UPROOTED JUSTICE: TRANSFORMATIONS OF LAW AND EVERYDAY LIFE IN NORTHERN THAILAND

DAVID M. ENGEL∗

ABSTRACT

Studies of law in everyday life tend to view law either as instrumental in shaping specific decisions and practices or as constitutive of the cultural categories through which humans apprehend their world and perceive law as relevant to a greater or lesser extent. This article, however, suggests that circumstances may arise in which law’s role in relation to everyday life is neither instrumental nor constitutive but instead becomes one of radical dissociation.

Based on a case study of injuries over time in northern Thailand, it explains how law can become uprooted from everyday life and viewed as alien to the experiences and values of ordinary people. Two transformational episodes in the recent history of Thai society contributed to this situation. The first was the creation of the modern Thai state in the late nineteenth and early twentieth century and the extension of centralized legal and political control over the northern region and other outlying areas. During this process, the organic connection between customary and written law in northern Thailand was disrupted, and customary practices were relegated to a shadowy existence outside the framework of formal law.

The second episode was the period of dramatic social and economic change that occurred at the turn of the twenty-first century and brought with it a weakening of customary village relationships and practices. Traditional remedial practices were no longer tenable even outside the official legal system. New forms of Buddhism prompted injury victims to reject state law as an alternative, since they viewed it as

∗ SUNY Distinguished Service Professor at the University at Buffalo School of Law. A former President of the Law & Society Association, he is the author of numerous books and articles about legal culture and legal consciousness in the United States and Thailand. His most recent book is TORT CUSTOM, AND KARMA: GLOBALIZATION AND LEGAL CONSCIOUSNESS IN THAILAND (2010).
inefficacious and contrary to justice as they now understood it. Consequently, law came to play neither an instrumental nor a constitutive role in the everyday lives of injury victims. After a century of state building and globalization, the dissociation of injury law from everyday life appears to be all but complete.

INTRODUCTION

Studies of law in everyday life usually conclude that law plays a pervasive and substantial role in the experiences of ordinary people. Its influence may not always be obvious. Very often individuals choose not to invoke the law or even to discuss it explicitly. Yet research has demonstrated that law’s effects are not merely direct and overt but also constitutive. Law affects ordinary people not only when it is explicitly invoked, but in subtle and indirect ways, as when it shapes the fundamental categories, concepts, identities, and relationships that constrain thought and behavior. Law can even be oppressive or hegemonic although its face is hidden from view. Are there times, however, when none of this is true, when law simply has no connection to everyday life? Under what circumstances might such a radical disjunction occur? In this article, I describe the evolution of a situation in which law appears to have become totally detached from everyday life.

When ordinary people in Lanna, the culturally distinctive region of northern Thailand, are asked what role law plays in their everyday lives, the question itself is mystifying. They respond that law for them is

---


remote, formal, and institutional. They tend not to consider law relevant or important to their own life experience, except when it confronts them during relatively infrequent, and usually unpleasant, encounters with the criminal justice system. Their perception that law is essentially irrelevant to their own lives raises important policy questions and suggests the need for caution in subscribing to the widespread assumption that the role of law is on the rise in Thai society and elsewhere in Asia.3

In a recent study of injuries in Lanna, we attempted to discern the role of law in one sector of everyday life by interviewing a cross-section of men and women who had been treated in a major Chiangmai4 hospital after involvement in serious accidents.5 As we listened to the injury victims’ extended accounts and analyses during this “pre-legal” moment in their experience, we considered how and when law played a part in their thoughts and actions, whether directly or indirectly, instrumentally or constitutively. At the same time, we studied the flow of personal injury cases in the records of the Chiangmai Provincial Court, tracing what appeared to be a steady decline in litigated tort cases per actionable injury over a thirty-year period. The detailed findings of this study are presented elsewhere.6 For purposes of this article, four conclusions are of particular importance: (1) Turn of the century social and demographic changes in Lanna drastically undermined a

---


4 Chiangmai, historically considered the capital of the Lanna region, is the name of the largest city in northern Thailand and is also the name of the province of which it is the administrative center. It is sometimes transliterated as Chiang Mai.

5 Research was conducted by the author with the collaboration of Jaruwon S. Engel and the participation of three Chiangmai-based research assistants: Duen Wongsa, Sutthira Foocon, and Rotjarek Intachote. The fieldwork on which this article draws consists of three components: (1) From a pool of ninety-three injured persons treated in the Suan Dok Hospital of Chiangmai for serious injuries, we selected thirty-five for extended qualitative interviews. The interview sample, while not representative in the statistical sense, was designed to provide variation across several dimensions, including gender, type of accident, and rural versus urban residence. (2) Additional interviews were conducted with approximately sixty-five individuals who could shed further light on injuries, law, and everyday life in Lanna. This group included lawyers, judges, insurance agents, village leaders, Buddhist monks, spirit mediums, and academic experts. (3) We surveyed the docket of the Chiangmai Provincial Court and identified every injury case litigated from 1992 to 1997. All injury case files were photocopied, read, and analyzed; and these cases were then compared to cases identified in a similar study in the same court in 1975 that covered cases litigated in the years 1965 to 1974.

6 DAVID M. ENGEL & JARUWAN S. ENGEL, TORT, CUSTOM, AND KARMA: GLOBALIZATION AND LEGAL CONSCIOUSNESS IN THAILAND (2010).
longstanding customary law of injury that had enforced remedies for several centuries at the village level; (2) As customary law declined, so did its connection to official tort law, which had previously provided a forum of last resort when village-level conflict resolution failed; (3) The severed connection between village-level practices and official law was associated with the rise of new forms of Buddhist practice and a perception that religious belief is now opposed to adversarial legalism; (4) Both the individual interviews and the court-based litigation data revealed a decline in the role of law in injury cases and a pervasive disinclination to embrace the discourse of rights.

