Globalization, Investing in Law, and the Careers of Lawyers for Social Causes: Taking on Rights in Thailand

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I. WHY STUDY CAUSE LAWYERS?

Lawyers for social causes are familiar in America. “Cause lawyering,” described as law practice “furthering a vision of the good society,” is also global. Although American scholars trace its origins to liberal legalism and movements for civil rights in the United States and Europe, cause lawyering has become increasingly visible on the world stage in societies whose legal traditions are very different, although most case studies of successful cause lawyers come from developed democracies, their former colonies, and especially those societies influenced by the common law.

Thailand, the site of my research, is an Asian society with a long history of authoritarian government and a legal system influenced by civil law traditions. Unique among Southeast Asian countries, Thailand has never been colonized or subjugated to European law. We may fairly ask, then, why would individuals drawn to social advocacy choose to deploy a symbolic resource such as law, and especially the “rule of law,” against a powerful government in a society where law has uncertain legitimacy and legal advocacy has unproven power? Observing the growing global attraction to rights advocacy under circumstances such as these, legal anthropologist Sally Engle Merry sensibly concludes that “[t]aking on rights is a difficult process and fraught with ambivalence. Asserting rights often comes at a price.”

Cause lawyers, of course, are not typical anywhere, and that is why they are interesting. In the United States, cause lawyering is related to an important aspiration of client-centered professionalism—achieving justice for each client and placing that goal at times ahead of making money and personal benefit. Many lawyers, though

3. See generally Cause Lawyers and Social Movements (Austin Sarat & Stuart A. Scheingold eds., 2006) (containing essays relating to the life cycle of social movements and the effect that cause lawyers and the social movements have on one another); Cause Lawyering and the State in a Global Era (Austin Sarat & Stuart Scheingold eds., 2001) (containing essays relating to cause lawyering in, among other locations, Ghana, the United Kingdom, Latin America, the United States, and Israel); Law and Globalization from Below: Towards a Cosmopolitan Legality (Boaventura de Sousa Santos & César A. Rodriguez-Garavito eds., 2005) (focusing on the changes in legal institutions against the backdrop of globalization through a collection of essays); The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice (Austin Sarat & Stuart A. Scheingold eds., 2005) (containing essays highlighting the breadth of causes served and providing information on case studies from India, Argentina, and the United Kingdom); Sarat & Scheingold, supra note 1, at 5–7 (contrasting, at a superficial level, the development of cause lawyering in common law and civil societies, as well as in rule-of-law systems and authoritarian regimes).
6. A fundamental principle of the lawyer-client relationships in Anglo-Saxon law is client loyalty; accordingly, a lawyer’s judgment and effort is exercised “solely for the benefit of his client and free of compromising influences and loyalties.” Model Code of Prof’l Responsibility EC 5-1 (1980) (correlating with Model Rules 1.7(a), 1.8(c)–(g) & (j)). As amplified by aspirational statements within
choosing a more traditional practice recognize the importance and legitimacy of cause lawyering, if not the legitimacy of everything that cause lawyers do. Even lawyers who are not and will never be activists defend the profession’s activism, its involvement in public interest law, pro bono requirements, and law reform because they believe that these activities reflect the profession’s political independence and power, as well as its entitlement to public respect. These symbolic resources are assets that legitimize the deep involvement of lawyers in the development of society through policy-making, international relations, and overall political life. The viability of cause lawyering as a career may indeed be a good measure of the legal profession’s political independence and power and may illuminate the role and legitimacy of law in a society.

The strength of the American legal profession, and its cause lawyers, is closely related to America’s unique political institutions. Other societies, like Thailand, whose history and institutions create a different and more limited role for law in contention for power, provide less promising terrain for cause lawyers. No one doubts the power of lawyers in the United States.7 “In the US,” write scholars Yves Dezalay and Bryant Garth, “symbolic innovators’ . . . gravitate to the powerful and relatively autonomous professional milieus.”8 In other words, in the United States ambitious activists often pursue some type of public interest law practice. My study asks why, in spite of Thailand’s less promising terrain, do Thai activists invest in law and what do they achieve by doing so? Answering these questions will help us understand the practical meaning of “rule of law” in Thailand from an important perspective: lawyers seeking to open greater political space for social causes.

the Model Code of Professional Responsibility and the Model Rules of Professional Conduct, as well as statements of purpose of virtually every bar association, lawyers maintain a stance of seeking the full measure of justice on behalf of clients.


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Research that involves charting social justice lawyers’ careers is a new strategy with great potential in the field of socio-legal studies of the rule of law in developing societies. Dezalay and Garth’s groundbreaking comparative study of the political independence of lawyers in the United States and Latin America relied on microhistories of lawyers’ careers. Their interviews tapped the local and intimate knowledge of the power and limitations of law that is required for the successful pursuit of a legal career and for the deployment of the symbolic resources at the profession’s disposal. Similarly, my collective biography of social justice lawyers in Thailand potentially provides a rich mapping of the paths open to those who choose law and of the opportunities to use law to influence other institutions of the society, especially government.

This article provides a preliminary report of research based on interviews conducted in Thailand with Thai lawyers and other activists on behalf of a wide variety of politically weak or socially disadvantaged groups seeking equality, power, or merely recognition for their causes. The multi-generational and variously committed ensemble of interviewees permits comparison of the opportunities, limitations, and successes and failures of law in many contexts, increasing the likelihood of observing patterns. In my interviews, I ask when and how they use the law on behalf of social movements and causes, about their methods of work and how they support themselves, about the nature of their clients or other work if their work is not for specific clients, and about their successes and failures. I chart their careers, how and why they entered the profession, their networks of collaborators, and, as accurately as possible, the mentors, role-models, or institutions that taught them or directed their career paths. I pay particular attention to the networks and movements they attempt to build and to their perceptions of their own work.

Part II of this article describes the origin of the concept of cause lawyering, the paradoxes of its attractiveness outside the safe haven of developed, liberal democracies, and the dependence of law on a unique and uncertain process of adaptation in each developing society. Part III describes the strengths of the research strategy employed by this study, which is a multi-generational collective biography. Part IV introduces four Thai social justice lawyers, describes their careers, and sets forth the historical context of each. Part V discusses what the narratives reveal about the influence of social change on the four careers described in Part IV. Part VI, my conclusion, offers a brief speculation about the effects of social justice law practice on achievement of the “good society”—a vision in which the rule of law becomes a means to greater political space for the social causes of the lawyers—and what we might learn from fuller examination of cause lawyers’ careers.

II. CAUSE LAWYERS IN A GLOBAL PERSPECTIVE

A rapidly growing literature on cause lawyering takes liberal legalism as its starting point. Liberal legalism, the dominant legal ideology in developed Western democracies, combines two conflicting premises. First, liberal legalism incorporates the rule of law, a concept that encompasses procedures that serve to legitimize the state’s authority. Second, liberal legalism establishes absolute limits on the state’s authority that protect autonomy, equality, and other individual and community values. Lawyers, as members of a profession privileged by the state, stand between these two potentially conflicting mandates, serving by grace of the state’s authority but often challenging the state’s authority for transgressions of substantive rights. Under liberal legalism, lawyers exercise their privileges to mobilize the law with some degree of immunity from reprisal or interference even when they invoke rights that challenge the state’s authority. Emphasis on individual rights creates space for advocacy not only for existing rights, but also for the expansion of rights and even for new rights that will bring about substantial social change on behalf of individuals or the public generally. In the United States, cause lawyers have often succeeded in their advocacy for new rights that impose limits on the state and have rarely faced reprisal for their advocacy. For this reason, scholarship about U.S. cause lawyers has focused less on the consequences of conflict with the state than on lawyers’ motivation, the structure of their practices, and the roles they play in movements for social justice.

This picture changes in societies where assumptions about the rule of law, rights, and the lawyer’s professional role are quite different. In many societies, “speaking law to power” risks more serious reprisal than in Western democracies. Professor Richard Abel’s examination of the institutional sources of opportunity for cause lawyering worldwide suggests that both liberal legal ideology and the institutional and political framework of a society are important. The United States’ well-
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entrenched ideology of rights and a relatively independent judiciary are important factors facilitating cause lawyering, but they, in turn, have developed in part because of the opportunities to challenge state authority created by federalism, separation of powers, and institutional support for professional autonomy. Abel examined societies that ranged from authoritarian to newly emerging democracies and corrupt dictatorships. He found that “speaking law to power” also occurs in the absence of significant support for liberal legalism in societies where law and legal process generally lack either moral legitimacy or the support of independent legal institutions.

The seemingly paradoxical attraction of cause lawyering in such societies has been accompanied by an astonishing rise in the number of lawyers, and especially in some of the societies most resistant to democracy and human rights. The mere presence of a rapidly growing legal profession does not translate into politically independent law, legal institutions, or liberal democracy, at least in the short run. As Professor William Alford observes in his discussion of the rapidly rising numbers of lawyers in East Asian societies, there are many new roles for lawyers in rapidly evolving societies that do not involve confronting state authority. Quite the opposite, lawyers provide services that augment state control and help government (whatever its character) manage relationships with international regulation, finance, and commerce. Many forces for change combine to make entry into the legal profession more attractive. Chief among them is the global economic boom, which has made lawyers, among other anomalies, the highest paid profession in China. Other factors that influence the role lawyers play in each society include the international symbolic significance of constitutionalism and law “as the skeleton of the modern state”; pressure from institutions of global finance; and domestic demand in even

18. Id. at 71, 87–95.
19. Id. at 78–102.
20. See William P. Alford, Of Lawyers Lost and Found: Searching for Legal Professionalism in the People’s Republic of China, in Raising the Bar: The Emerging Legal Profession in East Asia 287, 290 (William P. Alford ed., 2007) (discussing the rising number of lawyers in China); Daniel S. Lev, A Tale of Two Legal Professions: Lawyers and State in Malaysia and Indonesia, in Raising the Bar, supra, at 383, 387, 400 (discussing the rising numbers of lawyers in Malaysia and Indonesia).
21. See William P. Alford, Introduction, in Raising the Bar, supra note 20, at 1, 7. Scholars debate the long run, some anticipating convergence, others suggesting that the historical path of the legal profession in many developing societies will be unique. Id.
22. See id. at 6–9.
the most authoritarian states, however ineffectual, for accountability, transparency, and fairness as social and economic change transform public life. 26

Thailand’s experience exhibits a similarly paradoxical pattern. Since the mid-twentieth century, while Thailand’s population has tripled, the number of lawyers in Thailand has increased more than twenty-five fold. In 1960, fewer than 2000 lawyers existed in a population of 23 million; in 2008, there are more than 54,000 private lawyers in a population of 60 million, while thousands more work for the government as judges, prosecutors, or legal advisors. 27 No doubt Thailand’s booming economy has contributed to the rapidly increasing number of lawyers, raising law from among the also-rans of university education to one of the most popular fields of study. 28 Over roughly the same period, Thailand has experienced nineteen military coups, the latest in 2006, has had eighteen constitutions, and is still widely criticized for recent human rights violations. 29

In contrast to earlier periods of global interconnection that were accelerated by revolutions in transportation (sixteenth through nineteenth centuries) and global finance (post-World War II), contemporary “third wave” globalization is distinctively about transnational influence on governance, through exporting institutions, organization, and technology. 30 The current wave of global interconnection has opened the door as never before to mutual influence. 31 Cultural exports, in the form of rights, political institutions, or technology of production, have taken shape on the ground in societies such as Thailand. In turn, developing countries contribute distinctive views to international discourse on human rights, “Asian values,” and rule

26. See, e.g., Alford, supra note 21, at 9–17 (summarizing the findings of studies of the legal profession in East Asia included in the volume).


30. Ammar Siamwalla, Globalisation and Its Governance in Historical Perspective, in Social Challenges for the Mekong Region 13, 34–35 (Mingsan Kaosa-ard et al. eds., 2003). I am calling Siamwalla’s second phase of the Second Globalisation a “third” wave because of its distinctive emphasis on political and economic governance, rather than finance, but otherwise I accept his characterizations of relevant changes and their effects.

31. Lauren Benton has shown that mutual influence is always present even in relations of formally unequal global influence, such as conquest and colonization. See Lauren Benton, Law and Colonial Cultures: Legal Regimes in World History 1400–1900 (2002).
of law. The rule of law and liberal legalism are important exports from the Global North, promoted by dominant world financial and political powers to encourage stability, but also frequently embraced by domestic advocates who believe that rights will support equality, accountability, and social welfare within their own societies.

Widespread advocacy for the rule of law begins with the most powerful international actors, and it is often prescriptive, suggesting that adoption of Western models for economic and social regulations, individual rights, and legal process are key stepping stones to prosperity and democracy. Many of the most important contemporary advocates for rule of law reforms are powerful international economic and political actors who promote democracy and the rule of law to stabilize emerging societies for the benefit of the global economy. But advocates with other goals—for example, nongovernmental organizations (NGOs) that promote human rights, United Nations agencies, and religious institutions—have also become highly influential.

While international agencies such as the World Bank, International Monetary Fund (IMF), and the U.S. Department of State have promoted rule of law from the top down—through structural adjustment, diplomatic influence, and technical expertise resulting in statutory and constitutional reform—more progressive, humanitarian NGOs and organizations have attempted to influence change at the grassroots level by linking ideas, technical skills, and financial resources to local participation in rights advocacy.

Professors Thomas Risse and Kathryn Sikkink proposed a “spiral model” to explain a pattern that they perceived created successful movements for enforcement of international rights regimes through a combination of local advocacy and


33. “Global North” is a term used widely to refer to the political, economic, and cultural perspectives of the economically developed societies, predominantly, but not exclusively, in North America and Europe. See, e.g., Boaventura de Sousa Santos, Three Metaphors for a New Conception of Law: The Frontier, the Baroque, and the South, 29 Law & Soc’y Rev. 569, 579 (1995) (exploring the potential significance of the concept of Global North and Global South).


37. See Keck & Sikkink, supra note 36.
international pressure.\textsuperscript{38} According to their theory, partnerships between an international and a local advocacy group ensure that rights advocacy has validity in the local “vernacular,”\textsuperscript{39} while pressure from international advocates, phased in over the lifetime of a local movement, creates an ascending spiral of influence pressuring a recalcitrant government toward the implementation of a particular regime of rights. The key to the “spiral model” is the presence of Transnational Advocacy Networks (TANS) which link local advocates with their counterparts in International Nongovernmental Organizations (INGOs), international agencies, and foreign countries in a position to deploy a hegemonic discourse of rights in ways the government of the society may be less willing to ignore.\textsuperscript{40}

Professor Daniel Lev has observed that even in Europe there were “long histories that produced distinctive local institutions and legal habits.”\textsuperscript{41} Contrary to the views of American and European scholars who seem to consider an idealized version of “Western” law a standard by which to judge the evolution of other legal systems, he maintained that there was nothing natural or universal about the Continental “rechtstat” or the English “rule of law.” These systems of legal thought have been promoted as universal ideals, but they are rationalizations for systems of law that favored newly emerging political or economic interests. Their adoption by other societies with different histories is not inevitable and where different dominant interests promote development. Lev concludes that many new states now face problems similar to those faced a century or more ago in Europe and that influential groups have embraced a familiar solution, namely to “establish some controls over powerful governments by subjecting them to more or less autonomous legal process.”\textsuperscript{42} Nevertheless, he cautions, in new states,

pressures toward constitutionalism and more effective legal process have advantages and suffer constraints quite different from those of old Europe . . . . [I]deas, in Asia as in Europe or anywhere else, take hold only when they make sense domestically and are adapted to domestic purposes.\textsuperscript{43}


\textsuperscript{39} Merry, \textit{supra} note 5, at 1 (describing meaningful characterization of human rights concepts in local contexts as translation into the “vernacular”).

\textsuperscript{40} TANs are networks of advocates for particular policies or rights that are “distinguishable largely by the centrality of principled ideas or values.” They offer a variety of resources, such as legitimacy for social justice claims (and rights) or media and political access for progressive advocacy, as well as material and technical resources. Social movements may be drawn to TANs and choose lawyers associated with them. Keck & Sikkink, \textit{supra} note 36, at 1.

\textsuperscript{41} Lev, \textit{supra} note 25, at 4.

\textsuperscript{42} \textit{Id.} at 6.

\textsuperscript{43} \textit{Id.}
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III. WHAT CAUSE LAWYERS DO: A RESEARCH STRATEGY

In their study comparing human rights lawyers in the United States and Latin America, Dezalay and Garth adopted a promising approach to understanding the complex means by which law and legal process take hold or fail in developing societies. The study focused on “microhistories” of lawyers’ careers, “and, more generally, relational biographies,” through which they were able to describe human rights advocacy in each society as a field “constructed out of the tools and resources that were available to particular actors at discrete moments.”44 Through analysis of the collective biographies of elite lawyers, they were able to “situate individuals in relation to others in fields that are constantly changing.”45 Their approach illuminated the relationship between opportunities for legal action and the institutional structure underscored by Lev. Tracing careers objectively illustrates, in a way that no declaration of motives, ideals, or principles could, the evolving opportunities, rewards, and limits for legal advocacy within Latin American and U.S. political institutions.

