

# Women Lawyers for Social Causes: Professional Careers and Legal Development in Thailand

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## Abstract

*Women have become increasingly visible as leading advocates for social causes in a male-dominated profession. Their advancement in a specialized and often risky law practice illustrates a general process by which lawyers establish themselves as influential interpreters of law, enabling them to broker contentious relationships between the state and those who challenge its authority. The women lawyers considered in this article have succeeded through the strategic use of resources available to them as women from families with limited financial or social capital, including the legacies of prior generations of women lawyers: networks connecting social cause lawyers with particular powerholders—especially bureaucrats and international organizations—and the rise of NGOs, social movements, and a welcoming community of social cause practitioners. In general, it may be said that lawyers succeed through the “investment” of social, cultural, and economic “capital” in law—a conceptual framework developed in Part II. Part III describes the long relationship between political authority and legal development in Thailand, which*

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*created opportunities for women's investments in legal activism. Part IV illustrates our general arguments by following the careers of three women lawyers whose different investments in law led to success as advocates for social causes, while having other unexpected consequences. These investments enabled them to develop distinctive law practices, creating different professional identities and relationships to the rule of law.*

Keywords: Thailand women lawyers — Thailand legal profession — Thailand legal development — Rule of law

## I. INTRODUCTION

Thailand's robust 21<sup>st</sup> century social movements are drawing attention to women who are leading legal defenders of human rights and social movements. The question addressed in this article is how women have succeeded as legal advocates for social causes<sup>1</sup> in a male-dominated profession; notwithstanding limited progress in judicial appointments, few women have risen to positions of influence within the legal profession itself. Recent studies have drawn attention to women's critical roles in grassroots protests<sup>2</sup> and their emergence in politics.<sup>3</sup> Lawyers acquire their status through the profession's special relationship to the state—as interpreters of the state's own authority, and as “double agents” who may use the law to defend or oppose actions of the state itself. The advancement of women lawyers who choose to become advocates for social causes shows a more general process by which lawyers establish themselves as influential interpreters of state authority, enabling them to broker relationships between the state and those who challenge its authority.

Part II of this article describes the conceptual framework for this study. Part III examines the long relationship between political authority and legal development in Thailand, which created opportunities for women's investments in legal activism. In Part IV, the careers of three women lawyers are described, to illustrate the relationship between each lawyer's success and the “capital” she accumulates and “invests” in a career—with special attention to differences in the use of international forms of capital. Part IV also considers why these investments in successful law practices may have unexpected consequences, creating different professional identities and relationships to the rule of law, while yielding fewer alternatives for women's

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<sup>1</sup> For purposes of our research, we define advocacy for social causes as a private calling using a lawyer's special function in the state on behalf of social movements, the politically weak or socially marginal, requiring little in return from the beneficiaries.

<sup>2</sup> Adam Simpson, “Democracy and Environmental Governance in Thailand” in Sacchidananda Mukherjee and Debashis Chakroborty (eds), *Environmental Challenges and Governance: Diverse Perspectives From Asia* (Taylor and Francis 2015).

<sup>3</sup> Duanghatha Buranajaroenkij, Philippe Doneys, Kyoko Kusakabe, and Donna L. Doane, “Expansion of Women's Political Participation through Social Movements: The Case of the Red and Yellow Shirts in Thailand” (2018) 53 *Journal of Asian and African Studies* 34.

advancement through politics or government employment than social cause advocacy might for similarly situated men.

## II. A CONCEPTUAL FRAMEWORK

The essence of our argument is that lawyers gain influence by “investing” accumulated social, cultural and economic “capital” in the construction of a career.<sup>4</sup> This includes “family capital,” by which we mean a family’s experience, wealth and social position, and other forms of cultural, economic and social capital—such as a knowledge of law acquired through education and professional socialization, and the status, wealth, and relational resources accumulated within and outside a community of professionals over the length of a career. Each lawyer’s aggregation of resources may be different, allowing the construction of a unique career, but the construction of a career must make sense within particular domestic social and political conditions—a necessity that yields similarities within generational cohorts, but creates differences over time.

Our focus on lawyers for social causes, who generally favor stronger protections for the rights and liberties of ordinary Thai, necessarily aligns to a degree with the international narrative of modernization advanced by scholars who have argued that stronger legal systems in developing countries will speed convergence toward democratic forms of government.<sup>5</sup> Yet, pro-rights activists in a developing country such as Thailand rely on a more complex narrative—the legacy of much earlier attempts to achieve protections and equity, indigenous social movements for goals that make sense locally, and indigenous ideas of justice. Activism in Thailand, and indeed anywhere else, may invoke international ideals when they make sense and have

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<sup>4</sup> Our approach is consistent with the conceptualization of career strategies within the “field of state power” developed by French sociologist Pierre Bourdieu (see Pierre Bourdieu and Loïc J. D. Wacquant, *An Invitation to Reflexive Sociology* (Chicago University Press 1992)) and its application in the path-breaking research by Yves Dezalay and Bryant Garth (see Yves Dezalay and Bryant Garth, *Asian Legal Revivals* (Chicago University Press 2010); *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago University Press 1996) 15–17). In contrast to Dezalay and Garth’s research on elite lawyers, we study lawyers with more limited access to “resources,” as we use that term here, who are required to develop different, more risky strategies to manage contention in the “field of state power.” See Frank W. Munger, “Globalization through the Lens of Palace Wars: What Elite Lawyers’ Careers Can and Cannot Tell Us about Globalization of Law” (2012) 37 *Law & Social Inquiry* 476.

<sup>5</sup> Dezalay and Garth, *Asian Legal Revivals* (n 4); Frank Upham, “Mythmaking in the Rule-of-Law Orthodoxy,” in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment 2006).

been adapted to local conditions, but in developing countries such as Thailand, activism is rooted in indigenous concepts of justice and equity,<sup>6</sup> or a blend of both.<sup>7</sup>

Although increasingly visible in the contemporary media environment, women's legal activism has roots in the past and is intertwined with the origins of the modern state.<sup>8</sup> Lawyers representing social causes are found in nearly every generation, but a distinct community of practice coalesced after a 1973 student-led uprising demanded a new constitution and overthrew a military dictator. Constitutional reform in 1997 gave additional prominence to the community of lawyers for social causes, who embraced the opportunity to put constitutional rights and new courts to use. Women are not only at the forefront of this effort, but also have significant, if often underappreciated, roles in its development.<sup>9</sup> The careers of the women lawyers described here provide a lens through which to examine and begin to understand the reasons for the rise of women in particular sectors in modern Thailand. The careers of women lawyers who have become advocates for social causes are also a point of entry for understanding the relationship between Thailand's legal evolution and the struggles over political authority.

We assembled detailed descriptions of the lives of three successful women lawyers, in order to illustrate the process by which lawyers construct a career and simultaneously build the authority of law, enabling them, under the right conditions, to represent social causes and become agents of legal change. Each of these women founded an innovative law practice for social causes.<sup>10</sup> Our emphasis is on the women's accumulation of "capital," including family background, continuing relationships from

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<sup>6</sup> See Peter A. Jackson, "Withering Centre, Flourishing Margins: Buddhism's Changing Political Roles," in Kevin Hewison (ed), *Political Change in Thailand: Democracy and Participation* (Routledge 1997).

<sup>7</sup> The problem of "translating" international human rights in local "vernacular" is well-known to Thai activists working with community groups who have a strong sense of justice but little understanding of "rights" or "human rights" as a technical discourse. Community organizers, and lawyers who work effectively with them, are well aware of this gap and often use different vocabularies to "translate", which might be said to a court or bureaucrat into terms that community leaders can apply to local conditions. Conversely, these lawyers face the reciprocal problem of translating a community's expectations and sense of justice into terms for a judge or bureaucrat who has little understanding of a rural, urban slum, or ethnic group the lawyer represents.

<sup>8</sup> The importance of women as agents of change in Thailand is not new. Tamara Loos, *Subject Siam: Family, Law and Colonial Modernity in Thailand* (Cornell University Press 2006); Philippe Doneys, "Political Reform Through the Public Sphere: Women's Groups and the Fabric of Governance" in Duncan McCargo (ed), *Reforming Thai Politics* (Nordic Institute of Asian Studies Press 2002) 163–82, nor have women's roles in the past been limited to members of the elite and educated middle class. Juree Vichit-Vadakan, "A Glimpse of Women Leaders in Thai Local Politics," in Kazuki Iwanaga (ed), *Women and Politics in Thailand: Continuity and Change* (Nordic Institute of Asian Studies Press 2008) 125–67; James Ockey, *Making Democracy: Leadership, Class, Gender and Political Participation in Thailand* (University of Hawaii Press 2004).

<sup>9</sup> Doneys, "Political Reform" (n 8).

<sup>10</sup> We have been interviewing lawyers for social causes in Thailand for more than 15 years, and during that time we have conducted multiple interviews with each of the three women, their colleagues and clients, government officials and members of the judiciary. Unless otherwise indicated, information about them is based on these interviews.

early life, university experiences, and other sources of support for their law work that shaped their skills and purposes as lawyers. Of the greatest importance is the embedding of each of these women in an evolving “community of practice,”<sup>11</sup> comprised of practitioners connected to one another through dense and long-standing relationships, which support and guide how they represent social causes.

The community of practice that welcomed the women includes at least four interrelated generations of lawyer-activists, linked through continuing relationships formed at university, collaboration in advocacy, mentoring, and shared identity. The First Generation are role models and mentors in the community, and became outspoken defenders of the rights and liberties of common people between the end of the absolute monarchy in 1932 and the student-led democracy movement of the 1970s. They are followed by the October Generation, lawyers who graduated between the late 1960s and the end of 1976—the years leading up to the momentous student-led uprising in 1973 and the crushing military response in 1976. The Amnesty Generation is comprised of lawyers who entered the profession from 1979, when amnesty was declared for those who fled the military, onwards to 1997, the year Thailand’s liberal constitution was adopted. These were years that solidified the community of practice. The Constitution Generation entered practice after 1997, during a period of robust and continuing struggle for constitutionalism. Other groupings might be identified, but these correspond to important changes in the state’s political structure, and are frequently mentioned by the lawyers we interviewed as periods in which the state’s shifting structure required important changes in their status and legal strategies. Over the length of this timeline, we can observe not only the effects of the changes in state structure, but also the rise of new resources for lawyers, including new forms of “legal capital.” Legal capital has been created by new legal institutions, rising political support for rights, and shifts in Thailand’s geopolitical context.

The women lawyers whose careers are described in this article are members of Generation Three—social cause lawyers who entered the profession between the amnesty in 1979 and the adoption of the People’s Constitution in 1997. Their careers bridge the shift from dominance by a military-monarchy alliance to a continuing popular struggle between new political actors arising from a changing civil society and the forces of tradition that oppose them, represented by the military. Sor.Rattanamane Polkla is the founder of the Community Resource Centre, which specializes in litigating community environmental and land rights, two persistent sources of conflict caused by development projects. She now helps the government to draft legislation preventing environmental human rights abuses by corporations. Siriwan Vongkietpasan, founder of SR Law Firm, is a pioneer advocate for gender rights, ending human trafficking, and criminal law reform. She partners with government ministries to reform policy while retaining sufficient independence to litigate against both government and private companies to end human rights abuse. Yaowaluk Anuphan directs Thailand Lawyers for Human Rights, an NGO that

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<sup>11</sup> See Part III.B for detailed explanation of this concept.

represents victims of human rights abuse by the military or police—an especially controversial and risky practice under Thailand’s recent governments.

