

Thailand - Judgement Day: The Sequel

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It was a sequel with a difference. When Thaksin attended the court in August 2001 on the asset concealment case, he got out of his car and walked the last stretch through cheering crowds, waving and pressing the flesh like a presidential candidate. This was a man without fear. The judgement was muddy, opaque, and bizarre. The judges split 8-7 in his favour. One later complained of being “unsuccessfully lobbied” over the case. Another hinted at foul play. The logic and rationale of the verdict left legal experts scratching their heads. This seemed to be a drama about the law’s subjection to power and money.

Scroll forward seven years, almost to the day. In place of the festive mood, the defendants were cloaked in gloom. In place of the muddy verdict, this one was crystal clear. This seemed to be a drama about law triumphant.

The verdict and the sentence are remarkable. Most comment has focused on these. But the event was much more elaborate. The judges seem to have realized this was a historic moment, and milked it for all the drama it could deliver.

That is not surprising. Ever since April 2006 when the king called on the judges (“If you don’t help to make democracy move forward, it will be the country’s downfall”), the judiciary has been in the spotlight as never before. For some, this has been a blessing. They talk of a judicial revolution, and the coming of the rule of law. They predict a new era of Thai politics. Others have been a lot more skeptical. They point out that bringing the judiciary into politics will end up politicizing the judiciary; that the new constitution gives quite extraordinary power to a handful of senior judges; that judgements afflicted by political bias are laying down precedents that will be regretted in the future; that the recent firestorm of legal decisions is undermining parliament and executive; and that in truth what is going on is more like a witch hunt than a judicial revolution. They scoff, “When I see the same standards applied to everyone, then I’ll believe it.”

Both sides are probably rushing to judgement long before it is due. History tells us that it takes some time to establish the traditions, the mind set, the institutions in which a rule of law starts to come into play, so the enthusiasts need to calm down a bit. But history also tells us that the steps towards a rule of law are taken at times of crisis and conflict. Some have forgotten how recently in the US the judiciary was activated to counter ways in which the executive under Nixon was running riot. Some have forgotten how recently in the UK the Poulson case disrupted the widespread corruption in local government contracting. The rule of law does not grow steadily, like grass.

The judges last Thursday seemed very conscious of this debate, and very conscious of the precedent set seven years earlier in a trial on essentially the same issue. The judgement started out with a passage that is more like a manifesto than a preamble to a criminal verdict. It ran like this:

“Before reading the judgement, the bench wishes to point out to the three defendants and those attending to hear the judgement that, as is well-known, at present some segments of the population are divided into camps. This is clearly a political problem, and the conflict that has arisen in thinking and action is violent, with no quarter given. This is a matter that people involved must cooperate to overcome in the future. The role of the courts of law is to be neutral. They have a duty to scrutinize

cases under democracy. Let everyone rest assured that the courts scrutinize cases according to their authority and according to the law. They furnish justice to all parties according to the constitution without bias, and without susceptibility to current sentiment."

Then, instead of moving directly to the verdict and sentence, the judges picked their way through the evidence and through the defence arguments almost line by line, detailing the chicanery, exposing the lies, and pulling apart the cover-up. As a performance it was relentless.

After the verdict and the sentence, it was not over. The judges had another message to deliver. At the tail-end of the judgement, they appended a homily about money, power, and social responsibility:

"All three defendants are people of high social and economic status. In particular, at the time the crime was committed of giving false information in order to evade the payment of tax, the second defendant was the wife of someone who held office at the level of the country's executive. All three defendants, besides having a general duty to conduct themselves as good and proper citizens, should also behave as good examples befitting their social and economic status. Yet instead they conspired to evade tax, an action which is a violation of the law, and an injustice to society and the tax system, even though the amount of tax that the first defendant had to pay was insignificant compared to the wealth of the second defendant and family at the time. If the first defendant had paid tax according to the law like any citizen it would not have affected the status of the second defendant in any way. Thus the crime of all three is serious."

The preamble of the judgement made the case for law as something fair, independent, and free of political bias.

The detailed core of the judgement made the case for law as a rational, forensic instrument capable of separating truth from falsehood.

The final homily made the case for law as an instrument of social justice in the face of the inequalities of wealth and power.

This was not just a judgement in Pojaman's tax case, but a manifesto on behalf of the law.

P.S.

* From <http://www.geocities.com/changnoi2/verdict.htm>