



CHAPTER 3

THE SOCIAL AND POLITICAL HUMAN RIGHTS ENVIRONMENT

After having considered the abstract theoretical concepts and framework of this thesis, it would now befit us to consider those concepts within the context of modern Thailand. I maintain that it is not possible to discuss the belief systems of Thai advocacy coalitions regarding human rights without first considering the social, cultural and political conditions or environment which gave rise to said beliefs. Thus, this chapter will deal with the factors influencing or indeed framing the debate on human rights and the national commission in Thailand. First, we consider the moral and philosophical influence of Buddhism on the both the debate and very essence of Thai beliefs regarding human rights. This type of fundamental, moral belief is what Sabatier and Jenkins-Smith would see as influencing core beliefs within the Advocacy Coalition Framework. Second, we will move from the abstract to an examination of how the aforementioned beliefs are translated into modern policy debates about the applicability of human rights to Asian societies. Following this, the role of the mass media will be considered. As one of the major, relatively free arenas in which competing advocacy coalitions attempt to articulate and build public consensus on their positions, the importance of the media cannot be underestimated here. Finally, we move from the abstract musings of philosophy to the more material representation of the political situation within the country.

3.1 Buddhism and Human Rights

At the convergence of morality, law and philosophy lies the controversial and complex social construct that is human rights. Historically having grown out of the atrocities of the Second World War, the discourses of human rights have primarily

been articulated by Western nations. These human rights standards have come to be codified in various conventions, articles and declarations in international law. Principal among these is the *Universal Declaration of Human Rights* of the United Nations General Assembly, 1948 which declares in its preamble that:

“...the inherent dignity and...the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”⁶²

However, with the rapid ascent in economic power of the Asia Pacific nations, and the subsequent emergence of a more vocal civil society in those nations, tension has arisen over the western domination of the discourse of human rights. The leaders of Asian nations have begun flexing their muscles on the world stage and have argued forcefully for the tempering of international human rights norms with a certain measure of cultural relativism. That is, that human rights must be considered not as a universal standard, but rather must take into account regional and country-specific cultural traits, belief systems and traditional modes of governance. The so-called ‘Asian values’ debate has thus emerged, challenging the claims to the universality of international human rights standards. Indeed, in 1993, Asian governments adopted the Asian Regional Declaration on Human Rights (the Bangkok Declaration) which asserted that,

“(The Asian Governments) emphasise the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure.” and,

⁶² คณะกรรมการประสานงานองค์กรสิทธิมนุษยชน (2540), *สิทธิมนุษยชน*, กรุงเทพฯ, p.11

“While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”⁶³

Against this backdrop, various traditional philosophies, religious arguments and ideologies have been advanced both to challenge and defend the legitimacy and universality of human rights. Buddhism is no exception. Buddhism has come slow to ethical debates of moral, social and political dilemmas, lagging behind the more socially-conscious and socially-active Christian, Jewish and even Muslim communities. However, Buddhist ethicists and religious leaders have recently begun to address the issue of human rights from historical, scriptural and contemporary, socially engaged perspectives.

It is the premise of this section to examine the debates regarding Buddhism, human rights and ‘Asian values’ in Thailand. To date, there has been very little in the way of substantial or comprehensive scholarly analysis on this issue. This author is thus at great pains to attempt to construct a complete picture of the contemporary situation. There are a great many questions which have yet to be investigated or even posed on the issue. Are Buddhism and human rights compatible ideologies? To what extent has Buddhism informed and shaped the discourses and debates regarding human rights in Thailand? Is Buddhism able to, and is it responding to emerging social issues? Has Buddhism succeeded in providing freedom from the state for its members

⁶³ Vitit Muntarbhorn. *Human Rights in Southeast Asia: A Challenge for the 21st Century*. The Kernial S. Sandhu Memorial Lecture, Bangkok: Chaiyong Limthongkul Foundation Awards in Arts and Humanities, December 20, 1993, p. 3

in Thailand? While the former philosophical question is beyond the scope of this paper, the latter three questions will frame the discussion at hand. This discussion will *not* focus on the state's treatment of any one particular group⁶⁴, nor will it detail the activities of any specific Buddhist movement that is engaged in human rights work. It is our purpose here to examine the larger structural and societal obstacles to the active participation of Buddhism in the development of human rights in Thailand.

It is my contention that Buddhism in Thailand has not contributed (or has been prevented from contributing) in any meaningful way to the development of human rights in Thailand for three key reasons: the lack of any separation between church and state, the systematic marginalisation of human rights activists and reform-minded monks, and the restriction of the debate to the esoteric, supra-mundane level.

Before we move to the discussion of the situation of Buddhism and human rights in Thailand, it is proposed to begin with an examination of the concepts and language of human rights discourse in the West, in Thailand and in Buddhist scripture. Following this, in order to illuminate both the complexities and the various contributions made to this field of study, I shall undertake to identify and analyse some of the more significant works and debates on the subject, and examine the case both for and against drawing linkages between Buddhism and human rights. Only by first doing so, can we begin to understand the failure of Buddhism to address this most contemporary, controversial and critical moral and ethical issue.

⁶⁴ See Stewart, Robb. *Defending the Faith(s): Buddhism and Religious Freedom in Thailand*. Paper presented at the International Conference on Thai Studies, Amsterdam, Netherlands, July 1999

3.1.1 Human Rights Discourse: the language of rights and freedoms

The discourse of human rights is replete with ambiguous socially constructed concepts which have grown out of a largely Western philosophical and historical tradition. As an universal concept and as an international legal instrument, human rights grew out of the aftermath of the Second World War when the allies were forced to confront the inhuman atrocities and horror that was the Holocaust. As a subtler concept, however, the term *human rights* has a much older history. Donnelly holds that the concept human rights indicates both their nature and their source. They are the rights one has by virtue of being human. They are held by everyone, regardless of other rights and duties they may hold as citizens, family members, etc.⁶⁵ While the term 'human' is self evident and draws a clear distinction between those rights held by humans and those of, say, animals, the term 'right' or 'rights' is a more fluid concept.

The term 'right' has two key meanings in English. The first is the moral sense of 'right' as opposed to 'wrong'. We know it is 'right' not to kill, lie, steal or cheat. The second sense refers to the political sphere and denotes something to which one is entitled. This definition of (a) 'right' forces a relationship between actors, be they individuals, groups or states. Thus, someone may be said to have a 'right' to X and they other party is thus duty bound to provide it. It is this type of right that is enshrined in various national and international agreements, rules, social practices, etc.

⁶⁵ Donnelly, Jack. *International Human Rights* (2nd ed.) Boulder: Westview Press, 1998, p. 18

Human rights may be viewed as an unique synthesis of the two. Donnelly calls human rights ‘paramount moral rights.’⁶⁶

In any discussion of human rights, invariably the subject of ‘freedom’ arises. However, freedoms and rights are not synonymous terms. The number of rights a person enjoys or the degree to which he/she enjoys such rights may be considered a measure of his/her freedom. Yet, freedom is not absolute. In a commonly cited example, one’s freedom to swing one’s arm ends precisely at the tip of another person’s nose. In other words, one may have the freedom to swing one’s arm freely, but that freedom ends when contact with another person occurs, thus violating their right to security of person (i.e. their right not to be assaulted.)

Philosophically, the source of justification for human rights has proven to be equally elusive. Grounded primarily in Western moral theories, human rights have come to be considered universal and based in an inviolable *inherent* human dignity. This has its origins in Christian thought where all men were created equal in the image of God, and has progressed through the historical philosophical writings of the likes of Jeremy Bentham, John Stuart Mill, Immanuel Kant and John Locke.⁶⁷ In other words,

“...the modern vocabulary and grammar of rights is a many-faceted instrument for reporting and asserting the requirements or other implications of a relationship of justice *from the point of view of the person(s) who benefit(s)* from that relationship. It provides a way of talking about ‘what is just’ from a special angle: the viewpoint of the

⁶⁶ Ibid. p. 19

⁶⁷ Keown, Damien V. “Are There Human Rights in Buddhism?” in Damien Keown, Charles Prebish and Wayne Husted (eds.), *Buddhism and Human Rights*. Curzon Press, 1998, pp. 18-19

‘other(s)’ to whom something (including, *inter alia*, freedom of choice) is owed or due, and who would be wronged if denied that something.”⁶⁸

Now let us turn to a brief look at the vocabulary of rights in Thailand. Historically, Thailand has lacked indigenous terminology that can adequately represent modern human rights concepts. In Thai, the term ‘human rights’ is rendered as สิทธิมนุษยชน or *sitthimanusayachon*. Soraj Hongladarom considers this recent coinage to be regarded as foreign by most Thais, having the connotation of being incongruent with traditional patterns social interaction which favour compromise and conflict avoidance.⁶⁹ While the first part of this word, *sitthi* is an old word, references to which can be found in documents dating from the Sukhothai period in the 14th century, this term has undergone a transformation from its original meaning of ‘authority, success’ to the modern meaning of ‘authority, right’ in the Bangkok period.⁷⁰

Thanet Aphornsuvan has argued how the vocabulary of rights and the discourse of freedom did not emerge out of the anti-slavery movement as it did in the West, but rather how Thai elites manipulated the meanings to portray Thailand as a modern and civilised nation.⁷¹ This obsession with trying to appear civilised in the eyes of the Western world saw the radical reinterpretation of words such as ‘tai’ or ‘thai’ (free) so as to make such institutions as slavery appear to be very un-Thai. Slavery became

⁶⁸ Finnis, J.M. quoted in *Ibid.*, pp. 19-20. Italics in original

⁶⁹ Soraj Hongladarom. “Buddhism and Human Rights in the Thoughts of Sulak Sivaraksa and Phra Dhammapidok (Prayudh Prayutto)” in Damien Keown, Charles Prebish and Wayne Husted (eds.) *Buddhism and Human Rights*. Curzon Press, 1998, p. 97

⁷⁰ Thanet Aphornsuvan. “Slavery and Modernity: Freedom in the Making of Modern Siam” in David Kelly and Anthony Reid (eds.) *Asian Freedoms*. Cambridge: Cambridge University Press, 1998, p. 163

⁷¹ *Ibid.* p. 163

repositioned as a colonial Khmer import and as something abhorrent in Thai society. The deliberate reconceptualisation of language was very apparent in the nation-building programmes and writings of Prince Damrong and King Vajiravudh (Rama VI).⁷² Thus, the Thai elite appropriated new western-based concepts in order to make seemingly foreign linguistic constructions appear as suddenly something very old and very intrinsic to the Thai national identity. It must be understood that we are referring here to the superficial grafting of western notions onto Thai language and discourse. By no means did this type of exercise immediately transform Thailand into a western-style liberal democracy. On the contrary, as Thanet states, “the dominant aspect of the idea of freedom in Siam, when it was used in political discourse, was the persistence of the old and traditional ideas in favour of the state’s rights and privilege.”⁷³ The significance of this point will become apparent in chapter five.