### III. LAWYERS IN THE MODERN THAI STATE

#### A. Origins of the Thai Legal Profession

Sor.Rattanamanee, Siriwan and Yaowaluk’s family origins bear little resemblance to the lives of the hereditary elites who were, with a few exceptions, the first Thai trained as lawyers. Siriwan and Yaowaluk grew up in poor families supported by women, while Sor’s parents left a government-owned state enterprise to work on their farm. All three grew up in regions distant from Bangkok, the country’s political center. For women of their generation, a university education promised upward mobility and security, and studying law was a thoroughly practical preparation for government work or business. Sor.Rattanamanee and Siriwan chose law to make a living. Yaowaluk acknowledges that from a young age she believed that by becoming a lawyer she would be able to protect her family from the injustices her mother suffered as a single parent. Social cause advocacy as a life’s work was not a plan or even a concept for any of them.

Still, attending university and entering the profession of law was itself a measure of the revolutionary changes that have occurred since the founding of the modern state in the late 19<sup>th</sup> century. Thailand’s enlightened monarchs, Rama IV [1851–68] and V [1868–1910], father and son, conceived of a modern state with sufficient power and legitimacy to consolidate the monarchy’s authority internally and preserve its territorial integrity while under pressure from Western colonial powers. Law, courts and ministries, adapted from European models, were their chosen mechanisms of centralization. Rama V chose to create a bureaucratic judiciary and establish a new civil code because he believed that these not only gave him more control over the use of his authority, but that they would also make it easier to negotiate with Western countries with similar legal systems.<sup>12</sup> Loyal, law-trained professionals from among the ranks of the hereditary elite, the core of a legal profession, were necessary to negotiate Thailand’s relationship to European states, and to staff new ministries and a centralized system of courts. The political and social development that followed reform and Thailand’s dependence on geopolitics over the course of the 20<sup>th</sup> and 21<sup>st</sup> centuries left an additional imprint on later generations of lawyers, but the legacy of the profession’s origin survives.

Our three advocates regularly encounter one of the principal legacies of the monarchy’s plans for law—the conservatism of its judiciary. Although in practice a mixed legal system, the Thai judiciary emphasizes strict adherence to its

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<sup>12</sup> Loos, *Subject Siam* (n 8); Central Intellectual Property and International Trade Court Thailand, *The Judicial System in Thailand: An Outlook for a New Century* (Institute of Developing Economies, Japan External Trade Organization 2001) 64.

understanding of statutory language, granting lawyers little license to interpret policies. Judges are highly trained career bureaucrats selected on the basis of academic merit rather than practical experience. They are widely viewed as favoring the interests of Thailand's bureaucrats and monarchy.<sup>13</sup>

A Ministry of Justice Law School<sup>14</sup> was established in 1897, later becoming part of Chulalongkorn University. Rama V sent a younger brother to England for legal training, charging him on his return with developing a curriculum for the school that trained officials entrusted with overseeing ministries and serving as justices in the Royal Courts. Only a few commoners from influential families joined members of the hereditary elite at the school. No women were admitted until the late 1920s.<sup>15</sup>

## B. The First Legal Activists

Rama V embraced the idea that change and improvement could be brought about by human agency, a view that influenced other elites and inspired educated commoners who were increasingly frustrated by absolute rule and the disadvantages of their rank. Belief in “people making history” along with the ambitions of an upwardly mobile class became “a potent combination.”<sup>16</sup> One such talented commoner was Pridi Banomyong, who, together with a few aspiring civilian and military members of his generation, led the revolution in 1932 that ended the absolute monarchy<sup>17</sup> but did not end the monarchy's influence, its continuing role in Thailand's politics, or the character of its rule of law.

Pridi's influence on the legal profession is profound and lasting. Until 1933, formal training in law excluded most commoners. In 1934, Pridi carried out the

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<sup>13</sup> Scholars have observed that Courts of Justice are reluctant to rule against the government (David M. Engel, *Code and Custom in a Provincial Court* (University of Arizona Press 1978)), and that in highly charged political cases, courts favor what they perceive to be the will of the monarchy (Duncan McCargo, *Fighting for Virtue; Justice and Politics in Thailand* (Cornell University Press 2019)). Lawyers we interviewed made similar observations.

<sup>14</sup> In 1891, Rama V created a Ministry of Justice to handle law reform and consolidation of existing court systems, and in 1897 the Ministry of Justice established its “Law School” (โรงเรียนกฎหมาย). เนติบัณฑิตยสภา, 100 ปี โรงเรียนกฎหมาย (เนติบัณฑิตยสภา 2540) [Thai Bar Association, *100th Anniversary of the Law School* (Thai Bar Association Under the Royal Patronage 2008) (Thai) and Central Intellectual Property and International Trade Court Thailand, *Judicial System in Thailand* (n 12) 63.

<sup>15</sup> As in many countries, the earliest form of legal education was an apprenticeship at the home or office of an experienced judge, practitioner or bureaucrat who trained his new associates or office staff himself, an unlikely path to law practice for women (Thai Bar Association, *100th Anniversary of the Law School*). Even today, law graduates are required to complete an apprenticeship before they can be licensed, and the continuing importance of a patron-client culture may benefit women if they form a lasting professional relationship with an experienced attorney but may create barriers for others in a predominantly male profession.

<sup>16</sup> Chris Baker and Pasuk Phongpaichit, *A History of Thailand* (2nd edn, Cambridge University Press 2005).

<sup>17</sup> Returning from France before the revolution, he lectured at the older Ministry of Justice school. The king considered his lectures politically dangerous and warned him to be careful. A few months later, Pridi led a coup against the King.

revolutionary party's plan to create an accessible institution of higher education by establishing the University of Moral and Political Science, now Thammasat University. The University, open to all who could qualify, offered an education where class attendance was not required and tuition was low. The curriculum was intended, in part, to prepare a new generation for government service.<sup>18</sup> Profoundly influenced by his training in French jurisprudence, as well as by his upbringing in Thailand, Pridi's lectures on principles of government under rule of law included not only the structure of government and interpretation of a modern legal code, but also the harmonization of European liberal ideals with familiar Thai values.<sup>19</sup> Several generations of students remember that Pridi introduced them to new ideas about the role that law could play in their society.<sup>20</sup> Only a few of Pridi's students entered private practice. Among them were a handful of social cause practitioners, whose personal experience led them to undertake the risky practice of defending politically unpopular causes.<sup>21</sup> The influence of these Generation One practitioners on younger social cause lawyers continues today.

### C. Women in the Legal Profession

The decision to become a lawyer was not unusual for women of Sor.Rattanamane, Siriwan, and Yaowaluk's generation. Employment opportunities for women in Thailand's developing economy make that choice attractive—opportunities gained, in part, through the efforts of earlier generations of women. Women's early failures to achieve equality under law revealed both the limitations on women imposed by family culture and the determination of Thailand's elites to preserve important characteristics of a male-dominated social hierarchy.<sup>22</sup> Even though Thammasat

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<sup>18</sup> The curriculum covered law, but also political science and the ethics of public service.

<sup>19</sup> Pridi Banomyong, *Pridi by Pridi: Selected Writings on Life, Politics and Economy* (Chris Baker and Pasuk Phongpaichit tr, Silksworm Press 2000). Members of Khana Ratsadorn, or the Siam Revolution Group, were deeply involved in the policy and administration of Thammasat University. While Pridi served as Rector at Thammasat University, other members of the revolution's leadership and their close relatives also held positions as Rector, Chairman of the University Council and on the faculty. See วารุณี โอสธารมย์ และคณะ, ผู้ประศาสน์การและอธิการบดีมหาวิทยาลัยธรรมศาสตร์ (พ.ศ. 2477–2556): ประวัติชีวิต ความคิด และการทำงาน (มหาวิทยาลัยธรรมศาสตร์ 2556) [Warunee Osodtarom et al. (eds), *Administrators and Rectors of Thammasat University: Life History, Ideology and Their Work* (Thammasat University 2013)] (Thai).

<sup>20</sup> ธเนศ อาภรณ์สุวรรณ, “ขบวนการนักศึกษาไทยในช่วงแรก”, ใน วิทยากร เชิงกุล, ขบวนการนักศึกษาไทย : จาก 2475 ถึง 14 ตุลาคม 2516 (กรุงเทพฯ : สายธาร, 2546) [Thanet Arpornsuwan, “Student Movement in the First Period,” in Wittaya Chiangkul (ed), *Student Movement in Thailand: From 1932 to October 14, 1973* (Bangkok-Satarn 2003)] (Thai).

<sup>21</sup> Marut Bunnag and Thongbai Thongpao are among the best known in Thailand. See Frank W. Munger, “Thailand: The Evolution of Law, the Legal Profession and Political Authority” in Richard L. Abel, Ole Hammerslev, Hilary Sommerlad, and Ulrike Schultz (eds), *Lawyers in 21<sup>st</sup>-Century Societies, Vol. 1: National Reports* (Hart Publishing 2020).

<sup>22</sup> Loos, *Subject Siam* (n 8). The first notable exceptions, for example, women's right to vote and ending formal recognition of polygamous marriages, were victories of an early male advocate for women's rights, Pridi Banomyong.



University's open admissions allowed women to enter the legal profession in significant numbers for the first time, women's opportunities for advancement through government employment were limited.<sup>23</sup> Understandably, in comparison with men, fewer women sought a legal education. However, those women who chose to study law were undoubtedly attracted by the opportunity for safe and secure government employment; still, they were as likely as their male classmates to be influenced by Pridi's enlightenment jurisprudence.

In 1928, while Pridi was still teaching at the Ministry of Justice Law School, the first female student, Ram Promobol, was admitted. Ram hoped to become a judge, but after her graduation and admission to the Thai Bar in 1930, the law was changed to deny her that opportunity.

In 1930 when I graduated second in my class and became the first female [member of the] Bar in Thailand, I was so excited and hoping to become a judge. But when they announced the new Judiciary Act, it wasn't possible for me to be a judge and perhaps a prosecutor too. According to this new act, a judge must be Thai male and older than 25 years old, but I am a woman and younger than 25 years old. So, I decided to become a lawyer, which was the only profession that I studied. I went to work with Tilleke & Gibbins, an English law firm, and they didn't have a Thai lawyer working at that time.<sup>24</sup>

After the revolution in 1932, Ram joined a group of former students to help Pridi plan Thammasat University.<sup>25</sup> The group's collaboration created a small but tight-knit network of lawyers who shared the goal of helping the nation develop.<sup>26</sup>

By the middle of the twentieth century, much had changed as a result of Asia's increasing entanglement in international politics, World War II, and America's sponsorship of Thailand's post-war development. Expansion of higher education was among the first investments by American funders and the Thai government towards meeting the demands of expanding ministries, flourishing businesses, and the demand for upward mobility among ordinary Thai. The number of lawyers increased at an almost exponential rate.<sup>27</sup>

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<sup>23</sup> These legal barriers have since been removed.