Tracing the careers of human rights lawyers in the United States and Latin America revealed sharp differences in the relationship between law and the “field of state power.”46 Investing in law offered very different career opportunities and leverage for political change in the two hemispheres. While human rights advocacy and public interest law practice are widely valorized in the United States—and may be a springboard to a mainstream legal career, professional status, and influence in politics and government—investment in similar legal activity in Latin America is typically a dead end.47 There the path to power is through politics, not law. Because law lacks independent institutional support, human rights and public interest law practice earns little respect and accumulates far less professional capital in Latin America.

Dezalay and Garth’s research on lawyers’ careers has important implications for better understanding the globalization of legal expertise and the success of rights-based advocacy.48 The resources contributed by global networks of advocacy, foreign

44. Dezalay & Garth, supra note 9, at 355. The authors’ conceptualization of a career employed throughout their work is derived from the work of French sociologist Pierre Bourdieu, who describes the factors which contribute to construction of a field of action. A “field” is conceived as a “patterned system of objective forces” that “prescribes its particular values and possesses its own regulative principles” which governs the probability of rewards or sanctions. Pierre Bourdieu & Loïc J. D. Wacquant, An Invitation to Reflexive Sociology 17–18 (1992).

45. Dezalay & Garth, supra note 9, at 355.

46. Id. The “field of state power” is a field in which actors attempt to exercise power over or on behalf of the state.

47. See id. at 356–58.

48. Over the past thirty years, networks of advocates for human rights and other rights-based causes have grown in number, resources, and influence. See id. at 354. Latin American human rights lawyers, Dezalay and Garth argue, have been sustained almost entirely by funding from U.S. philanthropies and legitimacy derived from international affiliations. See id. at 361–63. The authors describe the growth of Amnesty International (AI) and Human Rights Watch (HRW) as organizations driven in large part by their dissenting stance within U.S. domestic politics and their evolving strategies for influencing American political opinion, as well as world opinion. See id. at 360–62, 364–65. The Ford Foundation,
aid, or international organizations supporting human rights had far from the expected long term effects. Where the structural determinants of legal careers were quite different in Latin America from the United States, career narratives revealed different potentials and limits for law. Further, Dezalay and Garth advise scholars who are “promoters of transnational cause lawyering to investigate critically the norms that gain legitimacy, funding and media attention in the places that count.” The place that counts most is often Washington, D.C., where United States’ foreign policy shapes the goals of many international networks whose apparent disagreements with foreign policy often merely fine tune the same overall approach to transplantation of familiar legal institutions to developing societies.49

Lawyers’ careers, therefore, have provided a promising starting point for examining both the evolving role of law and the influence of global advocacy for rights in developing societies; but to achieve a better understanding, the research must go well beyond the boundaries of Professors Dezalay and Garth’s research. While they helpfully draw attention to the “system of objective forces” influencing career decisions, they have, for comparative purposes, greatly simplified their account of the forces at work in shaping lawyers’ careers by explaining differences largely in terms of the overall strength or weakness of the profession and, in turn, the legal system’s overall political dependence or independence. This oversimplification ignores local variation in the influence of law, which may be important, for example, to the relative importance of law in regulating different institutional sectors or in mediating different types of relationships between individuals and government.50 While law may lack power with respect to some traditional institutions and some types of social relationships, it may have much greater power with respect to others. Thus, Dezalay and Garth may have drawn broad conclusions reflecting only the views of an inner circle of state power in countries where the legitimacy of law is weak at the highest levels but not uniform or static throughout the society.

Theory and empirical research suggest the “forces” that draw cause lawyers into careers and influence deployment of their expertise include the structure of work

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49. Dezalay & Garth, supra note 9, at 372.
50. See supra text accompanying note 46.
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settings;51 types of clients;52 relationships that are formed in professional or “epistemic” communities (groups sharing common views about causes of and solutions to social problems),53 opportunities to use law in combination with other forms of political, moral, and symbolic power;54 and global resources available through networks, conferences, education, travel, funding, and other relationships.55 Contexts that seem to make cause lawyering risky to observers may nevertheless offer attractive possibilities for a career in law when viewed in the vernacular.56 Even where courts, the profession, and law are weak, lawyers may mobilize a variety of resources, including symbolic and political resources, religious institutions and values, or other cultural systems and networks of support, either within the state itself or outside the society. They may deploy collective action that circumvents the legal system or strategically exploit limitations of the legal system. Thus, the seemingly limited overall prospects for law in opposing the state may not tell the whole story of the production of legal advocacy.

In sum, neither the view that associates cause lawyering with liberal legalism nor the view that identifies cause lawyering with the dangers of “speaking law to power” from a position of opposition to the state captures all the ways that Thai lawyers may pursue a moral vision of society. The lawyers that were interviewed for this study collectively pursued careers spanning more than half a century and virtually every significant social movement in Thailand. Their careers have not all been cut from the same cloth or shaped by shared purposes. Yet all have been influenced by the legal culture formed during Thailand’s unique, non-colonial path toward development: first as a modernizing monarchy, then as an evolving “bureaucratic polity” in which all leading political factions had power within the state administration,57 and, most recently, as a society struggling to establish democratic political institutions. It is to the narratives of the careers of four Thai social justice lawyers that we turn next in


52. See Heinz et al., supra note 7, at 7.


54. Scholars in the United States are discovering that lawyers for social movements often support a savvy mixture of legal and non-legal strategies determined by political opportunities and collective decision making. See Michael McCann & Helena Silverstein, Rethinking Law’s “Allurements”: A Relational Analysis of Social Movement Lawyers in the United States, in Cause Lawyering: Political Commitments and Professional Responsibilities, supra note 1, at 261, 276 (using the term “new style” public interest litigation as suggested in Susan M. Olson, Clients and Lawyers: Securing the Rights of Disabled Persons (1984)).

55. See Keck & Sikkink, supra note 36.

56. See supra note 39.

57. See Kevin Hewison, Introduction: Power, Oppositions, and Democratization, in Political Change in Thailand: Democracy and Participation 1, 3–5 (Kevin Hewison ed., 1997). Thailand’s bureaucratic polity concentrated power in Bangkok and incorporated all powerful elite groups, including the rising Sino-Thai commercial families who were not part of the hereditary aristocracy. See id.
order to understand the forces that have shaped their work and their ability to influence the exercise of government power.

IV. FOUR GENERATIONS OF THAI SOCIAL JUSTICE LAWYERS

In this Part we will meet four Thai cause lawyers and learn about their careers, beginning not only with their earliest thoughts about law but also a description of the decisions, actions, and experiences that have carried them to the present. The lawyers' lifetimes span Thai history from the 1920s, when the oldest was born under the absolute monarchy, to the present, under Thailand's eighteenth constitution. The oldest entered the practice of law in 1951, under a military dictator, and the youngest in 1999, in a democracy just two years after the ratification of Thailand's most liberal constitution, the so-called "People's Constitution." Changes which occurred over this eighty-year period, in the structure and institutions of government, economy, and society, interweave the stories of the lawyers. Their narratives, while representative of their contemporaries in no strict sense, have been chosen to illustrate the effects of these changes during four broad time periods which I call "generations." The time periods I use to define a generation have been determined by the changes that seemed most significant to the lawyers themselves, rather than by wholly arbitrary criteria such as evenly spaced cohorts. Seminal political and social events led to experiences which define particular generations in Thai culture (much like World War II or the "60s" define generations in the United States) and which radically changed the opportunities for deploying law within the society. The four generations are thus a convenience used to compress the more complex and complete story of law and institutional development that lies at the core of this research.

In subsection A, I introduce each narrator and sketch Thailand's legal history. This serves two purposes: to justify the generational markers I use to contextualize each career and to provide essential institutional and political history for the reader. In subsections B through E, I tell a more complete story about each of the lawyers and fill in additional historical details.

The four narratives intersect at important points. While several of the lawyers know each other, none knows all of the others. Yet an important theme is that these careers have been influenced not only by historical context but by the actions of earlier generations that have shaped the field of social justice law practice. Thus, the narratives are presented in order, tracing both history and the cumulative effects of earlier generations.

Unlike the studies of human rights lawyers' careers conducted by Dezalay and Garth, I am not concerned here with an elite group aspiring to become members of an inner circle in the “field of state power.” These Thai lawyers had little expectation of high status and were motivated in part by the much more prosaic goal of finding a career. They found ways to sustain careers validated by some measure of self-

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respect and effectiveness. Yet like the careers of the potential power elite, careers of typical social justice lawyers also provide a window into law’s legitimacy, independence, and power.

Previous research provides little guidance for predictions about how social justice law practices may emerge or not emerge, succeed or fail, in rapidly developing new states, as a means to limit the power of government. The inductive approach adopted in this article attempts to sketch two interrelated stories. The first is a story about the process that draws individuals into a difficult line of work and into a profession unknown prior to the late nineteenth century (and unknown to most well into the twentieth century) in the hope of influencing government and social change. The second story is about the consequences of this decision, not only for the lawyers themselves but for the profession, and potentially, the “field of state power.” The contributions of the individual narrators, however small, must be viewed as part of a broader process, and I will point out, in a speculative concluding section, where I think their contributions are reflective of trends in the broader process.

A. The Historical Context of Four Generations of Thai Social Justice Lawyers

Until the nineteenth century, governance in the feudal society of Siam, later renamed Thailand, was adapted to the needs of a powerful monarch and his local subordinates who exercised traditional authority. The structure and substance of monarchical rule spread from other parts of South and Southeast Asia, but, unlike the remote, infallible, and semi-divine rulers of India and Cambodia, Siam’s monarchs embraced a version of Buddhism that obligated them, as well as their people, to obey its precepts.59 Buddhism, still the religion of more than ninety percent of Thailand’s people,60 teaches that karma—the accumulated merit of an individual—determines individual fate.61 The concept of karma underpinned Thailand’s traditional social hierarchy.62 In the sixteenth century, hierarchy was formalized by the system of sakdina, in which each member of society, from members of the royal family to the lowest villager, had a prescribed place based on their relationship to the king.63 While sakdina became a relic after the overthrow of the absolute monarchy in 1932, modern Thai society remains hierarchical.64 Its monarch is still revered for his virtue and, many Thai believe, his sacred power. The influence of Buddhism remains strong, but has fragmented in an era of mass society,

62. See Baker & Phongpaichit, supra note 4, at 19–21.
63. Id. at 15
64. Scholars debate the nature of hierarchy in modern Thailand, but there is a great deal of evidence of its influence, reinforced by institutional remnants adapted to modern politics and economy. See Munger, supra note 29, at 466–67.
consumerism, and middle class ambition. Still, although much has changed, the institution of the monarchy and the hierarchy it represents still survive and their influence in both social relationships and politics is apparent.

In the pre-constitutional era before 1932, King Chulalongkorn’s (1853–1910) late nineteenth century “defensive modernization” of the Thai state included gradual Westernization of its legal institutions: establishment of courts, adoption of civil and criminal codes, and bureaucratic administration. State administration remained, as before, highly centralized, answerable to the king, and remote from the vast majority of ordinary Thai, although the aristocracy was pushed to assume administrative roles replacing their hereditary authority. The legal system King Chulalongkorn established was influenced by both civil and common law institutions, although the prevalence of code law, absence of citizen participation, and limited authority for judicial review suggest the predominance of civil law. Since the early twentieth century, Thailand has had civil and criminal courts of general jurisdiction and, more recently, specialized courts for domestic, labor, and commercial and intellectual property cases.

From its establishment, the purpose of the legal system was to support the centralization of the king’s authority, and the need for lawyers was limited largely to the affairs of state or dealings with foreign governments. King Chulalongkorn sent his son, Prince Rajburidirekrit (known as Prince Rabi), to study law in England, and on his return Prince Rabi established the first law school, which was for sons of royal families who were expected, like other members of the aristocracy, to serve in the king’s government. Prior to the middle of the twentieth century, private domestic business and commerce were undeveloped and dominated by Sino-Thai merchant families. The largely rural population knew little about law or lawyers.

A few firms with foreign-trained lawyers were located in Bangkok to serve foreign business interests, but the number of lawyers in private practice was small. As the influence of Western culture grew, families with means increasingly sent

65. See Baker & Phongpaichit, supra note 4, at 224–27; Peter A. Jackson, Withering Centre, Flourishing Margins: Buddhism’s Changing Political Roles, in Political Change in Thailand, supra note 57, at 75.


69. See Shinya Imaizumi, Political Reform and the Constitutional Court of Thailand, in Law, Development and Socio-Economic Changes in Asia 227, 229 (Naoyuki Sakamoto et al. eds., 2003).


72. There are few reliable sources on early practitioners. In 1960, the first Thailand Yearbook reported 1700 licensed lawyers (including those who were inactive), Statistical Yearbook, supra note 27, at 159, or, for comparative purposes, one lawyer for every 15,000 people (population 26,257,916). National
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their sons abroad to be educated, typically to France or England. Some, who were sons (and later daughters) of royalty, the tiny middle class, or successful Sino-Thai merchant families, returned with an education in law. Thai who were educated abroad, and especially those with law degrees, were likely to serve in the government after returning to Thailand. Alternatives to entering government service were few. Prestige and position were not won by entering private practice. A law graduate with an aristocratic name might become an important bureaucrat or win a coveted position in the Foreign Service.73

The monarchy's historical compromise with Western power opened Thai legal culture to the influence of powerful new values, including the concepts of equality and human rights.74 These new values, along with other elements of European culture, were embraced by some elites, but the attraction was by no means universal. Nevertheless, a slow transformation began which contributed to overthrow of the absolute monarchy by elites educated in the West, including a group of military leaders, and creation of a constitutional monarchy in 1932.75

Pridi Banomyong, the intellectual force behind the elite revolution that overthrew the absolute monarchy in 1932, made establishment of a public university to educate government officials one of his first priorities. In 1933, the University of Moral and Political Science (later renamed Thammasat University) opened, offering an undergraduate curriculum in law and other subjects, intended to educate future government officials in their responsibilities to the nation and its people. Pridi, imbued with many Western values, expected the majority of graduates to enter public service and to help establish a new mission for government—being responsive to the needs of the people—but his attempt to establish a parliamentary democracy was short-lived.76 Generals who made up the majority of the revolutionary party had ambitions of their own and soon pushed Pridi aside, promoting a new nationalism that combined the authority of the monarchy, the symbolic unity of the nation, and the sacred power of Buddhism under a central administration closely connected to its powerful leaders. From 1947–1973, Thailand was ruled by military dictators.77


73. Interview with Virada Somswasdi, Dir. of Women's Studies, Chiangmai Univ., in Chiangmai, Thailand (June 28, 2007) [hereinafter Virada Somswasdi Interview].

74. See David M. Engel, Mich. Papers on South & Southeast Asia, No. 9, Law and Kingship in Thailand During the Reign of King Chulalongkorn 59 (1975).


76. See id. at 123, 143–44.

In this period of military dictatorship, Thailand’s government formed a bureaucratic polity. While diverse elite factions were incorporated, and politics were pursued within the bureaucratic state, the bulk of the population was excluded from meaningful political participation. Moreover, there were few effective legal checks on the exercise of power by the Thai bureaucracy. The Thai Parliament tended to delegate broadly to ministries which used their authority to make policies without effective parliamentary oversight. The courts were deferential to bureaucratic discretion in making policy. With little oversight, Thai ministries were vulnerable to the self-interest of bureaucrats and outside influence, qualities that allowed alliances of the powerful traditional elite, military, and wealthy business families to grow through favoritism and corruption.

Thongbai Thongbao, perhaps Thailand’s first social justice lawyer, began his career in the era of Thailand’s bureaucratic polity. He graduated in 1951 from Thammasat University’s Faculty of Law, Thailand’s first law school for commoners. It is not difficult to understand how Thongbai’s origins in poverty, exposure to teachers steeped in public service, and belief in Buddhism contributed to an early embrace of social justice. Buddhism, together with Thammasat University’s public service values, emerges from Thongbai’s narrative as an important source of guiding principles. His identity as a lawyer, and the dictators’ abuse of both the concept of public service and the virtues of the dharma ruler to whom they owed allegiance, explain his passion for justice. More extraordinary is his early decision to devote his life to the legal defense of victims of government abuse at a time when there were few lawyers in Thailand and hardly any willing to oppose a ruthless military dictatorship.

