

Cinema and Human Rights Seminar

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*AN ASSESSMENT AND ANALYSIS OF HUMAN RIGHTS ISSUES AND IDEALS
INHERENT IN "EVERYDAY REBELLION" AND THEIR APPLICATION TO CREATIVE
RESISTANCE IN THAILAND, AMID ITS ONGOING STRUGGLE FOR DEMOCRACY*

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1. Introduction

Inspired largely by the film “Everyday Rebellion”¹, and thus by small but creative acts of defiance as a public show of support for democracy, this paper will focus on the idea of civil resistance and nonviolent action, following on from the recent wealth of academic literature showing its strengths, promise, and empirical evidence of its advantages over forms of violent resistance.²

The paper will explore the relevant human rights norms and issues that arise from the film before proceeding to consider the idea that forms of civil resistance work in very different and context specific ways, and their “success” depends on a multitude of factors. It aims to bring a multi-disciplinary approach to bear on the discussion. Drawing on studies from other literature, the most important factors in securing “success” of a civil resistance movement will be considered; success generally being conceived of in the sense of creating a situation which may lead to stable and legitimate democracy.³ The most important factors appear principally, to be international support and condemnation of the anti-democratic regime, defections from the regime, and serious political or economic cost to the regime in the continuance of its anti-democratic rule.

The paper will then argue that given the importance of these factors, the situation looks bleak for the success of non-violent protest in Thailand. Given the complex political situation and the fact that the military has succeeded following its May 2014 coup, in muting the expression of prominent critics, and creating a fear of denouncing the regime, it will be extremely difficult to organise any form of mass resistance to anti-democratic rule, given that there is also a significant proportion of society who are favourable to the military regime, or at the least see it as a necessary evil.

Finally this paper will argue that despite the importance and necessity of the freedoms of expression, assembly and association in civil resistance, such rights are often seriously

¹ For more information c.f. <http://www.everydayrebellion.net/>.

² Stephan, M; Chenoweth, E, ‘Why Civil Resistance Works’ International Security, Vol. 33, No. 1, 2008, 7–44, is widely accepted as the most definitive recent study.

³ “Success” of a civil resistance movement could be conceived of in a number of different ways. On the simplest level; the mere act of defiance or disobedience, raising awareness of inherent abuses in the system. On the most advanced level, leading to a full overthrow of the regime and implementation of a democratic system with mechanisms and safeguards. Something closer to the latter is here considered “full” success, with the former considered “minor” successes.

undermined by the regimes that are resisted, and that such struggles could be greater legitimised by the full institutionalisation and emergence of the right to democracy or democratic governance. This “right” was declared as “emerging” in an acclaimed article⁴ in 1992, but has since, as noted more recently by Susan Marks, faded away.⁵

1.1 The Premise: Everyday Rebellion

This excellent film speaks of struggles for democracy over dictatorship in Iran and Syria, it shows (among others) the Occupy Wall Street movement, the Spanish “Indignados”, the topless protests of FEMEN, and the Arab Spring, and offers insightful interviews about civil resistance in general and specific cases of successful campaigns of non-violence. The film showcased inspiring forms of creative protest, such as the portrayal of Syrian activists who gathered hundreds of ping pong balls, marking them with the word “freedom” and unleashed them into public spaces, down flights of stairs where they bounced chaotically, causing, presumably amusing scenes as police and military attempted to gather them.⁶ Creativity like this sends a powerful message, disproportionate to the size of the ball and the efforts implicit in the writing of one word. It inspires hope for change and solidarity, and that may be invaluable in the repression that is often characteristic of dictatorship. Although Thailand does not feature in the film, I was nevertheless inspired to apply the ideals and importance of the principles presented in *Everyday Rebellion*, to the most recent attempts to use symbolic protest in combating the military coup in Thailand, in a currently ongoing political crisis, where civil resistance and nonviolent action attempts to achieve change.

