



ภาพโดย: น.ส. จิระภา แก้วสว่าง

CONSTITUTIONAL LAW, DEMOCRACY AND THAI FOLK WISDOM

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INTRODUCTION¹

Lawyers in Thailand as well as in any other parts of the world can hardly think of folktales as a source of guidance in their profession. The only exception is, perhaps, those few lawyers who follow the legal pluralism movement. The main idea of legal pluralism is that law can be found not only in official documents, like statutes, regulations, judicial and administrative decisions and so on, but also in so called unofficial spheres of our social life. Legal pluralism has two theoretical sources. One is sociological jurisprudence. Another is legal anthropology.

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¹This article presents some of the results of my research conducted when teaching law in Chiang Mai University and studying Thai culture and language. The results of this research have been published in a separate book *Thai Folktales and Law* (Chiang Mai: Acts, 2004)

It is one of the greatest contributions of sociological jurisprudence to examine the life of law through analyzing complex relationships going beyond reading black letter law. Legal pluralism, being influenced heavily by sociological jurisprudence, goes even further. It claims that law is a cultural phenomenon, and therefore there are many cultural expressions of law. In maintaining this premise, legal pluralism can be identified with legal anthropology.

Therefore, the study of folktales can fit into legal research if we accept sociological and (or) anthropological views of law. The only problem with these views is that they cannot transcend the limits of a particular social or cultural group with which a folktale is closely associated. Thai folktales originated in Thai rural culture which rapidly changes under the influences of industrialization, consumerism, urbanization and modern methods of the communication. Both sociological jurisprudence and legal anthropology struggle with the problem of whether it is possible and to what extent to use the findings of sociological or anthropological legal research beyond their social and cultural contexts by applying those findings to different societies and cultures. Pure sociological and anthropological methods are not sufficient to explore the richness of folk culture. A legal researcher needs to go back to the oldest theory of jurisprudence: the tradition of natural law to bring the bridge between different cultures and different societies.

The major premise of this article is that Thai folktales contain wisdom which offers lessons and a rich source of moral and legal reasons for lawyers to be used not only in Thailand but elsewhere in our globalized world. The time has gone when only Thai lawyers

went abroad to study law from *farangs*. *Farangs* have come to learn from Thai folk wisdom the things which will be used in law beyond the borders of Thailand.

THAI FOLKTALES AND CONSTITUTIONAL LAW

Can Thai folktales address constitutional issues? This question can appear to many lawyers as strange and unintelligible. Folktales are imaginative stories. They deal with an unreal world of fantasy. Constitutional law deals with the real system of government, even though to many people the provisions of many constitutions on the rights and freedoms of people can be like a kind of folktales, having too little connection with a real life. I would not, however, be quick to dismiss folktales as something from which lawyers can learn nothing. According to the Thai Constitution, Thailand has a democratic system of government. The Constitution clarifies this basic provision in the terms that sovereign power belongs to Thai people.² The legislative acts come from the parliament. And both houses of the parliament are elected by the people. The winning party forms the Council of Ministers which is the highest executive body.

Thus, the only legal channel for decision makers to identify the will of people is restricted to the elections. However, elections do not deal with the very practical issues which political figures have to address each day. Elections are about choosing the right persons for the position of the representative of people and about general political platform of the parties. Folktales are not a product of one author. They

² *Ibid.*, Section 3.

are the result of creative powers of people, and they do deal with practical problems, even though those problems are formulated in imaginary forms. Therefore, folktales can be a source of identifying the will of people in relation to practical issues of constitutional law.

Folktales contain practical moral principles of people which should be binding on everyone calling himself or herself a representative of the people, particularly those who draft and enact laws on behalf of the people.

Apart from this, there are some legal provisions in constitutional law which need the material provided by folktales! These are, first of all, the provisions which refer to the concept of good morals.

Section 28 of the Constitution states:

A person can invoke human dignity or exercise his or her rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this Constitution or *good morals*.

Section 38 states:

A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or *good morals*.

Section 39 states:

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.

Section 42 states:

A person shall enjoy an academic freedom.

Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or *good morals*.