In the Tipitaka, or Buddhist Pali Canon, there exists no word for the subjective concept of a ‘right’ or ‘rights.’⁷⁴ We do find instances of the word ‘right’ such as in the Noble Eightfold Path’s ‘Right Understanding’, ‘Right Mindfulness’, etc. However, this ‘right’ corresponds to the first meaning of the word as discussed earlier, and does not imply any social contractual relationship. One thing that is found in the Pali Canon, which some have extrapolated to include ‘rights’ are the various instances where ‘duties’ are referred to (for example, references to the duties of husbands and wives.⁷⁵) Some have argued that such duties have an automatic and corresponding right component. Thus, if a husband has a duty to provide for his wife,

⁷² Ibid., pp. 177-181

⁷³ Ibid. p. 179

⁷⁴ Keown, 1998, p. 20

⁷⁵ see Sigalovadasutta

the wife has a right to expect such support. This concept will be further discussed later.

With respect to the concept of ‘freedom’, Buddhism speaks of freedom without any specific or necessary reference to rights.⁷⁶ Dr. Saneh Chamarik accounts for such a situation by claiming that there is “no need to search for the place of human rights in the Buddhist tradition. Freedom is indeed the essence of Buddhism.”⁷⁷ While there is some truth to this statement, I would caution against such a direct correlation between human rights and freedom. As mentioned before, while they may be complementary, they are not interchangeable concepts or terms.

The discussion of human rights from a Thai perspective is thus made easier as a result of the vocabulary originating not in any esoteric, religious terminology or doctrine, but rather having been formulated and heavily influenced in the political realm of international relations during the period of contact with Western nations. As noted before, the Thai elite was obsessively concerned with its external image, and therefore structured such concepts along international lines. I must reiterate that I am referring to the belief systems regarding rights and freedoms here. It would be a mistake to confuse the conceptualisation with the actualisation of concrete rights in legal statutes. So, one may ask, what role does Buddhism have to play in the arena of human rights? Let us now turn to a discussion and analysis of the major debates and arguments for and against the linking of Buddhism and human rights.

⁷⁶ บุญธรรม พุณทรัพย์. ศีลธรรมกับสิทธิมนุษยชนในพุทธปรัชญาเถรวาท. วิทยานิพนธ์, บัณฑิตวิทยาลัย, จุฬาลงกรณ์มหาวิทยาลัย, 2533, p. 64

⁷⁷ Saneh Chamarik. *Buddhism and Human Rights*. Bangkok: Thai Khadi Research Institute, Thammasat University, 1982, p. 5

3.1.2 Human Rights and Buddhism (lokuttaro)

In this section we will address the issue of human rights as it appears in the significant works and writings of scholars of human rights and Buddhism. It will be readily apparent to the reader that this discussion occupies the *lokuttaro*⁷⁸, or supra-mundane plane. Put another way, these writers discuss the confluence of Buddhism and human rights from a moral and philosophical perspective. This is not the Buddhism of the common people, in everyday interaction with social and political forces. It is what may be considered the ideal Buddhism, the Buddhism of scripture, or higher *nibbannic* Buddhism.

First to be considered are those authors which appear to argue for the inclusion of, or at least the compatibility of, Buddhism and human rights. These authors point to fundamental Buddhist scriptures or concepts which they argue justify and lend legitimacy to Buddhism playing a constructive and active role in the negotiation, articulation and enforcement of human rights. This perspective is most accurately represented in the works of Damien Keown, Saneh Chamarik, and Sulak Sivaraksa. In contrast, the authors Preecha Changkwanyeeun, Phra Dhammapidok and Boontham Poonsap tend towards a viewpoint which sees the relationship between human rights and Buddhism as ranging from ultimately incompatible to antagonistic. It might be productive to consider these differing viewpoints as representing a spectrum of beliefs, highlighting the major points of convergence and divergence in the debate.

⁷⁸ พระเจ้าบรมวงศ์เธอ กรมพระจันทบุรีนฤนาถ. ปทานุกรม บาลี ไทย อังกฤษ สันสกฤต กรุงเทพฯ: มหามกุฏราชวิทยาลัย 2537, p. 665 “Lokuttaro (adj.) transcending the world, supra-mundane, spiritual skt Loka - uttara”

The case for the inclusion of Buddhism in human rights discourse is most convincingly made by Damien Keown, a leading Buddhist scholar and ethicist.⁷⁹ Keown traces the history of the concept of rights from both the Western and Buddhist perspective. He argues that the concept of *anatta*, or non-self, provides that all people are intrinsically equal in the most profound sense. Keown is also a proponent of the reciprocal rights/duties construct alluded to earlier. For him, duties always entail an corollary right. Interestingly, Keown locates the justification of human rights in Buddhism in the Third and Fourth Noble Truths, in contrast to what he claims is the traditional overemphasis on the First and Second.⁸⁰ Here, Keown argues that human dignity and human rights must focus on the potential for human goodness. Human rights provide the minimum conditions under which such goodness may emerge and provide for the full realisation and development of the spiritual self.⁸¹ As a result, despite the Western origins, human rights thus become a moral issue and thus fall within the domain of Buddhism.

In terms of criticism, I would say that Keown's argument suffers from an intellectual 'jump' from duties to rights. Just because someone has a duty to do something, does not necessarily mean that I have a right to demand it. Ihara also challenges Keown on this point and cites some rather amusing examples such a ballet and soccer to describe how sometimes duties can be differentiated between duties *to* another and duties which *involve* another.⁸²

⁷⁹ Keown., op. cit., 1998

⁸⁰ Ibid., p. 29

⁸¹ Ibid., p. 31

⁸² Ihara, Craig K. "Why There are no Rights in Buddhism A Reply to Damien Keown" in Damien Keown, Charles Prebish and Wayne Husted (eds.) *Buddhism and Human Rights*. Curzon Press, 1998. pp. 44-46

In Saneh Chamarik's study of Buddhism and human rights, Saneh defines his paper as an attempt to "inquire into the true meaning and purpose of Buddhism from the standpoint of universal humanity, as distinguished from institutional Buddhism as state religion."⁸³ It is however, left unclear how he intends to accomplish such a task, and why he would choose to do so considering the issue of human rights is directly related to the state and state mechanisms. For Saneh, the pursuit of human rights in Buddhism must be incorporated into a socially active and socially conscious mentality. To illustrate, he quotes the Mahavagga Sangyutta-Nikaya:

"Monks. Taking care of oneself means as well taking care of others. Taking care of others means as well taking care of oneself. How is it that taking care of oneself means as well taking care of others? It is by diligent practice, by love for the *dhamma*, by magnanimity. That is how taking care of oneself means as well taking care of others."

"How is it that taking care of others means as well taking care of oneself? It is by tolerance, by non-harming, by love, by compassion. That is how taking care of others means as well taking care of oneself."⁸⁴

Saneh goes on to further highlight the how goodness and right action that comes from within is fundamental to the full realisation of human rights. In commenting, I would charge that Saneh's discussion is far too idealistic, treating Buddhism as some other-worldly ideal divorced from the reality of day to day life. Furthermore, his comments seem to portray Buddhism as the only introspective religious tradition. Near the end

⁸³ Saneh Chamarik. 1982. p. 34

⁸⁴ Ibid., pp. 28-29

of the paper, Saneh criticises others perspectives which suffer from being “based more upon [the] interpretation of Buddhist ideals than upon a knowledge of actual experiences of followers of Buddhism who have to adapt these ideals to practical actors.”⁸⁵ What is ironic is that Saneh’s paper suffers from exactly the same failing. Lastly, this paper, dating from 1982 is sadly out of date.

The final supporting arguments for the inclusion of Buddhism in human rights discourse are offered by Sulak Sivaraksa, the well-known Thai social activist and critic through an analysis by Soraj Hongladarom.⁸⁶ For Sulak, the realisation of nibbana is impossible without relation to others. His socially-engaged Buddhist message posits that human rights naturally flow from individuals who are free from attachments such as “I”, “me” and “mine”. The influences here from Buddhadasa Bhikkhu are clear, and become even more so when Sulak speaks of the duty of the benevolent ruler to enshrine and protect human rights for his subjects (certainly influenced by the dhammic socialism of Buddhadasa).⁸⁷

According to Soraj, Sulak views the concept of human rights as being indigenous to Thailand, but fails to detail why he believes this is so. Both Soraj and Sulak ironically and surprisingly claim that consumerism, greed and the exploitation of the natural environment are Western impositions and that human rights suffer, not benefit, from the importation of Western ideals. This is just purely Sulak’s anti-Western rhetoric at its best. In his characteristically superficial and simplistic fashion, Sulak attempts to appropriate human rights as a traditional Thai trait. Sulak later contradicts himself

⁸⁵ Ibid., p. 36

⁸⁶ Soraj Hongladarom, 1998

⁸⁷ Ibid., p. 100

with regards to human rights, on one hand appearing to champion them (“I have never submitted to any authority, and have challenged corrupted authority all my life”⁸⁸), while on the other hand placing limits on them, (“I am not affirming, nor would I affirm a right to commit *lèse majesté*.”⁸⁹) He thus negates the central democratic principle of freedom of speech and right to criticise one’s leaders by paying homage to an outdated social taboo against speaking ill of the Royal Family. He thus perpetuates the traditional Thai pattern of the elite and powerful using the law to preserve their privilege and maintain the status quo.

There are some who believe however, that Buddhism and human rights are incompatible ideologies. Let us now briefly survey the major arguments forwarded by Preecha Changkwanyeeun, Phra Dhammapidok and Boontham Poonsap. Preecha, a Philosophy professor at Chulalongkorn University, holds that rights are only necessary because people do not act towards one another with *metta*, or kindness and compassion. He stated that “if people had *metta*, speaking of rights would almost be unnecessary.”⁹⁰ He therefore proposes that we cultivate *metta* as opposed to cultivating the concept of human rights because human rights are based in individualism, and are thus not conducive to the development of good, kind people.⁹¹

The most critical flaw in Preecha’s argument is that he assumes that the cultivation of human rights and the cultivation of *metta* are mutually exclusive. Therefore, he does

⁸⁸ Sulak Sivaraksa. “Buddhism and Human Rights in Siam” in Sulak Sivaraksa and Pipob Udomittipong (eds.), *Socially Engaged Buddhism for the New Millennium*. Bangkok: Sathirakoses-Nagapradipa Foundation & Foundation for Children, 1999, p. 203

⁸⁹ *Ibid.*, p. 204

⁹⁰ ปรีชา ช้างขวัญยืน. *ความคิดทางการเมืองในพระไตรปิฎก*. กรุงเทพฯ: สำนักพิมพ์จุฬาลงกรณ์มหาวิทยาลัย 2538, p. 122
(author’s translation)

⁹¹ *Ibid.*, p. 126

not allow for the simultaneous cultivation of both to serve in those cases where *metta* fails and legal redress is required. While it is an admirable notion, it is somewhat overly optimistic to assume that we will ever reach the state where all human beings will be free of defilements and act towards one another with pure *metta*, thus negating the necessity for codified human rights instruments.

