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Rights as Wrongs: Legality and Sacrality in Thailand

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Abstract: *Interviews with injury victims in northern Thailand (Lanna) conveyed a pervasive sense of injustice in their daily lives but a notable absence of the language of rights. Despite the proliferation of rights-based discourses, organisations, and institutions in Thai society, interviewees tended to disfavour the pursuit of rights because they believed that resort to the legal system would subvert Lanna traditional practices and would add to the bad karma that caused their suffering in the first place. This article traces fundamental contradictions in northern Thai concepts of justice arising from the imposition of “modern” systems of law and religion by the central Thai (at that time Siamese) government in the late nineteenth and early twentieth centuries. It views the legal modernisation project as a continuation of earlier efforts to impose central control over outlying regions by curtailing what were viewed as deviant cultural practices in order to weaken rival political, religious and legal traditions. The transformation of law in Lanna – from the Mangraisat tradition to a European-style legal framework – should therefore be viewed in conjunction with other cultural and political transformations initiated from Bangkok. Current expressions of disaffection and confusion about justice are rooted in this broader historical process.*

Keywords: *Thailand, Lanna, justice, law, religion, injury, Mangraisat*

Introduction

Contemporary Thailand echoes with cries of injustice, but Thais have found it nearly impossible to communicate about justice across divides of region, class and political party. It has become as difficult to define justice in Thailand as it is to obtain it. Geography plays an important part in shaping these different perspectives. In the often rancorous public debates of recent years, there are indications that citizens of the north and northeast may hold views on justice issues that differ from those of people living

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in Bangkok, the central region, and the south. This article will suggest that some of these differences have deep roots in Thai history and extend back to premodern understandings of law, religion and society. It is worth noting that legal modernity arrived on different terms in different parts of the country. The imposition of modern, rights-based law in Thailand had a mixed and even paradoxical reception outside the capital city of Bangkok.

The following discussion of justice in Thailand draws on a research project set in the north, a region of Thailand known historically as Lanna.¹ This study explored the ways in which Lanna residents, treated in a local hospital, dealt with serious physical injuries caused by another person.² It attempts to understand the excruciating dilemmas they confronted when they pursued their rights – or, more accurately, when they *rejected* the option of pursuing their rights. Their experiences may shed light on broader struggles with justice issues in contemporary Thailand. It is no coincidence that Lanna is home to key leaders and numerous followers of the populist “red shirt” political movement, including former Prime Ministers Thaksin Shinawatra and his sister, Yingluck Shinawatra.

This article suggests that modern law came to Lanna as part of a total package aimed at subverting Lanna’s culture and religion as well as its unique legal traditions. When interviewees in the injury study rejected modern law they were also affirming Lanna cultural identity in the face of what they perceived as encroachments by outsiders. Unfortunately the rejection of law and legal rights tended to cut injury victims off from any practical remedy, since customary Lanna remedial institutions have now become largely ineffective in injury cases. They could no longer get justice through familiar Lanna-based practices; but to invoke other justice institutions, including those of state law, appeared futile as well as a betrayal of fundamental norms and values. Ironically, the invocation of state law seemed to them to be a step toward the acceptance of injustice – a dilemma that produced a sense of frustration, anger and loss. They believed that the language of justice in Lanna was neither heard nor understood elsewhere in Thai society.

Popular Understandings of Justice in Contemporary Chiangmai

When they were given the opportunity to discuss their views of justice and injustice, the men and women we interviewed in Lanna – farmers, labourers, clerks, merchants and government officials – responded with a discourse that had little to do with law and rights. Their view of justice was not rights-based but drew instead on three elements that tended to contradict the neutral, secular and universalist premises of legal modernity: (1) *Locality* – justice practices should and do vary depending on the village, province or region in which disputes arise;³ (2) *The sacred* – justice, and indeed law itself, is rooted in and inseparable from Buddhism and spirit-based beliefs and practices; and (3) *Community* – justice has meaning only within a relational matrix that connects disputants to fellow villagers or townspeople and to one another.

Justice defined in terms of these three elements – locality, the sacred and community – was embedded in Lanna culture and identity, but interviewees’ references to Lanna culture were complicated by the sense that longstanding practices were in decline, a process hastened by the intolerant attitudes and policies of people from central Thailand. For example, Bancha,⁴ a 39 year-old custodian and grounds keeper, spoke

with resentment about the “Thai people”, which was the term he used to describe central Thais. Bancha referred to natives of Lanna not as Thai but as *khon müang*, the people of the northern principalities. He complained that “Thai people” come north to Chiangmai as tourists and view *khon müang* with curiosity and condescension, almost like zoo animals. They photograph exotic spirit-based ceremonies “to display as something strange” while thinking, “What are these people doing? This isn’t proper or acceptable religious behaviour”.

