

## **Dhamma in Dispute: The Interactions of Religion and Law in Thailand**

---

Frank E. Reynolds

This article explores the ways in which law and religion overlap and interact in Thailand. The imaginative-symbolic dimensions of Thai law and religion share many common elements, which have been apparent in the discourse of national politics throughout the 20th century and in the discourse associated with conflict, dissent, and reform in contemporary Thailand. With the emergence of a constitutional monarchy in the 1930s, traditional Buddhist concepts of cosmic law and religion were fused with new concepts of political administration and legal authority. A new "civic religion" emerged, resting on the three-fold formula of nation, religion, and kingship. This evolving civic religious tradition has provided a framework for both the imaginative-symbolic and the more practical, action-oriented discourses that characterize modern Thai legal culture.

**T**he interplay between religion and law is an extremely complex topic that has received very little concentrated attention either from scholars who focus on religious studies or from scholars who focus on legal studies. To be sure, some scholarship in religious studies has dealt with matters of law. Some scholarship in the area of law has taken certain religious dimensions seriously into account. And a few anthropological studies have broken middle ground in the study of certain kinds of cultures. To my knowledge, however, no work provides a comprehensive theoretical orientation that is at all adequate, nor is there any broadly gauged interpretive model that can serve as a reliable guide.

Among the relevant theoretical approaches with which I am acquainted, the most suggestive one has been put forward by Clifford Geertz. Picking up on the notion of "life worlds" developed by Alfred Schutz, Geertz has developed his own understanding of culture and cultural systems. From Geertz's perspective, human cultures are highly complex constructions that are constituted by the coexisting presence of a variety of closely correlated cultural systems. Within this broader view, he has set

forth several very useful notions that are relevant to the study of religion and law. He has written an influential essay spelling out his notion of “religion as a cultural system” (Geertz 1973) and—without using the terminology in an explicit way—has developed in another essay a notion of law as a cultural system (Geertz 1983).

I do not consider Geertz’s characterizations of religion and law sufficiently nuanced to establish an adequate framework for dealing with the highly complex interactions between the two that have developed in Southeast Asia—in Thailand in particular. In the essays “Religion as a Cultural System” and “Local Knowledge: Fact and Law in Comparative Perspective” he does, however, highlight several points that will help in formulating issues central for our discussion.<sup>1</sup>

The first useful point that Geertz makes is that in specific cultural contexts religion is best understood as a coherent cultural system that involves an imaginative-symbolic discourse on the one hand and a correlated discourse about human action on the other. Geertz identifies the imaginative-symbolic discourse with expressions through which the world (in its most extended and ultimate sense) is socially constructed; and he identifies the discourse about human action with the articulation of a program of human conduct that generates a particular kind of ethos. From Geertz’s point of view, the imaginative-symbolic discourse and the more pragmatic, action-oriented modes of religious discourse are mutually reflexive aspects of a single cultural system. Through an ongoing process of mutual interaction and confirmation, these two modes of discourse constitute a particular religious culture characterized by its own very distinctive patterns of religious sensibility.

The second useful point from Geertz’s essays is that law is also a kind of cultural system and that it can be understood in parallel terms. There is an imaginative-symbolic discourse through which the legal community constitutes what Geertz calls the basic if/then structure of existence. In this same legal context there is a correlated discourse about human action (a discourse that deals with what he calls the as/therefore course of experience) that establishes the legal forms and guides legal decisions. Geertz contends that any viable legal system must maintain a mutually reflexive connection between these two levels of discourse such that they “seem but depth and surface versions of the same thing” (1983:175). He argues that when both levels of legal discourse are operative and reflexively correlated, a particular local pattern of legal sensibility will be continually constituted and confirmed.

---

<sup>1</sup> In coining the phrase “law as a cultural system” and in the discussion that follows, my purpose is not to present a simple restatement of Geertz’s ideas. Rather, I am using my reading of his essays to generate insights that will be useful for my own purposes.

The third useful point is clearly implied but—perhaps because he has discussed the two kinds of cultural systems in essays addressed to two different audiences—is never explicitly stated. He presumes (primarily in “Local Knowledge”) that in a great many cases the kind of cultural system he characterizes as religious and the kind he characterizes as legal overlap and interact in different and complicated ways. In many cultural contexts the imaginative-symbolic discourses of religion through which a basic worldview is constituted have an extensive overlap with the imaginative-symbolic discourses of law through which the if/then structures of existence are identified and confirmed. So, too, in many such contexts the religious discourses through which a broad-ranging program of human conduct is set forth have an extensive overlap with the legal discourses through which legal procedures and decisions are continually being established and legitimated.

The fourth useful point is Geertz’s strong emphasis on the radical pluralism that in most contemporary situations—and certainly in most nation-states in Southeast Asia—has become a central reality. Since Geertz raises this issue in his essay on law, he focuses his attention primarily on what he calls the florescence of legal pluralism in the modern world. To this I would add (as I believe Geertz himself would do if pressed) that the equally pervasive realities of religious pluralism must also be taken into account.

We can now turn to the specific case of religion and law in Thailand. To provide a historical baseline, I will begin with a cursory account of the traditional pattern of Thai Buddhist law, a pattern that remained in place until the later decades of the 19th century.

