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B. Concepts of Rights: Introduction

David Engel

Although the discussion of rights came at the end of the conference, we have, for reasons already described, chosen to place these materials in direct juxtaposition with the materials on religion. The discussion of religion concluded with speculation about pluralism in Southeast Asian societies. As Robert Kidder asked, What sense of necessity compels us to imagine that the diverse peoples and religions of the region must be contained within the boundaries of nation-states? Who benefits and who is disadvantaged by this form of political reorganization? What cultural and religious transformations must accompany the transition from traditional polities organized around sacred centers? What obligations have the governments of these nation-states toward the various and distinctive groups whose members have now become citizens?

Although the Western liberal tradition might conceptualize each citizen as an autonomous, rights-bearing individual, there are competing conceptions in the traditions of Southeast Asia. Indeed, even among non-Asians, concepts of rights have evolved to include notions of group rights, as well as individual rights. In Asia, as the Southeast Asian scholars at this conference often observed, legal and political theory is premised on concepts of obligation, not just rights. The relevant issue is often framed not in terms of what rights the individual might assert against the community or the state but in terms of what obligations the individual might owe the community (or other individuals and groups, including the family).

Satjipto Rahardjo describes in his essay the traditional Indonesian practice of the *pepe*, by which villagers brought grievances to the attention of the king. *Pepe* means "to sit in the sun." Rather than asserting a right, the villagers would dress in white clothing and sit peacefully in an open field between two banyan trees.

Eventually the king would take note of their presence and, because of *his* sense of obligation to them, would try to learn what they wanted to tell him.

Although there was general agreement that the concept of rights was too limited to encompass Southeast Asian ideas about law, obligation, and governance, the conference participants were equally disinclined to accept the simplified characterizations of harmonious or nonlitigious Asian legal cultures popular among scholars in decades past. After all, if the villagers gathered to sit in the sun, they must have been ready to entertain the idea that they had been wronged and that justice must be done.

More to the point is the emphasis that all the participants placed on the dynamic and multicentered quality of law and society in Southeast Asia. Satjipto Rahardjo's article shows, for example, how the Indonesian Constitution of 1945 embraced the Western concept of the rule of law while simultaneously modeling the postcolonial system on indigenous concepts of village and family governance. The Indonesian leadership sought to go "forward" toward industrial capitalism and "backward" toward non-Western approaches to community rule and nonconfrontational dispute resolution. Thus, not for the first time in its history, Indonesian society was presented with seemingly inconsistent models of diverse provenance. Additional complexity came from the influence of global norms assimilated through contacts with private companies, international agencies, tourists, and the media. In such a rapidly changing context, it becomes impossible to characterize entire societies simplistically in terms of indigenous legal cultures emphasizing rights avoidance.

What is most striking about Satjipto Rahardjo's article and the discussion that follows is that rights, obligations, and concepts of law emerge from the continual interaction between local, state, and international forces. We are accustomed to hearing about tensions between state-sponsored law and unofficial, local-level systems of social order and control. Yet the state in colonial and postcolonial societies may be losing some of its claim to predominance as events unfold. This diminishment occurs as the result of a complex set of developments. For example, the conference participants described many occasions when individuals and groups within states might assert norms whose legitimacy does not depend on state law. In some instances, the norms are legitimated by their association with religion, rather than state law: one thinks of Buddhist groups in Thailand protesting the destruction of forests or of Islamic groups in Malaysia and Indonesia who oppose repressive or corrupt government policies. In other instances, individuals or groups oppose state law by appealing to norms of international law. In the past, doing so was problematic because international authorities were reluctant to recognize the legal claims of nonstate actors. More recently, in-

ternational law has been increasingly receptive to individuals and groups within states. As a result, nongovernmental organizations, indigenous peoples, and individual victims of human rights violations have been empowered in international arenas and have been able to advocate new concepts of rights in their local struggles.

In addition, as several of the Southeast Asian scholars observed, the role of the media has been of great importance. Individuals and groups within states have used international wire services, television news channels like CNN, and newspapers and magazines to publicize their claims. Governments fear and respect the media and are sometimes inclined to capitulate rather than risk adverse publicity. The media are thus able to empower those groups within states whose causes they choose to report. These are direct effects. Indirectly, the media also play a significant role in disseminating ideas about law and politics across state boundaries. This is yet another aspect of the globalization of law and society in Southeast Asia and throughout the world.

The continuing interaction among global, national, and local phenomena is thus a crucial aspect of our consideration of concepts of rights in Southeast Asia—whatever these rights may be. This complex process continually redefines individuals, communities, and the state itself. As definitions change and as power is gained and lost, concepts of rights (and obligations) also change, along with understandings about whom rights may be asserted *against*. In the present-day societies of Southeast Asia these processes of change are vividly apparent and crucially important.

