Theravāda Buddhism and Human Rights. Perspectives from Thai Buddhism[1]

MARTIN SEEGER

In this article I intend to pursue two major objectives. Firstly, I want to examine current debates in which ideas and practices in Thai Theravāda Buddhism[2] have repeatedly been perceived as being not in line with or problematic with regard to human rights. In particular "freedom of religion" has become the subject of debate in the course of various controversies that have taken place in Thai Buddhism during the last twenty years. There has been considerable dis-

1 In this paper, I have adopted a standardized phoneticization of Thai script except with cases where the author's or person's name mentioned in this paper has an established form of transliteration. Some of the texts that I refer to in this paper are bilingual, i.e. in Thai and English. In these cases, I give the reference of the passage I quote or refer to both for English and Thai (which is indicated by using a slash between the respective page numbers). All the translations from the Thai and Pāli are mine unless otherwise stated; in cases where an English translation was available this has been consulted. I would like to thank Dr Caroline Rose, Dr Justin McDaniel, and Mr Robin Moore for their valuable comments on this article. I am also grateful to Ajarn Dhanapon Somwang who sent me a number of texts that were important sources for this article.

2 When using "Buddhism" or "Buddhist" in this article, this has to be understood as referring to Theravāda Buddhism, unless it is stated otherwise.

cussion as to the extent to which this human right can be referred to in order to legitimate deviation from traditional orthopraxy and orthodoxy. Focal points of my investigation will be the Thai nun-ordination controversy and the debates revolving around the controversial teachings of the Thai Buddhist movements Santi Asok and Wat Phra Thammakai. Secondly, I will look at investigations of human rights concepts that have been put forward by influential thinkers of Thai Theravāda Buddhism. The rationale for this approach is to identify and analyse the challenges and problems of the encounter between Thai Theravāda Buddhism and human rights, both on a practical and theoretical level.

The Thai Nun-Ordination Controversy

In the course of the ongoing controversy over the possibility of a revival of the vanished ordination lineage of Theravāda nuns (P. *bhikkhunī*),[3] the relationship between human rights and current "monastic law" (Th. *kotmai khana song*)[4] and practice have repeatedly been debated in Thai society. It has been argued that the current monastic law regarding ordination of *bhikkhunī*s is at variance with human rights as enshrined in the Thai Constitution.[5] Also, it has been argued that the Thai *saṅgha*, i.e. the Thai Theravāda monastic community, should change its hermeneutical approach to the Pāli canon in order to overcome its "anachronistic structure,"[6] for the human rights of women "is at stake".[7] At the same time, however, it has been opined that constitutional law cannot be im-

3 See Seeger 2006a; Seeger 2007.

4 When I use "monastic law" in this paper, I refer to the Thai *Saṅgha* Acts and all other regulations that have been promulgated by the Thai *Saṅgha* Supreme Council (Th. Mahatherasamakhom). "Canonical law," however, refers to the monastic rules as they are outlined in the canonical texts of the *vinayapiṭaka* ("basket containing the monastic discipline" which is one of the three sections of Theravāda's Pāli canon, the "*tripiṭaka*" or the "Three Baskets").

5 Seeger 2006a, p. 160. All the debates regarding female ordination that I discuss in this paper took place under the Thai Constitution of 1997 which was abolished in 2006.

6 See Seeger 2007, p. 4.

7 Suwanna Satha-anand 2001, p. 290; see also Suwannna Satha-anand, 2007.

posed upon Buddhism, that the Buddha's teaching (P. *dhamma-vinaya*) "should be above (Th. *khuan yu nuea*)" constitutional law[8] or that

> […] when the "rule of the *dhamma* [P. *dhammādhipateyya*]" is blended with "democracy [Th. *prachathipatai*]," society might become disunited [Th. *taek-yaek*].[9]

It has also been argued that while Buddhist Pāli canonical law was established by the Buddha, the most excellent being, constitutional law has been drawn up by un-awakened human beings (P. *puthu-jjana*) who

> […] still possess a great amount of defilements and cravings [Th. *yang mi kilet tanha yu mak*].[10]

To fully understand this summary of the arguments, it is worth recapitulating very briefly the background and major lines of disagreement in the nun-ordination controversy.

The Pāli canon recounts[11] that the Buddha allowed women to be ordained into his monastic community (P. *saṅgha*) only after having been requested seven times for permission. He also made eight special rules (P. *aṭṭhagarudhammā*) a condition for their ordination.[12] These eight rules not only prescribe the institutional subordination of the female *saṅgha* under the male monastic community — one of them also requires women to be ordained both by the male and the female *saṅgha* (P. *ubhatosaṅghe*).[13] A variety of explanations have been given as to why the Buddha established these rules and seemingly only reluctantly allowed the establishment of the nun-order. Whereas some Thai scholars doubt the authenticity of these rules in their entirety, as they regard them to be at variance with major parts of Buddha's teaching, others have argued that by establishing these rules the Buddha was responding to a patriarchal socio-cultural context in order to not endanger the success of

8 Quoted in Rabiebrat Pongpanith 2546, pp. 62 and 143.
9 Senate Commission on Women, Youth and Elderly People Affairs, s.a., p. 41.
10 Quoted in Rabiebrat Pongpanith 2546, p. 62.
11 Vin.II.253–255; AN.IV.273–279.
12 See Hüsken 1993.
13 Vin.II.255.

his recently founded religion. After all, there are numerous references in the Pāli canon that clearly state that women have the potential for awakening.[14]

Be this as it may, Thai Theravādins have perceived themselves as guardians of the most original form of Buddhism that is believed to be described in the Pāli canon.[15] Here, it is believed that the Theravāda tradition has been extremely successful in painstakingly preserving Buddha's teaching (*dhammavinaya*) by making sure that original teaching and practice have to a large extent remained unchanged for the last 2500 years. The objective of this conservatism is often expressed by quoting the words of the Buddha:

> […] the monks do not establish what has not been established, and do not abrogate what has been established […][16]

In the late 1920s, when the possibility of Theravāda *bhikkhunī* ordination was publicly debated for the first time in Thai society, the then Thai Supreme Patriarch (P. Saṅgharāja) promulgated a regulation which forbade all Thai monks and novices from ordaining women as apprentices (P. *sikkhamānā*), novices (P. *sāmaṇerī*) or nuns (P. *bhikkhunī*). He explained that a valid *sāmaṇerī* ordination procedure, as prescribed by Pāli canonical law, has to be performed with the help of a (Theravāda) *bhikkhunī*. The *bhikkhunī* order (of the Theravāda), however, he argued, ceased to exist "a long time ago" (this is believed to have happened some 1,000 years ago). Consequently, for him, the absence of the *bhikkhunī* order rendered legitimate ordination of female (Theravāda) novices impossible.[17] The promulgation of the Thai Saṅgharāja is still valid today and was reportedly only recently endorsed by the current Saṅgharāja in 2001, just three months after the beginning of the most recent attempt to revive the vanished Theravāda nun order in Thailand.[18]

The Thai scholar of religious studies Suwanna Satha-anand perceives in the Buddha's decision to allow women's ordination in

14 See e.g. Vin.II.254–255; SN.I.33.

15 See Seeger 2005; Seeger 2006a; Seeger 2007; Seeger 2009a.

16 "[…] *bhikkhū apaññattaṃ na paññapessanti, paññattaṃ na samucchindissanti* […]" (DN.II.77); see also Seeger 2009a.

