging of Buddhism plain and simple:

> If the constitution is constructed [like this]…no one will be able to change the fact that there is a place for only one religion in this country… Buddhism. Some may think that because they have spoken about other religions in Resolution 5(4), no objection should be voiced. I want to point out the fact that except the rights that have been applied to individual persons, there are no rights which have been allocated to religions…except for Buddhism, and Buddhism alone, no place is given to all other religions.

According to this, DBR 3 had a more dubious logic undergirding it. The privileges accorded to Buddhism, the Federal Party argued, were not offset with protections for all religions in DBR 5 (on Fundamental Rights) because of a deliberate linguistic misfit: DBR 3 gave rights to the country’s dominant faith, Buddhism as a religion (*matam*); however, DBR 5 enumerated rights for individual persons (*tanippattaka manitarkalukku*). Thus Buddhism could claim legal status, protections and privileges that Hinduism, Islam, and Christianity could not. Therefore the only appropriate amendment to DBR 3 was to rewrite it to make Sri Lanka a “secular” state or—in a more literal translation of the Tamil term used (*matacāṟṟappā*)—‘a state that did not bend towards a particular religion’:

---


29 Ibid., May 14, 1971, 929-930 translated from Tamil.

30 Dharmalingam raised the issue of the incoherence of Buddhist privileges and religious fundamental rights, as well, during the debates on DBR 5 (Fundamental Rights Chapter). Here the argument took a slightly different shape. Dharmalingam pointed out that, as currently worded, the protections for religion in resolution 5(4) were rendered as protections for citizens, rather than for all persons living on the island. Such a provision would not protect the many Tamil tea estate laborers who lived in the upcountry of the island but who had not been granted formal citizenship by the government. Dharmalingam argued “does that mean that this Government thinks that it is not the duty to give constitutional guarantee [of religious freedom] to the ten lakhs of Tamils and Hindus who are stateless today?” Ibid., May 20, 1971, 1157 in English.
The Republic of Sri Lanka shall be a secular State but shall protect and foster Buddhism, Hinduism, Christianity and Islam.\textsuperscript{31}

Through the course of debates on these amendments, one can see two antithetical processes at work. On the one hand, members of the Constituent Assembly, particularly opposition politicians, fought hard to disambiguate or strengthen the particular types of religious rights being described in the resolution and to press the question of coherence between Buddhist prerogatives and general religious rights. On the other hand, members of the majority United Front fought hard to avoid any alterations to DBR 3, so as to maintain its ambiguous rhetoric, a rhetoric carefully calibrated by De Silva to appeal to all parts of the ruling coalition (which had a two-thirds majority in the Constituent Assembly) and to as many other opposition parliamentarians as possible (Buddhists and non-Buddhists, religious nationalists and secularists, liberals, Leftists, and others). In this sense, the ‘success’ of DBR 3 lay in the fact that its language expressed popular demands regarding religion, while holding in abeyance potentially contentious questions about the specific content and/or relative priority of those demands. In the end, only two small amendments—both of which were suggested at a later, semi-closed committee stage—were integrated: the phrase “religion of the majority of the people” was dropped and the phrase “foremost place” rather than its “rightful place” was selected.

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights granted by section 18(1)(d).\textsuperscript{32}

Additional Constitutional Polarizations: The 2\textsuperscript{nd} Republican Constitution of 1978

In May 1972, with the ratification of Sri Lanka’s First Republican Constitution, Sri Lankans constitutionalized special religious rights for Buddhism and general religious rights for citizens. For some, this seemed a victory: demands for religious freedom that had been gestating for decades were now recognized in the highest law of the land. Although there continued to be frustrations with the shape of the constitution, and suggestions that its provisions for religion were

\textsuperscript{31} Constituent Assembly, \textit{Constituent Assembly Committee Reports (Colombo: Ceylon Govt. Press, 1972)}, February 27, 1971, 225-26 in Tamil