Section 45 states:

A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group. The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

Section 50 states:

A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and *good morals*, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

These rights and freedoms can be limited and restricted in order to protect good morals. The problem is who should decide what morals are good and what morals are bad. A judge or legislator may rely on their own sense of good morals. However, a morally bad legislator or judge may have a different view on what constitutes good morals from a judge or legislator with good morals. It is obvious, that in application these general principles of constitutional law a judge or legislator must rely on the standards of morals accepted by the society as a whole. In this respect folktales become an indispensable source of identification of good morals because, first, they are the product of collective creativity. They do not belong to a particular individual, but to the whole society. Second, folktales are dynamic. They live and develop with people.

The sections of the Thai Constitution referred to above, are mainly restrictive. Good morals limit the exercise of rights. The truth, however, is that they must be the essential element of the rights and freedoms. The right and freedom can be morally justified if it is directed to the good of people. This idea is implicitly present in the sections of Constitution covering duties of Thai people.

Further, the Constitution requires the state to take seriously moral aspects of its activities. For example, Section 77 demands:

The State shall prepare a political development plan, moral and ethical standard of holders of political positions, Government officials, officials and other employees of the State in order to prevent corruption and create efficiency of the performance of duties.

In other words, governmental officials and employees must have high moral standards. The natural question is what must be the source for those standards. For more than a century Thailand has adopted the Western concepts of law. Does it mean then, that it should also adopt the Western standards of morality? Morality, however, is not like a dress or even the colour of the hair which can be changed. It is the flesh and blood of the nation.

One can say that upholding the morality expressed in the folktales is one of the primary functions of the state. This function is reflected in Section 81:

The State shall provide and promote the private sector to provide education to achieve knowledge alongside morality, provide law relating to national education, improve education in harmony with economic and social change, create and strengthen knowledge and instil right awareness with regard to politics and a democratic regime of government with the King as Head of the State, support researches in various sciences, accelerate the development of science and technology for national development, develop the teaching profession, and promote local knowledge and national arts and culture.

Thus, it is clear that Thai constitutional lawyers need a source to which they can refer in specifying what good morals mean, and what are the duties of the state and its officials in preserving those duties. Thanks to the great work of Thai anthropologists, Thai folktales have been collected and can be studied by Thai lawyers.

THAI FOLKTALES AND DEMOCRACY

Constitutional law provides a normative framework for the exercise of political power, whether in democratic or authoritarian political regimes. The existence of parliamentary elections and written constitution are not necessarily true indicators of the existence of democracy. In the Soviet Union there were parliaments, elections, and constitutions. It is clear, however, even for the Russian Communists now, that there was a lack of democracy in the USSR. **What makes democracy real is the actual participation of people in making ordinary political decisions.** This participation takes direct and indirect forms. The modern states, unlike the famous democracies of the past, use mainly representative forms of democracy, which is understandable considering the size of the modern states and the complexity of the issues which the state power must address. In the representative forms of democracy there must still be substantial freedom for people to raise their voice and actually participate in making political decisions. What is the most important, however, is the nature of the relationship between the people who elect, and the officials who are elected.

This is exactly the point where Thai folk wisdom becomes relevant to the contemporary issues of democracy and constitutional law in Thailand. Thai folktales represent a type of relationships which contemporary systems of law and democracy are lacking and which they desperately need. The spirit of many Thai folktales affirms the importance of personal relationships between those who have authority and those who do not.³ It is the relational aspect of folktales which

³ Shytov A.N., *Thai Folktales and Law*, p.152-165.

modern democracy and constitutionalism misses. The system of state and law becomes over-formalised, where people stop to be people in the folk sense, and become like machines or computers.

This formalism finds its completion in the theory of public law. Public relations are not private relations. They are formal and mechanical. They lack grace and mercy and love so richly present in the folktales. The latter do not distinguish between the areas of public and private. In a sense, all relationships of power and authority in folktales are private relationships. Is it possible to build the system of democracy and constitutional law without formalizing social relationships by drawing on the experience of folk culture? This is a complex question which cannot be fully answered here. However, there is at least one element of democratic life which the philosophy and the experience of Thai folktales can be applicable to.

