Thai Legal Studies (2023) Vol. 3 No. 1 | 1–18
https://doi.org/10.54157/tls.261254

Remorseful or Resigned: Criminal Justice Legitimacy and the Appearance of "Docile" Defendants

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Abstract

In monopolizing penal violence, the criminal justice system requires public acceptance, preferably not via coercive force but rather via the recognition of legitimacy that yields voluntary compliance. Nevertheless, under pressure of the demand for efficiency and mass case processing, the modern-day criminal justice system increasingly relies on convenient indicators that promote a superficial image of legitimacy. What follows is the undesirable blindness of the system to its marginalization of defendants. Still, the authorities' indifference can remain strong so long as defendants appear willingly compliant. Being directly affected by the state's penal power, defendants' voluntary expression of repentance and obedience is arguably a strong affirmation of the system's fairness. Drawing conclusions from observational and interview data regarding the criminal court process in Thailand, this article argues that instead, such visible docility is shaped by systemic pressures that gear defendants towards self-blame and fatalism. Such gearing mechanisms

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I am grateful to Professor Cyrus Tata and Dr. Rhonda Wheate for their insights that contributed to the analysis and conceptualization of data collected in this research. Many thanks also to Dr. Jay Gormley for his suggestions that helped develop the framing of arguments presented in this article.

are neither deliberate nor coercive; yet, under their influence, free choice is also elusive. Accordingly, the defendants' appearance of docility is defensibly induced by the system rather than being utterly voluntary. Although subconsciously produced, defendants' complicity in their own marginalization powerfully endorses the claimed legitimacy of the proceedings, albeit to the erosion of the due process principle.

Keywords: Compliance — Docility — Legal consciousness — Self-blame — Symbolic violence

I. INTRODUCTION

The criminal justice system is the epitome of state violence. By reason of monopolizing the power to punish, the system needs to be regarded as legitimate. Legal authority aside, remorse and voluntary submission to the sentenced punishment are arguably the coveted evidence of legitimacy, especially in the eyes of criminal justice professionals, because they signal the endorsement of the system's violence by its direct recipients.[1] Therefore, the defendants' docility is a convenient validation of the system's legitimacy. However, what appears to be docility in the context of criminal justice may not arise from absolute volition. Some studies propose that instead, docility is shaped by the interference of professionals, particularly through the advice or inducement to plead guilty.[2] Others emphasize the manipulation of an unpleasant procedure that inflicts such immense suffering that defendants seek the quickest exit route by yielding to the system.[3] Although the literature has already proposed that the line between volition and coercion is too blurry to conceptualize the two as a dichotomy, the evidence so far has concentrated on the defendants' conscious decision to comply because of resignation to procedural pressures. This article contributes to the body of knowledge by offering evidence that defendants can be made deferential to the system without even realizing that they are being compelled or influenced. This deferential compliance is manifested in the defendants' remorse and their wholehearted willingness to accept the suffering

[1] Cyrus Tata, "Humanising Punishment? Mitigation and 'Case-Cleansing' Prior to Sentencing" (2019) 9(5) Oñati Socio-Legal Series 659, 676 <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1098>.

[2] Mike McConville and Luke Marsh, *Criminal Judges: Legitimacy, Courts and State-Induced Guilty Pleas* (Edward Elgar Publishing 2014) <https://doi.org/10.4337/9781782548928>; Sharyn Roach Anleu and Kathy Mack, "Intersections Between In-Court Procedures and the Production of Guilty Pleas" (2009) 42(1) The Australian and New Zealand Journal of Criminology 1 <https://doi.org/10.1375/acri.42.1.1>.

[3] Pat Carlen, *Magistrates' Justice* (Martin Robertson & Company Ltd. 1976) 54; Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (Russel Sage Foundation 1979) <https://doi.org/10.2307/1288075>.

imposed upon them by the system. Nevertheless, this seemingly uncoerced volition could be subconsciously produced by the stigmatizing procedural contexts and the culture of responsibilization; i.e., the idea that everyone must take self-responsibility for their own pleasures and plights.[4] This mechanism is unintentional; yet despite or rather because of this unintentionality, its power in shaping "free choice" is unparalleled. By subliminally framing procedural hardships and inherent degradation as natural, defendants can be led to (mis)believe in the "just deserts" of the undue procedural sufferings or pretrial punishment.[5] As a result, they willingly become submissive to criminal justice violence. In turn, this non-reluctant expression of compliance is a powerful corroboration of the system's legitimacy claim and perpetuates the cycle of the state's penal violence—however overly harsh or unnecessary this may be.

The objectives of this article are twofold. First, I will present the argument that defendants' compliance arising from remorse and deference to the law can still be reasonably doubted, whether or not it originates from unmanipulated volition. Second, I intend to explain, using fieldwork data I have collected in Thailand, how procedural structures and cultural beliefs co-contribute in inducing such seemingly voluntary compliance.

The article is structured in six parts, including this introduction. In the section immediately following, I will explain the significance of the defendants' remorse and docility in sustaining the legitimacy of the criminal justice system, most importantly in the eyes of criminal justice professionals. I will then describe the research methods that I adopted to explore defendants' compliance in Thailand. Subsequently, I will report on Thai defendants' compliance despite the sufferings inflicted by criminal procedures. Finally, I will discuss the strong structural and cultural influences that tacitly shape such an expression of docility, before providing a conclusion.