### The Premodern Pattern

In the traditional Thai context, religion and law were not differentiated in any significant way. *Dhamma* (the Truth, or Cosmic Law, discovered and taught by the Buddha) was the center of a set of imaginative-symbolic discourses that constituted Buddhist culture. Within this Buddhist culture, *Dhamma* was the central and pervasive norm informing a set of discourses that provided both the worldview and the ethos that constituted Buddhist religion. The same *Dhamma* was also the central and pervasive norm in the set of discourses that formulated the structures of existence and the legal procedures and decisions that constituted Buddhist law.<sup>2</sup> The relevant distinction in the premodern Thai Buddhist context is not between religion and law but between

<sup>2</sup> For an excellent discussion that develops this point see O’Connor 1980.

the two wheels of Dhamma.<sup>3</sup> At the textual level, the two wheels of Dhamma refer to two types of law that are both encompassed within the broader framework of Buddhist religion. The first is the ecclesiastical law that is embedded in the Vinaya (one of the Three Baskets of the Tipitika, which purports to contain the teaching of the Buddha himself) and the Vinaya commentaries. This ecclesiastical law, like other forms of legal culture, includes both an imaginative-symbolic dimension and a more programmatic, action-oriented dimension. The imaginative-symbolic dimension is articulated in a set of Dhamma-based discourses that focus on the Vinaya as a soteriological discipline. The more pragmatic, programmatic dimension is constituted by a set of Dhamma-based discourses that regulate the day-to-day operation of the Buddhist order and structure the activities of individual monks.<sup>4</sup>

The second type of law is the secular law (I use the term *secular* in its original sense: to refer to a nonmonastic, socially situated dimension of religion), which developed in mainland Southeast Asia under the rubric of Dhammathat or Dhamma commentary. This Dhamma is constituted by a set of Dhamma-based discourses that include both an imaginative-symbolic dimension and more pragmatic, programmatic dimension. The imaginative-symbolic dimension is to the fore in the myth of the discovery of the Dhammathat in primordial times—a myth that introduces most of the Dhammathat texts, including the *Law of the Three Seals*, which was used in the early Bangkok period (after 1803).<sup>5</sup> The more pragmatic, programmatic aspects are included in the main body of the text, in which a wide-ranging legal code is inscribed.<sup>6</sup>

At a more communal level, the two wheels of Dhamma refer to the order of monks on the one hand and to Buddhist kingship on the other. According to the classical ideal associated with this formulation (an ideal maintained even though, in practice, it was often subverted, bypassed, or ignored), monks and king worked in tandem to assure that both the ecclesiastical law and the secu-

<sup>3</sup> The early development of this notion, which is basic to any adequate understanding of Theravada Buddhism in general and Thai Buddhism in particular, is spelled out in my title essay in Obeyesekere, Reynolds, & Smith 1972.

<sup>4</sup> For an excellent discussion of Vinaya discourse that deals with both dimensions, see Holt 1981.

<sup>5</sup> This myth tells of a time when Mahasammata (the first king, whose name or title means “Great Elect”) confronts the need to restrain the chaotic conditions that had developed among his people. According to the story, an adviser named Manu enters into a meditative state, travels to the wall of the universe in which we live, and finds there—written on the wall—the legal code that he is seeking. When Manu emerges from his meditative trance, he remembers what he saw and proceeds to make available the Dhammathat or Dhamma commentary.

<sup>6</sup> In the Theravada kingdoms where the Dhammathat was established as the basic code of law, it was supplemented by additional laws enacted by kings and their advisers. I discuss the kinds of supplementary laws and the differences among various Southeast Asian traditions in Reynolds 1990.

lar law were properly embodied and enforced. The wisest of the monks (along with, in the Thai case, a contingent of court Brahmins who had been encompassed within the Buddhist tradition) were expected to serve as advisers to the king in his role as the embodiment and enforcer of the secular law. At the same time, the king was expected to support, through the use of royal force if necessary, the efforts of the most accomplished and disciplined monks to ensure that the monastic community maintained its adherence to the ecclesiastical laws encoded in the canonical Vinaya and the Vinaya tradition that was based on it.<sup>7</sup>

Finally, it is important to recognize that the monastic-Vinaya tradition and the royal-Dhammathat tradition were, in many situations, supplemented by local traditions and customs. At the basic level of the Sangha (the Buddhist monastic order), these traditions and customs were sometimes associated with diverging activities that had roots within Buddhism itself. In other cases they derived from indigenous sources that had little if any Buddhist content. In the secular law, many of the local traditions and customs that supplemented or deviated from the code enshrined in the Dhammathat were themselves deeply influenced by Buddhist sensibilities that had penetrated society as a whole.<sup>8</sup> In other cases, however, they included elements that were quite unconnected with specifically Buddhist modes of belief and practice.

### The Nation-building Process

During the 19th and 20th centuries the Bangkok kingdom has undergone and generated a radical transformation that has affected every aspect of the religious and social life of the peoples who populate the area presently included within its borders. To understand the emergent relations between religion and law, it is important to recognize three closely related factors that have played a central role in the nation-building process.

The first is the Buddhist reform movement that was launched in the middle decades of the 19th century by Prince Mongkut, a member of the royal family who was a monk at the time and later became king. To be sure, this reform movement had a number of precedents, extending far back into Buddhist history. Recent research (including work that Charles Hallisey and I are doing on the *Sangitiyavamsa*, composed and compiled during the reign of Rama I) has revealed, moreover, that some of the “modernist” emphases characteristic of the mid-19th-century reform move-

<sup>7</sup> Premodern Thai kings were also closely involved with religions other than Buddhism. In most cases they supported certain aspects of Brahmanism and certain aspects of the local spirit-cult traditions. They also had connections of varying intensity with non-Buddhist traditions, such as Islam and Christianity. See Yoneo Ishii's essay in this volume.