The second generation of social justice lawyers entered the legal profession under radically different circumstances. The critical turning point for them occurred in 1973, although social unrest leading to the events of that year began long before. The student uprising against the dictatorship in 1973 and its aftermath marked a watershed in cause lawyering and in Thai anti-authoritarianism generally. Not only was the rising tide of discontent and radical idealism among students validated, shaping the careers of many, but Pridi’s public service ideals for legal education were reinforced and reshaped, especially at Thammasat, to emphasize the transformation of civil society as well as government. For later generations, Thammasat became the most desirable law school for candidates with a commitment to social causes and the source of a disproportionate number of new cause lawyers.

78. See Hewison, supra note 57, at 3.
79. See Baker & Phongpaichit, supra note 4, at 150–55.
80. See id. at 180–89; Craig J. Reynolds, Thai Radical Discourse: The Real Face of Thai Feudalism Today (1987).
81. Graduates from Thammasat University form the largest group among my interviewees, and the second largest group graduated from Ramkamhaeng University. Cause lawyers who graduated from Ramkamhaeng may be numerous in part because the university is very large, and many more law students graduate each year from Ramkamhaeng than from other universities in Bangkok. More
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Equality and democracy have particular appeal for the generation of Thai who lived through the 1960s era of brutal military rule and anti-communist terrorism that led to the student uprising of October 14, 1973, the “October Revolution.” In the 1960s, Thailand’s economy experienced its first “take-off.” The military dictatorship received massive American foreign aid and philanthropy as well as World Bank guidance. During the Vietnam War, Thailand became a staging area for U.S. military intervention in Vietnam as well as efforts to create a free market bulwark in Thailand against the spread of communism. Many members of Thailand’s growing educated elite opposed the Thai government’s authoritarianism and corruption and supported the October student uprising. The uprising toppled the U.S.-supported military government and created a brief window for political liberalization. The years 1973–1976 became a watershed of social and political change—a true “constitutional moment.”

Military rule returned in 1976 after a second bloody confrontation between the military and students because, in part, a wavering middle class favored stability, even if it meant the return of an authoritarian government. The political ambivalence of the Thai urban middle class toward popular democracy, and its comfort with authoritarian governments under some circumstances, is a continuing theme of Thai politics. Government persecution of the October activists drove many of them to join the communists in the countryside. By the end of the 1970s, a more moderate authoritarian regime attempted to heal this rift by welcoming the dissidents back into Thai society. Many members of the “October generation” continue in active roles in universities, government, and private enterprise.

Among the most influential members of the October generation is Somchai Homla-or, a second generation social justice lawyer who came of age as a student leader at Thammasat University before and during the uprising. Like other students of his generation, when the uprising toppled the dictatorship and democracy followed, he became a teacher and organizer in the countryside. When the dictators returned, he fled to the jungle to seek protection. Somchai returned from the jungle in 1979
to a greatly altered political landscape. During the 1980s, under stable, military-led governments, the economy again grew rapidly, attracting Japanese and Western investors. The October generation’s legacy grew through the efforts of returning activists, like Somchai Homla-or, who helped build a vibrant NGO movement in both the poorer parts of the countryside and in urban centers.

A third generation of social justice lawyers graduated in the shadow of the events of 1973 with the new political and social landscape of the 1980s—relatively benign military leaders and a booming economy. With the end of the Cold War, communism receded as a plausible threat. Political space opened as government violence against its enemies declined. Many lawyers strove to expand this space, but they were by no means the only actors who entered this field of opportunity. Unlike Latin America, Thailand was never the focus of a decades-long Cold War campaign by U.S. philanthropists for rule of law or human rights reform. Yet the long-term presence of NGO workers and organizers in rural areas indirectly reflects the influence of global funding and activism. Some TANs became facilitators of political consciousness and organizers of social movements among the rural poor. The continuing presence of NGO workers, with some support from TANs and international aid agencies, may have strengthened popular consciousness of social injustice but may not necessarily have raised consciousness of rights, in part because of the influence of traditional culture in the construction of popular justice claims in local contexts.

Surachi Trong-ngam is a third generation social justice lawyer who graduated from Thammasat’s law program in 1987. Early in his career he worked for NGOs while he accumulated experience. In 1994 he and three other lawyers formed a private social justice law practice. In 2000, with the aid of a network of activists and foreign funding, he became coordinator of an environmental litigation project. Many third generation lawyers, representing a transitional cohort of social justice lawyers,

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87. See id. at 188–89; Ji Giles Ungpakorn, Challenges to the Thai N.G.O. Movement from the Dawn of a New Opposition to Global Capital, in Radicalising Thailand: New Political Perspectives 289 (Ji Giles Ungpakorn ed., 2003).


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combine the idealism of the October generation with new career opportunities in a growing private sector.

A military coup in 1991 provoked yet another confrontation, this time with a much stronger, widely mobilized “civil society” sector, which resulted in the restoration of civilian rule and a strong rejection of military intervention.90 The same sector led a popular debate about expansion of constitutional rights and democratic government. In its final stages, the efforts of these advocates for change, combined with institutional failures contributing to the currency crisis of 199791 and international pressure for “structural reform,”92 led to adoption, with widespread popular approval, of a liberal, rights-oriented constitution in 1997.93

Until 1997, Thailand’s constitutions played only a small role in its jurisprudence; courts rarely referred to the constitution and only a handful of cases involving constitutional questions were decided against the government.94 The 1997 Thai Constitution, however, created a politically independent Constitutional Court with power to render binding constitutional interpretations and an Administrative Court that for the first time offered an accessible forum for challenging the decisions and policies of the vast bureaucracy.95

The fourth generation is comprised of lawyers whose careers began after the adoption of the 1997 Constitution. During this generation, the NGO movement has continued to strengthen and expand in part a result of new forms of foreign subsidy. After the Cold War ended, the United States was far less interested in sending military aid to Southeast Asia, but aid has continued and reflects, as always, American social concerns and policies, including drug interdiction and human trafficking prevention.

Duean Wongsa is a fourth generation social justice lawyer. She graduated in 1999 with a law degree from Chiangmai University and followed the tide of law graduates entering the global economy, choosing employment for two years as a lawyer with a Japanese business firm. At present, she is a staff lawyer with a trafficking prevention NGO funded by the U.S. government but created by a long-

91. The IMF interventions in 1997, together with foreign criticisms of “crony-capitalism” and “patron-clientelism,” were considered Eurocentric misperceptions by many Thai. See Baker & Phongpaichit, supra note 4, at 256–57.
93. See Michael Kelly Conners, Framing the ‘People’s Constitution,’ in Reforming Thai Politics, supra note 29, at 37.
94. See Imaizumi, supra note 69, at 229–37.
time Thai-British organizer and philanthropist. Her career reflects the maturation, in a certain sense, of social justice lawyering as a viable career.

After ten years of popular democratic rule, a military coup in September 2006 imposed a government pattern that many Thai thought had been rejected in 1992. Yet the coup was bloodless and was welcomed by middle class, urban Thai because it ousted a prime minister who, although popularly elected, was perceived as corrupt and overreaching. The coup leaders restored civilian rule under a new, popularly-ratified constitution after a little more than a year, but many Thai have viewed the recent coup as a step back from constitutionalism and rights.

Thailand’s rapidly growing economy has created opportunities for lawyers and, perhaps, for cause lawyers. Access to university level education has increased steadily since the mid-twentieth century, supplying both the private sector and the government with educated workers.96 Law is an increasingly popular undergraduate major,97 and the number of licensed attorneys is growing rapidly.98 In 1985, Parliament established an independent Lawyers Council of Thailand with exclusive power to license


97. As in Great Britain and much of Europe, Thai law schools are four-year undergraduate institutions. The first public law school, which later expanded to become Thammasat University, was established in 1933 as an “open” university, introducing a radically democratic concept of education, especially professional education, in a country where universities had been administered by and largely for the benefit of its elite. In most of rural Thailand, primary education was provided to males only, typically by literate monks at nearby temples. Secondary education was neither free nor locally available in much of the country. In the 1960s, a faculty of law was added to Chulalongkorn University, the country’s oldest university. See Kovilaikool., supra note 70, at 538. In the late 1970s, Thailand’s first open-admission law school, Ramkamhaeng, was founded. Id. Over the past twenty years, the number of public law schools has increased rapidly. The Ministry of Education (MOE) records statistics for twenty-four public universities and other institutions of higher education offering first law degrees (undergraduate degrees). See MOE Annual Report, supra note 28, at 27. A web search suggested that an equal number of private schools may offer first law degrees. While graduates in Law are not uniformly reported separately from graduates in Political Science in the MOE’s reports, the numbers suggest an enormous rise in popularity of law among undergraduates beginning in the 1980s. During Thailand’s boom in the 1980s, law became the second most popular field of study. Chira Hongladarom, Unemployment in Thailand, in THAILAND ON THE MOVE: STUMBLING BLOCKS AND BREAKTHROUGHS (Suchart Prasithrathsint ed., 1990). The table is reproduced in Tienchai Wongschisuwan, The Political Economy of Thailand: The Thai Peripheral State, 1958–1988, at 378 (1993) (unpublished Ph.D. dissertation, SUNY Binghamton) (on file with author).

98. The careers of practicing lawyers, public prosecutors, and judges are distinct. The term for a practicing lawyer is frequently translated as “barrister,” although unlike the British use of this term, it covers all licensed lawyers, including those who perform functions as solicitors as well as those who appear in court. As in many civil law legal systems, candidates seeking to become public prosecutors or judges must pass a separate, much more difficult examination, and usually sit for this exam early in their careers. Thus, judges and prosecutors do not normally come from the ranks of practitioners. Most judges are career bureaucrats receiving assignments which are, as a formal matter, based on merit and moving up a hierarchy of authority and desirability (e.g., being assigned to an area closer to Bangkok is generally considered more desirable). As described previously, the number of practitioners has increased dramatically in the past twenty-five years, paralleling the rise in other rapidly developing Asian societies. See supra note 20 and accompanying text.
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The Lawyers Council of Thailand has utilized its mandate to establish a legal assistance bureau to provide a clearinghouse for lawyers representing individuals and movements in human rights cases, although the scope and effect of this role awaits careful study. The governing board of the Lawyers Council has included human rights lawyers like Somchai Homla-or, who became the first chairman of its Human Rights Committee after the adoption of the 1997 Constitution. Surachai has served on both its Environmental Law and Human Rights Committees.

Yet the maturation of social justice law careers does not reflect the complexities that Thai social justice lawyers confront. For example, in spite of explicit recognition of human rights by the 1997 Constitution, and the growing support for human rights lawyers from the Lawyers Council of Thailand, an attorney associated with the Council, widely known for his human rights advocacy on behalf of the Muslim minority in southern Thailand, was assassinated by police in 2004. The Lawyers Council responded by issuing a public declaration calling for an investigation into and the punishment of the perpetrators, yet the government has taken no action to identify or prosecute his abductors. The assassination is not an isolated case, and the government’s use of violence to silence advocacy for rights, however infrequent, cannot be ignored by Thai attorneys.

Authoritarian rule has roots in Thai legal culture. Professor Frank Reynolds contrasts fundamental values underlying the political discourse of constitutional monarchy in Thailand—often described in terms of a trilogy of concepts: monarchy, nation, and religion—with the underlying values that dominate American political culture, termed “utilitarian individualism.” While American political culture grew from a tradition of individual freedom of conscience and dissent, treating institutionalized authority with suspicion, Thai political culture grew from a tradition far more respectful of the authority of traditional and spiritual leaders. Yet, the culture of deference to traditional leaders has not precluded objections to government...
action based on the welfare of the Thai people, and advocates for popular movements have been able to claim that those in power are responsible for promoting the people’s welfare. Equality and democracy (if not precisely representative democracy) also have a strong appeal, not only among elites, but among the Thai people generally, and growing support for these values is credited, in part, for the strong popular protests which toppled military rule in 1992 and propelled constitutional reform in 1997.

Some Western scholars have suggested that Thai culture encourages respect for leaders, avoidance of direct conflict, and reluctance to invoke law against persons who possess authority. According to this theory, patriarchal social norms encourage clientelism and networking to secure social position and benefits rather than contentious interaction with government officials and private power holders. If such a generalization is true, one might argue that Thai cause lawyers will prefer mediation or cooperation with the government over threatening to invoke formal legal process in order to preempt or oppose the government or other power holders. This generalization, like the claim that the Thai embrace “Buddhist values,” is controversial and best evaluated in the context of particular conflicts and the work of particular cause lawyers.

B. Thongbai Thongbao—The People’s Lawyer

Thongbai Thongbao, a first generation cause lawyer, was born in 1926 to a family of poor rice farmers in Ubon Rachiatari (Thailand’s poorest region located in the northeast) and raised by his five siblings. During his long career, he has become Thailand’s best known human rights lawyer. He looks back to humble origins to explain his mission to fight on behalf of the poor and oppressed. Thongbai knew little about law and had never met a lawyer, but he was encouraged to choose law by a young law graduate from Thammasat who taught in his high school and put into practice the public service values he had learned at the university. The young teacher

102. See Jackson, supra note 65; Reynolds, supra note 59.

103. See Michael Kelly Connors, Democracy and National Identity in Thailand, at ch. 8 (2003) (claiming democracy and liberal western political values are often embraced as an ideal and taken to mean government which respects the needs and best interests of the people—government for the people). But this rhetoric and its underlying values are manipulated to support authoritarian governance—government for the people but not by the people, rather government by the better elements of society.


105. See Imaizumi, supra note 69, at 228.

106. See, e.g., Fiona Haines, Globalization and Regulatory Character: Regulatory Reform After the Kader Toy Factory Fire 52–56 (2005). Haines’ theory does not predict an absence of conflict, but rather suggests that Thai power holders also prefer “corporatist” consolidation of their power and exclusion of rivals rather than public conflict or violence. Id. at 55. Yet Thai society displays plenty of overt conflict. As Indonesia scholar Daniel Lev commented with respect to another Asian culture said to avoid conflict, “[i]f Indonesians seek harmony and avoid conflict, they have not been good at it.” Lev, supra note 25, at 5–6.
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told him, “Even poor people like you can study in Bangkok. You can work to put
yourself through school.” With some help from his family, and by working and
living like a pauper, Thongbai graduated from Thammasat in 1951 with a degree in
law.

The Northeast is very poor and exploited by many people. . . . [W]ith my
own eye, I have seen they have taken people’s real estate, something like that.
So I think if I study law I think I can do something good for the people. . . . I
thought if I am a lawyer I can fight the police; I can fight many people.
Because to be a lawyer, as a people’s lawyer I can fight them.

Thongbai did not learn how to help poor people in law school, and he could not
become a lawyer until he had served as an apprentice to a licensed lawyer. When he
found an apprenticeship there was nothing for him to do, and he earned no money.
He was forced to live in a Buddhist temple, which charged nothing. He worked as a
reporter to support himself. Journalism, he said, was a good way to criticize the
government and earn a living at the same time.

Work as a reporter led to his first arrest, not for his reporting, but because one of
his friends was arrested under the anti-communist law for joining a peace movement.
Thongbai had not participated in the peace movement and was released after three
days. He then attempted to defend his friend in court but failed miserably, he says,
and his friend was given a long jail term.

For the next seven years he worked primarily as a reporter. In 1958, Thongbai
joined a group of journalists touring China. During his absence from Thailand, a
coup brought to power a brutal and virulently anti-communist general. Thongbai
was arrested when he returned from China, and spent the next eight years in jail
fighting his own case and those of other prisoners.107

I enjoyed being in jail. . . . [A]s a political prisoner I could go on practicing
law. I had applied for my license—I had it in 1958. In jail I was teaching law
to the prisoners. They are farmers. Even if they graduated from university
they knew nothing about the law.

Thongbai not only defended his fellow prisoners in court, he organized them to
fight to improve the prison’s abominable conditions by appealing to families for
support, convincing prison officials to allow the prisoners to cultivate prison grounds
so they could grow food and supplement their inadequate diet, organizing recreational
activities, and forming a legal defense committee with seven other imprisoned
lawyers.108

107. He won his case before a military court in 1966, but only after the death of the dictator and a public
discrediting of his regime. 1984 Ramon Magasaysay Award For Public Service: Biography of Thongbai
Mar. 1, 2009) [hereinafter Thongbai Biography].

108. See id. In 1975, two years after a student-led uprising toppled the dictatorship, he published a
best-selling account written during his Lad Praow prison years entitled Lad Praow Communists. Id.; see
also Reynolds, supra note 80, at 36.

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In 1960, while in jail, he filed a suit on behalf of all of the prisoners for false arrest under Thai law and also under the Universal Declaration of Human Rights. Three years later a civilian court ruled in the prisoners’ favor under Thai law. All of the prisoners were released except Thongbai and two others who were charged with new offenses under the Anti-communist Act and brought before a military tribunal. Thongbai again brought a false arrest claim, initiating a four-year stalemate. When an acquittal seemed likely, following a regime change, the government offered to drop all charges against him and many similarly situated inmates if, in return, he dropped his suit for false arrest. If his freedom alone had been at stake, Thongbai would have continued the legal fight, but he could not refuse an offer which would benefit so many others.