II. REMORSE, DOCILITY, AND LEGITIMACY

Criminal justice professionals need to be convinced that the criminal justice system is fair, particularly in light of the mass processing of an overwhelming caseload.[6] Since modern criminal justice ethics, particularly the due process principle, underline the need to protect defendants' autonomy and dignity, ideally defendants must exercise free choice in deciding how to plead. Moreover, punishment must be individualized for proportionality and executed post-sentencing, not pre-trial. Nevertheless, the speedy and semi-automatic nature of the efficiency-driven routine casts doubt on the

[4] See Alison Wakefield and Jenny Fleming (eds), *The SAGE Dictionary of Policing* (Sage 2009) 277–78 <https://doi.org/10.4135/9781446269053>.

[5] See Feeley, *The Process is the Punishment* (n 3).

[6] Cyrus Tata, "Ritual Individualization: Creative Genius at Sentencing, Mitigation, and Conviction" (2019) 46(1) Journal of Law and Society 112 <https://doi.org/10.1111/jols.12144>.

upholding of such principles. The dissonance between ideals and reality cannot be easily resolved by using neutralization techniques to deny responsibility.[7] Rather, professionals need to see for themselves that the system is fair, because seeing is more convincing than rationalizing.[8] Arguably, the best evidence in the view of criminal justice professionals is the defendants' voluntary admission of guilt and their submission to punishment. This is precisely because defendants are perceived to have the least incentive to respond in this manner.[9] For this reason, remorse has become a sought-after proof of the system's legitimacy for professionals, and judges will look for it despite difficulties in verification.[10]

The adversarial process expects at least a thin performance of remorse as a sign of legitimacy.[11] Examples of such a performance include admission of responsibility, showing emotions, and evidence of transformation to a better self.[12] In general, every expression of remorse must convey submission to the authority of the law in order to eliminate doubt regarding its authenticity.[13] Nevertheless, defendants can be motivated by multiple incentives to strategically express their remorse and comply with the system—from increasing the chance of receiving a mitigated sentence[14] to expediting their exit from the tormenting system.[15] Tacit coercion, which is inherent in the prohibitive process costs and procedural difficulties that seem to impose punishment pre-sentencing, is arguably the ultimate force behind such a strategic decision.[16] The intrinsically coercive nature of the criminal procedure sustains doubt as to whether the appearance of remorse may in fact be resignation to the overpowering force of the authorities. This "reluctant conformity,"[17] while still projecting an image of docility, leaves traces of halfhearted willingness that may undermine the system's legitimacy. From the system's perspective, it is therefore preferable to have defendants who are genuinely remorseful and willing to undergo

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[7] Cf Jacqueline Tombs and Elizabeth Jagger, "Denying Responsibility: Sentencers' Accounts of Their Decision to Imprison" (2006) 46(5) The British Journal of Criminology 803 <https://doi.org/10.1093/bjc/azl002>.

[8] Tata, "Ritual Individualization" (n 6) 137.

[9] Jay Gormley and Cyrus Tata, "Remorse and Sentencing in a World of Plea Bargaining" in Steven Tudor and others (eds), *Remorse and Criminal Justice: Multi-Disciplinary Perspectives* (Routledge 2022) 40, 48 <https://doi.org/10.4324/9780429001062-4>.

[10] Tata, "Humanising Punishment?" (n 1) 676.

[11] Gormley and Tata, "Remorse and Sentencing" (n 9) 59.

[12] Richard Weisman, "Being and Doing: The Judicial Use of Remorse to Construct Character and Community" (2009) 18(1) Social & Legal Studies 47, 52–60 <https://doi.org/10.1177/0964663908100333>.

[13] ibid 66.

[14] Gormley and Tata, "Remorse and Sentencing" (n 9) 60.

[15] Kevin Kwok-yin Cheng and others, "Why Do Criminal Trials 'Crack'? An Empirical Investigation of Late Guilty Pleas in Hong Kong" (2018) 13(1) Asian Journal of Comparative Law 1 <https://doi.org/10.1017/asjcl.2017.27>.

[16] Feeley, *The Process is the Punishment* (n 3).

[17] Jessica Jacobson, Gillian Hunter, and Amy Kirby, *Inside Crown Court: Personal Experiences and Questions of Legitimacy* (Policy Press 2015) <https://doi.org/10.1332/policypress/9781447317050.001.0001>.

the procedure out of complete deference to the criminal justice system. In other words, such deferential compliance is more favorable than compliance expressed out of resignation.

Data from my fieldwork in Thailand indicate the prevalence of compliance among defendants in the lower-court proceedings. While a few participating defendants admitted the futility of resistance, leading to their conscious compliance, many others seemed to comply without such calculation. At first blush, the majority of the participants' self-professed volition in admitting guilt and obeying the authorities appears to be devoid of manipulation. However, on closer inspection, even this seems to have been shaped by the stigmatizing criminal justice setting and the dominant culture of responsibilization. The subtle influence of the denigrating surroundings and cultural beliefs that normalize denigration can generate and perpetuate a worldview that internalizes the justifiability of the pain inflicted by criminal justice, however harsh it is. Accordingly, defendants with such a worldview tend to be subconsciously ready to uncritically accept the "naturalness" and "fairness" of the process-inflicted agonies. The resulting docility is virtually impeccable. With hardly a trace of unwillingness present, the system gains as a corollary an almost incontrovertible legitimacy in the use of violence. This counterintuitive phenomenon, whereby the victims welcome and ratify acts of violence against themselves, is conceptually the most insidious and potent form of violence. Bourdieu[18] terms it "symbolic violence" after its underlying symbolic means of control—namely culture and language.