In discussing their experiences, the interviewees did not invoke interpretive frameworks that were influenced by legal categories and concepts. As they pondered issues of causation, harm, and responsibility, they almost never suggested that legal rights and remedies had the slightest relevance to their misfortune. In this paper, I attempt to explain why the everyday lives of accident victims appear so radically disconnected from the law. I suggest that the relationship between injury law and everyday life was shaped by two transformational episodes in the modern history of Lanna: (1) its integration into the modern Thai state and its political and cultural subordination from 1890–1935, a story usually told from the perspective of Bangkok as a triumph by one of Thailand’s greatest kings over the threat of colonization; and (2) the impact of globalization on Lanna from 1980–2000, a period of dramatic socioeconomic change that drastically altered the relationship between villagers, their birth communities, and the customary legal practices that had long prevailed.

The perspective offered in this article provides a counterweight to the powerful ideology of the centralized Thai state that was famously articulated and disseminated by King Vajiravudh (r. 1910–1925) in the early twentieth century. This unifying nationalist myth was designed in part to weaken and destroy distinctive regional traditions by emphasizing an imagined whole bound together by the symbols of chat (nation),

---

7 Much of the analysis in this article draws on confidential interviews conducted in Thai with injury victims and others in Chiangmai. The fieldwork design and methodology are described supra note 5. Direct quotes are referenced by the date of the interview, but pseudonyms are used in all cases to protect confidentiality. The original Thai language interview transcripts are on file with the author. All translations into English are by the author.

satsana (religion), and phramahakasat (king). The creation of the modern Thai legal system was both a means and an end in the project of nationalism. To understand the role that law actually plays in the everyday lives of ordinary Thai people, however, it is necessary to distinguish between prescription and description and between the political aims of national leaders and the actual experiences of the citizenry. The utter irrelevance of law for ordinary people who face the devastating consequences of personal injuries may be surprising, but it provides an important clue. It may help to explain what happened during the twentieth century to the everyday legal traditions of Lanna.

I. The First Transformational Episode: Creation of a Modern Nation-State

A. STATE BUILDING UNDER KING RAMA V

At the turn of the twentieth century, Rama V (King Chulalongkorn) and his princes established a completely new Siamese legal and political system, which abolished longstanding conceptions of law and government and replaced them with European models. In the process, the central government changed the relationship between everyday village-level customary legal practices and the official legal system. Customary law, long familiar to ordinary people in Lanna, was relegated to a shadowy, unrecognized existence that nonetheless had a powerful influence on village practices and the selective use and nonuse of the new legal system.

Rama V, revered today as the great modernizing king who oversaw the creation of the modern Siamese state, was placed on the throne in 1868 at the age of fifteen. Young and essentially powerless, his functions were performed by a regent until his second coronation, as an adult, in 1873.

10 Siam’s name was officially changed to “Thailand” in 1939.
13 Id. at 35–50.
attempted coup and by repeated threats and conflicts involving the British colonizers to the west and south and the French to the north and east. The Siamese governing structure, a confusing amalgam of civilian and military administrative responsibilities distributed in seemingly arbitrary ways across the territory of the kingdom, was unequal to the challenges Siam faced. The polity was “galactic” in the sense that it “was not so much a bureaucratized centralized imperial monarchy as a kind of galaxy-type structure with lesser political replicas revolving around the central entity and in perpetual motion of fission or incorporation.” The Lanna region of northern Siam was in this sense only nominally a part of the kingdom, although its leaders had chosen to associate themselves in a kind of tributary relationship with the Siamese monarch since the late eighteenth century. Their aim was not to become part of the Siamese state, but to free Lanna from centuries of control by the neighboring Burmese. Lanna had its own rich political, legal, and cultural traditions and Chiangmai was itself a galactic center, at least at certain times in its history, in relation to the lesser principalities of the north.

As the British and French threatened to seize part or all of what he considered his territories, King Chulalongkorn and his princes embarked on a remarkable state-building project that preserved Siamese independence from colonial rule. By the end of Chulalongkorn’s reign in 1910, a new kind of polity had emerged based on a rationalized bureaucracy, a centralized economic, military, educational, and religious administration, and a European-style legal system complete with a three-

---

14 B.J. Terweil, Thailand’s Political History: From the Fall of Ayutthaya in 1767 to Recent Times 181–87 (2005).
15 As King Chulalongkorn himself described it, the Ministry of Interior (Mahatthai) had primary responsibility for civilian and military matters in the north, the Ministry of Defense (Kalahom) had primary responsibility for civilian and military matters in the south, and the Ministry of the Treasury (Khlang) controlled ports and coastal provinces. King Chulalongkorn, PhraRatchadamrat Song Thalaeng Phiraborommarachathibai Kaerkhail Kankokhirong Phaenndin [Speech explaining the governmental reforms] 3–6 (1927).
16 S.J. Tambiah, World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand Against a Historical Background 70 (1976).
18 See generally Ongsakul, supra note 17.
19 See, e.g., Wyatt, supra note 8, at 184–209; Baker & Phongpaichit, supra note 8, at 52–80. See generally Wyatt, supra note 12.
tiered judiciary controlled from the capital.\textsuperscript{20} The centralization of political and legal authority was accomplished through the \textit{thesaphiban} system, an administrative structure that divided the nation into regions (\textit{monthon}) and provinces (\textit{müang}), each led by a man appointed by and accountable to the central government.\textsuperscript{21} The galactic polity was replaced with an administrative grid through which the capital aimed to exert control in equal measure across the entire kingdom.\textsuperscript{22} The creation of a European-style Siamese nation-state and the negotiation of fixed and clearly demarcated boundaries helped to keep the English and French at bay.\textsuperscript{23} The essential features of the modern legal system emerged with clarity in a relatively short span of years, including the Penal Code of 1908, the Criminal and Civil Procedure Codes of 1934, the Civil and Commercial Code of 1935, and the Charter of the Courts of Justice of 1935. A coup d’\textit{état} in 1932 led to the enactment of a constitution, the first of eighteen up to the present time.\textsuperscript{24} In 1939 “Siam” became “Thailand,” an unmistakable affirmation of the principle that the nation was not only independent (the word \textit{Thai} is said to mean “free”) but also composed of all the ethnically Tai peoples within its borders, not just the Siamese.\textsuperscript{25}