17 Wirat Thiraphanmethi and Thongbai Thirananthangkun 2546, p. 459.

18 For more details of this and previous attempts, see Seeger 2005, pp. 194–213; Seeger 2006a; Seeger 2007.

a patriarchal socio-cultural environment "a fine illustration of respecting women's rights".[19] She argues that

> […] [t]he universality of Buddhist truth also required the Buddha to make the decision to support the human rights of women, at least with regards to religious practice.[20]

In a similar vein, the Thai Senate Commission on Women, Youth and Elderly People Affairs perceives freedom of religion and gender equality, as enshrined in modern constitutional texts and the UN *Convention on the Elimination of All Forms of Discrimination Against Women*, as being in conformity with Buddha's teaching (*dhamma-vinaya*), especially regarding the equal potential of awakening for men and women.[21] Both Suwanna Satha-anand and the Thai Senate Commission argue that the current Thai *saṅgha* should abandon its traditional conservative practice with regards to female ordination by following the example of the Buddha, who allowed female ordination. They maintain that this approach would also be in accordance with the human rights of women.[22]

For the Thai scholar of Buddhism Pathomphong Phoprasitthinan, however,

> […] to refer to modern human rights in order to cancel out [Th. *lom*] principles which the Buddha laid down as regulations [P. *buddhapaññatti*] is inadequate [Th. *phit kala thesa*], as this would not be a matter of human rights but of human wrongs.[23]

According to his understanding, rights can only be invoked as long as "morality" (Th. *sinlatham*) and established laws and practices that have developed in specific communities are not undermined. For him, maintaining human rights entails respect for the principles and practices of specific communities (Th. *chumchon*). As a consequence of this, he expresses his opposition to the revival of

19 Suwanna Satha-anand 2001, p. 286.
20 Ibid., p. 285.
21 Senate Commission on Women, Youth and Elderly People Affairs, s.a., pp. 3–4, 57.
22 Ibid., pp. 57–66; Suwanna Satha-anand 2001; Suwanna Satha-anand 2007; see also Seeger 2006a, pp. 165–166.
23 Pathomphong Phoprasitthinan 2545b, p. 62. In this passage "human rights" and "human wrongs" occur in English.

the Theravāda nuns' order, as this "cannot be reconciled with [Theravāda] canonical law".[24] Furthermore, he argues that if the Theravāda abandons its traditional conservatism regarding this matter, the floodgates would potentially be opened to abolishing other monastic practices that some people might perceive as being in conflict with human rights. He mentions here as an example the Buddha's prohibition of the ordination of hermaphrodites (P. *ubhato-byañjanaka*).[25] While apparently agreeing with the prohibition of the Saṅgharāja of 1928, Pathomphong suggests that women's rights should be interpreted on the basis of Thai culture. For him this means that in order to allow women to develop their spiritual potential more efficiently, alternative institutions for female practitioners should be supported or developed.[26]

The Thai academic Kulavir Prapapornpipat, who describes herself as a "Buddhist feminist," however seems to have a quite different understanding in this respect. She argues that

> […] when the practical regulations of the *saṅgha* were at odds with the principles of the country's law, the Buddha had the *saṅgha* conform to the law of the state in order to avoid conflict […][27]

Consequently, she suggests that

> […] those parts of the *saṅgha* regulations and laws that are at variance with the principles of constitutional law [should be reconsidered].[28]

According to the Thai scholar-monk Phra Payutto, who is widely regarded as the foremost authority on the Pāli canon in Thailand,[29] women undoubtedly have the right to become ordained. For him, to refer to constitutionally guaranteed rights, however, is not valid in this matter: he argues that while the right to become ordained still exists, there is no one with the right to perform the ordination proce-

24 Pathomphong Phoprasitthinan 2545b, p. 64.
25 See Vin.I.89; Vin.II.271. Pathomphong Phoprasitthinan 2545b, pp. 62–63; see also Pathomphong Phoprasitthinan 2545a.
26 Pathomphong Phoprasitthinan 2545b, pp. 64–65.
27 Quoted in Seeger 2006a, p. 161. Bhikkhunī Dhammanandā argues similarly, see Nasak Atcimathon 2544, pp. 74–75.
28 Quoted in Seeger 2006, p. 161.
29 See Seeger 2005.

dure.[30] According to him, at the moment, the ordination of female Theravāda nuns (*bhikkhunī*) is simply technically not possible (due to there being no Theravāda order to provide the nuns who have to take part in a female ordination), and, as a consequence of this, he, like Pathomphong, suggests either creating an alternative institution or improving existing institutions.[31]

As for the Thai government during the time of these debates, it seemed to have found this issue too difficult to deal with and decided not to get involved in the nun-ordination controversy. In this way, in 2002 the then Deputy Prime Minister Visanu Khruea-ngam

> […] stated repeatedly that the issue of women's ordination, being a religious matter, was beyond the jurisdiction of the government.[32]

In 2004 the then Prime Minister Thaksin Shinawatra

> […] said that the government was in full support of equal opportunities for women in all spheres, except for women's ordination.[33]

He then continued,

> The government has no idea how to deal with this issue of *phiksuni* [*bhikkhunī*] ordination. We must withdraw from the matter.[34]

The "Santi Asok Case" and the "Thammakai Case"

During the last three decades or so, several scandals and controversies have severely unsettled the Thai *saṅgha*. For the Thai *saṅgha* arguably the most unsettling and challenging of these, though, was what has come to be known as the "Santi Asok Case" and the "Thammakai Case". In both of these cases Thai institutional *saṅgha* and what are believed to be more traditional forms of Thai Buddhism have been critically challenged by the teachings and practices of the two popular Buddhist movements Santi Asok and Wat Phra Thammakai (the latter has been far more popular in Thai society, with hundreds of thousands of followers, whereas the former

30 Phra Payutto 2544, p. 12.
31 See Seeger 2006a, pp. 171–172; Seeger 2009b.
32 Varaporn Chamsanit 2006, p. 218.
33 Ibid., p. 205.
34 Cited in ibid., p. 205.

has followers in the thousands, possibly tens of thousands). Both of these cases are characterized by an enormous complexity, demonstrated by the huge number of publications, both in Thai and in Western languages, that examine various aspects of these phenomena or condemn or vindicate these two movements. Here, I will solely focus on the debates that deal with the extent to which the human right of freedom of religion can be referred to in order to legitimate deviation from what has been perceived to be traditional orthopraxy and orthodoxy of Thai Buddhism.

