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BUDDHIST INFLUENCED OBJECTIONS

TO THE RULE OF LAW

AND THE IMPLICATIONS FOR SOCIAL POLICY

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Having been involved in social policy design and implementation for the past 10 years (primarily in security and political development matters) I have become fascinated by the influences on people's ideas regarding society and the acceptable ways to deal with its problems which seem to come from their Buddhist backgrounds. [For example, in drafting a new National Security Policy for the Southern Border Provinces in 1998 there was initially great hesitation and uncertainty in the different committees that had to pass the new policy (made up almost entirely of Buddhists) because it stood out from past policies in its high level of inclusiveness and acceptance of diversity. The policy was eventually approved, not however by intricate security based arguments but by introducing into the discussion the idea of the Muslim population in the region as being "friends in the birth-ageing-sickness-death cycle".] Two things stand out pertaining to these Buddhist influenced views. First, only a few Buddhist points of references are usually used over and over (karma, friends in suffering, good society coming from good people etc.) and secondly, these points of reference are so entrenched that any new proposed understanding of such commonly held views which come out of Buddhist scholarship and research

are either ignored, or those who make such suggestions are considered to need more study, or if they are monks are considered as "monks at the end of the line", a common phrase that senior monks use to describe such monks. This perspective raises the question of in what way is Buddhist doctrinal scholarship relevant to understanding how Buddhism influences actually held views on the rule of law and other legal issues.

In many parts of Thai society there has always existed a sense of uneasiness in discussions about ways to improve society when the question of building strong institutions is raised. The uneasiness most often comes because it seems as if we are walking someone else's path, a path alien to our own way of understanding what the foundations of a desirable society should be built on. As the discussion on social policy progresses, whether it be in official meetings or academic seminars, the counter position most often raised is that good societies come about by having good people making decisions and not by having strong institutions such as rule-of-law. Upon further probing it will then be suggested that this is the Buddhist way of understanding human beings and society. [The term "Buddhist way" is used here to refer to Thai Buddhism at the level of a moral system (in this case a moral system for social ethics) and not as enlightenment or as a philosophical system, using the typology of Saeng Chandra-ngarm]. To find the roots of this understanding of what the features of a Buddhist moral system are we need to look into two kinds of sources for such ideas, the writings of Buddhist scholars written for the general public and the sermons delivered by Buddhist monks on various occasions. This paper will discuss the views on this topic of two such Buddhist scholars, Preecha Changkhwanyuen from The Royal Institute and Somparn Promta from the Chulalongkorn Center for Buddhist Studies (one of the purposes of setting up this center was to encourage the study of the relationship between one's understanding of Buddhism and one's social-political-economic views). The analysis of Buddhist sermons requires

another kind of study which goes beyond the scope of this discussion, though the views of some influential monks will be discussed.

At the same time in present day Thailand there are attempts to solve various social problems by exactly the methods being opposed, namely by the strengthening of institutions. Two such directions which shall be discussed are The National Reconciliation Commission's proposal to deal with the violence in southern Thailand by reform of the legal system and strengthening rule of law, and the advocacy position of the Asian Human Rights Commission on the connection between rule of law and the protection of human rights, a position taken by Thai human rights organizations as well.

Until these opposite ways of understanding how to work towards a better society are reconciled there is the risk of much of the progress from each side canceling each other out. In the conclusion we discuss a possible path towards this reconciliation.

The view of two Buddhist scholars

The two scholars whose writings on this topic will be discussed are chosen because of the nature of their works. Preecha's style is very accessible to the general public and he also gives numerous talks to a wide range of institutions such as schools, military academies, political institutions. Because of this, the impact of his ideas go beyond the walls of academe and can continually influence public debate. Somparn, on the other hand, intentionally writes to engage the public (as he explains in detail in the preface to his book *Buddhist Philosophy*). Though he takes a somewhat controversial position in his understanding that being a Buddhist does not mean being just a follower of the dharma but also means debating with the dharma on some issues while still following the Path, his ideas are influential because of his many "popular" books on the Buddhist view of such things as abortion, cloning, violence, law, environmental problems etc. which are written for general public consumption. He also has a close involvement with the Bud-

dhist monastic universities both as an alumni (of Mahachulalongkorn) and as a lecturer.

Preecha's view on the Buddhist way to build a better society begins with his understanding of what the nature of a Buddhist society should be like. For Preecha it is a society whose members are compassionate human beings. Such a society could be referred to as a compassionate society. The question for our concerns then is whether the rule of law is a feature of such a society. Preecha's general answer is that the rule of law is irrelevant to building a compassionate society because if people are not compassionate they will either take advantage of imperfect laws or find a way around the better ones. On the other hand, if people are compassionate then there is no need for the rule of law.

Somparn's view on this matter is slightly different. Though he begins with the same understanding as Preecha that a desirable society in the Buddhist sense means a compassionate society, he sees the necessity of having the rule of law present in such a society. His view is that there are people who can become compassionate and others who are not able to so easily. The rule of law is a means to protect the compassionate members of society from those others who would otherwise do them harm. What Somparn is proposing is that a desirable society must have rule of law but only as a tool and not as a fundamental feature of such a society. He disagrees with Preecha in that he believes that there can be laws which effectively curb the behavior and the ability to harm others by those members who might wish to do so. However, in the important question of whether the rule of law is a fundamental feature of a desirable society, both Preecha and Somparn are in agreement that it is not.