Phra Dhammapidok (Prayudh Prayutto) is one of Thailand's leading and most respected Buddhist monk and Pali scholar. While he is renowned for his impressive knowledge of traditional scripture, he is also revered in activist circles for being supportive of the socially-engaged Buddhist movement. As a result, it is not entirely fair or accurate to place Dhammapidok in this category. However, while Dhammapidok may support and even encourage human rights *debate* in Thailand, he remains at heart a Buddhist monk who views human rights as a this-world compromise, not a solution to the cycle of *samsara*.⁹²

According to Dhammapidok, there are three major flaws in the contemporary understanding of human rights. First, the very concepts are flawed, having arisen from dissension, conflict and disharmony. Furthermore, human rights must be obtained through demand. The 'politics of anger' are antithetical to Buddhist teachings.⁹³ Second, Dhammapidok views human rights as being a purely human social construct. That is, they are not 'natural' law, they are not lasting and are only based upon mutually accepted laws. Finally, Dhammapidok feels that as a purely

⁹² Soraj Hongladarom, 1998, p. 104

⁹³ Vitit Muntarbhorn & Charles Taylor. *Roads to Democracy: Human Rights and Democratic Development in Thailand*. Montreal: International Centre for Human Rights and Democratic Development, 1994, p. 96

social convention, human rights do not consider the mental motivation that underlies and gives rise to unwholesome actions.⁹⁴

For Dhammapidok, *Dhamma* is an unchangeable, natural law, and human rights are human law, much like the *Vinaya*. As such, they do have a role to play in the development of a environment conducive to the practice and realisation of *Dhamma*. Beings should therefore struggle for self-perfection out of complete understanding of the *Dhamma* and not for selfish reasons based in greed, hatred or ignorance. Thus, for Dhammapidok, it is entirely irrelevant whether human rights are a Western concept or not.⁹⁵ They are simply a means, which are not necessary in an ‘ideal community.’⁹⁶

According to Boontham Poonsap, in his graduate thesis *Morality and Human Rights in Theravada Buddhist Philosophy*, Buddhism speaks of freedom without any necessary reference to rights.⁹⁷ Boontham largely agrees with Preecha that *metta* is key to the realisation of harmonious relations among people. According to Boontham, the ‘good life’ is based on *kammic* law, not secular law guaranteed by the state. Human rights demands made externally to the state are in conflict with Buddhist teachings as one should make demands on oneself in order to secure true freedom.⁹⁸

My criticism of Boontham’s thesis would stem from the fact that he depended almost entirely upon a comparison with one Western author’s work (Gewirth). Furthermore,

⁹⁴ Soraj Hongladarom, 1998, p. 104

⁹⁵ *Ibid.*, p. 107

⁹⁶ *Ibid.* p. 107

⁹⁷ บุญธรรม พูนทรัพย์, 2533, p. 64

⁹⁸ *Ibid.*, p. 66

his analysis takes place at the theoretical level. People do not live in theory, they live in the real world. Unless practical application of the theory can occur it can have little relevance to the discussion at hand. Now that we have briefly surveyed the major debates and literature on the subject, we can turn to an analysis of how these concepts and conflicts play themselves out in the real world of Thai society and politics.

3.1.3 Human Rights and Buddhism (lokiyo⁹⁹): Conflict in Thai Society

The historical development of human rights in Thailand and the resulting social schizophrenia regarding human rights as a concept is perhaps best illustrated by the position of Dhammapidok and Sulak Sivaraksa. On one hand, human rights are seen as a means – a necessary political and legal evil in an unenlightened society. On the other, human rights are viewed as the representation of an end in Buddhism, where in a just society, human rights would naturally be respected. As a result of this tension in Thai society, I would argue that three key factors have contributed to the impotence of Buddhism in the arena of human rights and have ensured that Buddhism has played only a minor role in the development, articulation and maintenance of human rights standards in Thailand: the lack of separation between church and state, the marginalisation of human rights activists and reformist monks, and the restriction of the debate to the esoteric, supra-mundane level.

In Thailand, a key source of legal tension has resulted because the state has been unwilling to state which law takes precedence in religious matters – the *Vinaya*, or

⁹⁹ พระเจ้าบรมวงศ์เธอ กรมพระจันทบุรีนฤนาถ. อ้างแล้ว, p. 665 “Lokiyo (adj.) worldly, earthly, temporal, mundane. skt. Laukya”

monastic code, or the secular law. Indeed, Jackson points to this fundamental tension inherent in Thai law. The conflict arises in the legal definition of a Thai monk. Is adherence to the *Vinaya* paramount, or is it the procedures dictated by secular law? Peter Jackson maintains that this question has never been resolved by a secular court or the Sangha authorities in Thailand.¹⁰⁰ The clearest contemporary example of this is the case of Wat Phra Dhammakaya and its abbot Phra Dhammachayo. A prominent human rights lawyer recently argued that under the constitution, as a citizen, Dhammachayo has the right to own land.¹⁰¹ However, this is clearly in conflict with *Vinaya* guidelines which stipulate that a monk may not own land or money.

Not only does the issue of separation of church and state occur in monastic legal matters, but it also is present in fundamental issues of freedom of religion. I have argued elsewhere that effectively, freedom of religion does not exist in Thailand.¹⁰² The state's intervention in the affairs of the Sangha and its monopoly on truth has been a common feature in both historical and modern times. The Thai monarch, and more recently the government, has frequently ordered the Sangha to convene a *sanghayana* or Buddhist Council to purge and purify the *Tipitaka*. The state has also acted, through the Sangha Acts of 1902, 1941 and 1962 to bring the entire administrative structure and government of the Sangha under the purview of the state within the Department of Religious Affairs. The current debates regarding Sangha reform are but an extension of this state-sponsored meddling in the affairs of the

¹⁰⁰ Jackson, Peter. *Buddhism, Legitimation and Conflict: The Political Functions of Urban Thai Buddhism*. Singapore: Institute of Southeast Asian Studies, 1989, p. 174

¹⁰¹ Thongbai Thongpao. "Right to Religious Freedom." *Bangkok Post*, Sunday, May 9, 1999, p. 5

¹⁰² Stewart, Robb., *op. cit.*, 1999

church. Governments such as that of Sarit were not adverse to the direct manipulation of the Sangha and its control for the purpose of legitimising their regimes.

It is my recommendation that the state withdraw from its traditional role of shaping and managing the Buddhist Sangha. At the very least, the state needs to accommodate or permit the opening of political/spiritual space in order to allow other sects, belief systems or *nikaya* to emerge. The state's unwillingness to recognise a third *nikaya* such as Santi Asoke runs counter to both the emerging civil society and new constitutionally guaranteed rights to religious freedom.

In order to maintain control over the Sangha and the state version of 'truth' it has been occasionally necessary to marginalise certain vocal critics or reform minded laypersons and monks. According to Taylor, the state operates what he calls a 'regime of truth' for the purpose of maintaining power. This regime must portray other counter-ideologies as threatening to the civic religion (in this case, Theravada Buddhism.)¹⁰³ Within civic religion is included the state's hegemonic control of conceptions of nationhood. Taylor considers the Thai triumvirate of Buddha, monarch and state to be "truth statements" which serve to delegitimise counter-ideologies. The state's hold on relative truth is derived through its manipulation of power and produced through the use of 'multiple restraints.'¹⁰⁴

The multiple restraints at the disposal of the state may be of three main types, institutionalisation, structural neutralisation and ideological 'other'-isation. Taylor claims that the Thai state's most successful method of countering alternative

¹⁰³ Taylor, Jim. "Buddhist Revitalization, Modernization, and Social Change in Contemporary Thailand" *SOJOURN* 8:1 (Feb. 1993)

¹⁰⁴ *Ibid*, p. 76

ideologies is that of institutionalisation.¹⁰⁵ By this, he refers to the co-optation of monks and movements and their institutionalisation into the official Sangha administration. He cites as an example the case of the wandering forest monks of the Northeast, and the amnesty programmes of the 1970s and 80s.¹⁰⁶ This may also be said to apply in some fashion to Dhammapidok Bhikkhu.

The structural neutralisation method as outlined by Jackson¹⁰⁷, may range from physical excommunication to the restriction of senior administrative positions to those monks who are deemed to be 'friendly' towards the state and its policies. This method was used initially quite successfully in the campaign against Phra Phimontam, where senior administrative positions were kept deliberately vacant in order to weaken his support and prevent his eventual ascension to the level of Supreme Patriarch. Other high profile examples include Phra Photirak (Santi Asoke) and Phra Dhammachayo (Dhammakaya).

The third method is one long favoured by both secular Thai and religious authorities in the marginalisation of any political threat be it an idea, movement, or individual. This method entails the ideological 'other'-isation of a competing ideology, usually by labeling it un-Thai. Therborn is quoted by Taylor as defining the condition of ideological non-existence as being, "excluded from further meaningful discourse as being insane, depraved, traitorous, alien and so on."¹⁰⁸ The communist epithet is by far the most favoured 'other-isation' technique in recent Thai history and has been

¹⁰⁵ Ibid., p. 81

¹⁰⁶ Ibid., p. 81

¹⁰⁷ Jackson, Peter., op. cit., 1989, p. 14

¹⁰⁸ Taylor, Jim., op. cit., Feb. 1993, p. 80

applied to a wide range of Thai monks whose teachings or actions were perceived as posing a threat to a particular interest or party.

The other key source of friction in Thai society is that of tradition versus modernity, the former being represented by scripturally grounded philosophical debates and the latter being exemplified by the social activism of the ‘socially-engaged’ movement. As clearly shown by the analysis of the literature in this field, the vast majority of the debate has occurred at the level of philosophical discussion, on whether or not Buddhism and human rights are compatible ideologies. This has meant that discussions on just exactly *how* Buddhism can make significant contributions to the development and protection of human rights in Thailand have been largely ignored. While I do acknowledge that there are some high-profile monks who hold influential positions, and also some Buddhist-based NGOs at work, they are often represented by marginalised leaders (Sulak) or risk being marginalised for violating the traditional (and legal) prohibition against monks participating in political activities.

Many still cling to the ultimate Buddhist values such as *anatta*, *anicca*, etc. and therefore claim that Buddhism has no social or political role to play because all social institutions are transient or that the concept of non-self negates any individual to which human rights could be attached.¹⁰⁹ However, I see it as a dire mistake to equate spiritual freedom and temporal, mundane freedom. If rules and regulations were not necessary to create a social environment conducive to spiritual practice, then the Vinaya would not exist. The traditional, absolutist arguments thus run the risk of creating a situation Saneh warned against when he stated, “Buddhism is vulnerable to

¹⁰⁹ Mabbett, Ian. “Buddhism and Freedom” in David Kelly and Anthony Reid (eds.) *Asian Freedoms*. Cambridge: Cambridge University Press, 1998, p. 21

a relapse into mere dogma, incapable of adapting to change - and only serving the status quo and the powers that be.¹¹⁰ What he failed to acknowledge is that such is already the case in Thailand. This was not a foreshadowing, it was a reflection of reality.