\textsuperscript{32} Draft basic resolution 3(4) was incorporated as section 18(1)(d), although the wording remained identical.
incoherent or ill-conceived, some steps were ventured to lessen the dissatisfaction of those who had wanted stronger Buddhist protections as well as those who demanded stronger fundamental religious rights. The only successful attempt came in 1978 with the redrafting of the country’s constitution by the UNP.33 Unlike the process of 1970-72, the 1978 Constitution was not drafted through the mechanism of a Constituent Assembly, but through a Select Committee On the Revision of the Constitution consisting of nine members.34

The changes made to religious rights were small, but pregnant with significance. The 1978 Constitution changed a single word in the Buddhism Chapter. In the second clause of the sentence, the word “Buddhism” was replaced with “Buddha Sasana.” As had been pointed out by some of the deputations, the term Buddha Sasana referred back directly to the language used by Bandaranaike’s Buddha Sasana Commission Report and the All Ceylon Buddhist Congress.35 Furthermore, the term referred to a much wider range of Buddhist phenomena, not only the teaching and practices introduced by the Buddha, but also monks, temples, relics, temple lands, and lay devotees. In Sinhala, the rewording has another implication: the term usually translated as Buddhism (buddhāgama) is a compound formed from two words, buddha and āgama, and the term āgama connotes religion in a very particular sense: it stresses creed, belief, and doctrine, rather than the larger institutional frame in which religion is practiced, consisting of buildings, organizations, and lands owned by a religious community. It also underscores the comparability of one religious doctrine with another, indirectly referring to the commensurability of Buddhism (buddhāgama), for example, with Hinduism (bindu āgama) and Christianity (kristiyāni āgama).36 Moreover, when used by itself, the term refers to Christianity: ‘ēyā āgamen’ means, ‘that person is a Christian.’37 Thus, using the term buddhāsasana, rather than buddhāgama, in the second part of the revision not only widened the range of possible institutions which the government undertakes to

37 This second aspect was suggested to me by a former senior civil service official and assistant to multiple presidents and prime ministers, Mr. Bradman Weerakoon. Interview on August 6, 2009.
“protect and foster,” it also subtly asserted Buddhism’s non-commensurability—and, by implication, its preeminence—when compared with other religions.

The 1978 Constitution also strengthened the position of Buddhism in two other ways. Responding to the recommendation of certain monastic deputations and incorporating the suggestions of Bandaranaike’s Buddha Sasana Commission, the Select Committee included in the new constitution a provision for the creation of separate monastic courts to adjudicate disputes between Buddhist monks. The Committee on the Revision of the Constitution in 1978 further enhanced the status of the Buddhism Chapter by making it an entrenched clause of the constitution which could not be changed without a two-thirds majority in parliament plus a referendum of the people (Article 82). Referring to these measures to further fortify Buddhism, the UNP-led Committee on the Revision of the Constitution of 1978 boasted that the chapter on Buddhism had now been made “inviolable.”

At the same time the 1978 Constitution buttressed the position of Buddhism in Sri Lanka, it also deepened the reach of fundamental rights and particularly rights to “freedom of thought, conscience and religion.” As a whole, the section on fundamental rights was lengthened and strengthened. A provision for freedom from torture was added and rights to freedom from discrimination and arbitrary arrest were further specified. Regarding enforceability, the 1978 Constitution also stated that any court cases involving the infringement of fundamental rights by the state would be heard directly before the Supreme Court (Art. 126). Regarding religion, the 1978 Constitution further bolstered the section that guaranteed “freedom of thought, conscience and religion” in three ways: listed first among the fundamental rights, making it, by implication, the most primary; giving it the status of an entrenched clause (like the Buddhism Chapter); and rendering it as an absolute freedom, free from any of the limitations imposed on other fundamental rights.