2. What is the Power of Civil/Nonviolent Resistance and its Link to Human Rights?

Civil resistance is defined thus:

[A] type of political action that relies on the use of non-violent methods. It is largely synonymous with certain other terms including “nonviolent action”, “nonviolent resistance” and “people power” .It involves a range of widespread and sustained activities that challenge a particular power, force, police, or regime – hence the term”

⁴ Franck, T. ‘The Emerging Right to Democratic Governance’, *The American Journal of International Law*, Vol. 86, No. 1. 1992, 46-91.

⁵ Marks, S. ‘What has Become of the Emerging Right to Democratic Governance?’ *The European Journal of International Law*, Vol. 22, No. 2. 2011, 507-524.

⁶ Bal, E. ‘A Man With Balls’, Article for *TheOptimist.com*, Issue, January/February 2014)
<http://www.everydayrebellion.net/wp-content/uploads/2014/01/Ahmed-US.pdf>.

resistance”. The adjective “civil” in this context denotes that which pertains to a citizen or society, implying that a movement’s goals are “civil” in the sense of being widely shared in a society; and it denotes that the action concerned is non-military or non-violent in character.⁷

Gene Sharp’s famous book “The Politics of Nonviolent Action”⁸ took the eponymous term to be the overarching one, but in line with the definition above, I shall take the terms “civil resistance” and “nonviolent resistance” or “nonviolent action” to be, broadly speaking, synonymous.

As Chenoweth and Stephan state, “[s]cholars have identified hundreds of nonviolent methods – including symbolic protests, economic boycotts, labour strikes, political and social non-cooperation and nonviolent intervention.”⁹ It is symbolic protests that will form the bulk of the focus here.

It is becoming more and more accepted that nonviolent campaigns may well be becoming significantly more successful than violent resistance to oppression for a number of reasons.¹⁰ It is argued here that one of the reasons for this is, with the increasingly globalising, and connected world where stories and awareness spread so rapidly, nonviolent campaigns have an increasingly greater chance of inspiring and garnering widespread support. This is significant because it is able to portray, on a widespread scale, the picture of the regime as “the bad guys”. The key here, is the political cost for the regime. If nonviolent action can create high political costs for the regime’s continued oppression, then it will have a higher chance of succeeding. Indeed “the international community is more likely to denounce and sanction states for repressing nonviolent campaigns than it is violent campaigns.”¹¹

2.1 Relevant Human Rights Norms

The human rights issues arising in such movements are quite clearly of a civil and political nature. The rights to freedom of expression, association and assembly are the most relevant within civil resistance and nonviolent action, freedoms that feed, in different ways into one’s

⁷ Roberts, in Garton Ash, T; Roberts, A (eds) *Civil Resistance and Power Politics – The Experience of Non-violent Action From Gandhi to the Present*. Oxford University Press, Oxford 2009, p.2.

⁸ Sharp, G. *The Politics of Nonviolent Action*. Porter Sargent Publishers, Boston, 1973.

⁹ (n.2.) p.9-10.

¹⁰ *ibid.* p.8.

¹¹ *ibid.* p.12.

ability to express, represent, or develop oneself collectively or individually, in a political manner or otherwise.

These freedoms have extremely strong ties to democracy¹² and are important democratic ideals. One of the reasons for the strength of such links is, as Manfred Nowak points out, in referring to the work of Amartya Sen, that “[t]here is much empirical evidence...that functioning democracies with a free flow of information have not experienced...human made disasters, and usually do not wage war against each other.”¹³ A paradox that seems inherent within the struggle against oppressive regimes through civil resistance, is that such resistance may well be in the pursuit of democracy and the full guarantee of the same civil and political rights relied upon to form associations and to protest, but which may be undermined or violated by the regime. This is but one reason for the emergence and growing popularity of forms of creative resistance, that send a powerful message, but that do not necessarily rely on fully implemented civil and political freedoms.