Thai folk materials deal mainly with a non-democratic or authoritative type of governance, except when they present democracy on the level of a village. There are many folktales which teach Thai people to respect a morally good authoritative regime and to handle problems with morally bad rulers. It does not mean, however, that Thai folk materials cannot be used for constructing an ideal of a democratic rule. Democracy can have many meanings. The basic characteristic of the democratic representative regimes is that the elected officials have the position of the servants of people. Even though law may distinguish between political offices and the offices of civil or military service, every politician in a democratic regime is a servant of the people since the sovereign power resides in the people and not in politicians. The word 'minister' has the original meaning of

a servant, and the word 'prime minister' means the first servant. In this respect Thai political vocabulary does not display the same deep meaning of being a politician under the democratic rule. The word *rattomontri* is more associated with the concept of a state adviser rather than a servant.

Even though Thai folktales do not deal with political democracy as much as they deal with a political authoritarian rule, they have something to say to Thai politicians and lawyers. **One of the most important implications of Thai folk wisdom for constitutional law is that there is no essential difference in duties between private and public servants.** For Thai folk consciousness, any public law relationship has the feature of a private law relationship, and the idea of the servant of the people must inevitably borrow normative materials known to Thai folk in their ordinary life.

The second section of the Thai Constitution says that the people of Thailand have the sovereign power. Consequently, the public officers must be genuine servants of Thai people. The present perception of Thai politicians is very different from the image of a servant. Thai politicians are seen mainly as lords, and elections are conceived as a way of bargaining with them to receive some benefits for the locality in exchange for the support in voting. **If democratic regime in Thailand has to be rooted in Thai folk tradition, then the relationship between the elected and the electing must take the form of a private law relationship between the agent and the principal in which the politicians will acquire the place of agents of the people.** The specific feature of this relationship is that both principal and the agent preserve and keep personal relationship between themselves.

The nature of this relationship is very well understood in Thai folk materials. What the agent does or says is considered to be done and said by the principal, even though the agent did not have such authority.⁴

If one has to apply the principal-agent relationship to the system of representative democracy then the people are the principal, and the MPs in democratic states are the agents which have a duty to act strictly within the authority given by the principal and in accordance with the will of the principal. Every principal-agent relationship is based on agreement. The agent, the elected officials, express their agreement through their nomination as the candidates to act on behalf of the people and to follow certain policies which the people want. The people express their agreement through election. The latter is more than the process of voting for the candidates. It is also the time for political discussion and policy formulation, which the elected officials must strictly comply with. In democratic states, the power of the elected officials is based on the mandate of the people, and the elected official must act within that mandate.

This is an ideal which strikes by its difference with the realities of Thai political life, and many other countries. There are several elements of principal-agent relationship which are present in Thai folktales, but which are lacking in political systems of this world. There is often no way for the people to control the activities of the

⁴ The idea of principal-agent relationship is present, for example, in the story of Tricky Turtle considered in the book *Thai Folktales and Law*, p. 199ff and many other stories published in an academic collection of Thai folktales: Wichian Getpratsum (ed.), *Nithaaphynbaan* (Bangkok: Samnakphimpattanaasygsaa, 2000)

elected officials. If people want to get rid of an unworthy servant, they can do that in folktales, but not in the reality of constitutional law. There is no mechanism of termination of representation if a representative elected official does not comply with the promises he made when being elected, or he does not act in good faith toward the people who elected him. Unless there is a criminal misconduct, an elected official would enjoy political power until the next elections regardless of the fact whether he acted according to the promises he made to the people or not. Furthermore, there is a lack of control over the officials from the time they are elected until the time of new elections because the relational element is missing in public law.

Another familiar element of Thai folktales is loyalty.⁵ In principal-agent relationships, the agent owes *the duty of loyalty* towards the principle. This duty involves particularly the requirement that the agent must not obtain any secret profit or benefit from his or her official position. There are many scandals in Thai political life which points out that this element of the principal-agent relationship is also lacking in the political life of many countries. In the real democracy, the elected official must not accept secret gifts or commissions from third persons in connection with his official duties. Any deceitful act against the principal is prohibited. Since the enactment of the new Thai Constitution in 1997, there are certain institutional mechanisms which try to ensure that the political figures act according their duty. Many countries, however, do not have even

⁵ See for example, a story of *Calf*, commented in the book *Thai Folktales and Law* mentioned in the previous references.

those mechanisms.

