

LAW IN TRADITIONAL SIAM AND CHINA: A COMPARATIVE STUDY

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In 1805, Rama I, founder of the present Bangkok (Chakkri) dynasty, caused the compilation and publication of Siam's first comprehensive law code. Known as the "Three Seal Code"¹, or simply as the 1805 Code, this legislative feat in time came to represent a reconstruction of the laws of the Ayudhayan Kingdom, A.D. 1350-1767 (nine tenths of whose original tracts were lost in the sacking of the once great Siamese state by the Burmese in 1767), and remained the operational code for the country until the introduction of Westernized laws at the turn of the century. Reference to traditional Siamese laws herein will, therefore, be taken subsequently to be those laws which operated during the period between the fourteenth and nineteenth centuries—or roughly covering both Ayudhaya and the early part of the present Siamese ruling house, and which were reflected in the Three Seal Code.

In the case of traditional Chinese laws, reference is made to the Ta Ch'ing Lu Li (大清律例: "Great Ch'ing Penal Code") first completed in 1740. This code in essence represents the culmination of much of the previous legal development in Imperial China. As in the case of the Siamese code, it also persisted through the dynastic period until it was finally superseded by a Westernized code early in this century.

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- 1) *Kojmai Tra Sam Duang* (กฎหมายตราสามดวง) or the Three Seal Code is so called because the original royal edition—first printed in 1849, 45 years after its promulgation—was affixed, as authentication, with the seals of the lion (of the Interior Department), the *kotchasi* (คชสีห์) a mythological lion-elephant beast (of the Defence Department), and the glass lotus (of the Finance Department). Because the first public printing of the Code was subsequently seized by the authorities (on the grounds of showing disrespect to the king), the contents of the Code were kept from public knowledge for a long period. Despite attempts by Dr. Dan Bradley, who was responsible for issuing the Bradley Edition of the Code in 1863, and Prince Rajburi, responsible for the so-called Rajburi Version of the Code in 1901, the original and complete Three Seal Code was not publicly issued until 1939, the first publication being sponsored by the newly founded Thammasart University (University of Political and Moral Sciences) in Bangkok.

The availability of both the Siamese and Chinese codes thus gives a convenient basis for building a structure of comparison of the legal concepts and institutions of the traditional Siamese and Chinese states. However, what follows is essentially more of an effort to understand the Siamese side, comparing it to the Chinese model whenever this is felt helpful in strengthening understanding of the traditional Siamese legal background. Hence, this presentation necessarily leans more on the Siamese experience.

Introduction

The purpose of this study is to highlight various features in traditional Siamese legal institutions which may be used to compare and contrast with those of traditional China. The basis for such a study rests upon the assumption that Siamese and Chinese laws, as characteristic traditional laws, reflected essentially the *pouvoir arbitraire* of the ruling monarchy. Both states formulated a political model based upon the close interaction between the human and the cosmic spheres, in which the ruling monarch was regarded as an appointed agent to regulate the human domain on behalf of the cosmic order. In this respect law, that which regulates, became identified with the ruler's prerogatives. This represents the incorporation of natural law (*jus naturale*) into the positive law (*jus gentium*) of the ruler, making the *pouvoir arbitraire* the sole legal principle for government².

Siam had a historical background quite different from that of China. Its legal institutions, along with other administrative ones, were structured upon ideas borrowed from the Indian tradition. Yet, Siamese and Chinese laws were comparable in their pronounced moral and ethical overtones, as they were primarily deemed pedagogic, aimed rather to uphold the model of government, than to protect rights of individuals in the state.

- 2) *Jus naturale* in the Chinese context lies in Chu Hsi's (朱喜, Sung philosopher) correlation of the Confucian "five relationships" (*wu lun*, 五倫) and the "rules of the universe" (*yu-chao kuei fa*, 宇宙規法). This correlation in Chu Hsi is summed up in the term of *yi* (義) which is both the *raison d'être* (*yuan li*, 原理) of the universe and manifestation of human relationships. See Niida Noboru (仁井田陞), *Chūgoku hō-set shi kenkyū* (中國法制史研究), (Tokyo, Tokyo University, 1964), p. 576.

Underlying this principle are varying degrees of similarity and divergence within the two legal systems which make each of the two unique in its own way—while still being essentially within a similar framework. Through a study of historical, political and social developments in Siam, Siamese legal institutions and ideas can be brought to light. One may then proceed to make comparison with the Chinese experience to see if both Siam and China had a common development in the concept of law.

I. Nature of the Traditional Siamese Polity

A form of paternal monarchy always existed in the Siamese polity since the foundation of its first state in southeast Asia in the thirteenth century. This lasted till 1932, when Siam switched from absolute to constitutional monarchy. From a relatively simple feudal state to a quasi-centralized one, paternalism as a vital feature of government never lost its prominence, so much so that even today such an outlook still exists to some degree.

When they established their first state in Sukhothai, the Siamese had undergone the experience of living under military regimentation resulting from years of fighting the Mongols in southern China. In their new setting in the southeast Asian peninsula, the Siamese had to continue their struggles against other peoples who were already present in the area, and, as a matter of fact, much of the subsequent history of Siam involved armed struggle with other southeast Asian states. This historical fact proved conducive to the development of a Siamese nation unified under the principle of paternal monarchy, which was eventually strengthened by the introduction of Indian ideas of centralized administration.

In the stone inscriptions of the edicts of King Ramakamhaeng (พระรามคำแหง), the third monarch of the Sukothai state (A.D. 1278-1318), the current concepts of government, law and the administration of justice show a definite father-son arrangement. The monarch was directly in charge of the administration of justice, as the fourth chapter of the noted "Four-Chapter Law" (*Kojmai Si Bot*, กฎหมายสี่บท) of Ramakamhaeng states:

At the door is hung a bell. Any subject with a grievance may ring this bell, and *Pho Khun* Ramkamhaeng will appear to hear his case.³

The remainder of this law, including clauses on inheritance, land ownership, and litigation procedures, clearly reflects this spirit of a father's concern for his children. This has been highly regarded by Siamese legal historians as the long-lasting basis on which was founded the true legal tradition of Siam⁴. This tradition was based upon a paternal and undifferentiated form of administration with the king assuming the role of the *pra karuna* (พระกรุณา: "the magnanimous lord").

In A.D. 1350, another Siamese state, Ayudhaya, emerged which was destined to mark the major era in Siamese history. Political administration in this period, with extensive borrowings of political ideas and institutions from the Indian tradition, reached its highest peak of development. Over its first century which culminated in the capture of the Khmer Angkor Thom in A.D. 1431, Ayudhaya restructured the Siamese polity, using Indian models—with advice from Brahman priests—and adjusting them to the existing Sukothai paternal political system. The result was the formulation of a quasi-centralized system. Imitating the Indian pyramidal structure, Ayudhaya abandoned the Sukothai system of territorial allegiance for one based on tiers or layers of administrative units responsible directly to the central government. In the capital city, under the Indian concept of functional specialization, a system called the Chatusadom (จตุสดมภ์: "four pillars") was set up. It comprised four "departments" (*krom*: กรม): the *Vieng* (เวียง: "city", dealing with peace-keeping including the maintenance of the police force

3) Pra Vorapak Pibul (พระวรภักดิ์พิบูล), *Prawatsart Kojmai Thai* (ประวัติศาสตร์กฎหมายไทย), (Bangkok, Chulalongkorn University, 1961), pp. 8-11.

4) The terms *poh* (พ่อ: "father") and *luk* (ลูก: "child") appear consistently in various administrative shades throughout Siamese political history. The king and his designated deputies were referred to as *poh* by the people. The king's legal advisers bore the title of *luk*, and litigants are even today referred to as *luk kwam* (ลูกความ: literally "children of litigation").

and jails), the *Wang* (วัง: "palace", dealing with palatine affairs and under which was the highest body of administration of justice under the tutelar guidance of the king), the *Klang* (คลัง: "finance", dealing with finance and later, foreign trade), and the *Na* (นา: "agriculture", dealing with the management of agriculture and land, as well as economics).

Under the reign of the third Ayudhayan monarch, Trailokanart (ไตรโลกนาถ), centralization was vigorously extended to outlying territories of Ayudhya. With the proclamation that all land was in actual fact the king's, the very basis of feudalism was removed, and thus all former territorial lords assumed a new relationship *vis-à-vis* the monarch. The erstwhile Sukhothai feudal arrangement of the *poh muang* (พ่อเมือง: "the fatherly king") allotting domains to his *luk muang* (ลูกเมือง: "the king's vassals"), or, in other words the territorial scheme of government, gradually gave way to a system of personal allegiance and service. Under the new *Kojmai Betset* (กฎหมายเบ็ดเสร็จ: literally "Miscellaneous Law"), all land in the domain of Ayudhya was to be the exclusive *rachatani* (ราชธานี: "royal domain") of the *prachao paendin* (พระเจ้าแผ่นดิน: the "Lord of the Land", the monarch). Hence, the former feudal vassals could no longer expect to regard their domains as theirs absolutely, but as belonging to the king.⁵ From this, then, arose a new relationship of servant-master between the former vassals and the king. The former assumed their new role as the king's employees, and (rather like the Manchus' system on the eve of their conquest of China) they came to rely solely on the monarch for remuneration in return for services rendered⁶.

To meet the demands of this new arrangement, King Trilokanat, again with the counsel of his Hindu administrative advisers, instituted a system of remuneration known as the *sakdina* (literally, "dignity

5) Luang Wichit Watakarn (หลวงวิจิตรวาทการ), *Karn muang karn pokkrongh khong krung Siam* (การเมือง การปกครองของกรุงสยาม), (Bangkok, Thai Mai Press, 1932), p. 36.

6) See Wang Chung-ban (王忠含), *Ch'ing shih cha-k'ao* (清史雜攷), (Peking, Jen-min ch'u-pam she 人民出版社, 1957), chap. 2.

marks"). This was essentially a scheme for dispensing land and titles to all those serving the king and the state. As long as a person's service in government met with the monarch's favor, a status would be accorded him bringing with it a certain acreage of agricultural land and a designated rank. Unlike the former feudal arrangement, however, such land and rank were not inheritable and had to revert to the monarch upon retirement or death⁷.

Thus, under the application of the Indian notion of sole land ownership by the monarch and the institution of the *sakdina*, the traditional Siamese concept of rule by paternalism, far from being weakened, became more significant as it was given an added dimension, that of the expectation of specific obligations by subordinates to superiors based on the traditional concept of reverence to the father. As a follow-up measure, a "Ministry of Defense" (*Krasuang Kalahom*, กระทรวงกลาโหม), and "Ministry of the Interior" (*Krasuang Mahadai*, กระทรวงมหาดไทย) were created to supervise administration in outlying towns and villages of the kingdom, the northern sector being under the Interior Ministry, and the southern under Defense⁸. Consequently, by the end of the fifteenth century, Ayudhaya seems to have adopted a considerably effective centralized government not too dissimilar from the Chinese one—though on a comparatively smaller scale, of course.

Central to this significant political transformation in Ayudhaya was the monarchy. As mentioned above, with the introduction of Indian political principles and institutions, the role of the Siamese king led to significant political consolidation. The traditional father-figure of the monarch was elevated to that of the *Chakravatin* (Hindu for "Lord of the Universe"). He attained a status similar to the Chinese emperor who acted as intermediary between heaven and earth. According to the Hindu interpretation, the Ayudhayan monarch was regarded as the apex

7) *Praracha pongsawadarn* (พระราชพงศาวดาร), *Pra Racha Hattai Leka* (ฉบับพระราชหัตถเลขา) edition, I (Bangkok, Thai Press โรงพิมพ์ไทย, 1914), p. 436.