Accounts of these extraordinary transformational years usually emphasize the brilliance of the national leaders who simultaneously created a nation and preserved its independence.\textsuperscript{26} The unified Thai legal system, whose creation was overseen by the king’s son, Prince Ratburi Direkrit, is closely identified symbolically with this seminal period in the nation’s history.\textsuperscript{27} Yet the mythic story of origins, often retold, is almost

\textsuperscript{20} See generally \textsc{Engel, Law and Kingship}, supra note 11; Andrew Harding, \textit{The Eclipse of the Astrologers: King Mongkut, His Successors, and the Reformation of Law in Thailand}, in \textsc{Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia} 307 (Penelope Nicholson & Sarah Biddulph eds., 2008).

\textsuperscript{21} \textsc{Engel, Code and Custom}, supra note 11, at 25; \textsc{Wyatt}, supra note 8, at 194; \textsc{Baker & Phongpachit}, supra note 8, at 54–56.

\textsuperscript{22} \textsc{Tambiah}, supra note 16, at 193–99; \textsc{Engel & Engel}, supra note 6, at 49–50. Anderson notes that the transformation of “dynastic realms” to nation-states creates a new conception of sovereignty that is “fully, flatly, and evenly operative over each square centimetre of a legally demarcated territory.” \textsc{Benedict Anderson}, \textit{Imagined Communities: Reflections on the Origin and Spread of Nationalism} 19 (rev. ed. 1991).

\textsuperscript{23} \textsc{Winichakul}, supra note 9, at 128.


\textsuperscript{25} \textsc{Mary R. Haas}, \textit{Thai-English Student’s Dictionary} 252 (1964).

\textsuperscript{26} See, \textit{e.g.}, \textsc{Wyatt}, supra note 8, at 197–209.

\textsuperscript{27} \textsc{Tamara Loos}, \textit{Subject Siam: Family, Law, and Colonial Modernity in Thailand} 51 (2006).
entirely Bangkok-centered. For the rulers and ordinary citizens of what were once semi-autonomous regions such as Lanna, the process of state-building had somewhat different meanings. Because of the continuing influence of the early twentieth-century nationalist ideology of state-religion-king, it may be difficult to appreciate the implications of this transformation as it was experienced at the time in outlying areas. Yet, as Winichakul observes in his analysis of the contemporaneous extension of Bangkok’s control into Isan, the northeastern region of Siam,

if we merely change our point of view, the entire story about the administrative reform... reads very much like a colonial history in which Siam always claimed its natural superiority over the regional horizon. Because of this, the function of the external threat as the causality of the stories is vital for the history of Siam. Not only can this element alter the contextual reference as suggested. It can also shift Bangkok’s perspective from a view towards its victims to another view toward the external powers. The shifting perspective conceals the expansionist desire but magnifies the anticolonial pretension.28

In Winichakul’s view, the creation of the modern Thai nation-state was presented in a discourse of anti-colonialism, yet the administrative transformation necessarily involved what he calls “colonizing actions” by Bangkok itself in relation to regions such as Isan and Lanna.29 The very conception of nation-religion-king as transcendent within the territory of Siam required a suppression of local traditions, leaders, laws, religions, and political autonomy.30 However, the process of internal hegemony was almost invisible to the Siamese who, as Winichakul observes, considered themselves “We” in relation to the residents of Lanna and Isan, unlike Europeans and other foreigners whom they viewed as “They.”31 Whether the Siamese were seen as “We” or “They” from the Lanna perspective is a question that is sometimes overlooked.

B. IMPACT OF STATE BUILDING ON LAW IN EVERYDAY LIFE IN LANNA

The radical transformation of the Siamese state had profound implications for the role of law in everyday life in Lanna. In order to

28 Winichakul, supra note 9, at 148.
29 Id. at 106.
30 Id. at 129.
31 Id. at 107.
gauge the consequences, it is necessary first to reconstruct the texture of law in everyday life prior to the advent of the modern Thai legal system with a particular focus on the handling of injury cases. Some degree of speculation is required simply because the historical record is so thin and because little attention has been given to the distinctive character of village-level customary legal traditions in Lanna. Nevertheless, based on information provided by our interviewees concerning the practices and beliefs of earlier generations and on recently recovered nineteenth century law texts, it is possible to sketch a plausible picture.32

Before the enactment of the modern Thai legal codes, most injuries among ordinary villagers in Chiangmai were resolved by village chiefs (pho luang, or ‘big father’) who mediated conflicts of many kinds and applied what we might in retrospect consider a form of customary law based on local understandings of Buddhist doctrine (thamma) and the wishes of the guardian spirits. Village chiefs sought to achieve harmonious outcomes, and overly adversarial behavior was discouraged. A disputant who was too aggressive in his or her demands was likely to continue the karmic cycle of injury and retaliation not only in this lifetime, but in future lives. Yet wrongful acts could not be ignored, and damage to the social fabric had to be repaired. Improper behavior offended the spirits and put the entire community at risk, requiring the wrongdoer to perform propitiatory rituals and to make payments to fellow villagers so that they could seek the aid of the spirits, recall the khwan,33 or improve their karma.

