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Buddhism, Human Rights and Constitutional Reform in Thailand

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Abstract

The purpose of this article is to address the relationship between Buddhism, constitutional reform and human rights in Thailand. It poses the questions: To what extent is the Thai state Buddhist in character? How are we to describe the relationship between Buddhism and the state? Can and should human rights be supported or presented as being supported by Buddhism, or interpreted according to Buddhist ideas? The historical relationship between the state and the sangha is examined, in which the state used religion to bolster the state's legitimacy. The place of Buddhism, human rights and the Human Rights Commission under the 1997 constitutional reforms is then addressed, in the context in particular of the problem of insurgency in the Southern provinces. It is concluded that the constitution-makers rightly refused to make Buddhism the state religion but that attempts to disseminate human rights understanding in Buddhist terms are justified, provided inter-faith dialogue is part of this process.

KEYWORDS: Thailand, Buddhism, constitutional law, human rights

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I. INTRODUCTION

The purpose of this article is to address the relationship between Buddhism, constitutional reform and human rights in Thailand in the context, in particular, of the problem of the Muslim South and the Buddhist justification of human rights - a well known position taken by the NHRC's President, Professor Saneh Chamarik,¹ and some leading Buddhist writers. I will try to address this relationship in such a way as to shed some light on Buddhism, human rights and the reform process that has taken place since 1997² (or perhaps, more profoundly, since 1932). In order to do this we need first to consider issues relating to religion and the Thai state: To what extent is the Thai state Buddhist in character? How are we to describe the relationship between Buddhism and the state? We also need to address issues relating to human rights in the context of Thai constitutional law, which may well be dependent on the answers to the foregoing questions: Can and should human rights be supported, or presented as being supported, by Buddhism, or interpreted according to Buddhist ideas? Some extensive background concerning the nature of Thai Buddhism and also the nature of Thai constitutionalism seems appropriate before we address these questions in a more direct fashion.

II. BUDDHISM AND THE STATE IN HISTORY

We have to start this investigation as far back as 250 BCE or 2250 years ago, in the reign of King Asoka, who was the first secular leader to embrace Buddhism and attempt to Buddhicize the state. Asoka's empire was a vast one, extending over most of South Asia and beyond. He converted to Buddhism in about 250 BCE and proceeded to establish a model for the relationship between state and religion that became predominant in the Theravada Buddhist world. This change was far-reaching: the legitimation of kingship came to rest on dutiful actions and the approval of the *sangha*, as opposed to descent from a divine source or pure military prowess.³ In this sense Asoka's theory of kingship is usually distinguished from the Brahminist concept that it replaced. Under the Asokan theory kings established monasteries and *stupa* and supported the *sangha*, sometimes reforming it in the process, sometimes resolving disputes within it. The King was subject to religion, and therefore to religious law (*dhammathat*),

¹ Affirmed to the writer on two occasions (April 2002 and August 2003), by Professor Saneh, and also appearing clearly in some of his own unpublished conference papers.

² Klein, 1998; Borwornsak and Burns, 1998; Harding, 2001. For human rights in the post-1997 phase, see Vitit Muntabhorn 2006.

³ Asoka himself before his conversion had been a bloodthirsty warrior king.

but also determined the positive law (*rajathat*) and was therefore in this sense above the law.⁴

These ideas later influenced the development of the Siamese monarchy in the context of Theravada Buddhism, as the latter developed in Siam from the Sukothai period and came to occupy a position of great importance in society, which it still occupies. Somboon Suksamran says:

Buddhism is a social institution which is important in giving meaning to and being a symbol of national unity. It is a source and medium of the culture and traditions of the Thai nation ... Buddhism is like a root of our national existence and of the original social, cultural and political identity of the Thai nation.⁵

When he says 'political identity' he refers no doubt to the importance of the monarchy and its connection with Buddhism. As Keyes says of the monarchy:

Not only was the right of a man to occupy the throne legitimized in the popular mind by the idea that only a person with an exceptionally meritorious component to his *khammic* legacy could occupy the throne, but it was also believed that the welfare of the kingdom during a man's reign was dependent upon the degree to which he possessed a 'merit' which could be shared by his subjects.⁶

In Weberian terms we can characterize the Siamese monarchy as having a 'traditional' legitimation, as opposed to the 'charismatic' or 'legal-rational' legitimation of historically later institutions.⁷ The legitimation of the contemporary state is clearly a more complex matter, as all three types seem to have some relevance. Turton says of Thailand that the 'close identification of bureaucracy, (military led) government, state, nation, monarchy and religion ... gives the state, and associated institutions, a monopoly of legitimacy rarely found to such a degree'.⁸

Buddhism has both influenced and legitimized the exercise of political power in Siam/ Thailand. Originally, in Asokan terms, the cosmological order it represented was reflected in the institutions of state. Religion was not separate from the state but was in fact closely identified with it, supporting but also

⁴ Asoka was called 'Chakravartin' or 'he for whom the wheel of law turns'. A comparison with the Roman Emperor Constantine is instructive. Constantine converted to Christianity as Emperor in 312 CE and also had a concept of an integrated church and state, using religion as a unifying factor. His conversion seems to have been less sincere and rather more political than Asoka's.

⁵ Quoted in Jackson 1989, at 2. The quotation is from Somboon Suksamran 1984, at 4.

⁶ Keyes 1973: 98, quoted in Jackson 1989, at 12. Keyes' paper was delivered in 1970. The quotation is probably even truer now than it was then.

⁷ For discussion of Weber's analysis, see, e.g., Bendix 1977, chs.10,11,12. For a fascinating discussion of the Siamese monarchy in terms of both rationalism/ science and Buddhism, see Thongchai Winichakul 1994, ch.2.

⁸ Turton 1984, at 21.

supported by it. Unlike Christianity, however, but more like Islam, Buddhism as a whole does not have any central doctrinal authority. There is no Pope-like figure to lay down the law and to expunge dissenting elements and heretical views. The state in the Theravada Buddhist world has therefore been free to intervene with its organisation and therefore its official doctrine, as has occurred in the above instances and repeatedly throughout Thai history.