8) *Kojmai pokkrong* (กฎหมายปกครอง) (Bangkok, Thammasart University, 1935), pp. 163-4.

of the pyramidal model of human government and his status was, in actual fact, set in the border realm between the human and cosmic spheres.

Although they never went so far as to accept the Hindu cosmological order completely, Ayudhyan kings nevertheless capitalized upon the latter's concept of the divinely sanctioned kingship to fortify their traditional paternal status. To make it even more complete and absolute, Buddhist doctrines from India were introduced to strengthen further the ideal of the kingly righteousness in government and administration. (And with this, the picture of an absolute and virtuous *Chakravatin* was made complete.) Possessed with the three cardinal principles of *dhammakamata* (ธรรมกัมมัต: "desire for righteousness"), *attakamata* (อรรถกัมมัต: "desire for others' welfare"), and *rattapipalanopaya* (รัฐพิพลาโนพยา: "policy of governance")⁹, the Ayudhayan monarch, like his Chinese counterpart, was armed with an important moral-ethical weapon to govern (i.e. to protect, lead, and set an example for his people to follow).

It may be said that a spiritually and morally sanctioned monarchy such as the Ayudhayan one was indispensable in a political system based upon mutual relationships. In both Siamese and Chinese models, personalized rule was the basis of government, and any degree of political or administrative centralization was enforced solely to strengthen the central figure of power supposedly endowed with cosmological sanction.

9) His Holiness Prince Vajiranana, *The Buddhist Attitude Towards National Defense and Administration* (Bangkok, n.p., n.d.), pp. 7-18. Although not mentioned herein, the Siamese king, owing partially to supernatural Hindu and animistic beliefs, was deemed sometimes to be a Bodhisattva who governed the people wisely and with the seven virtues in accordance with the norms of the *chakravarti vakra* ("duties of the Universal Sovereignty"). One concrete manifestation of the king's adherence to this Universal Sovereignty is the necessity of justice in governance. The Lord Buddha admonished kings on the principle of justice, which is essentially like the holding of a pair of scales. A just and virtuous king is the wise one who is careful with justice. For an exposition of this concept of the kingly Bodhisattva one may consult Robert Heine-Goldern's *Conceptions of State and Kingship in Southeast Asia* (Ithaca, New York; Cornell University Press, 1956).

As a clear delineation of state and monarchical powers was absent, the personal capability of the ruler was completely identified with the efficiency of government. The fact that both the Siamese and Chinese systems of absolute monarchy remained effective in meeting the demands of the state for centuries makes it imperative to understand their nature in any attempt to study Siamese and Chinese political and legal processes.

II. Nature of Traditional Siamese Society

Political rather than moral-ethical considerations formed the primary basis of social organization in Siam. Due to constant threats of warfare in the Ayudhaya period as well as in the early part of the Chakkri, the main focus was on the individual's relationship to the state and, hence, it may be said that the state played more a direct role in personal life in Siam as compared to China where the primary relationship was rather in the familial sphere.

Traditional Siamese society was set up as a proto-military state whereby the people were organized in specific groups, controlled, at the informal level, by a paternal scheme, and, on a more formal level, by the centralized Indian hierarchy. It was a pyramidal structure with the monarch at the top and the hierarchic order of the *sakdina* under him. Beneath various officials of certain ranks were grouped bodies of people who had to give up a part of their time to serve the state as *prai* (ไพร่) similar to part-time conscripts in China. Theoretically, the king granted all his subjects, except slaves (*tars*, ทาส), land according to their rank and title (if any), and in return all must work for the state through this proto-military system¹⁰.

Under this system, social considerations were strictly conformative to one's relations to the state. Mobility was more by personal initiative based on wealth and merit, for standings were based upon favoritism by the monarch. In the society of Ayudhaya and early Chakkri periods, as family names were almost non-existent, titles granted by the king to his

10) H.G.Q. Wales, *Ancient Siamese Government and Administration* (New York, Paragon Reprints, 1965), p. 25.

avored servants became social distinctions which brought with them governmental titles, income and even responsible offices¹¹. Non-privileged people retained short and informal indigenous personal names, while those with commissions from the king bore long and complicated Hinduized titles which showed their social standing as well as responsibilities¹². Consequently, it may be noted that, unlike the Chinese model, relations in Siamese society were based on the need to meet specific tasks, and were loosely structured rather than aiming at a perpetuation of position. On this basis, one sees a picture totally opposite to that of the tightly knit Chinese society or, for that matter, the rigidly structured caste system of India.

From this model, therefore, it is not difficult to conceive of a society in which mutual interests prevailed in the social orientation. The traditional class structure was open and relatively informal, being, as mentioned above, dependent primarily on favors from the monarch or other superior delegated authority. Five classes of people may be said to have existed in the traditional society, but the distinctions between them were subject to a considerable degree of fluidity. After King Trilokanart fully instituted a centralized administration and introduced the Indian concept of the *chakravatin*, royalty and nobility, officialdom, commoners (freemen), slaves, and the ecclesiastics, emerged more or less as the general classes within society.

The nobility and royalty naturally occupied the top echelon, but their status was never rigid throughout Siamese history. In the days of King Ramakambaeng of Sukothai, partly because of the smallness of their number, they were a hereditary, privileged group in society. However, after the introduction of the harem institution from India, the

11) Family names were uncommon in ancient Siamese society; commoners had short and very informal first names. Privileged people were entitled to use their titles as a hereditary family name, however. This practice was also seen in traditional Burmese society. See Maung Maung, *Law and Custom in Burma* (The Hague, M. Nijhoff, 1963), p. 47.

12) Wales, *op. cit.*, p. 20.

erstwhile monogamous Siamese monarch¹³ began to practice a polygamy which soon became institutionalized and led to a tremendous increase in the rank and file of royalty. With the application of the Indian master-servant concept in government, the nobility and royalty ceased to retain its hereditary privilege and became subject to an ingenious scheme whereby royalty would merge with commonality after the fifth generation¹⁴. At the same time, the royalty and nobility were given various *sakdina* grades and placed in various governmental positions as servants to the monarch. However, as a class, they still retained privileges, being still an important component of the monarchy¹⁵.

The official class was the most vital class in the centralized administrative system introduced from India. Unlike China, Siam did not have a civil service examination to provide a sure channel into officialdom, and, as mentioned, in most cases, commoners could become important officials through the king's recognition of their public services. An official's status was based also on the *sakdina* system, and whatever titles might be granted him by the king. By these, it could be determined what social privileges he could enjoy such as sumptuary ones, exemption from compulsory corvée and so forth. Again, an official's title and position was not hereditary, and his offspring must prove their own worth before being recognized by the monarch.

Below the official class was a broad class of commoners or free men. In theory, all freemen were given a low *sakdina* grade, in return being registered to serve the monarch in some particular grouping by performing corvée labor or fighting in the army. Thus, this was actually

13) From Ramakamhaeng's stone inscriptions, apparently during the Sukothai period monogamy was dominant. The Laotian nobility, historically related to the Siamese, also observed this custom.

14) Wales, *op. cit.*, pp. 21-22. The Manchus also had a similar scheme of diminishing royalty which, however, did not lead to eventual merger with commonality; the lowest rank of royalty was untitled but retained imperial association. See *Chung shih chieh lo lu li* (宗室覺羅律例), (Hsuan t'ung 宣統 edition), vol. I.

15) Rama V, "On the Nobles of Siam", in Oskar Frankfurter, *Elements of Siamese Grammar* (Leipzig, Karl Hiersemann, 1900).

a carry over from the pre-centralized period when men rendered their services to a particular overlord in return for land to farm as well as protection.

The class which occupied the lowest stratum of society was the slaves, in Pali *dhasa* or in Siamese *tars*. Siamese slaves were in an equal position with Chinese slaves in that, in most cases, they could be redeemed and so automatically restored to their rights as common freemen. Parents could sell their children into slavery, and so could an individual himself. Once a slave, a person was attached to his master only, and was exempt from the services to the state which all free men were obliged to render. As in China, most slaves were domestic slaves (in Chinese *chia nu*, 家奴, and in Manchu *pao i*, 包衣, "bonded servant")¹⁶. Sir John Bowring, visiting Siam in the 1850s, wrote:

Bishop Pallegoix [of France] states that slaves are 'well treated in Siam—as well as servants are in France'; and I, from what I have seen, would be inclined to go even farther, and say, better than servants are treated in England. This is proved by the fact that whenever they are emancipated, they always sell themselves again. Masters cannot ill-treat their slaves, for they have always the remedy of paying the money they represent...¹⁷

It may be observed that slaves, like all the other classes mentioned, were never really a fixed class. Since monetary redemption could free a slave from his bondage to his master, the slave could actually be more appropriately reclassified as a class of "bonded servants".

The Siamese ecclesiastics were made up of the Brahmins and Buddhist monks, but each served very different functions and were diverse in orientation. The Brahmins in Siam never formed a real class as in India, and hence their influence was actually quite limited. In the first place, their number was deliberately kept small; they served in an advisory capacity, only to the monarch, and on state ceremonial functions (something like the Chinese priests in charge of ceremonial services for

16) Robert Marsh, *The Mandarins: The Circulation of Elites in China* (Illinois, Free Press of Glencoe, 1961), pp. 59-60.

17) Sir John Bowring, *The Kingdom of Siam* (London, Oxford University Press, 1969), vol. I, p. 193.

the emperor) and in interpretations of governmental and legal treatises. However, the Brahmins, as in India, were revered for their knowledge of sacred texts and they also received a high *sakdina* grade from the monarch¹⁸.

The Buddhist monkhood (*sangha*) in Siam also played no direct role in politics and government, but, as a group, its influence was far greater than the Brahmins. It represented a rather fluid class which men could enter to seek spiritual as well as practical knowledge. The temple has always been an important center of learning in Siamese history, and, hence, an indirect vehicle for social mobility. The Buddhist church provided the meeting ground for people from all strata from the poorest freemen to those of the princely class, and in this respect, may be regarded as the main societal tie of the collective whole. Buddhist ecclesiastics, through their professed animistic Buddhistic tenets, could adequately influence all classes in their spiritual and ethical beliefs, and, therefore, served as an effective regulatory factor in the people's conduct, as well as checking the monarch's despotic tendencies: for even the king, himself, was supposed to serve in the temple for at least a brief period to study the *dharma*.

Taken as a whole, the Siamese social structure may be said to be less rigidly stratified than the Chinese. Compared with the Chinese social norm of "interdependency" between individuals in social units from the family upwards, the Siamese value system centered rather around the individual with fewer obligations and commitments to others except to the political organization of the state. Allowing for the restriction on behavior required for a degree of collective living, a higher sense of *laissez faire* prevailed in Siamese society than in Chinese, and out of this grew an outlook relatively free of social inhibitions. Ideas and actions in traditional Siam were comparatively more pragmatic than in China, and for the Siamese enjoyment of what life could offer to the fullest extent was more meaningful than complicating life by reading too much into it.

18) For a comprehensive account of the role of the Brahmins in the Siamese court, see Wales, *op.cit.*, pp. 42-5.