<sup>24</sup> คุณหญิงแรม พรหมโบล บุญยประสพ, “เสี้ยวหนึ่งแห่งความทรงจำ” (สถาบันปรีดี พนมยงค์ 2553) [Ram Promobol, “Part of My Memory” (Pridi Institute 2020) <<https://pridi.or.th/th/content/2020/05/266>>] (Thai). The article was originally published in 1984.

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> See announcement of Lawyers Council on 19 June 2012. In addition, 29 former teachers' colleges have upgraded programs offering law degrees on the approved list (see พระราชบัญญัติมหาวิทยาลัยราชภัฏ พ.ศ. 2547, ราชกิจจานุเบกษา เล่ม 121 หน้า 1 (14 มิถุนายน 2547) [Rajabat University Act B.E. 2547, Government Gazette vol 121 p 1 (14 June 2004)] (Thai).

**Table 1. University Graduates and Law Graduates by Gender 1991–2016**

	University graduates		Law graduates	
Year	Total	% female	Total	% female
1991	59,654	n/a	5,239	n/a
1992	61,658	n/a	5,260	n/a
1993	63,749	n/a	4,941	n/a
1994	68,503	n/a	5,266	n/a
1995	71,048	n/a	4,997	n/a
1996	61,009	54	4,861	19
1997	65,892	54	6,214	19
1998	69,532	56	4,048	24
1999	73,647	56	4,934	24
2000	80,671	57	5,171	28
2001	93,764	58	5,849	31
2002	82,158	55	5,932	31
2003	220,142	59	6639	37
2004	257,881	n/a	n/a	–
2005	272,886	62	n/a	–
2006	259,089	62	11,059	40
2007	268,508	61	9,747	41
2008	289,413	61	7,841	43
2009	274,473	60	9,634	43
2010	231,733	61	9,833	45
2011	248,871	61	8,129	45
2012	182,216	61	7,246	43
2013	140,653	64	7,867	43
2014	245,566	62	8,311	47
2015	262,807	63	6,888	51
2016	220,768	65	4,063	52

*Sources:* Bureau of Policy and Planning (1998; 1997–2004); Information Center Bureau of Administration (2005–06); Office of Higher Education Commission data for 2006–16 available at <http://www.info.mua.go.th/information>.

Although earlier generations of women were excluded from positions of power in government and business, many occupied positions in which they could exercise

influence. In 1947, 80 female graduates created a legal aid program to help women and families. In 1955, the same group founded the Women Lawyers Association of Thailand under the Queen's patronage, and soon launched a campaign for women's equality by drafting legislation to encourage the appointment of women as civil servants and judges.<sup>28</sup> In 1961, the Queen provided funding for a National Women's Council.<sup>29</sup> Women appointed to the Council have sponsored NGOs supporting advocacy for women and children.<sup>30</sup>

Today, many barriers to government employment of women have been removed, and recent National Development Plans emphasize the importance of women's advancement. The enrollment of women in law schools has increased steadily from the 1970s onwards, and the number of female graduates now exceeds that of male graduates (see Table 1), although they pass bar examinations at somewhat lower rates (Table 2). Many women work for businesses, and increasing numbers of women lawyers work for global firms.<sup>31</sup> Women lawyers are comparatively well represented among the legal advocates for NGOs and social movements, and in government service. While a few women have risen through bureaucratic advancement to the highest levels of the judiciary,<sup>32</sup> they are still underrepresented in higher positions within ministries and offices with political power, including Parliament.<sup>33</sup>

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<sup>28</sup> The Women Lawyers Association, especially Khunying Nanthaka Supraphatranan, was a key sponsor of a gender equality requirement in the draft of the 1978 Constitution. อีรณันท์ อีระธนากร และ กนิษฐา ชิตช่วง, "บทบาทของสมาชิกสภาสตรีในการเคลื่อนไหวผลักดันสิทธิสตรีใน รัฐธรรมนูญ: ศึกษากรณีคุณหญิงนันท์ ทาสุประภาตนะนันท์" (2558) 41(2) วารสารสังคมศาสตร์และมนุษยศาสตร์ มหาวิทยาลัยเกษตรศาสตร์ 96–97 [Theranun Therathanakorn and Kanitha Chitchang, "The Role of Female Members of Parliament to Call for Women's Rights in the Thai Constitution: Case Study of Khunying Nanthaka Supraphatranan" (2015) 41(2) Journal of Social Sciences and Humanities 96–97] (Thai).

<sup>29</sup> The status of both NGOs "under the Royal Patronage" provides symbolic capital for staff members' work as an implicit endorsement by the monarchy of advocacy for women and families.

<sup>30</sup> Interviews with Saisuree Chutikul (July 28, 2010; July 12, 2011).

<sup>31</sup> Bangkok's largest firms reflect the influence of global norms by offering more opportunities for women. One female Baker McKenzie partner said she had experienced no discrimination in the Bangkok office, noting that the managing partner at the time was a Thai woman. She estimated that about 30 per cent of the lawyers in the Bangkok office were female, but a smaller percentage were partners because they had begun their careers much more recently than their male partners. A prominent female lawyer and activist, who served as a commissioner of the National Human Rights Commission until 2007, confirmed that Thai women still encounter barriers to career advancement.

<sup>32</sup> A woman was recently appointed Chief Justice of the Supreme Court of Justice and as Chief of Justice of the Appellate Court of Justice. "Thailand Appoints First Female Supreme Court President" *Royal Thai Embassy, Washington D.C.* (2020) <https://thaiembdc.org/2020/08/03/thailand-appoints-first-female-supreme-court-president/>; "ไสลเกษ'พ.อาวุโสในศาลฎีกา 'เมทินี'ปธ.ศาลฎีกาหญิงคนแรก 'ปิยกุล'ขึ้นปธ.ศาลอุทธรณ์" - ข่าวสด (9 สิงหาคม 2563) <[https://www.khaosod.co.th/newspaper-column/people/news\\_4666205](https://www.khaosod.co.th/newspaper-column/people/news_4666205)> ["Slaikate – Senior Judge on the Supreme Court, Methinee – First Female Supreme Court President, Piyakul Appointed Appellate Court President" *Khaosod* (9 August 2020)] (Thai).

<sup>33</sup> See "Asia and the Pacific: Thailand" *UN Women* <<https://asiapacific.unwomen.org/en/countries/thailand>>. The recently deposed female Prime Minister, Yingluck Shinawatra, may be the exception that proves the rule, since she served as the surrogate for her brother, Thaksin Shinawatra, removed from the same office in 2006 by a military coup. Like her brother, Yingluck was accused of corruption and abuse of power.

**Table 2. Bar Passage by Gender, 2011–16**

Year	Thai Bar Pass		Attorneys Bar Pass	
	Total	% female	Total	% female
2011	n/a	–	1,918	46
2012	1,231	44	3,087	46
2013	1,227	46	3,182	55
2014	1,485	46	2,599	46
2015	1,302	49	2,420	45
2016	928	48	1,630	42

Source: Thai Bar data courtesy of Thai Bar Association; Attorneys Bar data from Lawyers Council (2011–15) and unpublished 2016 data courtesy of the Lawyers Council Under Royal Patronage.

## D. The October Generation and Creation of a Community of Practice

By the 1960s, an expanding university system opened higher education to children of families seeking upward mobility for the next generation. Unprecedented numbers of women were among the students in the October Generation, and along with their classmates they quickly discovered that they knew little about their country's politics or people, and that they could play a role in bringing about change. New ideas about society and government flowed not only from Western-educated faculty but also from neighboring China and Vietnam, where popular revolutions and confrontations with Western powers offered alternatives. In 1973, student leaders led a movement that united social sectors with long-suppressed grievances behind the demand that the military dictator adopt a constitution. The students' demand was carefully crafted to uphold the principles of the "civic religion" promulgated by Rama VI—Nation, Religion, Monarchy, principles that had legitimated the elite-dominated governments established by earlier constitutions; but coming now from a truly popular movement, the demand for a constitution was unprecedented. A new vision of the rule of law was introduced, if not fully realized or universally appreciated, animating efforts to use law to advance social causes and effect change.<sup>34</sup>

The return of the military dictator in 1976 was accompanied by a brutal military and police crackdown that slaughtered students, led to arrest and trial for many, and forced thousands to flee. NGOs and other progressive organizations identified by the police as "communist" were disbanded, and their offices ransacked and destroyed. A few courageous lawyers represented defendants in the political trials that followed—

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<sup>34</sup> Kanokrat Lertchoossakul, *The Rise of the Octobrists in Contemporary Thailand* (Yale University Southeast Asia Studies 2016).

lawyers from Generations One and Two who were politically or royally protected, or known internationally as human rights defenders.<sup>35</sup> As support among liberal elites and the middle class for the restored military government eroded, it was eased aside by the monarchy and more liberal generals and elites, and in 1979 amnesty was granted to those who had fled.

In the late 1970s, two projects took shape under a more tolerant semi-democratic government,<sup>36</sup> growing from the legacy of the October Generation to become pillars of an intergenerational network of lawyers for social causes. The Union for Civil Liberties [UCL] and Friends of Women [FOW] revived advocacy for social causes, recruiting and training new generations of lawyer-activists and opening the way for women in particular. Together they created a new culture of law-based reform, and a discourse of rights and rights-related strategies among social cause advocates. FOW advanced a progressive discourse of women's rights and became a leading center of advocacy for women—a training ground for Generation Three lawyers, especially women lawyers, and a starting point for women who founded other advocacy projects. FOW was founded through collaborative networks that extended into influential institutions of the state, and it spawned a group of NGOs for gender-related causes that accepted negotiation with bureaucrats as a principal, if not the only means, of establishing reform. UCL was revived by October Generation lawyers, training new legal advocates for social causes in both law and community organizing. UCL forged a discourse of human rights and government accountability, which was widely shared by leaders of NGOs and lawyers for social causes.<sup>37</sup>

The two NGOs, whose influence we discuss in detail in Part IV, contributed to the formation of a self-sustaining *community of practice* comprised of lawyers for social causes. Practitioners understand that law is a practical art, and that lawyers are guided not only by jurisprudence and technical skills, but by practical knowledge developed during representation of similar clients and causes. Lawyers doing similar work form a “community of practice” made up of “layered and overlapping sets of attorneys who interact regularly and provide reference points for one another about the nature of appropriate professional conduct”<sup>38</sup> who communicate knowledge of

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<sup>35</sup> For example, Generation One lawyer Marut Bunnag came from an influential and royally connected family, and other lawyers who defended October 1976 defendants benefited from relationships with military officers or recognition of their human rights advocacy by the international community. Sulak Sivaraksa, the activist professor trained as a barrister in England, who inspired Generation One and Two advocates and organized international support for the October 1976 defendants, began his university-based activism under the protection of a member of the royal family, Prince Narathip Pongprapan, who served as Rector of Thammasat University. Osodtaron, *Administrators and Rectors* (n 19) 188–89.