In Thailand, Buddhism represents a national ideology of such importance that each successive regime since the establishment of the Chakri dynasty in 1782 has found it of great importance to ensure that its political programme was supported by the *sangha*, even to the extent that it has if necessary reorganized the *sangha* and suppressed dissent from official interpretations of religion to bring about this result, making quite overt use of legal and administrative controls. King Mongkut (Rama IV) had himself been a monk for 20 years before becoming King and had a profound effect on Buddhism through his acts as King, creating the Thammayut order as a means of asserting royal control over religion. His outflanking of traditional astrology by appeal to Western science at Waco in 1868, when he successfully predicted an eclipse of the sun, was a crucial moment in which Siam commenced its engagement with modernity, a modernity which King Mongkut justified, nonetheless in Buddhist terms.⁹ As this modernization progressed rapidly, Sangha Acts were passed in 1902, in 1941 and 1962, and a Sangha Bill was presented to parliament in 1975 but not proceeded with after the 1976 military coup. These dates are all highly significant, representing the commencement of periods that were, or were intended to be, ones of intense political change.¹⁰

In the late 19th and early 20th centuries, faced with the threat of colonialism, the Thai state started, under King Chulalongkorn (Rama V), to centralize politically, administratively, and religiously, creating a national *sangha* to oversee the national Theravada clergy, and absorbing peripheral states which had previously owed only allegiance to Siam.¹¹ This centralization also involved asserting Siamese control over the Muslim South in a manner which has been portrayed as itself colonial, and included copying the British technique of co-opting Islamic law as personal law for Muslims, enforced in state-organised *Sharia* Courts.¹² When the nature of the state changed with the advent of the constitutional monarchy in 1932 and the periods of quasi-military authoritarian rule under Generals Phibulsongkram, Sarit and Thanom in the 1940s to 1970s, Buddhism continued to provide the state with legitimacy. In 1962, the military government became concerned about possible communist infiltrations into

⁹ Thongchai Winichakul 1994, at 45-7.

¹⁰ Morrell and Samudavanija 1982.

¹¹ Thongchai Winichakul 1994; Loos 2006.

¹² Loos 2006; Thongchai 1994.

Buddhist temples and passed a Sangha Act that placed Theravada Buddhism under the control of a Supreme Council, loyal to the government, which received all the public funds, and allocated them to local institutions. Now that the state is, since 1992, democratically oriented and concerned above all with social and economic development, once again Buddhism legitimates the state. As Jackson points out, political discourses on social and economic development are still couched in terms of Buddhist concepts, and all political groups other than communist, Christian and Muslim ones, claim to be Buddhist.¹³

III. BUDDHISM AND THE STATE UNDER THE 1997 CONSTITUTION

According to various estimates by the Government and others, 99% of the population of Thailand professes some religious belief, approximately 85-95% claim to be Buddhist, and 6-10% are Muslim; estimates also indicate that Christians constitute approximately 1-2%. Monks belonging to the older and more popular Mahanikaya School far outnumber those of the more elitist Thammayut School created by King Mongkut. Islam is the dominant religion in four of the southernmost provinces, which border Malaysia. Minority Muslim populations also live in 74 of the 76 provinces. The majority of Muslims are ethnic Malay, but the Muslim population encompasses also groups of diverse ethnic and national origin. There are approximately 3,320 mosques in 59 provinces, with the largest number in Pattani province. All but a very small number of these mosques are associated with the Sunni branch of Islam.

We have seen that the state in Siam/ Thailand has used Buddhism to create legitimacy, and has sometimes molded Buddhism itself, in its official positions and organization, to suit the purposes of the state; for this very reason too, the state has encountered difficulty over many years in its attempts to incorporate non-Buddhist minorities within the aegis of its citizenship. This is most apparent with the Muslim community in the South, which has periodically for several hundred years rebelled against Thai 'sovereignty';¹⁴ it is true also of other ethnic and religious minorities such as the Northern indigenous hill tribes and Burmese refugees, and has been true at various times of the Chinese. Diplomatic accommodation between Siam and Britain in the early 20th century sealed the geopolitical fate of the Muslim kingdom of Patani¹⁵ as being within the Siamese sphere of influence rather than that of Britain. Had things been otherwise Patani would have probably eventually joined Kelantan, Terengganu and Kedah in

¹³ Jackson 1989, Introduction.

¹⁴ The quotes acknowledge that sovereignty is a Western legal concept which not only inaccurately describes the relationship between Siam and the northern Malay states, but also contributed to the present disastrous situation in the Muslim south of Thailand.

¹⁵ [Sic]. Patani with one 't' is the Malay spelling.

becoming part of the Federation of Malaya in 1948 and then Malaysia in 1963.¹⁶ The issue of religious minorities has clearly exercised the constitution-makers. There were and of course still are demands to make Theravada Buddhism the state religion under the Constitution,¹⁷ a claim which is not inherently implausible for the reasons indicated by the quotations above from Somboon Suksamran and Turton. However, the Constitutional Drafting Assembly, which created the 1997 Constitution, stuck with the principle of constitutional secularism (i.e. official indifference to religion and recognition of religious freedom and equality, modified only in three respects, which are discussed below), on the grounds that such an action would create social division and be offensive to other religious communities.

Some comparative comments are appropriate here. Cambodia's Constitution of 1993 provides for Buddhism to be the state religion.¹⁸ The effect of this has been to give some credence to those who find non-Buddhist minorities offensive and a species of Buddhist nationalism has been on the rise in recent years.¹⁹ Cambodia has about the same proportion of (Theravada) Buddhists as Thailand and a somewhat similar array of ethnic and religious minorities. The West too, where there is a historical separation of state and religion, is not free from a tendency for religion to alter the 'secular' nature of the state. Indeed the development of constitutionalism and human rights owes much, historically, to religious support and explanation. This does not of course entail that those who promote the idea of a 'state' or 'national' religion intend to oppress minorities or abuse human rights, or do anything other than respect religious freedom; the point is rather that any form of enshrinement of religion in a constitution is likely to create mistrust between the majority and the minorities and afford in some indirect way an acceptable basis for those who would, quite precisely, seek to oppress and abuse religious minorities.

The overtly secular nature of the state in Thailand is modified by the following considerations:

¹⁶ It is beyond the scope of this paper to examine the causes and effects of separatist insurgency in the South. Undoubtedly international Islamic terrorism has played an important part in reviving separatism.

¹⁷ These demands, made but rejected in 1997, have become more strident during the current (early 2007) constitution-drafting process. For example, on 12 February 2007 *The Nation* reported concern expressed by the government over the divisiveness of this issue.