In fact, Siamese monarchical paternalism, combined with the Hindu conception of the *chakravatin*, fitted the temperament of the Siamese. It tended to produce a symbiotic relationship between those who had the duty to rule and those with the duty to be ruled. The autocratic monarch professed an air of benevolence in government, and in return the people acquiesced. Under such an arrangement, the state operated a relatively simple and uncomplicated "give-and-take" system of direct government as compared to China where there were other influential socio-political units in addition to the state, such as the clan and guild, to regulate the people.

In such a social setting, it is purported to show below that Siamese laws turned out to be comparatively more utilitarian, and less entangled in complex moral-ethical implications, though by no means free from these. Law was regarded as a tool for upholding the relationship between the ruler and the ruled. In contrast with the Chinese model where the law was considered the final resort for settlement of individuals' differences after the family, village, and clan, and so forth, the Siamese people, with their more direct association with the machinery of government were more apt to resort to formal legal means for settlement of disputes.

III. Sources and Contents of Traditional Siamese Law

Because the monarch's principal duty as a *Chakravatin-Bohisattva* was to govern, it goes without saying that the administration of justice was one of his main concerns. The effort by King Rama I in the 1805 Code in a sense represents only the culmination of a long series of attempts by previous Ayudhayan kings to produce a practical code of laws.

Siamese rulers borrowed substantially from Indian laws. In the 1805 Code, prominence was given to a corpus of legal treatises known collectively as the *Dharmasatra* (ธรรมศาสตร์; in proper Siamese pronunciation, it should be romanized as *Thammasart*)¹⁹. It is generally believed that this corpus, adopted also by the Burmese and the Cambodians (Khmers), was a modified version of the original Hindu Manu

19) Robert Lingat, *L'Esclavage privé dans le vieux droit siamois* (Paris, Université de Paris, 1931), p. 12.

Code written in Sanskrit, and that the Siamese received it in a Pali (vernacular Sanskrit) version from the Ramans (Mons) after they moved southward into the southeast Asian peninsula and briefly came under the rule of the latter²⁰.

One reason for the emphasis on the *Dharmasatra* lies in its supposed sacred origin. The original *Dharmasatra* of Manu was actually used as a sacred book by the Brahmans, the highest and most revered group in the Indian caste system²¹, in their administration of justice. The legal treatises contained therein are purported to be divine pronouncements copied down in a vision by the famous Brahman adviser Manosara of the great court of King Mahasammuti from the walls of the universe²². In Indian history, the Manu Code was the king's Bible, the sacred source of his rule over the people. It contained essentially moral and religious tracts admonishing the people to lead a proper life, as well as some sort of a civil code arranged under various titles²³.

However, the Pali version of the Manu Code which the Siamese took from the Mons²⁴ consisted mainly of the portion dealing with civil

20) Phraya Nitisart Paisan (พระยาศรีพิศาล), *Prawatsart kojmai Thai* (ประวัติศาสตร์กฎหมายไทย), (Bangkok, Thammasart University), p. 160.

21) The original *Dharmasatra* stated that the Creator of the Universe created the four classes of man from the various parts of His body, viz.: the Brahman, from His mouth; the *Khsatriya* (king), His arms; the *Vaisya* (commoner), His waist; and the *Sudra* (base), His legs.

22) Robert Lingat, *loc. cit.*

23) The Manu Code contains eighteen civil titles, namely non-payment of debts; deposit and pledge; sale without ownership; partnership; partition of property; resumption of gift; non-payment of remuneration; dispute between master and servant; non-performance of agreement; rescission of sale and of purchase; boundary dispute; defamation of character; assault, robbery and violence; theft and adultery; partition of inheritance; and gambling.

24) The Mons (Ramans or Taleng) lived in the southern reaches of the Irrawaddy in Burma. Historically, they served as intermediaries or carriers of Indian legal ideas and institutions into southeast Asia, and from them the Siamese later adopted the Manu Code. These legal borrowings from the Mons served to facilitate further introduction of Hindu administrative practices from the Khmers (Koms) when the Siamese brought them under their domination, after the sacking of the Khmer capital at Angkor Thom.

matters, and was devoid of most of the original Brahmanical preachings. One feasible explanation for this significant modification can be attributed to the growth of Buddhist influence in India during the reign of Asoka in the third century B.C., and the subsequent spread of Buddhism into the southeast Asian peninsula²⁵. This may be one reason why the original emphasis on the Hindu caste and moral concepts in the *Dharmasatra* became diluted. The Siamese version of the Hindu sacred treatises in the 1805 Code represents a further step towards modification of the Mons' Pali version; what was retained in the Siamese law dealt mainly with that which substantiated the notion of the king's undisputed prerogative (reflective of a divine source, as arbitrator of human justice) together with the portion dealing with civil legal matters. This came to serve as the basis for all subsequent Siamese legislation, and was to remain changeless in one sense, comparable to the Chinese *lu* (律) corpus which was held to represent the "rule of law" or *nittitam* (นิติธรรม) and for which the Siamese retained the identification of *Dharmasatra*. Legislation which grew around this corpus over the ages came to be known as *Ratchasatra* (ราชศาสตร์) which is similar to the Chinese *li* (例) or the supplementary laws which were the product of the monarch's legislation based upon the *lu* or *nittitam*.

One crucial observation to make when studying the source of Siamese law lies in its divergence from the Chinese experience. As has been described above, the Siamese built their legal foundation upon selected ideas borrowed from an alien Indian source rooted essentially in ethics and morality. The consequence was that Siam came to formulate its own legislation encompassed within the underlying Indian philosophy, which in turn made the law an important, noble and ideal instrument under the king's auspices. In the Chinese instance, however, law was not taken to represent any manifestation of ideals. On the contrary, it was primarily deemed as negativistic, as an instrument of

25) King Asoka, dubbed the "Constantine of Buddhism" for his role in propagating Buddhism, established the Magadha empire in south India after 284 B.C. His famous Magadha Edicts were a main vehicle in the spread of the Buddhist religion into southeast Asia. See John Wigmore, *A Panorama of the World's Legal Systems* (Washington, D.C.; Washington Law Book Center, 1936), p. 228.

coercion applicable only to the "wicked" (*chien*, 賤) while the "good" (*liang*, 良) were bound only by "ethics" (*li*, 禮). Thus, law and ethics were deemed as two separate realms, though necessarily related, with law acting as a corrective sanction against deviation from standard ethical norms. In the feudal period, nobles regarded themselves as above law and submitted themselves only to a code of morality. The destruction of feudalism (in the formal sense) and the rise of legalist influence meant the extension of the jurisdiction of law to all classes, both the good and the wicked alike, but the negative outlook concerning law persisted²⁶.

All this may be partially explained by the fact that law in China was regarded by the Chinese as an import from barbarians²⁷. The emperor's primary concern with laws was to use them to enforce the moral-ethical code of heaven, by using punishment as the instrument (*chu*, 器), whereas for the Siamese monarch enforcement of laws was the main task of his administration. Thus, law in China was deemed as "man-made", and to be used insofar as to ensure man's continued harmony with ethical nature²⁸. In essence, the Siamese concept of the source of law enabled them to have a rather positivist view toward the function of law. The *Dharmasatra* stipulated that the king be in one sense the supreme judge of man, and hence must deal with formal litigation and interpret written laws²⁹. On the other hand, in the Chinese concepts, positive laws were not associated with a divine origin, and were viewed basically as coercive instruments, a necessary evil to prevent

26) Ch'u T'ung-tsu, *Law and Society in Traditional China* (The Hague, Mouton, 1961), p. 172.

27) *Ibid.*, pp. 155-6. Or see Derk Bodde, "Basic conceptions of Chinese law: Genesis and evolution of legal thought in traditional China", *American Philosophical Society*, CVII (1963), p. 381.

28) Here one sees the Chinese practice in reverse of the Siamese. Jean Escarra cites a possible postulation of the *wu hsing* (五刑: "five punishments") to the ethical *wu lun* (五倫: "five human relationships"), an attempt, perhaps, to justify the punishments under an ethical imposition. See Jean Escarra, *Le Droit Chinois*, trans. G. Browne (Peking, 1936), pp. 17-8.

29) Robert Lingat, "Evolution of the conception of law in Burma and Siam", *Journal of the Siam Society*, XXXVIII (1948), p. 28.

ethics from going astray. Precisely because of this, and as shall be elaborated below, there was less stigma or inhibition attached to the operation of law in traditional Siam than in traditional China.

The 1805 Code is arranged in an order of 29 titles, each representing one fundamental division of function though not always clear-cut. These titles as a whole represent a relatively co-ordinated body of legislation reflecting a composite of the *Dharmasatra* (with moral admonishments), the *Ratchasatra* (with modified and expanded civil legal concepts drawn from the original Manu Code and entitled *laksana*, ลักษณะ), as well as other special royal decrees, regulations and decisions. This *corpus* had served the Siamese monarchical state for centuries, and may be listed as follows³⁰:

1. *Dharmasatra* (ธรรมศาสตร์) — on creation, etc.;
 2. *Intarapard* (อินทราภท) — on moral instructions from the Hindu god Indra to judges;
 3. *Koj Montienbarn* (กฎมนเฑียรบาล) — palatine regulations;
 4. *Pra Tammanoon* (พระธรรมนูญ) — on courts and judges' authority;
 5. *Laksana Promsak* (ลักษณะพรหมศักดิ์) — on fines and compensation;
 6. *Laksanas Sakdina Fai Polaruan* (ลักษณะศักดินาฝ่ายพลเรือน) — on civilian ranks;
 7. *Laksana Tamnaeng Na Taharn* (ลักษณะตำแหน่งนาทหาร) — on military ranks;
 8. *Laksana Ayakarn Ban Panaek* (ลักษณะอัยการบาลแผนก) — on basis of dispute;
 9. *Laksana Rub Fong* (ลักษณะรับฟ้อง) — on basis for litigation;
 10. *Laksana Payarn* (ลักษณะพยาน) — on witnesses;
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- 30) *Kojmai Tra Sam Duang* (กฎหมายตราสามดวง : *The Three-Seal Code*), in 3 vols. (Bangkok, Thammasart University, 1939). Compare the *Laksana*'s with the civil titles of the original Manu Code as mentioned in footnote 23. Also, compare with the Ch'ing penal code which consisted of robbery and theft (three parts); homicide; quarrel (two); cursing; litigation; bribery; falsehood; rape; miscellaneous crimes; arrest; imprisonment (two). See Hsiao I-shan 蕭一山, *Ch'ing-tai tung-shih* (清代通史), (Taipei, Commercial Press, n.d.), p. 587.

11. *Laksana Lui Nam Lui Fai* (ลักษณะลุยน้ำลุยไฟ) — on trial by ordeal;
12. *Laksana Tralakarn* (ลักษณะตระลาการ) — on judges;
13. *Laksana U-torn* (ลักษณะอุทธรณ์) — on appeal;
14. *Laksana Tard* (ลักษณะทาส) — on slaves;
15. *Laksana Pua Mia* (ลักษณะผัวเมีย) — on husband and wife;
16. *Laksana Luck Pa* (ลักษณะลักพา) — on abduction and kidnapping;
17. *Laksana Bed Set* (ลักษณะเบ็ดเสร็จ) — on miscellaneous infractions;
18. *Laksana Moradok* (ลักษณะมรดก) — on inheritance;
19. *Laksana Gu Nee* (ลักษณะกู้หน้) — on loans;
20. *Laksana Vivart* (ลักษณะวิวาท) — on violent disagreements;
21. *Laksana Joan* (ลักษณะโจร) — on robbers and bandits;
22. *Laksana Aya Luang* (ลักษณะอาญาหลวง) — on criminal offenses against the state committed by officials;
23. *Laksana Aya Rahd* (ลักษณะอาญาราช) — on offenses against the state in general;
24. *Laksana Kabor* (ลักษณะกบฏ) — on treasonable activities;
25. *Kojmai Pra Song* (กฎหมายพระสงฆ์) — monastic code;
26. *Pra Racha Kamnod Gao* (พระราชกำหนดเก่า) — on former regulations;
27. *Pra Racha Kamnod Mai* (พระราชกำหนดใหม่) — on new royal regulations;
28. *Koj Samsibhok Kor* (กฎหมายสามสิบหกข้อ) — on the thirty-six rules;
29. *Pra Racha Banyat* (พระราชบัญญัติ) — on royal decrees.

