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Litigation Across Space and Time: Courts, Conflict, and Social Change

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LITIGATION ACROSS SPACE AND TIME: COURTS, CONFLICT, AND SOCIAL CHANGE

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One of the problems facing researchers who have studied courts across time and space has been the cultural variability of seemingly uniform analytic categories, including conceptions of time and space themselves. This article proposes that we take such variations in meaning as a starting point for comparative studies of courts and social change rather than viewing them as were "noise" in the system. Litigation in Chiangmai, Thailand, is presented as an example. Changing conceptions of "space" in Thailand from the nineteenth century to the present illustrate the transformation of legal and political authority as well as the proliferation of normative systems and dispute processing fora. By focusing analysis on variations in the meaning of a concept such as "space," it is possible to discern the significance of litigation in relation to unofficial systems of normative ordering and to gain insight into changing relationships among individuals, local communities, patron-client hierarchies, and the state.

I. INTRODUCTION

Why study courts and litigation across space and time? Certainly one purpose has been to reveal significant relationships between social context and the role of law as an instrument for handling conflict. The view across space and time makes it possible to compare patterns of litigation and disputing in a variety of social settings. It is usually assumed that such comparisons could, if our analysis were sufficiently shrewd and persistent, lead to a more complete understanding of the variety of circumstances under which law and legal institutions are used and avoided.

The difficulties facing researchers in this tradition have, however, become increasingly apparent, and the proliferation of data concerning court caseloads across space and time has not necessarily led to a better understanding of the relationship between social

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context and the role of law. The articles in this collection explore a number of reasons why this has been so.

Perhaps the most pervasive problem of comparative litigation research is that it has typically found itself caught between two modes of conceptualizing courts and their social environment: the "official" and the sociological. Put somewhat differently, researchers have had consistent difficulty developing and applying their own analytic schemes and categories rather than those of the courts they study. Thus in investigating the rise and fall of litigation rates in particular communities, researchers have of necessity analyzed the social-spatial entities marked out by the courts' own jurisdictional authority rather than mapping social boundaries as the researchers themselves might prefer. Similarly, in determining who the participants or affected parties in a conflict might be, researchers have tended to accept the often simplified or distorted definition of parties that the court, for its own purposes, must use. Indeed, in determining the very concept of what the case is and what the conflict is about (for example, an argument concerning a driveway or a broader conflict over change and the influx of "undesirables" in a community; see Yngvesson, 1988: 427–32), researchers have tended to defer to the often misleading categories and definitions employed within the official system.

In a sense, this scholarly capitulation to the conceptualizations used by court officials represents nothing more than a grudging willingness to do the best one can with what is available. Even though the official categories and definitions may be misleading in some ways and ill-suited in others, the statistics associated with them surely tell us *something* about disputing and litigation in various social settings and are better than no data at all. Such justifications can be conversation stoppers. It is, however, important to consider the consequences of the dominant role played by official categories and definitions in the study of courts across time and space.

Reliance on the conceptualizations of official actors and institutions represents a major concession to what Griffiths (1986) has called "the ideology of legal centralism." Griffiths and others (e.g., Moore, 1978: 54–81; Kidder, 1979; Engel, 1980) have stressed the importance of acknowledging and understanding the plurality of legal systems in a given social setting, of which the official legal system is but one. Other, unofficial legal systems may be based on custom, interaction, religion, or nongovernmental associations or organizations, and typically represent highly important sources of normative order and social control (Galanter, 1974a). The "ideology of legal centralism," which Griffiths criticizes, asserts that nongovernmental legal norms and processes are unimportant in understanding such phenomena as disputing and litigation, which is surely an absurd and untenable position in light of all that we have learned in the past twenty years from the dispute processing

literature. Furthermore, Griffiths (1986: 3) argues, "legal centralism" has led researchers to confuse the prescriptive claims of official law with the empirical realities of the world they seek to describe:

> The consequence has been a series of attempts to build an empirical theory of law directed not toward a phenomenon conceived of in general terms but rather toward one defined directly or indirectly in terms of the hegemonic claim of the modern state. Conceptions of what law is have reflected a particular idea about what it ought to be.

