

Legal Culture, Perspective Reproductions, and the Thai Legal Professionals¹

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Abstract

Legal professionals, in particular judges at the Court of Justice and the Constitutional Court, have lately received some marked criticisms targeting their perspective, paradigm, and legal culture. The dimension of judicial decisions has expanded to include political, economic, and social aspects. Community rights and political cases have been introduced to the Court in a more visible manner. Yet, the Court steadfastly refuses to take these new dimensions into consideration and focuses solely on the letter of the statute when rendering justice. Consequently, the general public outcry can be easily observed, but few seeks to understand the underlying legal culture of legal professionals.

Drawing from well-researched empirical evidence, this article argues that the origin of Thailand's legal culture stemmed from the legal education. The process of education proceeds to shape not only the knowledge but also the perspective of legal professionals. This shared perspective is often manifested in the form of judicial decisions which rigidly adhere to the traditional approach and neglect the economic, social, and political context. These decisions are then studied and replicated in future decisions thus reproducing the legal perspective forming the foundation of Thailand legal culture. The article concludes with a hopeful perspective in the near future.

Keywords: Legal culture, legal professional, legal education, perspective reproduction, Thailand

¹ This article is based on a doctoral thesis of Department of History, Faculty of Humanities, Chiang Mai University.

Introduction

Thailand legal culture has its foundation in the Thai legal education which began with the establishment of the first Law School under the Ministry of Justice in B.E. 2440, shortly after the formation of the Ministry of Justice in B.E. 2434. Since its conception, the organization of Thailand legal study remains unchanged.

From the beginning, the Thai legal education is rooted in a conventional framework focusing on statutes in accordance with legal positivism theory. Accordingly, the legal study focuses solely on formal law or law *stricto sensu* which is confined to the study of codes, acts, royal ordinances, and royal decrees.

The education based legal culture inevitably shapes the perspective of legal professionals, having undergone through this process, which manifests itself in the form of the interpretation and application of the law in the judicial decisions, in particular the Supreme Court decisions. This perspective is then reproduced as seen in the examinations of legal professionals at every level: undergraduate, barrister, assistant prosecutor, and assistant judge, which require recitation of legal provisions as well as judicial decisions. The official answer guidelines reveal an ostensible preference for Supreme Court decisions. This practice consciously creates a religious adherence to the judgments of the Supreme Court as a standard in explaining or solving legal issues. As a result, the Supreme Court decision is likened to the concept of justice itself. Since the case is considered settled, legal professionals therefore will not question, comment, or doubt any judgments especially those of the Supreme Court. In response to the growing importance of the Supreme Court decisions in the Thai legal culture, they are later included in the law schools' curriculum. In this manner, the reproduction cycle is repeated.

Admittedly, the legal culture does not threaten the study of most branches of law such as criminal law, civil law, civil procedural law, and criminal procedural law. However, changes in society brings about new issues in Thai society. New conflicts are incessantly born whether they are conflicts between the Government and its citizens or conflicts among the citizens. Courts should render judgment in accordance with economic, social, and political issues alongside with legal ones. They could no longer cling to past routines of interpretation and application of pure law, and decisions should be richly motivated to satisfy the query.

There is little doubt that the current legal culture, which rigidly adheres to the traditional approach and neglects economic, social, and political context, is incompatible with current social changes. Moreover, constant adherence to the Supreme Court decision generates legal perspective reproduction among legal professionals which extends beyond a simple transfer of knowledge of legal matters. Consequently, the legal paradigm of legal professionals is called into question.

This article aims to explain the origin of the legal culture of Thai legal professionals through the historical perspective of the Thai legal study. It will then explore the process of perspective reproduction among legal professionals. Ultimately, this article serves as a starting point to understand legal culture and perspectives of legal professionals especially those of the judges. It will finally conclude with a brief examination of the perspective of the near future.