The following discussion is necessarily somewhat speculative because of the absence of documentation for injury cases resolved at the village level prior to the establishment of the modern law of torts in 1935. Nevertheless, the broad conclusions about injury cases in everyday life during this period rest on a reasonably firm foundation. Middle-aged interviewees in our fieldwork during the 1990s spoke extensively about injury-related practices of their grandparents’ generation. Their observations were consistent not only with one another but also with accounts found in numerous village ethnographies in north, northeast, and central Thailand. Finally, pre-modern legal codes from northern Thailand, known as mangraisat (the sastras of King Mengrai), which are cited in the discussion that follows, corroborate the interviewees’ discussion of spirit-related practices and Buddhist norms and procedures that were followed in injury cases by members of previous generations. Although several mangraisat texts were consulted, this article will refer in particular to a palm leaf manuscript found in Wat Chiang Man, a temple in the city of Chiangmai. The Wat Chiang Man mangraisat was published in its original form together with a translation from archaic to modern Thai language in 3 PRASERT NA NAGARA ET AL., KOTMAI LANNA BORAN: WIKIPO RO BOPHRONGSAN LAE NÚHÁ BOTBANYAT THI AN NAI BAILAN [BASIC RESEARCH ON THE ANCIENT LANNA LAW: ANALYSIS OF ITS LEGAL STRUCTURE AND TEXTS AS INSCRIBED IN PALM LEAVES FROM TIME IMMENORIAL, vol. 3, bk. 3] (1988) [hereinafter CHIANG MAN MANGRAISAT].

33 The khwan is a flighty spiritual essence found in all living beings and in some natural objects such as rice fields, mountains, and even automobiles. Each human possesses 32 khwan located in
In order to ascertain the views of the spirits, injury victims or their families consulted spirit mediums, who had the ability to speak to villagers in the voices of the guardian spirits and explain the underlying cause of injury. The spirits thus played a dual role in injury cases. On the one hand, the behavior of an injurer could offend the spirits and require a remedy for the good of the entire village. On the other hand, the spirits themselves could cause injuries or illness when they were displeased by behavior within the village. For example, it was not unusual for a spirit to be offended by the sexual misconduct of a female villager and to injure or sicken another family member as a form of indirect punishment. Thus, the spirit medium, like the village chief, played a key role in enforcing local norms and maintaining social order within the village.

The conceptualization of physical injury did not resemble the modern notion of a tort. Harms suffered at the hands of another human or spirit might take many forms: bodily injury, fever, stomach ache, or a psychic disorientation indicating the loss of the *khwan* or possession by a ghost. Also, the physical self was not considered sharply bounded and autonomous. The personalities and spiritual essences (*khwan*) of villagers were interconnected from birth. Injury or illness suffered by one person harmed others in his or her relational network, and numerous villagers might have a direct interest in seeing that proper remedies and rituals were provided. Furthermore, certain kinds of wrongful acts, such as offenses to village spirit shrines or the spirits of rice fields, had collective dimensions and were not seen as being aimed at any particular person. Such harms were considered very serious, and they demanded a legal remedy, but they were quite unlike the sort of individuated (or even aggregated) tort case that is envisioned in a European or Anglo-American legal system.

---

Village-level legality familiar to ordinary people had direct conceptual links to official legality administered at the highest levels of the Lanna political system. The household, the village, and the ʔɯang were organized spatially and symbolically upon identical principles within a single hierarchy. Each of the three levels in the hierarchy centered on a sacred post or marker representing Mount Sumeru surrounded by the four continents. Moreover, as Davis observes, houses and towns were geographically oriented along north-south and east-west axes to replicate the sacred spatial arrangements of the ʔɯang capital, thus creating a shared sense of identity linking villagers to the Lanna region in which they lived:

Houses and towns are thus oriented in the same manner. The dwelling is a miniature representation of a ʔɯang, and households may be said to form the very lowest level of the ʔɯang hierarchy. By constructing his house on the model of the ʔɯang, the household head in effect asserts that he is a Khon Muang, a person of the ʔɯang.36

Just as the geo-spatial arrangements of house, town, and ʔɯang reflected a shared vision of cosmic order, so did the law of injuries reflect a single understanding of wrong and remedy. Customary legal arrangements at the village level drew on the same principles as the provisions of the royal law texts, known as ʔɯangraisat, or the sastras of King Mengrai, the founder of Chiangmai and the Lanna kingdom.37 Copies of these law texts on palm leaf manuscripts have been discovered in temples throughout the Lanna region.38 Scholars have transcribed and translated them from northern dialect into standard central Thai, but they still await analysis by socio-legal experts.39

Even a cursory reading of the ʔɯangraisat texts that are now available to researchers suggests that the royal legal codes of Lanna had many unique qualities and that they were organically connected to village-level customary law. Sections dealing with injuries contain numerous provisions that appear to recognize and codify village norms concerning harms to fellow villagers or injuries to their animals or other

36 DAVIS, supra note 34, at 47; see also MORRIS, supra note 35, 119–20.
37 See supra text accompanying note 32.
38 CHIANG MAN ʔɯANGRAISAT, supra note 32.
39 Id.; see also texts cited infra, notes 40–41.
property.40 The mangraisat law codes also make frequent reference to village guardian spirits, and they impose sanctions for actions that could offend the spirits and thereby harm fellow villagers.41 Royal law in Lanna was explicitly and extensively rooted in the everyday lives, beliefs, and practices of Lanna villagers.