The undue influence of official categories and definitions on comparative litigation studies has thus tended to bestow a false sense of sociological legitimacy on what are essentially prescriptive rather than descriptive terms, such as "case," "community," and "parties," and to simplify the conceived relationship between individuals and courts by exaggerating the predominance of official law in what is actually a complex tangle of overlapping and competing systems of official and unofficial law.

A second and equally important problem has been that, in adopting such categories and definitions for their own research, scholars have tended to finesse the question of whether they are meaningful to the actors involved. Thus we know what the court considers a "case" to be, but what definitions might the disputants themselves apply to this term? And how would such definitions compare to the official definitions? Similarly, how might local people define their "community" and its boundaries? And how might such definitions compare to the official jural community within which the court exercises its authority?

Until recently, those who have studied courts across time and space have been relatively uninterested in questions of meaning, because their focus has been on behavior. As Krislov (1983) has observed, the attraction of comparative litigation studies has been the relatively simple and uniform *act*—the filing of a lawsuit—that underlies all analysis and that can be related by researchers in a variety of ways to social-environmental variables. But is this act either simple or uniform, and can it be understood without asking what meaning it has for the litigants or for others in the community? Once the "hegemonic claims" of the official legal system are called into question, it would seem imperative for researchers to ask what alternative conceptual systems exist in a given locality and how they impinge on the consciousness of disputants and shape behaviors and meanings for those who invoke and avoid the courts.

What might our research look like if it rejected the definitions and assumptions of legal centralism and emphasized that systems of meaning are inseparable from behavior? Chaotic, perhaps. The very elements whose constancy and universality seemed to invite comparison now appear problematic and indeterminate. By asking

what such basic terms as "case," "parties," "community," and "time" itself mean to different actors in differents contexts, comparative research will have to contend with a plurality of conceptual systems in place of—or in addition to—a single, universally applicable framework derived from official terms and concepts.

Moreover, such systems, and the relationships among them, are not static. Comparative research of this kind will often be concerned with the evolution, interaction, and competition between different systems of ideas and behavior over time. Change will be a central focus. This in itself should not disturb us, for change and its relationship to law is something researchers sought to understand when they first began to study courts across time and space. That certain fundamental social concepts will be altered or transformed over time (including the concept of time itself) should also be a source of interest rather than despair. Such transformations are not barriers to analysis, nor are they mere static or noise; instead they are among the most important of the phenomena that we seek to explain. In Moore's (1987: 4) words, "the very shifting picture that was once thought least amenable to systematic theorizing has become the only interesting problem for analysis."

The challenge, then, with respect to the kind of research I am describing, is to study courts and litigation in terms of their relationships to the changing social context, which includes multiple overlapping systems of norms, ideas, and processes in which law and conflict are created and contested. Official categories and concepts, in this approach, are to be regarded as data but not as the exclusive framework of analysis. Transformations of fundamental concepts related to litigation are to receive particular attention, for they often reveal underlying shifts in power or dominance among contending systems of social control.

II. LITIGATION AND CHANGING CONCEPTS OF SPACE IN THAILAND

I cannot pretend to have conducted the kind of research I am advocating. I have, however, experienced the challenges and frustrations of studying litigation in its social and cultural context in two quite different settings: rural Illinois and provincial Thailand.[1] From these studies I have gained a sense of how one might

[1] Elsewhere (Engel, 1987) I have described how changing conceptions of time in an Illinois county revealed tensions between various views of social order and of law among the residents of a community experiencing profound social and economic transformations. Patterns of litigation in the locality and the social meanings attached to litigation reflected the changes the community was experiencing. By focusing on the various conceptions of time that I found among residents, it was possible to understand how different groups perceived the legitimate and nonlegitimate role of law. Thus the concept of time, which is often taken as a given or as a universal constant in court studies, proved to be particularly revealing when viewed as part of the local scene to be observed and interpreted rather than as one of the instruments of interpretation. I will not repeat the analysis of time and litigation in Sander County here.

frame comparative litigation studies across time and space in keeping with the goals and principles described above.