The above signifies, at least in form, the continuing heavy influence of the Indian moral-ethical code; but what is more important is how the Siamese regarded and utilized it. While under each title in the code there were written short introductory comments in Pali upholding the spirit of the Manu Code³¹, these were intended primarily to lend sacredness to the main body of the legislation which dealt with secular matters.

31) *Ibid.*

As mentioned above, the *Dharmasatra* served as the "basis" (*mulkadi*, มุลกคิ) for the Siamese legal development. In the Three Seal Code, it is represented essentially by the first two titles, the *Dharmasatra* and *Intrapard*, supposedly timeless and unchanging. These two titles purported to represent the universal truth, serving as an inviolable constitution which even the monarch himself must observe. The true value of the two titles (notwithstanding the rather fascinating account of the creation of earth in the first title) was an admonition to rulers of men to maintain justice constantly, and specifically to uphold justice in law. The first title spoke generally of the king's obligation to ensure peace by being just and righteous; the second title spoke out more specifically on legal justice, and amounted to a set of instructions to men of law on the proper mental attitude to maintain, and the proper process of litigation to observe in dispensing justice³².

The remainder of the Code may be classified as *Ratchasatra* in the broad sense of the term, and can be broken down into the categories of criminal, civil, and administrative laws. In the area of civil law, the section on this subject in the original code of Manu was adopted but as modified by successive Ayudhayan reigns. This reflected the necessity for having proper regulatory devices to govern the relationships between individuals in material transactions. Titles 14 (slaves), 15 (husband-wife), 17 (miscellaneous infractions), 18 (inheritance), and 19 (loans) may be classified as belonging to the civil category in the 1805 Code. As for the criminal section, one may cite titles 21 (robbery), 22 (officials' public violation), 23 (offenses in general), 24 (treason), 16 (abduction), and 20 (violent quarrels). These titles represent activities deemed as disrupting public peace and order, which throughout Ayudhaya were heavily sanctioned against³³. Traditional Siamese administrative law was, in fact, quite elaborate though not to the same extent as the Chinese.

32) Praya Nitisart Paisarn, *op.cit.*, p. 189.

33) Such actions were regarded as "disruptive" given the nature of early Siamese society which was plagued by constant warfare. Compare with the Chinese conception of criminal offenses, and one can see interesting similarities and contrasts.

In the Three Seal Code, the titles pertaining to this category were: 5 (scheme of compensation), 6 (civilian ranking), 7 (military ranking), 4 (*Pra Tammanoon*), 9 (litigation basis), 10 (witness), 11 (ordeal), 12 (judges, corollary of the *Intarapard*), 13 (appeal), 8 (dispute basis). The remainder of the Code, titles 25, 9 and 3, may be treated as a special subgroup of administrative law concerned more with the king's private sphere.

Comparatively speaking, the Siamese code was, of course, much smaller than the massive Ta Ch'ing Lu Li. This is not to say, however, that it was not comprehensive. Both Siamese and Chinese laws were built up through accretion³⁴. With the *Dharmasatra* and the Confucian-Legalist ideals as bases, the two systems of law over the centuries amassed a wealth of legislation.

A. Nature of the *Dharmasatra*

In this part on "universal and ethical truths" the concern expressed is for justice and the administration of justice. It is alleged that human beings are actually the incarnation of gods³⁵ and to this end it is the natural wish of the Divine to foster human peace and justice.

Consequently it is stated in the *Dharmasatra* of the Three Seal Code that the monarch is to serve as the fountainhead of justice³⁶. There is repeated mention of proper moral conduct by judges who are to follow the *Intrapard*, the set of divine instructions given them by the god Indra. The instructions, in essence, focus on Indra's warning to the judges to abstain from the four *akati* (อกติ: "unrighteous feelings"): *chantakati* (ฉันทคติ: "greed"), *tosakati* (โทษคติ: "anger"), *payakati* (ภยคติ: "fear"), and *mohakati* (โมหคติ: "infatuation")³⁷. Failure to administer justice in the most proper manner will cause judges to be consumed by hellfire.

34) See the appendix for a list of Ayudhaya's *Ratchasatra* legislation.

35) Phra Vorapak Pibul, *op.cit.*, p. 29.

36) *Kojmai Tra Sam Duang*, vol. I. The prominent figure of judge-ruler mentioned therein was King Mahasammuti (or Mahasmamatirat) in whose reign the Manu Code was formulated.

37) Luang Suttivartanalueput (หลวงสุตติวาทญาณฤทธิ), *Pravatisart kojmai Thai*, (ประวัติศาสตรกฎหมายไทย), 3rd printing (Bangkok, Thammasart University, 1969), pp.50-2.

In addition, the *Dharmasatra* is also quite articulate about bases for settlement of disputes, which may be grouped into five general categories covering: the procedures for filing and ascertaining law suits; methods for arriving at the truth during a trial; the role of the judge in conciliation or adjudication; the judge's sincerity in settling the dispute or difference with a minimum delay; as well as his right to independent decision-making and judgment³⁸.

In the *Dharmasatra*, one also notes that the emphasis is on civil litigation. Section V of this "legal bible" is devoted to what is known as *mulkadi vivart* (มูลคดีวิวาท: "basis of cases involving disputes"). It took note of 29 types of cases involving disputes, and left it to the monarch to legislate *Ratchasatra* provisions to implement them³⁹.

The *Dharmasatra*, therefore, made it very clear that law and ethics were essentially indivisible, and that it was the duty of kings and judges to uphold this principle. In one sense it represented a certain concept of natural law which prescribed a set relationship for the ruler and the ruled, and made law an acceptable basis for seeking justice. The prominent position of the *Dharmasatra* in the Siamese legal development served to legitimize and strengthen the monarchy.

B. Nature of the *Ratchasatra*

The central idea behind the *Ratchasatra* is, of course, law that was formulated by the ruler to supplement and manifest the general legal concepts in the *Dharmasatra*. This legislative power was conformative to the concept of the Indian sacred code that the duty of the monarch was to abide by, and lead the people, in the principles expressed therein; it was to help actualize the natural law already laid down. With the aid of Brahman priests, experts in the Manu Code, the monarch legislated in accordance with the *Dharmasatra*⁴⁰.

38) Phra Vorapak Pibul, *op.cit.*, pp. 31-3.

39) Among the 29 types of *mulkadi vivart* were included sales and contracts, inheritance, chattels, property, trespass, rent and loan, abduction, quarrel and fighting. Praya Nitissart Paisart, *op.cit.*, pp. 180-2.

40) Because 32 monarchs in the various reigns of Ayudhaya had promulgated *Ratchasatra* laws, the latter's contents sometimes overlapped and the laws did not necessarily follow in logical succession. See appendix.

The rationale in the section on crime appearing in the *Ratchasatra* was that a case could be considered "criminal" so long as it had such potential adverse repercussions on society that it was the king's divine duty to take preventive measures. In Ayudhaya, the most serious offenses were the *ayaluang* (อาญาหลวง), *joan* (โจร) and *kabot* (กบฏ). The law concerning *ayaluang*, first promulgated in 1352 or two years after the founding of the Ayudhayan kingdom, dealt mainly with transgressions by officials.

The Ch'ing code was explicit about the special status of the official class as being one of *pa-i* (八議) and about its legal privileges, which often included monetary redemption in lieu of actual punishment. The Siamese code, on the other hand, had very little to say about the official class as a privileged class under law. However, in certain instances, despite the severe punishments laid down, the monarch would allow for monetary compensation.

The *ayaluang*, moreover, treated the subject of official transgression with great concern. It prescribed, at the very beginning, ten severe forms of punishment applicable to a guilty official, as warning and deterrent against compromising his official duties⁴¹.

The *ayaluang* repeatedly touched upon the question of public officials mistreating commoners or intimidating or extorting them. These acts, in varying degrees, were punishable by death (by public execution) or other forms of public humiliation⁴². Next in order of emphasis was legislation dealing with irregularities in official duties and intentional disobedience of the monarch's orders. This also included lack of manners in public while on official duties, or being rowdy and quarrelsome. Again, all such acts were to be punishable very severely, including beheading. (In the Chinese code, whereas such acts would be regarded as improper, they were never as severely sanctioned against as in the Siamese *ayaluang* provisions.)

41) The punishments for officials were : caning, beheading, confiscation of property, enslavement of dependants, solitary confinement, probation, expulsion, feeding elephants, mutilation of mouth, fine and public exposure, and fine and full compensation for loss (*Kojmai Tra Sam Duang*, II, pp. 370-1).

42) *Ibid.*, I. See *Kojmai Tra Sam Duang* esp. Articles 3 (372) & 12 (379).

Another important set of criminal laws was the *Joan*. In force for over 500 years from 1360, this legislation dealt with society's foremost public enemies: robbers and bandits. The laws were very detailed in the classification of robbers and bandits⁴³ and in the definition of what constituted *joan* activities⁴⁴. Furthermore, corresponding to the Chinese use of the mutual guarantee system, the *pao-chia* (保甲: the "rule of collective responsibility") applied. In an effort to preserve peace and deter robbers, both Siamese and Chinese laws did not hesitate to incriminate close relatives and friends of the wrongdoer. Articles 37 and 38 of the Siamese code made it explicit that close relatives and friends were liable to punishment, and especially that they had the duty of apprehending the fugitive or reporting his whereabouts to the authorities⁴⁵. This subsequently led to the law of the *Joan Har Sen* (โจรห้าเส้น: "five-kilometre robbery") by which all inhabitants in a defined radius from where a robbery took place were held to be jointly responsible for apprehending the wrongdoer.

- 43) In the Three Seal Code, the *Dharmasatra* outlined eight circumstances which constituted robbery and banditry, i.e. committing the act (of robbing or stealing) personally; ordering others to execute the act; acting as teacher; giving refuge to the culprit; being friends with the culprit; conspiring with the culprit; giving protection to the culprit; living with the culprit. The first three categories may be described as being involved directly in the wrongdoing (*ongkajjoan*, องค์โจร), and the latter four, secondary or complementary (*somjoan*, สมโจร). *Ibid.*, II, p. 290.
- 44) In the *Laksana Joan*, an elaborate classification of what constituted bandit activities included over ten types which fell roughly into the two categories of banditry committed in the private domain, and that committed in public places or on the road. However, what constituted a *joan* activity was not necessarily confined to the actual stealing, robbing, or snatching done either in private or public: being suspected as a *joan* or showing indications as being one could, in itself, constitute a *joan* activity (this type described in Pali as *nilummaporn joan*). *Ibid.*, II, *Pra Ayakarn Laksana Joan*, pp. 289-366.
- 45) Article 37 reads: "If the culprit robbed and killed the owner of a house, as long as he is still at large, his parents, wife, and children shall be detained until he is apprehended and tried . . ." Article 38 demands the reporting to the authorities by those who should know of the culprit's whereabouts under risk of punishment. *Ibid.*, II, p. 313.