The Santi Asok case took place in the 1970s and 1980s and ultimately resulted in the decision of the Mahatherasamakhom to defrock Samana Phothirak, the leader of the Santi Asok movement. The Santi Asok movement is characterized by its strict practices of abstinence, its rejection of the widespread superstitious beliefs and practices in Thai Buddhism, its emphasis on anti-capitalism and community life, and its vegetarianism. Samana Phothirak has been accused of distorting a number of central Pāli canonical teachings, for example by claiming that a person can concurrently be an *arahant* (fully awakened one) and a *bodhisatta* (Buddha-to-be); that it is legitimate according to Pāli canonical law that monks proclaim their higher spiritual attainments (P. *uttarimanussadhamma*) in front of non-monastics, which he himself repeatedly did; and, in connection with this point, that only beings on an advanced spiritual level (P. *ariyapuggala*) are able to understand and propound correctly Pāli canonical teachings;[35] and that Theravāda monks should be vegetarians.[36] In addition to this, in 1975, after he "had met many obstacles" — for example, "he had been obstructed by the pedantic application of *saṅgha* rules and regulations" to which he was unable "to conform" — he declared his movement independent of the Thai *saṅgha* institution.[37]

In contrast to the Santi Asok movement, the Wat Phra Thammakai movement has not challenged the Thai institutional *saṅgha* in a direct and overt way, but has rather been trying to establish close connections with it and other important Thai institutions, such as the Royal Family, the military, the government, and banks. This movement enjoys support from a number of high-ranking and

35 See Seeger 2005, p. 141.

36 See Sunai Setbunsang 2537, pp. 62–63.

37 Jackson 1989, pp. 161–162; see also Keyes 1999, pp. 129–130.

influential monks, some of whom are members of the *Saṅgha* Supreme Council in Thailand, the Mahatherasamakhom. The Thai sociologist Apinya Fuengfusakul wrote that

> […] Thammakai's conformist disposition enables it to synthesize consumerist competitive marketing and advertising strategy with the traditional belief of merit accumulation with ends up in the merchandization of merit […][38]

At the height of the controversy, the spiritual leader of this movement, Phra Thammachayo, was charged with, amongst other things, embezzlement under secular law. At the same time, he was accused of having claimed to possess higher spiritual attainments [39] and of spreading teachings that have been regarded as unorthodox from a Theravāda doctrinal point of view. Severe criticism has particularly been directed against the movement's wide use of miracles (P. *pāṭihāriya*) and their teaching that *nirvāṇa* (P. *nibbāna*), the soteriological goal of Buddhism, has the characteristic of a Higher Self (P. *attā*), which is in conflict with traditional Theravāda's view that "all and everything is no-self" (P. *sabbe dhammā anattā*), including *nibbāna*.[40]

Teachings and practices of both of these movements have been criticized heavily by a number of acknowledged Thai scholars, academics, monks and social critics who are concerned about the integrity and longevity of "original" Buddhism. These critics maintain that Santi Asok and Wat Phra Thammakai have distorted Theravāda Buddhism in its fundamental principles to an unacceptable extent. Phra Payutto, who has been one of the most outspoken and widely heard critics of both these movements, explains that while the Theravāda allows for a lot of interpretational freedom, teachings and practices of Wat Phra Thammakai and Santi

38 Apinya Feungfusakul 1993, p. 195.

39 According to Pāli canonical law, monks are not allowed to report their spiritual attainments to laypeople or novices. If the claim of possessing supernatural abilities or having attained transcendental states of mind is a deliberate lie, however, the respective monk has irredeemably lost his monkhood (in this case it does not matter if these claims have been made to monastics or laypeople). For more on this see Ṭhānissaro Bhikkhu 2007, pp. 93–108 and 318–321.

40 For more on this see Seeger 2005, pp. 221–232; Seeger 2006b; Seeger 2009a.

Asok deviate from the normative and formative authoritative source of the Theravāda, the Pāli canon, to such an extent that they cannot be regarded as Theravādin. In numerous publications and public speeches, Phra Payutto has systematically and in much detail compared the Pāli canonical teachings with those of Santi Asok and Wat Phra Thammakai. For him, distorting and abrogating canonical teachings, or adding interpolations to the Pāli canon, is the "direct destruction of the essence of Buddhism".[41]

For his criticism of Wat Phra Thammakai and Santi Asok, Phra Payutto has himself repeatedly been criticized not only by proponents of these movements but also by a number of Thai academics. He was accused of "being narrow-minded" (Th. *mi naeu khwamkhit khapkhaep*), "attached to the scriptures", "a dogmatist" and "a purist" who tries "to prevent religious freedom and thus promot[es] religious intolerance".[42]

Phra Payutto, however, explains that people have the right and freedom to disagree with the principles and teachings of Buddhism and to leave Buddhism,[43] but

> […] the freedom of religion doesn't mean the freedom to alter […] or do whatever one wants with the religion.[44]

He maintains that

> […] human rights and constitutionally guaranteed freedom are meant to enhance righteous practice and should not be referred to in order to justify arbitrariness [Th. *tham arai dai tam chop cai*] or […] to destroy the essence of Buddhism.[45]

For him, the voluntary decision to join the monastic community by the act of ordination implies that the new member accepts canoni-

41 Phra Payutto 2533, p. 64. This statement has to be understood in the context of Theravāda Buddhism and refers only to the Pāli canon. It is not intended to criticize other Buddhist schools or their production of "new" texts, as these schools do not claim to be Theravāda.

42 Sanitsuda Ekachai, in *Bangkok Post*, January 17th, 2000; see also Olson 1995, p. 21; Seeger 2005, pp. 147–151; Wimuttinantha 2548, p. 10.

43 Phra Payutto 2533, pp. 50–51.

44 Phra Payutto 2533, pp. 79–80; see Phra Payutto and Rawi Phawilai 2532, pp. 74–75.

45 Phra Payutto 2533, p. 84.

cal law (P. *vinaya*)[46] and adheres to Buddhist principles and teachings.[47] Monks have the freedom guaranteed by the Thai constitution to leave the Thai monastic community and are then not subject to *saṅgha* law any longer.[48] Phra Payutto also maintains that the *saṅgha* has the right to deal with "impostors" (Th. *bukkhon aepfaeng*) in accordance with the monastic mechanisms and regulations as laid down by the Buddha.[49]

In line with Phra Payutto's argument, the famous social critic and proponent of the 1997 Thai constitution, Dr Prawet Wasi, argued that based on their human right of freedom of religion Wat Phra Thammakai should either "split" from the Theravāda and declare themselves as a new cult (Th. *latthi*) or congregation (Th. *nikai*), or adjust their views (P. *diṭṭhi*) and practices so that they are in line with the Theravāda.[50] The well-known *Bangkok Post* columnist Sanitsuda Ekachai maintains that Wat Phra Thammakai followers do not "have the right to call their religious belief Theravāda Buddhism, because it is not".[51] The Wat Phra Thammakai movement, however, has made clear that they do not regard themselves as a new school or congregation (Th. *nikai*) but as an integral part of "traditional Thai Buddhism".[52]

This raises a number of important questions, of course. For example, who is to be invested with the authority to expel monks from the Theravāda and how exactly is this to happen? Who decides what constitutes unacceptable deviation from canonical norm? What are the hermeneutical criteria to be taken in doing so? And what is the role of the Thai state in all of this? If it has/should have one, in what form and to what extent should the Thai state get involved in religious controversies specifically, and in the Thai *saṅgha* institution more generally? Streckfuss and Templeton maintain that calling upon the state, as was done by some, "to deny [Wat

46 Phra Payutto and Rawi Phawilai 2532, p. 20; see also Phra Payutto 2531, p. 11.

47 Phra Payutto 2533, p. 78.

48 Phra Payutto 2531, pp. 4 and 11.

49 Phra Payutto 2533, p. 53.

50 Prawet Wasi 2542, pp. 15 and 21–22.

51 *Bangkok Post*, January 7th, 1999.