I would like to draw briefly on some materials from the Thailand study to illustrate how, over a broad historical span, the exploration of certain key concepts relating to litigation can enhance our understanding of transformations in the relationship between plural social and normative orders. Specifically, I will suggest how the study of changing conceptions of space and community can clarify the patterns of disputing and court use in a society.

Thai culture, like many in Southeast Asia, is characterized by the multiplicity of external influences it has experienced. But the phenomenon I shall emphasize is the dramatic transformation of its political and legal institutions from the later part of the nineteenth through the early part of the twentieth centuries. This was a period in which Thailand was under extreme pressure from Western colonial powers: England to the west and south and France to the east and north. As the threat to Thailand's independence increased, the ruling elite—headed by King Chulalongkorn—responded by consolidating central control over the entire country and by transforming its legal and administrative institutions along Western lines. In large measure, the Western models were justified on the grounds that they would appease the European powers and deprive them of the pretext that intervention was necessary to protect Westerners (and Thais) from a backward and barbaric regime. It must also have been apparent to the king and his advisers, however, that the administrative structure of the Western nation state vastly increased their own power and enabled them to initiate changes throughout the country that would otherwise have been impossible.

What was the nature of this transformation as it related to law, litigation, and disputing, and why are cultural conceptions of space and community part of the story? Before Thailand's rulers attempted to recast their country as a typical Western-style nation state, its internal political organization was based on principles of control over persons rather than the administration of geographically bounded units. The king's authority over his domain was expressed not by the delineation of a fixed boundary line around his territory but by ceremonial acts of fealty rendered him by provincial rulers and vassal princes and, indirectly, by the subjects they controlled. In the words of Rabibhadana (1969: 77):

> Thus, while certain societies might be more conscious of the importance of land and divide the polity into regions with definite boundaries, the Thai, extremely conscious of the importance of manpower, divided the kingdom into groups of men, each with a chief who served as a responsible member of a staff-line, patron-client structure. The boundary of the kingdom, or of a province, was always left vague, while the population of the kingdom, or a town . . . were the main concern of the Thais.

For purposes of political and legal administration, "space" was thus defined in terms of hierarchical relationships between people and groups—princes, patrons, and clients who were part of a complex network that reached from the capital to provincial centers to villages. The royal law codes of the eighteenth and early nineteenth centuries were concerned largely with the definition of ranks within this hierarchy and with the specification of obligations pertaining to the various ranks. There was little consciousness, within this "galactic polity" (Tambiah, 1976), of geographical space as a phenomenon that was in itself charged with political or legal significance.

And yet, in a different sense, land and geographical locality *were* significant. First, it is obvious that control over manpower was equivalent to control over the cultivated fields. Indeed, one of the most important indices of status was an individual's *sakdina*, or "dignity marks," which might range from five for a slave to ten to twenty-five for a farmer to an infinite number for the king (Rabibhadana, 1969: 22, 113–14). Literally translated, *sakdina* means command or power over rice fields, and the marks themselves were expressed in terms of numbers of *rai*, which is a unit of land measurement.

In another sense, too, land and locality were important to the traditional system of law and government in light of the relationship between territoriality and the role of spirits in regulating human affairs at the local level in Thai society. In the past, and to a great extent in the present, numerous spirits were associated with houses, trees, rivers, swamps, rice fields, forests, and other natural objects and settings (Tambiah, 1970: 264–65, 316–17; Wijeyewardene, 1970: 249; Potter, 1977: 19–20). In this pantheon of spirits, one group is explicitly associated with venerated territorial markers or pillars found in villages and in provincial capitals. Such spirits have a distinctively political responsibility for events occurring in the territory with which they are associated, and within their locality certain basic rules of "citizenship" may be enforced, including the requirement of ritual notification of such important changes of status as birth, death, marriage, and change of residence (Wijeyewardene, 1970: 252; Sharp and Hanks, 1978: 131–35; Terwiel, 1976: 264–71).