Ironically, the 1978 Constitution ‘resolved’ frustrations over religious rights by further strengthening Buddhist prerogatives and religious rights, adding to their perceived antimony rather than clarifying the links between the two. Since 1978, a number of lawmakers, religious organizations, and lobbyists have proposed further alterations of the Buddhism chapter, which have largely taken the same approach. In 1997 and 2000, the Chandrika Bandaranaike Kumaratunga administration

38 See Section 105 of 1978 Constitution. Although the provision “provide[d] for the creation and establishment” of monastic courts, to my knowledge no such courts were created.
40 These limitations included: “the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of
proposed a draft constitution which sought to address both concerns by extending and strengthening the language regarding Buddhism and fundamental rights:

7(1) The Republic of Sri Lanka shall give to Buddhism the foremost place and, accordingly, it shall be the duty of the State to protect and foster the Buddha Sasana while **giving adequate protection** to all religions and **guaranteeing to every person the rights and freedoms** granted by paragraphs (1) and (3) of Article 15;

7 (2) **The State shall, where necessary, consult the Supreme Council, recognized by the Minister of the Cabinet of Ministers in charge of the subject of Buddha Sasana, on measures taken for the protection and fostering of the Buddha Sasana.**

In this proposed change, a whole second paragraph is added to the article, specifying the creation of a Supreme Council of high-ranking Buddhist monks who will advise the government on issues relating to the health of Buddhism in the country. In addition, the language regarding fundamental rights is rendered more explicit in the first paragraph (the section that was Article 9), such that the government is charged with giving “adequate protection” (rather than “assuring” as it was rendered in Article 9) to all religions and “guaranteeing” freedoms to “every person” (rather than every citizen).

**Arguing about Religious Rights in Court**

So what effects have constitutional rights had on the adjudication of disputes in the courts? Since the 1972 Constitution, constitutional claims for religious rights and Buddhist rights have come to Sri Lanka’s courts in a number of forms. While these claims were not made frequently in the years immediately following the ratification of the 1972 and 1978 constitutions, they have been asserted regularly since 2000. The increase in such claims has come in the context of social and political upheaval on the island resulting from the escalation of the civil war between the Sri Lankan Army and the Tamil Tigers, the growing influence of foreign governments and human rights organizations, and the rapid liberalization and globalization of Sri Lanka’s economy. In this context—which was punctuated

---


by the 2004 Boxing Day Tsunami—a number of Buddhist groups on the island have become increasingly anxious about perceived threats to Buddhist religious life: they worry about the ‘cultural’ effects of global consumerism and the political power wielded by foreign ‘Christian’ states (such as Norway and the United States); they are concerned about the social influence of non-governmental organizations (such as the World Vision and the United Nations) on the lives and habits of rural Buddhists; and some fear that Buddhist Sri Lankans are the targets of a concerted conversion campaign by Christian missionaries who have come to the island under the guise of humanitarian aid workers responding to the island’s civil war and tsunami. From the late 1990s, tensions between Buddhists and Christians have risen and given way not infrequently to violence and intimidation against Christian groups.

Particularly notable about the response to the violence has been the frequent use of the language of rights on both sides to articulate competing claims. Christians have asserted that, aside from the immediate and serious harms to body and property, intimidation by Buddhists has impeded their ability to believe and practice their religion. Buddhists have claimed that these violent incidents were vigilante responses to “unethical” proselytizing practices being used by certain Christian groups. Therefore, they argue that the violence stems from an original violation of Buddhists’ rights: aggressive Christian missionizing had threatened Buddhists’ rights to “have a religion” as well as the Sri Lankan state’s constitutional obligation to protect the Buddha Sasana. Eventually, these claims met in the country’s highest court of law, the Supreme Court where, from the early 2000s, justices began to hear cases that involved interpretations of the Buddhism Chapter and its referent sections on Fundamental Rights.

While it is beyond the scope of this article to examine all of these cases in detail, the most prominent among them illustrates the ways in which the use of constitutional religious freedom provisions and language of religious rights served to transform specific (already acrimonious) disagreements into broader, more polarized,

---

43 Norway was heavily involved in attempting to monitor a ceasefire and to negotiate a peace process between the LTTE and the Sri Lankan government from 2002 to 2008.
47 E.g. SC Special Determination 2/2001, “Christian Sahanaye Doratuwa Prayer Centre (Incorporation) Bill.”
and more intractable contestations. De Silva’s “very balanced” constitutional rhetoric produced very unbalancing real-world results.