52 Scott 2006, p. 216. Here, I will not discuss the semantic problems with regard to the use of "traditional Thai Buddhism" and "Theravāda Buddhism".

Phra Thammakai] the right to call themselves Theravāda Buddhists" is a "solution" which "is probably unacceptable in terms of human rights".

> It is not for the government to determine whether Thammakai adherents [*sic*] are actually practising Buddhism or whether they can call themselves "Buddhists".[53]

As demonstrated by numerous academic studies,[54] there exists a closely and complexly intertwined relationship between the Thai state and the Thai *saṅgha*, and it is because of this complexity that the only thing I can do here is to hint at a few of the intricate issues that are relevant to my discussion here. While some scholars have criticized the Thai *saṅgha*-state relationship as being unfavourable for Thai Buddhism, others seem to believe that this liaison is necessary for the continuity and integrity of Buddhism, for it has been argued that the *saṅgha* on its own would not be able to secure its "purity" without support from the state, especially in terms of enforcing canonical law.[55] A number of Thai academics have defended this close relationship by arguing that it is necessary for the state to "help" the monastic community by enforcing proper monastic behavior in order to safeguard its "purity". There has been concern that without the "protection" of the state Thai Buddhism could be "destroyed" (Th. *wibat*).[56] In Thai history a number of legislative texts, such as the different *Saṅgha* Acts, regulations and resolutions, have been proclaimed with the aim to enforce "proper" monastic behavior and administer the monastic community; it has also repeatedly been noticed, though, that the *Saṅgha* Acts have had the aim of enabling the Thai state to "control" or "use" the monastic community for national-political ends.[57] At the same time, however, it has also been argued that "solely using the *dhamma* and monastic laws [*vinaya*] like during the time of the Buddha is certainly not sufficient" nowa-

53 Streckfuss and Templeton 2002, p. 77.
54 See, e.g., Jackson 1989; Ishii 1986; Swearer 1999; Tambiah 1976; Taylor 1993.
55 See, e.g., Somparn Promta 2549, p. 18.
56 See ibid., p. 18.
57 See, e.g., Keyes 1971; Phiphat Phasutharachat 2549, pp. 327–330.

days for the protection of Buddhism in present times.[58] The role of the current Thai state is seen as being, or even expected to be, tied to the traditional role of Thai kings, who by proclaiming *Saṅgha* Acts or other monastic laws and expelling "impostors" from the monastic community were aiming to preserve the integrity and purity of "original" Buddhism.[59] By doing this, these Thai kings were following the paradigms of Indian kings whose endeavor to protect "authentic" Buddhism is described in post-canonical texts.

The independent Thai author Phiphat Phasutharachat argues, however, that in this respect the traditional role of Thai kings cannot be taken as a standard for the modern democratic Thai state whose role should be confined to supporting the Thai *saṅgha*. According to Phiphat, the Thai government should abstain from enforcing proper monastic conduct by law and punishment:[60]

> The prohibition of monks from violating canonical law [*vinaya*] is not the business of the government. This prohibition is a violation of the rights of the people.[61]

According to him, the current *Saṅgha* Act, which was proclaimed in 1962 violates the freedom of religion in that it prevents the emergence of new Buddhist schools in Thailand by the force of law.[62] He argues that while the Mahatherasamakhom "has the right" to expel monks whose beliefs deviate from Theravāda principles from the Theravāda community, it would "have no right" to force monks to disrobe (as was done in the case of Samana Phothirak). Phiphat suggests that monks whose beliefs deviate from normative beliefs and practices of the Theravāda should, however, indicate to the public that they belong to a different school. This could be done for example by wearing robes of a different style.[63] However, in addition to the hermeneutical problems involved, as already indicated above, the "solution" that Phiphat proposes here might also be problematic from a Pāli canonical law point of view, as the Buddha was quite

58 Wirat Thiraphanmethi/Thongbai Thirananthangkun 2546, p. 4. See also McDaniel 2008, p. 103.
59 See Seeger 2009a.
60 Phiphat Phasutharachat 2549, pp. 316–317 and 336.
61 Ibid., p. 320.
62 Ibid., pp. 351 and 396.
63 Phiphat Phasutharachat 2549, pp. 389, 390 and 394.

specific as to what styles of robes can be worn by his monks. In this way, a Buddhist monk who is wearing a prohibited color or garments of another religion (P. *titthiya*)[64] might incur what the *vinaya* regards as a minor offense or a grave offense respectively. Demanding that monks wear a different style of robes might consequently force them to breach the respective monastic rules and thus obstruct their religious practice. The proper style of wearing robes as prescribed by the Pāli canon forms an essential part of proper ordination procedure and monastic life. In addition to this, the saffron or brownish robes of Thai monks have become a powerful cultural symbol in Thailand.[65] Numerous special privileges are granted to monks simply because of the fact that they are wearing the traditional robes. Consequently, apart from being made into some "other," monks with different robes might be precluded from this elevated social position and the privileges connected to it.

As it stands at the moment, expelling monks from the Thai Theravāda monastic community without asking them to disrobe would hardly be possible anyway because, as Phra Payutto explains, based on their ordination Thai monks are not only required to follow canonical law (*vinaya*) as outlined in the Pāli canon, but are also obliged to follow laws by the state. And according to these laws, leaving the Thai *saṅgha* can only be done by disrobing:

> Once you have been ordained, and as long as you haven't disrobed (or haven't died), you belong to the Thai monastic community and are subject to the *saṅgha* law [Th. *kotmai khana song*; which includes the *Saṅgha* Acts].[66]

For Phra Payutto, asking monks to obey secular law conforms with the approach of the Buddha who laid down numerous monastic rules complying with extant secular law and also prescribed a general practice when he said:

> Bhikkhus, I ask you to act according to [the laws] of kings [P. *anujānāmi bhikkhave rājūnaṃ anuvattitunti*].[67]

Phra Payutto, consequently, argues that the correct approach in this respect that would be in coherence with democratic principles

64 Vin.I.306.
65 See Seeger 2009b.
66 Phra Payutto 2531, p. 11.
67 Vin.I.138.

would be to try to change existing legislation regarding all the points with which one disagrees, without, however, infringing upon them.[68]

Phra Payutto's Critical Investigation of Human Rights Concepts

In the following section, I would like to present the critical investigation of Western human rights concepts put forward by the Thai scholar-monk Phra Payutto.[69] This will be done by considering his arguments in the context of approaches and ideas of other influential Thai thinkers and Buddhist studies scholars. In this paper I have repeatedly referred to the ideas of Phra Payutto. Considering his thoughts in more detail here is an obvious choice for various reasons. Phra Payutto undoubtedly is one of the most influential thinkers in modern Thai Buddhism. Due to his manners and his widely acknowledged erudition regarding the Pāli-canonical texts, many regard him as the ideal "personification or representation of [the Theravāda] tradition".[70] Through his enormous literary output Phra Payutto not only excels in systemically and comprehensively propounding Theravāda's doctrine in Thailand, he is also widely esteemed for the way he critically analyses modern social, educational and scientific phenomena from a Theravāda Buddhist perspective.[71] Likewise, in his talks and publications he has also repeatedly and to various extents discussed Western concepts of human rights from a Theravāda point of view. At the same time, however, as already mentioned above, his conservative stance re-

68 Phra Payutto 2531, pp. 18 and 23. This does not imply, of course, that Phra Payutto agrees with the content of the 1962 *Saṅgha* Act. Quite the opposite is the case, he is actually quite critical of it (see, e.g., Phra Payutto and Rawi Phawilai 2532, p. 47).