As I mentioned earlier, Buddhism has come late to the dialogue on human rights. Scholars, activists and religious leaders are scrambling to find moral justification for the location of human rights in Buddhist doctrine and ways to incorporate Buddhist doctrine into modern human rights theories. One must ask however, is it necessary? Do modern rights theories have to be somehow proven to be extant or represented in ancient scriptures in order for them to be valid? Or, can we rather hope to nudge the stagnant, paternalistic Thai Sangha into recognising that while modern human rights theories may not find explicit mention in the Tipitaka, that they are indeed congruent with Buddhist ethics and morality.

Unfortunately, progress in this regard has been slow and I have thus argued that Buddhism in Thailand has not contributed in any meaningful way to the development of human rights in Thailand for three key reasons: the lack of any separation between church and state, the systematic marginalisation of human rights activists and reform-minded monks, and the restriction of the debate to the esoteric, supra-mundane level. However, while Buddhism has not to date contributed significantly to the discourse on human rights in modern Thailand, the two concepts are not mutually exclusive. Moreover, as a moral issue, Buddhism is obliged to respond, and respond thoughtfully.

¹¹⁰ Saneh Chamarik., *op. cit.*, 1982, p. 7

This thesis is concerned with the establishment of the National Human Rights Commission as mandated by the constitution of 1997. To what extent Buddhist thinkers or drafters of the *National Human Rights Commission Act* incorporated Buddhist fundamentals as outlined in this section remains to be studied. The purpose here was to simply outline the philosophical underpinnings of Thai worldview that might serve to illuminate our consideration of belief systems and their effect they have upon policy formation. Because the Advocacy Coalition Framework is founded upon the importance of belief systems, it would seem amiss to neglect a brief examination of religion – the fountain of many social and cultural beliefs. Many of the attitudes mentioned above find articulation and manifestation in later discussions on ‘Asian’ values, and in Chapter 5. While they are not explicitly linked to Buddhism, many do believe a social cultural heritage which supports among other things, a hierarchical society with strong patronage systems.

Another critical component of this consideration of Buddhism and human rights is the influence that it exerts upon social norms and understanding about human rights. When highly-influential monks such as Phra Dhammapidok make public statements about human rights, these statements become part of the public sphere and have influence on the way people perceive the issue. In some ways, this may be also said to be a form of policy-oriented learning, albeit lacking in true analytical tractability value. The discussion here was not an attempt to describe Buddhism as having a direct causative impact upon the human rights commission debate, but rather was highlighted as a fundamental cultural value, one of the four key stable parameters contributing to policy and belief system stability as outlined in the Advocacy Coalition Framework.

According to Phra Dhammapidok, it is not sufficient to view religion as a force that helps people to live at peace with themselves and others. We must challenge religion and examine deeply the ‘outlook the religion has on man and suffering and how it functions to relieve or get rid of that suffering.’¹¹¹ Thailand is at a cross-roads with respect to human rights. It is my sincere hope that Buddhism can show the way to a more democratic and egalitarian future through the strengthening of civil society. Yet, there are forces at play who seek to contain the growing acceptance of the universality of human rights by citing an apparent conflict between universal (Western) rights, and ‘Asian values.’ Let us now turn to this controversial issue.

3.2 ‘Asian values’ and Human Rights

On the surface level, this argument is a very easy one to refute. The *Universal Declaration of Human Rights* (UDHR) should apply in Thailand, without exception. This is so for two key reasons. First, the universality principle of the declaration means just that – that the principles contained therein are recognised as being universal, inalienable rights that all human beings have by virtue of their birth. Second, from a less metaphysical point of view, Thailand (then Siam) was one of the initial signatories to the UDHR in 1948 and thus committed itself to the promotion, and protection of the ideals and principles of the Declaration.¹¹² As such, Thailand publicly demonstrated that it was in agreement with the spirit and nature of the rights contained in the document and that it would endeavour to implement those rights to

¹¹¹ เสน่ห์ งามริก. *สิทธิมนุษยชน: เกณฑ์คุณค่าและฐานความคิด*. กรุงเทพฯ: สำนักงานสิทธิมนุษยชนศึกษาและ การพัฒนา สิทธิมนุษยชน 2542, pp. 1-2

¹¹² Vittit Muntarbhorn & Charles Taylor., op. cit., 1994, p. 14

the best of its ability. Having signed the document, it is therefore not tenable that we enter into speculation about which provisions need not apply to Thailand, or which provisions may be watered down due to 'cultural peculiarities.'

On a more subtle level, however, the matter is not as simple as it seems. Indeed there is growing sentiment and understanding of the climate in which the *Universal Declaration* was born, and the pro-Western bias which some believe pervades the document. The proponents of this view have forwarded the 'Asian values' argument, which arguably poses the most significant threat to the universality of the UDHR in its fifty-year history. We must therefore ask what the 'Asian values' debate is and how it applies to Thailand, if at all. Does Thailand see itself as a party to the 'Asian values' camp or not?

The debate over 'Asian values' is articulated by its champions as representing a regionally distinct and identifiable social, economic, political and cultural belief system that is in opposition to the belief system of the Western nations. Even at the crudest level of analysis this claim to a regional identity is highly dubious and indefensible at best. The nations of Asia are geographically, historically, religiously and politically more diverse than perhaps even the Western nations. One of the key components of the 'Asian values' debate has been the inclusion of Confucian values as the basis for a supposed communal versus individual mentality among Asians. Asians are presumably more group-oriented, self-effacing and put the well being of the community ahead of their own personal, individual rights, desires and goals.

In criticism, it is readily apparent to the most amateur scholar of Thailand, that Confucian values are not a defining characteristic of Thai belief systems or world-view. In fact, the so-called 'group mentality' of 'Asians' is conspicuously absent in Thailand. In a highly revealing study of Thai world-view, Suntaree Komin, she found that among urban Thai residents (where one would expect to find some Confucian influence among the large ethnically-Chinese community) the instrumental value that ranked the highest in terms of importance was 'independence.'¹¹³ In addition, 'personal focus' terminal values outranked 'social focus' values as the top three categories.¹¹⁴ Thus, it would seem that the Thai are not so group-oriented as some would like us to believe.

Although Thailand did sign the Universal Declaration of Human Rights, it is interesting to note those areas of human rights law where the views of the declaration and the views of the Thai government differ. Looking to the International Covenant on Civil and Political Rights, Thailand entered four reservations or exceptions at the time of signing the treaty. The Thai State took issue with the right to self-determination (1.1), not carrying out the death penalty on minors or pregnant women (6.5), prompt trial and custody/bail rights (9.3) and the prohibition of propaganda for war or incitement of religious, ethnic or national hatred (20).¹¹⁵

¹¹³ Suntaree Komin. "The World View through Thai Value Systems" In *Traditional and Changing Thai World View*. Amara Pongsapich. (ed.) Bangkok: Chulalongkorn University Press, 1998, p. 226

¹¹⁴ Ibid. p. 216

¹¹⁵ United Nations High Commissioner for Human Rights. Treaty Body Database, Internet Version

The question of whether or not some provisions of the UDHR should not apply to Thailand is a complex one when one examines the actual implementation and commitment to the principles enshrined in the document. However, being a signatory to the Declaration obligates Thailand to uphold its principles. Thailand has long sought to be viewed (along with the Philippines) as a regional champion of human rights. This is evidenced by the joint proposal to ASEAN members to reexamine ASEAN's stance towards human rights abuses in Burma, and the Thai government's support for the idea of a regional human rights commission¹¹⁶. So, while human rights abuses occur daily within the kingdom, at least on the external front, Thailand is trying very hard to appear a democratic nation firmly committed to international, universal human rights values.

The recent debate regarding 'Asian values' is multi-dimensional, ranging from cultural relativist discourses to highly politicised debates regarding economic, social and political policy and ideological supremacy. As such, it is a dubious pursuit to attempt to identify exactly what 'Asian values' is/are. Being a discourse based in the 'crudest of generalisations'¹¹⁷, the core of the 'Asian values' debate can be summarised as follows.

First, it is argued that Asian culture places more value upon the group rather than on the individual. Consequently, Asians 'work for the good of society, are less selfish

¹¹⁶ Bangkok Post, May 30, 1998

¹¹⁷ Inoguchi, Takashi and Edward Newman. "Introduction: 'Asian Values' and Democracy in Asia" in *'Asian values' and Democracy in Asia*. Proceedings of a Conference held on 28 March 1997 at Hamamatsu, Shizuoka, Japan, First Shizuoka Asia-Pacific Forum: The Future of the Asia-Pacific Region

and accept that the cohesion and stability of society are more important.’¹¹⁸ This is exemplified by a supposed greater respect for family, the elderly, economic conservatism, hard work and team work. Secondly, the proponents of ‘Asian values’ place greater importance upon economic, social and cultural rights than on civil and political ones. Thirdly, as a corollary to the group-orientation mentality, there is a greater emphasis placed upon the duties of the citizen rather than on citizens’ individual rights.

According to Yash Ghai, the concept of ‘Asian values’ arose out of the unique context of human rights in Asia. He highlights four key areas for observation. First, that Asia has radically differing political models that have led to massive unequal distribution of wealth, authoritarianism and political corruption. Secondly, that the state is major violator of human rights in all areas. Thirdly, that the knowledge and understanding of human rights is not sufficiently widespread so as to counter human rights violations by the state. Finally, human rights violations in Asia usually occur against groups rather than individuals.¹¹⁹

Following the recent economic success in Asia, and a newfound confidence, Asian leaders began to question the apparent bias in the UDHR towards civil and political rights. This led Asian governments, in the preparatory meetings prior to the Vienna Conference on Human Rights, to meet and issue what is known as the Bangkok Declaration in which they outlined their position as follows:

¹¹⁸ Ibid., p. 2

¹¹⁹ Ravindran, D.J. *Human Rights Praxis: A Resource Book for Study, Action and Reflection*. Bangkok: FORUM-Asia, 1998, pp. 52-53

'We affirm our commitment to the principles of indivisibility and interdependence of human rights, be they civil, political, economic, social or cultural rights. The protection of human rights concerns both individuals and collectivities. The enjoyment of human rights implies a degree of social responsibility to the community...There must be a holistic and integrated approach to human rights. One set of rights cannot be used to bargain for another.'¹²⁰

In critique of the 'Asian values' position, there is much to be said. It is argued here, however, that because of the lack of consensus on what 'Asian values' are, and because the debate concerns larger issues of cultural relativism and ideologies, it is not productive to engage in an article by article analysis of the UDHR with a view to categorising those articles which do or do not accord with so-called 'Asian values'. As mentioned in the answer to the previous question, it is illogical to attribute to such a diverse region such as Asia a monolithic homogenous cultural, political, economic and social character. In fact, according to C.O. Khong, the idea of an Asian tradition is something very new.¹²¹ This new tradition has even been labelled an 'invented tradition' by some, with the aim of countering Western charges of Asian authoritarianism.¹²²

The second critique of the 'Asian values' position concerns the concept of community and individual. The apparent bias in favour of the individual in Western discourse has been, in my opinion, greatly exaggerated. As Vitit Muntabhorn notes, provisions exist in almost all international human rights instruments, including the UDHR, which

¹²⁰ Kelly, David. "Freedom – An Eurasian Mosaic" in David Kelly and Anthony Reid (eds.) *op.cit.* 1998

¹²¹ Khong, C.O. "Asian Values – The Debate Revisited." (mimeograph, n.d.).