III. RESEARCH METHODS

The data reported in this article were collected during my doctoral fieldwork in Thailand between December 2020 and February 2021. The venue of the fieldwork was a medium-sized trial court with a jurisdiction over both felony and misdemeanor offences in a medium-sized province in the central region of Thailand. This court was selected because of its convenient location and accessibility, as well as its "not so atypical as to be unique"[19] quality in terms of the frequency and type of prosecuted offences and court practice.

The overall objective of my fieldwork was to investigate court routines and stakeholders' views on the penal fine. In order to thoroughly collect the defendants' perceptions regarding the sanction imposed, I expanded the scope of inquiry to include their pre- and post-sentencing experiences, on the grounds that defendants are more likely to evaluate their penal experiences holistically and take into

[18] Pierre Bourdieu, *Masculine Domination* (Richard Nice tr, Stanford University Press 2002).
[19] Feeley, *The Process is the Punishment* (n 3) xxxii.

consideration the preceding stages of their penal journey.[20] Therefore, I recruited defendants at the onset of their first court appearance after being indicted. I observed those willing to participate throughout their court experience, during which I interviewed them in a semi-structured format to elicit the narratives of their own lived experience, right from their arrest up until the very moment of interview.

The court proceeding undergone by participating defendants was the arraignment, during which defendants would be asked by the judge to enter the plea, and the presiding judge could announce the sentence immediately after the entry of a guilty plea. This summary nature of the proceeding permitted the conclusion of the case within a day. This arraignment-cum-sentencing process was known colloquially in Thai as เวรชี้ (*wain-chee*), and it was the principal disposal channel of the vast majority of daily incoming cases.

Because my doctoral research was on the fine itself, the recruitment of defendants was based on their prospect of being fined, either as a standalone penalty or as an auxiliary to other sanctions. Predicting the likelihood of this was possible because Thai judges normally defer to the recommendations of the inhouse "sentencing guidelines," locally known as ยี่ต๊อก (*yee-tok*).[21] Although the *yee-tok* is confidential, a few days of court observation are sufficient to notice the consistent sentencing patterns, and veteran court officials are able to accurately "predict" the sentence. Nevertheless, this prospective outcome was not revealed to participating defendants during recruitment, so as to prevent creating the false impression that I may be able to interfere with their sentence.

Research activities and data collection methods had been ethically approved before the fieldwork began. To comply with ethical principles, I obtained informed consent in writing from all recruited defendants, who also coined their own pseudonyms. Because defendants were held in the access-restricted holding area in the court basement the entire time during the *wain-chee* and recording devices were prohibited therein, I documented observational and interview data in handwritten field notes—as real-time and verbatim as possible. I transcribed these notes into a more organized and readable format immediately after the end of each fieldwork day. I was also solely responsible for the translation of the transcribed notes from Thai to English.

Overall, fifteen defendants participated, fourteen men and one woman. Nearly all were prosecuted for minor drug offences (misuse or minor possession of cannabis[22] or methamphetamine). All pleaded guilty, and all except one participant

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[20] See Louise Victoria Johansen, "Between Remand and Verdict: Ethnic Minority Prisoners' Legal and Penal Consciousness" (2021) 62(4) The British Journal of Criminology 965 <https://doi.org/10.1093/bjc/azab094>.

[21] Supakit Yampracha, "Understanding Thai Sentencing Culture" (PhD thesis, University of Strathclyde 2016).

[22] From 9 June 2022 onwards, raw cannabis and cannabis extracts produced in accordance with the specified rules are removed from the lists of illegal narcotic drugs, according to Thailand's Health Ministry Proclamation dated 8 February 2022. This would have decriminalized defendants in this

were sentenced with a fine, either as a standalone penalty or as a supplement to suspended imprisonment. The fourteen fined participants could settle their fines using various methods; most by full payment from various sources of money, while some would "pay" by doing community service—others having already had their fines offset by their pretrial custody. Many participants were first-time offenders. For those with criminal records, prior convictions were few and far back in the past, thus leaving no ground to classify any of them as career or habitual criminals. Therefore, it must be noted that the findings of this research should be confined to non-habitual and moderately charged offenders. Additionally, because of the small sample size, the findings should be treated as exploratory—which nevertheless can formulate a hypothesis to be tested in future research.

IV. COMPLIANCE DESPITE PROCEDURAL HARDSHIPS

Coinciding with the previous research on defendants' lived experiences,[23] participants in this study complied with the criminal procedure. Despite the unpleasantness of their experiences and their disapproval of some officers' hostile demeanors, no participant protested or explicitly complained to agents of authority. Nearly all had faith in the fairness of the law. Few were critical of the harsh treatments they endured during the proceedings; and most of these few critical voices still attributed their procedural hardships to certain "abusive" or "corruption-prone" individuals, particularly police officers. Most noteworthy was the degree of self-blame, according to which participants believed in the causal relationship between their present procedural sufferings and their past misdeeds. The perceived fairness of the criminal procedure made participants willingly defer to the system and comply with its mandates. Although there were participants who did not hold the criminal justice system in such high regard, they too blamed themselves—particularly their character weaknesses—for their penal journey. They ascribed their compliance, while not as deferential as that of their counterparts and partly born of resignation, to their belief in the "deservedness" of their fate. Therefore, to these few participants, self-blame was also critical in the eventual expression of docility.