69 See also Jeffrey's article "Does Buddhism need Human Rights?" (2003) where he investigates Phra Payutto's critique of human rights in order to suggest that "grounding human rights in Buddhism is philosophically problematic". Another article in English that discusses Phra Payutto's concepts on human rights is Soraj Hongladarom 1998.

70 Olson 1989, p. 188; see also Olson 1989, p. 192; Seeger 2009a. The well-known Thai scholar of Buddhism Camnong Thongprasoet describes Phra Payutto as: "[…] he is wholly Theravada." (Olson 1989, p. 256).

71 See Seeger 2005, pp. 24–32.

garding the "safeguarding" of the Theravāda tradition has been criticized as being problematic in connection with human rights. For Phra Payutto the

> […] concept of human rights is [very] useful in an age of fighting and contention, or when human thinking is divisive and separatist.[72]

He sees human rights as outlined in the Human Rights Declaration as having a "similar nature"[73] in comparison with some elements of Buddhist teachings:

> If human beings act in accordance with the [Buddhist] Five Precepts [P. *sīla*][74] there is no need for "Human Rights" [i.e. the *Universal Declaration of Human Rights*] […] we can find the many provisions of the Human Rights Declaration in the framework of the Five *sīla*s or [the Buddhist] principle of the Six Directions [P. *chaddisā*].[75]

According to Phra Payutto, the *Declaration of Human Rights* could be regarded as an unfolding, detailing and contemporizing of these Buddhist teachings. Furthermore, he explains that

> […] [b]y translating the Five precepts [*sic*] and other teaching into precise standards such as the UDHR [*Universal Declaration of Human Rights*], the sense of ownership is created. Each individual will feel that the UDHR belongs to him or her and that it can be used as a legitimate claim to prevent oneself from being violated by others and as a legal protection. It equips oneself with a shield, a weapon to defend oneself.[76]

While noticing the usefulness of human rights and their similarity to aspects of Buddhist teaching, Phra Payutto also opines that "the concepts of human rights" are "flawed" (Th. *bokphrong*) in various aspects and possess "weak points" (Th. *cut on*).[77] In this way Phra Payutto maintains that

---

72 Phra Payutto 2550, pp. 18/63 and 20–21/64. Translation as given in the original.

73 Phra Payutto 2541, p. 42. Translation as given in the original.

74 The Five Precepts (*sīla*) are (1) to abstain from killing; (2) to abstain from stealing; (3) to abstain from sexual misconduct; (4) to abstain from false speech and (5) to abstain from consuming intoxicants (see, e.g., DN.III.235; AN.III.203).

75 DN.III.189–192. Phra Payutto 2541a, p. 19/41.

76 Phra Payutto 2541a, p. 20/42. Translation as given in the original.

77 Phra Payutto 2550, p. 20/64.

[…] rights [ultimately] do not exist and we are not able to call upon our rights with nature [as] in nature all things operate in accordance with a system in which all things are causally related to each other […] [This implies] that with nature humans cannot even call upon rights over their own life and body.[78]

According to him, rights can only be called upon between humans in accordance with the conventional, normative system that has been created by them, but with regard to nature humans do not possess any rights at all because humans are not capable of influencing natural law (P. *dhamma-niyāma*). For example, in the case of illness, humans are not able to call upon their rights, as physical laws (P. *utu-niyāma*) will proceed on their own irrespective of humans.[79] For this reason,

[…] from a Buddhist perspective, the Western concept that postulates that humans possess natural rights represents a confusion [of natural law and convention].[80]

He summarizes thus:

Human rights are a convention, a purely human invention, and do not exist as a natural condition. They are not "natural rights" […] They must be supported by laws and they must be accepted by all parties in order to work.[81]

The Thai scholar of Buddhism Somparn Promta seems to have a different understanding in this respect. According to him, despite the absence of the word "right" (Th. *sitthi*) in the Pāli canon, the concept of "natural rights" (Th. *sitthi doi thammachat*) can clearly be found in canonical Theravāda Buddhism:

[…] both human rights and natural rights really do exist within the individual being. They are something that people obtain automatically at birth.[82]

To underpin his argument, Somparn refers to Buddha's teaching of "self-standard principle" (P. *attūpanāyika-dhamma*) to the villagers

78 Phra Payutto 2543b, p. 222; see also Phra Payutto 2541b, pp. 24–30.
79 Phra Payutto 2543b, pp. 221–222.
80 Phra Payutto 2541b, pp. 26–27.
81 Phra Payutto 2550, pp. 20–21/64.
82 Somparn Promta 2002, p. 46; see also Somparn Promta 2541, pp. 61–62.

of Veḷudvāra[83] in which the Buddha propounds a kind of Buddhist "Golden Rule," which states:

> For a state that is not pleasant or delightful to me must be so to him also; and a state that is not pleasing or delightful to me, how could I inflict that upon another?[84]

For him this teaching can be regarded as the "basis of that part of Buddhist ethics that concerns society" (Th. *rakthan khong phutthacariyatham nai suan thi kiaukap sangkhom*). It shows the rationale that humans "do not have the right" to take another human being's life (first *sīla*); to steal (second *sīla*); to commit adultery with someone who "belongs" to someone else (third *sīla*) and to lie (fourth *sīla*), because as a consequence of doing these actions, there will be infringement on other people's rights to life, property and (in case of the fourth precept) to truth.[85] For Somparn the principles propounded in the teaching of *attūpanāyika-dhamma* are universally valid[86] and show that the Five *sīla*s[87] have been "laid down" (Th. *banyat*)[88] or "created" (Th. *song thuk sang khuen*) by the Buddha in order to protect "individual rights" (Th. *sitthi suan bukkhon*), i.e. the right in one's life and in property.[89] He argues that the validity of the Five Precepts (*sīla*) is not dependent on the existence of a law-creating and law-enforcing state. The Buddha

> […] established the five precepts not only as a personal ethic for the individual […], but also as means for demanding social responsibility.[90]

Another canonical passage that Somparn refers to in order to support his argument is a conversation during which the Buddha explains to a Brahmin one of the four "virtues that lead to benefits in

83 SN.V.352–356.

84 SN.V.353–354. Translation from the Pāli as quoted in Harvey 2000, p. 33. A similar passage can be found at Dpd.130.

85 Somparn Promta 2541, p. 62.

86 Ibid., p. 62.

87 Somparn explains that the first four of the Five *sīla*s are to protect "individual rights," whereas the fifth *sīla* does not have a direct impact on others, but is to help ensure that the first four *sīla*s are not transgressed (ibid., pp. 62–63).