The organic connections between village customary law and the royal legal codes of Lanna were, however, abruptly terminated as a result of the legal and political transformations at the turn of the twentieth century. At the village level, despite the enactment of European-style law codes by King Chulalongkorn and his successors, dispute resolution and injury-related beliefs and practices continued relatively unchanged. Village chiefs and spirit mediums still played their central roles. Buddhism and spirit worship remained central. Concerns about karma and virtuous responses to personal wrongs still tempered the shared recognition that injurers bore a heavy responsibility to make amends for affronts to the guardian spirits and had to help repair the damage they had caused to the community as a whole. Yet these beliefs and practices were nowhere reflected in the newly-codified law of torts that was promulgated in Bangkok, as evidenced in the core provision of the Law of Wrongs drawn almost word for word from contemporary German tort law: “A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefor.”42

This provision contains no mention of or even indirect reference to Buddhism, spirit worship, karma, or traditional village practices. Nor do the Code provisions concerning remedies for tortious acts acknowledge or reinforce village-level remedial practices or rituals as did the

---

40 For example, the following provision appears in the manuscript found in Wat Chiang Man in the city of Chiangmai: “If one leaves a knife, sharp stick, a spear, or a sword stuck in the ground and they fall on another and kill him, or if a person runs into them and kills himself, the owner of the spear, sword, or sharp stick must pay half the damages. If it is an animal that is killed, he must pay all the damages because an animal cannot understand human language. If there is no death, the injurer must pay for medical treatment.” CHIANG MAN MANGRAISAT, supra note 32, at 241.

41 For example, the Wat Chiang Man manuscript contains the following provision dealing with an offense against a village guardian spirit: “If a person by stealth cuts down a tree that is the habitation of a village guardian spirit, he must perform a ceremony for the spirit according to custom. If a pig is usually offered, he must offer a pig. If a buffalo is usually offered, he must offer a buffalo. But everything he offers must be four times the usual amount. If he fails to make this offering and a person in the village dies as a result, he must pay the value of that person (kha khon).” Id. at 240.

42 CIVIL AND COMMERCIAL CODE, tit. V, ch. 1, sec. 420 (Thai.).
provisions of the *mangraisat*. Compensation for tortious injury is not determined by longstanding village customs or by the cost of ceremonies to propitiate the village guardian spirits. Rather, judges are instructed to consider “the circumstances and the gravity of the wrongful act,” the actual expenses and lost income of the plaintiff, and, in cases involving fatalities, the cost of “funeral and other necessary expenses.”

These and other provisions of the new Thai law of torts suggest a total break with customary practices that were familiar to Lanna villagers. The language of state law in effect denied the existence of the conceptual universe in which the villagers lived, and it excluded from consideration the *mangraisat* that had formerly linked that universe to the judicial and governmental structure of the Lanna rulers. The official law of injuries now had no connection to Lanna culture. Indeed, because the same law was applied throughout the kingdom, Thai tort law in general had now disconnected itself from Thai culture, religion, and customary practice.

Severing the roots that formerly connected official law to the everyday beliefs and practices of ordinary people was not merely an unintended consequence of the formation of the new Thai nation-state. The Bangkok ruling elite had designed its reforms deliberately to disempower local rulers in regions such as Lanna. For a time, local princes became civil servants in the new administrative structure, and Chiangmai’s region (*monthon*) was temporarily granted the right to initiate minor legislation pending subsequent approval from Bangkok. But the direction of change was clear: Local rulers and regional power

---

43 Id. sec. 438.
44 Id. sec. 444.
45 Id. sec. 443.
46 *See* Charles F. Keyes, *Buddhism and National Integration in Thailand*, 30 J. ASIAN STUD. 551, 559 (1971) (“The aim of the Culalongkorn [sic] revolution was to introduce a number of new axes which would link the people of these areas [such as northern Thailand] and the central Siamese government. To do so, however, necessitated the breaking down of ‘primordial attachments’ such as those focused upon the Yuan [northern Thai] Buddhist tradition, and to substitute attachments to the nation in their stead”).
47 *See* *Wyatt*, supra note 8, at 186. The royal commissioners sent by Rama V to administer outlying regions such as Lanna “began to take effective control with the ability to promulgate laws and organize revenue collection . . . . As members of the royal house, they could override both the old guard in the ministries nominally responsible for these provinces and the entrenched local authorities, governors who for the most part had succeeded their fathers and grandfathers in office.” Id. The methodical implementation of this policy in Lanna from 1884 to 1933 is described by *Ongsakul*, *supra* note 17, at 188–213.
centers were subordinated to control from Bangkok.\textsuperscript{49} Recognition or preservation of the traditional law-ways of Lanna would have obstructed the centralization of power. Law was a crucial element in the strategy of reducing the former principality of Chiangmai to the status of one among many provinces that composed the new nation-state.\textsuperscript{50} The separation of official law from everyday life was not an incidental byproduct of this process; it was essential to the strategy of the modernizing Siamese elite.

The story of Thailand’s legal and political modernization, when told from the perspective of Bangkok, may not fully capture the impact of these reforms on Lanna and other outlying regions. Lanna residents, however, clearly understood their import. Short-lived uprisings occurred in the first decade of the twentieth century in southern Thailand, in northeast Thailand, and in Lanna.\textsuperscript{51} The so-called Shan Rebellion involved immigrant workers from Burma who, in 1902, took over the government offices in the northern province of Phrae and went on to attack Siamese officials in Lampang, the province adjacent to Chiangmai.\textsuperscript{52} Their uprising against the representatives of the central government was supported by the traditional Lanna nobility as well as the local populace.\textsuperscript{53} As Ongsakul observes, “The Shan Uprising had revealed clear splits and lack of understanding between khon mueang, Lan Na people, and khon Thai, Thai people. The idea that everyone was part of one people, one nationality, under the absolute monarchy had a long way to go.”\textsuperscript{54} Ultimately, however, the Siamese succeeded in crushing this resistance and, more generally, in suppressing distinctive Lanna political and cultural institutions: “Gradually the traditional character of Lan Na broke down in virtually every area, from politics, the economy, society, and education to religion, the arts, and culture.”\textsuperscript{55}

The campaign against Lanna traditions included an effort to suppress local religious practices which, as we have seen, were closely connected to “pre-modern” law and to spirit worship at the village and the mūang level.\textsuperscript{56} The famed Lanna religious teacher, Khruba Siwichai,

\textsuperscript{49} W Y A T T, supra note 8, at 186; O N G S A K U L, supra note 17, at 188–213.