The case in question involves a 2004 a bill that was introduced to Sri Lanka’s parliament with the aim of criminalizing “forcible” (S:balahat kārayēn) conversions from one religion to another. The bill was introduced by the head of the JHU (Jathika Hela Urumaya, or National Heritage Party), a Sinhala-Buddhist nationalist political group consisting almost entirely of Buddhist monks, and it drew upon the language of the constitution in order to frame conversion both as a violation of the state’s special protections to Buddhism and individuals’ religious rights. The preamble reads:

WHEREAS, Buddhism being the foremost religion professed and practiced by the majority of people of Sri Lanka due to the introduction by great Tathagatha, the Sambuddha in the 8th Month after he had attained Buddhahood on his visit to Mahiyangana in Sri Lanka and due to the complete realisation after the arrival of Arahat Mahinda Thero in the 3rd Century B.E.[sic]
AND WHEREAS, the State has a duty to protect and foster the Buddha Sasana while assuring to all religions the rights granted by Article10 and 14(1)(e) of the Constitution of the Republic of Sri Lanka
AND WHEREAS, the Buddhist and non Buddhist [sic] are now under serious threat of forcible conversions and proselytizing by coercion or by allurement or by fraudulent means
AND WHEREAS, the Mahasanga and other religious leaders realising the need to protect and promote religious harmony among all religions, historically enjoyed by the people of Sri Lanka…

In the rhetorical architecture of the bill, conversion and proselytizing are framed both as violations of the state’s ‘historic’ duties to Buddhism (posited as extending back to the third century BCE) and as violating the state’s obligations to uphold fundamental rights to freedom of religious belief and freedom to manifest one’s religion.

Shortly after the bill was introduced to parliament, its constitutionality was challenged before the Sri Lankan Supreme Court by twenty-one separate petitioners


48 See introduction for rights listed in Art.10 and 14(1)(e).
almost all of whom were associated with non-Buddhist religious groups or non-governmental human rights organizations. Against each of these petitioners, the JHU and other Buddhist activist organizations put forward Buddhist “intervenient petitioners,” each of whom foregrounded in their affidavits that they were Buddhists who were concerned about the wellbeing of Buddhism.

What is notable about the Supreme Court case was not just the religiously polarized rosters of petitioners for and against the bill (which were, to a large degree, non-Buddhists and secularists vs. nationalist Buddhists), but that through the process of challenging or defending the constitutionality of the JHU bill, litigants on both sides seemed to reify and confirm the essential incompatibility of the two visions of religious freedom. Those who opposed the bill insisted that general religious freedoms should trump Buddhist prerogatives, insofar as equal rights for all religions was not commensurable with special privileges for a single religion. They also insisted that freedom of conscience (expressed in Article 10 of the constitution) entailed a positive freedom to encounter different religious views, to adopt or modify one’s own views, and to prevent one’s own ‘internal’ beliefs from being the object of state interrogation. In arguing against those claims, supporters of the “Anti-Conversion Bill” (as the JHU bill came to be known in the country’s newspapers) insisted upon the essential coherence of Buddhist privileges with equal religious rights for non-Buddhists, a coherence deriving not from a balancing of religious prerogatives but from the inherent “tolerance” of Buddhism itself. They also offered a view of freedom of conscience as a negative freedom, freedom from particular impositions on “sober reflection,” “consideration,” and “free thinking.” In this interpretation of Article 10, freedom of conscience depended upon the “freedom to choose…[through] spontaneous volition, to make an informed decision which is not encumbered, subverted or corrupted in any manner whatsoever by external

50 These challenges were made under Article 121(1) which entitles citizens to petition the Supreme Court for pre-enactment judicial review of parliamentary bills.