¹²² Inoguchi, Takashi & Newman, Edward., *op. cit.*

provide for the overriding of individual rights by community rights where the greater good is at stake. This is only qualified by provisions that such abrogation of individual rights be undertaken fairly and proportionally.¹²³ I would argue that surely, communities are formed of individuals and not visa-versa. Without individuals, a community cannot be possible. This is in contrast to the Hegelian concept of the 'person' only being made possible through membership in a larger group unit such as the community. Moreover, successive resolutions of the United Nations (ie. UN General Assembly Res. 32/130) explicitly maintain the interdependence of economic, social and cultural rights and civil and political rights.¹²⁴

There have been various interesting arguments advanced by some Asian scholars which I would like to address here. In the four defining characteristics of the Asian human rights context as outlined by Ghai above, it is interesting that such characteristics are identified as uniquely Asian, when in fact, the history of the Western nations has evinced many of the same features. It was also suggested that the Asian leading elites have forwarded the 'Asian values' position as a catalyst to stimulate debate among their citizens rather than with the West. I would categorically disagree with this statement. Much of the promotion of the 'Asian values' position has taken place at the international, diplomatic, foreign-policy level. Moreover, the 'Asian values' position has been taken for granted as a real entity by Asian leaders, without actually asking their citizens what they really want. One need only look to the mandates of many Asian human rights NGOs to see that they clearly represent divergent views from their respective governments. Kasian Techapira has argued that

¹²³ Vittit Muntarbhorn. *Human Rights in Southeast Asia: A Challenge for the 21st Century*. Chaiyong Limthongkul Foundation Award in Arts and Humanities: Bangkok, December 20, 1993, p. 6

¹²⁴ Yamane, Hiroko. In Vasak, Karel., op. cit. 1982, p. 665

the 'Asian values' position is merely a tool used by authoritarian governments to resist change.

Finally, Joseph Chan has written that the 'Asian values' debate is a very important pursuit, which is 'at its core a search for a coherent political morality' within Asia.¹²⁵

We must ask ourselves why this is important? What purpose does it serve? Is such a coherent morality possible or even desirable? In whose interest is it? Perhaps we should stop trying so hard to refute the relativist position of certain Asian leaders and instead work towards strengthening and substantiating international human rights law. This could prove a more beneficial exercise considering the apparent lull in the debate precipitated by the Asian economic crisis. If this is indeed the case, it would certainly lend weight to the position that 'Asian values' must be considered not only in terms of culture but also in terms of economic development. The so-called third generation of international human rights instruments therefore become critical and necessary supplementary documents to the Universal Declaration of Human Rights. Indeed, one of the most vocal proponents of both civil/political and social/economic/cultural rights has been the media. Because many of the governments in Southeast Asia (including Thailand) keep a strong grip on the transfer of information within their respective nations, often the general population (aside from activist and academics) have no available venue to learn, exchange and develop their thoughts on human rights. The media thus play a critical role in the dissemination of information regarding human rights. Moreover, often the media, as the primary vehicle by which the average

¹²⁵ Chan, Joseph. "The Task for Asians: To Discover their Own Political Morality for Human Rights." *Human Rights Dialogue* 4 (March 1996).

citizen can interface with human rights discourse, serves as both a catalyst and mediator in the promotion and protection of human rights.

3.3 *The Media and Human Rights*

Some Western scholars have argued that the development and dissemination of democracy and democratic ideals was made possible by advances in mass media technology, such as the printing press, which divested the Church and land-owning elite of their privileged knowledge of language. As a result, it suddenly became possible for political, religious and social ideologies to find a wider, receptive audience through access to the printed word. Later technological developments like the radio, television and most recently the Internet, have proven to be equally, if not even more successful in this regard. Leo Bogart has even gone so far as to suggest that 'representative democracy is inconceivable without forms of mass-communication.'¹²⁶ While I agree with this statement, I am of the opinion that it is critical to attempt to investigate and understand what makes this statement hold true. How does mass communication contribute to representative democracy?

This section seeks to investigate this question with reference to a key component of democratic development and civil society: human rights. According to the International Centre for Human Rights and Democratic Development in Montreal, Canada, there are four key dimensions by which we can measure the status of rights and the development of democracy: the security of the person, welfare rights, the absence of discrimination and the power to participate in society and its governance at

¹²⁶ Bogart, Leo. "Media and Democracy." In Dennis, Everette E. & Snyder, Robert W. (eds.) *Media and Democracy*. News Brunswick: Transaction, 1998, p. 4

all levels.¹²⁷ To what extent does the mass media contribute to and shape our understanding of these concepts and rights? Is the media merely a mirror of the current political situation or does it actively participate in the discourses and debates surrounding democratic development and human rights?

In this discussion, I will argue that the mass media wields considerable influence and power in the arena of politics and human rights in particular, and that the mass media is a critical and crucial ally in the promotion and popularisation of human rights in Thailand. However, having said this, I shall argue that the media has thus far been failing or not reaching its full potential in this regard for three key reasons. The first is that the press in Thailand has traditionally and even presently operated without a great deal of press freedom. Intimidation, closure, censorship, monitoring and now, libel laws and corporate monopolies have all contributed to the lack of a truly free press in Thailand. The second reason concerns the representation of human rights in the media and its focus not on education, but on specific government initiatives, special events and international cases. The third reason concerns the misunderstanding of human rights by the media and the confusion of its role in their promotion and protection. As a result, the media is often wittingly or unwittingly an accomplice to the violation of basic human rights.

Before undertaking our examination of these three dimensions of the human rights situation in Thailand with respect to the mass media, it may be helpful to define what exactly we mean by mass media. Usually scholars distinguish between mass communication and mass media. Mass communication involves the use of the mass

¹²⁷ Vitit Muntarbhorn & Charles Taylor., *op. cit.*, p. 14

media – print media (newspapers, magazines, etc.) and electronic media (radio, television, Internet) to disseminate information to large numbers of people at the same time.¹²⁸ To this may perhaps be added the telecommunications and other electronic media such as email, pagers, cellular communications, teleconferencing, etc. This paper will primarily discuss the more traditional sources of print and electronic media. Newspaper sources will be favoured here because of their ready accessibility and their tendency to deal with more serious subject matter as compared to television and radio, which focus on entertainment programming.¹²⁹ Before turning to the presentation of human rights in the media and their role in shaping public discourse on the topic, let us begin by first looking at the legal and socio-political environment in which the mass media *itself* operates.

3.3.1 Human Rights of the Media

In this section, we deal with the human rights *of* the media. In other words, what human rights, liberties and freedoms does the mass media actually enjoy? Are these rights ever violated, and if so, how? In this increasingly information based society, what has been also called the New International Information Order (NIIO), requires a complex web of international treaties, regulations and tough policy decisions. The policy challenges of this order go to the heart of freedom of expression, the public's right to know, intellectual property rights and content affecting the rights of information.¹³⁰ While such policy decisions may seem to merely regulate the

¹²⁸ Berger, Arthur Asa. *Media Analysis Techniques*. Thousand Oaks, California: Sage, 1998, p. 103

¹²⁹ Thongbai Thongpao. "Thailand." In Hamelink, Cees. & Mehra, Achal. (eds.) *Communication Development and Human Rights in Asia*. Singapore: Asian Mass Communication Resource and Information Centre, 1990, p. 125

¹³⁰ Venturelli, Shalini. "Prospects for Human Rights in the Political and Regulatory Design of the Information Society." In Servaes, Jan. & Lie, Rico. (eds.) *Media and Politics in Transition*:

administrative and financial arena of the media and telecommunications, in fact they deal directly with public access rights, universal access and information diversity or pluralism. Such information diversity and access is, as noted above, essential for the development and growth of representative democracy and civil society.¹³¹ In order to begin to answer the questions raised above, by let us begin by first outlining the international legal instruments with cover media rights, followed by the laws and regulations at the local level. Then, we will be in a better position to address some areas of concern where press freedom has been, or is under attack.

3.3.1.1 International Legal Instruments

From the earliest days of the birth of the modern concept of ‘human rights’ the rights and duties of the press and the media have been recognised as important and enshrined in various international treaties, covenants, declarations and plans. The most concise and explicit of these can be found in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. This declaration, while not legally binding in international law, represents the highest level of treaty and aspiration of human rights to which its signatories are morally bound. With regards to the issue of freedom of expression and the freedom of the media, the UDHR position is stated in Article 19:

“Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹³²

Cultural Identity in the Age of Globalisation. Amersfoort, Netherlands: Acco, 1997, p. 62

¹³¹ Ibid. p. 69

¹³² คณะกรรมการประสานงานองค์กรสิทธิมนุษยชน. *สิทธิมนุษยชน*. กรุงเทพฯ, 2540, p. 14

This right and its permissible limitations are even more explicitly detailed in the International Covenant on Civil and Political Rights' Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and necessary;
4. For respect of the rights or reputations of others;
5. For the protection of national security or of public order, or of public health or morals.¹³³

This more comprehensive detailing of the right to freedom of expression is notable in that it explicitly defines those situations under which the said right may be curtailed. However, those explicitly defined situations are themselves highly vague and open to interpretation. History has proven that many authoritarian states have played upon the vagueness of such terms as 'public order' and 'public morals' in order to compromise these rights for their own dubious political agendas. In addition, the reference in section 3(a) to the 'reputation of others' has opened the floodgates to permit the manipulation of libel and slander legislation to restrict freedom of expression.

¹³³ Ibid. p. 48

In terms of explicit international instruments dedicated to elucidating the rights, freedoms and duties of the mass media, a 1978 UNESCO declaration was one of the earliest and most worthy of note. The Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War was, despite its lengthy goals (and name!) was unfortunately very weak. In the end, it did little but urge the media to promote human rights.¹³⁴

In addition to these major instruments, there are of course a plethora of other regional, national and local legal and regulatory instruments at play. Some are regional in nature, such as those within the European Union, while others address specific minority groups such as children. The international and local instruments pertaining to the mass media and the rights of the child will be discussed later in this paper. There are many trends in current international politics and economics, which are actively working against the promotion and protection of freedom of expression and information rights as outlined in the above international instruments. Privatisation, conglomeration, commercialisation, and oligopolisation are all contributing to the erosion of the free flow of information and are contributing to the increasing coupling of access to information with economics and private ownership.¹³⁵ As a result, most mass media in many countries are controlled by the state or are highly influenced by traditional *loci* of power such as the financial, industrial or military sectors of society. This points to a fundamental weakness in international law concerning human rights

¹³⁴ Hamelink, Cees. & Mehra, Achal. (eds.) *Communication Development and Human Rights in Asia*. Singapore: Asian Mass Communication Resource and Information Centre, 1990, p. xxiv

¹³⁵ *Ibid.*, p. xix

and the mass media. To begin with, such law is virtually non-existent. What few legal mechanisms do exist take the form of declarations and covenants, which are not legally binding on the signatory parties, but rather represent merely aspirations or goals to be endeavoured to.