1. The Formation of Legal Culture through Legal Education

The influence of legal positivism is prevalent in Thailand. Krom Luang Rajaburi Direkridhhi and Yud Sang-Uthai, respected senior legal professionals, disseminated the concept among Thai legal professionals that “Law is the command of the sovereign, backed by force.”² The following generations strictly abide by this founding concept which emphasizes formal legal study in the form of governmental provisions, for example, codes, acts, royal ordinance, royal decree, ministerial regulations, and notifications.

This particular conception of legal positivism is also adopted in Thailand legal education. This is seen in every participating legal education and training institutions: undergraduate, barrister, assistant prosecutor, and assistant judge. The willingness to conform to the theory of legal positivism can be observed in both legal textbooks and law school curriculum in which the focus is entirely on internal legal culture with a complete disregard of external factors surrounding the application of the law.

Law textbooks exclusively seek to explain and clarify laws in accordance with the civil law legal system which is grounded in legal positivism. However, it is through the university curriculum that efforts in building legal culture are most effective. Looking

² Charan Khosananan. *Legal Philosophy*. (Bangkok: Ramkhamhaeng University Press, 2545) p.48.

through the undergraduate law curriculum of three leading universities in Thailand - Chulalongkorn University, Thammasat University, and Chiang Mai University – social science courses are of little importance and are only offered to freshmen. Most of the courses concern the law *stricto sensu*. Chulalongkorn University offers 6 credits in social science and humanities. The sole required social science course is Legal Reasoning (3 credits). The Principle of Law (71 credits) is a compulsory course with major elective compulsory courses (18 credits) and free elective courses (18 credits), all in the field of legal study. Thammasat University, on the other hand, proposes general education courses for humanities (Integrated Humanities) and social science (Interdisciplinary Studies of Social Sciences) amounting to 6 credits in total. General education courses for legal professionals (students must pick 3 out of 9 courses) that has elements of social science is called Thailand in Historical Social and Cultural Perspective (3 credits). The rest of the courses, both major courses (106 credits) and minor courses (18 credits), are all legal study. Lastly, Chiang Mai University requires 6 credits in humanities and social science. Major courses both compulsory and elective courses (108 credits) are in legal study. The Law and Society course (3 credits) is the only elective course offered in relation to the field of social science.

It is obvious that the aforementioned law curriculum is set to guide students on the same track which is to produce skillful legal professionals to become judges or prosecutors in respond to students' need. Thus, it is unavoidable that the curriculum is specifically designed to correspond with their desires. Moreover, each law school curriculum must receive approval from the Institute of Legal Education of the Thai Bar Association which prevents any modification to include broader area relative to the enforcement of the law, for instance subjects of Law and Society, Law and Justice, or Jurisprudence. These subjects are relegated to elective courses to which students tend to pay less attention since they are not considered beneficial to their career path.

This limitation continues at legal professional training level. The Institute of Legal Education of the Thai Bar Association who organizes the Thai Bar examination training course divides courses into 2 parts: substantive law and procedural law. Subjects of substantive law include criminal law, labor law, administrative law, tax law, intellectual property law, tort law, international trade law, civil and commercial law concerning obligations, juristic acts and contract, loan, suretyship, mortgage, gage, partnerships and

companies, sale, hire of property, hire-purchase, family, succession, property and land, agency, insurance, bills, current account. Procedural law courses³ cover civil procedural law, bankruptcy law, judicial system and constitution of Court of Justice, criminal procedural law, human rights in justice process, evidence law, counsel practice, and legal documentation. Similar to the organization of the Institute of Legal Education of the Thai Bar Association, the examination and training courses for assistant judge or assistant prosecutors include subjects like civil procedural law, criminal procedural law, civil and commercial law, criminal law, and constitution of Court of Justice.