¹⁸ Article 43 states: 'Khmer citizens of either sex shall have the right to freedom of belief. Freedom of religious belief and worship shall be guaranteed by the State on the condition that such freedom does not affect other religious beliefs or violate public order and security. Buddhism shall be the State religion.'

¹⁹ In November 2003 a teacher's association recommended that all references to 'God' be removed from school textbooks, maintaining that Cambodia's constitution states that Buddhism is the state religion. At the same time Buddhism has, in a reflection of the attempts to provide human rights education in Thailand, clearly been important in the peace-making process: Morris 2004.

- (i) The King must be a Buddhist, which is a fact of Thai history and culture that could hardly be gainsaid. At the same time the Constitution provides that the King, as is the case with all Thai citizens, shall be the protector of all religions.²⁰
- (ii) The State patronizes and protects Buddhism and other religions, promotes good understanding and harmony among followers of all religions as well as encouraging the application of religious principles to create virtue and develop the quality of life.²¹
- (iii) Buddhist monks, novices, and clergy are prohibited from voting or standing as a candidate for (or from continuing to sit as a member of) the House of Representatives or the Senate.²² Muslim Imam, Ulama, Catholic monks, nuns and clergy, and so forth, are not subjected to the same restrictions.

Provisions of the Penal Code also support the general picture of a secular state.²³

On the last of the three exceptions some jurisprudence from the Constitutional Court is of interest. In 1999 Somkiart, a member of a local authority, while sitting as a member, was ordained to become a Buddhist priest. Under the law governing elections to the local authority, which pre-dated the 1997 Constitution, this event disqualified him from continuing as a member of the local authority. The issue before the Court was whether the law in question was contrary to the provisions of the Constitution, which at section 38 guarantees the liberty of a person to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief, provided it is not contrary to his or her civic duties, public order or good morals. In exercising this liberty, the section continues, a person is protected from any act of the state, which is derogatory to his or her rights or detrimental to his or

²⁰ 1997 Constitution, s.9. the 1997 Constitution has been abrogated by the military coup of 19 September 2006; however, it is highly unlikely that the principle of s.9 or the other two principles set out in the text will be altered in any significant way by the constitution-drafting process under way as of November 2006.

²¹ 1997 Constitution, s.73.

²² 1997 Constitution, ss.106(2), 118(5), 109((3), 126(4), 133(5).

²³ S. 206 provides: 'Whoever commits any act, by any means whatever, to an object or a place of religious reverence of any community in a manner likely to insult the religion shall be punished with imprisonment from one to seven years or a fine from two thousand to fourteen thousand baht, or both.' S. 207 provides: 'Whoever causes any disturbance at an assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment not exceeding one year or a fine not exceeding two thousand baht, or both.' S. 208 provides: 'Whoever dresses or uses a symbol showing that he is a Buddhist monk or novice, ascetic or clergyman of any religion unlawfully in order to make another person believe that he is such person shall be punished with imprisonment not exceeding one year or a fine not exceeding two thousand baht, or both.'

her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious precepts or exercising a form of worship in accordance with his or her different belief from that of others. Section 29 also lays down the principle that the restriction of rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution, and only to the extent of necessity, and provided that it shall not affect the essential substances of such rights and liberties.

The Court held²⁴ that the law was not unconstitutional as it was saved by the fact of its predating the Constitution. Part of the argument, however, was that the prohibition did not actually cause Somkiart to lose his right of freedom of religion, as that right still existed despite the prohibition. This part of the decision seems to fly in the face of sections 29 and 38, as clearly Somkiart's right had been at least abridged and it could be argued that, in terms of section 38, it was in fact his civic duty, if anything, to *continue* to serve as a member of the local authority. The Court, however, considered the other sections of the Constitution that have the effect of prohibiting Buddhist priests, novices, monks or clergy from voting or standing as a candidate as stated above. Thus in approximating the position of a member of a local authority to that of an elected member of the National Assembly, the Court privileged the principle of religious disqualification over that of religious freedom, and in a sense implicitly downgraded constitutional human rights, the restriction of which is itself restricted by section 29.

Although this legal position might seem on the face of it to discriminate, in a sense, against Buddhists, in fact it points to a special relationship between Buddhism and the state. It suggests that the state views Buddhism as a religion which in its purest form does not permit its adherents to undertake political pursuits or take politically partisan positions; it is on this view concerned mainly (as regards the *sangha* at least) with the acquisition of *khamma*, and ultimately the condition of *nibbana* or release from earthly suffering through ritualistic observance and the rejection of the mundane. Buddhism does not in fact prevent its adherents from engaging in mundane matters such as politics or business: it merely discourages monks and clergy from doing so, although in practice from time to time the *sangha* has in fact been involved in politics in a big way. The rationale for excluding Buddhist monks, novices and clergy from holding office or voting is thus designed not to discriminate against Buddhism but to uphold one of its central tenets. This prohibition is, on the evidence of Somkiart's case, important enough in the Thai context to trump the fundamental rights set out in the Constitution. The political emasculation of Buddhism is not merely doctrinal;

²⁴ Somkiart case, 44/1999, Constitutional Court of Thailand.

politicians have always asserted that religion and politics should not be mixed, but the reality is that they can be mixed but not usually by the *sangha* itself.²⁵

Irrespective of the rights and wrongs of the decision in Somkiart's case, it points to the fact that the Constitution has in fact placed Buddhism in some kind of a special position. The Constitutional Court made a decision that makes sense in terms of the actual text and the constitutional tradition in Thailand; however, if the state is truly secular, surely the issue of political activity by the *sangha* should be one, not for the state, but for the *sangha* itself? This is paradoxical when it is considered that at all other points²⁶ the 1997 Constitution suggests that equality before the law and religious freedom are recognized. The Thai people, irrespective of their origin, sex or religion, enjoy equal protection under the Constitution. All persons are equal before the law and enjoy equal protection under the law. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, is not permitted.²⁷

Despite all this, the view is commonly held that Theravada Buddhism *is* the state religion. Buddhist foundations, for example, often proclaim on their webpages that Buddhism is the state religion because 90% of Thais are Buddhist (which is true) and that the King is a Buddhist (which is also true), but the conclusion does not of course follow from the premises. Historically there is much truth in the statement that Buddhism is the state religion, as we have seen. However, as a statement of contemporary constitutional law it is simply incorrect. Why indeed would so many of these same religious organizations, clearly dissatisfied with the outcome of the 1997 constitution-making process, make the claim that Buddhism *ought* to be made the state religion if it was such already?