88 Ibid., p. 62.

89 Ibid, pp. 59–62.

90 Somparn Promta 2002, p. 39.

the present" (P. *diṭṭhadhammikattha-saṁvattanika-dhamma*), namely the "achievement of protection" (P. *ārakkhasampadā*). Here the Buddha says that righteously acquired (P. *dhammikā dhammaladdhā*) wealth (P. *bhogā*) can lead to benefits and happiness in the present (P. *diṭṭhadhammahitāya saṃvattanti diṭṭhadhammasukhāya*).[91] For Somparn, this passage shows that the Buddha acknowledged "that human beings may rightfully claim ownership of things".[92]

According to Somparn, Buddhism is not only concerned with individual morality that is based on the natural law of *kamma*, but also with social ethics. While through the law of *kamma* reality is examined on the ultimate level of truth (P. *paramattha-sacca*), social ethics is based on conventional truth (P. *sammuti-sacca*). Here, Somparn argues rather similarly to Phra Payutto that when seen from the level of ultimate truth (P. *paramattha-sacca*), "no one is the owner of anything" (Th. *mai mi khrai pen caukhong arai*),[93] since according to the Buddhist principle of no-self (P. *anattā*) anything in the universe is subject to the law of causality and can therefore not really be owned:

> Even though in terms of *paramattha-sacca* Buddhism maintains that human beings have no right to claim ownership of anything […] in terms of *sammutti sacca* [*sic*], Buddhism concedes that human beings may rightfully claim ownership of things.[94]

91 Somparn Promta 2002., p. 44.

92 Ibid., p. 43.

93 Somparn Promta 2541, p. 169.

94 Somparn Promta 2002, p. 43. According to Somparn, this interpretation has quite significant implications in connection with ethical questions: for example while from a Buddhist perspective suicide is not regarded as a breach of the first precept of abstaining from killing (P. *pāṇātipātā veramaṇī*), euthanasia always is, as the ownership of one's life is not transferrable (Somparn 2002, pp. 48–49). Somparn sees the way the Buddha designed his monastic regulations, the *pāṭimokkha*, in conformity with this principle. One of the four gravest offenses (*pārājika*) in the *pāṭimokkha* is assigned to a rule according to which a monk who kills another person who asks him to do so is immediately and irrevocably expelled from the monastic community. At the same time, however, attempted suicide entails the breaching of the mildest severity (P. *dukkaṭa*) and only because as a consequence of such an attempt other human beings might be put into risk. Somparn states that while according to canonical texts the

For Phra Payutto, it is vitally important that humans make themselves constantly aware of the difference between conventional truth (*sammutti-sacca*) and ultimate truth (*paramattha-sacca*) in order to make sure that they develop the right and appropriate attitude and practice towards these truths. He explains that whereas human rights might be able to provide humans with peace and security on an inter-human level, these rights will not be able to sustain peacefulness (Th. *santiphap*) between humans and nature (nature here is to be understood as comprising not only the material world, but also and more importantly the human mind). Humans might "be led astray" (Th. *long*) in their conventions and neglect their study of the law of nature. This, however, might have severe consequences for humanity:

> Humans might use [human] rights [in order to gratify their own needs whilst] destroying nature or causing contention amongst themselves.[95]

According to Phra Payutto, in Western-influenced discourses the conception of equality is often understood to be

> […] equality in competition, which means to have equal rights to compete with each other. This is equality based on competition, mistrust and fear.[96]

Consequently, according to Phra Payutto, there are two extremes that are to be avoided. That is, on the one hand, it is an extreme if no rights of others are respected and preserved at all. At the same time, however, it is also an extreme to "be absorbed [Th. *mua mokmun*] in rights", i.e. restricting oneself to watch over one's rights, always suspicious of others infringing on them.[97] He demands that people be aware of and pursue the "real" objectives of human rights,

---

Buddha criticized monks who committed suicide, he did this with rather mild words, namely that it would "not be appropriate" for a member of Buddhist monastic community to commit suicide (Somparn Promta 2541, p. 170). "However, if considered from the perspective of individual morality, Buddhism sees suicide as wrong, since it is an action that arises from one of the unwholesome mental roots of action, delusion." (Somparn Promta 2002, p. 45). Cf. Harvey 2000, pp. 286–310.

95 Phra Payutto 2543b, pp. 225–226.

96 Phra Payutto 2550, p. 23/65.

97 Phra Payutto 2541a, p. 13/36.

namely the creation of a peaceful and virtuous society.[98] According to Phra Payutto

> […] the facilitating of moral behaviour [however] is not sufficient for the creation and maintaining of human civilization.[99]

He argues that human rights gain their importance through,[100] and

> […] have resulted from, a background and basic attitude of division and segregation, struggle and contention […] Human rights must be obtained through demand [Th. *riakrong thuang au*].[101]

This means that humans do not behave in accordance with human rights naturally or automatically, but only on the basis of "compromising" (Th. *prani-pranom*) their actual needs and desires. This idea becomes clear when looking at the way Phra Payutto perceives a major problem of Western ethical systems. He asserts that there is a basic assumption that

> […] human defilements like greed [P. *lobha*], aversion [P. *dosa*], craving [P. *taṇhā*] and conceit [P. *māna*] belong to human nature and cannot be resolved. Accordingly [Western] ethics is about constraining oneself and going against one's actual desires and needs.

Buddhist ethics, however, Phra Payutto elaborates, is based on the supposition that defilements of humans can be resolved since humans are

> […] beings capable of training and developing themselves […] which allows the converting of defilements into virtues. In this way, ethics does not necessarily have to be constraining to the mind. Real ethics is the ethics of contentment and happiness.[102]

According to Phra Payutto,

> […] humans possess a special capability which allows them to train themselves […] and develop nearly without any limit.[103]

98 Ibid., pp. 13–14/36.
99 Phra Payutto 2541b, p. 51.
100 Phra Payutto 2550, pp. 17–18/63.
101 Ibid., pp. 20–21/64. Translation as given in the original.
102 Phra Payutto 2543b, p. 96.
103 Phra Payutto 2541b, p. 42.

Consequently, Phra Payutto maintains that, due to their undervaluing of humans' potential to develop, human rights in their current conception are neither able to bring about true peace, unity, harmony and happiness,[104] nor are they "lasting".