The frequency and high degree of participants' self-blame was remarkable, particularly considering their painful experiences during the criminal procedure. The first hardship undergone by the participants was the loss of freedom after being arrested and taken to police custody. Inside the reportedly cold, dark, and stale-aired cell, participants waited up to two days for a remand hearing and court bail decision. On top of this physical discomfort, they endured separation from their loved ones and an immense anxiety about their unpredictable future. Gift, a 31-year-old mother

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study who were convicted of the cannabis-related charges. However, fieldwork for this research had been completed in February 2021, long before the Proclamation came into effect.

[23] E.g., Jacobson, Hunter, and Kirby, *Inside Crown Court* (n 17); Johansen, "Between Remand and Verdict" (n 20).

of two children and a first-timer, revisited her time in the police cell with tears welling up her eyes, as she had admittedly feared being sent to prison and being unable to see her children again. Likewise, Chin (male, aged 33), who was also a first-timer, confessed to having suffered acute anxiety over the likelihood of a future in prison. This overwhelming feeling drove him to tears when he saw his visiting mother for the first time after the arrest.

All participants, regardless of their prior exposure to the system, were ignorant of the law. The participants' ignorance prevented them from predicting the outcome of the court bail decision and the conclusion of their cases. This lack of ability to anticipate their future triggered a great fear of being sent to prison. Such fear would haunt them throughout the rest of their pre-sentencing journey and was felt by most participants to be one of the worst pretrial punishments.

The main reason why the participants' fear was not dissipated or mitigated was because they had received no proper legal consultation. At the pretrial stage, legal aid was not legally mandatory in a non-capital case; hence, a counselling service was neither offered nor suggested to participants. Even if it had been offered, participants would still have declined, for they all acknowledged the futility of putting their cases on trial, either because they admitted guilt or because they had been caught red-handed. Therefore, participants detained in the police cell were in no place to receive legal information that suited their interests. Their only source of information was the police officers, who seemed taciturn in providing legal explanations, even when directly asked. The sole advice participants remembered receiving from the officers was about how to make bail at the court. Nevertheless, even with this curt advice, the officers were found to have given wrong details.

For example, Bang (male, aged 51) recalled being told by the officers that the court would demand around 10,000–20,000 baht[24] in deposit for his bail, whereas merely 5,000 baht[25] was required. In a similar manner, Tong (male, aged 21) remembered the officers falsely "gaslighting" him into fearing that he would not be bailed in time because, according to the officers, the court was not open on Saturday afternoon. The officers also seemed to withhold information about documents for court bail application, thus forcing Tong's one-eyed father to make multiple trips between the police station and the court. His live-link encounter with the judge in a remote remand hearing[26] offered no better impression. He recounted that the judge appeared irritated when asked about the cost of his bail and avoided answering by telling him to ask court officials instead. "Those who know don't speak" was Tong's

[24] Roughly equivalent to £230–£465 (based on a roughly average rate of exchange during the mid-summer period in 2022).

[25] Roughly equivalent to £116.

[26] Participants in this study, arrested in late 2020, had to undergo the remote remand hearing with the judge at the court while they were still at the police station. The live-link hearing was specifically adopted as a Covid-19 measure to prevent contagion in court. In normal times, participants would have been transported to the court, although they would still have been held in the holding area down in the court basement, attending the remand session through a live-link with the judge up in his/her chamber.

bitter conclusion. His pessimism was shared by Ot (male, aged 34), who remarked, "[O]fficials never tell you anything." Ot arrived at this cynical conclusion after having received a non-answer from a police officer to his question about how to provide remedies to the complainant (the officer simply told him to "do as the judge says"), and after having learnt that the court officials had not informed his mother, who had paid the fine on his behalf, to activate his release by simply showing the receipt at the entrance of the court's holding area.

The participants' lack of adequate legal guidance regarding their cases continued after a remand hearing, whether they were bailed or in a remand prison. Those who were bailed resorted to advice from their network of ex-convict acquaintances or via the Internet, due to their assumptions about the expense and pointlessness of hiring a lawyer. The quest for a reliable prediction of their case outcome mostly ended with more confusion as answers conflicted, causing participants to abort the quest and succumb to fatalism. Those in remand custody had to make do with advice from "know-it-all" prisoners who often gave inaccurate and sometimes even dangerous advice. Tei (male, aged 20) almost unnecessarily suffered extra time in custody because he had believed the prison tale about the possibility of averting a prison sentence by enduring the maximum duration of remand custody—in his case, 48 days. He was fortunate to have been bailed on the sixth day in prison because his sentence was merely a fine that could be offset by two days in pretrial detention. On a general note, the severe lack of information intensified participants' anxiety to an insufferable level. Ot described it as "suffocating" and explained that waiting for the unforeseeable outcome of his case was tormenting because "I didn't know what to expect here. If only I had had some clues, I would have been able to prepare myself."