Kabot (นฏ : "treason") constituted another major infraction of the law in the Ayudhya period. Owing to a state of constant warfare against neighbors (especially the Burmese), the *Ratchasatra* or *kabot* drew ample justification from the *Dharmasatra* in meting out 21 different kinds of grotesque execution on those found guilty of treasonable acts against the monarch and the state⁴⁶. Again, the concept of collective or indirect responsibility also applied. As in the case of the Chinese, the practice of sentencing generations of relations to die along with the culprit was employed⁴⁷, and even those who gave tacit approval to a treasonable act were also to be treated in the manner of traitors⁴⁸. The laws on treason also prescribed punishable and meritorious acts in war.

Finally, another interesting set of criminal laws is the *Laksana Vivart* or violent quarreling. Traditional Siam regarded this also as being detrimental to public order just like banditry. Article 7 of the *Laksana Vivart* made this point very clear :

Two parties who quarrel and who arm themselves with weapons such as sticks and stones, daringly waiting to jump on each other in an alley or street, shall face multiple fines if injury results or instant death if death ensues⁴⁹.

Again, the principle of collective responsibility was important in the consideration of the circumstances of quarrels. People who stood nearby two quarrelling parties and did not intervene were liable to charges of criminal negligence⁵⁰, and the master who did not make any effort to stop his slave from quarreling or using abusive language was also subject to punishment along with his slave⁵¹.

Like the Chinese, the Siamese applied the principle of "letting the punishment fit the crime" in the settlement of public disturbances. If one should hit a learned Brahman priest, Buddhist monk, one's own parents

46) *Ibid.*, II, pp. 457-60.

47) Seven generations were to be condemned to death; compare with the Chinese proscription. *Ibid.*, II, p. 463.

48) "*Laksana Kabot*", *ibid.*, II, Article 6, p. 465.

49) "*Laksana Vivart*", *ibid.*, II, Article 7, p. 273.

50) *Ibid.*, 6.

51) *Ibid.*, 13, p. 275.

or grandparents, one faced multiple punishments which were designed to make one pay adequately for the serious nature of the crime committed⁵². Also, if in a quarrel one party should cause shame to the opposite party, who happened to be a female, by stripping her of her clothing, the severity of punishment would be according to the woman's marital status: if she were married, the punishment would be heavier, as the extent of the damage suffered was deemed to cover that suffered also by her husband and/or family⁵³.

Of the *Ratchasatra* titles on civil matters, the most interesting and illuminative are the *Laksana Pua-mia* ("husband and wife", section 15), and the *Laksana Tars* (slaves). The laws applicable to the relationship of husband and wife date back to the fourteenth century, and were in force for almost 600 years. Like Chinese laws, the Siamese laws gave greater prominence to the husband, but did not necessarily disregard the role of the wife to the extent found in the Chinese laws.

From its very introduction the *Laksana Pua-mia* shows the bias in the law towards male superiority. A man was legally entitled to three types of wives: *mia klang muang* (เมียกลางเมือง: "major wife"), *mia klang nork* (เมียกลางนอก: "minor wife"), and *mia tasi* (เมียทาส: "bonded wife")⁵⁴; while a woman was legally entitled to only one husband at a time. Further, as in China, the husband had under law varying degrees of responsibility towards the various types of wives, but they were all subject to treatment as chattels, pieces of the husband's transferable property⁵⁵. The *Laksana*

52) Although hitting the above-mentioned people, especially one's parents, did not normally involve the death sentence as it did in China, Article 32 of the "*Laksana Vivart*" did prescribe a long and terrible process of punishment, viz., caning; public procession (exposure) by land and river for six days; chopping off all fingers before the offender's own eyes; six-month imprisonment; exposure by hanging by the feet for three days; tattooing the chest. *Ibid.*, I, p. 282.

53) "*Laksana Vivart*", *ibid.*, II, 33, pp. 282-3.

54) "*Laksana Pua-mia*", *ibid.*, p. 2.

55) King Rama IV of the present dynasty has been quoted as saying that in traditional law, "women are buffaloes, and men human beings". Thanin Kraivixien (ธำนิภรณ์ กรวยวิเชียร), *Sitti kong satri nai kojmai Thai* (สิทธิของสตรีในกฎหมายไทย), (Bangkok, Prime Minister's Office Press, 1967), p. 2.

had a great deal to say about the immorality of adultery, and prescribed severe penalties for the adulterous wife but comparatively lighter ones for the adulterous husband. The heaviest punishment for the "immoral" wife was "public exposure" (*prachan*, ปรากฏ) unless the husband requested the authorities to accept, in lieu, a fine payable to the state treasury⁵⁶. Again, as in China, the husband, catching his unfaithful wife with another man in an amorous act, could legally kill both of them but not one only, which would be punishable by fine. The rationale here is to protect one's honor⁵⁷. An adulterous wife who repeated her illicit performances more than twice would be subject to being tattooed on the face.

Another inequality in women's status in traditional Siam was the description under law of a class of women called *ying pessaya* (หญิงพศยา: "evil women"). Adulterous activities committed by women of "despicable" professions such as prostitution or public entertainment, as well as "habitual" adulterers, were to be punished more heavily than usual, and the male involved in these activities would be exempt from any form of punishment by the state. However, the *Laksana* made no mention of punishment by death in any circumstance.

Siamese and Chinese laws both had sanctions against incest. Chinese law prescribed incest as one of the ten most serious crimes (*shih o*, 十惡) and (Siamese law likewise) considered it a capital offence described formally as *nei luan* (內亂: "internal disorder"), an offence disruptive of not merely the human sphere, but also of the cosmic order. The *Laksana Pua-mia*, Article 36, stated the severity of this offence:

Should there be illicit sexual activities within [the close circle of] parents and children, brothers and sisters, etc., [offenders] would be put on a raft and cast off into the sea. [Concurrently]...priests were to be summoned to conduct

56) Considered as a very humiliating form of punishment, the public exposure provision called for the defendant to be dressed in a certain way, and led around populated areas by a party with gongs and cymbals calling out to the people about the crime committed.

57) "*Laksana Pua-mia*", *op. cit.*, Article 8, p. 6.

incantations to get rid of the sinful marks, so that rain might fall from heaven to benefit all. If [superiors] knew about [the shameful act] but did nothing, they would also be liable for extreme punishment⁵⁸.

Finally, this title also dealt with the conditions of marriage, and the relationship between man and woman in marriage. As in China, the principle of male dominance prevailed. Nevertheless, while the Chinese operated strictly by the idea that "the father is the son's heaven; the husband the wife's"⁵⁹, the Siamese husband did not have as complete legal control over the wife. For instance, the law allowed the husband to cane his wife if the latter was at fault, but under no circumstances could he kill her except if the latter was caught redhanded in an adulterous act. On the other hand, when the wife had wronged her husband, she must go through a ritual to ask for his pardon⁶⁰.

The *Laksanas* did specify that, if not the wife's right, at least it was the husband's enlightened obligations to maintain his legally wedded spouse. Apart from the option to spare his wife from public humiliation through public exposure in an adulterous case, the husband had to live steadily with her. A man who left his wife though she had done no wrong and did not return to her for over nine months could legally lose his wife and the nuptial possessions would automatically revert to her⁶¹. Further, when a man, being angry with his wife for one reason or another, left the house and took with him all vital possessions, and, in addition, damaged part of the house's foundation, he would be treated as

58) *Ibid.*, p. 17.

59) Niida Noboru (仁井田陞), *Chugoku no hō to shakai to rekishi* (中國の法と社會と歴史), (Tokyo, 1967), p. 77.

60) *Ibid.*, 60, p. 30.

61) *Ibid.*, 50, p. 24. Property of husband and wife in Siamese law was made up of *sinderm* (สินเดิม: "prenuptial property of both sides pooled together on marriage") and *sinsomrot* (สินสมรส: "possession acquired during married life"). Upon divorce, both husband and wife were entitled to their share of *sinderm*, and proportional share of the *sinsomrot* with the wife getting less. See R. Lingat, *Régimes matrimoniaux du sud-est de l'Asie* (Hanoi, Ecole Française d'Extrême-Orient, 1931), p. 154.

having broken the tie of husband-wife if he should not return in a day's time⁶². The wife was then at liberty to remarry. This contrasted with the Chinese law which considered the question of divorce almost solely from the male's side, e.g. grounds for divorcing one's wife were barrenness, unfiliality to one's parents, theft, and even jealousy⁶³.

The *Laksana Tars* is a good case-in-point of the type of *Ratchasatra* which traditionally grew out of the original *Dharmasatra*. The law adopted the latter's interpretation of slaves in general as being chattels or moveable property, as well as its seven-fold classification of slaves, i.e. purchased, born within master's domain from slaves, inherited from parents, given by others as a gift, rescued from danger, cared for in calamitous times, and captured in war⁶⁴.

Siamese and Chinese laws made most types of slaves redeemable except prisoners of war which were treated as *tars luang* (ทาสหลวง: "royal slaves"). It further specified the right of a person to sell himself into slavery. Husbands, parents and creditors of a person might also sell him or her as well as his or her children and wife⁶⁵.

Nonetheless, the law did give enslaved individuals some protection. Serious injury or death inflicted on the slave by the master was explicitly prohibited by law, which permitted the master only to go so far as to cane his slave to teach the latter a lesson⁶⁶. The law required further that the redemption value of a slave be equitable with the original price for which he was sold: a slave was entitled to redeem himself at what his

62) "*Laksana Pua-mia*", *loc. cit.*, 51, pp. 24-5.

63) Niida Noboru called this the husband's prerogative to divorce which was recognized by Chinese law. Niida Noboru, *Chugoku no hō*, p. 91.

64) "*Laksana Tars*", *ibid.*, 1-2, pp. 72-4. For a short discussion on the Chinese slave institution, see Niida Noboru, *Chugoku no hō*, pp. 35-8.

65) "*Laksana Tars*", *ibid.*, ch. 1, pp. 71-2. For the English version, see Samuel Smith, *Siamese Domestic Institutions: Slavery* (Bangkok, 1880), p. 1.

66) "*Laksana Tars*", *ibid.*, 6, p. 76. However, Art. 1, ch. 42 qualified that male or female private slaves whose masters had paid for them above and beyond a certain amount set down by law could not expect protection from the State, as their fate lay entirely in the hands of their master. See p. 95.

master had paid for him⁶⁷. In addition, the wife of a slave was given due protection. The "master" (*chao nger*⁶⁸, เจ้าเงาะ) could not legally violate the slave's wife; the penalty was freedom for the slave and compensation for his violated wife⁶⁸.

But the most significant protection given under the law to the slave was the latter's right to file court suits against the master, provided that the slave had arranged for his redemption by paying back the bond he owed to the *chao nger*. The law further stated that when the slave had acquired the necessary sum to redeem himself, the *chao nger* must consent to let him go⁶⁹.

Similarly to the Chinese case, offspring of slave parents born in the *chao nger*'s domain were to be treated as slaves (redeemable). This principle of enslavement of non-contractual parties also applied to the case in which a freeman fathered a slave child born in the master's but the redemption value of such a slave child would be less than the case where both parents were slaves⁷⁰.