51 Interestingly, a similar logic was employed by the Italian Administrative Court in the case of Lautsi and Others v. Italy. As quoted in the ECHR judgment of 18 March 2011, the Italian Administrative Court decision (which preceded the ECHR appeal) defended the innocuousness of crucifixes in public school classrooms by arguing, inter alia, that Italy’s heritage of Christianity set the foundation for its current secular atmosphere and culture of religious tolerance. Therefore, the court argued, the cross must be seen less as the exclusive and majoritarian symbol of a particular faith than as a general and ‘passive’ symbol of the country’s shared value system, of which secularism and tolerance were core features. (Thank you to Winnifred Sullivan for pointing out this parallel.)

52 Written Submissions, S.C.(S.D.) 4/2004, Intervenient Petitioner, Ven. Omalpe Sobhita Thero, 24, italics mine. Much of the substance of this submission was duplicated in approximately eighty percent of the other intervenient petitioners’ submissions.
stimulus; it was, therefore, the duty of the state to make sure that freedom to choose could be “preserved and maintained in its purest and most pristine form.”

Although the legal battle over the bill constituted a dispute between certain Sri Lankan Buddhists and certain Sri Lankan non-Buddhists, the language of legal argument projected debates over conversion into universalist terms. When refracted through the court, these historically-situated, politically-contextualized contests were recoded as global conflicts over universal norms, rights, and freedoms. While some petitioners commented on the exclusionary politics of the JHU as a political party, most arguments against the bill were framed as protests against the bill’s violation of broader abstract principles embodied in Sri Lanka’s constitution or liberal rights theory more generally, particularly freedom of religion. Similarly, those who supported the JHU bill framed their support as a defense using (and celebrating) those same principles. There were no illiberal arguments, only competing liberalisms—alternative ways of defining religious freedom, conversion, and conscience. The result of this process of upwards abstraction was the reification of two opposing regimes of truth: the positing of distinct, irreconcilable religious and/or cultural nomoi—Christian/Buddhist, Western/Sri Lankan—which rendered compromise or agreement on any single set of principles impossible.

Those who opposed the bill accused Buddhist interveners and the JHU of failing to understand that, for Christians, the act of evangelism was not secondary to or derivative from belief, but a spontaneous ‘witnessing’ of divine presence. Therefore, to limit proselytizing was to impinge on one’s religious belief, not to curtail a secondary manifestation of that belief. Similarly, Buddhist interveners insisted that the ‘Western’ ‘Christian’ perspective failed to grasp the importance and fragility of conscience within the Buddhist view. As lead council for Buddhist interveners explained to me: “For the West, [freedom of conscience] is freedom of choice. [Choices are] just laid out, like a buffet… But, for [Buddhists]… if I don’t want something creeping into my mind, or impregnating into my mind, I should be able to stop it.”

In this case—and in others—the turn to constitutional law accomplished the opposite of what constitutional designers had hoped for and intended. Rather than providing the terms for a rapprochement of views and the gradual reconciling of frictions around a shared commitment to religious freedom, the legalization of religious tensions seemed to further affirm and deepen the assumed lines of conflict between Buddhists and non-Buddhists (in this case Christians) through a process of reifying opposing notions of religious freedom. The process also affirmed and

54 Interview, February 4, 2009.
deepened conceptions of religious traditions as fixed, stable and unchanging. At no place in the course of this court case, or any other that I examined, did lawyers or judges question the reality of Buddhism and Christianity as distinct, internally coherent and naturally opposed communities or religions. Rather, the process further legitimated these cleavages by allowing Christian groups to speak on behalf of “Christianity” and by allowing Buddhist groups to speak on behalf of “Buddhism.” In this sense, what is particularly intriguing about the court case was that in no moment was a single, specific case of “forcible conversion” adduced in court, outside of a few indirect anecdotes taken from newspapers. Through constitutional law, then, popular concerns over conversion gave way to polarized battles of reified worldviews, abstract ideas, and hypothetical circumstances: conversion was translated from a site of historical struggle into a normative problem.