To the Bangkok-based outsiders, Lanna religion and culture indicate “primordial attachments” (Keyes, 1971, p. 559) to premodern, improper and uncivilised beliefs and practices. In Bancha’s words:

They say things that aren’t very nice about our customs. They say we are ignorant and stupid and things like that. We are backward and ancient creatures like turtles. Sometimes we feel offended. Whenever I hear this sort of comment, I feel personally offended.

Bancha views Lanna culture as embattled and disparaged, and part of the problem is its distinctive understanding of justice. Lanna justice is not based on the pursuit of individual interests but on conformity to the wishes of the spirits and the customary remedial practices of the locality. When conflicts arise, reconciliation of the disputants is essential, even if the outcome might be unfair when measured by some external objective standard. Litigation in a court of law, by contrast, produces either-or, winner-take-all outcomes and cannot provide this sort of inter-subjective reconciliation. Furthermore, as we shall see, the pursuit of legal remedies could have dangerous karmic consequences.

Phakdee, a 36 year-old Chiangmai merchant who had been injured by a drunk driver, agreed with Bancha. Rather than insist on compensation from his injurer, who was a fellow villager, Phakdee settled for a very small token payment. He told us that if he pursued his legal rights in the Thai court system it would actually produce injustice rather than justice. In effect, Phakdee rejected the basic premises of modern legality in his assumption that justice norms should not transcend the particularities of time, place and situation, and the acquiescence of the disputants:

Justice can’t be the result of a legal decision. Rights are fixed and defined by the law, but justice isn’t based on a verdict. We can’t tell what justice will be. It depends on the feelings of satisfaction of the two parties.

Manit, a 31 year-old villager who was also injured in a highway accident, agreed with the idea that justice resided in the subjectivity of the two disputants and their agreement to the outcome rather than in the imposition of judgment by an institutional authority such as a court of law. In Manit’s case, the other driver admitted fault but was unable to pay the full amount of Manit’s medical expenses and lost wages. The two sides got together one evening in Manit’s house, accompanied by a small group of friends and relatives. After cordial discussions, which took into account Manit’s loss and the injurer’s limited resources, they settled on a payment of only 3,000 *baht* (approximately US\$75 at that time). Even though this outcome left Manit much worse off than he would have been if he had pressed the matter or brought a criminal or civil complaint – thereby

forcing the other party to borrow additional funds from friends or relatives – he was satisfied with the behaviour of the other driver and thought that the compromise agreement represented justice.

Bancha himself offered a somewhat different example of justice through compromise. Once he had settled a fight between two drunken villagers who disagreed over their bar tab. Bancha told the two men:

You're friends, aren't you? Where is justice? Justice is in your relationship. It should be peaceful and bring you happiness. If you fight, you won't have justice together. You will be enemies to one another. *You must give each other justice* (emphasis added).

For Bancha, justice was not about right and wrong. It required that “[b]oth sides should be able to understand each other. Justice should give equally to both of them”.

All three interviewees – and many more like them – emphasised the mutuality and inter-subjectivity of justice. The paramount concern in rendering justice is to attain clarity in the minds of the disputants (compare French, 1995, pp. 75–76) and for both sides to recognise that achieving balance and preserving the bonds of friendship and community must take priority over the vindication of individual rights and interests.

It is possible that the residents of other regions in Thailand would express similar understandings of justice, which would mean that Bancha and others were incorrect in their claim that Lanna justice views are unique. What matters in this consideration of the Lanna perceptions of justice, however, is their very strong *belief* that these views are geographically distinctive, that they are part of Lanna culture and not shared by “Thai people” generally. As Prayat observed:

People in Lanna, maybe we just have meritorious spirits. That's just how we are. If something is destined to happen, then we just let it go. This has to do with our moral code, the ethics we learned in school when the religious teachers instructed us... [W]e keep that sort of thing in our minds at all times. That's why our society is like this.

The sense that justice is embedded in Lanna religious and cultural practices and is opposed by the Thai nation-state is actually supported by a long history of interactions between Lanna and central Thailand. A brief overview of this historical context may suggest why contemporary understandings of justice have become so embattled and contentious.

Premodern Law and Religion

Why did these men and women draw such sharp distinctions between Lanna justice and the law of the Thai state? Why, in their minds, has the pursuit of justice come to mean a rejection of individual rights? The story begins in the late eighteenth century, roughly one hundred years before the creation of the modern Thai legal system.

