

Comments and Discussion

East-West Differences: Rights versus Obligations

A discussion of the differences between local understandings of property and Western-influenced government land policies led to an exchange over cultural differences between the “East” and the “West.” Some participants emphasized differences, contrasting Western notions of private property with Eastern concern for the uses of land and Western stress on individual rights with Eastern concern for social duty and obligation. Others argued against simple East-West contrasts, suggesting that Westerners recognize both rights and obligations but invoke them in different contexts.

AKIN RABIBHADANA

In the course of modernizing Thailand, we have gone mad with privatization. We think that privatization consists in having private companies do things instead of the government. When the government decided to replant the forest, they got advice from Norwegian or German experts, who said, “You cannot replant the forest. You will never do it unless you privatize. You have to have a private company come and do it.”

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ANAN GANJANAPAN

The rural northern Thai people look at the land from a perspective that is very different from that of government officials influenced by Western advisers. In Chiang Mai, I found that the people don't perceive the land as property—as something that you can own. It is something to use. People have the use right, the usufruct right.

MICHAEL MASTURA

What you call Oriental versus Occidental or Eastern versus Western identity differs precisely in one thing: that we Easterners stress obligation or duty. Speaking largely as an Asian, not even a Southeast Asian, I think the idea of using property is a very strong part of our ethical values. Our emphasis on the right to use land or property differs from the Western idea of property ownership, in which I have rights because I own the property and I acquired title to it. The issue shifts from that of the use of land, the utility of it, to that of the legitimization or the validation of the right to use the property.

FRANZ VON BENDA-BECKMANN

I think that the idea of property rights, of productive rights, as exclusively tied to individual or private land ownership is already past in Western societies. Western specialists and legal scientists and development experts go on exporting the concept of private property to developing countries, but what is important now are those rights that entitle people to produce, which are increasingly dissociated from land ownership. Certainly in the European Community, which is a heavily regulated agricultural production system, what matters is new forms of production rights, such as milk quotas, entitling farmers to produce or not to produce—rights that are relatively independent of classical ideas of land ownership.

ROBERT KIDDER

My question is whether or not something in the Oriental situation or Oriental culture, such as the emphasis on duty or ethics suggested by Michael Mastura, is unique and different in some way from what we find in Occidental culture. Or are we talking about a difference in attention or maybe in arena? Duty, for example, is a word that we hear in the United States when somebody in a position of governmental authority wants to stop some kind of social movement by telling people that they have to start thinking of social responsibilities and stop emphasizing rights. It also occurs when somebody has failed in their duty, as when a government has failed to protect people from air pollution. It is not that nobody in the West cares about duty or ethics but that we get involved in law and society when there has been some sort of breakdown.

SULAIMAN ABDULLAH

What seems to have been lost in Southeast Asia with the switch to major commercial utilization of land and the privatization of many state concerns is the attitude of reverence and attachment to the land. This is where I think Michael Mastura's point about duty comes in, about the religious tradition of stewardship: that this earth is given as a trust for us to administer wisely and not misuse.

SUVIT RUNGVISAI

My research on land law in northern Thailand suggests that the farmers, or the poor, want to use the land rather than own it. Long ago, when the king owned all the land, the people stayed on land granted by the king's leniency. We could not possess land. But after Western incursions, we were afraid that we were considered underdeveloped and savage or something like that. So we tried to have a codified law. But in the rural areas, people still feel that they want to use the land more than have ownership of it.

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FRANZ VON BENDA-BECKMANN

According to the presentations that we heard today, ethics—Western or non-Western—is in pretty bad shape in Southeast Asian countries. Ethics doesn't seem to affect people as much as the behavior of powerful economic and political actors. Such ideas as state stewardship of natural resources are already written into most constitutions. The obligations to future generations are already in the law, and they are often legitimated by reference to communal traditions defined in opposition to supposedly individualistic Western ideas of ownership. No law in Thailand—I think—

requires government officials to engage in corrupt practices. No law requires that they should be arbitrary. On the contrary, all the beautiful laws that may be needed for a more pleasing administration for citizens and natural resources are already in the law books. So I think that we can put little hope in just devising better laws. Instead, we must think about how to change the conditions that would motivate people to engage in better social and political practices. Some legal changes may be necessary, but probably economic and political changes will be more important.

DAVID ENGEL

Is it possible that both duty and rights will begin to emerge with increasing importance around the world as we see the disintegration of nation-states or at least the lessening of their role? I mean duty in the sense of religious and ethical systems that are coming to the fore and rights in the sense of international norms based on organizations and institutions that go beyond the state.

The Costs of Development

Given the bleak picture of evicted farmers and devastated forests that emerged from the papers and discussions, Joel Handler asked if anyone knew of successful development projects. His question set off a lively discussion, reflected in the excerpts below. Participants first asked, "Development for whom?" which led into suggestions on how to spread the costs of development more evenly to avoid enriching the already rich and further impoverishing the already poor.

JOEL HANDLER

Are there any examples, in Southeast Asia or around the world, where conflicts between the forces of development and rural life have worked out in a satisfactory way? Discussions of land versus development such as we heard this morning always show tremendous conflicts, often cast in stark terms between very powerful interests and deprived people. I ask because intellectually and politically it becomes enormously depressing and frustrating to think about how to proceed; one can do so only in extremely defensive terms. In the public interest law movement in the United States, we are trying to move away from looking at situations in either-or terms and look instead for ways of adjusting differences.