Although local conceptions of space and law based on territorial spirits may seem inconsistent with royal conceptions based on the idea of a "galactic polity," the two systems were probably understood to be complementary. There is reason to believe that the emergence of Theravada Buddhist kings in Thailand and neighboring areas by the early centuries of the second millenium A.D. involved an incorporation of these indigenous so-called cadastral religions into a larger political scheme. In this scheme, the capital of the kingdom became the supreme territorial center with its own marker or pillar, and the indigenous symbols of political control

associated with local spirit cults were blended with Buddhist symbols of legitimacy and authority. The king, at the center of this scheme, was indeed Lord of the Land (Phrachao Phaendin), not only in the sense of having access to all the land in the kingdom by virtue of his infinite *sakdina* but also in the sense of wielding a sovereign power supported by locality spirits from every corner of the kingdom. Thus in the traditional semiannual ceremony of drinking the water of allegiance to the king, which was administered in Bangkok and in every provincial capital, individuals swore an oath of fealty that contained numerous references to local guardian spirits and invoked their power to punish those who were disloyal to the king (Wales, 1931: 193–98).

Systems of customary law and dispute resolution associated with locality spirits were thus a fundamental part of the pre-Chulalongkorn system of royal law and government. They symbolically linked the royal authority to locality-based systems of social control that regulated marriage, land ownership, and community affairs and also provided mechanisms to resolve disputes involving such matters. When disputes arose, or when the spirits expressed displeasure because of disregard for their authority within the locality, it became necessary to perform ceremonies to identify the source of their displeasure and placate them. Intermediaries and specialists were often called in for this purpose, and the normative order associated with the spirits was thereby restored.

The customary law associated with these locality-based religions thus distinctively defined individuals and their social obligations and identities. *Who* one was could not be separated conceptually from *where* one was, and legal obligation was inextricably linked to the human and supernatural community to which the individual belonged. Because the system was founded on the principle of locality, the individual personality was defined in terms of kinship, community, and geographical location. In matters such as marriage and land ownership, then, community approbation and conformity to local traditions as well as to the particular requirements of the locality spirits were all extremely important. Disputing and dispute resolution were grounded conceptually in traditional culturally based definitions of persons, obligations, and norms in each community.

After the transformation of Thai law and government at the turn of the twentieth century, a radically different conception of legal obligation was articulated and enforced from the capital. At the center of this new conception was a redefinition of space as it related to law and dispute resolution. Rather than defining jural communities in terms of numerous distinctive localities, each with its own system of rules and enforcement procedures, modern Thai law carved space into a replicating pattern of equivalent units, each subsidiary to the authority of the center. Starting with the concept of the kingdom itself as a geographically bounded entity

subject to the uniform power of state control, the territory was subdivided into circles (known as *monthon*), provinces, districts, subdistricts (*tambon*), and villages. Although some of these administrative units had traditional counterparts, the concept of law and social control applied to them was unprecedented. Laws were drafted in Bangkok and applied uniformly to every person within the boundaries of the kingdom. Power, as Tambiah (1976) has expressed it, radiated outward from the capital. Local variation was now viewed as a derogation of the royal authority rather than its source of legitimacy (cf. Hooker, 1975: 4).