Thongbai entered prison as a journalist and part-time lawyer, but he left with a mission to practice human rights law and with a reputation that brought him political, labor, and human rights cases. Over the next thirty years, many of the most celebrated cases involving political prisoners, social movement leaders, and outspoken critics of government found their way to him, enhancing his reputation.

Eventually he set up a small office in a poor section of Thon Buri (across the Chao Phraya River from Bangkok). He invited younger lawyers to join him as volunteer apprentices, and eventually the number grew to about twenty. He has worked with many contemporaries and younger lawyers, but few could sustain his level of commitment to practicing on behalf of the poor who often could pay very little for their services.

You should know that the Thai people are very kind people. They give me some money . . . . But the people who have no money . . . when they come to see me they bring durian, when they come from the Northeast they come with a bag of rice or carrots . . . . So, I am happy. Maybe only in Thailand you can do that . . . . to live like that . . . because they are Buddhist. They tell me “Thongbai if you practice law in the United States you will become a millionaire.” But I did not want to do that. No lawyer practices like me at the time, or now. I think, how can I live like that? But I can live very easy at that time. We have rice to eat. We have everything. If you could see my house, it is a small room. One hundred fifty baht per month—five dollars at that time. Because I know nothing about the safety of the lawyer at that time.

Even in recent times, some Thai lawyers representing movements which officials deem threatening have been arrested, attacked, and even assassinated. But Thongbai has never been concerned about his safety as a defender of political prisoners.

I feel I did good things. People don’t want to kill me. Even after all that, the military and the police were not against me. Because they recognize I do good things. I am for justice. Even after October 1976, people leave for the jungle. But I stay [in Bangkok] all the time. And I fight for the communists.
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I fight for the reporters [charged with] lèse-majesté.109 I fight for the farmer and I fight for the communist.

Thongbai has at times stood carefully apart from politics. He did not join supporters of the student uprising in 1973, although he supported the opening for democracy in principle. “I did not join the uprising. So that is why I can stay [out of the jungle]. What can I do? That is why the police and high ranking military officer trust me. . . . I am free.”

He led a team of lawyers who defended students that were arrested and charged with crimes during the reimposition of military rule in 1976, negotiating a spectacular retreat by the government. Having brought the case to near-victory, he forced the prime minister to refer the prisoners’ fate to the Parliament which granted a broad amnesty to all who had fled to the jungles to avoid arrest and prosecution after 1976.110

After the October activists returned from the jungle, some were charged with offenses under the Anti-communist Act for their subsequent activities. Thongbai now had many cases in military court where he enjoyed practicing because the rules of evidence were more relaxed. After concern about communism declined, Thongbai continued to handle high profile cases for outspoken critics of government and made several trips abroad to defend the rights of ordinary Thai facing harsh criminal justice in other countries.111

During thirty years of law practice, Thongbai had become the leading defender of activists persecuted by government. In 1996, he became one of the members of the drafting committee of the “People’s” Constitution, and, in 2000, a member of Thailand’s first elected Senate.

Thongbai’s defense of political prisoners made him famous, but the small law firm he maintained for most of his career was typical of the handful of social justice lawyers whose careers began near mid-century and took shape under repressive governments. The untold story of the social cause lawyers of his time, whether they represented poor people or opposed Thailand’s first military dictatorships in court, is all the more interesting because of the absence of a colonial bar (as in Malaysia), a common law adversarial system (as in South Africa), or leadership by the judiciary (as in India). Of the 1700 lawyers reported in the 1960 census, only a handful were educated in Europe, and Thongbai was not one of them. Even without a tradition of professional independence or rule of law, Thai lawyers may nevertheless have been influenced indirectly by Western professional ideals or more directly by sources within Thai culture—or both. However, Thongbai’s statements contrasting his law practice and the practices of New York lawyers, together with repeated mention of

109. Lèse-majesté is a crime defined as affronting the dignity of the monarchy. The critical element is an affront to the monarchy, usually through speech, rather than the veracity of the representation. The crime has long since ceased to be meaningful in Europe, but continues to play a role in Thai politics. See David Streckfuss, Kings in the Age of Nations: The Paradox of Lèse-Majesté As Political Crime in Thailand, 37 Comp. Stud. Soc’y & Hist. 445 (1995).

110. See Thongbao Biography, supra note 107.

111. Id. He received the prestigious Ramon Magasaysay Award for Public Service in 1984. Id.
the importance of Buddhism in maintaining relationships with clients, complicate any such inference. Further, in 1984, he expressed a characteristic Thai rejection of mimicry of foreign social mores when he replied to a proselytizing North Korean communist at a conference.

I am a Buddhist and the Lord Buddha teaches us to make decisions on our own, from our own study of the situation, and not to decide by the word of others, even if they are old and scholarly. I agree that your way may be good for you, but for Thailand it is different. We have a different way.

Thongbai’s professional mission could have many sources, including belief in Pridi’s values of constitutional and public service or emulation of the lawyers in Western societies, but Thongbai’s reference to Buddhism in that reply and in referring to his relationship with poor clients of his law practice is perhaps more suggestive. Buddhism is a core element of Thai identity. Thai Buddhism places a unique burden of moral leadership on Thai rulers, exemplified by their beloved king. Conversely, scholars have suggested that repugnance for immoral or corrupt leaders, more than desire for greater rule of law or participation, underlies the mass participation in the uprisings that have overthrown dictators (as well as the support for military coups which have served the same purpose).112 Thongbai’s idealism and particularly strong belief in resisting unjust, oppressive rulers, could have multiple sources, including his education at Thammasat (which inculcated moral leadership as well as rule of law), Buddhism, and perhaps least plausibly, emulation of Western professional independence.

After the October 1973 student uprising, Thongbai played an increasingly important role by training younger lawyers and defending victims of government abuse. The student uprising toppled the American-backed dictatorship, opening Thailand to popular dissent, encouraging social movements, and bringing back the possibility of constitutionalism—a government committed to basic principles of conduct. The political opening influenced the aspirations of new law graduates and created opportunities for them.

C. Somchai Homla-or—The “October Generation” Lawyer

Near the end of his four years as a law student at Thammasat University in October 1973, Somchai Homla-or and his university schoolmates propelled a conflict with the government into a confrontation and a mass-movement. Many of his generation were drawn to left idealists like Mao Tse-tung and in the early 1970s students at Thammasat had rediscovered and circulated the writings of the independent Thai Marxist Jit Promlak.

Somchai is the son of middle class parents who grew up in Ayutthaya, the old capital of Siam, north of Bangkok. His grandfather was a farmer, but his father had a university education and had worked as an accountant for the government and for private business. Even before 1973, he was drawn to discussions of social problems

112. See, e.g., Reynolds, supra note 59, at 440–44.
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while in law school, as were many of his classmates. He helped organize the “Rule of Law Club,” which recruited law students\(^\text{113}\) to study social conditions in Thailand and prepared them for visits to the countryside to talk with villagers.\(^\text{114}\)

After graduation, he worked for a federation of farmers in the poor, rural northeast and as a school teacher. The federation was organized by students who had been involved in the October 14 uprising. Their purpose was to help mobilize the farmers to achieve land reform. Somchai helped investigate cases of fraudulent transfer of title to speculators.

They occupied and used the land for generations, and they discovered that their land is under the title deed of one of the chiefs of the education department. The people were shocked. So they fight. We checked the document. We found a long time ago when these farmers were young, officers came and said they were surveying but didn’t say they were issuing title deeds. So the farmers cooperate. We helped them write a petition to the government in which we described these facts. And that mobilized the farmers.

Thailand had no administrative courts at that time, and a petition to the Council of State, which oversees the state bureaucracy, was one of the few remedies available.

[Y]ou have to mention some legal principle—land title, going back to the king—like public domain. The concept is that the king gives use of the land to you, not ownership. The concept of private ownership is introduced by the West. King Rama V introduced private land to Thai society . . . [and] allocated land titles to members of his family. In principle, if not developed during ten years, it must be returned to [the] king. The person who actually exploits the land should have ownership—that was their argument.

The government set up a committee to investigate the claims of the farmers, and eventually the farmers won return of their land titles from the family of the powerful bureaucrat who had stolen them, because, Somchai commented wryly, “the family was probably not powerful any more!”

Somchai was arrested when a military dictatorship returned to power in 1976. Released on bail, he fled to the jungle to join thousands of other October activists.

\(^{113}\) This recruitment process occurred until undergraduates were moved from Thammasat’s main, central Bangkok campus to the Rangsit campus on Bangkok’s outskirts and could no longer be recruited by upperclass members. Interview with Prinya Thewanaruemitkul, Vice-Rector, Thammasat University, in Bangkok, Thailand (Feb. 29, 2008); Interview with Prinya Thewanaruemitkul, Vice-Rector, Thammasat University, in Bangkok, Thailand (June 14, 2008).

\(^{114}\) In the 1960s, the Rector and Chair of the Economics Department of Thammasat, Puey Ungpakorn, had been instrumental in organizing a Graduate Volunteer Service, on the model of a similar British organization, which placed university graduates in community-based organizations in the countryside to give them better knowledge of their country and to encourage careers in public service. See Thanapol Eawsakul, Puey Ungpakorn: A Biography, in Collected Articles by and About Puey Ungpakorn: A Siamese for All Seasons 361, 366 (5th ed. 2000). According to one source, it is likely that this organization was made possible by funding from The Asia Foundation. See Sulak Sivaraksa, Loyalty Demands Dissent 79, 116 (1998). In the 1970s and 1980s, the Thai Volunteer Service, managed by Puey Ungpakorn’s son Jon Ungpakorn, placed students with non-governmental organizations in an effort to channel students’ careers in a similar direction and to support the growing NGO movement. Interview with Somchai Homla-or, in Bangkok (Dec. 21, 2006); see also infra note 119.
who escaped arrest in the camps of communist cadres on the Thai-Laos border. He soon became dissatisfied with the communist movement in the jungle and secretly returned to Bangkok to work underground. He was arrested and remained in jail for a few years until a general amnesty was declared in 1979.

Though support for dissent against military rule was growing within Thailand, the international community showed little interest.

At that time there were very few international organizations. . . . We know about Amnesty International because they sent the team from Oxford to the trial of the political activists, the student leaders that were arrested in 1976 and detained for almost three years before being released.

A Thai NGO, the Union for Civil Liberties (UCL), was formed around 1974 by European educated academics to support the human rights of participants in social movements. Somchai worked for the UCL after his release from jail in 1980, and the UCL had close connections with Amnesty International (AI) which was then monitoring Thai military treatment of refugees on the Thai-Cambodia and Thai-Laos border.

I helped Amnesty International to investigate and the National Security Council was very angry with me. It became big news for weeks but they did not mention me by name, but they implied it was me when they gave an interview . . . blamed me, harassed me, somebody follow me. The investigation became big news . . . .

Somchai was linked, like Thongbai, with the communist party, but the government perceived his involvement in a very different way because he had fled to the jungle. Anticipating arrest for his work with AI, he fled again in 1980, this time to Hong Kong. It was his first trip abroad. During three years in exile, Somchai became a fellow for the Asian Human Rights Commission and a trainee for Human Rights Watch. He studied human rights in other Asian societies. Later, he also met human rights advocates in the United States. These contacts provided resources that transformed his career.

When he returned to Thailand, he worked as a voluntary chairperson of the UCL and joined the Internet Law Firm, which was inspired by a Washington, D.C., human rights organization named Human Rights Internet which published a directory of human rights organizations in the days before the Internet. In addition, Somchai established a Human Rights Committee for the Lawyers Council of Thailand immediately after the ratification of the 1997 Constitution in order to gather all of the cause lawyers in one place for mutual support. Their legitimacy as a professional organization grows from the Council’s mandate to take cases on behalf of the needy.

115. See infra pp. 785–86.
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The criteria . . . are not restricted to these [poverty cases], but . . . we mainly focus on the cases that have an impact on the public, for example, the cases that really violate the basic principles of human rights. Because we want to maintain and promote the principle of human rights, so any case that may revoke or weaken the principle of human rights we will take. The case that may have some impact on or affect the vast majority of the people or a big group of the people we will take. We want to empower the people, not just only to solve the immediate problem. Because we believe that democracy cannot be built without the people’s participation . . . so we identify our role is one of support for the people’s movement.

Within the committee we set up subcommittees on different kinds of rights, and in the subcommittee we have lawyers and people from NGOs and academics, because we want the lawyers to work together with them. We want to be different from the mainstream lawyers . . . you cannot work alone.

Somchai has faith in the courts, and he urges young lawyers to raise constitutional rights and human rights in the cases that they litigate.

Judges are independent from the executive branch . . . but they are not independent from the king. . . . They are very proud that they act on behalf of the king. . . . And to this extent they can check the executive branch. There is no direct link between the other two powers and the judiciary. They are quite independent from the other branches. Except some corrupt judges!

He also understands the deeper problem of establishing rule of law—the behavior of the entrenched bureaucracy.117 A court decision may be required not only to vindicate the small adjustment of registration regulations to conform with the intent of the law, but also to empower a lower level government officer to use initiative to make the change.

Somchai is concerned that there are so few young lawyers in his network who are self-sustaining; one of his goals is to increase that number.118 He notes that young lawyers are difficult to recruit. “They are not our generation. Our generation is

117. He also trains government lawyers and at times uses a different strategy for advocacy to change government actions, namely by using his good relations with some ministry officials to propose cabinet resolutions favoring a broad and uncontroversial human rights policy. An example would be a resolution entitling every child to an education, and then using the resolution to pressure local administrators to address the need for improved education.

118. In 2006, when I first interviewed him, Somchai said, somewhat regretfully, that his Law Society network was sustained mostly by an aging corps of only about eighty lawyers countrywide. The limited interest of the vast majority of private practitioners in supporting, much less working on behalf of, social justice, human rights, or improvement of the rule of law in Thailand has been a persistent concern. Somchai recalled just one practicing lawyer who participated in the first years of the UCL, and he left quickly because it was not his thing. While my interviews suggested that the most active core was far smaller—at most fifteen or twenty whose names appeared again and again as organizers, trainers, and leaders of various projects, many others helped with particular projects or handled a small number of cases. Still others, not part of the network, work in the outlying provinces advising activist groups or NGOs and providing criminal defense for protesters. Still others serve as leaders, staff members, or counsel to NGOs.
more political.” The growing disparity between opportunities for private lawyers for businesses and the self-sacrifice required to pursue human rights litigation is as much a deterrent for third and fourth generation social justice lawyers as it was for Thongbai’s. A new internship program funds a few law graduates entering a training program run by Somchai and his colleagues, but they receive only 3000 baht (about $100) per month as a stipend.119 He believes that neither the Thai government nor international funding will sustain their work for long. Somchai has continued to maintain and extend his international network, allowing him to tap international funding for his projects and coordinate them with international advocacy.120

Prior to 1973, radical lawyers like Thongbai found a way to make a modest living while providing services to a poor, underserved, and needy urban population. These were the exceptional few who survived in spite of the constant threat of jail for “communist” activities, as Thongbai’s experience illustrates.

After 1973, cause lawyers found new roles. A group of activist first generation practitioners founded the Legal Aid Center Institute to provide services to poor, needy, and politically marginalized groups who lacked legal representation.121 Two academics educated in Europe formed the UCL, an organization focused on the rights of causes seeking to open political space for popular movements.122 After graduation, activist second generation law graduates, like Somchai, became organizers, but they delayed making decisions about the paths of their legal careers because they had fled to the jungle. Upon returning, their activism continued. The returning group took up careers shaped by idealism; some becoming organizers in rural areas,123 others joining NGOs spun off by staff members of the Legal Aid Center Institute who had been mentored by Thongbai’s generation,124 and still others

119. There were nineteen trainees in the program in 2006. Somchai focused recruitment on the need for human rights lawyers for Thailand’s beleaguered Muslim communities. The training was to be held in the south, the area of Muslim concentration, and many of the participants were from Muslim families. Another program, the Thai Volunteer Service, was formed in 1980 with a grant from the Asia Foundation to support the NGO movement by providing a small two-year subsidy to university graduates working for NGOs. In 2006, Thai Volunteer Service began supporting law graduates working for NGOs. Interview with Somchai Homla-or, in Bangkok, Thailand (Dec. 21, 2006); Interview with Somchai Homla-or, in Bangkok, Thailand (June 18, 2007); Interview with Somchai Homla-or, in Bangkok, Thailand (July 8, 2008); see also supra note 112.