Throughout the process, participants were handicapped from self-rescue. Apart from being devoid of necessary information, they were rendered helpless at two stages of the process that were crucial regarding their freedom: first, at the stage of bail application, and second, at the stage of fine payment to avoid fine-default custody. Participants were put in the police cell on the former occasion, and in the court holding area on the latter. Location difference aside, they were largely incapacitated from freeing themselves in both situations. Since bail applications must be filed with the court, even wealthy defendants in the police cell must rely on their loved ones to do the paperwork. The usual requirement of a monetary bail bond aggravated the situation for low-income defendants, who comprised the vast majority of participants. Monetary bail compelled defendants' families to juggle their tiny savings or resort to predatory lenders for instant cash loans. Post-sentencing, the ultra risk-averse court routine that held fined defendants in a holding area while demanding immediate payment with the threat of custody created the same conditions of pressure. Because of their ignorance, participants were incapable of accurately predicting their sentence and they came to court underprepared. Therefore, many of them were held while short of cash. Unable to obtain instant money on their own, participants again needed rescue from their trusted

acquaintances to pay the fine on their behalf. Being thus handicapped from saving themselves and needing others to secure their liberation, participants were peculiarly put in the same position as victims in a hostage situation, especially as money was similarly required to free them. Despite their purportedly legitimate purposes, these court practices arguably imposed a similar kind of pressure as kidnapping victims would feel, as Gift admitted with panic after being sentenced to pay a 15,000-baht[27] fine: "I didn't know. I wasn't prepared. I didn't know a thing before. Now everything is in a rush and the money is huge. There's no time for me to find it. I'm pressured."

Forcing participants to stay inside the holding area throughout the *wain-chee* procedure and to meet the judge virtually through a live video link implied the system's general distrust of defendants, despite their pretrial status of presumed innocence. The location of the holding area, the court basement, also served to symbolize the accusation of unscrupulousness and dangerousness. The ever-presence of walls, fences, and the authorities' watchful eye made Chin wonder aloud whether his offence (drunk and dangerous driving that caused non-fatal injury) was serious enough to deserve such austere security measures. Moreover, participants in the holding area were left with no information. No one informed them about the purpose and the length of their stay there. Participants waited for hours for a hearing they had not been informed about. On average, they waited for two hours until abruptly called to line up in front of a judge on a screen. Because no one had prepared them for this crucial hearing that could change their lives, participants appeared before the judge with trepidation, at times too intimidated to answer questions truthfully, or even to ask the judge for clarification.

For example, although she had no money to pay the 15,000 baht fine, Gift answered yes when asked whether she was able to pay it. In addition, although doubting whether she had heard the sentence correctly, she was too afraid to ask if the judge could repeat his announcement of the imposed fine. Having witnessed the preceding defendant being rebuked by the judge for requesting legal aid despite his intention to plead guilty, Gift was fearful of irritating the "intimidating" and "fast-talking" judge; this resulted in her untrue answer and unasked request for clarification. Equally intimidated and nervous, Tony (male, aged 26) could not remember anything the judge had said to him and had to ask the escorting court police officer post-hearing about the details of his own sentence, instead of asking the judge directly.

Some participants were so baffled by some of the judge's questions that they either stood dumbstruck or misinterpreted the purpose behind them—Tong was an example of the former case and Yot (male, aged 62) of the latter. Tong's bafflement could be seen in his exchange with the judge at the *wain-chee* hearing, during which he had stood in silence despite the judge repeatedly asking whether he wanted a lawyer. Tong remained answerless even after the court police officer standing nearby urged him to answer the question. Tong confirmed that he could hear the judge on

[27] Roughly equivalent to £349.

the screen; however, when asked for the third time if he wanted a lawyer, he replied that he had come to court without knowing anything. Only when the judge repeated the question a fourth time with a more intense and louder voice did Tong finally respond that he wanted legal representation. Interestingly, the judge then asked whether Tong would confess to his crime and, after hearing Tong's declared intention to plead guilty, questioned his need for legal aid. When Tong merely replied in bafflement that he did not know anything, the judge announced that he would hold the sentence and put Tong in custody pending trial. Suddenly, Tong appeared to understand what to do as he withdrew his earlier answer: "I see. I don't want any lawyer now. No, I don't want any. I don't know." The judge asked again whether Tong still wanted a lawyer; this time, the answer was no. The judge then read aloud the indictment and checked for a final time the intention to plead guilty. Tong confirmed it.

Tong admitted post-hearing that he had been confused and even disheartened after hearing the judge's question about his need for a lawyer. Having been uninformed about the role of a lawyer and his right to legal counsel, he misunderstood that by mentioning a lawyer the judge had implied that his case might somehow be extra-serious. Although he had previously seen no point in hiring a lawyer, Tong started to see the need and thus blurted out that he wanted one. The judge's decision to put him in custody pending trial as a result of his reply confounded him greatly. However, as we can see in the above exchange, this decision quickly changed Tong's mind, and he reverted to his original intention not to have a lawyer and just to plead guilty.

Also consider another example of participants' bewilderment in the exchange between Yot and the judge at the *wain-chee* hearing. In this exchange, the judge went through routine questions to make sure that the seven methamphetamine pills allegedly found on Yot when he was arrested were actually his. However, Yot gave an "unexpected" answer by saying that "a lad" had left them with him. The judge, seemingly perplexed, asked if Yot had used the drugs ("Who's this lad? Left the pills? Did you use them?"). When Yot answered no, the judge appeared irritated as he raised his voice and adopted a reproachful tone while probing why Yot had had the drugs despite being a non-user ("You didn't use drugs. So why did you take the pills? Answer my question first!"). Yot explained that a kid in his neighborhood had abruptly left the drugs with him and merely told him that someone else would come and collect them. The judge then merely inquired if Yot admitted that the drugs were found on him. When Yot confirmed that fact, the judge announced the sentence without checking if Yot wanted to be legally represented.