After the Burmese destroyed the Siamese⁵ capital of Ayutthaya in 1767, and after the “abortive reconstruction” attempted by King Taksin in Thonburi (Wyatt, 2003,

p. 122), the current Chakri Dynasty was founded in Bangkok by King Rama I in 1782. Many of the pre-existing law texts had been lost when Ayutthaya was sacked, and Rama I became convinced that the extant law codes were inadequate and unjust. Accordingly, he formed a committee to revise and purify the law in conformity with the Pali canon (Hooker, 1978, p. 25; Terwiel, 2005, p. 81; Harding and Leyland, 2011, p. 5). In 1805, the committee produced a new codification, known as the Law of the Three Seals (*kotmai tra sam duang*). According to conventional histories of Thai law, it was this “premodern” code that remained in effect until King Rama V (r. 1868–1910) set out to replace it with a European-style system of courts and law codes. Rama V’s aim in part was to bring greater efficiency to a polity administered rather ineffectively from Bangkok by a bureaucracy whose functions and territorial responsibilities had become hopelessly tangled over time. In addition, he feared that the English and French on Siam’s borders would encroach on her territory – or even take over the entire country – under the pretext that Siam’s laws provided insufficient protection for foreign nationals and their commercial interests. By creating a European-style legal system, he contended, Siam could pre-empt such negative judgments and ward off colonisation (Engel, 1975, p. 66).

It is somewhat misleading, however, to say that Siam’s new courts and law codes replaced the Law of the Three Seals. The reach of Bangkok-based law across the various regions of what is now Thailand was problematic at best throughout most of the nineteenth century. When Rama V ascended the throne, Siam was certainly not a unified nation-state with clearly demarcated boundaries (Winichakul, 1994). The north, northeast and southern regions of what is now Thailand were not securely integrated into the Bangkok-centred polity, and Lanna itself had experienced both Burmese and Siamese hegemony since its founding in the late thirteenth century. Indeed, Lanna had been indirectly or directly governed by Burma from 1558 until 1782, and thereafter had enjoyed considerable autonomy under its own royal line, the Chao Chet Ton Dynasty, until growing Siamese influence culminated in Lanna’s incorporation into the emergent Siamese nation under King Rama V (Ongsakul, 2005).

As Loos has observed, King Rama V’s aim was not only to ward off colonisation by the English and French but also to fulfil his own “imperial ambitions” (Loos, 2006, p. 2) by gaining dominion over the outlying regions of his kingdom. When Rama V attempted to introduce “modern” law and a centralised administrative system, he also aimed to reduce the power of Lanna’s local rulers and curb the traditions that constituted her unique identity (Ongsakul, 2005, p. 185). Those traditions included both a highly distinctive version of Theravada Buddhism and a vibrant legal tradition, recorded in palm leaf texts known as *Mangraisat*, the *sāstras* of King Mangrai, who was the legendary founder of Lanna and its capital city of Chiangmai.

In short, there is a different way to tell the story of legal modernisation in Thailand. According to this alternative account, modern law did *not* replace the Law of the Three Seals for most citizens of the new nation-state. In premodern Siam, the Law of the Three Seals had a geographically limited effect on the resolution of disputes and was confined mostly to the central region.⁶ Other regions had their own legal arrangements and texts. The influence of premodern Bangkok-based law on the legal traditions of the surrounding regions varied with time and circumstance. As Huxley (1996, p. 5) explains:

The assumption that Thai laws were applied exclusively within defined frontiers is inconsistent with an important theme in contemporary Thai historiography. Numerous authors from Edmund Leach to Sunait Chutintaranond have taught us to think of the territory ruled by a S.E. Asian king as being of obscure extension, porous at its periphery, concertina-like in its capacity for rapid expansion and contraction.

To the extent that these distinctive regional legal traditions continued to resist external influence and authority, they represented, from Bangkok's perspective, a serious problem confronting its efforts to establish a new nation-state in the late nineteenth and early twentieth centuries. Yet, Bangkok's attempt to solve this problem and supplant Lanna law and culture did not originate with Rama V's modernisation project but was part of a recurrent pattern dating back to at least a century before Rama V's reforms.

To understand this alternative historical narrative, it is important to recognise that it is only from a modernist perspective that the constituent elements of justice in Lanna – law, religion, custom and culture – are separable from one another. In the *Mangraisat* tradition, all of these components were intermingled and fused to produce a seamless, integrated conceptualisation of justice that was understood similarly by Lanna villagers and princes. Since Bangkok-based leaders from the very beginning of the Chakri Dynasty recognised the holistic nature of the Lanna concept of justice and its religious and cultural roots, they assumed that political control over Lanna and other regions could never be achieved without controlling the entire justice construct – religion *and* law *and* custom *and* culture.