The freedoms of assembly, association and expression will jointly protect one’s ability to take part in political protests or forms of civil resistance. It is argued that these freedoms are mutually reinforcing and all essential in conducting the sorts of resistance seen in “Everyday Rebellion”. Garton-Ash states however, that “[f]reedom of expression...is of the essence in such moments. As...Vaclav Havel...argued, the freedom to say what you want, to challenge a regime of organised lying with “one word of truth”, is both a symptom and cause of political change.”¹⁴ The importance of freedom of expression has a link here to the specificities of the Thai system, given the extremely strong ‘lèse majesté’ laws, which state that ““whoever defames, insults or threatens the King, the Queen, the Heir to the throne or the Regent shall be punished with imprisonment of three to fifteen years.”¹⁵ The Special Rapporteur on Freedom

¹² Freedom of expression was held in the European Court of Human Rights to be the “foundation of a democratic society” which should encourage values of pluralism and tolerance. *Handyside v. the United Kingdom* [1976] ECHR 5, at 49.

¹³ (n.7.) Garton Ash at p.380.

¹⁴ *ibid.* p. 383.

¹⁵ Thai Penal Code “Act Promulgating the Criminal Code (1956)”, <http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#chapter-1>, Article 112.

of Expression, Frank La Rue, has urged reformation of (inter alia) this law,¹⁶ and has also called on the authorities to recognise that “The exercise of freedom and liberty begins with freedom of expression.”¹⁷

The Universal Declaration of Human Rights lists at Article 19 the right to freedom of expression and at Article 20, freedom of peaceful assembly and association, taken together. Article 21 expresses the importance of democratic principles, in holding at Article 21(3) that “[t]he will of the people shall be the basis of the authority of government”. The latter quite clearly a principle that is not honoured in many dictatorships, including Iran, Syria and Egypt, as portrayed in the film. It is important to remember that the legal status of the Universal Declaration is strictly speaking, not binding. Although it may well now be seen as forming part of customary international law.

The International Covenant on Civil and Political Rights (ICCPR), is however, as the name suggests, a binding agreement, that has been signed and ratified by the vast majority of UN Member States. Within the Covenant, Articles 19, 21 and 22 protect the freedoms of expression, assembly and association, respectively.

As stated by Nowak:

[t]he formulation of the rights to freedom of expression, assembly and association in international human rights...reflects the need for...balancing of interests. Most explicitly, Article 19 CCPR...in paragraph 3, clearly states that the exercise of freedom of expression “carries with it special duties and responsibilities” and “may therefore be subject to certain restrictions.”¹⁸

A restriction on a right or freedom, will generally need to be based upon a concrete and precise aspect of domestic law, and be “necessary” in pursuance of some legitimate aim of the state, the response to which must be proportionate. Often a non-democratic state will justify or

¹⁶ Office of the High Commissioner for Human Rights, ‘Thailand / Freedom of expression: UN expert recommends amendment of lèse majesté laws’ 10th October 2011.

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E>.

¹⁷ *Rojanaphruk*, P, The Nation, ‘UN expert studying Thai freedom of speech, lese majeste law.’ 12th January 2012. <http://www.nationmultimedia.com/politics/UN-expert-studying-Thai-freedom-of-speech-lese-maj-30173577.html>.

¹⁸ Nowak, M, in Nowak, M; Januszewski, K; Hofstaetter, T (eds), *All Human Rights for All – Vienna Manual on Human Rights*, Neuer Wissenschaftlicher Verlag, Vienna 2012, p.381.

legitimise its interference on the grounds of public safety or public order, but if the interference with the freedom is particularly egregious, it may well be that the State action is disproportionate and therefore a violation of human rights.

There are of course regional instruments including (inter alia) the European Convention on Human Rights, The African Charter on Human and Peoples' Rights and the American Convention on Human Rights, but it is beyond the scope and necessity of this paper to consider the formulation of political rights in each of these instruments.

2.2 Relevant Mechanisms of Protection

The Human Rights Committee is the body of 18 experts who monitor compliance with the provisions of the ICCPR, and the recipients of the regular State reporting mechanism. The Committee will then address concerns in the form of "Concluding Observations" to the State in question. The Universal Period Review is another method of attempting to ensure States' compliance with the full range of their human rights obligations.