3.3.1.2 Local Legal Instruments (Thailand)

The mass media has a long history in Thailand, dating from the introduction of the printing press by Christian missionaries to the Kingdom in 1835.¹³⁶ Following this, and with the introduction of radio and television broadcasting, various governmental regulatory laws and organisations came into existence. Coupled with the state's national integration policies and the threat of communism, the state and the military assumed almost total control of the electronic media. Although many of the print media were in private hands, the 1948 Publications Act assigned 'press authority' to the police and the military and empowered them to monitor, ban or close down papers at their discretion.¹³⁷

With the promulgation of the 'people's' Constitution of 2540 (1997), the landscape of press freedom and the state's iron grip on the electronic media had been altered dramatically. There are three key sections that deal with the media in the Thai Constitution. Because of their critical importance, and newfound supremacy in Thai law, I would like to quote them here in full:

Section 39

¹³⁶ Thongbai Thongpao. 1990, p. 123

¹³⁷ Ibid., p. 124

A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.

The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a printing house or a radio or television station in deprivation of the liberty under this section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national as provided by law.

No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 40

Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest.

There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or

television broadcasting and telecommunication businesses as provided by law.

In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition.

Section 41

Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics.

Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.¹³⁸

Section 39 of the Constitution is critical in that it outlines the freedom of expression and the limits to be placed on such freedoms. It states that no closure of any media may be made except in special circumstances. However, in striking similarity to the international documents referred to earlier, the state has the prerogative to suspend such rights in the time of war, or for a number of other reasons chosen from a depressingly long list of vague terms such as public order, health, morality, etc. Another key component of Section 39, albeit not a new one, is the requirement that the owner of a media business must be a Thai national. This xenophobic requirement

¹³⁸ Office of the Council of State. *Constitution of the Kingdom of Thailand*. Government Gazette, Vol. 114, Part 55a, 1997, pp. 12-13

is at odds with international human rights standards, which forbid discrimination based on nationality. However, this is deliberate. The section dealing with the rights and freedoms in the Thai Constitution explicitly states that they are the ‘Rights and Liberties of the *Thai* People.’¹³⁹

Article 40 is perhaps the most controversial and potentially destabilising of all the new articles pertaining to the media under the Thai Constitution. In this section, radio and television frequencies are deemed to be ‘national...resources’ and are to be regulated by an independent regulatory body for the first time. The ensuing debate on the draft Radio Frequency Regulatory Agency bill has generated a considerable amount of controversy and debate regarding public access, press freedom and information rights. According to Ubonrat Siriyuvasak, a media specialist at Chulalongkorn University, Article 40 only gives the appearance of reforming the media to create a public sphere. In fact, it is really only about the liberalisation of ownership rights from the state and the military to the private, not public sphere.¹⁴⁰

Article 41 is notable in that it ensures that the government and military officials may continue to maintain their participation, ownership and control over media outlets. This is no small matter. The state currently controls virtually all radio, television and telecommunication frequency in the nation. While these are often parceled out to private companies on short-term contracts, ultimately they are still under the purview of the government. Even iTV, which was set up under the Anand government, and purports to be “*TV Seri*” or ‘Free TV’, comes under the jurisdiction of the Prime

¹³⁹ Ibid., p. 9 (emphasis added)

¹⁴⁰ Ubonrat Siriyuvasak. *The Media, Cultural Politics and the Nation-State*. Paper presented to the 7th International Conference on Thai Studies, Amsterdam, Netherlands, July 1999, p. 5

Minister's Office. Its recent acquisition by current Prime Minister Thaksin Shinawatra's family empire, and the subsequent firing of those employees critical of the takeover, has further eroded the supposed "free" nature of the channel. The state and military occupy a place of staggering proportions with respect to the Thai media. Consider the following figures:

Agency/Institution	Number of Radio Stations	Percentage
Ministry of Defense	214	41%
Public Relations Department	145	27.7%
Mass Communications Organisation of Thailand	62	11.8%
10 other state agencies	102	19.5%
Total	523	100%

Table 1 -- Ownership of Thai Radio Frequencies by State Agencies¹⁴¹

3.3.1.3 Areas of Concern: Traditional Modes of Suppression

Aside from the alarming control exercised by the Thai state and the military over the mass media in Thailand as evidenced by the data above, there are numerous other means (both direct and indirect) to control, manipulate and stifle the rights to freedom of expression and information. In many ways the Thai media, probably as a result of draconian laws and a hostile political environment, have traditionally employed some form of self-censorship. Because newspapers are first and foremost commercial operations, dependant upon advertising revenues for their survival, they tend to focus on, and direct their editorial content to light, entertainment-based, non-controversial material. This of course has a direct bearing upon press coverage of sensitive political and social issues. What is not omitted by self-censorship, may fall under the

¹⁴¹ Ibid., p. 5 (f5)

jurisdiction of the Censorship committee, which screens entertainment programming such as movies, plays, advertisements, etc., and has the authority to remove offensive material or ban outright the work.¹⁴²

There have been numerous instances, some of them very recent, when the state has exercised its legal authority and invoked censorship laws to ban or limit coverage which it deemed to be detrimental to the national interest. For example, in the controversy surrounding the Santi Asoke religious freedom case, the Prime Minister's Office of the Chatchai government declared a strict ban on any media reporting of the sect's leader trial, in order to deny Bodhiraksa any opportunity to obtain public sympathy.¹⁴³ In a 1999 example of press censorship, the former Prime Minister ordered the Public Relations Department to direct all television stations to 'cooperate' in screening shows featuring transvestites and transsexuals in order to 'prevent innocent youngsters from imitating unfavourable examples.'¹⁴⁴ This incident highlights clearly the government's ability and willingness to invoke 'public morality' as an excuse to violate the human rights of not only the media, but also 'unfavorable' minority groups.

Not only have these direct incidents of press harassment occurred, but also traditionally, patron-client relationships have dominated the work of the media in Thailand. For example, influential politicians often curry favour with certain news dailies, providing gifts, bonuses or concessions. In some cases, the politician

¹⁴² Thongbai Thongpao. 1990, p. 126

¹⁴³ McCargo, Duncan. *Chamlong Srimuang and the New Thai Politics*. London: Hurst & Co., 1997, p. 98

¹⁴⁴ Nation, The. May 18, 1999. Unpaginated Internet version.

becomes directly involved in the ownership of the paper, in order to enlist its services in the promotion of his/her political agenda.¹⁴⁵

There is still a great deal of conservatism regarding freedom of information and expression – a legacy from the days of authoritarian, military rule in Thailand. For example, Khien Theeravit, a Chulalongkorn University political scientist, claims that the mass media ‘undermines Thai democracy.’¹⁴⁶ However, in the chapter on this topic, he only seems to criticise biased reporting. There is no concrete explanation of how the mass media undermines democracy, nor is there any proof offered to substantiate such an argument. Unfortunately, Khien sees the media in Thailand from only the state perspective, and run by the state, not an independent agency. He argues that reporters should not ask divisive questions¹⁴⁷, claims that reporters produce news to incite violence¹⁴⁸, and is hesitant to allow the broadcast of international news programmes (such as CNN or BBC) as the ‘Thai stations...should ask themselves whether it is useful for the Thai people to watch a particular news.’¹⁴⁹ This type of attitude, coming from a recent scholar studying the May 1992 crisis, is particularly alarming. It represents the traditional paternalist attitude to news and information -- a paradigm in which the state knows what is best, and ‘knows’ when the public needs to be protected from information.

¹⁴⁵ This is extensively discussed in McCargo, Duncan. *Reforming Thai Print Media*. Paper presented to the 7th International Conference on Thai Studies, Amsterdam, Netherlands, July 1999

¹⁴⁶ KhienTheeravit. *Thailand In Crisis: A Study of the Political Turmoil of May 1992*. TRF Senior Research Scholar’s Publication Series. Bangkok, Thailand: The Thailand Research Fund & The Institute of Asian Studies, Chulalongkorn University, 1997, p. 28

¹⁴⁷ Ibid. p. 107

¹⁴⁸ Ibid. p. 107

¹⁴⁹ Ibid. p. 108

3.3.1.4 Area of Concern: Recent Policy/Ownership Trends

In contrast to the direct state intervention and manipulation of the press in the cases described above, a new much more insidious change is underway. Alluded to earlier with reference to Article 40 of the Thai Constitution, the Thai media is steadily undergoing a transfer of consolidation from the state to the private sector. While information and public access should be increasing, what is in fact taking place is the parceling out of the public realm to a private ‘concentrated proprietary governance.’¹⁵⁰ Venturelli has argued that while the approach to liberties of expression have been very poor in terms of free communication rights such as rights of assembly, association, public participation and expression, they have been wildly successful in terms of securing property rights, contractual rights and private rights.¹⁵¹ In other words, although I argue that information freedom is essential to the development of democracy, the electronic media has been increasingly appropriated for private, commercial exploitation. With the new policy and regulatory imperatives of the new international information order, the structure has been assuming a supranational one. While the state used to be the major threat to freedom of information, the new monopolies and content concentration of information is anathema to the information diversity and pluralism essential to a civil society.

The alarm bells have also been sounded in Thailand by Ubonrat Siriyuvasak. She notes how the original draft of Article 40 which referred to the electronic media as a ‘public resource’ was amended to refer to a ‘national resource.’ Thus the ownership

¹⁵⁰ Venturelli, Shalini., op. cit., p. 69

¹⁵¹ Ibid. p. 71

by the public became the ownership of the state.¹⁵² According to her research, under the draft Radio Frequency Regulatory Agency bill, public access would only be allotted at 'an appropriate time' and under Article 24, this allotment, 'as a measure to prevent a monopoly, this right of access to a certain time slot must not be given on a regular basis to any particular group.'¹⁵³ It is interesting to note that this allotment is at the discretion of the state and that the government only sees a monopoly from the public sphere, but not from the private or state sphere.

Under the draft legislation, both the broadcast media and telecommunications would be divided up between the state and private agencies. Therefore, as Venturelli had theorised, the definition of the right to freedom of expression has become realised not as public freedom of expression, but rather as free *market* expression. The Internet is perhaps the clearest example of this situation, whereby legislation is rapidly being formulated to protect the commercial, private interests of information technology, while simultaneously laws have been passed limiting freedom of public expression on the Internet (witness the blue ribbon campaign.)