The exclusion of social science from legal matters can also be found at university graduate level. The graduate research studies emphasize on legislation especially legal amendments. There is a rising interest in comparative study between Thai and foreign law. The approach used in the legal research is unremarkably traditional yet manages to maintain its popularity throughout the history of legal study. In truth, traditional research methodology is useful when applying to modern or modernized legislation. However, its failure lies in its inability to move legal study beyond conservative social values or perspective. To demonstrate this fact: the graduate research conducted at the Faculty of Law of Chulalongkorn University in the academic year 2014⁴ are Obtaining and Proving Evidence in Case Concerning Unfair Securities Trading Practice according to Securities and Exchange Act B.E. 2535 (Kullanun Karcharoen), Money Laundering Control Act B.E. 2542: A Study of Addition of Predicate Offences Under the Land Code (Kunlanid Yingchol), and The Consumer Case Procedure Act B.E. 2551 Section 12: A Case Study on the Appropriate Business Standard and Fair Trading (Patraporn Srisuk). In the academic year 2013 graduate research topics at the Faculty of Law of Thammasart University are The Basic Concepts of Terrorism Legislation (Pralong Siripool) is an example of a doctoral thesis, Partition (Peeraron Kongiakoan), Forms of Wills (Seksan Aekwiriawit), Selected Problems on Criminal Trial in the High Court (Haruthai Rusmicharoen), Problems concerning the Determination of a Writ by the Administrative Judge (Sumeth Theerawatcharamart), and

³ Institute of Legal Education of the Thai Bar Association. **2nd semester timetable**. 66th edition. Academic year B.E.2556. Regular class.

⁴ Chulalongkorn Law Journal Graduate Study Version. **Bachelor in Laws**. Faculty of Law Chulalongkorn University (Chulalongkorn University Printing House: 2557)

Liability for Mental Injury Under the Law of International Carriage by Air (Jayaravee Nipawan).⁵

By focusing exclusively on pure law subjects, the Thai legal education is completely divorced from external culture and empirical facts. It is unsurprising that legal professionals, especially judges, who are the product of such a system would not understand contemporary social issues. They also appear troubled by the concept of integrating social issues in their judicial considerations. Legal professionals often refuse to integrate their legal knowledge with other contemporary social issues. This unwillingness contributes to a strict framing of perspective of law. In contrast, it is accepted that law shall be associated with society because “law is considered an herbal medicine” diffusing into every parts of society in the same manner as traditional medicine.

Nidhi Eoseewong first pointed out the narrowness of legal professionals resulting from legal education system.⁶ He, nonetheless, insisted this is normal in Thailand where specialists of each field, be it historian or economist, are narrow-minded.

He boldly questioned the design of Thailand legal education:

“Why do we teach students? I think we teach them in order to be specialists in their fields such as legal professionals, historians and economists. Is that correct? We teach them so that they can do something to earn their livings. Curriculums are determined in regard of students’ future careers and then it is split into relevant courses so that legal students can pursuit their dream careers afterwards. That is why I said Thai education system produces specialists in whatsoever areas, like legal professionals as specialists in field of law. [...] From B.E. 2492, legal study in university are dominated by legal practitioners. Well-known judges, prosecutors, and lawyers as the educator plays a vital role in Thai education system management. Therefore, it is impossible to build up legal scholars who are not practitioners. It takes 20 years until Professor Puay,

⁵ Graduate Law Journal. **Faculty of law Thammasart University**. (October Print: 2556)

⁶ Nidhi Eoseewong’s comment in 11th Academic Days Professor Jitti Tingsapat in topic of Diversity People Critics Legal Professionals. 25 March 2549. Faculty of Law, Thammasart University (Tha Prachan) (Bangkok:October Printing), 2549, p.11-15

Professor Chitti, and Professor Sanya attempt to set up full-time lecturers, after that the legal scholars are come to existence. [...] However, those legal scholars need to work under legal study framework formulated by those legal practitioners for 20 years. Eventually, whether American approach or not, it shapes today's legal study which requires very special techniques. Though, full-time lecturers take positions in the faculty of law in various universities of Thailand, it remains quite technical focus. Thus, when we feel that law is technical, then it is undeniable that law is narrow.”