120. For example, Somchai’s Cross-Cultural Foundation funnels money to many of his projects and the committees or NGOs that maintain them. Former Prime Minister Thaksin Shinwatra attempted to block foreign funding flowing to Thai NGOs that he found politically troublesome by adopting regulations making direct funding of Thai NGOs from foreign sources illegal. However, Thai foundations may legally accept foreign funding, and in turn these foundations can fund NGOs. Interview with Somchai Homla-or, in Bangkok, Thailand (July 8, 2008); see also Amara Pongsapich, Thailand, in The International Guide to Nonprofit Law 304 (Lester M. Salamon ed., 1977).

121. See Ruangrawee Pichaikul & James R. Klein, The Asia Foundation, Legal Literacy for Supporting Governance Legal Empowerment: Advancing Good Governance and Poverty Reduction 146–47; see also infra note 154 and accompanying text.

122. See infra p. 785–86.


124. Pichaikul & Klein, supra note 121, at 147; see also infra note 153.
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entering government or politics. In the 1980s, a tidal wave of new NGOs marked the rise of “civil society” in Thailand and laid a foundation for the rapid overthrow of the 1991 coup and the movement supporting the adoption of Thailand’s liberal constitution in 1997.125

Thus, like Somchai, many cause lawyers in the first and second generations helped to institutionalize activist roles as providers of direct support for marginalized and poor individuals, as well as for social movement organizations. They also provided apprenticeships for the third and fourth generations.

D. Surachai Trong-ngam—The “Environmental” Litigator

Surachai Trong-ngam entered Thammasat University a little less than a decade after the uprising in October 1973 and is a member of the third generation of cause lawyers. The Vice Rector of Thammasat University, a prominent scholar and political pundit who is a half-generation younger and great admirer of Surachai Trong-ngam, showed me a picture of Surachai when he was in law school in the mid 1980s. In the picture he has long hair, torn jeans, a red book, and a cloth bag—he looks like a Berkeley radical. During the period when the photograph was taken, Surachai led groups of Thai law students to the rice fields near Bangkok to learn about the people.

Surachai has “attitude” that is expressed in his class-conscious description of his family, his admission of his own naiveté and that of other law students who went to the countryside to lecture villagers on politics unprepared to help with their legal problems, his continuing commitment to represent social causes, even though his commitment has meant a life in poverty, and his belief in the causes of the clients he represents in their fights against the government.

Surachai became radicalized during law school by students and teachers who believed in human rights and by a personal journey through which he embraced the legacy of 1973. A thoughtful self-critic, Surachai commented on the naiveté of law students armed with a superficial knowledge of Marxism, expecting to have something useful to tell villagers. He credited the visits with awakening him to Thailand’s social problems, its pervasive poverty and inequality, and the realization that law school had ill prepared him to understand the legal problems of the rural poor or to use the law to help them.

Surachai entered law practice in 1987 and worked for an NGO in Chiangmai, in Northern Thailand, doing “community research” by assessing problems of the youth and providing social services. While at this job, he gained further experience with rural communities reinforcing his belief that more specialized expertise was needed to help them and that an NGO specifically for that purpose would be useful.

Surachai moved to Bangkok where he was employed for a year or two by the Friends of Women Foundation, an NGO created by a lawyer from the October generation. In 1994, Surachai joined three other lawyers to establish a small public interest law firm, Meesit Law Firm.

The purpose was to help the lawyers survive well in their profession and so continue to do social [cause] work. They did not want to rely on sources of funding from foreign countries or on being an NGO in order to do social work. They wanted to find some other ways through being in the legal profession to do social work.

Each lawyer had experience in social cause practice—labor union representation, slum advocacy, criminal law—and Surachai brought his experience as a litigator for the Friends of Women Foundation and his interest in representing communities like those he had seen near Chiangmai. From the outset, the problem for the Meesit Law Firm was financial survival.

We try to get some work from the business sector but by nature the business is about problems related to villagers’ cases. We found it difficult to build good connections with business. We could make money from cases that were passed on by other lawyers or through a network of relatives and friends. We thought that if our strength was doing socially important work we should create this image and try to [sell] it to the public . . . . We thought about our strength in doing social work, and if we want Meesit to grow, we could try to use our strength to promote Meesit and get social cases in other areas.

Another challenge for Meesit is the reproduction of this kind of law practice. Surachai acknowledges that it is important to recruit and train younger lawyers, but this commitment adds to the burden of supporting the partners.

We provide opportunities to learn. Most of the people here were involved in social activities. We might not be able to fully support the next generation lawyers. If they can survive here, they must have fewer financial constraints and family obligations . . . . Many might not be able to continue to be here and will have to leave.

In 1999, Surachai returned to Thammasat University to earn a diploma in Public Law, which prepared him to represent clients in the new Administrative Courts created by the 1997 Constitution. Surachai was then recruited by Somchai Homla-or to join his Human Rights Committee and handle litigation brought to the Committee by NGOs on behalf of communities resisting private development or government projects.

In 2001, the New York based Blacksmith Institute proposed to fund an environmental litigation project in Thailand by creating an NGO called EnLaw.126

126. Interview with Penchom Saetang, Dir., Campaign for Alternative Industry Network, Nonthaburi, Thailand (June 30, 2008) [hereinafter Penchom Interview]. (Ms. Penchom is a senior activist who helped establish EnLaw.) Surachai said that an “ideal model” of something like EnLaw had been discussed within his network for some time, but his network had few international contacts in the environmental law area. Counterparts in other societies are learning to litigate through networks with environmental litigators elsewhere. Before EnLaw was established, a global network called ELaw linked environmental litigators together. ELaw is an environmental litigation project organized by Professor John Bonine at the University of Oregon. But Surachai’s contact with lawyers associated with ELaw has been limited in part by the fact that he speaks only Thai, and ELaw has had no contact with other lawyers in Thailand. Blacksmith’s proposal was first conveyed to Surachai’s network of friends and NGO contacts by a staff member at Human Rights First. A senior member of the network later
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EnLaw has subsequently received small amounts of funding from other foundations and the Thai government, and it is closely linked to Surachai’s law firm, which provides the lawyers who work for EnLaw. EnLaw has helped ease the Meesit Law Firm’s financial problems, but only temporarily because the Blacksmith funding, like so many grants from international sources, was a one-time grant to build “capacity” in a firm that was expected to become self-sustaining. Surachai explains, however, that the clients of his firm cannot afford to pay him because they are poor. They believe in him because he is a community activist, not because he is a lawyer for hire—to ask them for payment or part of the meager compensation they receive from court judgments would undermine their trust. Surachai has carefully considered alternative ways to sustain his work. In addition to occasional non-cause work, he thinks that the NGO network may be able to provide long-term funding.

Like Somchai, Surachai thinks litigation has become increasingly important for lawyers defending social causes, especially since the ratification of the 1997 Constitution.

Due to the fact that the establishment of the Constitution in 1997 including the trend toward development of administrative law, these make it easier for the people to oversee the state’s power by creating more channels for oversight that the people’s movements lack . . . . Until now, the legal process has been employed to limit the people’s rights. Now, people have their own rights to use the legal process. The legal process is a channel for people to fight. And we think we can back them up on this part.

Some of the important cases that have propelled Surachai’s reputation appear on the Blacksmith Institute website as illustrations of the global fight against pollution.127 To Western observers, Surachai may seem to support the most conventional form of the rule of law, an “American-style”128 environmental litigation firm that “plays for rules.”129 He litigates like American-style public interest lawyers, and his litigation seems to focus on a narrow regime of rights—environmental pollution. But Surachai does not view this as narrowing his role as an activist. He views his and EnLaw’s mission quite differently from Blacksmith’s emphasis on the natural environment.


128. By “American-style” I mean an aggressive use of law to initiate litigation to change the rules under which Thai ministries operate, to expand the statutory interpretations applicable to private firm liability, or to establish constitutional protections. Perhaps one other firm has recently emerged that aspires to such practice, but Surachai is far ahead of the curve. Interview with Somchai Homla-or, in Bangkok, Thailand (July 8, 2008).

129. The term was given meaning by Marc Galanter’s seminal essay, Why the “Have” Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc’y Rev. 95, 97–102 (1974). The concept refers to use of the court’s policy making authority by choosing to litigate for the purpose of establishing precedent rather than merely resolving a conflict or seeking a specific remedy. Id.
Surachai’s mission is supporting community self-determination, and the starting point is always a community movement.

It’s true that these groups arise as a result of our explanations about how to exercise their rights, letting them see the benefit of legal ways of fighting, both to protect and to reclaim. If they see the benefit, they can have us work on litigation. This is the work of networks of villagers, NGOs, and lawyers, right? They have to understand their movement’s friends . . . . Mostly, if they are strong, they tend to be sued anyway . . . . They already tend to be involved in many risky actions. Most of our work supports villagers when they are about to be sued. Even though we definitely do reactive cases, we also want to do proactive cases . . . . It’s the movement’s action, so we have to do it in the form of a group.

He assumes that his own transgressive politics are aligned with his aggressive litigation.

The problems encountered by Surachai sustaining his law practice for social change, including a paucity of fee-paying cases, the mismatch between occasional support from foreign sources and his own goals, and difficulty attracting and supporting younger lawyers, are typical and help explain the slow growth of cause lawyering among private practitioners. Although the number of lawyers in Thailand has increased sharply during the last twenty-five years, the number of cause lawyers in private practice, like Thongbai and Surachai, has not. Aging radical lawyers in small firms constitute the core of Somchai Homla-or’s country-wide network. While the first generation had few choices other than private practice, after 1973, a much wider range of employment opportunities existed for idealistic law graduates, including working for NGOs or combining NGO employment and private practice. The rising number of cause lawyers after 1973 is due in large part to employment by NGOs. The new cause lawyers are salaried, at least in the early stages of their careers, and many have been supported in part by NGOs. Somchai’s Human Rights Committee, which has become a focal point for cause lawyering and its reproduction,

130. See infra note 151. The take-off period occurred in the late 1970s, shortly after the 1973 uprising. See MOE Annual Report, supra note 28 (providing statistical data on the number of Thai lawyers).

131. It is possible that a few new cause lawyering firms have formed outside of Bangkok. See supra note 128. I recently learned of another “environmental” law firm like Surachai’s, which is less well known and has kept the Bangkok network at a distance. Although I have asked many sources about this, only a few provincial cause lawyers have surfaced—perhaps ten or fifteen—but all part time and none with the commitment of Somchai or Surachai to build a movement among lawyers or to become identified with social movements generally.

132. For information on the formation of the Lawyers Council of Thailand (originally named the Law Society), see Kovilaikool, supra note 70, at 546–47. The creation of the Lawyers Council by Parliamentary Act in 1985 may not only reflect the desire of practitioners to have their own organization, but also the symbolic importance of an independent bar in the modern nation state. See, e.g., Heger Boyle & Meyer, supra note 24, at 71. In addition to the growing importance of private lawyers in one of the fastest growing economies in the world and its popularity as a field of study, the liberal authoritarian governments of the 1980s attempted to simultaneously open up political space and to manage it by encouraging participation without full democracy. The Lawyers Council may be viewed as an attempt to foster and manage an important aspect of civil society, access to the courts. This goal is reflected in
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has depended on its relationships with NGOs to channel the most important cases to the Committee for consideration. This loop between human rights activism by lawyers and NGOs has tightened in recent years because most of the youngest members of Surachai’s network are associated with NGOs or work with NGOs.133

E. Duean Wongsa—The NGO Lawyer

When I first met Duean Wongsa, she was a young and idealistic twenty-seven year old about to embark on her career as an NGO lawyer in Chiangmai in northern Thailand. Today, at thirty, this fourth generation cause lawyer has seen and coped with more of the rough side of Thai society than the vast majority of her classmates. She has adapted her idealism to the contradictions of working between state anti-trafficking policies and the needs of young Burmese women whom she “rescues,” sometimes against their wishes.

Duean’s family has been a source of inspiration. Her mother worked at menial, difficult jobs to support Duean and her older sister. Duean has a strong feminist consciousness of the violence that men perpetrate against women, which may reflect her family’s experience, as well as the influence of her law school mentors, activist faculty members.

She attended the then new public law school at Chiangmai University. Although Chiangmai Law School does not have the reputation of the elite Bangkok universities, it has an exceptional faculty of activists, two of whom served as mentors for Duean. Both of her mentors were third generation cause lawyers with national reputations as advocates for northern rural communities, ethnic communities, and other human rights causes. One served on the board of EnLaw, Surachai’s environmental NGO. The other, a female professor Duean greatly admired, earned a doctor of laws degree at Cornell University, writing her dissertation under feminist law professor Martha Fineman’s direction, about the continuing struggle for women’s rights after the adoption of Thailand’s 1997 liberal constitution.

Duean’s first employer, typical of her generation, was a Japanese business firm where her sister worked as an administrator. She was quickly bored by the work, and after two years she searched the Internet for something that meant more to her. She accepted an opportunity to work for a new NGO dedicated to addressing problems of human trafficking.134 Trafcord, the NGO she works for, receives some funding from the Thai government, but most of its funding comes from U.S. sources: Open

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133. See supra note 119 and accompanying text.

134. She and another classmate are the only two from a class of fifty that are working for NGOs.
Society Institute (OSI), World Vision Foundation, and the United States government, which provides support through its Embassy in Bangkok. The Embassy channels funding under U.S. programs, such as the Office to Monitor and Combat Trafficking in Persons (G/TIP).135

Trafcord is in fact a network of formal and informal relationships among government and private agencies which collaborate to identify brothels, rescue women who are held in the sex trade against their will, and prosecute the traffickers. Collaboration between government and NGO is typical of many NGOs that have survived for long periods and remained effective. As Duean says, it is a necessary relationship. She explained that the NGO’s founders have experience helping children and families but no authority to make government officials or brothel owners cooperate. The government has the authority but no knowledge or ability to help. The alliance created by Trafcord may be smoother than in other circumstances because the G/TIP program threatens withdrawal of U.S. aid in countries that do not comply with U.S. policy.136

Employment by the NGO is a stage in her career as well as a cause. Duean explains her cause as providing a service to children, families, and the law—a career goal with latitude to allow her to envision moving to a larger NGO in a few years where she can assume greater responsibility. Her long-term goal is to form her own NGO or private organization to provide services to families. Typical of many in her generation, Duean can contemplate a career which might not have been possible for earlier generations of activists.

V. THE INFLUENCE OF SOCIAL CHANGE ON GENERATIONS OF CAUSE LAWYERS

The arc of the career of each of the four social justice lawyers was influenced by perceptions and interpretations of the individuals as well as by the opportunities and constraints created by their families, institutions, and other relationships. As individuals, the four lawyers are not alike, nor can they be viewed as representative, in any statistical sense, of all cause lawyers in the four generations. Yet their careers, considered together, suggest some of the most likely pathways for cause lawyer careers in each generation and the social changes that have altered them.

In this Part, I will consider the influence of Thailand’s political and economic evolution on cause lawyering. Four broad, overlapping sources of change emerge from the career narratives: (A) Thailand’s “development,”137 its economic growth together with related changes in education and class structure, (B) the October 1973

135. See U.S. Government Funded Anti-Trafficking Programs, http://www.state.gov/g/tip/c12606.htm (last visited Mar. 1, 2009) (providing a list of U.S. government funded anti-trafficking programs conducted under Office to Monitor and Combat Trafficking in Persons (G/TIP)). The initial task force to implement such programs was created pursuant to the Victims of Trafficking and Violence Protection Act of 2000 and is presently under the supervision of the G/TIP. See 22 U.S.C.A. § 7103 (2008).


137. By “development” I mean rapid social change along a historical path rather than progress toward a particular set of institutions or social goals.
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uprising, (C) the emergence of the 1980s NGO movement, and (D) the international flow of resources during the Cold War and post-Cold War periods.

A. Thailand’s Development

The longer view afforded by time underscores a parallel between Thailand’s modern economic development and the increasing numbers of lawyers (far outstripping its population increase). Thailand’s first public law school was established in 1933, opening the profession to anyone qualified for admission. Nearly thirty years passed before a second public law school was established. In the past twenty years, and especially in the last decade, the number of public and private law schools has grown rapidly. Families of university students have almost always preferred to have children enter secure government employment, and law students themselves are typically drawn to high-status public careers as a judge or prosecutor. Increasingly, students have been attracted to law as an entry point to the rapidly growing and globalizing business sector. As Daniel Lev has observed about similar increases in Indonesia and Malaysia, the vast majority of the new recruits are not deeply imbued with the values of professional independence or the rule of law. Yet there are far more cause lawyers in Somchai Homla-or’s extended network than there were in Thailand when Thongbai Thongbao began practicing law.