Therefore, as Tambiah (1976, p. 187) has observed, Rama I's promulgation of the Law of the Three Seals was closely connected to his efforts to "purify" Buddhist practices and purge them of deviations and impurities. Purification of law and religion were one and the same thing. Together they demonstrated Rama I's symbolic legitimacy as a righteous ruler at the same time that they helped him to consolidate central hegemony over rival power centres. Some provisions of the Law of the Three Seals speak directly to the deviant religious practices that Bangkok sought to root out. The Law of the Three Seals was, in Tambiah's words, "the most significant of the purification acts of the new king" (1976, p. 187).

Efforts at religious purification persisted throughout the nineteenth century. Each of the Chakri monarchs after Rama I tried to cleanse Buddhism of elements that, according to them, did not derive from the original texts and teachings. They did this in part by expelling monks who were guilty of deviant practices and by ensuring that only those with proper qualifications could perform ordinations. In this way, the King preserved the purity of the Sangha and protected the core identity of the Buddhist kingdom (Eoseewong, 2005, p. 283). These purification efforts constructed the King's identity as *thammaracha* – literally a "dharma king" – and demonstrated his legitimacy (Tambiah, 1976, p. 187). What some have called Bangkok's attempt to bring greater "rationalism" to Buddhist practice (Eoseewong, 2005, pp. 284–85), however, always pointed to the problematic issue of central control over the outlying regions (Tambiah, 1976, pp. 195–97; Ishii, 1986). Tambiah refers to premodern Siam as a "pulsating" polity in which control from the centre ebbed and flowed with changing circumstances (1976, p. 189). From the perspective of Lanna in the north, the Bangkok dynasty's efforts throughout the nineteenth century to impose its own justice concept must have

seemed a distant but real threat. Perhaps in response to this threat, *Mangraisat* texts proliferated during the nineteenth century, and many versions were copied and recopied by Lanna monks and placed in temple libraries throughout the northern region.⁷ In light of this thriving *Mangraisat* tradition in nineteenth-century Lanna, it seems quite clear that the *Mangraisat* and not the Law of the Three Seals was the primary legal authority in Lanna prior to the landmark reforms of Rama V.

This point about the precursor to modern law in Lanna is important because there were some very significant differences between the *Mangraisat* and the Law of the Three Seals. Although the *Mangraisat* texts exhibit some variation, and much of the analytic and comparative work remains to be done by specialists in the field, even a cursory reading of a number of these texts provides a good sense of their treatment of injuries.⁸ Some of the most distinctive features of the injury provisions of the *Mangraisat* texts can be summarised as follows:

- (1) Injurers' obligations to pay for their harmful actions were often expressed in terms of rituals for the locality spirits, the *khwan* (spiritual essence) of the injury victims, or the *khwan* of the fields, forests, markets or dams that were harmed by their wrongful acts.⁹
- (2) Injuries were rooted in concepts of place. The locality in which improper conduct occurred could determine both the nature of the offence and the nature and extent of the injurer's obligations. Conduct that was considered harmless in one locale could place villagers at risk if it occurred elsewhere, because there it offended the locality spirits and required ritual propitiation.
- (3) Typically, the relevant legal subject was a group and not the individual whose body was injured. Harm to the *khwan* or conduct that offended the locality spirits damaged the well-being of an entire relational network, not just the person who suffered a broken arm or leg. The wrongdoer's resulting obligations had as much to do with restoring order in the community as with the particularities of the injury victim's loss.
- (4) The physical aspects of injury were secondary to their nonphysical qualities. One way of expressing the harm caused by an injury was to say that the victim's *khwan* had flown out of the body. But the victim's *khwan* did not exist in isolation. It was closely connected to the *khwan* of others in the community, or to the *khwan* of important physical features of the village, so incorporeal harm to one was harm to others as well.
- (5) *Mangraisat* texts reveal a wholesale integration of rituals, social practices and customs from all levels of Lanna society. The sacred legal texts incorporate cases that appear to have occurred in actual village settings, and they reflect local customs, rituals and religious beliefs.

In certain respects, these characteristics of the *Mangraisat* differed significantly from comparable provisions of the Law of the Three Seals. The concept of *khwan*, for example, which is so prominent in the *Mangraisat* texts, is almost completely absent from the Law of the Three Seals, where it is mentioned only twice in five volumes (Ishii et al., 1990, p. 248). Similarly, the injury-related provisions of the Law of the Three Seals do not, for the most part, refer to locality or guardian spirits of any kind; and, of course, the Law of the Three Seals makes no provision for Lanna customary practices.

It was no accident that these key *Mangraisat* elements do not appear in the Law of the Three Seals. After all, the aim of Rama I, like his successors throughout the nineteenth century, was to curb or eliminate deviant and doctrinally impure practices. The persistence of non-Buddhist, community-based religious elements in the *Mangraisat* texts demonstrates the vitality of Lanna law, culture and religion in the face of Bangkok's recurring efforts to assert authority over them.

