Title: “Intention”

Author: Dr. Maung Maung, Chief Justice, Chief Court; Member, Special Criminal Courts’ Appeal Court

Date: 31 December 1970

Source: Special Criminal Courts’ Appeal Court Rulings (1965–70), 1971

Translator: Nick Cheesman, Australian National University

The Chief Court bench has directed previously that, “In making state policy a success, the Special Criminal Courts’ Appeal Court is issuing rulings with the quality of justice and has been laying down judicial guidelines. The Special Criminal Courts’ Appeal Court rulings included in the law reports and sometimes distributed via General Letter are to be studied well and followed.”

State policy is policy stipulated by groups of individuals who have taken on state powers from the people, as required for national security, unity, prosperity, etc., looking forward. Therefore, not only can the law not exist independent from policy, but it must serve to make it a success. However, as the Special Criminal Courts’ Appeal Court Chairman Colonel Hla Han pointed out in his foreword [to this book of rulings], when the invoking of “policy” goes against law—if ‘each monastery chants its own verse’, each court issues its own verdict—there is danger.

In making state policy a success by issuing rulings with the quality of justice, the Special Criminal Courts’ Appeal Court is a leading body. Significantly, in order to fulfill its

---

1 Assistant Commissioner of Taxation v. Aung Thein Kyu Rubber Estate, 1966 Civil Miscellaneous Application 1, at 2.
leadership duties the Appeal Court’s chairman and members include members of the Revolutionary Council and cabinet ministers. There can be no persons more familiar with state policy than those persons involved in formulating policy. There can be no persons with more practical understanding of how the power of law also can be used to make policy a success than those persons.

Indeed, in traditional Burmese justice too, when the ministers involved both in the making of law and management of state affairs, under the leadership of the king and crown prince, together heard and ruled on appeals they issued verdicts with the quality of justice and which made state policy a success. In the villages and townships likewise, respected learned persons who emerged from among the people were assigned to adjudicate on tribunals. Thus, the judiciary was not independent of the people.

In its country of origin, Britain, the British judicial system with which we were accustomed is also a system that from its base to its core has come into existence independent neither from the people nor from state policy. At the base, people’s (“local”) honorary judges (Justices of the Peace) adjudicate via tribunals. If a delicate legal problem arises or if procedure is unclear, they can consult an expert law court officer (Clerk of the Court). Professional judges and Justices of the Peace jointly hear serious cases. There are also people’s jurors who decide with assistance on legal matters from a professional judge. And the professional judges are not judicial bureaucrats who have risen through the ranks, but legal practitioners selected from among the people who have been close with the people’s lives.

The structure of Britain’s judicial system at its core is especially interesting. The person of the justice minister in the cabinet is referred to by the historic title of Lord High Chancellor.
That person is an elected member of the party in power. When the Lord High Chancellor is sent over to the upper house (House of Lords), his designation is presiding officer of the house. The nine Law Lords in the House of Lords and the Lord High Chancellor in turn are the country’s topmost appeal court. Not only that, the Lord High Chancellor is the President of the Supreme Court, in addition to which he is the presiding judge of the civil appellate division in the Supreme Court. The presiding council of the Supreme Court also includes personages from appellate and original jurisdictions.

And so, because a member of the cabinet of ministers, the Lord High Chancellor, is in addition to being the presiding officer of the House of Lords (legislature), the leader of the House’s Law Lords, and the topmost appeal court is formed from the House of Lords, etc., all of the branches of state power can be combined and coordinated in judicial directives for the good of the nation. There is no obsessive concern with the separation of powers or with keeping each branch of power in its place. Each power succeeds through cooperation rather than competition. But the legislature acts the part of exercising national sovereignty on behalf of the people.

The chief justice of the United States’ Supreme Court, in reflecting not long ago on the weaknesses and lacunae in the American judicial system, remarked that it would be good if the apex were combined and cooperative like that in England, as follows:

“The absence of some official who is the counterpart of the Lord Chancellor of England is very sharply in focus for me. The Lord Chancellor in England is the highest judicial officer, but he devotes only a limited time to purely judicial duties. He is also Speaker of the House of Lords and a member of the Prime Minister’s Cabinet. Thus, he has access and constant
communication with all three branches of government and can keep the executive and legislative branches fully informed on almost a day-to-day basis.”