Soon after World War II, the United States replaced England as Thailand’s protector and principal benefactor. Initially this was done to secure the United States’ position in Southeast Asia, but it quickly became a Cold War strategy driven by the United States’ desire to make Thailand a developed, free market bulwark against communism. U.S. aid built infrastructure not only to facilitate military needs but also to domesticate rural areas that might otherwise have fallen under communist influence. The Thai state grew and penetrated areas that previously had only a distant relationship to Bangkok, and now had roads, schools, and medical services. Major U.S. foundations addressed development of higher education and professional training. The World Bank issued a plan for fiscal management, which was implemented by Puey Ungpakorn, Director of the Ministry of Finance, later Rector of Thammasat University and a strong supporter of the student uprising in 1973.

Business boomed, and rising expectations began to have an important effect on other development policies of the Thai government. Thailand’s growth created new

138. See supra note 97.
139. See Lev, supra note 20. Thai legal education has been slow to modernize, but the limited role for lawyers derived initially from Thailand’s civil law tradition and the historical conservatism of the courts, which have contributed little to the development of a profession with a sense of independence or power.
140. Somchai’s Law Society network was sustained by a corps of approximately eight lawyers countrywide, see supra note 118, compared to the enterprising three lawyers that began the Legal Aid Center Institute, see infra note 153.
141. See Hess, supra note 35, at 320, 322.
142. See Ramon Magsaysay Award Foundation, Puey Ungphakorn, in Collected Articles by and About Puey Ungphakorn: A Siamese for All Seasons, supra note 114, at 35–36.
wealth and aspirations for upward mobility by families who desired to see opportunity perpetuated for the next generation through better education for their children.\textsuperscript{143} American advisors also pressured Thai bureaucrats to improve the education system, and American philanthropies invested enormous sums in subsidizing and retraining entire university faculties.\textsuperscript{144} Between 1961 and 1972, university enrollment increased from 15,000 students at five universities to 100,000 enrolled at seventeen universities.\textsuperscript{145}

Demographic change created a fertile ground for student idealism and opportunities for idealism to be put into practice.\textsuperscript{146} As opportunities expanded, middle class expectations also continued to rise, creating a politically precarious environment for Thailand’s dictatorship. While university students like Somchai Homla-or discovered new ideals that directed their opposition to authoritarian government, Thailand’s emerging middle class wanted economic opportunity, and when the dictatorship could not deliver in the early 1970s, they provided crucial support for the student revolt in 1973.\textsuperscript{147}

A comparison between the number of cause lawyers at mid-century and at century’s end is problematic because the very concept of a cause lawyer varies among the generations. Prior to 1973, some lawyers who worked in important positions for government shared many of the sentiments and values expressed by Thongbai.\textsuperscript{148} While we might pause before calling them cause lawyers, one of the most important characteristics of contemporary Thai cause lawyering is its use of insider connections.

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\textsuperscript{143} Id. at 149–52. Surachi’s career was influenced in this way by the expansion in educational opportunities during the 1960s and 1970s. Surachi’s family is poor, but a university education was not beyond his grasp or, more importantly for general political development, his family’s expectation.

\textsuperscript{144} See Hess, supra note 35, at 329, 335, 339. Aid from the Ford Foundation, Rockefeller Foundation, and Carnegie Foundation transformed higher education in Thailand. Puey Ungpakorn, Chair of Thammasat’s Economics Department from 1964 to 1972, began with a department of six which grew to over one hundred faculty members by the time he resigned. See Eawsakul, supra note 114, at 365. During the same period, U.S. philanthropies opposed U.S. support for pro-U.S. dictatorships in Latin America by funding human rights, reflecting a political split among elites in the United States. While there was opposition to the war in Vietnam, there was far less opposition to U.S. support for Thailand’s repressive military governments. Philanthropies may have viewed Thailand as underdeveloped and needing basic social welfare and educational reforms that would lead to development of a free market economy and democracy. Put another way, Thailand may have drawn less concern about human rights because it was perceived as unready for them while South American societies were perceived as fundamentally European in origin and closer to the United States in culture and politics. Amnesty International sent observers to the student trials in 1976. Interview with Thongbai Thongbao, in Bangkok, Thailand (June 22, 2008). Additionally, congressional hearings in 1977 concerned the wisdom of continued arms shipments but not human rights issues in Thailand. See Ewasakul, supra note 114.

\textsuperscript{145} Anderson, supra note 85, at 149. During this decade, professional occupations increased more rapidly than any other occupational group. Id. at 150 tbl. 7.1.

\textsuperscript{146} See id. at 154.

\textsuperscript{147} Id.

\textsuperscript{148} Confidential interview with former high ranking government prosecutor, in Mahasarakham, Thailand, (June 26, 2008).
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to accomplish what would be otherwise impossible through the courts. Whether such insiders who share some of the objectives of traditional cause lawyers are truly capable of “speaking law to power” raises difficult questions about cooptation of dissent. The issue is particularly difficult conceptually and empirically in Thailand where until mid-century the existence of a bureaucratic polity meant that all elite factions were employed by, or otherwise closely linked to, the state and its administration.

After the 1973 student uprising, political idealism carried law graduates in many different directions, but not into the private practice of law. Many of the most radical students in the uprising thought the human rights discourse of some of the professors who supported them was too conservative and too Western.149 The legal profession began its rapid growth in the late 1970s, but this rapid growth in the overall number of lawyers did not necessarily mean a similar increase in the number of cause lawyers.150 Undoubtedly, the general opening of Thai society, more than political idealism, generated a surge in the number of lawyers entering private practice. The same opening created an opportunity for Somchai and others to use their legal training to help the socially oppressed and to found institutions that promoted the use of law to support social movements.151 Soon, however, many of the most radical law students, like Somchai, fled to the jungle, postponing any thought of a professional career.

But of course that is the point. Before 1973, few individuals trained in the law who sympathized with opponents of government chose to invest in a career that involved deploying the law against the state.152 As time passed, and changes occurred

149. Human rights advocated by some Thammasat faculty, as well as liberal democratic ideas about development supported by Puey Ungpakorn, Rector of Thammasat (who was a protector and supporter of the students), were considered too Western by many students who were influenced by the models of liberation closer at hand in Vietnam and China, and who embraced Maoist political theory.

150. In 1960, there were fewer than 2000 legal practitioners in Thailand. Between 1970 and 1975, the number increased by a little more than 125 lawyers a year from 2541 to 3177. After 1975, the number of lawyers increased to about 7000 in 1980, or more than 750 each year. Statistical Yearbook, supra note 27, at 159. The rate of increase is currently in the range of 3000 new lawyers every year. There are currently over 54,000 licensed lawyers in Thailand (or roughly one fifth the per capita proportion of the United States), about twenty percent of whom are women. See Lawyers Council of Thailand, http://www.nichibenren.or.jp/en/directory/data/E07-Lawyers_Council_of_Thailand.pdf. (last visited Mar. 1, 2009). In 1980, the Ministry of Justice estimated that the number of lawyers was approximately 7000. Statistical Yearbook, supra note 27, at 159. The Lawyers Council registered more than 19,000 lawyers by the year 1986, the first year after it assumed responsibility for licensing practitioners. See Letter from the Office of the President of the Lawyers Council of Thailand to author (July, 1, 2008) (on file with the author). The take-off in numbers actually began a few years before 1980, just as the “October generation” of students who participated in the 1973 uprising graduated and began their careers, suggesting that not only was there an increase in students electing to study law, but also, perhaps, more graduates from law school were choosing private practice. See supra note 97.

151. See discussion infra at Part V.C.

152. Other lawyers accompanied Thongbai to prison in the late 1950s, and Thongbai himself trained young lawyers beginning in the late 1960s. Lawyers emerged from the historical shadows to help establish the Legal Aid Center Institute and defend students arrested by the military in 1975 and 1976. Oral history suggests that there were no more than a handful of lawyers ready to commit a substantial amount of
in the relationship between the state and “civil society,” more roles for cause lawyers emerged.

B. The October Revolution—From Private Practice to Institution Building

Although four years after the uprising the number of new lawyers entering the profession began to grow rapidly, many of the most idealistic law graduates from the October generation, like Somchai, left Bangkok to work directly with villagers in other capacities. Even though many activist law graduates of the October generation postponed their legal careers, radicalization of the profession began immediately. The previous generation of embattled private practitioners together with Western-influenced intellectuals formed two organizations to formalize, expand, and reproduce a more liberal role for law. A handful of practitioners from Thongbai’s generation established the Legal Aid Center Institute, an organization dedicated to providing legal services to poor persons.153 The Institute’s lawyers focused on legal assistance, but, equally important, it became the training ground for many of the next generation’s activist practitioners and founders of important NGOs.154

The UCL, the second institution organized by first generation cause lawyers and other activists, radicalized the bar in a different way. The UCL, also formed soon after the student uprising, was founded by a group of Western-trained faculty at Thammasat University and Chulalongkorn University. Its founders were not exclusively lawyers. One of the founders, Professor Saneh Chamarik, educated in Britain, became Thailand’s most prominent human rights theorist and the first chairman of the National Human Rights Commission.155 Another founder, Gothom Arya, a participant in a 1968 student movement in Paris, was a young member of the Chulalongkorn University Faculty of Electrical Engineering. A few years later, Gothom founded Thailand’s first human rights organization.156 Soon branches of

time to assisting victims of the dictatorship, helping rural people oppressed by government or land owners, or representing labor unions and social movements. An oral history undertaken on behalf of The Asia Foundation names three lawyers associated with the Legal Aid Center Institute. See Pichaikul & Klein, supra note 121, at 146–47. During my interview with him, Thongbai recalled just a few who helped him defend students at Thammasat University in 1976.

153. See id. My interview with the son of one of the founders also suggests that the Institute was focused on law practice rather than on community education, policy development, and other activities that have characterized many of the “Thai-style” NGOs founded during this period. The Institute has disappeared with the last of its founders in the 1990s. See id. at 147. Interestingly, Thongbai was never a part of the Institute but attempted to operate his own training program for younger attorneys and even sought funding from The Asia Foundation for this purpose in the 1990s.

154. Id. at 147.


156. Saneh Interview, supra note 155; Interview with Gothom Arya, Professor, Chulalongkorn Univ., in Bangkok, Thailand (Dec. 22, 2006). During the repression following reimposition of dictatorship in
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the UCL were established by similar groups in other cities, including Chiangmai and Ubon Ratchitani. Thus, both the Institute and the UCL were organized by first generation Thai cause lawyers and activists as an expression of their idealism and aspirations for the rule of law. They provided direct support for marginalized and poor individuals as well as social movement organizations, and they provided apprenticeships for third and fourth generation cause lawyers.

To Americans, the English translation of the UCL name may suggest that it is Thailand’s own American Civil Liberties Union, but the UCL’s mission has been quite different. Unlike the ACLU, which has focused on protecting freedoms named in the American Bill of Rights, the UCL had no national legal charter to orient its work nor was the concept of human rights commonly used or generally understood. Instead, the UCL supported social movements by, for example, assisting labor organizations to organize, educating workers about their rights, disseminating information about new rights, and providing criminal defense. After 1976, its work frequently brought it into conflict with the government and under suspicion of communist influence.

While the first generation established institutions, the October generation pursued a different path that, in the long run, led back to cause lawyering. Many lawyers of the October generation left the university and became organizers who sometimes used their legal skills. Other law graduates, some who had been in the jungle, founded NGOs of their own, supporting the rising tide of mobilization in poor urban and rural areas. Still others, particularly those who could attract foreign philanthropy, formed policy-directed NGOs, such as the Friends of Women Foundation and the Center for Protection of Children’s Rights—and are now senior members of the “Thai-style” NGO movement.

Somchai’s career is quite distinct from careers of first generation activist lawyers. Influenced by his early experience in a powerful social movement, he has self-consciously grounded his work in a strategy for social change, namely attracting and training progressive lawyers to support social movements of the people. Since his exposure to an international community of human rights advocates in the late 1980s, he has been key in building a network of human rights lawyers in Thailand. He has divided his energy between mobilizing legal support for important cases, creating space for the defense of human and civil rights by networking with friends in

1976, Professor Gothom formed, with American assistance, the Coordinating Group for Religion and Society (CGRS), which was apparently Thailand’s first human rights organization. CGRS was the only domestic human rights organization permitted to function during the repressive post-1976 regime and became a training ground for future human rights lawyers. Interview with Sarawut Protoomraja, former CGRS volunteer and currently one of two UCL staff lawyers, in Thailand (June, 2007).

157. See, e.g., John V. Dennis, Jr., The Ford Found., A Report to the Southeast Asia Regional Office of the Ford Found. on Possible Funding Opportunities in the Field of Human Rights and Social Justice in Thailand (May 11, 1987) [hereinafter Ford Foundation Report] (on file with author) (recommending funding the Women’s Center at Chiangmai University but advising caution with respect to the UCL because its members were not known to work well with government).

158. For a discussion of “Thai-style” NGOs, see infra Part D.3–5.

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government, and reproducing the current generation of activist lawyers through training and finding support for younger lawyers.159

C. The NGO Movement

Third generation law students drawn to cause lawyering, like Surachai, entered a field that had taken shape through the work of the October generation, especially Thammasat University’s own graduates. Surachi’s career provides an instructive illustration because the network of student and faculty ties formed during law school continued to influence Surachai’s career long afterward, helping to direct him to jobs and to fund his practice.

Like many third generation cause lawyers, Surachai had an opportunity to begin working as a salaried staff member of an NGO. He worked first for a “community research” NGO in the north, and within a few years, through his network, he found a job with the well-established Friends of Women Foundation as a litigator. Through his network of friends he was also working with other NGOs, including Alternative Energy Projects for Sustainability (AEPS),160 an NGO that helps communities threatened with environmental, social, and economic disruption by Thailand’s program for building power plants. After working for the Friends of Women Foundation for a year, Surachai joined a small law firm whose partners had experience working for labor organizations, slum movement groups, and other social causes. His work for NGOs was a productive apprenticeship for developing basic skills and learning about the roles he could play as a cause lawyer in private practice.

A few years after joining the firm, Surachai’s network, specifically his contacts at AEPS, brought him another opportunity: coordinator for EnLaw, the environmental NGO established by the New York-based Blacksmith Institute. He was selected because of his prior work with AEPS and his reputation as a litigator. Cases which he had worked on for AEPS with the support of Somchai’s Human Rights Committee became the first projects handled by the new NGO, EnLaw. Over time, Somchai drew Surachai more deeply into the work of the environmental subcommittee of the Lawyers Council. Gradually Surachai became well known in the cause lawyering community, and to the public at large, based on his litigation victories161 and the close relationship between the Human Rights Committee and the NGO community. He has become the “go to” lawyer for anti-development suits based on environmental laws.162

159. Currently he is creating a new foundation which will supplement the salaries of young lawyers who cannot otherwise earn a satisfactory living as cause lawyers.

160. A former staff member suggested that funding for AEPS might have come initially from Sulak Sivaraks’s support for environmental causes through the Komol Khemtong Foundation. Interview with Ida Aroonwong, staff member, Alternative Energy Projects for Sustainability (AEPS), in Bangkok, Thailand (June 17, 2008).


162. Recently, the Thai government recognized his expertise in environmental law enforcement by offering him a grant to conduct research leading to law reform. Interview with Surachai Trong-ngam, in
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Duean’s career, representative of fourth generation cause lawyers, exemplifies the new opportunities the NGO movement has created. She is a female, salaried NGO staff attorney. While an elite Women’s Bar Association\(^\text{163}\) has existed for many years, there were few female cause lawyers before the 1980s. This is hardly surprising in a male dominated society. Perhaps what is more surprising is the emergence of women in generations three and four (since 1980) as NGO directors and lawyers pursuing careers that combine both cause-clients referred by NGOs and private for-profit practice. One explanation for this may be that women’s interests are more aligned with the those of a well-established sector of the NGO community—the Foundation for Women, the Friends of Women Foundation, the Center for Protection of Children’s Rights, as well as NGOs that focus on women workers, prostitution, or sex-work.\(^\text{164}\)

The progress of the NGO movement also reflects a change in the fourth generations’ perception of their role in political movements. Duean is not motivated by the anti-authoritarian political ideology that motivated the first generation of cause lawyers, the lawyers from the October generation, and the third generation, those like Surachai who embraced the October generation’s legacy. Surachai (the third generation environmental lawyer), like Somchai (the October generation institution builder), was motivated by political idealism. Surachai explained the purposes of litigation as a form of support for community movements, not as environmental protection. Environmental law is simply a tool for achieving an essentially political objective. At the opposite extreme, the desirability of salaried apprenticeships for NGOs also draws recruits with less desire to be a cause lawyer than a desire to gain experience and move on.\(^\text{165}\) Duean says her responsibilities are to the “king and the law.” She is among the first to view cause lawyering as fully inside the mandate of the profession rather than at its margin or in opposition to the government. Cause lawyering, for Duean, if she is indeed a cause lawyer, is a “normal” career.