\textsuperscript{50} See discussion of laws establishing Bangkok’s administrative control over outlying regions and provinces in E N G E L, L A W A N D K I N G S H I P, supra note 11, at 1–27.

\textsuperscript{51} B A K E R & P H O N G P A I C H I T, supra note 8, at 56–58.

\textsuperscript{52} W Y A T T, supra note 8, at 199–200

\textsuperscript{53} Id.

\textsuperscript{54} O N G S A K U L, supra note 17, at 209.

\textsuperscript{55} Id.

led the opposition to centralized control over the Buddhist clergy in Lanna, in defiance of the National Sangha Administrative Act of 1902, which was designed to eliminate distinctive regional religious practices and to replace them with practices approved from Bangkok.\footnote{Id. at 229.} Khruba Siwichai attempted to preserve Lanna religious traditions in the face of these efforts by the central government, but in 1935 he was forced to report to religious authorities in Bangkok and was not allowed to return to Lanna until six months later, after he had agreed to curb his independent activities.\footnote{ONGSAKUL, supra note 17, at 213.} As Ongsakul observes, “Khruba Siwichai symbolized the last wave of opposition to administrative reform in Lan Na.”\footnote{Id. at 213.} The campaign against Lanna religion went hand-in-hand with the campaign against Lanna political and legal traditions. Both were designed, among other things, to undermine the very foundations of law in everyday life.

II. The Second Transformational Episode: Late Twentieth Century Globalization

Despite opposition to Bangkok’s turn-of-the-century assimilationist policies in Lanna, the nationalist ideology of nation-religion-king ultimately prevailed, and a centralized legal system founded on European models replaced Lanna legal traditions rooted in local cultural and religious practices.\footnote{See discussion of the ideology of nation, religion, and king, supra text accompanying note 11. The establishment of the centralized legal system with particular reference to Lanna is discussed in ENGEL, LAW AND KINGSHIP, supra note 11, at 59–76.} Although the linkages between village-level legality and the administration of justice in the official legal system were broken, village customary law nonetheless persisted without formal recognition or support, and most injury cases were handled at the village level according to customary norms and practices. The continuing vitality of the village-level legal system meant that litigation rates for injury cases in the Chiangmai Provincial Court were relatively low.\footnote{The mean rate of tort cases filed in the Chiangmai Provincial Court in 1965, 1968, 1971, and 1974 was 0.071 per thousand population. See ENGEL & ENGEL, supra note 6, at 102. A comparison to tort litigation rates reported in selected American states for the year 2000 provides a rough sense of how low the Thai litigation rates were during the 1960s and 1970s. In the year 2000, New York reported 4.127 cases per thousand people; Michigan reported 2.238 cases per thousand people; and Ohio reported 2.660 cases per thousand people. Even the state of Maine, which is the most predominantly rural American state for which tort statistics are available in the year 2000, reported a litigation rate of 0.983 cases per thousand people. Maine’s tort litigation}
Some injury cases nevertheless resisted local level resolution because the incident occurred outside the jurisdiction of village authorities, the injurer and the victim lived too far apart, or because the expected mediator was himself a party to the dispute. Injury cases that could not be resolved in the village sometimes found their way to the Chiangmai Provincial Court, where the parties had to translate their claims—and their very identities—into a different language. Injury victims still expected some sort of remedy, which explained the small but steady stream of unresolved injury cases that came to be litigated. Once these cases reached the court, however, the plaintiff’s underlying goals often remained the same as they had been at the village level: to receive a payment calibrated to the cost of traditional ceremonies that were intended to make merit or to propitiate the spirits. If the defendant offered the desired amount before trial or judgment, the plaintiff would withdraw the suit. This occurred even when the plaintiff in an injury case brought a private criminal action, which should not in theory be withdrawn on the basis of a money settlement with the defendant. Thus, the official legal system was actually used by injury victims—sometimes inappropriately—as an extension of the customary legal system, applying pressure in cases that exceeded the capacity of village level actors or institutions but adhering to the same underlying norms and goals. The court reinforced customary law by serving as a forum of last resort, ensuring that injurers could not escape their responsibilities to the victim and to the community as a whole; but the close connection between official law and the law of everyday life could no longer be openly acknowledged as it had been before the birth of “modern” Thai law.

By the time we conducted our fieldwork at the turn of the twenty-first century, however, the picture had drastically changed. The number of injuries had almost certainly increased greatly. Although no reliable statistics document the exact number of injuries in Chiangmai Province from the 1960s to the late 1990s, credible indirect measures are available. Between 1965 and 1997, the number of motor vehicles rate in 2000 is almost fourteen times greater than Chiangmai’s mean rate during the 1960s and 1970s. Id. at 102–03.

See discussion and examples in ENGEL, CODE AND CUSTOM, supra note 11, at 137–48.

Id. at 120–24.

ENGEL & ENGEL, supra note 6, at 76.

See, e.g., ENGEL, CODE AND CUSTOM, supra note 11, at 120–24.

Id. at 129–30.