<sup>8</sup> A Thai word for “custom” is *thamniam*, whose direct linguistic association with Dhamma is obvious.

ment were prefigured in ideas expressed during the very early years of the Bangkok period. All this having been said, it is still true that the reform movement initiated by Mongkut in the 1830s symbolized, embodied, and expedited the development of a new Buddhist orientation that was deeply influenced by modernist ideas and ideals.

The reform movement embraced and encouraged innovations in theory and practice. Here, several points are relevant to our present concerns. For example, Mongkut and those who shared his perspective reinterpreted the central Buddhist notion of Dhamma such that many aspects of the classical Theravada tradition were called into question. Mongkut and his fellow modernists sought to identify true Buddhism with a certain rationalistic strain that they discerned within the early Buddhist texts and—on that basis—to reconstitute the tradition so that it would not be in conflict with the new ideas and institutions being absorbed from the West.

In the ecclesiastical law, the reforms that Mongkut advocated and institutionalized in the monastic *nikaya* (sect) that he founded were relatively traditional. They involved a “return” to the supposedly authentic Vinaya tradition of the Mon Sangha (the Mon had dominated areas of southern Burma and central Thailand before the Burmese and Thai). This “return,” however, included a much more rationalistic interpretation of the imaginative-symbolic dimension of Vinaya discourse and a much stricter understanding and application of the code of behavior set forth in the Vinaya texts. It also involved an attempt to radically reduce the influence of local traditions and customs in the reformed sect itself, and to discredit the local traditions and customs that continued to be observed by other members of the Sangha.

In the secular law, the reformed tradition had relatively little impact at the outset, even after Mongkut left the monastic order and became king. But the more rationalistic interpretation of the Dhamma that Mongkut and other like-minded Buddhists encouraged did in fact prepare the way for truly revolutionary developments in the secular law. The reformists, through their more rationalistic interpretation of the Dhamma, self-consciously undermined the credibility of the traditional cosmological and cosmogonic imagery. In so doing, they undermined the credibility of the structures of existence that had been a necessary and integral component of Buddhist secular law.

The second major factor that affected the new relations between religion and the law that developed during modernization in Thailand was the introduction of a radically new system of secular law. During the reign of King Chulalongkorn (Mongkut’s son and successor, who ruled from 1868 to 1910) the Dhammathat tradition—already weakened by the attack on the credi-



bility of the imaginative-symbolic discourse integral to it—was replaced by a system of modern law adapted from Western models. The process through which this radical transformation was accomplished has been discussed in detail by David Engel in an excellent monograph, *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (1975). Engel describes the crisis generated in the latter decades of the 19th century by the penetration of Western colonial powers, and the corresponding need to establish a governmental structure that would enable the Thai to retain their independence. This required the establishment of legal and administrative forms that would be recognized as legitimate by the colonial powers, forms that would also facilitate the development of the old Thai kingdom into a modern nation-state.

Engel focuses on the central role played by King Chulalongkorn and a small group of court supporters in implementing the radical transformation in Thai secular law. He describes how the traditional Thai pattern of sacral kingship provided Chulalongkorn with the authority to implement his objectives effectively. At the same time, he points out that the newly established forms of modern law were based on notions of the structure of existence (e.g., the principle of human rights and the principle of equality) that were in direct conflict with the notions of authority and hierarchy on which the sacral authority of Thai kings had traditionally been based. The contradiction between traditional Thai conceptions of kingship and the ideals embedded in the modern system of law established by Chulalongkorn led (in conjunction with a variety of other factors) to a crucial turning point in the development of modern secular law in Thailand. The key event was the coup d'état of 1932, which resulted in a forced transition from a so-called absolute monarchy to a largely symbolic and ceremonial one. The coup also resulted in the establishment of a modern-style constitution designed to provide the basis for a more democratic social and legal order.

The third major factor that has affected the relations between religion and law in modern Thailand has been the expansion and extension of the authority exercised by the Thai government in Bangkok. In the early stages, this expansion and extension met with a great deal of active resistance, including religious resistance. Obvious examples are the Phi Bun movements, which both expressed and generated violent resistance and rebellion in the northeastern and northern sections of the country.<sup>9</sup> Other local leaders and peoples adopted more subtle strategies of noncooperation.

Expanding the kingdom involved the incorporation of new territories, including areas where differing religious and legal tra-

---

<sup>9</sup> The Phi Bun were charismatic leaders who were perceived to have great supernatural power because of the great merit they had earned in past lives.

ditions were practiced by significant portions of the populace. Here, the two primary examples are the expansions to the south and to the north, both of which occurred during the 19th century. With expansion to the south came incorporation of areas on the Malay Peninsula, where Islam was the dominant religion and Islamic law was well established. With expansion to the north came incorporation of the territory of the old Chiang Mai kingdom, in which a rather different form of Theravada Buddhism was practiced and a rather different kind of religious sensibility was embedded in the culture. The expansion to the north also brought incorporation of the northern hill country, which was populated by a number of different tribal groups, each with a distinctive religiolegal tradition.

A closely related process involved activities and mechanisms whereby the control of the central government was extended into levels of society that had previously been allowed to operate with a minimum of central government interference. Extension was, in part, an aspect of the transition from a galactic to a radial polity, to use Stanley Tambiah's (1976) terms. In the older, galactic polity there were a variety of hierarchically ordered centers of relatively independent political and legal authority distributed throughout the kingdom. In the newer, radial polity the political and legal authority of the government located in Bangkok was extended directly from the center to each local area.