<sup>36</sup> See Baker and Pasuk, *A History of Thailand* (n 16).

<sup>37</sup> Michael Kelley Connors, *Democracy and National Identity in Thailand* (Nordic Institute of Asian Studies Press 2003).

<sup>38</sup> Leslie C. Levin and Lynn Mather, *Lawyers in Practice: Ethical Decision Making in Context* (Chicago University Press 2012) 66.

practice by example with other lawyers whom they trust.<sup>39</sup> Nearly all of Thailand's lawyers for social causes have been embedded in the community of practice that was formed by returning October Generation radicals in private practice and the attorneys associated with FOW and the UCL. This community of practice became a repository of resources—knowledge, purpose, legitimation, and a gateway to external resources, including resources from foreign and international organizations. But the community of practice was much more than that. Notwithstanding differences in relationships and commitments that created variations in practice, over time the community of practice influenced each lawyer's identity—the sense of who they were and how they should practice, supported by a narrative of the community's purpose. Fundamental to the community's sense of purpose were ideals embraced by the October Generation about entitlement to rights and government responsibility—beliefs that were intrinsic to their later-acquired discourses of human rights and rule of law, and which gave these meaning.

### E. The 1997 “People’s Constitution”

The constitution enacted following the 1973 uprising was the first to be adopted in response to a broad popular movement, and it was pushed aside by a military coup two years later.<sup>40</sup> After the amnesty, activism returned, but nearly two decades of unresponsive Parliaments, rampant political corruption, and popular activism led to a broadly-based movement for a new constitution that guaranteed rights, popular participation and government accountability. With widespread support and unprecedented popular involvement, the 1997 constitution included an extensive bill of rights, a fully democratic government, independent watchdog agencies, and a National Human Commission, together with a Constitutional Court and a system of administrative courts to maintain the new political structure.<sup>41</sup> Thailand had never experienced life under a constitution that established effective checks and balances on politicians and bureaucrats, permitted meaningful participation, or guaranteed enforceable equal rights. The “People’s Constitution” reshaped the relationship between Thai citizens and the state, but from the beginning its influence was far from certain. The constitution's revolutionary implications as guarantor of rights and as a framework for popular sovereignty required nurturing to withstand the precedent of

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<sup>39</sup> Sor.Rattanamanee made this point by saying that trust was one prerequisite for collaboration with otherwise skilled practitioners who represent communities in environmental cases, and for this reason she has been wary of lawyers attracted to similar litigation by fees or by its potential for attracting publicity.

<sup>40</sup> See generally, Marc Askew, “Introduction: Contested Legitimacy in Thailand,” in Marc Askew (ed), *Legitimacy Crisis in Thailand* (Silkworm Books 2010).

<sup>41</sup> James R. Klein, *The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy* (The Asia Foundation 1998).

history and the text's ambiguous language, which permitted interpretations serving different visions of change.<sup>42</sup>

Differences within the coalition supporting constitutional reform meant that actual change depended on interpretation. Interpretation of reforms led to bureaucrats and politicians who put the Constitution into practice, but above all to the courts and those who use them—the lawyers and the people. Unexpectedly, lawyers invested in representing social causes were among the most likely potential beneficiaries of what was, in many ways, a lawyers' constitution. Making rights meaningful required not only new courts, but new ways of thinking about law and the judiciary's role, and new support systems for constitutional interpretation and litigation. In the view of the most liberal reformers, implicit in the concept of constitutionalism was a broad acceptance not only of democracy in form, but also a far more consequential social revolution that included a judiciary, bureaucracy and general public willing to accept a reduced role for traditional centers of power, and an expanded role not only for popular democracy, but also for the judiciary itself. Thailand hardly seemed ready for such a leap. Lawyers for social causes were limited by the absence of a support structure—developed jurisprudence, a judiciary that embraced rights, organizations that provided resources and legitimacy for defending rights, and popular trust in meaningful constitutionalism. Among other challenges, they represented individuals and groups who had limited understanding of the value of rights and feared government officers, especially the police and judges.

#### IV. CONSTRUCTING A CAREER

In Part IV, we illustrate our theory of career construction through detailed descriptions of women who became Generation Three lawyers (between the amnesty for guerillas and communists in 1979 and the adoption of the 1997 Constitution), maturing in the constitutional era by investing in a singular and risky<sup>43</sup> form of law practice.

Between 1995 and 2005, three enterprising women attorneys crossed paths while working for the Chalit Meesit Law and Accounting Firm [hereafter Meesit Law Firm], which was, arguably, Thailand's first social cause law firm that attempted to become self-supporting without depending solely on the charismatic leadership of a single, dedicated practitioner or the generosity of wealthy business partners. Yaowaluk Anuphan joined the firm in 1993 after two years as a staff attorney with the Women's Law Center of the Friends of Women Foundation. Siriwan Vongkietpaisan met Chalit

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<sup>42</sup> James R. Klein, "The Battle for the Rule of Law in Thailand: The Constitutional Court of Thailand," in Amara Raksasataya and James R. Klein (eds), *The Constitutional Court of Thailand: The Provisions and Working of the Court* (Constitution for the People Society 2003) 35–92 (Appendices omitted).

<sup>43</sup> In Thailand, the risks posed to lawyers are real. Assassinations and "disappearances" of human rights defenders have occurred and lawyers have been the subject of these incidents. Lawyers for political dissenters have been arrested or harassed for activities that would be unremarkable in Europe or the United States.

Meesit in 1997 and joined his firm after working in debt collection for ten years. Sor.Rattanamanee never became a partner but moved her practice into the firm's offices in 2000 to begin a career as an environmental litigator. As partners, Siriwan and Yaowaluk were attracted in part by the promise of financial support, which gave them the freedom to practice as they chose, and the capacity to develop innovations in complex forms of advocacy for social causes of their own choosing. For Sor.Rattanamanee, the firm provided symbolic and material resources that shaped her law practice, in particular the promise of collaboration with her law school mentor, a skilled environmental litigator. How and why they, as women, sought this opportunity and what their alignment with the firm enabled them to do depended, in turn, on the investments in law and law practice for social causes made by each of the women.

In the first section, we follow the women's careers from their family background to the establishment of their signature law projects, examining the influence of "capital" acquired early in life, at university, and at their first jobs, which led each of them by a different path to the network of social cause lawyers and its community of practice. While family background determined their point of entry into the legal profession, relationships with peers and mentors at university were a more important influence on their first career steps, and were a resource that influenced their career paths at later points. The forms of capital that influenced early career steps also guided each to the activist community at a different point in her career though a different network. In addition to FOW and the UCL, which play important, if sometimes indirect, roles in creating the resources on which they drew, we also discuss the Lawyers Council of Thailand Under Royal Patronage [LCT], created by Parliament in 1985 to represent the interests of the practicing bar, which became a center of the community's collaborative law work.

In the second section of this part, we examine the influence of the internationalization of law on each career. Globalization's influence has left few areas of Thai society completely untouched, but Thailand's legal development has been a particular target of Western assistance. International resources have had important but different influences on the construction of each woman's career.

## A. Entering Law Practice; Finding an Identity

*Yaowaluk Anuphan*<sup>44</sup>

*Yaowaluk Anuphan is composing herself for a picture at her modest desk in the offices of Thailand Lawyers for Human Rights [TLHR], an NGO whose mission is "to provide legal aid and monitor human rights situations after 2014-coup in Thailand."<sup>45</sup> TLHR lawyers defend political protesters and those charged with political crimes or who are victims of police and military abuse. To her audience she appears unassuming but determined, which suits her uncommon bravery*

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<sup>44</sup> Based on interviews conducted in 2007, 2011, 2014, and 2020.

<sup>45</sup> Quoted from TLHR's Facebook page, found at <<https://www.facebook.com/tlhr2014/>>.



*and dedication to her vision of the rule of law. Later, in another room, the exuberance of her younger collaborators is on display. Staff attorneys are hard at work documenting cases and preparing for litigation. One has brought his children, who are keeping the staff entertained. A group outside on the patio is discussing strategies over beer. Morale is high in spite of the risk of practicing law at the outer limits of regime tolerance.*

TLHR's extraordinary legal practice is the culmination of Yaowaluk Anuphan's long journey from modest beginnings. She grew up in Narathiwat Province in the South of Thailand, a region troubled by conflict over Muslim independence since its annexation during British rule in Malaysia in the 19<sup>th</sup> century, and a virtual battle ground under the military occupation ordered by Thaksin's government in 2005.<sup>46</sup> Yaowaluk's memories of her childhood recall a different kind of injustice. After her father's death when she was two, hardships suffered by her mother caused by disrespectful local officials made Yaowaluk think of becoming a lawyer. There were other reasons, too. Law was a route to government jobs, which were considered a secure source of income and sought after by sons and daughters of upwardly mobile families. Yaowaluk and her three siblings all studied law.

Like many students who lacked elite credentials or needed to work while studying, she chose Ramkamhaeng University, an open admissions institution located in Bangkok. Beginning her studies in 1986, law school focused her sense of justice on social issues and opened unforeseen paths to a career. She was inspired by the ideals and aspirations of October Generation radicals who were returning to complete their university education, and by summer camps where students worked with villagers to build community facilities or tend crops. In her second year, she began skipping classes to work in a slum project, joined a student club run by labor NGOs, and began to learn about women's rights. Law school, she says, made her an activist.

Yaowaluk's early career reflects two motives in tension—concern for injustice and desire for financial independence. From childhood she had an understanding of women's victimization in Thai society, and at university her interest in women's rights grew. Choosing a job and a career was not so easy for a university graduate attracted to social causes, because Yaowaluk knew that she would earn little working as an activist lawyer. She is critical of radical classmates who compromised their ideals by working for politicians or in high paying jobs. When she graduated in 1990, she accepted an internship with the Northern Women Leaders Project, teaching women from ethnic minorities about their rights. In 1991, she applied for a position as a paralegal at the Friends of Women Foundation's Women's Rights Protection Center.

She was attracted to the Center by its work for victims of human trafficking, a global problem of great concern in Thailand,<sup>47</sup> and because she could work with

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<sup>46</sup> Duncan McCargo, "Thaksin and the Resurgence of Violence in the Thai South: The Network Monarchy Strikes Back" (2007) 38 *Critical Asian Studies*, 39–71; "Thai Districts Put Under Martial Law" *New York Times* (3 November 2005) <<https://www.nytimes.com/2005/11/03/world/asia/thai-districts-put-under-martial-law.html>>.

<sup>47</sup> Yaowaluk says she had observed abusive treatment of prostitutes in her hometown.

experienced Generation One and the October Generation lawyers who provided training. There, she met Surachai Trong-gnam—a 1986 Thammasat graduate, one of the Center’s attorneys and a litigator for grass roots social causes, who became her role model, mentor and friend. After two years, she passed the bar and received her attorney’s license. Seeking higher income<sup>48</sup> and the freedom to choose her own cases, Yaowaluk followed Surachai to the Meesit Law Firm,<sup>49</sup> where lawyers received modest living expenses and costs from a common fund. Additional income depended on the cases she handled. The lawyers were free to represent different social causes. Yaowaluk recalls her hopes for the firm:

It was . . . like . . . we still dream about it. We wanted people who had the same way of thinking, sharing common ideal goals. The leaders were from the Oct 6th [1976] people and Pee Tom [Surachai].