The area of *Ratchasatra* legislation concerning the administration of justice in a sense represents a composite of Ta Ch'ing Hui Tien (大清會典: "*Administrative Statutes of the Ch'ing*") which laid down the structure and functions of the state's departments, and the Ta Ch'ing Lu Li. Due to the very diverse and complicated nature of the mechanism of administration of justice and the elaborate procedures adopted in the state's dispensation of justice, almost all aspects of state administration were somehow tied in, directly or indirectly, with the question of litigation.

As seen above, in the days when the state was still small and uncomplicated, the monarch was personally in charge of all administration, including the administration of justice. Soon, as administration

67) *Ibid.*, ch. 51, p. 99.

68) "*Laksana Pua-mia*", *ibid.*, ch. 42, p. 19.

69) *Ibid.*, ch. 85, 86, p. 115.

70) *Ibid.*, ch. 97, 100, pp. 120-1.

grew more complex, the monarch had to delegate his judicial authority. Hence there developed an elaborate system of justice administration which lasted for over three centuries.

According to the *Laksana Sakdina Fai Polaruan* (Art. 6) instituted in the reign of Trilokanart, there were 22 law courts each with specific jurisdiction within the capital of Ayudhaya alone⁷¹. Such a system of court decentralization was based on an ingenious judicial scheme for the separation of the advisory and executive authorities; the rationale being that the monarch, though having to delegate his judicial power, still wished to ensure the proper administration of justice carried out on his behalf. The system was supposedly effective in checking on the officials who carried out his delegated authority, and, at the same time, ensuring justice to his subjects. Nevertheless, naturally at the apex of judicial power was still the monarch himself.

At the capital as well as in the provinces, courts were classified into the court of first instance and the court of appeal, or second instance, and these governed most classes of society except the monks and the nobility. At the head of the first-instance court system in the capital was the department of the *Krom Wang* (กรมวัง: "Department of the Palace") with its *Krom Rub-fong* (กรมรับฟ้อง: "Litigation Station") appointed by the king to receive written suits. The station was staffed by a body of Brahman priests, called *luk khun* (ลูกขุน) which reviewed the suits on the basis of the *Dharmasatra* and recommended if they had sufficient substance in law to be brought to trial⁷². The recommendations were then passed on to another committee, the *Pra Racha Pichai* (พระราชพิชัย) which decided under the jurisdiction of which of the twenty-odd departmental courts the case should fall⁷³. The departmental

71) *Ibid.*, I, p. 179.

72) Wigmore observed that the role of the Brahman priests was likened to that of the Jewish rabbis who were also attached to the king's court and interpreted legal treatises based on the sacred books (Wigmore, *op. cit.*, pp. 242-52).

73) For instance, cases involving daring robbery, murder, practising sorcery, and even abortion fell under the jurisdiction of the *Vieng* court (in the capital) and the *Kwaeng* (แขวง: "district") court (in the provinces); cases involving destroying animals or crops were to be handled by the *Krom Na* court, and so forth. See "*Pra Tammanoon*", *ibid.*, pp. 52-89.

court's sole function was to hold proceedings necessary to gather all material evidence and to make a summary of the case before it. The findings were then returned again to the Brahman *luk khun* ("jury") who decided the appropriate verdict. If the sentence should be a serious one, the king's approval was necessary before it was executed by yet another committee (attached to the *Krom Vieng*, "Department of the City") called the *Pra Krai Si* (พระไกรศรี)⁷⁴. In the outlying districts, a committee of senior officials took the place of the *luk khun* in the capital, with the various district departments (more or less identical with their city counterparts) taking on the task of the trial proceedings.

The courts of second instance at the capital and the provinces were called the *Sarn Luang* (ศาลหลวง) and *Sarn Na Rohng* (ศาลหน้าโรง) respectively. Appeals (*dika*, ฎีกา) could be made against misjudgments by judges or other improper proceedings in court—primarily on the principles of the *Dharmasatra*, against the misconduct of the judge or the improper admission of evidence⁷⁵. *Dikas*, in the case they were filed in the capital, must be submitted to the monarch, while in the outlying areas, the ones who heard the *dikas* were the provincial rulers with authority delegated by the king.

Among special courts established outside of the regular court system for specific purposes and mentioned in the *Pra Tammanoon*, several merit one's attention. A special court, the *Sarn Raj* (ศาลราช), dealt exclusively with infractions of judges who had been accused by the people in the capital—with its counterpart in the provinces as well. The duty of *Sarn Khun Prachaseb* (ศาลขุนพระชาเสบ) was to deal with officials' dishonesty and violation. In addition, a *Sarn Ayachak* (ศาลอาญาจักร)

74) Direk Chaiyanam (ดิเรก ชัยนาม), "Vivatanakarn kojmai Thai" (วิวัฒนาการกฎหมายไทย), *Dulapaha* (ดูลปะหา), XIII, 1 (January 1966), pp. 19-20.

75) Pra Vorapak Pibul, *op. cit.*, pp. 221-2. Judges who were allegedly partial to either party, distorted written statements, threatened litigants, imprisoned or detained litigants beyond necessity or without a just cause, or witnesses who falsified testimony, were some bases for a just appeal. Nevertheless, it was understood that if an appeal were later found to have no foundation, the appellant faced criminal actions.

was established to deal with "litigation tricksters" like the Chinese *sung-kun* (訟棍: "professional litigants") who incited litigation, made false representation in court, and represented litigious parties for a fee⁷⁶.

As far as trial procedures were concerned, Siamese judicial administrative laws were also rather detailed. Prominent among the *Ratchasatra* legislation on this matter were chapters dealing with the questions of litigation basis, witnesses, and methods of arriving at the truth.

The *Laksana Rub-fong*, promulgated quite early in the Ayudhayan reign (in A.D. 1356) set the basis for litigation which was to be instituted in the courts of the monarch. It is of interest to note that, despite the monarch's determination to give justice to all his subjects, qualifications were made at the very start of the *Laksana* which excluded certain types of people from filing suits and initiating litigation. Nevertheless, it should be noted that such restrictions were placed mostly on those with some type of physical limitation, the seven categories to be excluded being the insane, the deaf, the crippled, the blind, the beggar, the senile, and the mentally incompetent or "babbling infant"⁷⁷. Furthermore, the *Laksana* was quick to point out that suits filed by persons neither on their own behalf nor on behalf of their close relatives such as grandparents, parents, spouse, brother or sister, uncle or aunt, would be rejected, and if found to be guilty of any intention to disrupt the peace, such litigants would also be fined⁷⁸.

Finally, the law also required that all writs initiating litigation must bear the full name of the person(s) filing them, or the party submitting them would be punished⁷⁹. This is in line with the Chinese laws against anonymous accusations.

76) The *Pra Tammanoon* specified about 30 different types of special courts, but did not elaborate on questions of jurisdiction, or their relationship to the regular courts. See *Kojmai Tra Sam Duang*, I, pp. 52-89.

77) Praya Nitisart Paisarn, *op. cit.*, p. 543.

78) *Ibid.*, Art. 1.

79) *Ibid.*, pp. 544-545.

The *Laksana Rub-fong* prescribed circumstances under which litigation could be stopped and discontinued—e.g. complainants and the accused purposefully missing appointments in court, complainants or the accused attempting to suborn witnesses, and so forth⁸⁰. It also specified minute administrative points which could nullify or void a suit, all of which were part of the king's efforts to ensure the smooth operation of the machinery of justice administration, without running the risk of being overburdened with improperly initiated cases or suits.

The legal provisions on witnesses or the *Laksana Payarn*, promulgated in A.D. 1351, served as a guideline for the courts in dealing with witnesses. They were based upon the *Dharmasatra's* emphasis on the role of witnesses in bringing out the truth or helping clear up doubts. In this respect, Siamese law seemed to see more importance in witnesses than did the Chinese where little regard was actually paid to direct statements; what apparently seemed more vital was wringing out the truth from litigants than taking witnesses seriously⁸¹.

The law excluded 33 types of people from appearing as witnesses in litigation because of physical impediments or intellectual incapacity. The list ranged from slaves, children under seven, elders over 70, dancers, beggars, the deaf and blind, wizards and witches, quacks, executioners, fishermen, vagabonds, madmen, prostitutes, gamblers and thieves, and so forth⁸². The *Laksana*, in addition, followed the *Dharmasatra* in classifying people who were eligible as witnesses into three kinds whose testimony would bear varying weight. Those classified as *tippayarn* (ทิพย์พยาน, from *tippa*: "superior", *payarn*: "witness") being monks, Brahman priests, learned scholars, nobility, and so forth, would seem to give the weightiest testimony; the *udorn payarn* (อุดรพยาน) i.e. merchants, farmers, would rank second; and the *udripayarn* (อุดริพยาน), relatives of a litigant who cited them, for example, would be deemed as the least credible of the three groups. However, the Siamese law on witnesses

80) *Ibid.*, pp. 549-51. About 20 instances were mentioned.

81) Ernest Alabaster, *Notes and Commentaries on Chinese Criminal Law* (London, Luzac and Co., 1899), p. 16.

82) Praya Nitisart Paisarn, *op. cit.*, pp. 106-7.

did not merely take this triple classification as determining the value of a witness's testimony; circumstantial considerations were also important. Hence, a witness who was at the scene would be worth more than one who had second-hand information, and so on⁸³.

The practice of swearing in witnesses was also adopted by the Siamese. The *Laksana* described the oath administered to witnesses as a long and elaborate curse on perjurers including the prayer that should the particular witness suffer one way or another within three to seven days after taking the oath, the litigant party who cited him stood to lose his case automatically⁸⁴.

Furthermore, law required that judges follow witnesses' testimony very closely. Ayudhayan courts are known to have practised the issuing of subpoenas, and as for those who had the privilege of not being compelled to appear as witnesses in court, such as monks and nobles, the judge must go to them for their testimony⁸⁵. By traditional legal definition, such people, especially monks, were *mokapayarn* (โมกะพยาน: "witnesses who are beyond the status of witnesses", i.e. witnesses beyond reproach); their testimony would be most likely to be held accurate or truthful.

The most fascinating section of Siamese laws concerning methods and procedures for arriving at truth in litigation (known collectively in Siamese as laws of the *vitisabanyat* (วิธีสืบญัตติ) is the *Laksana Lui Nam Lui Fai* ("trial by ordeal"). The law, following the tradition of the *Dharmasatra*, prescribed that when witnesses' testimony was unclear, or the judge could not ascertain the truth in the trial, the litigant parties could be made to, or could themselves request to, use trial by ordeal to determine which side held the truth. The rationale behind this was that

83) Luang Suttivartanapud, *op. cit.*, pp. 117-23.

84) *Kojmai Tra Sam Duang*, Art. 10, p. 82.

85) Pra Vorapak Pibul, *op. cit.*, pp. 259-60.

each party should prove (*pisud*, พิสูจน์ from the Sanskrit *visudhi*: "purity") himself through a process of purification or purgation by fire or water⁸⁶. For it was held that truth would be most likely to be on the side of the party which survived the ordeal better. The parties involved in the test were further required to take extremely lengthy oaths which could easily fill three printed pages, invoking all the gods to help the party who spoke the truth by supporting him successfully through the ordeal and causing the one who spoke falsehood to fail⁸⁷.

Nevertheless, trial by ordeal was normally reserved as the very last resort of the court when every other means had failed. Siamese law was explicit about circumstances where this type of a test would not be allowed, such as when statements by litigants and witnesses were in contradiction, or when one litigant did not have any witnesses while the other did.