The elected official has *the duty to obey all lawful instructions of the people who elected him*. This principle of obedience is powerfully expressed in several Thai folktales.⁶ In a real democracy, those instructions are given during the election campaign, but they can be given even after the election has taken place. At this point one can again see the weakness of modern democracies that do not provide sufficient channels for people to give their instructions to their deputies. If an agent does not comply with the instructions, he is liable to the principal for any harm which may result. Another weak point is that modern democracies do not normally make politicians liable when they do not act according to the mandate they received from the people, which in turn cause political harm to the society. These weaknesses in democratic regimes can lead to the problem of politicians who are greedy for power to make all sorts of promises without any intent of acting in accordance with those promises.

There is also a *duty of reasonable care*⁷ and a *duty of accounting for all property or money*⁸ belonging to the principal, or people, collected mainly in the form of taxes. Furthermore, there is a *duty to provide the principal with all information* which concerns the principal. There is sufficient amount of information to conclude that these elements in the relationship between the elected and the electing are lacking as well in the countries pretending to be democratic.

⁶ See for example, a story of *Three Charms* commented in the same book.

⁷ See: *Thai Folktales and Law*, p. 152, 165, 187, 192, 232.

⁸ See the story: *King and Cock*, p. 122 of the book.

The main problem with the realization of democracy is the change of perceiving themselves. One element of such change is to recognize the value of folk culture and norms which this culture possesses. Since folk materials are originated in the creative spirit of ordinary people, these materials must be used by the public servants, because ordinary people are the sovereign in a democratic regime. An elected MP is not a lord over the poorly educated mob, but a servant of people. At the same time, ordinary people must recognize the dignity of their folk inheritance.

In authoritarian states, the relationship between people and the officials is very different from the democratic rule. The authoritarian rule nowadays also has elections and constitutions, but the relationship between the elected and the electing does not possess the nature of the agent-principal relationship. It still has the relationship of a patron (the elected) and client (the electing) or worse than that, the relationship of the master (the elected) and slaves (the electing). Under authoritarian rule the people do not elect, but give their consent or sanction to the rule of the powerful. Election is an expression of obedience to those who rule. It is a noteworthy fact that in authoritarian regimes there would rarely be more than one real candidate for the elected post. Elections under those regimes can hardly be a process when people formulate the mandate which binds the elected officials. The elected would already have their program which is given to the people to accept with thanks and without raising any criticism of it. In the authoritative states, the people can still ask politicians to do something, for example, to build new roads, or provide more funds for education and health. Such asking has the nature of begging, rather

than the nature of the sovereign who gives directions to its servants.

The authoritarian states may have constitutions, and its officials can claim that the state is the most democratic, but the nature of power the officials have remains the same. The people must obey their rulers. If they do not, then violent force can be used. Authoritarian rule can take different forms. It can be the rule of one person. It can also be the rule of a highly organized class such as military or civil bureaucracy, or a mixture of all those types. For example, in medieval Europe, there would be a king and there would be a military class, which at the same time possessed land and was quite independent of royal authority since the main income was generated from the land rather than from the royal treasury. The Soviet regime had the power of a dictator such as Lenin or Stalin, and at the same time it had the highly organized class called Communist party. Even though the membership was open for everyone who shared the faith in Marxist-Leninist teaching, the rule of the party was based on civil, military and secret police bureaucracy.

The foregoing begs the question "where does modern Thailand fit in these considerations?" If one considers the concept of democracy outlined above, it is clear that the general political system of Thailand is still more authoritarian than democratic. There is, however, a strong democratic movement in Thailand which has made important advances since the beginning of the 1990's. The relationship between the electing and the elected does not yet have the nature of the principal-agent relationship. The elected are still considered more as the patrons of local interests rather than the servant of the people.

A lack of democracy is seen particularly in the insignificant

role of ordinary people in the political mechanism on the national level. The role is reduced only to elections of the parliament. The lower house of the parliament is elected every four years; the upper house is elected every six years. In the past there were many reports of the abuse of elections, when the votes were virtually bought by the candidates and those who supported them. It was asserted that the members of the parliament could hardly be very representative of the Thai people considering their social background: "Not a single MP could be called a representative of farmers who still formed over half of the population."⁹ The election campaign was often successfully carried out by local Mafia leaders called *Jao Phor* - the word means local spirits with power. "The provincial magnates controlled elections on a patronage system. They lavished their wealth on schools, clinics, bus shelters, and other local amenities. They promised the electorate that as MPs they would bring more government funds into the locality."¹⁰ This inability of the electorate to see in the deputies something more than the providers of local funds has been noticed by many writers,¹¹ and by the author of this book who conducted some interviews with local administrative officers in the North of Thailand.