Even with rising legal education problems, legal professionals still maintain the separation of their science from other sciences. For instance, the concept of “justice” only refers to justice in the context of law completely disregarding other fields. In this context, Krom Luang Rajaburi Direkridhhi warned that “we need to be careful. Do not combine law to virtue, wicked, or justice. Law is an order we need to conform to. Even though, law sometimes can be wicked or unjustified. What is unfair origins from numerous sources like religions, whereas, law origins solely from rulers or delegates.”⁷

This reality has been intensely transferred and replicated from generation to generation, resulting in Thai legal professionals abiding by the letter of the law while ignoring the facts and happenings in other fields. Community rights of resources management, for instance, has long been recognized by sociologists and anthropologists, yet the judges still refuse to take them into account. Pinkaew Laungaramsri commented on the procedure of the Court of Appeal in the Mae Omki case that “Facts, anthropologists’ testimony, and other evidences are thrown away in the Court of Appeal; judgment is weighted solely on the letter of the law. This results in different judgments which is opposite from courts of first instance. Judgment functions to uphold unfair power of state and to reserve rights of those authorities in society.”⁸

⁷ Krom Luang Rajaburi Direkridhhi. **Law volume.1.** (Bangkok:Prime minister publishing office, 2513) p.7 (in Thai).

⁸ Human Rights Lawyers Association. **Mae Omki : Life of the Forest and Ideals of the Justice Process.** Bangkok: Parbpim Printing. n.d.) p.124 (in Thai).

These realities demonstrate that the Thai legal research is fixated with conventional method and is unable to escape from the letter of the law whether in the forms of legal amendment or comparative study of Thai and foreign law. Consequently, Thai legal professionals cannot connect legal concepts with sociology, anthropology, and economics in order to utilize them as tools to explain, consider, and analyze ongoing phenomena other than legal issues. Indeed, there are several research methods aside from the conventional one, for example, legal consciousness, feminist legal theory, law and economics, and historical approach to law.⁹ However, most legal institutions and law lecturers do not highlight these alternative legal methodologies. It follows that the researches are often conducted using only the familiar and much-repeated method. It seems that the paradigm of legal professionals is further preserved even after obtaining graduate degree.

2. The Reproduction of Legal Perspective

The paradigm of legal professionals is reproduced through the judicial decisions, especially the Supreme Court decision. The prevalence of Supreme Court decision can be observed despite Thailand being a civil law legal system. This prevalence originated from the chaos born from the conception of the School of Law under the Ministry of Justice led by Krom Luang Rajaburi Direkiddhi, then Minister of the Ministry of Justice. He implemented a common law education system and established Legal Study Assembly in B.E. 2467, while Dr. Duplatre designed the curriculum by applying the civil law system. In addition, Nidhi Eoseewong opined that another factor might be the result of legal practitioners, like judges and prosecutors, applying the Supreme Court judgment as a mean to educate students.

Under the Thai civil law legal system, legal professionals' role is to apply relevant law according to the fact at hand. Yet, this civil law system must respect the Supreme Court decision, similarly to the principle of precedent of the common law legal system.¹⁰

⁹ Somchai Preechasilpakul. **Alternative Legal Research: Concept and State of Knowledge**. (October Printing: 2555) p.55. (in Thai).