IV. The Operational Philosophy of Siamese Law

Partly as a result of the Siamese adaptation of the Hindu code of law, Siamese justice came to resemble Chinese in many respects. Yet, amidst the seeming similarities lay a degree of difference in the rigidity of the legal model. The Siam model, far from being completely conformative to the highly absolutistic Indian legal system, was, in fact, more of a hybrid which retained a great deal of the informality inherent in the Siamese social structure.

86) *Laksana Lui Nam Lui Fai* prescribed seven forms of trial by ordeal: drinking molten lead; swearing; walking on fire; diving; swimming; swimming from one bank to another in a race; and testing by candles. See Praya Nitissart Paisarn, *op. cit.*, p. 567. Captain Gerini, in the service of the Siamese king, wrote a stimulating account on the subject in which he tried to show the correlation between trial by ordeal in traditional India and traditional Siam. See Captain G.E. Gerini, "Trial by Ordeal in Siam and the Siamese Law of Ordeals", *Royal Asiatic Review*, in two parts (IX, X, 1895), pp. 415-25 and 157-74, respectively.

87) For an example of the oath administered before the ordeal by diving, see Praya Nitissart Paisarn, *op. cit.*, 574-77.

Nevertheless, law in both Siam and China was for the purpose of regularizing (and not merely regulating) society. The Siamese term for "law", *kojmai* (กฎหมาย), means stipulated standards and regulations to be enforced, while the Chinese term for "law", *fa* (法), denotes that which smoothens out like the surface of water⁸⁸. Both connotations emphasize a sense of passivity.

Consequently, in both societies, the positive law, applicable to the people, presupposed the prerogative of a monarch acting as the principle human agent of natural law which constituted the absolute law of the universe. With this concept grew the acceptance and acknowledgement among the people, ruler and ruled alike, that prescribed rules or standards must necessarily be observed if only for the sake of the maintenance of the harmony of the human and natural spheres.

This explains the need to make law penal. As the practical expression of natural law, positive law could not be taken lightly: any violation or transgression, no matter how mild or severe, must be regarded as disruptive. This served as the basis for the Siamese judicial attention to the *munlamert* (มูลละเมิด: "treatises on transgression or violation"), punishable always by corporal means. In Chinese, the concern was even more prominent with provisions for the so-called *shih o* ("ten crimes") being listed at the very beginning of the penal code of the Ta Ch'ing Lu Li, indicating clearly the concern to try to prevent any possible disruption of natural harmony⁸⁹.

88) Liang Ch'i-ch'ao (梁啟超), *Chung-kuo ch'eng-wen fa p'ien chih chih yen-ke* (中國成文法編制之沿革), (Taipei, Chung-hua 中華 Bookstore, 1957), 1st printing, p. 70. Liang stated that *fa* (法) may also be equated to *ch'iang-chih* (強制): "arbitrary regulations".

89) The provisions of the *shih o* are found not only in the penal code of the Ch'ing Code, but in all the other codes as well, such as the code for the Imperial Clansmen, the Chung-shih Chieh-lo Lu Li.

In this respect, punishment for any transgression was meant to be pedagogic⁹⁰, and, consequently, corporal. The operation of law was deemed to be on a vertical rather than a horizontal plane, in the sense that personal rights or *beneficium separationis* were secondary to those of the larger whole. Despite the fact that law was considered essentially enmeshed in the whole of the social sphere in both Siamese and Chinese societies, however, there were differences in the degree of intensity with regard to the interpretation of the association. The Chinese view of natural law seemed to conceive it more in its absolute abstraction, in its ethical-moral norms, *li*. Consequently, Confucianists were inclined to interpret *fa* as being one with the *li* and inseparable, while in the Siamese case, the association was given a more personalized flavor, reflecting the Siamese integration of the Indian ethical-moral concepts into the indigenous philosophy of life. (Siamese have been noted for their relatively uncritical philosophy of life and their inclination to an uncomplicated life-style; this tendency leads some people to identify it as habituation to servility.)

Since law with its penal characteristics was intertwined with the concept of pedagogy (for the maintenance of social and universal harmony), its operation was naturally based upon what Derk Bodde calls the "principle of differentiations". By this is meant that law and its dispensation was made to conform with varying socio-political considerations. In other words, justice was interpreted on a scale operating according to status, means, motivation, and circumstance, contrary to modern concepts of justice as *theoretically* functioning in a uniform standard or mode⁹¹.

90) The Chinese term *hsing* (刑) may be defined as "shaping process" or that which shapes. Chou Ta-ts'ung (周大從), *Fa-lu shih-hsiang ch'an-wei* (法律思想識緯), (Taipei, Chung-yang wen-u kung-ying 中央文物供應, 1953), p. 46.

91) Derke Bodde and C. Morris, *Law in Imperial China* (Cambridge, Harvard University Press, 1967), pp. 29-31.

Both Siamese and Chinese laws took into consideration differentiation of status in society. Under Chinese law, the *pa i* (人識: "eight privileged groups", including nobility, and officialdom) were placed explicitly above ordinary legal reproach. Normally they were above arrest, investigation or punishment without the prior approval of the emperor; and, further, they could have corporal punishment commuted to fine or confinement. Above all, the *pa i*'s superior status worked in their favor in legal cases involving lower classes: in the case of one of the *pa i* wronging a person of an inferior status, the former's sentence would be lighter than in a case involving equals; if a *pa i* was wronged by a person of an inferior status, the latter would be punished more heavily than in a case involving equals⁹².

Under Siamese law, the worth of people was also differentiated systematically. The *Laksana Sakdina Fai Polaruan* (civilian ranking according to the *sakdina* system) defined people's standing according to the number of *sakdina* marks they held (i.e. the size of cultivable land a person was entitled to) from the highest rank of royalty to the lowest (freeman). As in the Chinese case, a person with a higher *sakdina* grade, wronged by another with a lower *sakdina* one, was entitled to compensation comparable to his status, so that the lower ranking offender would be punished in proportion to that befitting the higher ranking complainant—i.e. more heavily than in a case involving equals. However, contrary to the Chinese model, should the person with superior *sakdina* marks be the party in the wrong, the sentence was also made compatible with his status—and not in accordance with the inferior ranking of the party wronged, as in the Chinese penal law⁹³.

92) Sir George Staunton, *Ta Tsing Leu Lee* (London, Straham and Preston, 1810), pp. 5, 8, 332-3, etc.

93) A person of *sakdina* marks of five *rai* (2.22 acres) wronging another of *sakdina* marks of ten *rai* (4.44 acres) would be required to pay a fine twice as heavy as he ordinarily would have to one with the same *sakdina* marks. Nevertheless, if the five-*rai sakdina* person was the victim of the ten-*rai* one, the former was entitled to a compensation compatible to the latter's status—the rationale being that the higher ranking one was, the more careful one had to be in avoiding wrongdoing. See Pra Vorapak Pibul, *op. cit.*, pp. 80-1.

In addition, Siamese law went further than Chinese law in differentiating between age groups and sexes. Both laws recognized the unequal standings of people based on such criteria, but the Chinese seemed to place greater importance on the differentiation of people according to their social status and rank. The Siamese, however, also paid considerable attention to the individual with regard to his or her physical endowments. Consequently, assessing the worth of an individual for the purpose of legal settlements, *Laksana Kromsak* gave due consideration to his age, strength, usefulness in general, in addition to his ranking as defined in *Laksana Sakdina Polaruan*. The general rules were that for women, their prime years were considered to be between 21 and 30, while for men 26 to 40 was when their monetary worth was at its peak. Elders above 70 years old were worth as much as infants below 12 months old. Furthermore, as to be expected, the worth of women was in all instances less than that of men, especially in the prime years when the difference was greatest. The rationale behind this lay in the supposition that men were more physically capable and therefore likely to be more productive. But, then, all these assessments were based on the assumption that there were no serious physical defects—for which a scale of deductions was also worked out⁹⁴.

The "principle of differentiation" in both Siamese and Chinese laws also applied to the question of the proper punishment for specific injury or extent of damage, especially physical wounds, inflicted on what type of a person of what rank. Both laws specified and differentiated degrees of punishment for injury ranging from bruises to broken arms or legs, as

94) There was an entire section called *Prommatan* (พรหมทาน : "compensation to the wronged") in the *Dharmasatra* which was utilized in the Siamese code. See Pra Vorapak Pibul, *op. cit.*, pp. 77-9. For details in Chinese law, see Ta Ch'ing hui tien tse li (大清會典則例 : "Ch'ing administrative law, with precedents"), section 808, on *tou-shang* (鬪傷) in the Hsing-pu (刑部: Board of Punishment) collection.

well as the areas of the body hurt⁹⁵. In addition, both laws had provisions concerning the nature of offenses, whether they be "private" (*ssu*, 私) or "public" (*kung*, 公). Needless to say, offenses considered as "public" in nature would face sterner sanctions than those of a "private" nature. In the Siamese case, as mentioned, some types of severe corporal punishment were reserved for those officials committing "public" crimes in the penal provision known as the *tohd sib prakarn* (โทษสิบประการ: "ten forms of sanction").

In their seemingly complicated and complex fashion, both Siamese and Chinese laws purported to make adjustments to all factors in human society to make them conform with the accepted natural order. Hence, they stressed the necessity to treat all legal circumstances as "public", blurring the dividing line between the private and public treatment of law. For instance, in Siamese law, an unfilial son was legally recognized as a social misfit, and, therefore, was of reduced legal capacity being one of the 33 categories of people ineligible as a witness. While it was acceptable for a man to have as many wives as he pleased without being legally considered adulterous, a woman who chose to associate with more than one man at a time was regarded as an "evil woman" (*nang pesaya*) and hence a public criminal⁹⁶.

Under the Chinese legal conception, the private sphere was made even less divisible from the public. Provisions of the public law applied to an intricate web of familial relationships and made any deviation a

95) Both Siamese and Chinese laws also observed the provision that if the nature of injury should worsen after a specific period (both stated 15 days), then the new development could not be taken into consideration. In other words, if a person should die from physical injury sustained after 15 days, no charge of homicide could be brought against the person who had inflicted the fatal wound(s). See "*Laksana Vivart*", *ibid.*, and *Huang-ch'ao cheng-tien lui-ts'uan* (皇朝政典類纂), section 401, *Hsing-pu* (刑部), Ch'eng-wen (成文) edition, p. 11561.

96) Siamese law prescribed that the minimum punishment for a young adulterous wife was "public exposure" (*pracharn*), while for an older wife the usual punishment was to send her to feed royal elephants in elephant compounds.

serious public crime. Mourning relationships (*szu ma*, 思麻) became an important basis for determining whether a small civil infraction, such as an oral insult or a minor theft, could lead to criminal charges and severe public sanction. Consequently, it was difficult, or actually not meaningful, to attempt to separate the private from public spheres in law.

In the purely public realm where relationships were based on large group interactions, the law was clearly penal and pedagogic. In addition to treating robbery and banditry as one great source of public disturbance, Siamese and Chinese laws included such offenses as streetfighting, arson, and opium smoking as corollaries to robbery or banditry. Such were punishable by crippling or maiming, and, naturally, beheading. "Guilt by association" and "collective responsibility" were two clauses often invoked to show great concern for public peace and order. Siamese law on the *joan* ("robber", "bandit") made relatives and friends automatic suspects or culprits, who had an obligation to apprehend the offender(s) at large. The law even required that whoever discovered a slain man or head of cattle left at his doorway was also obliged to inform the authorities and join in the search for the robber⁹⁷.