IV. HUMAN RIGHTS, RELIGION AND THE MUSLIM SOUTH

Early in 2004 twenty schools in Thailand's southern province of Narathiwat were torched by Muslim separatists, and four soldiers were killed in an attack on an army camp. Five Thai Muslims accused of these crimes alleged that they were tortured by the police. Their defence attorney, Somchai Neelaphajit, a well known Muslim human rights lawyer, subsequently disappeared; nearly three years later Somchai's case is still giving rise to public concern and nothing has been resolved. In April 2004 the military stormed the Kru Se mosque where armed Muslims separatists were holed up, and 107 of them were killed. These events were interspersed with several assassinations of Thai officials in the four southern

²⁵ Jackson 1989, at 14-15.

²⁶ Subject as stated in the text above.

²⁷ S.30.

Muslim provinces. In October 2004, in an incident known as the Tak Bai riot, 78 Muslim protesters were suffocated to death when they were arrested and herded into army trucks. Altogether 85 persons, including mere bystanders, are reported to have died. The unrest that had existed prior to these events has continued, and further incidents have been reported with great frequency, despite a moving apology to the Muslim population by the new Prime Minister Surayud Chulanont in November 2006.²⁸ However, although much effort has been devoted to bringing the perpetrators to justice, including an investigation by a sub-panel of the National Human Rights Commission, nobody had been charged with human rights abuses, despite some very disturbing findings by the panel.²⁹ Efforts to punish separatist terrorists resulted in the acquittal in May 2005 of four men charged with plotting terrorist offences. The government appointed a National Peace and Reconciliation Commission (NPRC) under the chairmanship of the former Prime Minister and architect of constitutional reforms, Anand Panyarachun.³⁰ Following the military coup on September 2006, the coup leader General Sonthi Boonyaratglin cited the actions of the former government of Thaksin Shinawatra as a major reason for the coup, and the new government installed by the junta has pursued a much more accommodating policy. This would appear to signal a change in government policy that would emphasize human rights and good governance.³¹ However, it was not within the remit of the NPRC to investigate human rights violations as such; and great damage and mistrust have been engendered which will take many years to mollify, even with a more enlightened policy.

The facts and allegations stated above are not only the subject of investigations; they are also the subject of international concerns. However, the fact that they have been or are being investigated at all is a new situation in that for many years, and despite many advances in governance and democracy,

²⁸The issue of 'the troubled south' centres on three predominantly Muslim provinces (Pattani, Yala and Narathiwat) that formed the ancient Malay kingdom of Patani. Discontent and separatist tendencies have been evident for many years, but have resurfaced in the early years of the present century.

²⁹The Commissioner appointed to chair the investigation, Khunying Amporn Meesuk, is reported (*Bangkok Post*, 5 April 2005) as saying that extensive field trips and in-depth interviews showed that the whole process, including treatment of protesters, crowd control, dispersal of protesters, detention of suspects, damage compensation and prosecution of suspects, had failed to meet human rights standards upheld by the constitution and governed by international conventions. Indeed it was also reported that 58 protesters had been charged; the sub-panel recommended that these charges be dropped as they had been made randomly. The sub-panel also recommended other measures, including the award of compensation to the victims. Its report has been forwarded to the Prime Minister and a committee is dealing with the matter of compensation.

³⁰*Bangkok Post*, 11 April 2005.

³¹It is no coincidence that the 'war on drugs' of 2003 also involved human rights abuses by the police in particular, and notably in these same Muslim provinces.

notably the implementation of the anti-corruption, rule-of-law Constitution in 1997,³² the conduct of the police and the armed forces has been beyond the reach of the law, and beyond the scope of any form of accountability. The findings of the sub-panel show that the soldiers dealing with the Tak Bai riot regarded themselves as following not only orders but normal procedures in dealing with protesters, that is to treat them as prisoners. The fact that they had such orders and saw no reason to exercise some judgment in the matter is already a cause for some disquiet.

The reality of human rights in Thailand is that many minorities suffer from discrimination.³³ Such actions are routine and barely noticeable. Ethnic and religious minorities such as Burmese refugees, Northern indigenous hill tribes, and the Muslims of the South often face disadvantages in Thai society. Alleged drug-traffickers and other alleged criminals have been killed in police action or in police custody, or as a result of police actions, during a 'campaign' against 'dark forces' in Thai society in 2003 which resulted in the deaths of approximately 2,500 people; and trade union and farmers' movement leaders have been mysteriously assassinated. Even the urban middle classes and university students have suffered oppression at the hands of brutal military dictatorship in 1973 and 1992, their rights to freedom of expression and personal security being abused on a wide scale. Much has changed politically since 1992, and the 1997 Constitution reflects much of that change. It is abuses of this kind that sparked deep public frustration and hastened the advent of the NHRC and the 1997 Constitution. The abuses of human rights run counter to all the aspirations of those reformist lawyers, academics and politicians who drafted the 1997 Constitution after substantial public consultation, and indeed spurred the drafting of a document that attempted as far as any document could to 'change social facts by law'.³⁴ Indeed, despite the frequency of human rights abuses substantial progress has been made. Thailand does not, however, have a long human rights tradition, and although there has always been a concept of the just state, it has not been part of Thai culture, at least until recently, to make *legal claims* on the state.

An example of the way in which the law is developing can be adduced here. Following a decision by the Local Administration Department (LAD) to remove citizenship from 1,243 villagers in the Mae Ai district in Northern Thailand, who were considered by the LAD to be Burmese, the individuals concerned were not eligible to receive services from state agencies, including the 30-baht universal health care scheme, and they were not entitled to apply for loans from state financial institutions. Also, deprived of their citizenship, some students were forced to leave school. The Chiang Mai Administrative Court in April 2002

³² Borwornsak and Burns 1998; Borwornsak 2000; McCargo 2002; Pinai 2002.

³³ Vitit Muntarbhorn and Taylor 1996.