After two years, Yaowaluk became one of the first to leave. She acknowledges that her litigation skills were improved by Chalit’s instruction and that her commitment to social causes became deeper, but the firm failed to provide an adequate income, and Chalit’s demanding labor cases limited her freedom. Continuing to maneuver her career toward greater independence, Yaowaluk accepted a well-paid<sup>50</sup> position in a business consulting firm. After learning everything she needed to know about business practice, she established her own practice, relying on business clients for financial support and volunteering for FOW where she became the Head of Litigation.

As Yaowaluk gained the independence to practice as she wished, her reputation as an activist lawyer grew. Encouraged by Surachai, among others, she became active in a new network forming around the Lawyers Council of Thailand [LCT].<sup>51</sup> She began to work closely with Somchai Homla-or—a veteran of the October 14 uprising, President of the UCL from 1995 to 1999, and a leader of the popular movement for constitutional reform.<sup>52</sup> Somchai used the visibility and legitimacy of the Lawyers Council to help organize collaborative projects among legal activists to put the 1997 Constitution’s new courts and constitutional rights to use. Once again, Yaowaluk felt she was not fighting

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<sup>48</sup> At the Center, she worked as a paralegal trainer and victim counsellor for two years earning a salary of 2700 THB/mo (less than 100 USD).

<sup>49</sup> Entering Thammasat University in 1976, Chalit Meesit met members of the October Generation and witnessed the military crackdown. Graduating in 1979, he joined the UCL, becoming a skilled litigator and an inspiring labor organizer. In the early 1990s, Chalit and a few Generation Three friends formed the Chalit Meesit Law & Accounting Firm, Ltd., structured as a corporation with shares owned by wealthy investors.

<sup>50</sup> 40,000–50,000 THB/mo.

<sup>51</sup> Yaowaluk chaired the LCT’s subcommittee on Children, the Elderly and Disabled, a group of informed advocates who made policy recommendations, joined international NGOs to comment on draft legislation, and represented the Lawyers Council in Parliament.

<sup>52</sup> In part through his influence, she was selected by the United Nations High Commissioner for Refugees [UNHCR] to work on cases involving the rights of refugees and other human rights issues, while continuing to work as an independent attorney and dividing time between the Women’s Rights Center and UNHCR until 2007.

alone but in partnership with friends, and this time, she believed, Somchai had found a way to minimize the conflict between serving human rights and earning a living through collaboration with independent practitioners.

*Sor.Rattanamanee Polkla*<sup>53</sup>

*In 2015, a group of villagers in the northern village of Ban Haeng is engaged in discussion with a young woman lawyer from the Community Resource Centre [CRC]. The lawyer is telling them that she is close to filing the law suit she and the villagers have been preparing to oppose nearby construction of a lignite mine, which threatens to render large tracts of village land unusable. CRC is the life's work of Sor.Rattanamanee Polkla who is well-known to NGOs, activists, and community organizers throughout the North and Northeast.<sup>54</sup> For four years Sor.Rattanamanee and her staff attorneys helped Ban Haeng's residents gather facts, construct maps and charts, prepare documents in preparation for litigation, and counselled them about strategies that included demonstrations, petitions, and election to the local Tambon Administrative Organization.<sup>55</sup>*

Sor.Rattanamanee Polkla is from the South and the oldest of five children, of whom she is the only lawyer. Her career bridges the period of increasing NGO strength after 1980 and the post-1997 constitutional era. Sending girls to university is now more common in Thailand, but at that time supporting a university education for a girl who was an eldest child and capable of helping out at home or going to work to help the family was more unusual, unless the family was well-off. Sor's family was indeed among the better off in her community because her parents were retired government workers who owned a farm, placing them among the middle class in their community. Unlike Yaowaluk, Siriwan, and most other Generation Three lawyers for social causes, she maintained an independent practice from the start of her career, but long before the Ban Haeng litigation, she made a decision to devote most of her practice to "social law."

In 1987, Sor.Rattanamanee entered Thammasat University Law School, the university at the center of the 1973 uprising, where students and faculty carried forward the memory of the October Generation through student clubs and social activism. Just over a decade after the uprising, students continued to visit the countryside and slums, faculty members encouraged the study of society and its problems, and a "Rule of Law" club [*Nititham*] formed by faculty and students from the October generation continued to attract students inclined to support social causes. The Rule of Law Club taught a new generation about the history of the preceding

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<sup>53</sup> Based on interviews conducted in 2007, 2011, 2014, 2017, and 2020.

<sup>54</sup> Experienced organizer and Commoner Party founder Lertsak Kamkongsak put the villagers in touch with CRC in 2011.

<sup>55</sup> The Tambon is a subdistrict within Thailand's hierarchy of provincial government administration. The Tambon Administrative Organization [TAO] is an elected local board with financial and administrative power over villages within the district.

decade, and connected students with alumni who encouraged them to continue their activism after law school. She says that during her first year she was drawn to the group by a charismatic fifth-year student in the Club, Surachai Trong-ngam, whom Yaowaluk was to meet a few years later at FOW. When Sor.Rattanamanee graduated in 1991, the Rule of Law Club's faculty mentor guided her to his business law firm, where she learned the fundamentals of practicing law. To her surprise, she liked litigation, and a few years after receiving her attorney's license she set up her own practice.

Sor.Rattanamanee's journey from her family's farm to becoming a premier advocate for community rights is intertwined with Surachai's path to the EnLAW project under the Meesit Law Firm. Reconnecting with Surachai reminded her of the Rule of Law Club's concern for justice, and made her acutely aware of the violations of people's rights perpetrated by some of her business clients. She says that as a student, although she was a member of the Club, she did not know that lawyers could earn a living while working for social causes. Through Surachai and Somchai Homla-or, she was invited to join Lawyers Council working groups, and became increasingly committed to defending the rights of communities. When Surachai was chosen as coordinator of Thailand's first environmental litigation project, EnLAW,<sup>56</sup> he invited Sor.Rattanamanee to join him in litigation in the new administrative courts. Until 2009, she maintained her independent practice at EnLAW's offices, collaborating with Surachai on numerous cases.

### *Siriwan Vongkietpaisan<sup>57</sup>*

*To the young woman lawyer who is legal director of an anti-trafficking NGO in Chiang Mai, Siriwan Vongkietpaisan is a role model. In 2005, Siriwan and her husband established SR Law, a firm that has become a hub for innovative gender rights litigation, labor protection advocacy and other human rights cases. The young attorney says she is awed by Siriwan's handling of a human trafficking case in which she persuaded a judge to accept a new interpretation of Thai statutory law, providing a remedy for the grievous injustice to a young woman trafficked by her parents to Japan. Unspoken, Siriwan's rise from poverty through hard work to create her own celebrated law firm is likely to have been equally compelling for the young attorney, herself the daughter of an impoverished single parent, and for other women who face similar challenges.*

Siriwan is the youngest of six children of Chinese immigrants who settled near relatives in Buri Ram, a province in Thailand's Northeast. Her mother's small business was the family's principal source of income, and when she died, a year after Siriwan's birth, providing for the younger children was of greatest importance. Her father

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<sup>56</sup> In 2000, the New York-based Blacksmith Institute announced its intent to fund a Thailand-based litigation project. A group of leading environmental NGO directors chose Surachai as director and served on its board, along with intellectuals, academics and senior lawyers for social causes, such as the Director General of the UCL.

<sup>57</sup> Based on interviews conducted in 2008, 2012, 2014, and 2020.

remarried and had six more children, but he was a poor provider. Siriwan's sister, fifteen years her elder, cared for her like her own daughter, and supported her until she completed her university degree.

Siriwan enrolled at Ramkhamhaeng University in 1983, overlapping Yaowaluk's years as a student, but without meeting her. Siriwan chose Ramkhamhaeng because its open admissions and relaxed attendance policies allowed her to work and earn her degree at the same time. Her memories of studying law at Ramkhamhaeng and her plans after graduation are quite different from Yaowaluk's. Her sister told her that lawyers do not have a good reputation, but Siriwan was curious. During law school, Siriwan lived with her older sister and helped her sell merchandise made from forest products, sometimes working late into the night, skipping classes and limiting her participation in student activities to those which would not interfere with work. Still, her limited involvement in a student organization that raised money for orphans left a lasting impression.

I think I was affected by student activities; especially, when I was appointed to be president of a group. I sometimes argued with the male vice-president. I thought that males and females were equal, but some members would complain that I could not make a proper decision because I am a woman. I also learned that I should not focus only on the majority, because the voice of each person is important, and I needed to listen [to everyone]. This activity showed me how to conduct a group effort, and it became a part of what inspired me to work for society.

Motivated, perhaps, by her family's struggles, Siriwan intended to earn a good living, and upon graduation in 1991 she went to work for a debt collection company. After discovering that as an unlicensed law graduate she could do little to help her family or other people in need of legal assistance, she set new goals for her career. In 1994, she obtained her practitioner's license, but knew she needed a different job in order to learn about practicing law. Through a high school friend, she learned about the Lawyers Committee's working groups and met Chalit. Although the lawyers in the Chalit Meesit Firm were earning less money, they had more freedom to develop as practitioners. In 1997, after several months of discussion with Chalit, she quit her job in debt collection to pursue her dream by becoming a partner in his firm.

Siriwan chose the Meesit Law Firm, in part because she lacked the experience to join a more established firm, but also because she admired Chalit's mission.

In the end, I decided to work with the Meesit Law Firm because I believed that Khun Chalit is the role model for me. . . . He worked on labor cases, and he was also a counselor for many labor federations. I worked with him on many cases relating to social issues and human rights, such as women's rights, environmental issues and so on because there were not many lawyers who would work on those cases. For me, I had a chance to learn how to work on social issues, such as children, women, labor and marginalized people who lost social benefits. Mr. Chalit showed me the value of being a lawyer in the field of social assistance and service, and it became my inspiration.

Siriwan was inexperienced when she arrived, but she believes that at that time she was the only lawyer in the firm ready to pursue litigation in criminal court. At first, she assisted Chalit with his labor cases, of which there was a constant stream. Like Yaowaluk, she acknowledges that Chalit taught her how to work with clients and with judges beyond the formalities of litigation—skills she applied in other areas. She handled mainly labor cases involving women, but also criminal cases referred by NGOs, such as FOW and related NGOs, and she assisted Surachai and Sor.Rattanamanee with their environmental litigation.

## B. Advancing a Career Through Internationalization

As we noted earlier, our focus on pro-rights lawyers aligns to a degree with the international narrative of modernization advanced by scholars who have argued that stronger legal systems favor liberal democratic regimes.<sup>58</sup> In many cases, these theories have proved to be misguided. Pro-rights activists in a country such as Thailand have benefited more from the material resources and legitimacy that international recognition brings, than from the usefulness of international prescriptions.