The new concept of law required not only that it be applied in the same way in each administrative unit but also that it be viewed as the exclusive source of legitimate norms and procedures. Whereas the traditional legal system was unconcerned with substantive inconsistencies, in theory the new system required that official law be the sole source of normative order and that any surviving customary alternatives conform to the rules of state law. Space was now demarcated on a new set of principles. Maps, surveys, and boundary lines were the instruments of choice rather than venerated territorial pillars or the "social space" of patron-client networks. Marriages were valid if they conformed to the regulations administered by government officials in district offices rather than village spirit sanctions. Land ownership was valid if it conformed to district and provincial regulations based on official maps and surveys rather than on local customs concerning ownership and use. The tendency of state law was thus to distinguish between personality and locality as legal concepts and to define all persons as individual citizens of the state, subject primarily to its civil authority rather than to village-level systems of social control. As Keyes (1977: 153) puts it:

> The role of the locality spirits in rural life has come under attack as customary law, which villagers traditionally believed was enforced by locality spirits, has given way to laws enforced by agents of the state, including village headmen in their capacity as local representatives of the state's authority. In more general terms, as the authority of the state has been widened, the authority of locality spirits has been narrowed.

Of course, this new conception of law and individual obligation never completely displaced traditional conceptions based on locality spirits and patron-client hierarchies. Rather, I suggest that by focusing on conceptions of space, we can discern a process of change that does not involve the replacement of one system by another but the continuing interplay of multiple systems of law and dispute resolution. Thai villagers, from the early twentieth century to the present, have lived in a society characterized by a multiplicity of legal orders, each with its own basis of legitimacy and coercive force, each formally severed from the other, with the offi-

cial system asserting an unprecedented claim of dominance and exclusivity.

The implications for disputing and litigation should be obvious. Individuals in twentieth-century Thailand must maneuver through a complex world in which claims that are valid in one context may be invalid in another. Disputants must utilize strategies that will place them in the most advantageous forum while at the same time guarding against an opposing strategy that might move them into a disadvantageous setting or against official efforts to suppress behavior that was once normatively correct. My research was conducted primarily in the Chiangmai provincial court, so many of the cases I studied involved disputes that had moved from customary systems—village-level mechanisms or patron-client mediation—into the formal system. One claim for compensation, for example, was invalidated by the court because it was asserted by the father of an accident victim, and the court discovered that his marriage to the victim's mother had never been officially registered with governmental authorities. The failure to register a marriage at the district offices had no significance within the village, where traditional ceremonies legitimated marital relationships, but it proved to be the all-important consideration when the case entered the governmental court system (see Engel, 1978: 120–24).

Similarly, a number of disputes over land turned on the validity of official documentation. Typically, the allegation was that documents granting ownership to one party had been forged or obtained by fraud. Complaints would allege, for example, that the thumbprint of an illiterate plaintiff was obtained by making him drunk or by concealing the true nature of an instrument whose effect was to transfer important rights to the defendant. In customary terms, of course, the mere recording of a thumbprint in itself is quite irrelevant to issues of occupation or ownership, which depend chiefly on validation by the local community of humans and spirits. Within the formal system, however, the consequences can be drastic, and great importance can be attached to rights granted on paper, even when they conflict with rights conferred in a more customary manner. Those who successfully obtained such forms of documentation thus had good reason to litigate their claims rather than having them resolved in traditional forums where other definitions of ownership and obligation might have prevailed.

The Chiangmai court thus represented one forum among many in provincial Thailand, but associated with it was a distinctive system for conceptualizing persons, conflict, community, land, and space itself. Moreover, the legal system associated with the court—as contrasted with village spirits or patron-client hierarchies—was an instrument chosen by the central government in Bangkok to assert hegemony over rival legal and political systems

throughout the new Thai nation state. A critical part of the centralization of power was the redefinition of space itself. By denying the legitimacy of traditional definitions of land, territory, and community, the Bangkok government sought to forge a polity in which all "citizens" were directly linked to the norms and institutions of the state.