³⁴ Harding 2001; Borwornsak and Burns 1998; Likit Dhiravegin 2003; Saitip 1995.

found that the LAD had acted unlawfully when it removed the names of these villagers. After the LAD appealed, the Supreme Administrative Court in September 2005 confirmed the original decision of the Chiang Mai Administrative Court which resulted in the villagers enjoying automatic reinstatement of their Thai nationality and brought to a close a three-year legal ordeal for the villagers. There is still an issue of how those villagers not parties to the case will be dealt with.³⁵

With regard to Islam, the Thai government has long standing policies designed to integrate Muslim communities into society through developmental efforts and expanded educational opportunities, as well as policies designed to increase the number of appointments to local and provincial positions where Muslims traditionally have been under-represented. It also provides substantial funding to support Buddhist and Muslim institutes of higher education; to fund religious education programs in public and private schools; to provide daily allowances for monks and Muslim clerics who hold administrative and senior ecclesiastical posts; to subsidize travel and health care for monks and Muslim clerics; and renovate and repair Buddhist temples and Muslim mosques, maintain historic Buddhist sites, and upkeep on a daily basis the Central Mosque in Pattani. Muslim female civil servants are not permitted to wear headscarves when dressed in civil servant uniform. However, in practice, most female civil servants are permitted by their superiors to wear headscarves if they wish to do so, particularly in the Muslim provinces. Muslim female civil servants not required to wear uniforms are allowed to wear headscarves. The recent human rights abuses are extremely unfortunate and run counter to all other government policies in recent years. They have fuelled mistrust and the desire for secession and have poisoned an otherwise excellent relationship with Malaysia.

It is of course fashionable, particularly in a multi-cultural context, to try to interpret different religious and cultural values as being consistent with international or 'constitutional' human rights. The basic concept here³⁶ is that we can find areas of congruity or overlap between different approaches to human rights, even though our reasons for holding them to be important might be quite different. This approach is laudable: it would be intolerant to a degree, and indeed contrary to human rights thinking, if we were to take the position that *international* human rights must not only be observed by everyone (as they must) but must also be supported by the same ideology.

Applying this approach one could consider the profound respect paid by Buddhism to human, and indeed all, life, and the civility, harmony, and public service to be found in everyday life in Thailand, which is also attributable to a

³⁵ Leyland 2006.

³⁶ Here I reflect the work of Vitit Muntarbhorn and Taylor 1994; see also Vitit Muntarbhorn 1996, 2004, and 2006.

Buddhist culture.³⁷ Human rights and Buddhism do have much in common, depending on which forms of both one is referring to, and there is much that can be compared and debated between the two. As stated at the outset, the National Human Rights Commission views Buddhism as an important tool in explaining human rights to a sceptical public in its ambitious programme of human rights education.³⁸ However, Buddhism also profoundly affects the concepts of justice and legal personality held by most of the Thai people, and this if anything has become even truer in the age of globalization, in which the local values of village life and local dispute settlement have been dissipated.³⁹

These Buddhist concepts run counter to the whole idea of positive law as a means of resolving what we might call 'situations of injustice'. The legal culture of the West, which has done much to advance human rights, has also resulted in every misfortune being regarded as inevitably caused by the fault of another human being or institution. What is seen by lawyers using Western concepts as an act of injustice caused by an illegal action to be remedied or restored through a process involving attribution of liability, a Thai Buddhist might see as an adverse event which occurs in a context that includes the victim's actions in a previous life and his or her own fault in this life, as well as the fault of another individual and sheer bad luck, and is to be corrected by a virtuous action on the part of the victim rather than the tearing even further of the fabric of the universe by antagonistic gestures. The problems this may create in encouraging a naming, shaming, and blaming approach to human rights violations are very clear.

It is of course hard to see how the state figures in this mystical equation: is the state merely a form of political or administrative or judicial weather against which one tries to insulate oneself by avoiding it as much as possible, especially when it appears to offer a legal remedy? Or does it represent a moral and inclusive community under the aegis of a virtuous Buddhist King who has kindly bestowed a modern, reformed Constitution? Both of the attitudes just indicated seem to be held by Thai people, who with apparent consistency both distrust the 'people of colour' (that is people in uniforms, or officials) and at the same time, as shown in the June 2006 royal 60th anniversary celebrations, show complete trust in a virtuous Buddhist King if not perhaps the modern, reformed Constitution.⁴⁰ An interesting indicator is that while a large majority of voters supported Thaksin Shinawatra's Thai Rak Thai Party in the 2001 and

³⁷Jackson 1989.

³⁸ See the NHRC's website at www.nhrc.or.th/en/, accessed 30 May 2005.

³⁹ Engel 2005.

⁴⁰ Any Thai citizen of about 80, having endured the adoption of as many as 17 Constitutions within a single human lifetime, could be excused for refusing to accept the last one as definitive or even as worthy of attention. For discussion of a previous constitutional reform effort, see McDorman 1995.

(subsequently invalidated) 2006 elections, a large majority apparently also approved of the military coup, sanctioned by the King, that displaced Thaksin's government.⁴¹ The moral state is not generally viewed as being democratic or as a source of rights; but the dharmic notions of Thai Buddhism undoubtedly see the state as potentially capable of going beyond the limits of benevolence, as it did in the 1973 and 1992 suppression of popular dissent against military dictatorship and as it also has appeared to do in the South in 2004-6, and even in Bangkok throughout a turbulent 2006.⁴²

Similar attempts are of course made within Islamic intellectual discourse. What has been absent in Thailand until the setting up of the NPRC is any concerted attempt at inter-faith dialogue and peace-making, as opposed to simply providing equal treatment. Sustaining this will be a major governmental task for the future. Here positive use could perhaps be made of Malaysian Prime Minister Abdullah Badawi's *Islam Hadhari*, or 'civilizational Islam'.

V. HUMAN RIGHTS AND CONSTITUTIONAL DEVELOPMENT

Despite the existence of a bill of rights since 1932 it is only since 1997 that methods of enforcing human rights have become salient, and this is against the background of a de facto immunity generally enjoyed by the state military and security apparatus over many years, of which some evidence has been provided above. This apparatus was formally banished from politics to the barracks by the 1997 reforms, which refused to recognize any legitimate place for the military as such in the legislature, and also outlawed (ineffectually as it turned out) any military coup.⁴³ The military is not yet fully or clearly accountable before the law: the 1992 perpetrators still walk the streets of Bangkok unpunished, having benefited from an amnesty. The 2006 coup-makers gave themselves immunity by abrogating the Constitution and the Constitutional Court which could have ruled their actions criminally unlawful. Whether this immunity will be effectively breached in the present circumstances relating to the Muslim south remains a major test for the reforms in the context of human rights and good governance and the current peace-making initiatives.