\paragraph{D. Globalization and Hegemony}

Among the sources of influence on cause lawyers, the hegemony of Western ideas and resources has been the most intensely observed and theorized by progressive

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\(^{163}\) Virada Somswasdi Interview, supra note 73.

\(^{164}\) This may also reflect the opportunities available to women. While the number of women enrolling in law schools has greatly increased—now approaching fifty percent—it is likely that as compared to men, women’s opportunities to join private firms are more limited. However, there is no reliable data for this hypothesis.

\(^{165}\) There are, of course, many reasons why a younger staff lawyer would want to move on, such as the extraordinarily high work volume and low pay. These are familiar barriers to recruiting cause lawyers worldwide for all but the elite U.S. public interest law firms and foundations.
scholars. As described in Part II, some theories place globalization and hegemony in a more positive perspective than others. Risse and Sikkink are among those who view hegemonic standards and economic leverage as the engines that move advocacy along the spiral path toward human rights compliance.\textsuperscript{166} Dezalay and Garth, and many others, likewise view international resources and pressure as critical leverage in human rights empowerment.\textsuperscript{167} Comparing career narratives permits an examination of a wide range of global connections and resources and their direct or indirect influence on the indigenous network of advocates. Consideration of the changing paths of careers highlights the critical importance of increasing access to higher education. Comparing careers influenced by a range of funding programs, together with their embedded contingencies (such as cooperation with government), restricted objectives (forbidding pursuit of other objectives), or an assumption that a few months or years of “capacity building” will lead to a self-sustaining “deliverable,” allows us to assess the influence of foreign investments on survival of particular advocates, goals, and methods of advocacy.\textsuperscript{168}

1. Global Resources

Globalization is a shifting array of mutual influences among societies.\textsuperscript{169} In this article, the focus will be on policies of governments, philanthropies, and international actors (including both networks and organizations) intended to affect the institutional performance or development within Thailand. Aid, expertise, diplomatic pressure, and philanthropy flowing from the United States and the World Bank have predominated since mid-century, but European countries, Canada, Australia, and especially Japan have also played increasingly important roles.\textsuperscript{170}

Global resources play important and varied roles in cause lawyer careers. Scholars Dezalay and Garth suggested that Latin American human rights lawyers required global funding and legitimation to survive because law had little legitimacy and little independence within the institutional frameworks of the countries they studied. From another perspective, Risse and Sikkink, and their collaborators, derived a spiral model of global influence from case studies, according to which international

\textsuperscript{166.} See supra text accompanying note 38.

\textsuperscript{167.} See supra notes 47–48 and accompanying text. Dezalay and Garth have argued that Latin American political institutions remained relatively closed to independent legal advocacy for empowerment absent international connections. Id.

\textsuperscript{168.} Still other important effects of global influence on progressive advocacy are beyond the scope of my research, for example, global support for international or private regulatory regimes, or the potential undermining of domestic governmental regulatory regimes through bilateral trade agreements enforcing the terms of private development by international corporations.

\textsuperscript{169.} See supra text accompanying note 30. The evolutionary process is described as three waves occurring over many centuries.

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sanctions work in tandem with domestic human rights advocates to “spiral” up pressure to increase the space for both rights and advocacy. While a broader canvassing of cause lawyering in Thailand may support these hypotheses to a degree, the four narratives examined here suggest important qualifications for both theories.

As the Cold War ended, many other aid and advocacy organizations entered the scene of what was a predominantly American-influenced development. The attention of governments and philanthropies turned to “capacity building,” civil society, and rule of law aid intended to stimulate development of private institutions and governance.171 Aid and other forms of intervention no longer flowed almost exclusively to government institutions (including educational institutions), but found partners outside government bureaucracies. While the most dramatic shift in dollars flowing to Thailand has been the reduction of American military aid after the 1980s, equally significant has been a shift from funding government to funding activities in the private sector.172 Paralleling this rise in civil society funding, networks of connection began to form between Thai and foreign advocates and NGOs. Just as “third wave” globalization has involved influential exchanges of governance knowledge and resources from the top down, this phase of globalization has also involved influential exchanges of advocacy knowledge and resources from the bottom up.173


172. See Hess, supra note 35. Data from websites and archives of the following agencies were compiled to obtain a half-century perspective on American funding for Thailand: USAID, Ford Foundation, Rockefeller Foundation, The Asia Foundation, The Foundation Center (including grants by the Open Society Institute and the Carnegie Foundation). See, e.g., Ford Foundation Grants, http://www.fordfound.org/searchresults?thailand (last visited Mar. 1, 2009) (providing list of grants, including amount of funding and specific programs made to Thailand); Rockefeller Foundation Grant Search Results, http://www.rockfound.org/grants/GrantSearch.aspx?keywords=thailand (last visited, Mar. 1, 2009) (providing list of approved grants and a synopsis of the program); USAID Regional Development Mission for Asia: Thailand, http://www.usaid.gov/rdma/countries/thailand.html (last visited Mar. 1, 2009). Some agencies, notably The Asia Foundation, the United States Embassy, Ford Foundation, and Rockefeller Foundation, have local staff members who are friendly with and even integrated into local advocacy and NGO communities. Some have had long term relationships with the community of potential beneficiaries. This is true of government agencies as well, like the staff of the United States Embassy, which sometimes holds points of view that are closer to the Thai NGO community than to Washington policy makers. Interview with Ben Svasdi, Dir., Trafcord, in Chiangmai, Thailand (July 6, 2008) [hereinafter Interview with Trafcord Director]; Interview with staff member, United States Embassy, in Bangkok, Thailand (Jan. 29, 2008).

173. See supra note 35 and accompanying text.
More important than the total aid flowing to Thailand is the manner in which interventions occurred: to whom, for what activities, and with what effect? Some changes in legal institutions have been significant and supported to some degree by funding from abroad, including the establishment of special courts for domestic relations, intellectual property, and labor; the drafting and ratification of the liberal 1997 Constitution; the adoption of an administrative court system; the promotion of a “green bench” to handle environmental cases; and the promotion and adoption of new organic laws for criminal cases, environmental law, and women’s rights (all relevant areas of cause lawyering concern).

The effects of these globalization influences on cause lawyering are indirect and symbolic until put into practice, and their everyday meaning, or as Merry says, their meaning in the “vernacular,” may be better understood through the experiences of cause lawyers. Thongbai Thongbao’s early career was seemingly influenced very little by globalization. His childhood preceded globally financed development of the Thai countryside, and his education was exclusively in Thai schools. Yet Thammasat University was indirectly a product of modernization, created by a Western-educated idealist who believed in constitutionalism and democracy, and who intended university education to inculcate values of public service and government under law. Thongbai was inclined at an early age to embrace both of these values, even if not precisely in the way envisioned by Pridi. Thongbai’s early successful confrontations with military dictatorships which launched his career may have been subtly intertwined with the United States’ efforts to moderate Sarit’s brutality, but there is no direct evidence for this. International human rights advocates did not express concern about Thailand until 1976. And though Thongbai received much international recognition for his defense of human rights, and in 1984 was a recipient of the prestigious Magasaysay Award for Public Service, at this stage in his career he had already gained knowledge, power, and legitimacy for his work. Yet Thongbai’s early belief in government accountability and in the rule of law were clearly influenced both by twentieth-century westernization of Thailand’s legal system and new political ideals, such as Communism, as well as by more traditional Thai values underlying Buddhism and reverence for the monarchy.

Somchai Homla-or, like Thongbai, was educated exclusively in Thailand, but Somchai attended school in the “American Era” of intellectual fervor and rising

174. See supra note 39 and accompanying text.

175. Sarit, the dictator who arrested Thongbai, was usually particularly brutal toward opponents. Baker & Phongpaichit, supra note 4, at 169, 173. Yet Thongbai and other political prisoners were treated relatively well in prison. Thongbai may have been genuinely respected by the military and the police, as he claims, or as a journalist he may have worked for a publisher with some influence in Sarit’s regime. If American influence was also being exercised behind the scenes to moderate Sarit’s bloodthirsty rule, we have no evidence that the United States was concerned about Thongbai.

176. American philanthropy never involved funding the defense of human rights in Thailand as it had in Latin America. See Dezalay & Garth, supra note 9, at 357 (describing the purpose of American philanthropy in Latin America).

177. See supra note 111.
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Two of the most important Thai student leaders of the 1973 uprising had just returned from an American Friends Field Service fellowship in the United States. China’s break with Russia in 1960, and the ensuing years of rapid economic growth, was capped by Mao Tse-tung’s unleashing of the Great Proletarian Cultural Revolution in 1966, inspiring youthful idealists everywhere, especially in nearby Asian societies. Nevertheless, Somchai did not have direct contact with, or receive support from, global resources until his exile from 1987 to 1989, when he began to form a network of contacts with human rights advocates and sources of future funding. Somchai’s return in 1989 coincided with the growing power of the NGO movement and, soon after, the overthrow in 1992 of a military dictatorship and the national movement toward a more meaningful and liberal constitution. The 1997 Constitution, together with his networking through the Lawyers Council, provided a powerful cause lawyering mechanism. Somchai built a network of lawyers, urging them to use the new rights in litigation to push the courts to give them meaning. Further he has employed his international contacts to increase Thailand’s connection to human rights movements elsewhere; for example, he became co-founder of Forum Asia and was its first Secretary General. From his international contacts he has drawn resources for his network, providing funding for the training of young lawyers, for advocacy projects on behalf of migrants and stateless people, and for the defense of libel cases against the media.

Surachai has networked far less with international social cause advocates than Somchai, but his Thai network with NGO staff and academics has provided important global resources. Service-oriented NGOs often receive funding from American and European sources, and indeed some of Surachai’s NGOs were founded with such seed money. The Friends of Women Foundation, where Surachai made many contacts, was one such NGO. EnLaw, the NGO that definitely shaped his career, if not his identity, was created at the suggestion of an American foundation, which offered funding for environmental litigation. Typical of much international funding, the EnLaw grant was a one-time grant that has not been renewed. EnLaw has received no further funding from international sources and struggles to support its activities. Less apparent from funding patterns alone, Surachai has networked internationally with other environmental litigators, although his principal sources of legal expertise have been unusually creative Thai academics. Like Somchai, Surachai’s focus on litigation has meant that changes in the law and constitution have potentially great significance for his practice. The litigation that he began before EnLaw was created is derived from a law adopted by Thailand in the early

178. Western-educated leaders and intellectuals like Puey Ungpakorn, then Chair of Thammasat University’s Department of Economics and Rector of Thammasat University, believed in liberal government and greater democracy as well as in free market development. Student idealism was shaped by international events, including the rebellion by Parisian students in 1968, the U.S. anti-war movement driving American presidential politics, and the Great Proletarian Revolution in China in 1966.

179. See Jonathan D. Spence, The Search for Modern China 440, 602 (1990).

180. Command of foreign language is an important key to networking internationally. Surachai speaks no foreign language, while Somchai is fluent in English.
1990s to comply with an international environmental accord.\textsuperscript{181} Although the community rights and public participation provisions of the 1997 Constitution remain largely rhetorical, even after recent adoption of a community rights organic law, the creation of an administrative court system created a valuable resource for cause lawyers. Surachai filed the first case in administrative court, and subsequently has won decisions against agencies for failure to develop adequate standards for public protection against toxic waste and environmental hazards.\textsuperscript{182} He has been among the first to push the administrative courts to articulate new standards in order to make existing law clearer and stronger.

Duean's career has been influenced more than the other three by international advocacy and funding.\textsuperscript{183} Trafcord, her current employer, is a project initiated by the Thai government and a British-Thai philanthropist (who is the project's director but not a founder), and supported almost entirely through international organizations: United Nations Educational, Scientific and Cultural Organization (UNESCO), World Vision, and most importantly, the United States Embassy. Unlike the other three lawyers, Duean is an employee whose work is directed by others. Thus, priorities attached to funding for Trafcord have an important influence on her work and Trafcord priorities are particularly sensitive to U.S. funding for anti-trafficking and prostitution.

2. Dependence and Independence

The career narratives enable a careful reassessment of Dezalay and Garth's hypothesis that the viability of cause lawyering is highly dependent on global support to sustain and legitimize cause lawyers' careers.\textsuperscript{184} The view from Thailand is more textured. Thongbai had little contact with global advocacy in the formative stages of his career, and his legitimacy seems to have come from other sources. Similarly, Somchai Homla-or's early career may have been influenced in its early stages by idealism inspired, in part, from movements outside of Thailand and the increasing availability and cosmopolitan influence of university education, supported in significant part by American philanthropy. But not until much later in his career did he receive direct support from international funding, networking, or legitimating

\begin{footnotes}
\footnotetext[183]{Her first job was with a Japanese business. Her second, and current, job is with an American-funded human trafficking NGO.}
\footnotetext[184]{Dezalay & Garth, \textit{supra} note 9, at 354–57. Dezalay and Garth found that cause lawyers in Latin America are highly dependent upon on global support. \textit{Id.} }
\end{footnotes}
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recognition of his work. Duean’s career is most thoroughly intertwined with global funding and international pressures to address the problems of human trafficking, and even her NGO, which through its funding is closely linked to American policies, receives essential network support and legitimacy from the Thai government.

Surachai’s career is a particularly interesting case study for Dezalay and Garth’s hypothesis. Surachai’s experience supports their hypothesis that global support is important. His career also shows that notwithstanding a funder’s goals, the recipient’s own, somewhat different goals may continue to guide the use of the resources. Support from the Blacksmith Institute for environmental litigation has transformed his career, bringing him success as a lawyer and national recognition as an expert litigator and a people’s lawyer. Surachai has become a litigator of environmental law cases, but protection of the environment is not the cause he represents. Nor is he dependent upon international resources. He has expanded the field of cause lawyering and its legitimacy in Thailand, and though still not adequate for his needs, he receives support from Thai sources, including support from the Lawyers Council and government support for research projects. His environmental litigation is opportunistic, but his perspective is broad and idealistic, and it is motivated by his understanding of poverty, exclusion, and communities as “environmental” issues.

3. Cooptation by TANs

Career narratives also suggest that the “spiral model” proposed by Sikkink and her colleagues does not fully appreciate the effectiveness of some types of rights-oriented, local advocacy in overcoming government resistance to the recognition of rights. Thongbai’s defense of civil liberties and Somchai Homla-or’s advocacy for human rights are quite consistent with global movements for human rights. But global pressure directed toward Thailand on human rights issues has had little apparent influence. Although Thailand’s abuses of human rights are well-documented by Human Rights Watch, the Asian Human Rights Commission, and other watchdogs, neither the incidents identified nor the institutional weaknesses underlying them have become a major focus of global pressure.185

Where global concerns intersect with local advocacy, a further problem is apparent, namely a misalignment between global and local goals. Surachai’s environmental law advocacy appears to parallel the goals of well-established environmental advocacy by large, international NGOs such as the International

Union for Conservation of Nature and the Wildlife Fund. These large NGOs specialize in establishing relationships with the highest level of government that can be used to mobilize action to remedy problems brought to light by grassroots advocates. But Surachai’s concerns are not their concerns. While they work on forest management, trafficking in animals, water and air pollution, Surachai has little concern for the larger pattern of environmental quality regulation. Instead, like many of the lawyers working at the grassroots in Thailand on human rights issues, he is concerned about popular democracy, and the results that count for him are gains in popular participation and government accountability. A potential alliance between cause lawyers for communities threatened by development and global defenders of the environment might be possible, but Surachai’s career narrative suggests that a wide gap still exists in Thailand between local and global advocacy.

4. Winners and Losers

These four careers illustrate many types of global influence but leave open the question of its impact. By century’s end, not only had the number of cause lawyers increased, but their careers were more varied, including small private law firms, university faculty, and a wide variety of NGOs, which ranged from “Thai-style” partnerships with government to NGOs emphasizing social movement support. The increasing number of cause lawyers is associated mostly, but not exclusively, with the growing number of lawyers working for NGOs rather than an increase in the number of lawyers in self-sustaining private practices. An impact of global funding might be described as picking “winners” and “losers” among potential cause lawyers. Funding and legitimation may be provided at critical moments when a cause lawyer or project would not otherwise survive, or be initiated at all. Surachai’s EnLaw project is one example of funding that has reshaped a cause lawyer’s career. Duean’s employment by Trafcord is the clearest example. But the narratives also illustrate the independence of much cause lawyering work, its local support, legitimacy, and impact apart from global resources.

If survival is one measure of the impact of funding, a second measure is its effect on what cause lawyers do. Thai scholar Amara Pongsapich has suggested that Thai-style NGOs that cooperate with the government rather than oppose it have contributed little to the end-goal of cause lawyering, namely expanding political space. Funding from international sources, especially the United States, favors organizations perceived as capable of cooperating with government rather than

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187. Interview with an officer of the WWF Thailand, in Bangkok, Thailand (July 27, 2008). He described the general methods used by large environmental foundations.