### *Yaowaluk Anuphan*

In 2006, toxic Prime Minister Thaksin Shinawatra was driven from politics by a military coup—an event that stunned the international community, dividing Thailand, and, unexpectedly, its community of social cause lawyers. While the shock wave and aftermath still roiled the country, Yaowaluk was invited for advanced study and training at the Asian Human Rights Commission [AHRC] in Hong Kong, where Somchai had been a fellow 20 years before.<sup>59</sup> There, she worked on cases of torture and forced disappearance, but far more important than the particular legal issues, she says, is the way AHRC fundamentally changed her understanding of rule of law and the importance of international human rights.

Yes, it was a turning point for me. At AHRC, I got to learn about the concept of rule of law and was taught to look at the structure, which was called the Structural Problem. Actually, because we live in Thailand, all we had worked on were issue-based problems, right?

After her internship, she understood the purposes of the 1997 Constitution's mandates for separation of powers and rule of law in a new way and viewed the expanding field of activism as a "ripple effect" of constitutionalism.

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<sup>58</sup> See note 6.

<sup>59</sup> She was likely to have been recommended by Somchai, who had been a fellow at the AHRC in 1986.

Yaowaluk's greater understanding of human rights at first brought her closer to Somchai, as she immersed herself in the defense of human rights and the abuses of law caused by extrajudicial executions during Thaksin's war on drugs, and the ongoing conflict between the military and Muslims in the South of Thailand. But as she became progressively more outspoken in her opposition to military intervention and her support for upholding the letter of the earlier constitution, they went their separate ways. She and a few younger lawyers (Generation Five—post-2006 coup) charged the Lawyers Council with failing to defend the rule of law by approving the coup and defending pro-government protesters (Yellow Shirt and anti-Thaksin) but not anti-government (Red Shirt) protesters. The group formed a "loose network" that defended those arrested after the 2010 violence between the military and anti-government protests, and it became a source of support for the next step in her career—defending the rights of people caught up in partisan politics.

When the military stepped in again in 2014, ending the elected government of Thaksin's sister and once again setting a democratic constitution aside, Yaowaluk became a lead organizer and Director of Thailand Lawyers for Human Rights [TLHR], with the aim to "provide legal and litigation assistance to individuals who had been summoned, arrested, and detained by the military as a result of the 2014 coup" and to "consolidate the rule of law."<sup>60</sup> With support coming almost exclusively from abroad, and at some risk to themselves,<sup>61</sup> TLHR attorneys defend targets of arrest or persecution by the military government. Yaowaluk and her colleagues are viewed as Red Shirt supporters, although she maintains that their support for the rule of law is without political bias, but the international visibility of TLHR, as well as the increasing intolerance of Thais for the use of heavy-handed military intervention to suppress dissent, has allowed the NGO space to survive.

### *Sor.Rattanamanee Polkla*

Although Sor.Rattanamanee Polkla and Surachai Trong-gnam collaborated on many cases, Sor.Rattanamanee's story diverges from that of her mentor. Working on her own, she began to earn a reputation as a litigator for communities, and developed relationships with NGO-supported organizers in the North and Northeast. CRC's relationship with villagers in Ban Haeng, not far from Chiangmai in the North, grows from her connection to those organizers. Shortly after Yaowaluk returned from Hong Kong in 2007, Sor.Rattanamanee was urged to accept a similar internship at the Asian Human Rights Commission by the Country-Based Officer of the AHRC, an experienced female activist whose local office and personal network placed her in daily contact with the network of social cause lawyers.<sup>62</sup> Like Yaowaluk, Sor says her

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<sup>60</sup> From the TLHR website <<https://tlhr2014.com/en/about-us-2>>.

<sup>61</sup> She has been threatened by the military, and her staff lawyers have been arrested while representing clients.

<sup>62</sup> The Country-Based Officer, Putanee Kangkan, is a Thai activist with extensive experience working on local and Southeast Asian human rights issues and close relationships with other Thai activists.

internship transformed her as a lawyer, but this transformation moved her career along a very different path from Yaowaluk's. In Hong Kong, she learned about treaties concerning environmental rights and the influence of international organizations on government decisions. Her internship taught her about international human rights law and ways to challenge police tactics frequently used in Thailand to harass protesters—knowledge she uses to make her advocacy for communities more effective. She learned strategies and skills for litigation that are not taught in Thai law schools—methods of investigation, documenting evidence, and pushing courts toward internationally recognized interpretations of environmental rights that include prohibiting government actions that contravene the letter of the law or defeat the purpose of statutory protections.

As an independent practitioner, Sor.Rattanamanee was faced with the familiar dilemma of generating enough income to handle extremely complex cases with multiple clients, and with the financial burdens of investigation, documentation, and collaboration with domestic and international NGOs. Before she returned to Thailand in 2010, AHRC's director suggested setting up an NGO to seek international funding to sustain her practice. The international environmental movement and interest in Thailand's popular democracy created an opportunity, and her reputation as a community advocate, not to mention her growing competence in English, made her an inviting prospect for funding. In 2009, she received an initial grant from the Open Society Institute to establish the Community Resource Center. On her return to Thailand, Sor.Rattanamanee and her staff of young lawyers began to apply what she learned at AHRC to their work on land issues with communities in the South of Thailand and for groups resisting development projects in the North and Northeast. She began to push judges to use their authority expansively to fulfill the purposes of the environmental protection laws in situations like the conflict in Ban Haeng. She is proudest of a signature victory in a suit brought on behalf of villagers in Songkla Provincial Court for damages due to vibrations from blasting by the Khu-Ha Mining Company—a path-breaking judicial recognition of a new kind of injury. Unlike EnLAW, which Sor.Rattanamanee says has become too busy to work directly with community leaders, she and her staff spend years, if necessary, preparing her clients in rural communities for the long process of litigation by teaching them about law, conducting mock hearings to overcome their fear of courts, and securing court compensation for the cost of accommodation for large numbers of petitioners far from their homes.

### *Siriwan Vongkietpaisan*

Innovative litigation on behalf of victims of illegal labor practices made Siriwan famous. In 1999, FOW referred a case to her involving thirty Burmese laborers imprisoned by their employer. She was told by government officials not to bother bringing the case to court because illegal workers were not protected by Thai law. She sued the employer anyway and persuaded a Labor Court judge that the workers, even



though undocumented, were protected under Thai labor law. Her success opened the floodgates to litigation by other lawyers on behalf of undocumented migrant workers, and the Foundation for Women began a campaign to inform migrant workers of their rights. In Siriwan's view, her litigation was helping Thailand to "become a developed country with respect to justice and law enforcement." Dissatisfied with the lack of opportunity to expand her practice, Siriwan and her husband left the Meesit Law firm in 2005 to pursue legal work that would be more effective in accomplishing this goal. They established their own firm, which they named SR Law, and sought funding support for their legal work toward, among other things, modernizing Thailand's labor standards.

A year after forming SR Law, Siriwan accepted her first human trafficking case, winning a second widely recognized victory by persuading a conservative judge to use his power to interpret a statute of limitations with exceptional latitude to allow compensation for the suffering of a victim of human trafficking. SR Law relies on Siriwan's growing reputation as an advocate for human rights to attract cases, and on international as well as domestic support. By focusing on issues for which there is strong international support and government concern, she is able to support her practice, while collaborating with ministries to train officials as well as improve regulation, enforcement, and public knowledge of gender rights and laws prohibiting human trafficking. She benefits from the same network that supported the careers of Yaowaluk and Sor. Rattanamanee. The Meesit Law Firm, FOW, and the Lawyers Council connect her to other resources. Naiyana Supamong, one of the first female litigators for FOW, a founder of new NGOs for women, and one of the first commissioners [2001–9] of the National Human Rights Commission created by the 1997 Constitution, recommended Siriwan to the U.S. based Ashoka Foundation, which awarded SR Law a three-year sustaining grant for human rights litigation.<sup>63</sup> Additional funding from American foundations supports Siriwan's litigation, and also her non-litigation projects for broad-based legal change: writing manuals and conducting workshops for the public, and working with government ministries to draft regulations that comply with international standards while training the officials to enforce them.

## V. FROM DEMOCRACY MOVEMENTS TO LITIGATING FOR RIGHTS

The 1997 Constitution provided lawyers for social causes with an arsenal of rights and the means to enforce them. The women lawyers' effective use of this arsenal is bound up with their paths to practice, the influence of commitments they have made along the way to particular causes, and the resources that enabled each of them to construct a career. Their narratives show that each of them became inclined to make certain

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<sup>63</sup> EnLAW also received an Ashoka grant at about the same time. The two law projects have similar goals and approaches, Siriwan says.

choices through responsibilities felt at an early age as a woman within the family. Later interest in law practice was shaped by relationships, mentors, and colleagues at university. Two of the women (Yaowaluk and Siriwan) have a continuing commitment to issues of gender—a cause that has become increasingly important in Thailand. Sor.Rattanamanee found she liked litigation and turned this interest into an advantage for the cause of community environmental rights, for which there was strong international support, and where domestic law had recently established new government responsibilities. Further, her law school mentor offered to collaborate with her in environmental litigation, a cause in which she was already becoming interested. All three were embraced by the social cause lawyers' community of practice, opening the way to additional "capital," both symbolic (including knowledge of law practice and legitimacy) and material. The acceptance they receive as women within this community contrasts with the lack of opportunity they experienced in male-dominated private practices.

### A. October Generation Legacy—Lawyers as Movement Organizers

In the years before and during their association with the Meesit Law Firm, Yaowaluk, Sor.Rattanamanee and Siriwan became embedded in the community of practice where they learned distinctive methods of law work, and much more. The community was a repository of resources, including applied knowledge of legal practice, purpose, and legitimation, and was a gateway to external resources, especially from international sources—all of which lawyers converted into successful law work. Over time, the community of practice shaped each lawyer's identity—the sense of who they were and how they should practice. Fundamental to this sense of purpose were ideals embraced by the October Generation about the importance of the people's voice and government accountability—beliefs that were intrinsic to later-acquired discourses of human rights and rule of law, and lent these meaning. Their goals were tied to a strong commitment to working with social movements as teachers and resource providers, and as organizers with legal skills.

The organizations that provided each of the lawyers with a point of entry to practice for social causes were sources of the goals and strategies of the community of practice. The women who founded FOW remained movement organizers, playing leading roles in the popular movement for constitutional reform. The UCL, where Chalit became a practitioner, had been founded by October Generation idealists who believed that a social revolution was possible through a broader recognition of human rights. They had learned the hard lesson that lasting political change would also require support from new sources of political power, which they found in popular movements. When UCL was revived in the late 1970s, its leaders continued to preach that to bring about change, law should be combined with movement organizing, and spread a discourse of rights among social movement and NGO activists. Chalit has vivid memories of the intense debates about UCL's mission:

We fought, we argued . . . in the end, it was concluded that . . . we might have to define “legal aid” with a broader meaning. . . . UCL must work on each case [by] providing legal aid to people, [by] training workshops and so forth, necessarily leading to a movement that would improve the law so that it will be fair, amending the law in order to allow public participation. . . . The people must be able to identify their needs, able to understand the structure of the law, able to distinguish bad versus good law or just and unjust law, the makeup of a good law. . . . And this condition encompasses the legal aid service of UCL that would cover these three criteria.