In the new radial polity, the modern legal system that was established in Bangkok has been brought into direct contact with the lives of ordinary people throughout the country. Direct contact has produced an ongoing interaction between modern legal rules and procedures on the one hand and local traditions and customs on the other. The particulars of the interaction in the Chiang Mai area have been studied by David Engel (1976; see also Turton 1976), who devotes considerable attention to the religious aspects of the local culture. Engel has highlighted the importance of Buddhist-influenced notions of human personality, Buddhist-influenced notions of injury, and the mediating activities of Buddhist monks, as well as the significance of local traditions of witchcraft, spirit cults, and decision by ordeal.

### **Civic Religion and Legal Culture**

In the concluding section of "Local Knowledge," Geertz takes up the question of legal pluralism, especially as it presents itself in so-called Third World countries (a category that he uses to encompass all Southeast Asian nations). In his usual vivid style, Geertz points to the variety of legal cultures and institutions within these countries. He emphasizes what he considers to be the fundamental incommensurability of many of these legal cultures and institutions, and he suggests that what is needed is not



so much a struggle for consensus (which he believes is beyond the realm of possibility) as the cultivation of an “abnormal” or “nonstandard” discourse to facilitate a less than violent interaction across the plethora of diverging rationalities.<sup>10</sup>

In Thailand and other countries in Southeast Asia, much evidence supports Geertz’s view on the necessity of depending more or less exclusively on the abnormal discourse he commends. In Thailand—and, I suspect, in other countries as well—there are other aspects of the situation he fails to consider. My major contention is that as an integral part of modernization, a new, steadily evolving “civic religion” has developed, a civic religion<sup>11</sup> that has provided a normal discourse in terms of which many issues—including issues of legal principle, as well as those of form and procedure—have been and are being contested, decided (sometimes peacefully, sometimes forcefully), and contested once again.

Civic religion has been present in undifferentiated form in the history of many of the religiopolitical orders generated in the great civilizations of the premodern world. Certainly there are many examples of undifferentiated civic religious traditions in the Buddhist-oriented civilization of premodern South and Southeast Asia beginning from the time of King Asoka (r. ca. 270–232 B.C.) of India down to the 19th century. Many scholars have noted, for instance, that King Asoka used the notion of Dhamma to encompass within its range not only Buddhist meanings but also meanings associated with many other religiosocial traditions in his realm. Similarly, many of the kings of premodern Sri Lanka and Southeast Asian realms sponsored civic religions that, though not clearly differentiated from Buddhism, encompassed many Hindu and local components as well.

In Thailand, during the late 19th and early 20th centuries, a new and more clearly differentiated form of Buddhist-oriented civic religion developed as a part of the modernizing process. Like its Western precursors, it was intimately associated with the emergence of a modern nation-state.<sup>12</sup> The process was well under way in the final decades of the 19th century. During the reign of King Chulalongkorn the notion of the modern nation-state was brought to the fore and became a focal point—along with an updated version of the two wheels of Dhamma—of the

<sup>10</sup> Geertz takes his contrast between “normal” (or “standard”) discourse and abnormal” (or nonstandard) discourse from the philosopher Richard Rorty. In passages quoted by Geertz (1983:222–23), Rorty defines normal discourse as “any discourse (scientific, political, theological or whatever) which embodies agreed upon criteria for reaching agreement” and abnormal discourse as “what happens when someone joins in the discourse who is ignorant of these conventions or sets them aside.”

<sup>11</sup> For a general discussion of civic religion and the relevant Thai material, see Reynolds 1971, 1977.

<sup>12</sup> The emergence of the notion of a differentiated form of civic religion in the context of the Western Enlightenment and the French Revolution is discussed in Robert Bellah’s famous essay, “Civil Religion in America,” in Bellah 1970.

discourse that was beginning to constitute the new civic religious tradition.

Chulalongkorn was succeeded by his son, Wachirawut (r. 1910–26), often called the father of modern Thai nationalism. Wachirawut set forth and popularized the threefold formula of Chat (nation), Satsana (religion), and Mahakesat (king or kingship) that has provided, from that time forward, the basic symbolic structure of Thai civic religion. In the Wachirawut formulation, each of the three closely correlated and interacting components had its more imaginative-symbolic and its more pragmatic, action-oriented dimensions.

The Chat was seen in terms of the people, united and governed by a modern system of law. The Satsana was identified with Buddhism, including both the monastic tradition of law and practice and the lay-oriented teachings and practices that contributed to the well-being of society as a whole. The Mahakesat (king) was taken to be the father of the Thai people; he was the symbolic locus of political authority in general and of secular legal authority in particular.

During the early decades of the 20th century, the meaning of both the imaginative-symbolic and the more pragmatic, action-oriented dimensions of these three foci were hotly debated by those who advocated a more traditionalist interpretation, and by their opponents who advocated a more modernist interpretation. In the early 1930s the modernists mounted a successful coup d'état that initiated a new era in modern Thai history and set in motion a new version of the civic religious tradition.

In the new formulation, the importance of the Chat was significantly increased, the notion of Satsana was extended to include not only Buddhism but also other religions with a significant Thai constituency, and Mahakesat was understood in a new way that separated the symbolic role and functions of kingship (which were reaffirmed) from the exercise of day-to-day political power and legal authority (which was virtually eliminated). Furthermore, a fourth element was added to the symbolic trinity—the *Ratthathammanun* (constitution).<sup>13</sup> The inclusion of this fourth element affirmed the centrality of a modern democratic political and legal system and set forth some of the principles that should structure the relations and interactions among the Chat, the Satsana, and the Mahakesat.

