

Cambodia's Election and Two Conceptions of the Rule of Law

Written by Keally McBride

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KEALLY MCBRIDE, JUL 30 2013

Yesterday, the Cambodian People's Party (CPP) announced that it won re-election. This surprised no one. What was shocking was the strong showing of the Cambodia National Rescue Party, a new party resulting from the merger of previous smaller oppositional parties. The National Rescue Party should not be uncritically embraced, as its leader, Kem Sokha, claimed in May that Cambodians had been framed for the war crimes of the Khmer Rouge, and that the Vietnamese were responsible for the torture at places like S-21. The CPP responded by passing a law against war crimes denial, and summoning Sokha to court. Sokha has ignored the summons, saying it was politically motivated and intended to undermine his support in the election. Even given the unsavory cast of characters and widespread voting irregularities that may or may not ever be investigated, the fact of electoral competition should be celebrated nonetheless. Competition between groups could be the best way to achieve the rule of law in Cambodia.

Yesterday, the CPP presumably won only 55% of the seats in the National Assembly, while previously they held 75% of them, meaning that the Prime Minister's party could amend the Constitution as desired by controlling a two-thirds vote in the National Assembly. Prime Minister Hun Sen will still rule, and just as importantly, his children will have their hands in virtually every aspect of the country's political and economic life. The electoral results are a surprise because so many Cambodians have seemed willing to trade political freedom for stability, and memories of the Khmer Rouge are still fresh. Everyone knows the government serves itself, but for quite some time, there has been a sense that corrupt rule is better than genocidal conflict.

This malaise is not from lack of efforts at bolstering the rule of law in Cambodia. The United States has had a long standing Rule of Law Project there, called the "Program on Rights and Justice" (PRAJ). The laws of Cambodia would pass muster with virtually any international observer, but they are not enforced. One of PRAJ's more innovative programs is a television series, now in its third season, called "The Scales of Justice," which dramatizes the way policing and justice systems should work as a way of educating the Cambodian people about the rule of law. After years of advising Cambodian judges and party officials about how the rule of law works to little effect, they decided to work on building a constituency for reform of the justice system instead.

But this model assumes that changing expectations will create attitudinal shifts towards the law. But what if everyone knows how it should work, but no one expects it to actually be that way? Surveys indicate that Cambodians know their government is corrupt. This is the problem with the rule of law as it is commonly perceived: it doesn't exist unless everyone believes in it and behaves according to these beliefs. This way of thinking has led the United States to develop programs to raise the expectations of the Cambodian population for a more equitable administration of justice. But if the population expects and accepts judicial corruption, where is the leverage? This prevalent understanding of the rule of law depends upon a volitional idealism amongst a country's leaders and population.

There is an alternative possibility however; one that hearkens back to Montesquieu's conception of the rule of law. An essay by Judith Shklar, "Political Theory and the Rule of Law," points out that for Montesquieu, the rule of law was seen as a sort of power sharing agreement between elites. Different powers would promote and follow the rule of law in their country as a way of dividing the spoils and protecting themselves from one another. Following the law could be a way of securing their advantages, not a matter of saving face or serving ideals. Imagine if elites in Burma,

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Cambodia, or China decided that stricter adherence to principles of the rule of law would serve their long term interests. This may be another way of thinking about developing the rule of law around the world, but it requires several parties to develop a vested interest in order for the dynamic to work. At this point in Cambodia, too many roads lead straight back to Hun Sen's family, which does not need to protect its wealth from anyone else with power and influence.

The electoral results over the weekend suggest that the Cambodian population may be more willing to serve as a check upon the concentration of power than any opinion polls have been able to detect over the past decade. But it may be helpful to remember the other rationale behind the rule of law that was evident as it emerged in modern Europe. Elite competition may export better than volitional idealism as a ground for the rule of law.

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