Yaowaluk and Siriwan acknowledge Chalit’s influence on their development as lawyers, and Sor.Rattanamane adopted a similar style while working alongside these lawyers and others at the firm, or with lawyers who joined working groups organized by Somchai Homla-or, another UCL veteran. Teaching and organizing are as important to the success of their law work as the technical skills they have developed as litigators.

## B. Litigation Strategies

Liberal intellectuals and leaders of the popular movement for constitutional reform pushed for the inclusion of rights that protected the means of popular dissent and participation, and for independent agencies to oversee the enforcement of these rights—most importantly, a Constitutional Court and a system of administrative courts. Resistance by conservatives limited the jurisdiction and powers of the Constitutional Court, and guaranteed the appointment of a majority of justices expected to share their views about preserving the traditional hierarchy of authority between monarchy, bureaucrats and the people. A National Human Rights Commission established by the Constitution, despite the resistance of conservatives, expressly recognized the importance of human rights, but was stripped of enforcement powers. Nevertheless, for the first time, lawyers had an arsenal of express rights and the means to enforce them. In many ways, the 1997 Constitution and its successors are lawyers’ constitutions, intended by liberals to enforce rights and hold bureaucrats accountable, and by conservatives to shift political conflict to the courts and oversight by elite judges. In many ways, it will not be the courts alone, but also the lawyers who determine the impact of the new courts.

The three women lawyers are among the most successful litigators for social causes because of the resources they have been able to accumulate over the course of their careers—the benefits of mentoring by experienced activists; opportunities to practice for social causes within the network of colleagues and organizers that took shape during the 1980s; financial support, also made available through a network of contacts that extended to international foundations and NGOs; and their growing ability to adapt their organizing and litigation skills to particular causes. Yaowaluk and Sor.Rattanamane had the benefit of internships at the Asian Center for Human Rights, which transformed their understanding of the function of law and methods of

practice. Siriwan, with the benefit of an internship abroad, learned about the power of rights and creative advocacy in other ways—through perception of the subordinate status of women, collaboration with working groups and FOW, and the application of Chalit's perspective as a labor organizer for justice beyond the law to her litigation involving victims of labor exploitation.

Each of the women is pushing for changes in law not only by winning in the courts, but by mobilizing other functions of the courts.<sup>64</sup> The courts, by providing the women's clients with greater visibility, create opportunities for social change in a variety of ways, even when a judge is unreceptive to the lawyer's arguments. Litigators like these women are using the courts to bring insular and unresponsive ministries and powerful officials into a public forum, with the power to compel them to answer to law—a spectacle carrying lessons of its own. The courts have the power to make officials and politicians give an account of their conduct and, if the litigation is managed effectively, to allow litigants to present evidence that would not otherwise be revealed to the public. Finally, litigation is a means to organize through motivating group solidarity, creating legitimacy for a cause and becoming a focus of collective action that molds both a group's capacity and purpose. All of these functions are utilized regularly by social cause lawyers in countries where public interest lawyers are well-established.<sup>65</sup> Although examples of litigating for rights in other countries were not unknown among Thai lawyers before 1997, the practice flourished in the social, political and legal context of the 1997 Constitution.

By employing the multi-functionality of courts, the three lawyers are among the most successful social cause litigators who use the courts to achieve broader change in law—aided, at times, by reform-oriented government officials who welcome change, and by practitioners waiting in the wings to follow their example.<sup>66</sup> Their efforts may harmonize with the advancement of a social movement, but their strategy is litigation to create new rules.

As we saw, Sor.Rattanamanee expanded the reach of Thailand's environmental protection laws and regulations, which have often been ignored by government ministries that have the responsibility for approving and overseeing development projects.<sup>67</sup> Many of her cases are carefully constructed to pressure judges to shift their

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<sup>64</sup> Somchai Homla-or encouraged each of the Lawyers Council's working groups to develop "precedent" cases to serve as examples for judges and other attorneys contemplating litigation.

<sup>65</sup> Michael McCann, "Law and Social Movements," in Austin Sarat (ed), *The Blackwell Companion to Law and Society* (Blackwell Publishing 2004) 506–22.

<sup>66</sup> Environmental litigation is the focus of at least three other NGOs modeled on EnLAW and CRC, the first organized by a former Meesit Law Firm attorney, the second by a protégé of Surachai Trong-ngam, and the third a former business practitioner who competes with EnLAW by bringing head-line seeking law suits. Members of the business-oriented bar employ litigation strategies pioneered by NGOs when they seem useful, such as litigation under a new statute permitting class action litigation. See <<https://www.tilleke.com/resources/thailand-certifies-first-class-action>>.

<sup>67</sup> Under pressure from an international consensus minimum standard for environmental protection, Thailand adopted the National Environmental Quality Act in 1992, which included a requirement for a public hearing and an impact assessment prior to approval of projects with potential environment impact.

perspective on strict statutory interpretation—from literal readings that minimize burdens on the government, to interpretations that serve the purpose of protecting the public and provide remedies for litigants with few means of support.<sup>68</sup>

Siriwan is especially proud of her signature litigation for victims of human trafficking, which persuaded a judge to expand protection for illegal immigrant workers by ordering compensation for unlawful dismissal by an employer—setting an example soon followed by other attorneys. Her law firm, SR Law, litigates when necessary to protect the rights of trafficking victims, but she and her staff of lawyers use the knowledge gained through litigation to effect broad-reaching change through public education, and by collaborating with government ministries to improvement regulations and harmonize them with international best practices.

Yaowaluk and TLHR are viewed as opponents of the government rather than allies, but they are also engaged in a law reform project. By defending clients who are unpopular with the government, they are attempting to establish rules limiting suppression of dissent that are often deemed by the international community to be within the civil and political rights of Thai citizens. Their cases rarely have support from the Lawyers Council, and they do not motivate other lawyers to do similar work because of its risks and the unpopularity of their mission. They receive international attention and funding. Working together with iLaw, a documentation project created by the NGO community, TLHR created a repository of information and analysis of prosecutions under Thailand's *lèse-majesté* and computer crimes laws, which are often used to suppress criticism of the government deemed insulting to the monarchy. Yaowaluk, from her perspective, might conclude that even when courts fail to protect rights, lawyers may succeed in laying a foundation for stronger protections for political expression.

### C. Diminishing Professional Hierarchy

Siriwan's success as a law reformer has had another quite unexpected effect on who speaks "with the force of law."<sup>69</sup> In Thailand, judges of the royal courts, followed by public prosecutors as bureaucrats who serve the king, traditionally have a far higher status and greater influence on the outcome of legal proceedings than the lawyers who represent defendants or civil litigants. Judges are rarely deferential to lawyers in court. The expertise of a new generation of social cause lawyers, represented by the three women, is shifting the force of law to lawyers—a change still in its early stages. Siriwan discovered that her expertise is valued not only by bureaucrats, but also by judges, and

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<sup>68</sup> Similarly, she has won compensation for the particular costs of litigating on behalf of villagers with limited incomes, including the costs of travel, room and board to participate in lengthy proceedings in a distant Administrative Court.

<sup>69</sup> Different legal systems empower different institutional role players with the control over the force of law—legal advocates in common law systems, senior judges and scholars in civil law systems. See Pierre Bourdieu, "The Force of Law: Towards a Sociology of the Juridical Field" (1987) 38 *Hastings Law Journal* 814.

she noted how remarkable it seems when she is the featured lecturer in a room full of judges and prosecutors:

It has never happened that the lawyers lecture the judges or exchange idea or provide training. . . . Normally, when there is a training for judges, it will be a judge who is the lecturer. There is no way that the prosecutors would have come to join this training. . . . But, at present, I think that this has changed. When we trained prosecutors, they would say “you are lawyers, how can you train prosecutors?”

. . . [O]ur method is that we present true stories from our experience and . . . combine these stories with legal matters. For the judges and prosecutors, we take for granted that many of them specialized in civil cases, criminal cases, but we specialized in labor matters and claims [by workers] for compensation. . . . So, when the judges or prosecutors have to work with these issues, they have to know about them, too. And we have a manual that we already wrote. In addition, we also have written an academic work [with legal scholars], so they can see that what we lecture them is real and it is academic work, too.

In principle, both constitutional law and international law are intended to influence the distribution of power among state institutions by defining their authority. While social cause litigators agree that the Thai judiciary has been slow to recognize the implications of such fundamental changes in the rule of law, this slow progress tracks the growing legitimacy of both sources of law under pressure from international agencies, foreign governments and Thailand’s internal development. Furthermore, the judiciary’s importance in resolving social conflict has placed judges increasingly in the public spotlight, subjecting them to unprecedented scrutiny and criticism. Because of their role as advocates for Thailand’s popular movements, the women often speak with the force of each of these sources of authority.

Sor.Rattanamanee acknowledges her continuing battle with judges over constitutional supremacy.<sup>70</sup> She makes sure to put forward her views about the applicability of statutory and constitutional rights, which the judiciary might otherwise ignore in her arguments to courts. Representing a group protesting the Thai-Malaysia Pipeline in 2004, she and her litigation team convinced the Supreme Administrative Court to find that police exceeded their authority by arresting participants in a peaceful demonstration—a right particularly cherished by constitutional reformers, and protected by an express guarantee in the 1997 Constitution.<sup>71</sup> She often negotiates with trial court judges over the interpretation of law, emphasizing the importance of learning from international practices described in

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<sup>70</sup> Former Asian Foundation director James Klein has made a similar observation. Klein, “The Battle” (n 42).

<sup>71</sup> The case was based on an administrative regulation defining police authority, but it resonates more widely within the new contested culture of constitutionalism. It should be noted that the case was filed in 2005, but it was not decided on appeal until nearly a decade later in 2013, when the women say that some of the judges were more willing to recognize such rights.

her carefully developed pleadings. Sor.Ratanamanee has developed rapport with some judges, allowing her greater latitude to make these arguments.

Yaowaluk also observed that a few judges are beginning to recognize the supremacy of the Constitution. In retrospect, Yaowaluk thinks that judges are becoming increasingly receptive to advocacy for change since the adoption of the 1997 Constitution, more noticeably since 2006 when the King intervened to remind the justices of Thailand's three major court systems of their responsibility to respond to assaults on Constitutional democracy.<sup>72</sup>

Although the King had delivered similar speeches for decades before the turmoil over Thaksin to remind judges and prosecutors to seek justice, the 2006 speech has been viewed by some scholars as an invitation to the judiciary to exercise greater responsibility towards serving the underlying purpose as well as the letter of the law. It is possible that the speech had a symbolic force, recognizing the power of the judiciary to resolve social conflict and opening the way for other sources of influence. Yaowaluk observes that the influence of change may be especially pronounced among younger judges, who have a more internationalized understanding of rights and rule of law:

My work pushing alternative interpretations of the law continues. I would like officials in the legal system, such as judges, to recognize and understand human rights principles written into the Constitution and international law, such as the ICCPR [International Convention on Civil and Political Rights]. I saw a positive impact from the work done by many lawyers working in the southernmost areas. For example, my partners and I conducted a seminar for judges to train them to understand human rights principles and how to apply those principles to real cases. In the past, it would be difficult because the court tends to be more concerned with state security than human rights. . . . Actually, younger judges seem to be more opened-minded than senior judges.