So what did the Sri Lankan Supreme Court do? In its determination on the bill’s constitutionality, the three-justice bench tried to split the difference. The court agreed with both parties on the question of religious rights: that is, protecting Buddhism was indeed important, but what was crucially at issue was freedom of religion in the form of “freedom of thought and conscience and religion.” It further insisted that, in principle, converting another forcibly would violate that freedom of conscience by introducing a “fetter” on the “free exercise” of one’s mind. However, it also concluded that the measures laid out by the bill to prevent such forcible conversions—particularly its protocols for reporting and laying charges—constituted unconstitutional “restraints” on freedom conscience and religion. In this way, the court deemed the conversion bill constitutional in spirit, but not in key areas of substance.

What is perhaps most remarkable about the judgment is its studied avoidance of any statement concerning the questions that really mattered with respect to religious freedom and religious rights, most particularly questions about the relative priority of Buddhist protections vis-à-vis fundamental rights as well as any clarification of how freedom of conscience ought to be conceived. Like the members of the Constituent Assembly, the court refused to take steps towards disambiguating the Buddhism or Fundamental Rights Chapters. This refusal may reflect the difficult political context in which the Sri Lankan state and its judiciary found themselves: to assert the priority of Buddhist protections over fundamental rights—or even to admit the necessity of weighing up

56 Without going into detail, the court suggested that the bill would be rendered constitutional if it were to limit the types of people who can legally accuse another of “forcible conversion,” omitting a requirement that proselytizers and converts (or those who participate in conversion ceremonies) report conversions to the government and excising a section on the discretionary powers of ministers to add new categories of ‘vulnerable’ people and to institute new, related rules and regulations.
constitutional duties to Buddhism when considering religious conversion—would be to disenfranchise non-Buddhists, secularists, and liberals on the island, many of whom were important supporters of the government at that time. On the other hand to assert the priority of fundamental rights over Buddhist privileges would be to alienate Buddhist nationalists, including the JHU, who had gained significant public support. Interpretations of freedom of conscience became a proxy language for those who favored or opposed the bill: asserted as a negative freedom, freedom of conscience became the rallying cry for groups like the JHU; asserted as positive freedom, it served the bill’s opponents. The court carefully sidestepped either interpretation. In the end, by translating religious demands into constitutional language, litigants not only hardened the rigidity of those demands, they translated them into a form which the state refused to arbitrate.

Conclusion: Religious Freedom as Constitutional Evasion

Some may suggest that the dilemmas of legalizing religion that I have just described testify not to the corrosive effects of legalization in general but to the inadequacy of legal processes in Sri Lanka or the residual influence of a Buddhist nationalism as yet untamed by a commitment to the modern rule of law. Some would suggest that similar processes of ambiguous law-making and judicial interpretation characterize the legalization of religion in a variety of countries. That is, one might still posit that the solution to Sri Lanka’s religious tensions lies within the apparatus of law. In fact, a variety of international governmental and non-governmental groups advanced these arguments in the aftermath of the “Anti-Conversion Bill” case. Letters and reports were drafted by groups such as the Becket Fund for Religious Liberty, the U.S. Commission on International Religious Freedom, and the United Nations Special Rapporteur on Freedom of Religion of Belief. In all of these cases appeals were made to the Sri Lankan government to uphold “religious freedom,” by which was meant the positive freedom of conscience described above.