In terms of the struggle for democracy, and the rights and freedoms inherent, international condemnation from other States and Non-Governmental Organisations (NGOs) may however, be core effective in shining the spotlight on human rights abuse and increasingly the political "costs" for a repressive regime. This is one of the many reasons why nonviolent resistance may be particularly effective in certain cases, as such causes can inspire the International community in ways that violent resistance often does not, which may at the same time, provide greater legitimacy to the nonviolent cause.

3. Putting Civil Resistance to the Test: Thailand

3.1 Thailand's Political Background

Prime Minister Thaksin Sinawatra's rise to power at the start of the 21st Century, with his Thai Rak Thai (TRT) Party was largely inspired by his popular appeal to the rural masses and series of populist policies, many of which subsidised costs for farmers, and in turn led to a growing economy. After becoming the first Prime Minister to win re-election in 2005, in a landslide victory, he had "built the TRT into an unstoppable political machine".¹⁹ It seemed that a future of political stability and a healthy economy beckoned. However, rumours and accusations of corruption, directed at the Thaksin government were rife, and mass protests and turbulence

¹⁹ Pongsudhirak, T. 'Thailand Since the Coup', *Journal of Democracy*, Vol. 19, No. 4, 2008, 140-153, 142.

followed, leading to a coup in September 2006. “What had seemed like a firm march toward democratic consolidation...had suddenly fizzled and relapsed into military-authoritarian rule.”²⁰ The opposition Peoples’ Alliance for Democracy (PAD), had ironically been key in “laying conditions for the coup”.²¹ Since this time, the problem has been more or less a repetition of the same one, involving subsequent reincarnations of Thaksin’s original TRT, most recently the Pheu Thai Party headed by Thaksin’s sister Yingluck Sinawatra, which was ousted in the most recent coup on May 22nd 2014.

The “troika” of the bureaucrats, the military, and the monarchy, has, as Pongsudirak stated in 2008, “called the shots in Thailand for decades. As neither a grand reconciliation between the two opposing sides nor a third way that transcends both pro-and anti-Thaksin forces appears to be in the offing, Thailand’s democratisation process is headed for growing turbulence.”²² He was right.

3.2 Current Human Rights Violations in Thailand

At the time of writing, the military Junta, who, on May 22nd 2014, seized power in Thailand’s 20th Coup²³ since the 1930s, are suppressing many civil and political freedoms, in seemingly the “toughest post-coup regime in four decades.”²⁴ The National Council for Peace and Order are justifying their actions in the name of restoring peace and political stability, following months of protests and democratic uncertainty amid the boycotting of February 2014 election results by the opposition Democrat Party.

Prominent academics, activists, and those affiliated with the former regime have been systematically detained for questioning, seemingly with the aim of engendering a climate of fear and providing a strong incentive not to speak out in criticism of military rule. The press and media have been stifled and recent reports indicate that criticism has also been banned

²⁰ *ibid*, 143.

²¹ Pete, O; Schaffar, W. ‘The 2006 Anti-Thaksin Movement in Thailand: An Analysis’, *Journal of Contemporary Asia* 38, February 2008, 38-61.

²² (n.19.), 145.

²³ The figure is disputed, with some believing there to have been eighteen, and others nineteen before the coup of last month.

²⁴ Washington Post, ‘Thai anti-coup protesters say it with sandwiches’, June 8th 2014.

(http://www.washingtonpost.com/world/thai-anti-coup-protesters-say-it-with-sandwiches/2014/06/08/8d799f86-ef35-11e3-914c-1fbd0614e2d4_story.html).

within educational institutions nationwide.²⁵ As well as heavily restricting freedom of expression, the military has banned public gatherings of more than four people, violating the full freedoms of assembly and association. Martial law has been imposed, the Constitution suspended, and a curfew imposed, although the latter has been systematically lifted in most areas except Bangkok.