The Advent of Legal Modernity in Lanna

In the conventional narrative of legal development in Thailand, Rama V and his princes are the agents of modernity who established a national legal regime based on what Weber would term formal rationality. Abandoning the Law of the Three Seals and the premodern administrative apparatus he had inherited from his predecessors, Rama V adopted the trappings of a European nation-state. Lanna, then, received modern law in the form of new courts, judges, legal administrators and law codes imposed from Bangkok. Lanna's legal institutions became indistinguishable from those in other parts of the nation-state. But what did legal modernity really mean to the residents of Lanna, and how did they understand the new concept of "justice" it delivered to them?

Nidhi Eoseewong has cautioned that the appearance that Thailand has become a modern secular state is only "superficial", since "Thailand has not passed through a process of decisively separating state and religion as in Europe" (Eoseewong, 2003, p. 9). He notes that the reforms of Rama V, which included the promulgation of secular law codes, were entirely consistent with – and not a departure from – the premodern principle that the King must use his power to purify and protect Buddhism:

One purpose of holding power hence is to promote and nurture Buddhism. It can be counted as one of the important purposes of government. The state thus arises for Buddhism. The ruler has the duty of defending Buddhism from being troubled by bad dogma. At the same time, he deploys royal power to create conditions for all the people to accumulate the king's *barami* [prestige, influence, grandeur] so he may progress through the cycle of rebirth to attain nirvana. This purpose can be seen clearly from the reigns of King Taksin and King Rama I onwards. The reform of government and religion in the Fifth Reign did not affect this important principle (Eoseewong, 2003, p. 9).

Under Rama V, purification of religion and law continued to be closely interconnected, even when the type of law adopted in the Fifth Reign reflected principles of European secularism. As Eoseewong (2003) observes, Rama V's goals and methods were similar in many ways to those of his predecessors as he moved decisively to gain control over rival power centres in Lanna and other outlying regions.

Bangkok's campaign of cultural and political conquest met with resistance, especially in the north and northeast (Isan), which are, of course, the current strongholds of the populist red shirt political movement. One history of the period (Baker and Phongpaichit, 2009, p. 56) summarises the violence and unrest produced in these two regions by Rama V's reforms:

In 1895, villages in Khon Kaen revolted and excluded officials for three years. In 1889–90, some 3000 opposed the new administration in Chiang Mai. In 1901, 2500 rebels joined a millenarian revolt in the Ubon area of the northeast. In 1902 ... rebels took over the northern state of Phrae, and smaller incidents occurred in Lampang and Lamphun... In Lanna, rebels attacked the new government offices, and vowed to drive out the Siamese officials and Chinese tax-farmers... The northeastern rebels sacked the town of Khemmarat on the Mekong, and then set off towards the provincial capital of Ubon. Their stated aim was “to establish a kingdom which was not under either the Siamese or the French”.

The people of Lanna, then, like their counterparts in Isan, seemed to recognise with some dismay that their religion, law and culture were under attack.

A number of scholars have described the tumultuous impact of Rama V's religious reforms on Lanna. As Loos (2006, p. 23) has observed, the Bangkok government's view of nonconforming regional practices was marked by “the conflation of unorthodox Buddhist practices with political treason”. The National Sangha Act of 1902 aimed to give Bangkok control over the administration of temples throughout the new nation-state and attempted to ensure that only “orthodox” preceptors could ordain new monks:

The significance of the 1902 Sangha Act lies in its laying of foundations for a structure in which the authority of the king as “defender of religion” extended nationwide, and in which, through the ecclesiastical hierarchy, all monasteries, from the largest in the capital to the smallest in the outlying regions, and all monks and novices, were brought under the sway of that authority (Ishii, 1986, p. 72).

Lanna residents understood this effort in terms of the historic pattern through which the Bangkok-based monarch sought to extend his power by curbing the supposedly deviant religious-legal-customary practices – all the constituent elements of justice, in other words – that were the heart of Lanna culture. They had seen this before, as Rama V's predecessors had made similar attempts to impose what Lanna residents considered an alien ideology on their society. And they resisted, or at least some of them did.

Resistance to this latest effort at religious and legal purification was expressed most visibly in the person of Khruba Siwichai, a charismatic and highly influential Lanna religious leader. Siwichai became a symbol of Lanna Buddhism, which differed from Bangkok orthodoxy in its “accommodative attitude towards popular animistic religiosity”, its use of northern language and texts, and its endorsement of the legitimacy of religious leaders known as *ton bun*, whose “asceticism and *bodhisattva* qualities led their followers to attribute to them a range of supernormal powers, such as discerning other people's thoughts, clairvoyance and ability to ward off malevolent spirits” (Cohen, 2000, p. 142). Khruba Siwichai's thousands of followers in Lanna attributed these extraordinary powers to him. He embodied the form of religiosity that was under attack by Bangkok.