Following the coup of 1932 the new formulation of the Thai tradition of civic religion (including both its imaginative-symbolic and its more programmatic, practice-oriented dimensions) continued to provide a primary locus for debates on many of the most basic political and legal issues that the Thai nation con-

<sup>13</sup> The association between the notion of a constitution and the notion of Dhamma is signaled by the inclusion of *Thamma* (the Thai rendering of Dhamma) in the word *Ratthathammanun* itself.

fronted. In very general terms, the notion of Chat has increased in significance, receiving a more chauvinistic coloration at times and a more encompassing and liberal connotation at other times. The Satsana has been given a more exclusively Buddhist significance in some situations and a more ecumenical, pluralistic interpretation in others. And the Mahakesat has ranged in importance from relatively peripheral in the earlier period, when the reigning monarchs were less than imposing figures, to very significant indeed (a situation that has pertained since the early 1960s, when young Phummiphon Adulyadej, who had ascended to the throne a few years earlier, began to gain strong political and popular support). But perhaps the most interesting issues have concerned the Ratthathammanun. Among those who have pressed for democratic values and procedures, the Ratthathammanun continues to hold a place of honor in the civic religious tradition. Among those who have advocated a more authoritarian mode of political and legal practice, the triad of Chat, Satsana, and Mahakesat has remained a triad.

To illustrate my contention that the evolving civic religious tradition has provided a primary basis and locus for the imaginative-symbolic and practical, action-oriented discourses that have generated a distinctive legal sensibility in Thailand, I turn to the rhetoric used in the ongoing legal controversy over the environmental activism and legal problems of a Buddhist monk named Phra Pracak.

In early 1991, Phra Pracak—in the course of his efforts to aid villagers and protect forest reserves in northeastern Thailand—violated certain laws, resulting in his arrest and imprisonment and in threats of prosecution by government authorities. Though public pressure soon led to his release from jail, the case against him is (so far as I am aware) still pending. The situation has generated a heated national debate on a number of issues of policy and legality. What is of interest to us here is the rhetoric used as the controversy has developed.

The notions of Chat, Satsana, and Mahakesat legitimize the political and legal forces marshaled against Phra Pracak. But the same symbols are being used by Phra Pracak's supporters to defend his actions and to criticize the actions of the powers that be. Thus Phra Pracak's supporters have appealed to a broadly gauged (one might say suprapolitical and supralegal) notion of the Chat to justify his actions. They have claimed that Phra Pracak is the one who is truly serving the well-being of the Chat by addressing the needs of the village people and by protecting the national environment. On this basis, so they argue, Phra Pracak's actions are right, the actions of the government authorities are wrong, and the legal prosecution should be dropped.

The royal focus of the civic religious tradition has also played an important role in the rhetoric on both sides. At a certain

point, the entrepreneurs engaged in the police-supported project that Phra Pracak opposed claimed they were acting at the behest of the king; they were, after all, carrying forward the project of economic development that the king has strongly advocated. This rhetorical foray was immediately countered by Kukrit Pramoj, a journalist known for his royal connections and his long-term role as exponent and interpreter of Thai civic religion. Writing in his widely distributed editorial column, Kukrit asserted that the entrepreneurs were totally wrong in their claim to have a royal mandate because—as everyone should know—the king would never support actions that are against the best interests of the nation.

Finally, Kukrit and other defenders of Phra Pracak have been adamant and persistent in their appeal to the significance and the content of the Satsana. They have contended that the Dhamma (law encompassing both sacred law and secular law) is in this case being interpreted by the authorities much too narrowly and much too rigidly. On the basis of a more encompassing and authentic notion of Dhamma, they claim, Phra Pracak's actions are not only permissible but highly appropriate and commendable. At the same time they have argued that only in the most extreme cases, if at all, do the secular authorities have a right to apply legal sanctions and punishment to a member of the Buddhist order.<sup>14</sup> In this case, they contend, such action has no justification whatsoever.

My intention is not to evaluate the claims of Phra Pracak's supporters or opponents; given what I know of the controversy, my sympathies lie with the monk. What I want to emphasize here is the character of the rhetoric. The first conclusion that we can draw is that the civic religious tradition has provided the locus for the imaginative-symbolic and practical, programmatic discourse that has taken place. The second, more general conclusion is that the civic religious tradition has provided (and continues to provide) the legitimating symbols that are continuously being employed to constitute and reconstitute the most basic elements in the dominant tradition of secular law in modern Thailand.

### **Particular Religions and the Law**

The relations between religion and law in contemporary Thailand are by no means exhausted by the role played by civic religion in generating the distinctive type of legal sensitivity that is characteristic of the mainstream tradition of secular law. To extend the discussion of these relations, it is necessary to consider the ways the mainstream tradition of secular law engages

<sup>14</sup> According to traditional practice, a monk can come under the jurisdiction of the secular authorities only after he has been defrocked by the order of monks.

particular religious traditions and particular strands within these traditions. Because Buddhism is by far the most important of the particular religious traditions in Thailand, the relations between modern secular law and Buddhism are of paramount interest. For our purposes it will be helpful to separate two strands within modern Thai Buddhism. The first is basically conservative in that those involved are generally in concert with the mainstream interpretation of Thai civic religion and with the current patterns of Thai politics and law. The second strand is more radical in that the beliefs and practices of those involved have produced tensions within the status quo and conflicts with the powers that be.