One may infer from the above-described hearing that Yot recounted his version of the case, mistaking that the judge wanted to hear the facts from Yot's point of view, without realizing that his "facts" implied the lack of intent to possess the narcotic drugs and could be interpreted as a denial of guilt. Yot was unaware that his tacit non-guilty plea contradicted his answer to the court official upon arrival, when he declared that he would plead guilty. He did not know that his earlier reply had

been used by the judge to prepare the sentence in advance to enable the immediate announcement of the sentence and the expeditious disposal of the case. Unknowing that this contradiction would slow down the process and could hint at a "change of heart," Yot was dumbfounded when the judge spoke to him reproachfully: "The judge asked how I had the pills. I was confessing anyway. I told him a lad had left this thing with me but the judge just kept talking."

Astonishingly, despite all these hardships and intrinsic stigmas, nearly all the participants quietly accepted that their penal journey was the way things were supposed to be. Although they were alien to the law, the law to many of them was equated with utopic justice. Therefore, the criminal justice system and its staff, claiming to have followed the law, deserved to be respected and obeyed. This outlook resembles what Ewick and Silbey[28] conceptualize as "before the law" legal consciousness, according to which the law is canonized as impartial, rational, and objective.

Such consciousness is well encapsulated by a straightforward reply from Cloud (male, aged 22) that the criminal justice system is fair because it operates according to the law. This view is shared by Gift who simply reasoned that "If that's what's in the law, it's fair. We ought to follow the law." Following her own logic, Gift conceded that her ordeals were a result of her having broken the law, as she concluded, "This is the way things are in our country. Wrongdoers must be punished." In the same vein, notwithstanding his agonizing days in police custody and difficulties in finding someone to help pay the fine on his behalf, Cloud framed his penal experience positively: "It was good that [the case] happened." Cloud arrived at this astounding conclusion because, in his view, his case was a wake-up call for him to turn around his life. Therefore, instead of blaming the system that forced him to conjure up money within a time window of a few hours to avoid custody, Cloud blamed himself for not having prepared enough cash for a fine he could not have foreseen. He also justified the process, in that it must have caused him such hardships for a reason. Almost mirroring Cloud's answer, Chin—who had to wait another five hours post-hearing just to have his fine "paid" from the deposited bail money—also blamed himself: "It's wrong of me to not have instant cash ready. It's my fault not to have the money. The fault is on me. I can't manage myself."

Self-blame also occurred in participants who did not equate the law or the authorities with justice. In fact, even the most critical participant who did not repent his action also attributed his arrest to a character flaw. Tong insisted that cannabis use should have been legalized and that he would continue using it regardless of his sanction. He criticized the police officers for soliciting bribes, and criticized court staff, including the judges, for unempathetically slacking off in their work. His criticisms appear to have been unparalleled in this study. Nevertheless, he still blamed himself for his fiery temperament, which had made him fiercely altercate

[28] Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (The University of Chicago Press 1998) <https://doi.org/10.7208/chicago/9780226212708.001.0001>.

with his corrosive mother—the event that he believed had caused his mother to tip off the police about his drug habit. In a similar manner, although implying that he might have been entrapped by the police and their decoy into having methamphetamines in his possession, Yot blamed his gullibility for the seeming injustice of his case and refrained from blaming anyone else. This is evident in his deliberation: "I was wrong to have been easy with the lads [who left the pills for a customer's collection]. I didn't think much of it. . . . I never thought things would happen to me like this. . . . You could say that I was wrong. I was caught red-handed. . . . I don't blame anyone."

Interestingly, it was this self-deprecating worldview that made even critical participants finally see justice in their sufferings. Although the criminal procedure may not seem fair to them, the pains imposed were somehow deserved, from a transcendental perspective. As a result, they too were willingly compliant with the criminal justice system. This willingness, while not arising from deference to the authorities as with their counterparts, did not wholly arise from the calculation to have their sentences mitigated, either. At the same time, it might be hasty to conclude that the uncritical participants obediently tolerated their ordeals with conscious volition and respect for the system. The following section explains the structural and cultural forces that blur the line between voluntariness and manipulation in generating defendants' docility.

V. STRUCTURAL AND CULTURAL SHAPING OF DOCILITY

The docility of defendants is a complicated matter. Although it may appear sincere and voluntary, the hostility of the criminal justice system provides a solid ground for defendants to feign compliance in order to gain a lighter sentence and a quicker exit route.[29] Apart from motivating the defendants' survival instinct, this self-same structure of hostility can invigorate their habitus of blame internalization, already instilled by the society-wide culture of responsibilization that attributes self-responsibility to every personal problem. As Bourdieu theorizes,[30] habitus refers to culturally derived patterns of improvisations and intuitive responses. The fact that these are conceived unthinkingly makes the suppressive elements of society appear natural and justified. This façade of normality lures defendants into accepting, and even endorsing, their denigrated status and the seemingly justified violence against themselves. This imperceptible domination is at the heart of Bourdieu's concept of

[29] See Cheng and others, "Why do Criminal Trials 'Crack'?" (n 15); Jay Gormley and Cyrus Tata, "To Plead or Not to Plead? 'Guilt' Is the Question: Re-thinking Sentencing and Plea Decision-Making in Anglo-American Countries" in Cassia Spohn and Pauline Brennan (eds), *Handbook on Sentencing Policies and Practices in the 21st Century* (Routledge 2021) 208.