Khruba Siwichai's resistance to Bangkok's centralisation and purification efforts has been well documented. He defied the new law and continued to ordain monks according to the Lanna tradition. As a result, he was summoned twice to Bangkok and

confined there, even as thousands of his followers demonstrated their support (Tambiah, 1984, p. 304). The stakes were clear. Khruba Siwichai had become a beloved symbol of the effort to preserve Lanna culture, religion and law. He remains so today.

In 1935, Khruba Siwichai reached an accommodation with Bangkok. According to Sarassawadee Ongsakul, he agreed not to ordain new monks in exchange for an assurance that the central government would become “a bit less strict about local practices” (Ongsakul, 2005, p. 213). To appreciate the connection between Bangkok’s religious and legal reforms, it should be noted that this accommodation occurred during the same year as the promulgation of the Civil and Commercial Code of Thailand and three years after enactment of Thailand’s first Constitution following the Revolution of 1932. Sarassawadee goes on to observe, “Khruba Siwichai symbolized the last wave of opposition to administrative reform in Lan Na” (2005, p. 213), but it is noteworthy that outward expressions of resistance to centralisation and “modernisation” under Rama V and his successors continued as long as they did – for at least 40 years. Some would say that they continue into the present.

What do Khruba Siwichai’s struggles have to do with legal modernisation in Lanna? It is not unlikely that the new law codes appeared to Lanna residents to be simply one part of a broader effort by central Thailand to “purify” Lanna culture and eliminate the very underpinnings of both Lanna customary law and the written *Mangraisat* tradition. Law in Lanna had no meaning apart from the religious and cultural practices that were under attack. “Rational” law and “rational” religion arrived in Lanna as a single package. What was seen from one perspective as the arrival of modernity was viewed from the Lanna perspective as yet another effort to wrest power from local leadership and secure Lanna’s subordinate position within the Bangkok-centred polity. This pattern was not modern; it was deeply rooted in Thai history. In another sense, however, Rama V’s reforms were unprecedented in their effectiveness. The tools of the European nation-state had an unrivalled capacity to crush Lanna laws and legal traditions. The most notable quality of modern law from the Lanna perspective was not that it was rational or secular but that it was irresistibly powerful.

Justice after Modernity

Modernity in the form of Rama V’s new legal system dealt the Lanna justice concept a powerful blow, but Lanna-style justice did not simply disappear. Throughout much of the twentieth century, Lanna justice persisted in a parallel universe outside the formal legal system. Far from the new courthouses of the Thai state, village mediators continued to bring the parties together to resolve conflicts through compromise rather than through the adjudication of legal rights. Spirit mediums continued to voice the concerns of locality spirits, whose wishes were commands to those who lived in the village. Injurers were still required to provide rituals to placate the spirits and restore the *khwan*. Buddhist principles continued to moderate the demands of persons who suffered injuries, and the law of karma provided assurance that wrongful actors would ultimately receive their punishments (Engel and Engel, 2010).

Occasionally the mechanisms of traditional justice broke down or were unavailable to handle certain kinds of claims. When that happened, some disputants made use of state institutions to bring pressure on their adversaries and compel them to come to

terms. In the 1960s and 1970s, a small but steady stream of injury cases entered the Chiangmai Provincial Court, where they were negotiated and later withdrawn (Engel and Engel, 2010, pp. 75–79). Evidence from the case files suggests that the aim of the plaintiffs in these lawsuits was not the vindication of rights but the enforcement of traditional customary norms. The Lanna justice concept lived on in the interstices of modern law.

It was only near the end of the twentieth century that this symbiotic relationship between formal and customary law appeared to weaken. The court played a diminished role as a forum of last resort for enforcing customary Lanna norms, and the rate of litigated cases per injury appeared to drop significantly (Engel and Engel, 2010, pp. 100–08). As a result of economic, technological and demographic changes, there was a weakening of Lanna cultural institutions. Injury victims were less familiar with traditional remediation practices. Many had taken up work in the city and were far removed from village shrines and ritual experts. Away from the watchful eyes of the locality spirits, Lanna residents at the beginning of the twenty-first century turned increasingly to forms of Buddhism that were not anchored in village practices but were accessed on radio, television or the Internet. These non-Lanna Buddhist teachings emphasised general concepts, such as the law of karma, mindfulness, forgiveness, compassion and non-attachment rather than spirit-based remedial practices. Most of the interviewees understood such teachings to counsel them against the aggressive pursuit of their own rights. Indeed, they viewed rights-based claims as selfish and materialistic, since they no longer represented the interests of an entire community. By asserting rights in response to injury, they now feared that they would violate Buddhist teachings and create more bad karma. In the end, this would lead to further suffering and misfortune for them and for members of their family (Engel and Engel, 2010).

