Part I: Religion & Law

A. Dynastic Realms and Secular States: Introduction

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The conference began with a discussion of law and religion and four days later ended with a discussion of concepts of rights in Southeast Asia. The merging of the two topics in this symposium issue reflects a recognition that both concern questions of social order, political legitimacy, sovereignty, personhood, and belief. It reflects as well a recognition that the topics have a single history. As Frank Reynolds observes (with some understatement) in the essay that begins this part, religion as a cultural system and law as a cultural system "overlap and interact in many very different and complicated ways."

At one time, in Southeast Asia and elsewhere, there would have been no temptation to separate discussions of religion and discussions of rights, for distinguishing the topics would have been conceptually impossible. Prior to Western intervention in Southeast Asia, traditional polities were organized around the concept of kingship rather than the concept of the nation-state. As Benedict Anderson, a Southeast Asianist, has observed (1991: 19):

> Kingship organizes everything around a high centre. Its legitimacy derives from divinity, not from populations, who, after all, are subjects, not citizens. In the modern conception, state sovereignty is fully, flatly, and evenly operative over each square centimetre of a legally demarcated territory. But in the older imagining, where states were defined by centres, borders were porous and indistinct, and sovereignties faded imperceptibly into one another.

The king occupies a high center in the dynastic realm because his rule is legitimated by divine will: Through him the polity is connected to sources of religious power and becomes part of a cosmology in which law and religion are virtually indistinguishable. People are subjects, not citizens: "Human loyalties were

necessarily hierarchical and centripetal because the ruler . . . was a node of access to being and inherent in it" (ibid, p. 36).

As Anderson and others (e.g., Tambiah 1976) have demonstrated, the emergence of nation-states in Southeast Asia involved profound transformations in traditional conceptions of religious and political order. As the map of the region was redrawn to acknowledge the "nations" that now constituted it, the very concept of space was changed. Religious and political influence no longer radiated out from sacred centers, dissipating eventually beyond the horizon (see Tambiah 1976; Engel 1990). Rather, the boundary of the state was drawn on spatial grids, and within those boundary lines, political power was equally applicable to each location and to each individual (see also Anderson 1991:170–78). Such, at least, was the claim made by the rulers of the nation-state, although it was rarely substantiated.

The concept of the nation-state has, since the 19th century, coexisted uneasily with other Southeast Asian cosmologies. Sacred centers still exist, as do individuals who are believed to speak with divine authority on principles of truth and justice, which may differ from those on which the nation-state is founded. To some extent, nation builders in Southeast Asia have attempted to legitimate their authority by incorporating traditional cosmologies into the symbols and institutions of the nation-state. Frank Reynolds and Yoneo Ishii show how this was accomplished in Thailand; Satjipto Rahardjo suggests a similar process in Indonesia.

Yet the inevitable aftermath of nationalism in Southeast Asia was a phenomenon foreign to the conceptual basis of traditional polities: pluralism. Once a polity is conceptualized as a territory, rather than a unified community of believers drawn centripetally to a single incarnation of divinity, then it becomes inescapably obvious that the inhabitants of the territory are far from uniform in their beliefs and practices. The space of the nation-state, where only one system of belief once seemed possible, is filled with people, all of them "citizens," who believe different things and worship different gods. Where diversity had formerly been perceived as a problem only at the farthest edges of the dynastic realm, away from central influence, it now becomes a core issue going to the conceptual foundation of the state itself. The possibility of pluralism transforms—or *creates*, it was suggested at the conference—the concept of religion. Thus, as the discussion made clear, terms like *sasana* (roughly, "religion" in Thai) become ambiguous, referring at times to the particular religion of the king and at times to all religions that might be found in the nation-state.

As several participants suggested, secular law seems to play an important role here, for it offers the possibility of a discourse that transcends any particular legal-religious worldview and allows

people to talk about religion*s* and not just what is obviously (to them) true and right. Yet the essays and the accompanying discussion show that law has rarely functioned as a neutral, objectifying medium in the pluralistic states of Southeast Asia. The states themselves are often associated symbolically not with religion in the abstract but with a particular religion; and the presence of ethnic and religious minorities has been exceedingly problematic. Moreover, secular law is, in many Southeast Asian states, of little importance to the population generally and to the authorities who selectively enforce it.

Frank Reynolds provides a framework for understanding these issues in the context of Thailand and Thai Buddhism. His essay is followed by those of Yoneo Ishii and Michael Mastura, who examine the difficult position of Muslim minorities in Thailand (Ishii) and in the Philippines (Mastura). Unfortunately, the authors of two essays on Islam in Indonesia and Malaysia were unavoidably prevented from completing and presenting their work, for the comparison of Islam and Buddhism would have been enlightening. We hope, however, that this omission can be overcome in part by providing readers with a transcription of portions of the discussion where the Islamic perspective is explored.

The gaps and lacunae in this part of the proceedings (unlike the two parts that follow) are significant. The topic of religion and law in contemporary Southeast Asia has not received the attention that it deserves, given the importance of resurgent religious movements and current clashes in values and perspectives that have both religious and legal dimensions. The obvious need for further research has led at least one of the conference participants, Frank Reynolds, to organize an ambitious program to explore various aspects of law and religion in present-day Southeast Asia and other regions of the world. The following essays and commentary should therefore be read as a first step, as a tentative exploration of a topic that is both very old and very new. The radical social transformations of modern Southeast Asia provide an inviting array of examples and case studies for further sociolegal research.