Within the conservative strand of the Buddhist tradition, perhaps the most powerful and deeply entrenched type of Buddhism is the one that includes the government-supported and government-regulated monastic hierarchy and its lay supporters. This establishment Buddhism includes the *Thammayut Nikaya*, founded by Prince Mongkut in the middle of the 19th century; the older *Mahanikaya*, which includes the great majority of Thai monks; and the lay supporters of both groups. Although the two monastic *nikayas* retain separate identities, associated primarily with differences of monastic practice, both are encompassed within the national hierarchy.<sup>15</sup>

Over the years the government has modified the structure and regulations related to the monastic order in response to the changing political climate in the *Sangha Administration Acts* of 1902, 1941, and 1962. But government support and control, with all of the attendant advantages and disadvantages, have remained intact. The pattern of establishment Buddhism has, moreover, been used to encompass and transform different monastic traditions in areas that have been incorporated into the Thai state.<sup>16</sup>

Other conservative groups have appeared from time to time that are not part of establishment Buddhism. By far the most successful of these more independent conservative groups is the very distinctive *Dhammakaya* community, which emerged in the 1970s. Over the past decade or so it has gained a remarkable number of converts.

The *Dhammakaya* group has been described as a “fundamentalist” expression of contemporary Buddhism (Swearer 1991). It

<sup>15</sup> In recent years there has been much debate on the status of “nuns” within the *Sangha* in Thailand. The debate includes discussions of the *mae ji* (white-robed women who have taken Buddhist vows)—who have been a part of Thai Buddhism for several hundred years at least—and disagreements over the attempts, on a very small scale so far, to establish an order of *bhikkuni* (fully ordained Buddhist nuns). The *bhikkuni* order played an important role in early Buddhism but never—so far as can be determined—was a part of traditional Buddhism in Thailand. For a discussion of these very important matters from the point of view of an involved feminist see Chatsumarn Kabilsingh 1991, esp. pp. 36–66.

<sup>16</sup> For an excellent account of this incorporation in the north of Thailand, see Keyes 1971.

has adopted as its central practice a simple form of meditation that is—from the perspective of many Theravada Buddhists—well beyond the pale of Theravada orthodoxy.<sup>17</sup> The Dhammakaya leaders, who advocate the cultivation of personal ethics and moral purification as the favored solution to the problems of Thai society, have organized a massive evangelistic program using modern media techniques. Thus far the group has gained more than a million converts; it has succeeded in accumulating a vast amount of wealth; and it has developed an organizational structure that operates quite independently of the national monastic hierarchy.

The Dhammakaya community, in spite of the questionable orthodoxy of some central beliefs and practices, its trenchant critiques of monastic and social corruption, and the relative independence of its organizational structure, has managed to avoid any serious altercations with the officially sanctioned monastic hierarchy or the government. The success of its effort to avoid ecclesiastical confrontation can be explained in part by several strategies that the movement has adopted. The Dhammakaya leaders, who have their headquarters at Wat Dhammakaya, just north of Bangkok, have not established new *wats* (formally established temples that require official sanction) but have instead organized more informal meditation centers, student groups, and the like. They have maintained their official allegiance to the Vinaya tradition of ecclesiastical law. And they have adhered to the ordination procedures legalized by the official monastic hierarchy and approved by the government.

The Dhammakaya avoidance of direct confrontation with the government (despite accusations of financial improprieties and some rumors of impending investigations) is also related to the emphasis that it places on a conservative vision of Buddhist nationalism.<sup>18</sup> Donald Swearer (1991) has even claimed that, in a context where the established civic religious tradition of Chat, Satsana, and Mahakesat is showing signs of cracking at the seams, the Dhammakaya movement is presenting a new alternative. According to Swearer, this alternative version of Thai civic religion has two primary and inseparable foci: Thai nationalism and a renewed and revitalized form of Buddhism that is specifically identified with the Dhammakaya movement. However that may be, the Dhammakaya community has been successful in attracting

<sup>17</sup> The meditative technique, which seems to have close affinities with certain practices of Esoteric Buddhism, involves a process through which the practitioner attains a vision of the Dhammakaya (the Dhamma body of the Buddha, equated with Ultimate Reality). With further meditation on the Dhammakaya, the practitioner is able—according to the Dhammakaya teaching—to achieve the highest Buddhist goal: Nibbana, or Release.

<sup>18</sup> The emphasis in the Dhammakaya is not exclusively nationalistic. To the contrary, the strong emphasis on Thai nationalism is combined with an evangelistic mission to spread its Buddhist message worldwide.



strong support from the upper echelons of Thai society, including many wealthy businessmen and prominent military leaders; and the crown prince has recently been ordained as a temporary monk at Wat Dhammakaya.

In contrast to the strand of Thai Buddhism that is constituted by establishment Buddhism and the Dhammakaya movement is another important (though much weaker) strand that coexists with it. These more radical Thai Buddhists, because of their more critical and activist stance toward Thai religion and social life, have run into serious opposition from the authorities. Among these groups, the two with the greatest influence and prominence are the Santi Asoke movement and a loosely coordinated network of “engaged Buddhists.”