[30] Pierre Bourdieu, *Outline of a Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) <https://doi.org/10.1017/CBO9780511812507>.

symbolic violence,[31] whose invisible and gentle coercion insidiously and powerfully generates uncritical docility—as evidenced in the participants' significant degree of self-blame.

Although it may be contended that defendants are supposed to repent and blame themselves for their wrongdoings, the due process principle asserts the voluntariness of their self-deprecation, particularly when it occurs prior to their sentenced punishment. Theoretically, defendants are meant to learn about the wrongness of their crimes through the imposed sanction.[32] Before conviction, they are to benefit from the presumption of innocence. As a corollary, the due process principle not only commands the treatment of defendants with respect, but also disapproves of elements of pretrial degradation. For this reason, it is arguably unethical to endorse and continue the unnecessary procedural coercion and suffering that turns the pretrial process into premature punishment.

The unfriendliness of criminal procedure is an embodiment of the structural manipulation that incentivizes defendants to surrender to the system in exchange for the quickest and most mitigated sentence, and simultaneously inculcates the banality of denigration into defendants' perceptions. Kohler-Hausmann[33] argues that the "hassles" of the criminal procedure are active techniques of social control. On the one hand, the penal elements of the pre-sentencing process are the tools that go hand-in-hand with the practice of sentence discounting, which in Thailand is authorized by Section 78 of the Criminal Code. According to this provision, defendants who plead guilty can be rewarded with a discount of up to half the original sentence. Therefore, defendants who suffer anxiety over their case outcome are led to anticipate predictability and an enticing deduction to the expected punishment in return for the surrender of their defence and an ensuing guilty plea. By foregoing their right to a trial, defendants are promised a speedy escape from the gruelling pretrial procedure. Although none of the participants in this study mentioned their knowledge of the guilty plea discount, they shared the need for a rapid end to their suffocating penal journey. For example, Tong admitted that, despite his fear of being imprisoned, he had no intention to deny the charge because he "wanted [the case] to end quickly." Because he had truly committed the crime, he foresaw the futility of claiming otherwise, thus unnecessarily prolonging the case. This prescient caused him to astutely remark, "If you fight, you will definitely end up in prison. And if you lose the case, your time in prison will be lengthy." Given that Tong could arrive at this conclusion, his unawareness of sentence discounting notwithstanding, it is conceivable that defendants who know about this provision would be significantly more likely to prefer the predictable benefits of admitting guilt and appearing docile, even if they are innocent.

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[31] Bourdieu, *Masculine Domination* (n 18).

[32] Antony Duff, *Punishment, Communication, and Community* (Oxford University Press 2001).

[33] Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (Princeton University Press 2018) <https://doi.org/10.23943/9781400890354>.

On the other hand, the painful procedure is the initiation rite of defendants being denigrated as criminals, through which their self-perception is gradually broken down to become self-deprecating. This is achieved by frequently exposing defendants to the stigmatizing symbols inherent in the process. In the Thai criminal justice context, these symbols are the dominating presence of custody, the removal of defendants from an ordinary in-person hearing to the live-link alternative, and the ensuing distancing between the judge and the defendants. The repeated placing of defendants inside mobility-restricted facilities such as the police cell and the court holding area conveys messages of rejection, condemnation, and degradation.[34] The distancing of the hearing not only reduces defendants' rounded individuality into a flattened body on the screen,[35] but also intensifies the symbolized ideas of distrust, exclusion, and blame. Furthermore, the typical location of the holding area in the court basement resonates with the Thai traditional belief in a merit-based social hierarchy, according to which the meritorious are ranked highly while the morally condemnable are put at the bottom.[36]

Being surrounded by such stigmatizing symbols and negative stereotyping, defendants are induced to internalize self-deprecating messages.[37] When this internalization occurs, defendants can be blind to the structural manipulation that has led them to this point. Because they experience procedural hassles directly, defendants usually only see the direct and proximate causes of their sufferings—e.g., abusive or unempathetic agents of authority—instead of the behind-the-scenes social and political underpinnings. Therefore, they are still able to consecrate the law and the criminal justice system despite their procedural ordeals.[38]

As defendants make sense of their criminal justice experiences through their habitus or their culturally shaped frames of understanding,[39] culture plays an integral part in producing defendants' docility, along with the structural forces. In Thailand, the said culture is manifested in the dominant Buddhist belief of merit (บุญ; bun) and demerit (บาป; baap), accumulated throughout the never-ending reincarnations. It is the balance of merit/demerit that cosmologically dictates the just consequences of an individual's actions.[40] In essence, this is the belief in self-responsibility, and it is regularly used to justify social inequality and hierarchical discrimination—thereby sedating resentment against the inegalitarian status quo,

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[34] See Erving Goffman, *Asylum: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books 1961) 7.

[35] Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge 2011) 177–78.

[36] See David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté* (Routledge 2011) 68–69, 153 <https://doi.org/10.4324/9780203847541>.

[37] Scott Plous, "The Psychology of Prejudice, Stereotyping, and Discrimination" in Scott Plous (ed) *Understanding Prejudice and Discrimination* (Mcgraw-Hill 2003) 3, 23–24.

[38] Kohler-Hausmann, *Misdemeanorland* (n 33) 197.

[39] See Johansen, "Between Remand and Verdict" (n 20).