> If human rights are to be lasting and firm they must be connected to natural reality […] the human mind must be developed [Th. *phatthana hai mi saphapcit*] to a stage where people are prepared to preserve human rights. Only in this way will human rights be sustainable.[105]

For Phra Payutto this implies that, despite being absolutely necessary, morality as described in the Five *sīla*s, the teachings of the Six Directions or the *Declaration of Human Rights* is by no means sufficient:[106]

> [It] must always be connected to mental motivation, which is both the instigator and the guiding influence of that behaviour.[107]

As a consequence of this, Phra Payutto appeals for positive or constructive ethics.[108]

Here, in order to understand Phra Payutto's concept of positive or constructive ethics, it becomes necessary to look at how he rather comprehensively defines basic Buddhist technical terms: while *vinaya*, which in its canonical meaning designates the code of monastic discipline, is a structure or system created by humans as

> […] a means to develop *sīla* […] *sīla* [however] belongs to nature and is a human condition; *vinaya* denotes regulations, legislations and social rules […] it is prescribed external rules.[109]

104 Phra Payutto 2550, pp. 18–19/63; see also Phra Payutto 2543c, p. 50. Here, it must to be noted that Phra Payutto observes subtle, yet significant semantic differences between the English word "to compromise" and the Thai lexical equivalent "*prani-pranom*". He argues that whereas the former has a rather negative connotation, as needs have to be reduced in order to "meet the other side half way", the latter has a more positive meaning as it denotes a process during which conflict is resolved and harmonious unison is pursued (Phra Payutto 2543b, pp. 97–98).

105 Phra Payutto 2550, pp. 20–21/64.

106 Phra Payutto 2541a, p. 20.

107 Phra Payutto 2550, pp. 20–21/64. Translation as given in the original.

108 Ibid., pp. 42–43/75; Phra Payutto 2541a, p. 21/43.

Accordingly, human rights would be regarded as a form of *vinaya*. For Phra Payutto it is necessary to

> […] scrutinize carefully […] the *vinaya* with the purpose to make sure that it always is in conformity with the natural law and allowing the realization of the objectives of the *dhamma*.[110]

He also maintains that

> […] we [humans] have to progress from *sīla* and develop our lives in accordance with [the Buddhist teachings] from *sīla* toward *samādhi* [developed mind] and *paññā* [insight].[111]

> When laws are training rules [P. *sikkhāpada*] to develop oneself, these rules become tools for the creation of good people. For this reason, it should be stressed that laws are to create good people instead of doing away with bad people.[112]

Phra Payutto argues that good legislation has to take into account human nature, i.e. human's ability to evolve.[113] In this way, humans would be able to develop undiscriminating (Th. *mai camkat klumphuak*) and unlimited (P. *appamaññā*) love (P. *mettā*) towards each other and eradicate *diṭṭhi* (wrong or dogmatic views) that are the cause of intolerance.[114]

Fundamental Semantic Differences

It has become clear that for Phra Payutto human rights have to be transcended in order to be ultimately successful. This can be achieved by integrating them into the "universal Buddhist system of human development":

> As long as *diṭṭhi*s are still present, lack of tolerance cannot be resolved and the use of regulations, such as those with regard to human rights cannot really resolve these problems.[115]

---

109 Phra Payutto 2543c, pp. 62–63. In Thai language there often seems to be a confusion between these two terms (Phra Payutto 2541b, p. 61).
110 Phra Payutto 2541b, p. 99.
111 Phra Payutto 2541a, p. 21/ 42.
112 Phra Payutto 2541b, p. 129.
113 Ibid., p. 121.
114 Phra Payutto 2550, p. 23/66.
115 Phra Payutto 2542, p. 184.

Phra Payutto explains this point further:

When seen from a Buddhist perspective, ethics is an excellent way of life that necessarily consists of the three inseparable [integrated] components [*sīla*, *samādhi* and *paññā*]. The Western understanding of ethics, however, solely concerns good behaviour, which corresponds to the Buddhist concept of *sīla* that presents only one aspect of life.[116]

Or put in other words:

True *sīla* is the behaviour that is demanded by nature.[117]

Whilst Somparn, in a similar way to Keown,[118] extrapolates human rights from the Five Precepts (*sīla*) — in which he perceives them to be implicitly existent — for Phra Payutto they are a form of *vinaya*, a human convention. Despite these differences in views, however, both Somparn and Phra Payutto seem to share the opinion that human rights are to some extent consonant with Theravāda's teachings. Basing his arguments on Alan Gewirth's views on human rights, the Thai academic Buntham Phunsap also agrees that Buddhism and human rights are in their principles and methods to a certain extent reconcilable. However, he also argues that while Buddhism shares some objectives with Western notions of human rights, such as the creation of a peaceful society, human rights are not only absent in Buddha's teaching (*dhammavinaya*),[119] but are also not necessary (Th. *mai campen tong asai*) for Buddhism: the Five Precepts would already be a sufficient principle based on which "society can find peace and happiness" (Th. *sangkhom yu ruam kan dai yang sagnop suk*).[120] He acknowledges, however, that due to their trans-religious, trans-cultural neutrality human rights might be useful in culturally pluralistic societies.[121] In line with Phra Payutto, he further argues that from a Buddhist perspective, to demand (Th. *riakrong*) human rights might become problematic when this is done with

116 Phra Payutto 2543c, pp. 20 and 51.
117 Ibid., p. 22.
118 Keown 1998, pp. 31–33. Keown's interpretational approach in this respect has been variously criticized by other scholars. See, e.g., Ihara 1998.
119 Buntham Phunsap 2533, p. 64.
120 Ibid., p. 68.
121 Buntham Phunsap 2533., pp. 72–73.

unwholesome (P. *akusala*) motivation. This might cause exploitation, suppression and infliction of pain on animals.[122]

The arguments and concepts of Thai Buddhist studies scholars presented above have revealed that there are fundamental differences in meaning of a number of terms that are central both to Western human rights notions and Theravāda's soteriology. Due to one of its most important teachings, that on no-self (*anattā*), which rules out the existence of any enduring substantial entity, the Theravāda does not allow for the idea that humans could be endowed with any rights on the ultimate level of truth (*paramatthasacca*). According to the Theravāda, humans are ultimately "only" streams of causally-related events, while (human) rights are merely conventionally, not ultimately, existent. Closely related to the teaching of *anattā* is the Buddhist concept of freedom, regarding which there are also significant semantic differences with Western human rights notions. Suwanna Satha-anand nicely summarizes this problematic discrepancy:

> From a Buddhist perspective, freedom is not something given, but something that has to be acquired by effort and training, mindfulness [P. *sati*], wisdom [P. *paññā*] and loving-kindness [P. *mettā*], something one has to practise for.[123]

Generally, humans are far from being born free, but have to put in a lot of sustained effort and determination in order to attain real freedom. This freedom cannot be guaranteed or provided by any institution but has to be realized internally by each individual him-/herself. Freedom in the Theravāda is defined as the release (P. *vimutti*) from stress (P. *dukkha*) and the extinction (P. *nibbāna*) of the defilements of greed, hatred and delusion. According to Buntham Phunsap, however, in Buddhism

> […] humans possess freedom as a natural condition, in the same way that they are born with legs which enable them to walk wherever they want. Therefore, freedom is something that is given and not something they have to acquire. Using this freedom in a correct way, however, is another matter.