Id. at 107–10; see also PETCHSIRI, supra note 11, at 173–77.
registered in Chiangmai province increased from 8,547 to 677,123. The overall frequency of injuries in Chiangmai was closely tied to the number of traffic accidents. Most injury victims treated in the hospital were there because of traffic accidents, and most injury cases in the Chiangmai Provincial Court also originated in motor vehicle mishaps. It is reasonable to conclude that, during a period when the number of motor vehicles increased nearly eighty-fold, the number of injuries also rose substantially. Despite the probable increase in the number of injuries in Chiangmai Province, however, the number of tort cases per thousand population remained about the same—an average of 0.071 cases from 1965 to 1974 and an average of 0.088 cases from 1992 to 1997. Assuming that the number of injuries had indeed increased over this thirty-year time span, therefore, the litigation rate per injury must have dropped substantially. On average, from 1992 to 1997, only eleven personal injury tort cases per year were litigated in the Chiangmai Provincial Court out of a population of more than 1,300,000 people. Moreover, interviews with injury victims revealed that the norms and procedures of village-level customary law had become unfamiliar to most of them and incapable of being applied in nearly all cases. Obtaining a remedy from the injurer had become highly problematic.

What caused this dramatic change in the relationship between customary law and official law? A second transformation occurred at the end of the twentieth century as a result of accelerated global influences that affected Lanna society in many ways. During the 1980s and 1990s, the Thai export-oriented economy boomed, foreign direct investment increased, and at the same time the country became a prime tourist destination for Europeans, Asians, North Americans, and Australians.
Although Thailand’s industrial development was concentrated in the central region, Chiangmai and its immediate vicinity experienced secondary effects with the establishment of numerous factories, workshops, and industrial parks. Many of the younger workers in our study had left the villages to take up wage labor in or near the city of Chiangmai or in Thailand’s central region. Most of the interviewees lived far from their birth villages and described themselves as cut off from the practices, beliefs, and rituals that had shaped the everyday lives of their parents and grandparents. At the same time, the expansion of mass media—television, newspapers, the Internet, films, music, and videos—brought new ideas and images to replace those that had been familiar for generations in the villages. In short, Chiangmai’s culture, economy, and society underwent a massive transformation toward the end of the twentieth century, and village life changed dramatically as a result.

Interviews with injury victims revealed the impact of these changes on the role of law in everyday life. Injuries seldom occurred in the context of integrated village communities. Interviewees no longer spoke of offenses against the guardian spirits of the house or village, and they did not believe the injurer’s misconduct affected anyone but themselves. As identity became more sharply individualized, injuries and remedies lost their relational and communitarian qualities. While injury victims might still hope to receive some form of compensation from their injurers, no one else was thought to have a direct stake in ensuring that the injurer provided a remedy. Community pressure on the injurer to comply with customary law had all but disappeared.

The decline of customary injury norms and procedures is symptomatic of a broad change in village culture. As individuals live and work far from their birth villages, their relationships with fellow villagers and with local authority figures have become attenuated. The mutual obligations that formerly bound them together are less compelling than before. Moreover, the interviewees frequently stated that they had little knowledge of the beliefs and rituals that had been so important to their parents and grandparents. As one injury victim, a middle-aged woman named Saikham, explained:


If we followed the old customs, that would be good. But we don’t know how to do it now. Because we, how should I say it, we have entered the modern world now. How can I explain this? The old ways have ended; we don’t know how to do these things. I like them, but I can’t do them.74

The customary law of injuries, which was an integral part of the “old ways” cited by Saikham in this quote, disappeared not only because there was no one to enforce it, but because its conceptual underpinnings had been destroyed by the dramatic social and cultural transformations of the late twentieth century.

Formerly, the customary law of injuries had remained vibrant despite its disconnection from the official law of torts. Now, however, it has sharply declined and even disappeared from the consciousness of nearly all the injury victims we interviewed. What has replaced it, and what can we say about law in everyday life in the twenty-first century insofar as injuries are concerned? None of the interviewees consulted a lawyer or expressed a serious intention to use official tort law to obtain a remedy. With the decline of customary law, state law no longer serves as a forum of last resort, and the low rates of personal injury litigation as well as the individual accounts of injury victims suggest that the Chiangmai Provincial Court has not expanded in importance or taken on a new role as a forum of first instance when injuries occur. The discourse of rights and rule of law is nowhere apparent in the accounts of injury victims. Instead, injured persons tend to forego any demand that the injurer provide them with substantial compensation.75 Their refusal to pursue a remedy is couched in terms of Buddhist doctrine in general and the law of karma in particular.

Observers of Thai society have always said that villagers’ religious beliefs were a complex mixture of Buddhism and spirit worship.76 Nearly every injury victim we interviewed in Chiangmai in

74 Interview with Saikham (July 22, 1999). Saikham, like all interviewee names in this article, is a pseudonym.

75 “Substantial compensation” means something more than just the token payment of a few thousand baht. Tort cases litigated in the Chiangmai Provincial Court from 1992–1997 resulted in mean awards of 189,152 baht (at that time, approximately $4,729) and court-approved settlements of 100,000 baht (approximately $2,500). See ENGEL & ENGEL, supra note 6, at 117. “Substantial compensation” in out-of-court settlements would approximate these figures.

the late 1990s still professed belief in both Buddhism and spirits, yet they described an unmistakable shift in religious practice. Spirit worship for them was no longer tied to a village community. Belief in ghosts and spirits was still important but did not play a part in enforcing social norms or maintaining order. Buddhism, on the other hand, was increasingly disconnected in their minds from spirit worship. Perhaps as a result of the influence of popular new Buddhist movements, such as Thammakai or Santi Asoke, or because of the increased tendency to “access” Buddhism through television, radio, books, or the Internet rather than through local temples in their birth villages, the organic linkages between the practices of Buddhism and spirit worship have diminished.