The experience of the British judicial system with which we have been accustomed in Burma is unlike that of the flourishing system in Britain. In Britain, it is arranged for the people to rule on the people’s law through the tiers summarized above. In Burma, there was no such structure. The priority was maintenance of law and order at low cost. Low cost meant more profit. A pacified country meant that British traders would expand business. The government had influence over judicial officers, as it arranged appointments, promotions and transfers. Judges had more regard for influential persons than for the truth. And the influential persons in government had regard for the British traders. They took orders from the government of Britain sitting in London. Therefore, even though the British judicial system in Britain consisted of refined niceties, the system introduced to Burma bit by bit lost touch with the people, as even the English writers said, such as those below.

A British barrister who lived and worked in Burma for many years criticized the British administration for being distant from the people, heartless; respected but not loved.

“Most of the British administrators whilst discharging their duties conscientiously, did so with an air of detachment, and never forgot the vast difference between themselves and the Burmese and the bond of human sympathy was lacking. Hence, the British administration,

---

efficient within limits, was soul-less. It had the respect of those it governed for its good qualities, but they were not enamoured of it.”

Around 1922, as the British were inquiring about making reforms to the administrative machinery of Burma, a Burmese practitioner told the inquiry committee that the judicial system which the British had introduced was not suitable for Burma and had too many loopholes and definitions. He remarked that the law benefited only canny offenders.

“The Burmese people feel that there is too much of logic and too much of hairsplitting in the system of British law, and too many loop-holes and too many occasions for the benefit of the doubt. So the lawless people, the offenders, who are sharper, enjoy the advantage.”

As the Special Criminal Courts’ Appeal Court Chairman, Colonel Hla Han wrote in his foreword, the Special Criminal Courts system has been trialed with the aim of the people adjudicating the people’s law, and step by step, with people becoming involved the judiciary has come closer to the people. Because Revolutionary Council members and ministers are on the Appeal Court, not only is law making state policy a success, it is also becoming equitable. And it is leading the way to a people’s judiciary on par with the excellent qualities of both Burmese tradition and those of the advanced countries in the world.

Difficulties and delays are likely when the basic intention of the Special Criminal Courts system has not yet been well understood. The Ministry of Justice and Confirming Panel [of

---


4 Burma Reforms Committee, *Record of Evidence*, II, Rangoon, 1922, p. 73 [quotation in English].
the Special Criminal Courts] are coordinating with relevant departments to resolve the difficulties. The system’s basic intention will presumably be evident from the contents of the Appeal Court’s rulings. For the intention to succeed, for the system to run smoothly, everyone with tasks to perform has to gather round and make an effort; to strive to advance from the stage of showing the way ahead to the point where the people alone adjudicate on the people’s law.

…

(Words: 1431)
“The absence of some official who is the counterpart of the Lord Chancellor in England is very sharply in focus for me. The Lord Chancellor in England is the highest judicial officer, but he devotes only a limited time to purely judicial duties. He is also Speaker of the House of Lords and a member of the Prime Minister’s Cabinet. Thus, he has access and constant communication with all three branches of government and can keep the executive and legislative branches fully informed on almost a day-to-day basis.” (J)

and too many loop-holes and too many occasions for the benefit of the doubt. So the lawless people, the offenders, who are sharper, enjoy the advantage.” (5)

“Most of the British administrators whilst discharging their duties conscientiously, did so with an air of detachment, and never forgot the vast difference between themselves and the Burmese and the bond of human sympathy was lacking. Hence, the British administration, efficient within limits, was soul-less. It had the aspect of those it governed for its good qualities, but they were not enamoured of it.” (6)

“The Burmese people feel that there is too much of logic and too much of hairsplitting in the system of British law.


(5) Burma Reforms Committee, Record of Evidence, II, Rangoon, 1922, p. 73.