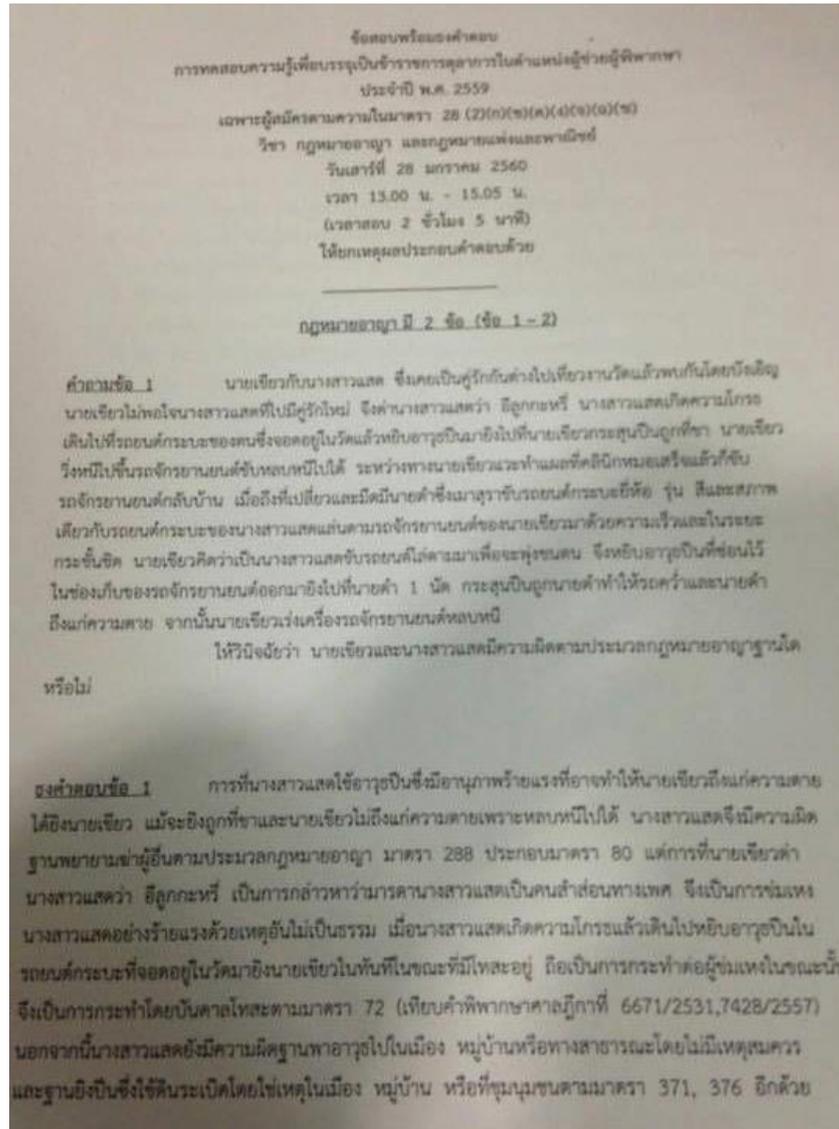
¹⁰ Nuthamon Kongcharoen. **Community Right Enforcement: Perspective on Legal Culture**. Nitisankimsart. 8th, Vol. 1/2558. p.114(in Thai).

The Thai legal education, therefore, necessarily consists of the interpretation of statutes as well as the Supreme Court decisions. These decisions, especially that of the plenary session, are highly valued by legal professionals. When encountered legal enforcement problems, they look to the Supreme Court decisions for answers. All components of the judgment whether the decision itself or any *obiter dictum* attached to the decision enjoy the referential status. In this regard, past legal perspective is constantly reiterated in modern society.

Law textbooks and examination guidelines for barristers, assistant judges, and assistant prosecutors stand testament to this perspective reproduction. They all share identical writing pattern. The text can be divided into two parts: interpretation of the law and samples of the Supreme Court judgments. Bar lessons, likewise, concentrate on the Supreme Court decisions, since the majority of lecturers are judges and prosecutors.¹¹ In this manner, reading legal textbooks and statutory interpretations can be considered a simple recitation process. Recitation is considered more important than analysis of judicial decision. This is true even in constitutional law or administrative law classes where students are encouraged to analyze selected legal issues.

Additionally, undergraduate students are often asked questions about the Supreme Court decisions during examination. It is therefore unavoidable that students choose or are trained to answer these questions accordingly. If the answer differs from past judgments, students shall suffer the consequence. This study method is currently widely accepted in Thailand. Furthermore, the examinations for barrister, assistant judge, and assistant prosecutor all apply this answering structure. The Supreme Court decisions, especially plenary session's, are used in examination copies as both questions and answers, and direct citation to "Supreme Court decision no. ..." appears at the end of the answer sheet (as shown below).

¹¹ Ibid, p.114



Consequently, perspective reproduction of legal professionals can also be found in the examination process of judges and prosecutors.