This crackdown has led many, predominantly “Red Shirt”²⁶ protesters to turn to creative forms of protest in order to register their anger that democracy, as they see it, has once again been suppressed in Thailand. In the last weeks, protesters have drawn on inspiration from popular culture in the form of Hollywood movie “The Hunger Games”, in raising a three-fingered salute as a pro-democratic and anti-coup gesture of defiance²⁷, as well as organising silent book readings, in groups of four, with politically suggestive novels such as Orwell’s “Nineteen Eighty Four”²⁸, and even handing out “Sandwiches for Democracy”.²⁹

Such movements have been effective in raising international awareness and have gained mass support on social media platforms such as Facebook and Twitter, and such exposure certainly cannot be underestimated. However, the culture of fear generated by the military has diluted the possible mass mobilisation of widespread support of such resistance, and the restriction on freedom of assembly, given the banning of groups of more than four people, have kept such movements small. The fierce political divides, and even the partisan nature of the military, rather than acting as neutral supervisors of transition will make it difficult for the resistance movement to achieve significant success. Chenoweth and Stephan have stated that “[n]onviolent resistance has a relative advantage over violent resistance in producing loyalty

²⁵ Thailand News, ‘Thai Schoolchildren to be Re-educated under Junta’s New Guideline’, June 8th 2014.

(<http://www.thailandnews.co/2014/06/thai-schoolchildren-to-be-re-educated-under-juntas-new-guideline/>)

²⁶ Those loyal to former Prime Minister Thaksin Sinawatra, whose sister Yingluck was ousted in the coup and headed the Thaksin allied Pheu Thai Party.

²⁷ The Independent, ‘Thailand’s anti-coup Protesters adopt “The Hunger Games” salute’, June 4th 2014.

<http://www.independent.co.uk/news/world/asia/thailands-anticoup-protesters-adopt-the-hunger-games-salute-9484892.html>

²⁸ Jakarta Post, In Junta-ruled Thailand, reading is now resistance, June 1st 2014.

<http://www.thejakartapost.com/news/2014/06/01/in-junta-ruled-thailand-reading-now-resistance.html>

²⁹ (n.24.).

shifts within security forces”³⁰ Thailand, given the politicised nature of the military, is likely to be, broadly speaking, immune to such occurrences.³¹

3.3 What Next for Thailand?

There appears to be emerging ideas from prominent anti-coup critics who have fled Thailand to start a civil resistance movement from abroad³² that may garner greater support in the future. In general however, it is argued that civil resistance will work in a relatively weak sense in Thailand, as it is unable to overcome the fierce political divides and garner sufficient popular support, given there are those who support the coup out of their principled hatred of the Thaksin regime and any associated subsequent regimes.

The problem, is highlighted by April Carter, who points out that “[p]eople power” does not always fit the “ideal type” of a large majority pitted against a repressive elite, and the democratic legitimacy of mass protest then becomes problematic. Such divisions can also make the role of external powers tending to support opposed social groupings more salient.”³³

Indeed the role of the international community is key in this situation, as the greater the level of outspoken condemnation, the higher the political costs, and possible economic ones, in the form of sanction, removal of aid and general lack of confidence in the economy.

4. Could the Right to Democracy Strengthen Civil Resistance?

In 1992, Tom Franck wrote; ‘We are not quite there, but we can see the outlines of this new world in which the citizens of each state will look to international law and organization to guarantee their democratic entitlement.’³⁴ We are still not quite there. But it argued that such an entitlement would greatly legitimise nonviolent struggles for democracy. The problem of reliance of many political rights that may be themselves suppressed, could be in part subverted by the full emergence of such a right.

³⁰ (n.2.) p.14.

³¹ Such loyalty shifts were seen in the civil resistance movement in the Philippines, and proved decisive. A huge public show of support for the military defectors, as well as a human barricade tanks and the defectors, ensure the failure of the regime and a “mutiny of soldiers and officers ensued. c.f. Carter, A, in (n.7.) *supra*. p.35.

³² UK Reuters, *Group of Thai politicians plan overseas movement to resist coup*, June 5th 2014.