122 Ibid., p. 72.

123 Suwanna Satha-anand 2533, p. 128.

For Buntham Phunsap, freedom is the potential to develop oneself, release oneself from *kamma* (Skr. *karma*) and attain awakening (P. *nibbāna*). This potential is inherent in every human being.[124] Some 30 years ago, after having briefly reviewed concepts of freedom proposed by Hobbes, Locke, and Rousseau from a Buddhist perspective, the Thai human rights scholar Prof. Saneh Chamarik maintained that:

> The truth is that the notion of freedom and human rights thus far comes to nothing much more than serving what, by Buddhist definition, is exactly the freedom and right to the craving and scrambling for things transient and illusory.[125]

Another fundamental conceptual difference between Western human rights and central Theravāda teachings is expressed by Phra Payutto:

> Humans are born equal only in some respects. In many respects, however, no human being is born equal to others.[126]

While humans are equal in that they possess the same spiritual potentiality, that is, the ability to train themselves towards *nibbāna* and ultimate happiness, due to the law of *kamma* each human being is born individually unique.

Summary and Discussion

I have presented a variety of different Buddhist approaches and views on Western concepts of human rights. Some of these are rather radical and try to offer constructive criticism: they not only maintain that Western human rights concepts are "flawed" in various aspects, but also point out ways in which human rights can be integrated into a system of human development. Here it is argued that this could ensure that human rights as conceptualized in the West can overcome its "weak points" and become sustainable. Also, in Thai Buddhism there are influential thinkers who state that rights do not ultimately exist, but are solely the outcome of invention and convention. Other approaches, however, maintain that

124 Buntham Phunsap 2533, pp. 51–52.
125 Saneh Chamarik 2543, p. 20/70. Translation as given in the original.
126 Phra Payutto 2543a, p. (9)/50.

concepts of human rights can indeed be identified in fundamental Pāli canonical teachings and that according to early Buddhism "natural rights" are inherent in every human. Still others have pursued the approach of reinterpretation of culturally-relevant canonical texts in order to identify human rights principles. Here, the aim is to invoke these Buddhist texts to promote the cause of human rights.[127]

While there seems to be a general agreement that Western concepts of human rights are useful and to some extent reconcilable with Buddhist teaching, influential thinkers of Thai Buddhism have argued that human rights cannot be referred to when, as a consequence of doing so, traditional practices and beliefs that are perceived as conforming with the Pāli canon are undermined. In 1996, Thai Professor of Law and winner of 2004 UNESCO Prize for Human Rights Education Vitit Muntarbhorn referred to the Bangkok Non-Governmental *Declaration of Human Rights* of 1993 which says that

> […] [w]hile advocating cultural pluralism, those cultural practices which derogate from universally-accepted human rights, including women's rights, must not be tolerated.[128]

It appears that we can identify a debate between universalism and cultural relativism in many of the discussions that I have presented, above: indeed, there are ongoing debates in Thailand as to the extent to which Buddhist monks or the monastic community should be regarded as "special," or are to be treated as normal citizens or as a "private organization" (Th. *ongkon phak ekkachon*), respectively. At the moment, it is quite obvious that Thai monks are treated in a particular way, for example they are not allowed to vote (prescribed in the 1997 Thai constitution) and, at the same time, have been traditionally extremely highly revered in Thai society.[129]

Also, Thai academics have been discussing the extent to which specific hermeneutical practices in present Thai Theravāda Buddhism, monastic legislations like the *Saṅgha* Acts, and particular

127 See also Suwanna Satha-anand 1999.

128 Quoted in Sulak Sivaraksa 1999, p. 195.

129 See Channarong Bunnun 2549, pp. (29)–(31); Phiphat Phasutharachat 2549, pp. (41)–(47); see also Streckfuss and Templeton 2002, pp. 82–83.

prohibitions for monks can be justified by referring to a particular socio-cultural context or simply have to be seen in fundamental contradiction to universal law. Where is the dividing line? To make it more complex, defenders of traditional practices that have been perceived as problematic from a human rights perspective have also argued that it is their right to defend and adhere to the traditional practices and principles of their religion. During the nun-ordination debate, we have seen the complexity of reinterpreting tradition and normative and formative Buddhist texts that have culturally been enormously significant. Several thinkers have attempted to root human rights in Pāli canonical texts and principles in order to ask for changes to traditional practices which they regard as sustaining inequality between genders. In this way, scholars have argued that as monastic and canonical law are conventional systems having the objective to facilitate spiritual practice, the Thai Theravāda should change its conservative hermeneutical approaches in this respect in a way that would allow female ordination. This would not only be in line with human rights but also with the very principles of the Buddha himself. While admitting that the *vinaya* could theoretically be changed as it is a conventional system that should be accommodated according to its socio-cultural context, many influential Thai thinkers are concerned that such changes could potentially critically endanger authenticity and longevity of the Theravāda. The Thai Buddhist studies scholar Watchara Ngamcitcaroen summarizes this notion as follows:

> According to Theravāda Buddhist principles the monastic community [Th. *khana song*] "has no right" to change the *vinaya*, but has to confine itself to practise according to it. It can be compared to policemen who have the duty to follow the law but not the right to change it.[130]

The Theravāda has developed into a complex entity that is characterized by its strict conservatism which Theravādins believe has developed and been maintained since the year of Buddha's passing away, some 2500 years ago. This conservatism is motivated by the concern to preserve "authentic" Buddhist texts and practice. Changing these basic markers of its identity would entail changing the Theravāda into something else, and would therefore be inherently

130 Watchara Ngamcitcaroen 2550, p. 477.

contradictory for the Theravāda.[131] At the same time, defenders of Theravāda's conservatism stress that they believe that the absence of *bhikkhunī*s does not necessarily imply the inequality of genders in terms of Buddhist practice. For them the Theravāda tradition is flexible enough to offer other venues for equal opportunities (such as creating "*bhikkhunī*s in a new form").[132] Some would even say that this approach would provide better opportunities, as being a *bhikkhunī* would necessarily have to entail institutional subordination of the female order under the male order (see above). In the course of the *bhikkhunī* ordination controversy many have argued that emphasis should be placed rather on individual spiritual progression and the facilitating of it than on institutional change. This again seems to point at another basic and crucial difference between Theravāda concepts and Western notions of human rights. Saneh Chamarik expresses this idea nicely by stating that

> […] according to Buddhist view [*sic*], what really obstructs the attainment of freedom is not so much the social and conventional "chains" or restrictions, as one's own ego and the three poisons: lust, hatred, and delusion.[133]

By contrast, Western human rights first of all seem to gain their importance through the possibility of referring to them as protection against governments, institutions or persons that exert power over people.[134]

There is a considerable number of Thai scholars and thinkers who have investigated Western human rights concepts. Some have attempted to connect Western human rights concepts with Theravāda Buddhist teaching. However, the fundamental differences between Theravāda views and Western human rights notions concerning the concepts of freedom, personhood, rights and aspiration seem to be so enormous that Thai scholars have argued that a theoretical connection between these two thought systems is a hugely challenging undertaking.[135] This undertaking does not seem to

131 See also Seeger 2009a.

132 Watchara Ngamcitcaroen 2550, p. 478. See also Seeger 2006a, p. 172.

133 Saneh Chamarik 2543, p. 68. The original text is in English. See also Buntham Phunsap 2533, pp. 55 and 65.

134 See Thanes Aphornsuwan 2539, pp. 223–224; Junger 1998, p. 84.

135 See Caran Khotsananan 2535, pp. 200–201; Thanes Aphornsuwan 2539, p. 224.

have been very successful so far. As both the Theravāda and human rights are inherently relevant for current Thai society, the dialogue will continue.