One recent, startling example involving press intimidation and ownership issues occurred under the new Thaksin administration. The almost hysterical paranoia of the current premier has caused him (or as he claims, his underlings) to seek to deport foreign journalists critical of the government, to having critical Nation Group radio programmes removed from the air, and to initiating investigations of senior Thai journalists under the Anti Money Laundering Office. The expected uproar among

¹⁵² Ubonrat Siriyuvasak., op. cit., p. 5

¹⁵³ Ibid., p. 10

foreign governments, local NGOs and members have the media has met with smug paternalism of government ministers citing 'national security' and selective use of international human rights norms.¹⁵⁴

This trend has direct and serious consequences and ramifications for the development of Thai democracy, human rights and civil society. If the public is shut out from participating in the mass media, if they are excluded from ownership, if the right of corporations take precedence over the rights of the individual, if the ownership of greater numbers of media become concentrated in fewer numbers of elite businesspeople, then the diversity and accessibility of the Thai media and its crucial role in the protection and promotion of human rights is in serious jeopardy. The state must act immediately to ensure that public information rights and access are not constituted by hollow, tokenistic policies. Traditionally, politics, democracy and human rights have been informed more by legal arguments and instruments. However, as a result of the growing strength of the media, these institutions are becoming more and more informed not by law, but by opinion. We used to look to the papers to acquire knowledge so we could decide what we think, now we look to them only to be told what we already think. The rise of poll journalism is indicative of this trend.

In sum, it can be said that the climate of press freedom and the free flow of

¹⁵⁴ During the recent media censorship crisis, the current Interior Minister Purachai Biamsomboon, responding to criticism from the American government, claimed that the government was invoking its sovereign right as a sovereign nation under the Universal Declaration of Human Rights. He conveniently neglected to mention Article 19 of the same document, which guarantees freedom of opinion and expression and the right to impart information.

information is largely hostile in the Thai context and thus mitigates against the promotion and protection of human rights in the Thai media.

3.3.2 Human Rights in the Media

A detailed discussion and analysis of the representations of human rights in all the Thai media is surely beyond this scope of this limited discussion. However, a brief overview and sketch of how human rights are portrayed can be made. In order to narrow the scope of the analysis, three key newspapers have been chosen for review: the Bangkok Post, the Nation and Matichon. Newspapers have been chosen for review as they are issued daily, exist in hard copy, consist of both 'hard' fact news reporting and editorial commentary and are less dependent upon advertising revenue than magazines, television or radio. The three papers mentioned above have been selected because they regularly deal with issues of human rights, are representative of more 'serious' journalism, and have readily accessible computer archive databases from which to search. The author recognises the limitations of analysing English language newspapers. While analysis of the 'yellow' paper publications such as Thai Rat, Thai Post, etc. would be more interesting and perhaps more colourful, they are not nearly as readily accessible for research purposes. Moreover, the English language press is still written by Thai journalists, so a 'Thai' perspective can still be obtained. The chronological period chosen for review includes only news articles from 1990 through to 2000. This review is by no means exhaustive and will leave a historical, comparative analysis to the future students of this topic. Seventy-four (74) English and ninety-two (92) Thai language articles were sourced from the three publications, which contained explicit headlines or references to human rights.

Only thirty or 32% of articles in Thai language newspapers used the word *sithi-manutsayachon* (สิทธิมนุษยชน) or *sithi* (สิทธิ) in the title headline or sub-headline, while 46 or 62% of English language articles contained the word ‘human rights’ or ‘rights’.¹⁵⁵

Upon content analysis, it was found that the English language press and the Thai language press were not significantly different in their coverage of human rights issues. There are three key areas under which the articles may be categorised. The first concerns articles relating to a particular, time-sensitive event or anniversary. For example, many of the articles were written to commemorate the 50th anniversary of the Universal Declaration of Human Rights. Thus, although they may be stories that raise interesting issues, their major point of reference is the anniversary. Human rights thus become a topic associated with a particular date (Human Rights Day, UN Day, etc.) and less spontaneous, dealing with issues as they arise.

The second category of article discusses human rights from a government focus. Characteristically uniform across various publications, these articles focus on government initiatives with respect to certain policy initiatives, government activities or official statements. For example, the articles under review here focused to a large extent upon the government’s progress with regards to the establishment of a national human rights commission as mandated by the constitution. Other articles dealt with the government’s decisions to accede to various international human rights instruments. This type of reporting is notoriously uniform in content, with reporters

¹⁵⁵ This excludes the Bangkok Post’s small subject heading of “human rights” assigned to all stories related to human rights.

heavily dependent upon official government statements or key individual sources within government. These articles focus mainly on *what* is happening to the neglect of *why* it is happening.

The third category of news article concerns human rights from an international focus. In this category, human rights are presented in an international context, whether in reference to other nations, the United Nations or regional bodies such as APEC or ASEAN. This article is much more common in the English language press and perhaps represents the international focus of their readership. In any case, these articles are generally taken from the newswire and do not contribute to a greater understanding of local human rights issues.

What can be learned from a brief analysis of these articles is that they do not contribute in a concrete fashion to the elucidation or development of local Thai human rights issues. The international focus is not local, the governmental focus is the official, dry events of the bureaucracy and legal proceedings and the special event articles treat human rights as a 'once a year' issue. Furthermore, all these articles treat human rights in the abstract, as a theory. With the exception of only a few articles, such as one on the human rights of the disabled (during the FESPIC Games), the Thai English and Thai language press do not seem to raise or identify certain issues as human rights issues. While labour, women, children, land and immigrant rights and issues are frequently discussed in the Thai press, very rarely are they mentioned with reference to human rights. Similarly, stories about discrimination are almost non-existent in the Thai media. Thus, the human face of human rights is absent in the daily reporting about rights and freedoms.

Only rarely does a detailed analysis or explanation regarding human rights occur in the articles, and if it does, it is usually in the form of an editorial. On occasion, such editorialisation may even become misleading. For example, in the controversy surrounding the Office of the Council of State's decision to completely rewrite the draft of the National Human Rights Commission bill, and in discarding an earlier draft which incorporated public input, one article unfairly characterises the debate as representing a battle between the "Office of the Council of State Version" and the "People's Version".¹⁵⁶ The anonymous article appears to be a news article, but actually reads like an editorial. For example, in reference to the Office of the Council of State's draft, the article states that if the people don't cry out, the issue will die. It is notable that highly colloquial slang is employed here.¹⁵⁷ While it is important for the media to encourage and inform the public to exercise their rights and freedoms, it is ethically unsound for a journalist to direct the public to a given course of action. This type of journalism further alienates the average individual as they see the conflict develop as a conflict between the media and the government, institutions from which the average Thai is largely barred from accessing. Thus, the media's constructive role in the promotion and development of human rights in Thailand is undermined by shabby reporting, a non-local focus, and an unwillingness to identify a wide range of issues as relevant to human rights.

¹⁵⁶ Matichon, March 2, 2542 (1999), p. 2

¹⁵⁷ "ถ้าไม่มีการโวยวาย เรื่องนี้ก็จะเงียบไปเรียบร้อยโรงเรือนรัฐบาล"

3.3.3 Human Rights by the Media

In this section we will briefly look at human rights by the media. That is to say, how does the media construct and participate in the actual discourses and implementation of human rights. Are there cases where the media itself is directly involved in the human rights of ordinary citizens, over and above the mere reporting of them? I would argue that, yes, in several instances the media is actually involved in the denial and/or violation of the human rights of Thai citizens.

Because of the political situation in Thailand which acts as an impediment to active public participation and input, the growth of NGOs in Thailand has been one avenue through which changes have been instigated and encouraged. Because of the relatively small voice that the NGOs possess in contrast to the media, the media has often taken upon itself, for better or for worse, the role of government watchdog. Many journalists see their role as not just reporting on the human rights situation, but actively engaging and commenting upon it. This has created, in my opinion, a climate where the media is acting in many regards as a *de facto* opposition force in Thailand. Indeed, some media organisations also boast of their accomplishments in this area, as did Matichon two days running when one of their journalists received an award for human rights related journalism.¹⁵⁸ While this may have some positive results, it must be borne in mind that as largely private institutions, commercially driven, and usually in the hands of powerful business or military elites, the media is not a democratic or representative organisation. As such, it cannot – and should not – replace open, participatory grass-roots public sector organisations as agents of change. In some

¹⁵⁸ Matichon, December 22 and 23, 2541 (1998), pp. 1 & 18

cases the media participates, for the sake of the sensational story, with the authorities known to be most insensitive to human rights concerns.

For example, in the field of justice, Thailand's archaic civil law criminal codes are in desperate need of reform. The practice of staging mock re-enactment with captured suspects by the police, and their coverage by the media is in direct contravention of the accused's rights to a free and fair trial, and to the right to be considered innocent until proven guilty. This practice is highly prejudicial, circumvents the authority of the courts and mobilises public perception against a certain individual who may in fact be innocent of the crime. It is well known that police officers use this media time to appear on television and thus increase their prestige and opportunities for career advancement. The media, hungry for a sensational story, actively participate in this practice on a daily basis.

In a related area, the rights of children are routinely violated in the Thai media. The Convention on the Rights of the Child, adopted by the United Nations, and to which Thailand is a signatory, states in Article 17 that:

State Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, State Parties shall:

1. Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

2. Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
3. Encourage the production and dissemination of children's books;
4. Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
5. Encourage the development of guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of articles 13 and 18.¹⁵⁹

As a result, Thailand, in the 8th National Child and Youth Development Plan (1997-2001) outlined a 'Plan of Promoting the Role of the Mass Media.' Under this plan the Thai government aims to enhance the production and dissemination of appropriate media benefiting the child, create awareness of the negative impact of media violence, obscenity and pornography, convince media to be ethical and not injure the child and to praise the media who produce good materials for children.

However, many of these goals are yet to be realised. Some provisions, like that which promotes the mental well being of the child are used in knee-jerk, unscientific fashion like the transvestite example discussed earlier. The most serious violation of the child's rights by the Thai media is in the area of justice and the right to privacy. In cases of sexual abuse or rape where a minor is involved, the media often shows pictures of the minor in their coverage. While the law forbids their name from being given, often the names of the child's parents are given, along with their address, so that the child becomes immediately identifiable. Often, only a small black bar across

¹⁵⁹ คณะกรรมการประสานงานองค์กรสิทธิมนุษยชน. *สิทธิมนุษยชน*. กรุงเทพฯ. 2540, pp. 168-169

the eyes or a baseball cap is all that conceals the child's identity. However, the media just merely adjust their camera angle to get under the rim of the cap and shoot the face of the victim. This very common practice is in direct violation of national and international practices and human rights concerning the privacy and protection of the child. The Thai government should immediately enact legislation forbidding the naming, photographing, filming or any other form of identification of minor victims of sexual assault, juvenile delinquents or minor defendants in criminal cases.