On the reasonable assumption that the constitution about to be drafted and come into effect in 2007 will closely resemble the 1997 Constitution, let us turn to

⁴¹ Speaking with inhabitants of Chiang Mai, Thaksin's home town, in November 2006, the author found strikingly little evidence of residual support for Thaksin despite the election results, which indicates that political allegiance takes forms that would require in-depth social-anthropological study to map out.

⁴² Hewison 1997; Nelson 2001; Nelson 2003; Phongaichit and Piriyaangsan 1996.

⁴³ See also 1997 Constitution, s.63 (no overthrow of democratic regime by unconstitutional means); and s.65 (right of resistance to unconstitutional acquisition of power).

that Constitution, placing it in an historical context before dealing with its human rights provisions.

This extensive, impressive and intelligent document is an elaborate, almost baroque, instrument designed to prevent corruption and create stable government. It rests on the rule of law, on human rights, and on the separation of powers, none of which have been entrenched in Thai public life despite a century of legal reform commenced by King Chulalongkorn in the 1890s.⁴⁴

Chulalongkorn believed in modernization and in extending and consolidating the reach of the state; he believed that modern law and a modern form of citizenship were needed to achieve these ends. He did not believe, however, that the time was ripe for either democracy or individual or human rights.⁴⁵ His upstanding Siamese ‘citizens’ would also be obedient ‘subjects’, at least until they could learn how to be both independent but responsible. Thus the Siamese citizen came to be endowed with legal rights under the codes of law inspired by France,⁴⁶ many of which could be called human rights in modern parlance, but they were the rights of citizens and had correlative duties, which have always been and are still found in Thai constitutionalism.⁴⁷

Chulalongkorn’s successors as executive heads after 1932 have been generals or politicians whose hold on power was either precarious or highly autocratic. Thailand has oscillated between weak coalition governments and military strong men, an oscillation which it was one purpose of the 1997 reformers to bring to an end. Mass movements have not normally espoused ‘human rights’ as a concept until the present age of the civil society and globalization; indeed the usual Thai term for human rights (*sithi-manusyachon*) did not come into usage until after the Universal Declaration of 1948.⁴⁸ Authority did not always recognize that organizing public opinion was legitimate: a farmers’ movement in northern Thailand in the 1970s collapsed when some of its leaders were assassinated with official connivance: the case human-rights lawyer Somchai looks to be a reflection of the same phenomenon. The military inflicted horrible slaughter on the students of Thammasat University on their own campus in 1973. It was only when military rule became intolerably harsh and self-serving that the Thai people stood up and demanded human rights and democracy; and only in the 1990s and 2000s have they achieved a democracy that is hopefully not simply an interlude between military coups but has become, one hopes, truly their

⁴⁴ Engel 1979.

⁴⁵ Engel 1979.

⁴⁶ These codes are referred to by Vitit Muntarbhorn as ‘a bastion toppled by coups’: Vitit and Taylor 1994, at 11.

⁴⁷ Constitution of the Kingdom of Thailand 1997, Chapter IV.

⁴⁸ Prior to this the main relevant term was *‘Itsaraphap’*, usually rendered as ‘liberty’.

natural system of government.⁴⁹ A military coup in 1991 was rejected in street demonstrations, which were brutally suppressed in 1992; this was followed by a mass demonstration resulting in the resignation of the coup leader Prime Minister General Suchinda and a distinct shift in the balance of power between the people and the military. Three short-lived coalition governments followed, fuelling activists' demand for really fundamental political reform and an end to the political oscillation. If the essence of the 1997 Constitution survives, its importance will lie in its having brought to an end (despite the events of September 2006) the cycle of military coups (17 since 1932, or 22 attempted coups), new constitutions (18 between 1932 and 2007), and revolving-door coalition governments (there have been 56 governments all told since 1932). But whether the ambitions of the constitution-makers will be fulfilled in other respects, notably with regard to the entrenchment of legality and human rights, is another question. If on the other hand the project commenced with the 1997 Constitution ultimately fails (and it is argued by some that it has already failed) it will not be appropriate simply to blame an imperfect document and promise to do better next time: in the author's opinion constitution-drafting has been taken virtually as far as it can go, and the 2007 Constitution will have to be essentially a revised version of that of 1997.⁵⁰

The 1997 Constitution was drafted by a Constitution Drafting Assembly (CDA) consisting of 99 members. Electoral process was used in the choice of members representing the provinces, numbering 76 (one for each province); the balance of 23 members consisted of lawyers, political scientists, civil servants and politicians. Its remit was expressed in the Preamble to the resulting Constitution, and embraced everything, including of course human rights, except the constitutional nature of the monarchy and the system of democracy. The Constitution was drafted and brought into effect during the first ten months of 1997, in the middle of which period the Asian currency crisis, commencing with the floating of the baht in June 1997, convulsed the country and then the entire East Asian region. Considering that the country passed through a cataclysmic economic crisis during precisely the period of enactment and implementation of the Constitution (1997-9),⁵¹ one might be forgiven for asking if this was indeed the right time for such endeavours, and whether the gargantuan efforts involved would not have been better directed to more immediate, that is economic,

⁴⁹ For the 2006 coup, which sheds considerable doubt on the hope expressed in the text, see section V below.

⁵⁰ Two days of discussion at the Annual Congress VIII of King Prajadhipok's Institute, on 'Thailand's Constitutional Reforms in Comparative Perspective', 3-5 November 2006, did not reveal any body of opinion that the 1997 should not be the basis for the new Constitution. Currently Thailand operates under an Interim Constitution of September 2006 which provides for interim civilian government and the process for drafting the new constitution.

⁵¹ Jumbala 1998.

problems. Thai opinion, on the contrary, has generally regarded the economic and constitutional issues as inextricably linked, and views both as coming down to the problem of good governance.