It is true that there were some positive changes in Thai election campaigns particularly since the enactment of the new constitution in 1997. The latter contains additional mechanisms to ensure the fairness

⁹ Pasuk Phongpachit, Baker Ch., *Thailand's Boom and Bust* (Chiang Mai: Silkworm Books, 1998), p. 209.

¹⁰ *Ibid.*, p. 227.

¹¹ Bello W., Cunningham S., Poh L.Kh, *A Siamese Tragedy* (London: Zed Books, 1998), p. 14.

of the election results. On the other hand, more freedom for the media since the beginning of the 1990's and an increasing level of education has also brought a positive impact as to how elections are conducted. The growth of the middle class has perhaps been the most important phenomenon which influences Thai politics.

How can Thai folk wisdom, with all its moral principles reflected in Thai folktales, fit into the political life of the Thai nation? It is true that Thai folk moral principles do not favour any particular political regime. They can be easily accommodated in the democratic or authoritarian rule. In fact, because Thai folk wisdom did not previously deal with the representative democratic rule, it contains more materials and has more application to the situations under an authoritarian rule. What matters for Thai folk wisdom, is not a constitutional provision or a form of government, but the moral character of the rulers. If the ruler is honest and caring for the people, there is prosperity and well-being of the nation. If the ruler is wicked there is suffering and affliction. The rule of a morally good person is responded to with the people's adoration and loyalty. The rule of the wicked causes people to play different tricks as a form of civil disobedience. A wicked ruler is secretly mocked and fooled by common people.

Thus, Thai folk wisdom would not trust legal institutions and constitutional guarantees of the freedoms and the rights of the people, but it would trust a person who has proved to be honest and caring. At the same time, Thai folk moral principles are not opposed to democracy. The Thai common people, with all their wisdom, have all the abilities and gifts to govern their own affairs democratically through the selection of morally good and caring officials. The question arises:

why don't they do it? There is no single explanation to the question. One of the answers is that Thai folk ethics is not violent, while Thai politics has proven to be violent. Therefore, Thai wise men and women do not strive for the first positions in the state and in elections. They let the power-greedy do that. The wise keep a low profile. Another reason why Thai folk democracy has not as yet been born is that the modern democratic movement in Thailand sprang from completely different sources than the Thai countryside. The Thai democratic movement has been based on students and the middle class brought into existence by modernization and Western influence. Consequently, **the democratic movement tended to adopt the Western concept of democracy, rather than to look at its own national roots and potential.**

However, if democratic rule is to be real in Thailand, it cannot avoid Thai folk heritage. There can be several reasons in favour of the application of folk moral principles to the realm of politics and law. First of all, Thai folk wisdom is rooted in the life of ordinary villagers whose main occupation is related to agriculture. Even though since the end of the 1980's there was a big social change when many people left their villages and went to the cities to become laborers in new developing industries, the majority of the population of Thailand still resides in the countryside. Those who moved into the cities still have close bonds with their relatives in rural areas. Therefore, the moral ideas and values of the villagers have the right to be taken into account when formulating national law and politics in a democratic state.

Secondly, as the author of this article concludes after researching Thai folktales, the moral principles contained in Thai folk

materials have their normative significance, not only for those who reside in the village, but they contain absolute moral values which can be applied to every aspect of social life whether by farmers, the working class, the middle class or entrepreneurs. The principles of love, forgiveness, punishment, equality, justice, equity, reciprocity, freedom, responsibility and virtue - all of which have been clearly articulated in Thai folktales - have universal significance.