These are just two brief examples of how the Thai media actively participates, with the collusion of the Thai justice and police systems, to violate the basis human rights of Thai citizens. The ethical and legal principles of responsible journalism need to be reevaluated in this light in order to encourage the media to implement reforms in this area.

In conclusion, I have argued here that the mass media in Thailand has a constructive and important role to play in the protection and development of human rights in Thailand. The role of the mass media in human rights is identified and reaffirmed by the various national and international covenants and laws discussed above. However, I have argued that the mass media in Thailand today has not lived up to its full potential in promoting human rights education, compliance or understanding. At times, it has even outright failed.

The reasons for the failure of the Thai media in this regard are threefold. The first is that the press in Thailand operates within a climate inimical to press freedom. Intimidation, closure, censorship, monitoring, libel laws and corporate monopolies

have all contributed to the lack of a truly free press in Thailand. In the struggle between proprietary rights in the private sphere and public expression rights, the increasing content concentration and monopoly formation in the Kingdom mean that proprietary rights have assumed primacy. This has direct and serious consequences for future policy decisions regarding information rights, diversity of views and access – all of which are critical to the public participation in representative democracy and civil society.

The second reason concerns the representation of human rights in the media and its focus not on education, but on specific government initiatives, special events or anniversaries and international cases. I argue here that the internationalisation and the focus on policy only strips the issue of human rights of its human face, and thus removes it from the sphere of the important personal issues of the individual. It positions the discourse of human rights at the level of the abstract rather than at the level the particular, the real world.

The third reason for the failure of the Thai media to adequately address human rights concerns the misunderstanding of human rights by the media and the confusion of its role in their promotion and protection. As a result, the media is often wittingly or unwittingly an accomplice to the violation of basic human rights, usually in collusion with power-hungry government, military or law enforcement officials. The rights of the accused and the rights of the child are particularly vulnerable in this regard.

As we will see later, the debates surrounding the new National Human Rights Commission have encouraged some in the media to take a proactive, comprehensive,

relevant, yet ethical role in the development of human rights and civil society in Thailand. In the new international information order, the ethical, access-based participation of the media is essential to the practical participation of the public in the new, democratic civil society of Thailand. Yet, this pluralist participation must overcome centuries-old systems of patronage and elite power structures which persist in Thai society.

3.4 *Politics, Elites and Human Rights*

For several decades now, since the overthrow of the absolute monarchy by the so-called ‘people’s party’ in favour of a constitutional monarchy (in reality, a military and elite bureaucracy), there has been a ‘vicious cycle’ of constant but static political change in Thailand.¹⁶⁰ While many would propose that the 1932 revolution and the resulting constitution was a move towards democracy, it instead served as a historical foundation whereby constitutional change and political reform serves not the people, but rather has been more concerned with cementing the power of elites who write the constitution and with deflecting political dissent.¹⁶¹ Assuming the average citizens to be ignorant and unable to govern themselves, the leaders of the 1932 revolution (the Promoters), set about to establish rigid control over all state structures and policy.¹⁶²

¹⁶⁰ Borwornsak Uwanno and Burns, Wayne. *The Thai Constitution of 1997: Sources and Process*. (mimeograph), Bangkok, 1998, p. 2

¹⁶¹ McCargo, Duncan. “Alternative Meanings of Political Reform in Contemporary Thailand.” in *Copenhagen Journal of Asian Studies* 13 (1998), p. 9

¹⁶² Klein, James. *The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy*. Asia Foundation Working Paper Series #8, 1998, p. 5

Elite power structures, be they military, civil or bureaucratic, grounded in a centuries-old system of patronage relationships has led to weak civil society consciousness. Unlike their Western counterparts with a history of political uprisings informed by a strong sense of individual rights, the Thai have been more apt to view political problems as originating from individual personalities rather than indicating systemic political failings. This can be seen clearly in recent political events. The 1991 coup against Prime Minister Chatichai Choonhavan met with very little initial opposition because his government was widely seen as corrupt. Ordinary citizens only began voicing dissent on a wide scale when the military elites sought to reassert their rule by appointing coup leader General Suchinda Kraprayoon as prime minister. Then, initial demonstrations, such as the hunger strike by Captain Chalard Vorachat (former Democrat MP – Trad), and the subsequent ‘hijacking’ of the demonstrations by Chamlong Srimuang, only focused their attention on the removal of General Suchinda from power. The central feature was not a shared platform of political reform, but a instead a temporary alliance to oust a corrupt leader from power.¹⁶³

The dominance of elite power structures in Thailand can trace its origins to the traditional absolute monarchy as well as to Buddhist religious concepts that impose a hierarchical structure on society, with individual station being decided by ones *bun* (merit) or *barami* (roughly, virtue). As mentioned above, this manner of social organisation has accustomed the Thai people to being ruled from above and accepting that power belongs to the elite and that that power cannot be divided.¹⁶⁴ These beliefs have been grafted onto the constitutional history of Thailand, rendering the

¹⁶³ Connors, Michael Kelly., op. cit., p. 211 and McCargo, Duncan., op. cit., (1997a), p. 245

¹⁶⁴ McDorman quoting Kanok Wongtrangan in McDorman, Ted. *The 1991 Constitution of Thailand*. Centre for Asia-Pacific Initiatives Occasional Paper, Victoria: U. of Victoria, p. F5

constitution impotent as it does represent a 'social contract between the state and people.'¹⁶⁵

Constitutionalism

Thai experimentation with constitutionalism has, throughout its sixty year and sixteen incarnations¹⁶⁶, sought to achieve two fundamental goals. The first, as mentioned above, was to secure the power and legitimacy of the ascendant elite clique. The second interesting goal was to (whether Thai leaders will admit it or not) gain international acceptance. Since the time of the first contact with European traders and colonists, the Thai royalty and elite have endeavoured to appear 'civilised' in the eyes of foreigners. This preoccupation is an outgrowth of a perceived sense of inferiority which was instilled in the Thai elite upon encountering Western scientific, technological, and political sophistication. It is no coincidence that the Promoters were educated in France, where they were influenced by French revolutionary history. Throughout Thai history of contact with the West, Thai rulers have attempted to strike a balance of, on one hand adopting Western modes of thought and organisation in order to appear as worthy of membership in the international community, while on the other hand, maintaining a fierce sense of independence and nationalism. As mentioned earlier, Thanet argues that for the Thai elite, the Western idea of 'freedom' was interpreted not to mean personalised, individual rights, but was rather conceptualised as referring to the Thai nation-state as independent and sovereign.¹⁶⁷

¹⁶⁵ Vitit Muntabhorn and James Taylor., *op. cit.*, p. 11

¹⁶⁶ Parichart Siwaraksa, Chaowana Traimas and Ratha Vayagool. *Thai Constitutions in Brief*. Bangkok: Institute of Public Policy Studies, 1998, pp. 1-2

¹⁶⁷ Thanet Aphornsuvan., *op. cit.*, p. 182.

Unfortunately, this exercise has proven rather fruitless in terms of advancing the development of democracy – what Vitit and Taylor call ‘modernisation without democratisation.’¹⁶⁸ Thai constitutions have in the past not even been the supreme law of the land, but have instead been qualified and constrained by a plethora of lesser laws, regulations, and decrees.¹⁶⁹ Many of these laws were also founded upon Western legal traditions, with drafters coming from Thai jurists and foreign experts who drew heavily upon French, Swiss, Japanese and German codes, and English, American, Belgian and Dutch laws, who ‘gave preference...to laws best adapted to meet *modern* requirements.’¹⁷⁰ Ted McDorman refers to much of Thai legal history as being viewed as an attempt to ‘appease or please foreign interests.’¹⁷¹

The evolution of rights in Thai constitutions has been positive however, with their gradual increase, broadening scope and enforcement in law. For example, the 1932 Constitution recognised only nine rights, while the 1997 Constitution recognises forty rights.¹⁷² Suchit Bunbongkarn, one of the members of the Constitutional Drafting Assembly and author of Articles 199 and 200, substantiates this analysis by claiming that the inclusion of a National Human Rights Commission in the Thai constitution is a signal to the world that Thailand takes human rights seriously. This is a bold statement, expressing Thailand’s willingness to participate in the world community

¹⁶⁸ Vitit Muntabhorn and James Taylor., op. cit., p. 1

¹⁶⁹ Thanet Aphornsuvan. *A Brief History of Modern Thai Politics and Government*. (mimeograph, n.d.), p. 8

¹⁷⁰ Direck Jayanama. *The Evolution of Thai Laws*. Bonn: Royal Thai Embassy, 1964, pp. 19-20. Emphasis added.

¹⁷¹ McDorman, Ted., op. cit., p. 4

¹⁷² Thanet Aphornsuvan., op. cit. (mimeograph, n.d.), p. 16

and human rights systems. However, Suchit unfortunately qualifies this statement by saying that a National Human Rights Commission must consider the benefit to both the people *and the State* so as not to become a pawn of any one group or to have a negative impact upon *national security*.¹⁷³ He thus reaffirms my argument that the Thai elite wishes to *appear* to be conforming to international standards, they maintain their xenophobic, rabidly nationalistic outlook, and also see human rights as a Western-imported concept which may pose a threat to national security. I believe it will be some time yet before human rights in Thailand are considered an integral part of national security, rather than something separate and apart from it.

Debates concerning human rights and the National Human Rights Commission are necessarily tied up with those related to democracy and political reform. In response to the coup of 1991 and the assumption of the premiership by General Suchinda, there began a stirring of civil society which culminated in massive demonstrations and the suppression of those demonstrations by lethal force in May 1992. This was not the first time Thai civil society organisations had engaged the ruling elite with demands for political reform. Similar actions had taken place as early as 1983, when a coalition of reform advocates (including the House of Representatives, media, academics and NGOs) thwarted the military's attempt to increase its power by amending the 1975 Constitution.¹⁷⁴ However, the 1992 events marked what one

¹⁷³ สุจิต บุญบงการ. “คณะกรรมการสิทธิมนุษยชนแห่งชาติ.” ใน บุญเลิศ ชาญพุทธเดช (ช่างใหญ่) และ ประสงค์ คงเมือง (บรรณาธิการ) *รวมสารรัฐธรรมนูฉบับประชาชน*. สำนักพิมพ์มติชน กรุงเทพฯ 2541. p. 284. Emphasis added.

¹⁷⁴ Klein, James., op. cit., p. 8

scholar called a ‘turning point’ in Thai history¹⁷⁵, and led to the formation of many pro-democracy and pro-reform groups such as the Campaign for Popular Democracy. Buried within the multiplicity of demands being made by the pro-reformers, the seeds of a National Human Rights Commission were being nurtured. No longer would violations of fundamental human rights be tolerated. Their recognition in law, with appropriate institutional measures to ensure their realisation and enjoyment began to be demanded by an increasingly powerful and vocal civil society. In the proceeding chapter, we will examine these emerging institutional measures and trace their development and significance in Thai legal history.

¹⁷⁵ Pasuk Phongpaichit., *op. cit.*, p. 10 (quoting Theerayuth Boonmee)