The CDA debates and their outcome were an education in constitutional law to the entire political class and the public. Many innovations were adopted. Many existing institutions were reformed. Naturally not everyone was happy with the result, as in some respects compromises had to be made. But on the whole it has to be said that in terms of fulfilling its objectives, the CDA adopted what amounts to a 'zero tolerance' approach towards corruption and the abuse of power.

How then did the reform process deal with human rights?

Human rights proved in the event to be by far the most controversial and problematical aspect of the reform process. This was not, at least on its face, a debate about 'Asian values'.⁵² It was a debate about how and to what extent human rights could be enforced as a fundamental feature of the Thai polity and the fixing of an appropriate role for the NHRC.

The Constitution (ch.III) set out an extensive litany of fundamental rights, supplemented by provisions (ss.236-247) dealing with the rights of accused persons in the criminal process, and others (ss.199-200) providing for investigation by the NHRC.

The fundamental rights were expressed, for the first time, to belong to persons in general, even though Chapter III was entitled 'Fundamental Rights and Liberties of the Thai people'. All state organs were obliged to observe fundamental rights and liberties in applying and interpreting laws, and an individual was able to enforce his or her rights either actively by bringing a lawsuit, or passively by invoking the Constitution in defending himself or herself in court (ss.27-8). There was no right of direct fundamental-rights petition to the Constitutional Court. The court having jurisdiction over the case would stay the proceedings and submits its opinion to the Constitutional Court for decision, with which the lower court then complied.⁵³ The absence of any right of direct petition and the possibility of delay or eventual circumvention of the decision of the Constitutional Court made the enforcement of fundamental rights a somewhat hazardous enterprise.⁵⁴ Nonetheless several attempts, some of them successful, were made to invoke this procedure.

Space precludes any detailed attention to the very extensive provisions on fundamental rights and the incidents and examples thereof, but a few points will illustrate their general character.

⁵² See, further, Thio Li-ann 1999.

⁵³ As occurred in Somkiart's case, above n20.

⁵⁴ Klein 2001.

There was no attempt to construct a notion of rights based on Asian values; indeed none of the rights would be out of place in a European or North American constitution, and no significant right generally enshrined in such a constitution seemed to be missing - indeed some of the rights were decidedly 'third-generation' in nature. Most of the rights were based on familiar concepts, but were carefully and broadly drafted. For example, the right to equality before the law prevented discrimination on grounds of difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view. Thus disabled persons, for example, should enjoy constitutional protection in the same way as members of ethnic minorities, although a Constitutional Court decision relating to disabled applicants for public appointments decided otherwise.⁵⁵ This provision (s.30) did not however prevent affirmative action measures 'to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons.'

The usual 'due process' rights were all guaranteed: the right to life and liberty (though the death penalty was permitted); the right not to be subjected to cruel or inhumane punishment or torture; or to arbitrary arrest, detention, or search (ss.31, 35, 237-8); the right to counsel and to habeas corpus, to bail, legal aid, and to a speedy, continuous and fair trial in a criminal case (ss.239-42); the right against retrospective penalties (s.32); the presumption of innocence (s.33); family rights, the right to dignity, privacy, and reputation (s.34), and the rights of peaceful habitation (s.35); liberty of travel and choice of residence and property and competition rights (ss.36, 48-50); the liberty of communication (s.37), freedom of religion (s.38), expression and assembly, association and to form a political party (ss.39, 44-7). The Constitution went to some lengths to ensure that the freedom of expression without censorship was real, and the media were protected from political interference (ss.39-41):⁵⁶ closure of presses and television and radio stations was prohibited; independence of journalists was guaranteed; even academic freedom was guaranteed (s.42). There were also guarantees against *ad hominem* legislation (ss.234-5). There were also a number of social and economic rights: a right to education for 12 years at public expense (s.43); to medical care and old-age pension (ss.52, 54); and special rights for the disabled (s.55).

Some of the rights are of great interest. Environmental rights included a right to participation in decision-making to reasons for decisions affecting the quality of a person's environment, and to environmental impact assessment (ss.56, 59). There was also a right of access to information (s.58); a right to present a petition (s.61); a right to sue state agencies (s.62); and a right to natural

⁵⁵ Case 16/2002, Constitutional Court of Thailand.

⁵⁶ Even so, government control over the media was cited as a reason for the September 2006 coup.

justice in administrative decisions ('the right to participate in the decision-making process ... in the performance of administrative functions which affect or may affect his or her rights and liberties as provided by law' (s.60). A right clearly based on Thai historical experience was the right of peaceful resistance to any act committed for the acquisition of power unconstitutionally (s.65).

It is hard to believe that this bill of rights will be significantly downgraded in the 2007 Constitution. Indeed the Interim Constitution of September 2006 provides at s.3 that 'Subject to the provisions of this Constitution, human dignity, rights, liberties and equality enjoyed by the Thai people under conventions pursuant to a democratic form of government with the King as Head of State and Thailand's existing international obligations shall be protected under this Constitution'.

VI. THE GENESIS OF THE NATIONAL HUMAN RIGHTS COMMISSION

In the reform process, separate debates on the Constitution and on the National Human Rights Commission (NHRC) (the latter debate having continued throughout the 1990s) became joined during the constitution-drafting process.⁵⁷ The transitional provisions of the Constitution (s. 334(1)) required an organic law to be passed within two years to set up the National Human Rights Commission, and this obligation was fulfilled with the enactment of such a law in 1999. The law went through no less than 17 drafts over seven years (1992-9) since its original conception long before the 1997 Constitution itself was conceived. The drafting process was thus longer than that leading to the Constitution itself, disagreements surfacing over almost every aspect of the NHRC, from its powers and organization to its composition and its selection process. The main issue was whether the NHRC would or would not be an independent body. The story of how the debate unfolded is an extraordinary saga of sudden reversals, false dawns, and last-minute compromises. Suffice it to say that the NHRC became a battleground between those who wanted to see a strong and independent NHRC, which they saw as the very foundation of human rights; and those who saw its role as limited have emphasized national security and the efficacy of Thai traditions. The human rights movement was probably too ambitious in expecting that the NHRC could be a kind of human-rights czar with powers to enforce human rights over the jurisdiction of other bodies. The result was indeed a compromise, but one with which Anand Panyarachun who was instrumental in laying its foundations during his two terms as Prime Minister, might well have felt satisfied.