³³ Carter, A, in (n.7.) p. 41.

³⁴ (n.4.) 50.

Franck focused on three building blocks of this potential right; self-determination, free political expression and the entitlement to elections that are free and fair.³⁵ Marks notes that in many countries, perhaps security now trumps democracy in a post 9/11 climate.³⁶ Democracy is certainly complex and involves many elements, and it is now unlikely that such a de facto right to democracy will be concretised, but it could be a great help in protecting rights if it did.

5. Conclusion

It is argued that the power of nonviolent resistance in general lies in its ability to undermine the legitimacy of regimes that respond with violence or continue to undermine human rights.³⁷ More specifically, the use of symbols and creativity in protest inspires solidarity and raises awareness, and although it may fail in the short term, it may also win small but significant victories. It has the ability to capture the imagination of the watching world and inspire international condemnation, or help to create a political culture understanding of the importance of democracy and willing to engage in open and transparent negotiations.

Earlier we held that: “[i]f nonviolent action can create high political costs for the regime’s continued oppression, then it will have a higher chance of succeeding.” The use of symbols can play a large role in creating political costs for a regime, by spreading internally and externally, and sending a clear message, that speaks louder than words.³⁸ This may even be more powerful now than in the days before social media took hold.

It is unlikely however, that civil resistance, nonviolent action and creative protest in Thailand will be able to reach the levels of efficacy and publicity as seen in certain cases documented within “Everyday Rebellion”, or in countries such as Burma, or The Philippines. This is in part, due to the frustrating lurches from semi-democratic state, to military dictatorship, to

³⁵ *ibid.* 52-64.

³⁶ (n.5.) 513.

³⁷ In Burma in 2007, thousands of Buddhist Monks marched in peaceful protest against the military regime. The protests were subject to a harsh crackdown with numerous casualties. Fink has stated that in this case “the use of violence against the monks awakened the political sentiments of the public and greatly damaged the regime’s claims to moral legitimacy.” C.f. Fink, C in (n.7.) *supra*, p.354. In recent years, Burma has seen some more promising moves towards democracy, such as, in 2010, its first elections in twenty years.

³⁸ In Belarus, in 2011, several hundred people would clap, in otherwise complete silence, in order to protest the regime’s treatment of the citizens and the recent crushing of a mass protest, leading a ban on clapping that \made the regime look vaguely foolish. C.f. The Economist, *No Applause Please*, July 7th 2011.

constitutional but undemocratic appointed governments and “episodic redemocratisation”³⁹ The oppression in Thailand is not on the same level as certain of the dictatorships featured in “Everyday Rebellion”, but it is not less important, democratically. The civil and political rights of the people are still under threat, and given that democracy should be seen, relatively speaking, as the best system to protect the rights of the people, it is extremely important that it is achieved in a stable way.

Garton Ash has written:

[c]ivil resistance does not merely interact with power politics, traditionally conceived. It has changed the very nature of power politics in our time. It challenges a still widespread assumption that military or coercive action...is the most effective and certain way of achieving change both within and between states.⁴⁰

The importance and effectiveness of civil resistance has certainly been noted here. However, it has also been seen that an effective and successful campaign of civil or nonviolent action will need to accomplish widespread support, inspire international awareness and condemnation of the regime and undermine its legitimacy. Symbolic protest, depending upon the scale of support can achieve this to some extent. However, it is argued that in Thailand, the campaign will not be as effective as some of those seen in “Everyday Rebellion”, because the political complexities, and effective nullifying of the rights of free expression, association and assembly have blunted its potential effectiveness.

A fully emerged “right to democracy” could provide the overarching legitimacy for such campaigns of resistance in the future, but we are not there yet.

³⁹ Farrelly, N. ‘Why democracy struggles: Thailand’s elite coup culture’, *Australian Journal of International Affairs*, 2013, Vol. 67, No. 3, 281-296, 291.

⁴⁰ Garton Ash in (n.7.) *supra*, p. 375.

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