Some of the women's innovations in practice have been made possible by the increasing influence of an international discourse of rights, and funders who support social causes aligned with international movements for rights. Yaowaluk's and Sor's exposure to international law during internships at the Asian Human Rights Commission added a new dimension to their repertoire of strategies, and gave them an edge as advocates. They learned about international treaty law, enforcement by treaty bodies, and international NGOs ready to intervene on behalf of their causes. The AHRC also taught about protections for rights, constitutionalism, and rule of law in legal systems considered to be more developed. After her internship, Yaowaluk's career changed course. She worked with international agencies for several years to document and remedy human rights violations committed by the Thai military police during suppression of conflict in Thailand's southern provinces, and she conducted

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<sup>72</sup> Duncan McCargo, "Competing Notions of Judicialization in Thailand" (2014) 36 *Contemporary Southeast Asia*, 417–41. In context, the King's speech was a broad hint, if not an explicit directive, to the judiciary to use its power under the Constitution to deal with Thaksin's abuses of power.

internationally sponsored seminars for security forces on international human rights and rule of law principles and practices.

Sor, following her AHRC internship, became a more aggressive litigator, pressing judges to interpret Thai law to protect basic rights accepted by judiciaries in other countries, and urging them to follow international human rights standards. Perhaps because of her own lack of knowledge before her internship abroad, she believes that Thai judges know little of constitutional or human rights enforcement elsewhere, and she views her role in part as that of educator as well as advocate.<sup>73</sup> She not only modified her advocacy in court, but also partners with international agencies to pressure government officials when courts refuse to intervene. For example, to stop a cross-border electrical power project with Laos, she by-passed a reluctant appellate court by contacting an international agency that used the country's international treaty obligations to pressure the Thai cabinet to reverse its approval. In another a recent case, she persuaded a Thai court to recognize the liability of a Thai corporation for projects extending across borders.<sup>74</sup>

#### D. The Limits of Women's Investment Law

Although all three women characterize themselves as human rights defenders, they are positioned differently in Thailand's changing legal culture, pursuing different interpretations of the rule of law. Implicit in their advocacy are different conceptions of Thailand's political structure and the future of democratic reform. These differences arise in large part because of the specializations made possible by the unique resources each of them assembled to support her advocacy. Among the most important of these resources are the diverse social movements and causes they represent, a sign of increasing popular engagement with law. Representation of different social causes in an increasingly engaged civil society has increased the diversity among the lawyers who work with them, and has perhaps—as we might conclude from the narrative of these women – weakened their shared identity as social cause advocates.

Siriwan's human rights projects concern changes that government officials welcome, because they improve regulatory authority, and in some cases end corruption.

I think our work is different from others because we are working on human trafficking and human rights which is in accordance with the government policies. [Further, in the South] . . . we asked a company to return the land to the government and distribute

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<sup>73</sup> The lack of knowledge among the older judges of the Courts of Justice about international human rights law and the meaning of human rights in general is confirmed by a high-ranking judge. Interview with Justice Court of Appeals, Judge A (2009). Younger judges have received a different education and seem to know far more. Interviews with Justice Court judges B and D (2020).

<sup>74</sup> Indeed, Sor.Rattanamanee is one of the few attorneys to attempt cross-border litigation under principles of Thai law, which, she argues in court, must meet standards for cross-border liability recognized in other countries. She now makes regular use of decisions of courts in other countries as persuasive authority.



it fairly to people [i.e., by reversing decisions made by corrupt officials]. So, our legal process is in line with the government policies on human rights and human trafficking. Now . . . the government allows migrant labor to register more easily and protects people from human trafficking better. Therefore, we do not face any political problems.

Her cases and projects extend across a changing social landscape, which the government itself is attempting to regulate, in the process subjecting its officers to laws that the administrative and justice courts seem ready to enforce—thus doing little to restructure the authority of government itself.

Sor.Rattanamanee's advocacy for communities threatened by development has closed down projects, forced payment of damages, and changed the way these projects operate. While her cases sometimes have political dimensions because they potentially alter the balance of power between communities, investors and government, she is careful to avoid association with factional politics or the ongoing protests against the military. Her reasons for this are partly pragmatic; environmental cases are easier to litigate than cases with overt political implications. But her decision to remain focused on environmental advocacy is also related to the growing power of the environmental movement in Thai society while government officials often favor development and profit.

Like, the people have power . . . [for] the environment. It's very easy to makes changes to protect the people when we talk about an environmental case. It is easier to change the law to create more protection for the environment and, like, community rights.

Her reputation as an expert in environmental law and her legitimacy in court are not only derived from the environmental movement in Thailand, but are also supported by pressure from international agencies. As a result, some officials view her as an expert who can help them to draft legislation preventing human rights abuses by corporations that threaten environmental harm, and to present the new policy to the United Nations.

Sor.Rattanamanee acknowledges that the challenges that she confronts are fundamentally different from Yaowaluk's:

[I]f you talk to me, I will say that oh now they . . . the justice courts . . . are more developed, have changed from before. But if you talk with Yaowaluk, you may see that, oh no. . . . They are very conservative – still more extreme. It's totally different because of the issue.

Yaowaluk's advocacy is politically controversial. Thailand Lawyers for Human Rights frequently accepts cases that arise from political movements deeply intertwined with struggles over the country's political future. Yaowaluk and her staff of lawyers defend the most controversial leaders of protests against Thailand's rulers—as well as defending ordinary Thai accused of political crimes under broad legislation controlling use of the internet, and under an equally broad law forbidding speech, which may be interpreted as criticism of the Monarchy.

Yaowaluk's journey to this outermost borderland of practice for social causes began with the 2006 military coup that ended Prime Minister Thaksin Shinawatra's corrupt and autocratic populist government. At the same time, the coup demonstrated the vitality of support for Thailand's ultimate authority, the monarchy and the military. The coup revealed a deep schism among NGOs, social movements, and October Generation leaders who supported the 1997 Constitution, dividing them according to unspoken political loyalties within networks of influence that gave them power, and by different conceptions of state authority.<sup>75</sup> The coup likewise had unexpected consequences for the women's community of practice, splitting lawyers for social causes between those who accepted, or at least did not object to, the military coup and those who, like Yaowaluk, rejected the legitimacy of the coup and the governments the military has put in place since 2006. She and a group of younger lawyers accused the Lawyers Council of ignoring the rule of law, due to its support of the coup.

Yaowaluk's constitutionalism was inspired by the liberal international ideals and practices she studied at the Asian Human Rights Commission—views at odds with the legacy of the monarchy and the October Generation's ambivalence about extreme populist democracy. On one hand, TLHR defends individuals accused of political crimes, mostly anti-coup Red Shirt sympathizers, drawing threats from the government and occasional arrests. On the other hand, as spokesperson for TLHR, Yaowaluk maintains her neutrality by emphasizing the NGO's mission to uphold the law and defend human rights. She attempts to distance TLHR from politics, even though her organization's work appears to others to have a political bias. For now, TLHR is also protected by international funding and recognition of its professionalism.

Still, the three women agree on an important core of beliefs about law and democratic change. They believe in the necessity of a stronger and more comprehensive rule of law to protect people's rights. Yaowaluk, perhaps because she embraces so completely the international discourse of constitutionalism and rule of law, is acutely aware of the dependence of legal development on changing the structure of power:

I view this problem the same way that NGOs do. That is, we need to build strong communities. They will have to have bargaining power.

As a lawyer, she says her role is different from that of a leader of a social movement. Like Siriwan and Sor.Rattanamanee, her role is defined by her profession:

I think toward the future, and I would like to train the next generation of law practitioners to become human rights law practitioners. No matter what they will become, lawyers, public prosecutors, or judges, as long as they understand the human rights issue.

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<sup>75</sup> Kengkij Kitirianglarp and Kevin Hewison, "Social Movements and Political Opposition in Contemporary Thailand" (2009) 22 *The Pacific Review* 451–77.

Despite the women's agreement on the importance of the profession's political autonomy, differences among their efforts to bring about change through law may mark the decline of the community of practice as a unified voice for constitutionalism and rule of law. Thailand's increasing acceptance of law as a medium of conflict and change is replicating the complexity of its politics.

## VI. CONCLUSION

We have argued that understanding the remarkable rise and success of women lawyers for social causes requires recognizing the influence of the "capital" that women have been able to "invest" in using the law. Women's influence traditionally depended on networks with other women, including a few women married to elite men, which extended across formal boundaries of government and social hierarchy. Economic development has been an important driver of social and political change, and has added new forms of capital, which women were able to invest specialized careers.

Relaxation of military oversight after 1980 allowed the legacy of earlier generations of social cause lawyers to develop into a self-sustaining community of lawyers, which recruited and trained new generations of lawyers and channeled other forms of support to their network. New social movements and continuing popular involvement in the contention over Thailand's political future created pressure on policy makers and politicians, which opened space for social cause lawyers to speak with the authority of law in order to broker relationships between the new social forces and the state. Strategies for supporting social movements were developed within the community of practice and learned by its new members. After the constitutional reform in 1997, litigation became an effective and permanent addition to the strategies employed by the lawyers on behalf of particular social movements. Growing support for constitutionalism as well as symbolic and material resources from foreign governments and NGOs in the contemporary era of globalization added to the women's capital.

An increasing engagement of civil society with law and a growing acceptance of constitutionalism provided lawyers for social causes with new ways to invest in a career and the rule of law. Constructing their careers as advocates has had other consequences as well, including increasing diversity among their social causes and differences between their commitments to the rule of law.

Our final thought is that the success of each of these women lawyers as a broker of state power for a different social cause has been made possible by her specialized capital, as conceptualized in our research—including particular technical knowledge, specialized strategic skills, a supporting network, and the social cause each lawyer represents. This accumulation of resources is the foundation for each lawyer's legitimacy and influence. Further, we suspect that the capital each of them has used to construct her career will not be readily convertible to other positions of influence.

Our explanation for the women's success leads us to ask whether they would have the same mobility as their male counterparts if they chose to reinvest the capital that made them successful lawyers in other pursuits that serve the same goals in politics or government? By becoming legal advocates for particular social movements, these women have succeeded in creating niche practices—not unlike other successful lawyers. Notwithstanding their success in specialized domains, women still face gender barriers, which the resources supporting their law work would be of little use in overcoming.<sup>76</sup> Unlike men, women who invest in careers as lawyers for social causes are unlikely to be able to convert their success into upward mobility to other positions of greater influence.

[Date of submission: 2 March 2021; Revision: 14 June 2021; Acceptance: 22 November 2021]

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<sup>76</sup> While male human rights lawyers from the same community of practice have occasionally risen to positions of influence as government officials, few women have done so. As noted at the beginning of this article, women have risen within the judiciary, some who express commitment to social causes, but they have not been practitioners or lawyers for social causes.