The Santi Asoke movement, like the Dhammakaya movement, took shape in the 1970s and expanded very rapidly in the 1980s. It was founded by Phra Bodhiraksa, a former television personality who claims to the status of *ariya*, or fully realized saint (a claim that, according to mainstream Theravada orthodoxy, is arrogant and therefore necessarily false). With roots in the tradition of highly ascetic forest monks, Santi Asoke has generated a kind of utopian community that emphasizes renunciation and moral purification. The community includes, besides monks, lay members who adhere to a strict personal discipline that has much in common with the discipline of the monks. Holding forth the Santi Asoke style of communal and personal life as an ideal, those who speak for the movement are intensely critical of the corruption, self-indulgence, and laxity that they see in the mainstream Sangha, in the government, and in society as a whole.<sup>19</sup>

Unlike the leaders of the Dhammakaya movement, Phra Bodhiraksa has directly challenged the official monastic hierarchy. Originally ordained in the Thammayut sect, he became alienated from his mentor, was asked to renounce his ordination, and did so. Later, having been reordained in the Mahanikaya, he decided to completely sever his ties with the official Sangha hierarchy. Acting on his own authority, he ordained 80 monks, who became the monastic nucleus of the Santi Asoke community.

Given Phra Bodhiraksa’s unorthodox claim to saintly status, his bold assertion of ecclesiastical independence, and the intense rhetoric of his attacks on social corruption and self-indulgence, a reaction from the authorities was virtually inevitable. The public confrontation began in earnest in 1988, when Phra Bodhiraksa was defrocked by the official Ecclesiastical Council in a process

<sup>19</sup> Chamlong Srimuang, who is an outspoken member of Santi Asoke, is a successful political figure who was for many years the governor of Bangkok. His affiliation with Santi Asoke is well known, and his integrity and ascetic life-style are widely praised and admired. According to a national poll taken in early 1992, he was, among possible candidates for the post of prime minister, the one who—apart from the incumbent—had the most popular support.

authorized by the Sangha Administration Act of 1962. After he refused to comply with the decision, he was arrested by the secular authorities. With the help of a great deal of public pressure on his behalf, an agreement was reached, and he was released from jail. Since then, Phra Bodhiraksa has, in accordance with the agreement, refrained from wearing the yellow robes that signify authentic monastic status. At the moment, the case against him is still pending. But it is probably safe to predict that as long as the present government is in power, Phra Bodhiraksa and his followers will not be allowed to reclaim monastic status; and it is also the case that—at least partially as a result of the confrontation with the ecclesiastical authorities and the government—the Santi Asoke movement appears to be on the wane.

The encounter of engaged Buddhists with the authorities is quite different. Those whom I have labeled engaged Buddhists<sup>20</sup> do not constitute a single organized community like the Dhammakaya and Santi Asoke movements. Rather, they are a loosely connected network of Buddhist organizations and individuals who are motivated to organize and participate in various kinds of social action projects. Generally speaking, engaged Buddhists are on the left side of the political spectrum and become involved in projects that are at odds with the policies and interests of business organizations and government officials. Moreover, these groups and individuals tend to cooperate with people in other religious communities (particularly, though not exclusively, Christians) who share their religiously oriented social concern and their commitment to social action.

Over the past several decades the best-known exemplar and spokesman for the engaged Buddhists has been Sulak Sivaraksa, a member of the laity who has had an extremely active career as a writer, teacher, editor, public speaker, and organizer. For both symbolic and substantive reasons, he has been at the center of the confrontation between the engaged Buddhists and the government. In 1976, following the military coup that replaced the more liberal government that had emerged in the wake of the student rebellion of 1973, Sulak's office was ransacked, and he wisely chose not to return from overseas—he was making a trip at the time. After the situation had quieted down, he did return; and he immediately organized more Buddhist-oriented social action groups and projects. In 1984, after being charged with *lèse majesté*, he was imprisoned for four months. Once again, late in 1991 he was accused not only of *lèse majesté* but also of sedition. Taking seriously the threats to impose a harsh punishment, Sulak took refuge in the German embassy and subsequently escaped, via Laos, to the West. He has since returned to Thailand, where he faces trial and the threat of imprisonment.

---

<sup>20</sup> I have taken the term from a publication by Sulak Sivaraksa (1988).

By harassing Sulak, Phra Pracak, and others who have taken similar actions, the government has sought, with considerable success, to blunt the effectiveness of the engaged Buddhists and to resist many of the changes for which they are working. Despite the government's legal and semilegal harassment of group leaders, however, many engaged Buddhist groups and individuals continue to pursue their antiestablishment agenda.

Although in Thailand the most important relations between the law of the nation and particular religions pertain to Buddhism, other important relations involve other religious traditions. The most important are the relations with Islam, which, after Buddhism, is the religion with the largest number of adherents (around 4%, according to government figures) and the religion of the great majority of the inhabitants of the Thai provinces that border Malaysia. The significance and interest of the relation between the government and Islam is accentuated and complicated by differences between Islam and Buddhism, including the basic pattern of communal organization and the attitude toward secular law.<sup>21</sup>

Over the years the Thai government has attempted to forge a connection between the secular law of the nation and the Islamic community that would parallel the connection between secular law and the Buddhist establishment. But these efforts have been seriously hampered by the absence of an ecclesiastical component in the structure of the Islamic community that is similar to the Buddhist Sangha, and by the Muslims' insistence on the continued use of Muslim secular law. The government's relative lack of success in this endeavor, coupled with many other factors, has led—particularly in the south—to serious controversies between the Thai authorities and the Muslim community. No satisfactory resolution has yet been found.<sup>22</sup>

Other specifically religious groups among the Thai have, generally speaking, been permitted a remarkable degree of religious freedom, though there have been some tensions over the years. During the period of chauvinistic Thai nationalism in the early 1940s, for example, adherents of other religions were pressured into participating in Buddhist activities. In 1991 the followers of the Rev. Sun Myung Moon were accused of undermining family values and were subjected to semilegal harassment.<sup>23</sup> But the overall relation between such minority religious communities as

---

<sup>21</sup> Although Buddhism in mainland Southeast Asia developed its own system of secular law, this situation is not typical of Buddhism as such. In most areas at most times, Buddhists have more or less accepted the secular law of the society in which they live. Muslims, throughout most of their history in most areas where they have lived, have, in contrast, insisted very strongly on utilizing their own Islamic tradition of secular law.