Moreover, these principles can appeal to the new emerging classes. The major problem which not only Thailand's middle class is facing is a moral emptiness and uprootedness. It was noted that a new urban middle class man experiences malnutrition in moral ideals. "They grew up with television rather than with books."¹² Niels Mulder characterized the new Thai middle class as lacking critical thinking, orientated more towards professional advancement, consumerism, cynicism and indifference regarding the public world of politics and economy. This is a common problem for a middle class person in any part of our globalized world. In this respect, Thai folk wisdom offers the meaningful ideal of social solidarity and mutual care, and it offers this way not only for the Thai intelligentsia disappointed in the world of politics and law, but also beyond the borders of Thailand.

The analysis of Thai folk principles can show that Thai folk moral principles can be applied on a larger scale than the limited world of the village.¹³ It can be applied to law and to politics. The main condition is that law and politics be accepted by the people as not something alien and foreign, not as something imposed by the

¹² Mulder N., *Inside Thai Society* (Amsterdam: Pepin Press, 1996), p.175.

¹³ See: Shytov A.N., *Thai Folktales and Law*, Chapters 20 and 21.

powerful, but as the property of common people. In this respect, democracy opens unlimited opportunities for Thai morality and folk law to actualize itself.

THAI WAY TO DEMOCRACY?

The essence of democracy lies in the rule by the people themselves. Democracy does not necessarily need parliaments, written constitutions, and prime ministers, but it does need the self-rule of people. The latter cannot be done without the ability of self-rule. Any authoritarian rule is based on the presumption that people have no ability of self-rule and they need an authoritative guidance. The ability to rule implies several things. The first is the knowledge or the purpose of rule. No one has the ability to rule without knowing the tasks of political governance. The second thing is the knowledge of the means of fulfilling that purpose. If the first aspect of political rule is concerned with the social and moral goods such as social peace, prosperity and so on, then the second is about the measures to ensure the desired goods, and the institutions used in the process of taking those measures. Political rule includes various institutions such as taxation, police, education and so on. Positive law is also one of the institutions of political governance, although law is more than an institution of political power, since it contains the moral (natural law) and constitutional (constitutional law) foundations of power itself. As a separate aspect of the ability to rule, one can single out the ability to organize and hold the society together. It is obvious that the realization of the ends, and the availability of the means, are not enough for political governance. One must have the political will which unites and motivates

people to build a political order.

The question whether or not Thai common people have all three aspects for self-rule cannot be answered apriori, since Thai common people were never given an opportunity to realize their ability of self-governance. The analysis of the folktales shows that they have a distinct perception of the ends of political rule. Modern education and information do undoubtedly provide means for self-rule with the assistance of experts. But the question of whether Thai common people have the will to organize themselves not only at a local but also at the national level cannot be answered in advance. For centuries, Thai peasants were ruled, first by kings and then by military and civil bureaucracy. If Thailand is really committed to democracy and wants the democratic rule to be genuine, there is a need to involve ordinary people in the daily political process of self-governance. Democracy is based on faith that common people can rule themselves without an authoritative patronage and dictatorship. This faith in democracy states clearly that Thai common people can exercise their sovereign power of the Thai State.

The historical experience of Thai people shows that they can manage their affairs at a local village level. Therefore, if there will be democracy at all in Thailand - I mean substantial democracy as the rule of people - it will need to take the forms of rule adopted at the level of the village first, and only later be extended to the national level. Anyone, who visits a modern Thai village cannot help but notice the powers of disintegration caused by social changes in society, and also by governmental interference in community life of the village. There is an acute need to build a strong local community which is

capable of managing its own affairs, and only after that can problems at the national level be solved.

The self-governance of Thai village is often under threat. It has been an established practice that the headmen of villages and village districts (so called *kamnan*) are directly elected by local people. The government, attempted to put forward a proposal to change this system by directly appointing the village headmen and *kamnans*.¹⁴ If such proposal is implemented through legislation, it would be a serious setback for Thai democracy in the meaning outlined above. There is, however, a strong opposition to such a move even among the members of the ruling '*Thai rak Thai*' party.

The ultimate success of Thai local self-governance, nevertheless, is not determined at the highest level of Thai political life. The Christian Bible refers to the fact that no one can rule the community without having the successful experience in ruling one's family first. If a father does not know how to control his children, he will unlikely be a good community leader. This approach to the leaders of the community finds its full support in Thai folk ethics.