In practice, the continued superiority of the Supreme Court decision in Thailand civil law legal system prevents the Court of First Instance from rendering any decision differently from the Supreme Court without a clarification letter addressing the Chief Judge.

The blind adherence to the Supreme Court decisions, some rendered in B.E. 2500, completely ignores today's social advancement. The inclusion of the principle of precedent in Thailand civil law legal system could only contribute to complications during judicial proceedings. It reduces legal professionals to manufactured products, each identical to another without independent legal perspective. It directly contributes to the

narrowness of the profession and problems of access to justice. It is not surprising that other specialists are unable to understand legal professionals' thinking process. Anan Ganjanapan's remarked his bafflement on the Mae Omki case as follow:¹²

"I think the appeal court decisions clearly reflect that courts neglect to any other aspects which is contradict to conceptual ides or legal philosophy – judgment should be justified made, do not judge according to legislations itself. If that is the case, what is law for? Since they do not understand its purpose to maintain justice or to solve people's troubles. In other word, legal professionals do not even recognize purposes of law enforcement. If there is this kind of court, why court should exist. It is quite strange since this point of view is considered as sociology approach."

These ingrained concepts force legal professionals to interpret issues based on legal basis and evidence law basis as the core principles of legal interpretation. It inevitably monopolizes forms of legal interpretation. Since the case is still on going, it is advisable that legal interpretation be terminated by the court. Therefore, in some cases, legal interpretation is misunderstood and doubts regarding its ability to respond to societal issues persist.

Further exacerbating the issue of the Supreme Court's dominance in Thailand legal culture, the Supreme Court decisions are brief and do not provide sufficient information about the fact of the case. Only a small number of legal professionals make a copy and read the full version of the decisions. Most legal professionals ignore the surrounding circumstances of the case before the deliberation. Sometimes, the missing details can be advantageous and instrumental in the analysis of the case.

Conclusion

If the purpose of legal professional is to pursue justice, the existing Thai legal culture only allows the pursuit of the legislative justice. In other words, because the law implies justice, therefore it is. In reality, the concept of "true justice" is hard to obtain

¹² Human Rights Lawyers Association. **Mae Omki: Life of the Forest and Ideals of the Justice Process**. (Bangkok: Parbpim Printing. n.d.). p.118 (in Thai).

since it intersects with political, economic, and social context. Legal education is restricted to recitation of the statute and the Supreme Court judgments which in turn forms a strict limitation to the legal perspective of legal professionals. The limited perspective would then be reproduced through legal education which unduly focuses on the Supreme Court. Unless there is change in the current Thai legal education system, justice can never truly be attained.

While it is true that existing legal issues cannot be suddenly resolved since there are too many legal institutions involved in the legal system: judiciary, prosecutors, educational institutions, Thai Bar Association, vocational institutions like the Lawyers Council, these legal professionals are aware of the problems and try to slightly shift the paradigm. It is noticeable that recent generation of judges are graduates from overseas institutions. In addition, the numbers of specialized courts have greatly increased. These two factors contribute to the inclusion of different styles of legal study such as critical legal studies and feminist approach.

Moreover, legal scholars have started to boldly criticize and question judgments of the Court of Justice as well as the Constitutional Court in the forms of academic articles and forums. Current leading scholars are Worachet Pakeerut, Piyabut Sangkanokkul, Somchai Preechasinlapakun, Kitpatchara Somanawat, as well as scholars from other fields such as Nidhi Eoseewong and Saichol Sattayanurak. The studied topics include legal professionals, courts, and judges, which will induce conceptual change to the legal professionals. Furthermore, it will continuously contribute to a change in the legal culture regarding legal professionals' perspective and perhaps in other important changes.

Cultural change is considered a key factor to changes in legal culture. If the majority rejects the coup, it too will become a new form of culture. This social culture will then give rise to changes in legal culture, whereas the Supreme Court decisions which agreed with the coup will need to be reversed. Even though it is difficult to change, it is undeniable that things always change. This power will gradually and eventually change the legal culture as well as other bigger changes.

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