As with all the other 'watchdog' bodies under the 1997 Constitution, the selection process (NHRC Act s.8) involved the Senate appointing a Selection

⁵⁷ For discussion of the fascinating if somewhat tortuous details of this process, see Klein 2001.

Committee, in this case comprising 27 members, who were to choose 22 candidates from whom the eleven Commissioners were to be chosen by the Senate. The 27 were to comprise the Presidents of the Supreme Court and the Supreme Administrative Court, the Attorney-General, the Chairman of the Law Society of Thailand, all *ex officio*; and the following members elected by the representatives of the relevant bodies from amongst their own number: ten from registered human rights NGOs; five from the political parties; five from the academic institutions; and three from the media. In the event the Commissioners selected were a fairly representative bunch of highly respectable individuals. There are five women and six men. Three are NGO activists, three are academics, three are lawyers (one judge, one government lawyer, one private human rights lawyer), one educationalist, and one journalist. Their expertise covers human rights, freedom of information, legal aid and family law, economic and political development, women's and children's rights, housing, welfare, public and mental health, environment, and management. Their average age is 61, with only one member under the age of 53. The list of Commissioners does not state their religions, and there has been no attempt to incorporate religious views or movements per se in the body of expertise the Commissioners represent. The NHRC commenced its duties in mid-2002.

The NHRC⁵⁸ is genuinely independent and has charge of the execution of its own enabling Act.⁵⁹ Active bureaucrats and politicians were excluded from membership; the Commissioners are full-time and salaried. Its functions include promoting respect for human rights, education, research, appraisal and dissemination; examining and reporting violations; making proposals in respect of law, policy and international treaties regarding human rights; promoting co-ordination among public and private agencies.

The NHRC Act emphasizes the role of the NHRC in dealing with allegations of human rights violation. These allegations may be received directly from a member of the public or via a human rights organization. The NHRC may investigate the facts relating to such allegations and must allow an opportunity for the relevant agencies to respond. It can mediate and secure compromise solutions; it can report that a violation has occurred, indicating remedial action; it can refer elsewhere matters not within its powers. In the event of an agency refusing to comply with the NHRC's report, it can refer the matter to the Prime Minister to order implementation of the remedial measures within 60 days. It can also publicize the refusal to comply where it considers it in the public interest to do so. It can even set out remedial action where no human rights violation has occurred, but there is an unjust practice in respect of which an aggrieved person deserves a

⁵⁸ See <http://www.nhrc.or.th/index.php>.

⁵⁹ In Thailand great importance is attached to responsibility for implementation, as the department implementing will be able to a large extent to decide matters of personnel, procedure and budget.

remedy. It does not have power to bring proceedings in court on behalf of aggrieved parties, as is the case in some other countries.

VII. CONCLUSIONS

At the start of this paper I posed these questions: To what extent is the Thai state Buddhist in character? How are we to describe the relationship between Buddhism and the state? Can and should human rights be supported or presented as being supported by Buddhism, or interpreted according to Buddhist ideas?

My answers are as follows.

The Thai state is ostensibly secular and the constitution-makers have rightly resisted demands to make Buddhism the state religion, but being itself an element, historically, of Theravada Buddhist culture, the state cannot entirely escape that culture, to which it owes existence and which has impelled it over the last 150 years to seek dominance over other elements. However, I see no reason to deny the validity of attempts by the state to explain human rights in Buddhist terms. Such an attempt to bridge the gap between culture and aspiration seems to me entirely sensible, provided in the process inter-faith dialogue is also seen as an important part of the process of human rights education. The actions of the state in the Muslim South have made the task of dealing with the outrages of the separatists even more difficult than it should have been, given the state's genuine attempts over several years to deal equitably with people of all religions.

The NHRC has been active for a little over four years. During this time it has made some steady progress in human rights education. It has also reported trenchantly on the situation in the Muslim South. It is important to understand that a human rights commission does not have sole responsibility for rectifying human rights violations. It has a duty to investigate where appropriate, but other bodies, including executive, legislative and judicial organs, have direct responsibility for enforcing and supporting human rights. Professor Saneh, a spirited and active 75-year old with long experience of community development issues, as President of the NHRC, has emphasized the NHRC's educational function.⁶⁰ For him human rights are a matter of hearts and minds and Buddhism is an important way in which human rights can be explained and the gap between law and culture can be bridged; and human rights are capable of embracing Asian values as far as those values are good ones. Or as Professor Vitit Muntabhorn has put it: 'uprooting of ... deep images of moral order from a people is not offering them a human fate ... what we ought to hope for is that indigenous images can evolve in a way which will provide a holding environment for democracy and human rights'.⁶¹ However

⁶⁰ See <http://www.nhrc.or.th/The%20Role%20of%20National%20Human%20Rights%20Commission.pdf>.

⁶¹ Vitit and Taylor 1994; see, further, Haller and Patcharee 2003.

the gap between constitutional aspirations and the actual delivery of human rights is extremely hard to bridge. Only the commitment of all state and civil society organizations in a common effort, shared by the police and the military, will produce the desired result.

Taking the matter onto a more general level, from the viewpoint of comparative law, how do we conceptualize, in the light of what has been said, the relationship of religion and the (secular, human-rights-based) constitution? In the West, although the Constitution is regarded as indifferent to religion but guaranteeing its freedom in the broader interests of human rights, embracing also the right to dissent from or even criticize religion (the latter being not only beyond human rights aspirations in Thailand but actually illegal),⁶² there is also a paradox in that the very conceptions of human rights and democracy are profoundly, historically, caught up with religion, and are so much part of Western culture that it is barely possible separate the two even as the separation is stated to be fundamental to Western constitutionalism. Moreover, the prevailing view of human rights taken globally is that they occupy a place in which different justifications overlap. The burden of this article is therefore that *we do better to try to agree on the content of human rights rather than on the justification for their observance*. On this basis, if Thais wish to either explain human rights Thai-style as resting on Buddhism or explicable in practice by reference to Buddhism, we cannot gainsay what amounts to an attempt to find precisely that special place where human rights can exist for all of us. The challenge for this approach - and it is a challenge for all approaches, whether based on religious or secular conceptions of human rights - is to encompass, or at least deal with, the possibility that others may disagree. Living with contradiction is something with which the West, not just South East Asia which has much experience in this regard, needs to get used to in the postmodern, multi-culturalist world of international human rights.

⁶² See above, n.19.

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