To summarize, then, I am suggesting that patterns of litigation and disputing in Thailand can best be understood in terms of change. I have attempted to show how transformations in the concept of space and community reveal the tensions between competing normative and political systems, each associated with its own conceptions and procedures for handling conflict. The interplay between these rival systems created a situation in which Thai villagers had to cope with a multiplicity of normative orders. While this situation presented them with new strategic possibilities for waging disputes, it also created new hazards and new pressures to conform to unfamiliar norms and procedures. Changes along these lines have continued in recent years. Commentators have noted an increasing penetration of village life by external economic and political forces and a consequent weakening of local ties and systems of social control. As this process continues, we can expect further change in patterns of conflict and litigation in Thailand.

This general approach casts litigation in a rather different light. Court use is now seen as part of a complex process that must be interpreted in terms of *all* its relevant parts. The concepts employed by the court—territory, jural community, land ownership, citizen, case, and so forth—emerge as an aspect of the claim made by the central government against rival sources of authority rather than as analytic categories that have validity in some general or abstract sense. Taking a dispute to the Chiangami court may thus represent a victory of sorts for the state regardless of the case outcome. A careful reading of the cases, however, cautions us that such conclusions should not be pushed too far. Nongovernmental norms and concepts can also be advanced through litigation in the Chiangmai court (see Engel, 1978: 118–49). For every category of dispute we should certainly want to know a great deal more about the context in which the conflict arose and the local significance of litigation as compared with other ways of handling such matters.

III. CONCLUSION: LITIGATION, SOCIAL CHANGE, AND CULTURAL INTERPRETATION

A research emphasis on meaning as well as behavior and on unofficial as well as official categories and concepts thus draws us continually to the broader context within which the court functions. The seemingly simple act of filing a claim in court raises some very complex interpretive problems. The most fundamental

concepts employed in litigation research, such as time and space themselves, provide us with some of the most valuable clues, for we can trace through their changing meanings the play of forces and contending systems within which the relevant actors make their choices. Comparative litigation research, conceived in this way, can take us a step closer to understanding the dynamic process of social change and its relationship to law.

It has been my assumption throughout this discussion that litigation patterns must be understood as part of the broader system of disputing and nonjudicial social control to be found in every society. I have further assumed that judicial and nonjudicial behavior of this kind is embedded in culture. A full understanding of litigation and disputing requires an analysis of the concepts, values, and normative repertoire available to disputants in a given culture.

Rather than starting with narrowly predefined "official" categories whose applicability outside specific institutional or cultural settings is questionable, we might well begin by asking which analytic categories are significant from one social context to the next and what content or meaning they might have. For example, a broader consideration of conceptions of space and community in Thailand drew us immediately into issues of change and social transformation. In Thailand and elsewhere, change appears to be associated with a proliferation of dispute forums and normative systems in which conflict might be handled. Static pictures of the societal context of litigation and disputing usually miss this important point. Litigation and disputing can be understood only in terms of the dynamic forces of change and social transformation operating within a culture.

Disputing in Thailand, in an Illinois county, and perhaps in all settings is largely a matter of coping with and maneuvering among this multiplicity of normative systems. Litigation and disputing are profoundly affected by the continuing interplay and interaction between alternative systems, driven in part by choices of the disputants but also by external economic and political forces that produce new power relationships in the society. The range of issues raised by this form of analysis thus takes us beyond the local scene to questions of state power and community autonomy as well as the battle for control among various groups within a given community. Thus, not only are disputing and litigation inextricably linked to change and the multiplicity of normative systems, but much conflict seems to be *about* change. Beneath the ostensible subject of many disputes, we may find a submerged conflict over the direction and significance of change itself.

Comparative litigation research should seek ways to explore the complex and dynamic social and cultural settings in which litigation and disputing occur. We have surely had enough of the two-dimensional and ahistoric characterizations that conclude that

society A has a litigious culture while society B does not, or that rural, close-knit communities are noncontentious while urban, anomic communities are litigious and assertive. It is time to go beyond such generalizations to an examination of the cultural meanings of conflict, claims, and consensus in societies experiencing different kinds of transformations. Through this kind of rich and open inquiry into the social context of litigation, we may begin to discover the range and meaning of the variations that we have sought from the beginning to explain.