Interviewees invariably cited karma as a primary cause of their injuries. They believed they had committed some non-meritorious act that led to their current misfortune. One young man believed his bad karma originated in his employment in a slaughter house; a middle-aged woman thought her leg was broken because she had beaten a dog with a stick and broken its leg; a farmer traced her motorcycle accident to the gardening work she did with her husband, since their tilling of the soil must have inadvertently injured or killed the tiny creatures who lived in it. Some interviewees stated that they were suffering now because of sins committed in a previous life. In fact, it was possible that they had injured their injurers in their previous existence. The cycle of injury and counter-injury would continue through many lifetimes and could be ended only if they manifested the Buddhist virtues of compassion and mercy. Rather than insist on a remedy, they elected to acknowledge the karmic origins of their misfortune and forgive the injurer. In this way, they could better protect themselves and their family members against future harm than by seeking monetary compensation.

In the past, injury victims were not required to choose between meritorious action and the pursuit of a remedy. Seeking compensation was not a violation of Buddhist teaching; it was not selfish or materialistic, since it reinforced the well-being of the entire community,

77 Frank E. Reynolds, Dhamma in Dispute: The Interactions of Religion and Law in Thailand, 28 LAW & SOC’Y REV. 433, 445–48 (1994); Apinya Fuengfusakul, Empire of Crystal and Utopian Commune: Two Types of Contemporary Theravada Reform in Thailand, 8 SOJOURN 153, 153 (1993); BAKER & PHONGPAICHIT, supra note 8, at 226.

78 Interview with Aran (July 7, 1999).
79 Interview with Buajan (July 16, 1999).
80 Interview with Thipha (July 12, 1999).
and all the villagers joined the injured person in demanding compliance with customary obligations. After the dramatic social transformations of the late twentieth century, however, individuals who no longer lived in their birth villages faced a dichotomous choice: be a good Buddhist or invoke tort law. Buddhism and law are now understood as oppositional rather than mutually reinforcing. Although some interviewees expressed displeasure that they received no compensation from the injurer, they unanimously agreed that it was better to comply with Buddhist doctrine (as they understood it) than to insist on one’s rights. Indeed, an interviewee named Buajan, who had argued over compensation with the old man who ran her down in his car, told us in a recent conversation that even her initial request for modest reimbursement had created bad karma that led to death and illness in her family. She attempted several years later to visit the old man and beg his forgiveness, but his family prevented her from meeting him because they feared that she would simply renew her demands for compensation. It is a striking demonstration of belief in the law of karma that an innocent injury victim, who had received a relatively small payment from a negligent injurer, would consider it necessary to ask him to forgive her. There could be no clearer illustration of the disappearance of customary law as well as the absence of official law in the everyday lives of injury victims in contemporary Chiangmai.

CONCLUSION

Contrary to conventional wisdom and popular belief, this case study of injuries in northern Thailand suggest that law may, at times, play little if any role in everyday life. In contemporary Chiangmai, tort law has become almost totally divorced from the views, experiences, and behavior of ordinary people who suffer injuries. In this article, I have attributed this disconnection of law and everyday life to two transformational episodes that forever changed the status of Lanna in relation to the Thai nation-state. In the first episode, the Siamese government (as it was then known) deliberately attempted to eliminate Lanna law and legal practices that had long prevailed at the levels of the village and the principality. Although the effort succeeded in abolishing

---

81 ENGEL & ENGEL, supra note 6, at 91–93
82 A detailed presentation of the story Buajan recounted in her first interview appears in ENGEL & ENGEL, supra note 6, at 21–32.
83 Buajan received 30,000 baht (approximately $750) for a seriously debilitating injury that led to loss of wages over an extended period of time. Interview with Buajan, supra note 79.
official Lanna law (known as *mangraisat*), it failed to eradicate village-level practices that were based on longstanding beliefs and traditions. Customary injury practices remained in effect and pervasively influenced the use and avoidance of official Thai tort law until the second transformational episode, when Lanna experienced intensified global influences at the end of the twentieth century. In this later period, as village society changed and injuries took place far from the locations where customary law had compelled the obedience of the disputants, longstanding traditional remedial practices were forgotten and enforcement mechanisms became ineffective. Rather than turning to Thai tort law to fill the void, injured persons in contemporary Lanna now tend to express a preference for Buddhist teachings that they have come to view as oppositional to law. Such teachings, which emphasize karma and forgiveness, no longer articulate with the locality-based spirit practices that had formerly served as the foundation for customary injury practices. Embrace of this less syncretic, more “fundamental” form of Buddhism leads injury victims to forego the quest for substantial compensation from the injurer. Along with the elimination of traditional Lanna law, the framework of traditional Lanna religion has also been shattered.

The divorce of law from everyday life in northern Thailand has left a residue of dissatisfaction and even despair. Although the interviewees generally placed deep faith in the workings of karma and the efficacy of Buddhist practice to deal with misfortune, they also expressed the sense that they live in a world where justice is beyond the reach of ordinary people—at least in the short run. As Buajan stated in our first interview, before she attempted to apologize to her injurer:

I didn’t receive justice. . . . I really came out badly, especially because I was a person with no resources. . . . No matter how holy the law is, I have no hope of using it. I don’t stand on the law, I stand on my own two legs, even though one of them is broken.  

Buajan and other injury victims have little hope for justice until the time—in this life or in some future life—when karma settles the accounts. They view the pursuit of a legal remedy as a violation of Buddhist teachings (*thamma*), which is likely to create more bad karma rather than resolve the underlying problem. Traditional Lanna customs

---

84 Interview with Buajan, *supra* note 79.
and laws have been forgotten, and the concepts and procedures of modern Thai tort law play no role whatsoever in the everyday lives of injury victims. After 120 years of state building and globalization, the separation of injury law from its roots in everyday life in Lanna appears to be all but complete.