However, better laws or legal institutions will not eliminate the fact that, in Sri Lanka as elsewhere, ideals of religious freedom and religious rights are grounded less in abstract arguments of liberal justice and natural rights than in historical arguments about colonialism and its legacies, sovereignty and its defense, Buddhism and its deprivations, and minority religious communities and their status on the island. In this context, the transnational legitimacy of secular liberal regimes of religious rights (such as those of the ICCPR), collide with anti-colonialist legitimacy of law as an index of sovereign independence and populist legitimacy of law as the embodiment

of majoritarian demands: what may appear as a guarantor of religious freedom in one mode appears as religious domination in another. Therefore, to further disambiguate the Buddhism Chapter—to further specify the primacy of liberal religious rights, for example—is not to invite a less problematic form of legality by way of a clearer form of legality. It is rather to risk tilting the content of law in a way that would undermine its legitimacy by exposing it to be either an expression of neocolonial Western dominance (in the form of hegemonic human rights norms) or an expression of national majoritarian dominance (in the form of clear Buddhist privileges). The persistence of Sri Lanka’s constitutional provisions on religion—or, rather, the reluctance of political and legal authorities to alter or further clarify the meaning of those constitutional provisions—derives precisely from the manner in which they lock together in irresolvable ambiguity the competing demands of citizens while also displaying those demands as not just authoritative, but ‘autochthonous.’

This brief overview of the political, legislative, and judicial histories of Sri Lanka’s constitutional religious rights is both a story about the avoidance of conflict and a story about deepening of conflict. It is a story of avoiding conflict, in that it highlights the deliberate reluctance of Sri Lankan lawmakers and judges to weigh up, evaluate, and reconcile competing understandings of religious rights and religious freedom on the island. Those charged with charting and interpreting the contours of religious freedom on the island have not—for reasons of political necessity—arbitrated between these different visions. It is a story of the deepening of conflict in that it shows how, in turning to law, Sri Lankans have transmuted specific lines of tensions into a contest between absolute, non-negotiable “freedoms” and between Buddhism’s “foremost place” and other religions’ “fundamental rights.” In the day-to-day lives of Sri Lankans, the increasing commonness of “rights talk” may therefore lead persons and communities to reconceive and recode what are often particular, historical, situational disputes in the language of universal, absolute legal claims.58

There is a price to be paid in this process. By constitutionalizing religious freedom, Sri Lankans have overwritten and ignored the far more porous boundaries between the “religious” and the “non-religious,” and between Buddhists, Christians, Muslims, and Hindus. Throughout Sri Lankan history and into the present moment, religious identities, religious worship, and religious sites have not easily been expressed as confined to single, isolated, distinct, religious “traditions.” It is common to find “Hindu” deities in Buddhist temples, or to see regular church-

---

58 To the best of my knowledge, this line of argument about the ‘impoverishing’ effects of “rights talk” was introduced originally by Mary Anne Glendon in the context of U.S. See: Glendon, Mary Ann. Rights Talk: The Impoverishment of Political Discourse. reprint ed. Simon and Schuster, 1993
goers attend Buddhist festivals. Many holy sites on the island—such as Adam’s Peak and Kataragama—are considered sacred by multiple religious groups, and these sites have, for many years, been places of concurrent, plural religious worship, with Muslims, Buddhists, Christians, and Hindus worshipping together simultaneously. Moreover, Buddhism itself—although rendered as a singular, coherent, collective entity in the constitution and court determinations—does not name an undivided religious collectivity, but an amalgam of different (often competing) monastic sects, lay organizations, places of worship, practices, texts, and devotees. Considering this, in Sri Lanka, the language of religious rights does not accurately reflect or readily translate the realities of religious life. The antimony of religious freedom in the Buddhism Chapter is, in a sense, the product of legal fictions. But if they are fictions, they are nonetheless influential ones. Legal institutions alter social life and reconfigure political incentives. In so doing, they may generate new lines of strife (or reaffirm the old ones), such that the very legal tools deployed to solve a social problem become complicit in the fixing and deepening of the problem itself.

The history of Sri Lanka’s Buddhism chapter points to the political, legal, and judicial consequences that flow from the seemingly banal observation that religious freedom means different things to different people. Yet, if we take this observation seriously, particularly in the context of a post-colony, it follows that legalizing religious freedom may not produce stable agreement on shared principles, but fossilized stalemate over opposing principles. If Sri Lanka’s religious communities are to have a harmonious future it may be in spite of the law, rather than because of it.