[40] Lucien M. Hanks, "Merit and Power in the Thai Social Order" (1962) 64(6) American Anthropologist 1247 <https://doi.org/10.1525/aa.1962.64.6.02a00080>.

while simultaneously silencing probes for socio-economic and political explanations.[41]

In this study, many participants explicitly justified their distressing penal journey through this belief, implying that their sufferings were justly deserved as a result of their past demerit. Using the term กรรม (*karma*), which also refers to the cosmic sense of justice, Witsanu (male, aged 29) succinctly explained this concept while making sense of his horrible past experience in prison as a convicted prisoner: "It's a consequence of committing an offence. It's *karma* and life in prison is the payment for one's *karma* so all that will be offset. When you commit bad deeds, you have to pay for it." Witsanu described arguably substandard living conditions in prison; the extreme overcrowding that forced inmates to sleep elbow to elbow on the cell floor, and the frequent fist fights over the precious sleeping space. He explained the importance of money deposited by the inmates' relatives for use in prison, and related that "you were truly done for without relatives. . . . A person with no relatives was like a dog in there." However, regardless of his bitter memories, never once did he question the legitimacy of being forced into such conditions. All he did was to invoke the concept of *karma* to pacify his anxiety over his present case and his fear of being sent to live in prison again, reasoning that this "karmic" justice was inevitable and that he only had himself to blame.

It is thus clear through the example of Witsanu that the idea of *karma* promotes responsibilization and self-blame as a way to make sense of trauma, in the process helping individuals to make peace with themselves by accepting their fate. However, this propensity to fatalism dispenses with reasonable criticism of the overharsh and undue treatments, not only in prison but also at other stages in the criminal procedure. Therefore, the soul-soothing advantage of the concept turns out to be an extremely powerful tool to quell resentment against the system. By legitimizing violence in the procedural punishment, the cultural concept of *karma* primes defendants' subjectivity to be extra-sensitive to the stigmatizing symbols in criminal justice environments. As a result, defendants with such a mentality are rendered more than ready to internalize denigrating messages, self-deprecate, and express docility to the system.

It is nevertheless noteworthy that, despite such strong structural and cultural influences on the shaping of docility, these forces are not deliberately or strategically planned. Procedural hassles are generated by professionals' daily decisions under constant conditions of uncertainty and constrained resources.[42] Because defendants are "involuntary clients" of the criminal justice system, their interests and points of view are rarely at the center of officials' decision-making.[43] Over time, the originally ad hoc decisions, which prioritized the constrained system, have become routinized and have thus taken their toll on defendants. Likewise, the cultural endorsement of

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[41] David A. Wilson, *Politics in Thailand* (Cornell University Press 1962) 275.

[42] Kohler-Hausmann, *Misdemeanorland* (n 33) 199.

[43] Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (Updated edition, Russell Sage Foundation 2010) 57.

domination and violence is likely to have evolved subconsciously. Through repeated interactions between individuals and their communities, certain beliefs have come to be widely shared, and are subconsciously embodied in people's habitus. The habitus in turn frames the widely believed facts and dominant values as natural, immutable, and inevitable.[44]

It is the subconscious nature of these structural and cultural influences that makes their impact on defendants' docility so profound and powerful. Because defendants internalize the ideas of blame and the deservedness of their own procedural sufferings, even they themselves have come to believe that the criminal justice system is fair and legitimate. Hence, their docility appears remarkably sincere and unwavering. Ironically, it is this compelling display of docility that becomes a powerful support for the system's infliction of suffering upon the defendants. As direct victims of criminal justice violence, the defendants' convincing appearance of docility legitimizes the system in the eyes of criminal justice professionals. This finally dispels the professionals' doubts about coercion and unfairness (if any should occur), thus allowing them to continue their practices with no further concerns about change or reform. In the end, the unnecessary pain and denigration of the criminal procedure, particularly its pretrial punishment, is perpetuated, and the ideal of due process by which defendants are presumed innocent and treated with respect continues to be eroded.

VI. CONCLUSION

To sustain the legitimacy claim of the criminal justice system, criminal justice professionals tend to translate defendants' appearance of docility as strong supporting evidence. Empirical evidence from Thailand shows that defendants in the lower court procedure do indeed express docility through a remarkable degree of self-blame. However, the stigma-infested criminal process and the Thai culture of responsibilization are more likely to implicitly shape such docility through their subtle power of symbolic violence. This shaping occurs subconsciously, and the process is neither deliberate nor visibly coercive. Nevertheless, it is precisely such unintentionality and the lack of direct coercion that effectively induces defendants into blame internalization, making their compliance appear wholeheartedly voluntary. The findings caution that defendants' docility is complicated, and that determining the boundary between volition and coercion is very difficult. Therefore, despite defendants' seeming docility, the system's claimed legitimacy still needs to be examined carefully in order to curb the violation of due process, especially in the form of pretrial punishment. More future research on this topic is recommended, both in Thailand and elsewhere, to test this article's thesis on a larger and more

[44] Bourdieu, *Masculine Domination* (n 18).

representative sample and to see whether the argument presented in this article is also relevant in other jurisdictions.

[Date of submission: 14 August 2022; Revision: 7 October 2022; Acceptance: 21 February 2023]

Suggested Bibliographic Citation:*

Thanyanuch Tantikul. "Remorseful or Resigned: Criminal Justice Legitimacy and the Appearance of 'Docile' Defendants." *Thai Legal Studies*, vol. 3, no. 1, Jul. 2023, pp. 1–18. https://doi.org/10.54157/tls.261254.

* **Indexing Thai names.** "Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies." *The Chicago Manuel of Style* (17th edn, University of Chicago Press 2017) §16.85.