<sup>22</sup> I am limiting my discussion of these issues because the most relevant points are treated in some detail in the excellent essay by Yoneo Ishii in this volume.

<sup>23</sup> For example, public warnings were issued, and the police ransacked the house of the local leader of the group.

the Christians, the Hindus, and the adherents of the Japanese new religions has been one of acceptance and mutual accommodation—in part because the communities have remained small and have not sought to use religiously grounded forms of secular law.

For the most part, legal involvement with the so-called animistic traditions—which involve the veneration of the *phi*, or spirits—has been relatively uncontroversial. Government leaders at various levels have often participated in regional or local cults devoted to the *phi*, and legal interference with the *phi* cults has been limited.<sup>24</sup> In recent years, however, two loci of tension have developed. The first has emerged in villages where land associated with local *phi*—sacred land that the villagers consider off limits—has been given over to private ownership or developmental exploitation (see Keyes, n.d.). The second has emerged in the rapidly expanding urban cults in which *phi* speak through mediums about personal problems and social issues. Sometimes strong messages have been conveyed advocating the legal prohibition of development projects that pose environmental risks. A rumor that recently circulated in Chiang Mai attributed the crash of an Austrian airliner, in which many members of the Chiang Mai elite were killed, to the retribution of *phi* whose warnings had been ignored.<sup>25</sup>

The situation with regard to the religions of the so-called hill tribe groups has been quite different. Most of the hill tribe groups in Thailand have had, until recently, a religiously oriented way of life in which communal religion and communal law have been inseparably woven together. Many groups, when translating the word that they use to identify their traditional complex of religious and legal customs, choose the Thai term *gotmai*—a word that in Thai refers specifically to the secular law of the state.<sup>26</sup> It follows that when hill tribe groups confront the national political and legal system, religious elements are inevitably involved. Moreover, the problems that these encounters generate in the hill tribe communities are exacerbated by the failure of the secular political and legal system that is being imposed to recognize tribal religions as religion (*Satsana*). These problems have also been made more serious and complex by the failure of those who represent and implement the new system to recognize

<sup>24</sup> An interesting situation developed in Chiang Mai in the early 20th century when the responsibility for the still-active cult of the regional *phi*, previously maintained by the descendants of the local kings, was transferred to villagers in the area where the central rituals were performed. It is very probable that further research would reveal developments of this type in other areas of the country.

<sup>25</sup> Rosalind Morris, a doctoral candidate in the Department of Anthropology at the University of Chicago, expects to complete her research on these urban cults in Chiang Mai late in 1994.

<sup>26</sup> Cornelia Kammerer first mentioned this point to me in a discussion about the Akha. The idea that this very revealing translation practice might apply in the case of other tribal groups was confirmed in a subsequent conversation with Sue Darlington.

the religious implications of the nationalization and development projects in which they are engaged.

Unfortunately, scholars working in the hill tribe areas have not, to my knowledge, focused any serious attention on the very complex relations among tribal religion, tribal law, and the new secular law. The best that we can do now is to identify important topics for future research.<sup>27</sup>

## Conclusion

At the beginning of this essay I set forth four basic methodological points drawn from Geertz. By way of conclusion, I would like to explicate three additional points that have been central to my interpretive strategy. First, I have recognized the importance of the presence or absence (the differentiation or nondifferentiation), in any given situation, of four possible types of law. These are (1) cosmic law (e.g., the Buddhist Dhamma in its most general religio-philosophical meaning); (2) ecclesiastical law (e.g., the Vinaya, which serves as the law or discipline for the Buddhist monastic order); (3) secular law in a traditional religious setting (e.g., the old Buddhist Dhammathat and the Muslim Shari'a); and (4) the secular law of the modern nation-state.

Second, I have recognized the importance of a modern form of civic religion. More specifically, I have traced the relations and interactions between the evolving expressions of that modern civic religion, on the one hand, and the continuing constitution and reconstitution of the national legal culture, on the other.

Third, I have emphasized the importance of the relations and interactions between (1) the law of the state, in both its imaginative-symbolic and more programmatic, practical dimensions, and (2) the particular religions and associated legal traditions that are supported by significant segments of the population.

My primary goal in pursuing this post-Geertzian approach to the study of religion and law has been to generate a broader and deeper understanding of the relations and interactions between religion and law in Thailand, but perhaps it could facilitate the study of the relations and interactions between religion and law elsewhere in Southeast Asia (and beyond).

---

<sup>27</sup> Insofar as Cornelia Kammerer's (1990) analysis is relevant to the issues that concern us here, it suggests that the inherited religious traditions that encompass both religion and law are being—in some cases at least—replaced by a more differentiated pattern that combines two distinct elements. The first is a religious commitment to a distinctively Akha Christianity, which (like most other forms of Christianity) allows for the concentration of the central practices of the religious life in a specifically religious sphere. The second is an acceptance of many aspects of Thai culture, including the modern Thai system of secular law.