MEHRUN SIRAJ

Unfortunately, what I am going to say merely proves what we have all been trying to argue: that the way development is being done in Southeast Asia creates problems for local people. I don't have examples of development working for the people. The problem is that things are done in the name of development itself—not by asking who development is for or what the effect of this development is on the people. As I was listening to this morning's discussion, I thought we were talking about progress, about using the law to implement development programs. But in the end, it is the people who are suffering. The question is, Exactly who benefits from all these changes?

FRANZ VON BENDA-BECKMANN

To decide whether the Indonesian dam-building project described by Erman Rajagukguk was a more-or-less successful development project in economic policy terms, we need more information than that about the immediate concerns of farmers in the immediate surrounding areas. The dam builders anticipated economic spinoffs for the peasants who would receive irrigation water, but these peasants were probably quite different people from the ones who were evicted from the catchment area.

RONALD RENARD

I do not know how to answer the question of who won and who lost when the Hmong in northern Thailand stopped growing opium and started growing cabbages. Maybe it is the cabbage eaters in Bangkok who profited, but it is certainly not the Hmong. And I don't think the Thai villagers who live downstream profited as their water supplies dried up.

FRANZ VON BENDA-BECKMANN

If we look at European history, we find similar effects of development: deprivation of a lot of people creating a landless class, and mass emigration to the United States. An important factor in the industrial growth of Europe was the use of cheap child labor—which may be happening in Thailand, as mentioned by Akin Rabibhadana. European development processes were successful for people who remained in Europe to profit from present-day conditions. But what about those who died or were forced to leave?

AKIN RABIBHADANA

If in the development of a country there will always be costs, then there must also be people or the law—or people who push the law—to ensure that those costs will be minimal. Isn't it true that if the countries of Southeast Asia are going to develop, as Europe did, we should be able to use the law to reduce the costs. After all, we have seen what happened in Europe, where many farmers lost their lands, where child labor was exploited, and where many people were forced from their homes and communities.

SUVIT RUNGVISAI

I agree with Ajaan Akin that we have to pay a price, but in the developing country of Thailand, most of the costs are borne by the poor. Why are the capitalists or the investors not bearing the costs as well? The written law and the customary law must provide justice to the people in our society. I would like to ask if anyone can suggest a way that in Thailand, or in Malaysia or in any country around here, we can pay the price equally—so that people who have much pay more and the poor pay less. At present the poor pay more and the rich pay less.

JOEL HANDLER

When I talk about a satisfactory resolution to the conflict between development and rural life, I mean (1) substantively, where trees and communities have been protected and where development meets the demands of globalization and industrialization, and (2) in terms of process, where local people have been able to participate in decisionmaking in an empowered way and where people have been able to adjust, not only in the initial stages but also as development proceeds.

TERRENCE GEORGE

Determining what counts as a satisfactory solution is important. You are not going to be able to arrive at a legal solution that will make everyone happy. Yet you might be able to arrive at a solution that increases consensus among a variety of groups over how the process ought to work, so that all those affected can feel that they have had some part in arriving at a final solution.

SATJIPTO RAHARDJO

Law is always a dynamic process of interaction. Even if a law achieves its goal today, success is not quite certain, for maybe in the long run, success creates other problems. Because a law has to operate in a real society that was running long before the law was introduced, should not we in Southeast Asia allot time to ensure that laws, especially new regulations, are democratically applied? Sociological studies have shown that, especially when new laws are introduced, the poor pay more, while the haves move ahead, perhaps because wealthy peasants can take better advantage of the new regulations than poorer ones. If we have a special engagement period, however, perhaps the effects of the next new regulation will be spread broadly among the population, thus creating fewer problems.

ANAN GANJANAPAN

What people need during development is a sphere in which to develop their own culture. At the moment in Thailand we are advocating something called community forestry or social forestry. It is a movement whereby people are allowed a certain space to create an alternative form of development. We think that capitalist development—progress, GNP, and that sort of stuff—is only one kind of development. Many other kinds of development may have been created through community practices but have been denied through this so-called commercial or capitalist development. Until we have the experience of the community taking part in development, I don't think there will be any kind of alternative to the bad effects of development that we have been discussing.

AKIN RABIBHADANA

I think the solution for Thailand is to make a fine distinction between what is to be centralized and what is to be decentralized—between the kinds of laws and operations that should be done differently by the people in different localities and the state law that should cover them all. Until we can find the proper balance between local autonomy and centralized control we will never solve this conflict.

BARBARA YNGVESSON

I am interested in the dichotomy that emerges in our discussion between large-scale development and alternative community development, because what I have seen in various parts of the United States suggests that what becomes understood as local develops in opposition to some concept of what is not local. Other people who have local interests—what they define as local interests by juxtaposition to the state or to some global process—harness what they see as national law in favor of those local interests. Because concepts of the local and the nonlocal are so often interlocked and defined in relation to one another, we make a mistake when we treat local interests as separate from or in conflict with national or international interests rather than exploring how they are intertwined.