Although the Lanna justice concept had lost its operational effectiveness, it was not replaced by modernist conceptions of justice. Injury victims faced a Hobson's choice: the conceptual coherence and local effectiveness of Lanna justice concepts had begun to fade but legal modernism remained an alien, dangerous and potentially counter-productive alternative. Consequently, most of the interviewees expressed frustration and even anger when they spoke of justice and injustice. As we have seen already, individuals such as Phakdee, Manit and Bancha retained a sense of what justice looked like from a Lanna perspective, but they felt it was increasingly difficult to attain. Moreover, they associated some of the institutions of the modern Thai state with an almost daily denial of justice. They did not know how to resolve this issue; but they thought that Bangkok and the central Thai government were part of the problem and not part of the solution.

The Dilemma of Rights

Do recent conflicts over justice in Thailand have some connection to the prolonged resistance to modernisation and centralisation that occurred in the first several decades of the twentieth century, particularly in the north and northeast? Did some elements of this cultural stream run underground in the later part of the twentieth century only to resurface in recent years? Of course, contemporary political movements and alliances are complex phenomena and grow out of many diverse elements, but it is striking to

see the discursive continuities with Lanna's past and to discover that the framework of legal modernity remains so marginal – and even suspect – to ordinary people who live in Lanna.

The injury victims in this study were not politicians or political activists. Yet they made it clear that Lanna-style justice concepts remain important in the everyday lives of ordinary people. They spoke of modern legalism as alien to Lanna and the assertion of rights as a transgression of their own cultural norms. Southerners, which was what they called central Thais, do not understand their way of life. Southerners' cultural practices, their language, even their way of dress, represent a threat to Lanna traditions. Like the beautiful and innocent young northern women who are seduced and abandoned by southern men in popular stories and songs, such as *Kulap wiangphing* [Rose of the North], Lanna itself is vulnerable to deceit and destructive behaviour by predators from Bangkok:¹⁰

Women of the North
Don't ever believe the words men speak;
You will die from the pain of a broken heart.
Men from the South are deceitful.
Once they have us, they leave us in tears.
If you give in to their words,
You will be tricked.

Early in this article, we saw that Bancha illustrated the Lanna concept of justice with a story of two friends who fought over the cost of their drinks and required Bancha to serve as mediator. In the same conversation, he told another story about justice and injustice, a story that was surprising but revealing. His 6 year-old daughter had recently lost a 60-metre footrace in her school because a classmate pulled on her shirt from behind. When Bancha's daughter complained, her teacher told her, "never mind" (*bo pen yang*). Bancha's daughter protested, "That's not justice!" Astonishingly, she used a legalistic phrase, *mai yuttitham*, which even our adult interviewees had never invoked. Apparently her teacher was also taken aback by this use of modern legal discourse in the playground, and she delivered a lecture to the class about justice and injustice. In her stirring response, however, the teacher rejected the language of rights and reminded the children that, in Lanna, justice comes from harmonious relationships:

Children, this kind of behaviour is not proper. We should always have a sense of harmony and unity [*khwam samakkhi*] toward one another. Whatever we do, we should do it for the team. We are all friends. We shouldn't try to trick [*klaeng*] one another. If we do, we will never obtain justice. Instead, we will only create problems and all of the children will be at odds with each other.

Bancha strongly approved of the words of the teacher. The story about his daughter seemed to reconcile divergent elements, starting with a legalistic protest and ending with a Lanna-style plea for relational and inter-subjective justice. Nevertheless, reconciling

these different elements in other contexts remains highly problematic, particularly to the extent that legal modernity itself is seen as an external and oppressive force that produces bad karma and injustice. Bancha struggled with these contradictions. As he complained about the condescending attitudes of outsiders who visited Lanna and treated *khon müang* like zoo animals or ancient turtles, he made the following statement:

They [meaning “Southerners”] really should understand our customs and traditions. They simply look down on us. Thai people don’t respect our rights. After all, we are also Thai people; we hold Thai citizenship, too. But if you come to the society of *khon müang*, at least you should try to be a little understanding.

In this short but complex statement, categories are created and collapsed before our eyes. Bancha begins by distinguishing “them” and “us”. “They” are southerners. “They” are also the “Thai people”. “We” by implication are not Thai people but *khon müang*, the people of the northern region. Thai people, who are outsiders to Lanna, “don’t respect *our* rights” – that is, the rights of *khon müang*. Why do *khon müang* hold rights? Because, he says, we are also Thai people. “We” are also “they” – citizens of the Thai state – although we are *khon müang* by culture and ethnicity.