Thai folk culture is a family orientated culture. The ethics of Thai folktales keeps at its centre the interests of the family. Therefore, building a strong local community must begin by giving a distinct social and legal status to families and their heads, providing that those heads possess high moral character. Independent households can become the cells of community life, and later become the basis of national democratic self-rule. Leaders of local communities must be

¹⁴ See reports in *Bangkok Post* on 28.01.2004 and 29.01.2004 at www.bangkokpost.com

recruited from the heads of families who keep their family in order, discipline and on a high moral level. Thai folk ethics requires a political and community leader to have a high moral character. Therefore, if democracy has a future in Thailand as being based on Thai folk culture, it will be a democracy with a strong moral element in it. This is what will make Thai democracy specific and different from the Western types of democracy with their sharp separation of the moral and the public. The same motif is expressed in the writings of a prominent Thai Buddhist thinker, P.A. Payutto who wrote that democracy is not an institution, but a heart. It starts from governing of the individual self.¹⁵ This is exactly where the power of Thai folktales lies: in a simple form to awaken the moral sense of the listeners. At the same time, Thai folktales stress the importance of relationships. Moral perfection, if it does not meet the needs of other people, and cannot be expressed in the form of social solidarity and mutual care, is useless. Such relationships must start from the family and the local community, so that later they can affect political life at the national level. The future of democracy in Thailand depends on the ability to transfer the experience of democratic rule from the level of self, family and local community to the level of the nation.

Thus, successful democracy is possible where the leaders of families and local communities possess a strong moral character. The paradox is that these moral qualities of social solidarity and mutual care cannot be realized without a mechanism of self-rule already in

¹⁵ Payutto P.A., *Buddhist Solutions for the Twenty-First Century* (Bangkok: Buddhadhamma Foundation, 1994), p. 1.

place. Consequently, there must be freedom for self-rule first, in order to see the good fruit of democracy later. The major threat to democracy in Thailand comes not from the inability of the common people to realize their moral potential for the democratic rule, but firstly from the false perception that a common villager is not able to solve the complicated matters of government, and secondly from centuries of bureaucratic rule of the country which still exist.

The first obstacle can be overcome by faith in the ability and wisdom of the common people of Thailand. The second obstacle can be overcome by action. The action should be directed to the struggle for the real rights of the people to govern their own affairs. For centuries, Thai folk culture was under the rule of a highly developed bureaucratic machine. Only recently, because of the rise of the middle class, did that bureaucratic machine have to yield some of its power to the public. Thailand at the moment experiences changes of the transformation from purely bureaucratic rule of the military and civil servants, to the mixed system where some democratic elements take a limited role. It has been noted above that the existence of democratic forms such as elections and parliaments can be deceptive. Democracy is the rule of people, not the rule of politicians who, through the use of money, connections and propaganda, managed to get seats in the parliament and later in the Cabinet of Ministers. So long as public perception of constitutional rule is identified with the rule of politicians or the military, democracy will be a mere word with a completely distorted meaning.

One can conclude that democracy cannot be restricted only to the elections held once every four years - elections which to a

significant degree can be manipulated by the media and the rich. Democracy must involve direct rule by the people. It is true that the complicated issues of economy, such as monetary policies need experts. At the same time, there are many issues which can be decided directly by the people in the localities where they live. The issues such as education, medical care, social welfare, police, taxation, land management, environmental protection and so on, can be decided directly by the people of the locality without much interference of the bureaucratic machine. Thus, the success of democratic rule in Thailand depends on the success in the struggle for more rights and freedoms in local government. Thai Constitution contains an important clause on the decentralization of state powers. According to Section 282, freedom should be given to the localities to manage their own affairs. But this decentralization must still be accomplished.

The weakness of democracy in Thailand lies in the gap between the rising middle class who are largely responsible for the democratic changes in the last decade, and the rural population who have never tasted any political power. They conceive the elections as a grace of the powerful to share some funds with the localities, rather than their own sovereign choice. Therefore, there is a need for the union between the democratic forces of Thailand and the masses of the rural population. That union will take place only if there is faith in the ability of the rural population to self-rule, and only if the democratic movement discovers the rich potential of Thai folk wisdom for the realm of law and politics. Thai folk wisdom is not violent and loud. She will not impose herself on others, but like a faithful wife, she waits for her husband to come and make a common home with her.