188. Pongsapich, supra note 88, at 226.
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expanding political space directly through public opposition to government policies.189 Understandably, perhaps, U.S. funding favors strengthening government capacity and contributing to interest group advocacy consistent with U.S. policy initiatives, such as drug interdiction and human trafficking prevention rather than political party or mass movement support.190 More surprising, perhaps, is the parallel focus of private funding, which continues to complement U.S. policies. “Development,” as interpreted by almost every American and European philanthropy, means development of routine, non-contentious citizen participation.191 This emphasis might be deemed appropriate in a society with an open polity and tolerance for political dissent. Restricting funding for advocacy to such purposes in a society where the means and goals of dissent are far more limited and contested may actually undermine the most important purpose of social cause advocacy and cause lawyering, namely making change possible.

5. Contingent Funding: Thai-Style NGOs

One of the puzzles of cause lawyering, indeed a question raised frequently about the rule of law, is whether law can truly limit the state’s power. Duean works for an NGO that partners with government agencies to enforce the law and resolve important conflicts in the government’s policies for dealing with trafficked women. We might ask then, why is Duean a cause lawyer at all, if she sees herself not an opponent of government power but its ally?

The term “Thai-style” NGO was entirely new to me when I began this project. A “Thai-style” NGO is typically a network which coordinates the efforts of professionals from public and private agencies to address a social problem.192 Their uniqueness arises from an ambiguous relationship with the government: sometimes strenuously opposing and at other times helping to implement government policies, sometimes training government personnel, sometimes operating under a contract with a government ministry, and sometimes using Thai government or foreign aid in ways officially disapproved of, but tacitly condoned in order to make a policy more

189. While this has certainly been true for U.S. philanthropy and foreign aid, some European governments and foundations have been bolder. For example, it is well known that DANIDA, the Danish development agency, funded the organization that for a time blocked construction of the Thai-Malaysia pipeline. Penchom Interview, supra note 126.


191. See Hess, supra note 35, at 323–24. Targets for funding in the mid-1980s were selected in part based on whether they had a record of cooperating with government. The UCL was considered a questionable target because of its history of conflict with government. Although not mentioned in the report, the consultant’s assessment may well have been influenced by the suspicion of “communist” leanings attached to leaders like Somchai Homla-or. Ford Foundation Report, supra note 157, at 39–42.

192. “Thai-style” is not an official term. It describes NGOs that have a certain collaborative style while adhering to a social cause; they are usually aware of the risks of compromise.

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consistent with the needs of a vulnerable population. Therefore, they are often concerned with social policies that are ill-served by existing government programs and which foreign governments and international philanthropies find appealing for their own political or humanitarian reasons.

Trafcord, Duean’s employer, makes an illuminating case study. Trafcord was described by one Asia Foundation staff person as the best Thai-style NGO. The independent wealth of Trafcord’s founder has allowed him to dedicate his career to social issues in Thailand, initially helping HIV/AIDS victims and, as an outgrowth, “rescuing” primarily women, and occasionally men, who have been trafficked for sex work and labor. While Thai police tend to downplay the importance of trafficking in relation to “real” crime, other Thai ministries have been deeply concerned about the welfare of women. The Thai government has typically lacked the will and capacity to overcome these conflicts and to act effectively without external funding. In 2007, a high level Thai governmental commission addressed this policy incapacity by creating a mandate in the form of a Memorandum of Understanding (MOU) under which Thai police, military, and welfare agencies must cooperate in addressing the problem. Trafcord became the agency with sufficient credibility to attract foreign funding and sufficient expertise to direct government officials assigned to the problem.

Foreign governments and philanthropies have provided a great deal of aid for trafficking interventions. For example, the United States has provided funding to aid sex-trafficking intervention, but the funding came with strings attached reflecting the conservative values of the Congress and the Bush administration. These strings limit the objectives and methods of intervention by criminalizing prostitution

193. Thai-style NGOs serve many of the covert policy functions that U.S. fiscal federalism is said to serve in the administration of its social welfare policies: helping to reconcile conflicting mandates, making discretionary choices that would be difficult to make at a higher, more public level of decision making, or by simply ignoring formal constraints that make a policy unworkable—with all of the accompanying hazards. For discussion of U.S. programs exhibiting this pattern of delegation, see John P. Dwyer, The Pathology of Symbolic Legislation, 17 Ecology L.Q. 233 (1990); Joel F. Handler, “Constructing the Political Spectacle”: The Interpretation of Entitlements, Legalization, and Obligation in Social Welfare History, 56 Brook. L. Rev. 899, 942–43 (1990).

194. Interview with Trafcord Director, supra note 172. Initially, the problem of prostitution involved two flows of migrants, one from poor rural families to the brothels of Bangkok during the Vietnam War, and a second flow from Thailand to Europe, America, and elsewhere to work in the sex trade or low wage sweatshops. Both problems continue, but now new sources of trafficking have become a major concern in Thailand, namely the flow of poor Burmese and Laotian women into the sex trade. Id.

195. Consistent with President Bush’s conservative social agenda, the Bush administration obtained legislation to condition anti-sex trafficking aid to developing countries on compliance with conditions requiring, among other things, criminalization of prostitution but offering no assistance to relieve poverty, which is often a root cause of women’s involvement in sex-trafficking. See supra note 135. See generally Edi C. M. Kinney, Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS, 21 Berkeley J. Gender L. & Just. 158 (2006).
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and punishing offenders rather than by addressing the underlying problems by helping potential victims through better education, poverty relief, or pregnancy and disease prevention options before traffickers take them.

While Trafcord is unique in having such a high-level mandate, other Thai-style NGOs have filled similar policy and enforcement gaps and added their own emphasis to government policies by providing expertise and advocacy, while avoiding rancorous conflict with government agencies. As a result, they are often among the most trusted outsiders, capable of intervening when Western-style hired gun advocates fail to gain an audience with officials. Thai-style NGOs blur the lines of public and private, insiders and outsiders, by acting under or against government authority. Unlike the bureaucratic polity at mid-century, which constituted a political space closed to all but powerful elites, NGOs like Trafcord define a different kind of political space in which exercise of governmental authority is textured by relationships with trusted outsiders who possess expertise or access or resources to make government policies work and, in many cases, to relieve external political pressure.

In turn, the ambiguous political space occupied by NGOs, such as Trafcord, also creates ambiguous roles for lawyers who work for them. Duean’s commitment to “king and the law” may be understood not only as her understanding of Trafcord’s mission, but also as an expression of her belief in the morality of government and its leadership. Duean says she is the trafficking victim’s legal advisor. She often is the only lawyer on the scene or at any subsequent proceeding unless she recruits another attorney to appear in court for the victim. Yet she says her duty “is with the law.” Although Duean might not characterize her own conduct as coercive, she uses her position as Trafcord’s lawyer and the victim’s advisor to persuade reluctant women to testify against their former traffickers in spite of the risk of retaliation and in spite of the belief of some women that they are “voluntary” workers. That is precisely why she is an idealist and a cause lawyer. Her duty to the law is a moral mission, not technical assistance. She also coerces resistant police and military to obey the terms of the MOU. She and her co-workers have built a powerful network of higher ranking officials within each participating agency, and she deploys her insider connections and commitments to bring officials, as well as victims, into line with the law.

196. Because trafficked women typically come from very poor families, some sex workers “voluntarily” enter the trade to earn wages. Most, it has been argued by foreign funders, are coerced, and many feminists claim that sex work by desperately poor women, and perhaps any woman, can never be voluntary.


198. Although I noted the analogy between devolution in Thailand and the symbolic politics of devolution of difficult policy choices within the American federal system, the relationship between government and Thai-style NGOs is not merely symbolic devolution of responsibility but without real power to alter policy. Because of the limitations of contemporary Thai government administration, the relationship is often one of symbiosis, not domination.
VI. CONCLUSION: POLITICAL SPACE AND NETWORKS OF LAW

Until recently, courts in Thailand rarely opened space for social change. All four of the cause lawyers discussed in this article said that the government’s failure to follow law is an important reason for their work. Thai cause lawyers, including the four discussed in this article, often devote as much effort to changing the government from the inside as they do to assisting confrontation between the government and outsiders or to “playing for rules.” Yet they approach collaboration and confrontation in different ways.

In contrast to Duean Wongsa, Somchai Homla-or and Surachai Trong-ngam describe their work as support for people’s movements. Their strategy is long term. In practice, much of what they do supports NGOs, attempts to enforce laws that are on the books, or pressures the judiciary to make constitutional rights more than principled rhetoric. They have advised groups locked in confrontations with the government, but they also have worked with government through Thai-style NGOs, like the Friends of Women Foundation, which employed Surachai, received government funding to train government officials in human rights, and advised ministries about policy. Their justifications for cause lawyering are political, yet their work is complex and involves some of the same puzzles as Duean’s work.

Pongsapich argues that opening space for change has been the first priority of social movement. Historically, political space for popular participation has been limited, and progress toward more open political space has occurred through a “bottom up” process of popular political involvement, which breaks the pattern of limited participation. Expansion of political space has been achieved during three periods of collective popular resistance to authoritarian rule and subsequent negotiations for changes in norms of governance by “civil society” organizations—the overthrow of the monarchy in 1932, the October revolution of 1973, and the uprising that ended the military dictatorship in 1992. Successful confrontations have been characterized by increasingly outspoken criticism of authority; mass demonstrations, often bloody reprisals by the military, police, and right wing groups; and the moral collapse of an authoritarian government. Courts, and rule of law, have played only a marginal role in opening political space at these times. In the aftermath, a new constitution may reflect the “constitutional moment,” but new rights depend on real gains in power by organizations representing the people.

According to Pongsapich’s theory, the power of ordinary people, and a key to opening political space, lies in “thickening” networks of civil society organizations.


200. Pongsapich, supra note 88, at 216.

201. Amara Pongsapich argues the network is thickening and getting stronger. The two most important periods of “negotiation” have been 1973–1975 and 1992–1997. This 1992–1997 period has yielded politically engaged “civil society” organizations. Id. at 236–37.

202. Non-elite, political engagement in Thailand at any level through privately organized communities, interest groups, or nation-wide collective action was quite rare, partly because of the absence of
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Somchai Homla-or and Surachai Trong-ngam embrace a similar evolutionary theory of political development, viewing the rule of law as an important tool to open political space for communities and popular movements to negotiate with the government. But Professor Pongsapich believes that the civil society organizations that count are those that oppose the government, not those that cooperate. Thai-style NGOs, including most NGOs funded by international agencies, have contributed only marginally, if at all, to opening political space. She views their work as a classic case of cooptation by the government, rendering them unable to influence the framework of governance in the long run. Pongsapich’s theory of political change through social movement activity has important implications for the role of cause lawyers.203

Pongsapich’s theory may indeed provide insight into both everyday negotiations between cause lawyers and powerful agencies and the momentous negotiations that transform the constitutions governing civil society.204 The results of everyday collaboration with the government may be more complex and more significant than she anticipates; the dependency between the government and Thai-style collaborators is often two-way. The opening for constitutionalism in the 1990s was in part a result of stronger NGOs and more confident popular leaders. As a consequence, Thongbai Thongbao, the combative human rights litigator, became a member of a constitutional drafting assembly in 1996 and was elected to be a senator in 2000, career capstones no one could have predicted when he began his career in Lad Praow prison in the 1950s.

All of the cause lawyers described in this article have worked for Thai-style NGOs and the government. They have worked not only as trainers and teachers, but underlying “civil society” organization. Few interest groups existed above the level of family or community agricultural cooperatives and non-participatory governance did not encourage formation of groups for participation in politics. The emergence of citizen groups that can influence policy or politics has been quite recent. As described previously in the text, during the “American Era” in the 1960s and 1970s, student groups began to form and some rural communities began to mobilize against development. See supra note 179 and accompanying text. Since 1973, “civil society” has grown rapidly through community organizing and NGO building by committed advocates, formation of political parties after parliamentary democracy began to become established in the 1980s, and still more recently, formation of political action groups mobilizing mass support to influence Parliament and government. In more established democracies, civil society organizations have existed in greater numbers over longer periods of time, often growing out of long standing communities of interest, collectively representing a wide array of non-political and political interests, and having deep roots (i.e., their existence is widely known and organizing is wide-spread and ongoing). In Thailand, these organizations have a much shorter history and are linked almost exclusively to advocacy. Coloring public perceptions is the fact that a great many NGOs, including “Thai-style” NGOs, have received substantial support from sources outside of Thailand.


204. The classic case study of “cooptation,” in the management of Tennessee Valley Authority (TVA) projects, describes relationships between a public project and the seemingly less powerful local agencies and actors. See Philip Selznick, TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION (1949). Yet the lesson of the TVA was not that the larger federal authority prevailed, but precisely that its purposes were altered by its need to accommodate local needs brokered by local organizations. Through the influence of local organizations, local interests altered the course and influence of the project.
as legal advisors, defenders of the rights of staff, organizers, and the people they
serve, and, as Duean’s work for Trafcord illustrates, missionaries spreading respect
for law and public morality among lower level government officials. Against the
backdrop of institutional resistance, “civil society” organizations have grown in
number and legitimacy, and therefore have an increasing ability to mobilize dissent.
While a careful examination of the growth of civil society in Thailand is beyond the
scope of my present discussion, it is not hard to imagine that small gains won by
cause lawyers and other advocates might help provide the foundation for mass
mobilizations of the kind that led to important constitutional moments in Thai legal
development. 205

Thongbai Thongbao, Somchai Homla-or, Surachai Trong-ngam, and Duean
Wongsa have different ways of reconciling a social vision with the limited capabilities
of Thai law. Duean acts for “king and the law,” Somchai and Surachai act “for the
people” and communities, and Thongbai Thongbao’s law practice enforces moral
limits that even authoritarian rulers, and their police and military, respect. The
viable forms of cause lawyering have multiplied as social change has created new
career opportunities, and, with the broadening opportunities for practice with a
social vision, the variety of visions of the transformative possibility for law have
increased. In different measures, these visions blend traditional and legal authority,
formal and substantive goals, and change and continuity of Thailand’s traditions of
governance.

Underlying each vision is a conflict between the pull of authority under a
European-style social compact reflected in law and respect for traditional authority
symbolized by the monarchy and a Buddhist regard for others. Opening political
space and strengthening the rule of law have often involved collaborating with
traditional authorities, and strengthening them as well, sometimes on the cause
lawyers’ terms. Mass protests that led to three “constitutional moments” were not
aimed at bringing down the structure of the traditional Thai state. During the three
significant moments of expansion of political space a sense of proportion quickly
returned without revolution and bloody reprisals against elites. Political change came
about through negotiations that simultaneously established the responsibilities of the
government and the legitimacy of the government—its authority was restored on
new terms. 206

205. I am deeply indebted to Nick Cheesman whose stimulating and thoughtful insights about Thai politics
and rule of law are based on many years of work as a human rights advocate in Burma and Thailand. I
owe to him the suggestion that Asian societies, like Thailand, with a history of bureaucratic governance
and authoritarian politics, create governance systems that allow small gains through processes that
absorb the efforts and energy of human rights advocates who devote proportionately less time to more
meaningful institutional change. It might be argued further that a political morality of paternalistic
governance, as in Thailand, plays a role in creating a system of small gains and (perversely) limiting the
expectations of advocates. In the text, however, I argue that such a system need not lead to profound
cynicism about change because small changes of the right kind may incrementally build capacity to
undertake larger changes.

206. Pongsapich, supra note 88, at 223–27. While the rights of the people may have played a role in this
process, their role is likely to have been wholly different from modern Western conceptions of
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By viewing cause lawyers solely through their collaboration with government and Thai-style NGOs, we may be inclined to conclude that they participate in a system of small gains while failing to address major defects in the rule of law because of the law's lack of legitimacy or the absence of a powerful court system. Such criticism may misunderstand their vision of a good society because, as citizens of the Global North, our own consciousness of constitutional limits and law is different. Rule by powerful, and ideally, moral elites is deeply ingrained in Thai culture. The rule of law has been embraced as a corrective mechanism for some of the system's worst abuses, but “top-down” change cannot remake the meaning of authority, leadership, or legitimacy embedded in everyday life without a deeper transformation that Thailand has never attempted or desired. Social hierarchy still plays an important role in governance. Ambiguous, Thai-style collaboration with government may make sense to cause lawyers under many circumstances because it blends the rule of law with the social relationships they value, creating a new culture of governance and opportunities for change. Further research about cause lawyers, their social vision, and the Thai institutions they seek to transform will reveal more about the validity of the suggestive implications drawn from these career narratives.

corporalism and rule of law based on a passive acceptance of the legitimacy of authority and may be closer to the direct popular participation of Americans during the American Revolutionary War.