We might ask why views like those of Preecha and Somparn are so opposite to many who see the rule of law as not only being a fundamental feature of a desirable society, but in some cases its defining characteristic. Can there be a greater contrast between "We wish to be a nation of laws, not of men" and "We wish to be a nation of compas-

sionate men, not of laws”? One answer might be that the two views understand the meaning of ‘rule of law’ differently. But whether the definitions given by each view be formal, substantive or functional (following the classification used by Matthew Stephenson), once the difficulties with the different definitions of ‘rule of law’ are worked out (e.g. not allowing for the desirability of the rule of law to be tautological) it seems likely that both views will tend to understand the meaning of the rule of law quite similarly, and so this should not be the answer. I think that a more accurate answer to the above question is that the two views begin with different ideas of what a desirable society is. For one view it is a society whose members are compassionate human beings, for the other it is a society whose members do not infringe on each other’s rights. With such a difference we can see how the role played by the rule of law in working towards such societies would be different. Taking a Buddhist cosmology seriously would mean many more such differences in regards to issues pertaining to law, for example the possibility that some commonly considered criminal acts might be a compassionate act on some occasions. Such possibilities would then have to be dealt with in the legal code in use. When discussing how to actually put such ideas into practice it is often said that the direction of a person’s karmic status might be too difficult to substantiate. But projecting the direction of a person’s behavior is done in many other contexts (advertising, voting behavior etc.) and so it seems as if the real obstacles lie not with those types of problems but with the idea of preventing something not yet done. This is only a problem if we accept an “innocent until proven guilty” position with the usual accepted understanding of proof.

The impact on social policy

Dealing with the violence in the South

The National Reconciliation Commission’s recommendations for dealing with the violence in the south have the strengthening of rule of

law as one of its main pillars (in the past, extrajudicial killings and state hit squads operated unhindered, or at best ignored). The recommendations cover such things as expanding responsibility for investigation of criminal cases beyond just the police force, establishing a center to handle cases of disappearances and abductions, putting into place mechanisms that provide wider access to the justice system, introducing ADR mechanisms, creating ways for the justice system to be accountable to the public etc.

But in order to be successful these recommendations need general public support to create society-wide ownership of the process of reform, otherwise the reforms will just be another case of trying to seem up to date in matters of the justice system.

The Protection of Human Rights

Strengthening the rule of law is necessary to counter impunity, something which is mainly responsible for human rights abuses (see the 3 articles from Article 2). Protecting rights and affording remedies are all about strengthening institutions such as the Department of Special Investigation, Department of Rights and Liberties Protection, Central Institute of Forensic Science, National Human Rights Commission etc. For example, consider the matter of torture. Torture continues to be practiced routinely by the police because no laws exist to proscribe torture and prescribe penalties; no procedures exist to investigate acts of torture. It is more efficient to deal with this matter not by convincing the police that torture is morally wrong, but by changing certain laws, such as the law involving detention of suspects, since reducing prolonged periods of detention will then lessen the likelihood of torture, also important are laws which put investigation procedures in place where institutions such as those above can follow up on abuses.

Reconciling the two attitudes towards the rule of law in Thailand

The debate between the two attitudes towards rule of law discussed above is based on one view believing that no matter what institutions

are put in place they can be undermined by immoral people in charge (either by good laws and institutions being undermined, or by weak laws being used for justifying improper acts). Examples of this way of understanding such matters are widespread in Thai society. Consider the following:

(1) The view of the prominent monk Phra Khru Dhammatornnipol, the abbot of Wat Toongkoi in Pattani. Himself a member of the NRC, he told the commission that "...we need moral human beings to deal with the violence in the south not more institutions and legal reforms..."

(2) A Sunday morning Buddhist sermon on TV explaining that solving social problems with institutions is like having an itch and dealing with it by scratching the wrong place.

(3) A radio talk show on politics with a call-in guest giving his opinion on the uselessness of reforming the Constitutional Court because no matter how good the law governing the workings of the court, it comes down to what kind of people the members of the court are.

(4) The present political/constitutional crisis where a large network of civil society groups want the King to determine if it is time to give the constitutional arrangement a rest and appoint a 'good' person to set society back on track.

However, from the other view we have the rejoinder that until we can come up with concrete ways to move Thai society towards a "compassionate society" there seems to be no better alternative than relying on the rule of law.

Engineering Compassion, but with a safety net

So how might we proceed? One way is to revisit the possibility of finding concrete measures that can make Thai society become a more compassionate society. Most of the pessimism relating to such projects stem from the fact that past attempts center around different forms of moral education, all of which have been failures. But there might be other ways to proceed. For example we could think about the possibil-

ity of 'engineering compassion'. Though this might sound strange it is because 'engineering' usually leads us to thinking about constructing manuals. But in this case it could be engineering by 'showing truth'. Such a project could begin the building of a more compassionate Thai society through policy: for example there could be daily TV spots, after the news, of hospitals and funerals showing people from all parts of society going through the cycle of Birth-Ageing-Sickness-Death, thus creating feelings throughout Thai society of everyone being fellow sufferers. From this recognition of our common humanity will then flow feelings of compassion towards our fellow citizens. Engineering compassion could also be a task for the King to engage in. One such task would be for the King to become the transitive point of passing on 'caring' among citizens. [I have proposed such a rethinking of what it means to be a good King and have suggested the necessity of going beyond the "Tossapit Rajadhamma" (the 10 Kingly virtues) in my paper on constitutional monarchies.]

Meanwhile, as these projects make slow but steady progress, we proceed with programs to strengthen the rule of law as a temporary safety line tied around our waist as we make our climb towards a compassionate society. This line keeps society afloat while 'bad' people are still in positions of power, allowing for the gradual change of these people (either internal change or by replacement). But since safety lines not only prevent falls, but also puts a limit on how high we can climb, eventually this line must be cut loose if we are to reach the peak.

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