Bancha’s reference to rights was almost unprecedented in these interviews. Rights were simply absent from the vocabulary of the interviewees, even in discussions focused directly on issues of justice. Yet here Bancha characterises the culturally oppressive practices of outsiders as a rights violation. Since the people of Lanna are also citizens of the Thai nation-state, they have rights that demand respect and understanding. Yet Bancha is also aware that rights themselves represent part of the legal-religious-cultural package that was aimed in some senses at the elimination and not the protection of *khon müang* as a separate social group. The essence of justice for *khon müang* is the rejection of rights, which are selfish and destructive of both self and community. Rights, which could protect *khon müang* from disrespect, are themselves a kind of Trojan horse that will destroy Lanna (Panikkar, 1982).

Conclusion

The conundrum of rights is not unique to Lanna but is a dilemma faced by victims of oppression and exclusion around the world. Studies of rights discourse in American society have demonstrated that those who hold rights often shrink from asserting them because they fear being branded as different and separate from the very society in which they seek inclusion (Minow, 1991; Engel and Munger, 2003). Rights can undermine social identity even as they empower those who assert them, and potential rights-holders often view rights with ambivalence. Yet the dilemma of rights in Lanna goes beyond concerns about social inclusion and exclusion. The deeper problem with rights from the Lanna perspective is that they are part of an invasive worldview that threatens core beliefs, values and social institutions. To invoke a rights-based form of legality may have negative consequences not only for the individual but also for the community and the sacred things, *sing saksit*, on which the community depends.

How then is justice to be defined and achieved? For those to whom we posed this question, justice was defined against the law and against the Thai state, not in alignment with them. If law itself is the problem, it is little wonder that debates over justice

in Thailand have been so spectacularly unproductive. Whether modern rights-based legal concepts can provide a way out of this dilemma remains highly uncertain, since they were in a very significant sense the cause of the conflict itself.

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Notes

1. “Lanna” means literally “a million rice fields”. Its political and social origins are associated with the rise of Tai principalities throughout the region in the late thirteenth century and, in particular, with the founding of Chiangmai by the legendary leader, King Mangrai, in 1296 (Wyatt, 2003; Ongsakul, 2005).
2. The study was based on extended ethnographic interviews conducted from 1998 to 2000 with more than 100 individuals, including village leaders, monks, spirit mediums, lawyers, insurance adjusters, judges, academic researchers and others. The core of the research consisted of interviews with 35 injury victims who were recently treated for serious harms at a major Chiangmai hospital. In addition, research was conducted in the Chiangmai Provincial Court, where the files of all injury cases litigated from 1992–97 were identified, photocopied and analysed.
3. A more extensive discussion of law and locality appears in Engel and Engel (2010, pp. 47–76).
4. All names are pseudonyms.
5. In this paper, “Siam” refers to the kingdom prior to its official name change to “Thailand” in 1939.
6. Streckfuss notes that the text of the Law of the Three Seals was not publicly circulated until 1863: “King Rama I had only three copies of the *Three Seals* made; one copy was given to the top judge, one the king kept near his bed, and the third was locked up in the royal library... Ironically, a foreigner and Thai nobleman printed the first copies of the *Three Seals* during the reign of Rama III (1824–51), thus making these laws available to local courts. Rama III, however, reconsidered, fearful that the profane act of printing would strip the laws of their sacred quality. He instead had the copies collected and burnt. Only in 1863 did King Mongkut (Rama IV) allow the *Three Seals* to be printed” (2011, p. 71).
7. According to Huxley (1996, p. 1), by 1989 at least 183 Lanna law texts had been discovered and made available on microfilm.
8. Few *Mangraisat* texts are available in English. An exception is the transcription and translation into English of a text from Nan Province (Wichienkeeo and Wijeyewardene, 1986). A brief description of the *Mangraisat* conceptual framework in Lanna society appears in Engel (2011, pp. 246–48).
9. Keyes (1977, p. 116) defines and describes *khwan* in the following passage: “This ‘vital essence’ exists in plural forms, occupying 32 parts of the human body, according to the Thai belief... In practice, villagers throughout the region think of the ‘vital essence’ as a unity. The ‘vital essence’ must be in the body of the human, the rice, or the animal lest the human or animal suffer misfortune and eventually die or the rice be deprived of its nutrient quality and its fertility. Thus, periodic rites are performed in order to secure the ‘vital essence’ to the body, such rites for humans occurring on such occasions as a radical change in status, a shift of residence, or a serious accident or disease”.
10. The city of Chiangmai is also known as the Rose of the North, suggesting the song’s deliberate identification of the female victim with Chiangmai as a social and political entity.

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