

Buddhism, Law and Comparative Law: the (Rebecca) French Connection

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Rebecca R. French, *What is Buddhist Law? Opening Ideas*, 64 **Buffalo L. Rev.** 833 (2015), available at [SSRN](#).

[Professor Rebecca Redwood French's](#) *What is Buddhist Law? Opening Ideas* is a major contribution to the nascent field of Buddhist legal studies and has the potential to advance our thinking about comparative law. In this review, I will highlight the article's significance to these two areas of study.

Professor French notes that although there is significant writing on the legal dimensions of the Christian, Jewish, Islamic and Hindu religious traditions, little has been written on "legal concepts in the Buddhist tradition." (P. 834.) Perhaps most significantly for readers of this blog, she points out that although some Buddhism scholars have written on "the Buddhist Law Code ... very few have written on it from a legal vantage point." (P. 834, note 3.) As the author of several important works in the field (including, [On Buddhism and Natural Law](#) 8 **J. Comp. L.** 141 (2013-2014)), as co-editor (with [Professor Mark A. Nathan](#)) of the collection entitled [Buddhism and Law: An Introduction](#) (2014) and as editor of the journal [Buddhism, Law and Society](#), Professor French has done much to fill this gap.

The introductory chapter to *Buddhism and Law: An Introduction* provides a terminological distinction that can help orient our discussion. There, Professors French and Nathan contrast "Buddhist Law," which refers to "monastic law codes," with "Buddhism and Law," which "alludes to the secular legal systems of countries that are Buddhist." (*Buddhism and Law*, P. 4.) In this review, I subsume within the capacious term "Buddhist legal studies" legal academic writing on monastic legal codes and on the interactions between Buddhism and secular legal systems.

Professor French begins her article by setting out several reasons for developing this field of study. Consider first the reasons for better understanding Buddhist Law. According to Professor French, Buddhism has a detailed legal code and a long legal history that can be traced back to the founder (P. 835), and research by jurists can illuminate this aspect of the tradition. It is also important to study this legal code, Professor French argues, because the concept of law in Buddhism challenges the dominant modern understanding of law. According to her, the Buddhist concept does not focus on artifacts of positive law ("cases, rules, rights, judicial procedures, decisions and sanctions" (P. 835)). Instead, writes Professor French, the concept of law in Buddhism is "uniquely focused on the socialization of the individual to a set of rules that will help him or her operate within a community." (P. 835.) This process of socialization affects the Buddhist practitioner's day-to-day behavior, reduces conflict, diminishes the need for legal rules, and facilitates the pursuit of religious practices (meditation) and goals (enlightenment). (Pp. 835-36.)

Professor French adds to these arguments in favor of studying Buddhist Law several that justify scholarly attention to Buddhism and Law. She contends that scholarship on Buddhist cultures has largely ignored the legal texts of the relevant political states. This body of academic writing (which includes Buddhist Studies and Area Studies) has therefore neglected the influence of Buddhism on "the political and legal operations of these states." (P. 838.) Professor French identifies pragmatic reasons for understanding this influence. She notes that many countries with significant Buddhist populations loom large in international relations and in the commercial and political interests of the United States. (P. 836.) There is, therefore, a strategic interest in understanding how Buddhism shapes the political and legal life of these states.

After identifying these reasons for undertaking Buddhist legal studies, Professor French undertakes a magisterial survey of relevant topics. In Part I of the article, she identifies the origins (Pp. 841-842) and objectives (Pp. 842-845) of

Buddhist monastic codes, before distinguishing the relevant concept of Buddhist law from an overbroad definition advanced in the field of Buddhist Studies. The latter definition captures the whole of the Buddha's teaching, including that which relates to "the nature of the universe, the position of human beings in it, reality, karma, nirvana and all of the other basic ideas of Buddhist philosophy." (P. 845.) In Part II, Professor French identifies the number and types of Buddhist legal codes, and examines their organization and style. In Part III, she demonstrates that the legal codes do not exhaust the content of legal materials in the Buddhist canon. Professor French demonstrates that the Buddha's observations on law can be found in "a wide variety of texts, proverbs, stories, sayings and homilies" (P. 866), and that other texts, including temple ordinances, royal proclamations and commentaries on the Buddhist canon also include discussions of legal norms. The article concludes with an overview of Buddhist Law and Buddhism and Law in South and Southeast Asia, East Asia, and North Asia and the Himalayan region.

It follows from the above discussion that Professor French's article will be a cornerstone in the field of Buddhist legal studies, and is worthy of attention for that reason alone. The article is also important, in my view, because it advances the field of comparative law in three important ways. First, comparative scholarship on legal systems in Buddhist societies is necessarily incomplete if authors do not understand how Buddhism shapes those systems. Professor French's survey of Buddhism and Law offers promising avenues for examining this influence.

Second, comparative law's neglect of Buddhist legal codes results, in part, from a tendency in the legal traditions literature to caricature Buddhism. Professor French sees this tendency in the work of my esteemed late colleague, Patrick Glenn. According to Professor Glenn, Buddhism spread "in a non-political, non-institutional way, just telling people about the way of the world and achieving some kind of political consensus only in Tibet." (P. 849, internal citations omitted.) Professor French's article is an excellent corrective and a starting point for a more fruitful engagement with the Buddhist legal tradition.

Third, Professor French's article has the potential to spark productive dialogues among comparative law scholars with a jurisprudential bent. As we have seen above, the concept of law in Buddhism contrasts with, and therefore contests, much of the modern positivist understanding of law. A similar challenge has been posed by some writers on Indigenous legal systems in Canada and elsewhere (see, e.g. John Borrows' *Freedom and Indigenous Constitutionalism*). Indeed, in a wide range of contexts scholars are examining practices and concepts of law that do not rely upon the imprimatur of the state for their legitimacy or efficacy. As part of this flourishing body of scholarship, one can foresee productive comparative conversations between Indigenous law scholars and authors building on the firm foundations established by "What is Buddhist Law? Opening Ideas." I, for one, intend to seek out such exchanges with enthusiasm and I anticipate drawing upon the abundant riches of Professor French's article for years to come.

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