With all this said about the harsh attitude that Siamese and Chinese laws maintained in their treatment of almost any crime as a public crime (and, as a matter of fact, the penal section of the Ch'ing Code listed over 3,900 crimes as public in nature and punishable by corporal means), the laws nonetheless operated with circumstantial flexibility⁹⁸. In the Chinese case, corporal punishment in many instances was commutable to fines, especially when the state was in need of cash for a public project; in death sentences, sometimes monetary compensation was permitted as replacement, but, in most cases, the device of "punishment after the assizes" meant the condemned offender at least had an

97) M.R. Seni Pramoj (หม่อมราชวงศ์เสนีย์ ปราโมช), "Kojmai Krung Sri Ayudhaya" (กฎหมายกรุงศรีอยุธยา), *Dulapaha* (ตุลพาห), (July 1967), p. 45.

98) Pao Chao-hsieh, *Government of China (1644-1911)*, (Baltimore, Johns Hopkins Press, 1925), p. 216.

opportunity of escaping ultimate decapitation or strangulation. In the Siamese case, law provided no identical or similar clause as the "assizes", and justice was often known to be quite swift; nevertheless, especially in times of national emergency or difficulty, condemned bandits or other wrongdoers were given mitigated sentences, and they in turn became feeders of royal elephants or royal slaves (unredeemable).

Siamese and Chinese monarchs, mindful of the need for harmony and order, professed to be ruthless in ensuring conformity from their subjects. Nevertheless, laws bearing severe sanctions were meant to be greater deterrents, reflective of the rulers' image as a benevolent paternal figure. This tendency is evident in the way law was written in the Three Seal Code of Siam, where in every section of the law there was a justification, or even some sort of an apology, for the issuing of it: that such was necessary in order to enforce peace and order. This inclusion, written in form of a citation from the *Dharmasatra*, rationalized that law was not merely a ruthless instrument of the ruler. Thus, it was made clear that law was not really meant to be utilized or exercised in the everyday life sense, but more as an abstract entity, constantly reminding one to conform to proper conduct.

However, every once in a while, the law became tested, which, in turn, set the cumbersome machinery of the administration of justice into motion. S. van der Sprenkel comments that traditional Chinese justice administration was no vehicle for the "expression of aspirations", nor was it an engine of "social change"⁹⁹. That is not at all surprising, when one considers justice administration in Siam and China in light of the above philosophy of law which stressed control over protection, deterrence over implementation.

As mentioned above, the Three Seal Code devoted considerable space to the question of the proper administration of justice (on judges, manner of trial, means of extraction of the truth, and so forth) incorporating the *Dharmasatra*, which represented divine admonishments for

99) S. van der Sprenkel, *Legal Institutions in Manchu China* (London, Athlone Press, 1966), p. 129.

justice. In addition, there was absent from the Siamese model the intensity of moral stigma attached to resort to public litigation as was the case of China: that litigation or resorting to settlement in a public law court was only befitting the "mean" (*chien*, 賤) and not the "noble" (*liang*, 良). Nevertheless, it must still be qualified that in Siam and China, settlement in court or by administrative justice was never encouraged, and was, at best, a necessity.

Both Siamese and Chinese systems of administration of justice had enough built-in complications and shortcomings to cause serious ineffectiveness, and, perhaps, this was all unconsciously intentional. As the states grew more bureaucratic and impersonal, the traditional role of the monarch as keeper of justice became diluted, and the sense of benevolent personal justice weakened correspondingly. In writing, at least, Siamese administration of justice was comparatively specialized, as was the Chinese, though not to the latter's degree. Within such specialization lay a gamut of formalities in procedural matters which made for an excessively cumbersome structure of justice administration.

Trial procedure in Siam, therefore, bore remarkable resemblance to that in China, which usually meant that litigated cases generally ended in great sacrifices by both contending parties. In an ordinary suit, as in the Chinese case, a written plaint must be made on the complainant's behalf by the court clerk (in China, the *yamen*, 衙門: "clerk") before the suit could be official¹⁰⁰. As a rule, after the case was accepted, both contending parties must appear before the judge of an appropriate court and were detained throughout the duration of the trial, unless they could submit a bond or produce a guarantor, or unless they were of a certain social ranking which would permit them to send a representative to the court instead of having to appear personally. Although the Siamese stressed the role of witnesses more heavily than the Chinese, the former did not differ much from the latter in their readiness to resort to

100) The rationale was to avoid anonymous accusation, considered to be harmful to public order and morality. For the Siamese case, refer to above. For the Chinese case, see also Derke Bodde and C. Morris, *op. cit.*, p. 400.

torture as a means of extracting confession, especially in a serious case involving death; the difference, indeed, might just be one of degree¹⁰¹.

Forms of punishment prescribed in Siamese law were just as harsh as in the Chinese. As mentioned, jail terms were rarely meted out; the main purpose of the jail, after all, was to detain litigants while the trial was in process¹⁰². Intended to be pedagogic, sentences of various types were often executed in public¹⁰³.

Taken as a whole, traditional Siamese justice administration faced similar problems to the Chinese. The complicated court system with its multitiered division of labor appeared capable of dispensing impartial justice; in actual practice, it caused confusion and produced tendencies towards corruption. One prominent Siamese legal administrator and historian, Chao Praya Rajburi Direkrerk (เจ้าพระยาราชบุรียะเรศ, Prince of Rajburi), commented at the turn of the twentieth century that the system of dividing the legal process between judges, assessors, and interpreters, while on the surface giving an assurance of the working of a system of checks and balances, actually made for difficulty in reaching decisions. Brahman priests, who did not participate directly in the trial process, must rely solely on written statements of judges' opinions submitted to them. Furthermore, the elaborate process entailed in the trial caused considerable delay in time and sizeable expenditure. Jails were filled with disenchanted litigants, and there were also problems with material witnesses who eventually grew disinterested and dropped out of sight. For a country several times smaller than China, the problem of backlog was, nevertheless, comparatively serious¹⁰⁴. Moreover,

101) Bishop Pallegoix, *Description du Royaume thai ou Siam* (Paris, 1854), p. 52.

102) Sometimes litigants were detained in chains in the open space under the private residence of the judge instead of in an official jail.

103) For a vivid description of Siamese public execution, see *Chung-kuo yü Hsien-lo* (中國與暹羅), (Shanghai, 1924), pp. 7-10.

104) Prince Rajburi Direkrerk (พระยาราชบุรียะเรศ), *Pra racha banyart nai Pajubun* (พระราชบัญญัติในปัจจุบัน), I (Bangkok, 1907), pp. 168-9.

expenditure must be incurred both by way of legitimate official fees for litigation as well as to line the pockets of officials from the Brahman priest down to the court clerk and even the jailer.

In Siam, the king, bearing the divine mission of ensuring justice to all mankind (to assess right or wrong, to uphold the righteous and the truthful, to acquire riches through just means, and to maintain the state through just means) in theory represented the actualization of morality in the form of law¹⁰⁵. This concept, indeed, made law not only the center of effective power, but also a prestigious source of justice. This seemingly ran counter to the fundamental Chinese concept of law, expressed in the Book of Rites as: "Li does not extend to common-folks; *hsing* does not reach gentlemen" (*Li pu hsia shu-jen; hsing pu hsia ta-fu; 禮不下庶人刑不下大夫*). However, Siamese law and Chinese law in the operational sphere were at one in conceiving that the law was to be regarded rather as a model than as an independent means for attaining private justice. Knowledge of the law and the administration of justice was to remain in the sphere of officialdom, and the public which ventured forth to seek justice must necessarily be placed at the mercy of the officials.

Both the Siamese and Chinese monarchs required that all legal cases involving capital punishment be brought to their attention for their approval. In addition, a complex judicial system was instituted to handle all kinds of cases. Nevertheless, a safe assumption may be that as the states grew more bureaucratic, they became more intolerant of litigious practices among the people, and instituted means to curb such tendencies. The explicit mention of the "collective responsibility" and "informal conciliation" clauses in both Siamese and Chinese laws revealed the attitude that justice, in the large part, must involve the initiative of the people in maintaining social peace and order, and formal legal means should be sought only after the failure of informal ones (for instance, through

105) Prince Dhani Nivat, "The old Siamese conception of the monarchy", *The Siam Society Fiftieth Anniversary Commemorative Publication* (Bangkok, The Siam Society, 1954), p. 163 ff.

conciliation in lesser cases). In the Chinese case, where there were distinct extralegal institutions (family, clan, guild, etc.) which could deal with the settlement of disputes or other kinds of minor conflict, the law tacitly expected the use of informal means of conciliation to the furthest possible extent. In the Siamese case, where there were no such distinct bodies for extralegal settlement, the law stated indirectly that litigants must seek assistance from the heads of their respective proto-military groupings before coming before the state's judicial machinery¹⁰⁶. And even then, it was prescribed that in most minor cases judges ought to resort to conciliation to avoid lengthy and unnecessary trial proceedings¹⁰⁷.

V. Conclusion

This comparative study of traditional Siamese and Chinese legal concepts so far has revealed an interesting conglomeration of facts and ideas which may be conceptualized under the following headings.

(a) **The notion of "togetherness".** "Togetherness" was very much part of the law in Siamese and Chinese societies. The Siamese lived under a hierarchy which was a mixture of master/servant and parent/son systems based upon servitude, and, to an extent, coercion. The various clauses in the law made this a mandatory requirement, but at the same time it served as an acceptable *quid pro quo* as a collective arrangement. In traditional China, the law stressed this tendency to an even greater degree. It recognized the family as the primary legal unit governing the status of the individual; as a rule, the well-being of the collective whole was above that of the individual. The spirit of Siamese and Chinese collectivism, hence, differed in degrees of intensity as well as of orientation. The Siamese experience can be said to be more loose or pragmatic, reflected in the direct relationship between the self and the state as represented by the king, while in the Chinese instance, collectivism

106) The law required that anyone who chose to initiate litigation must be duly registered with the head of a grouping and must obtain his permission. *Kojmai Tra Sam Duang*, I, ch. 10, p. 298.

107) *Ibid.*, II, ch. 45, pp. 400-1. Only in criminal cases must the judge resort to formal trial and result made known to the king.

meant more than pragmatic measures; it was more deeply rooted in the culture and psychological makeup of the Chinese. From the top down, the Chinese polity was served by an intricate web of relationships in which clarity and intensity were not the mere dictate of temporary convenience or expediency.

All this, however, does not negate the tendency of "togetherness" in both the Siamese and Chinese societies. For despite the differences, the two legal models, in the final analysis, were still founded on some type of an ethical-moral scheme purported to be of a divine origin—notwithstanding divergences of interpretation of the proper relationship between law and morality in the realm of practice.

(b) A unique combination of "universalism" and "particularism". Law in the Siamese and Chinese conceptions had a twofold operational definition. It represented both the ideal and the manifestation of it at the same time. Concerned with what the Chinese called *wang-tao jen-chih* (王道人治: "heavenly way and human governance"), Siamese and Chinese legal treatises placed a premium on harmony between the human and the natural (ethical and metaphysical) realms, with the monarch holding these two spheres of universalism and particularism together. Hence, law was treated as an instrument for preserving such a relationship, with the monarch upholding it and ensuring its proper functions.

Again, underneath this shared assumption of the two concurrent characteristics of law, lay a difference in the degree of abstraction between the Siamese and Chinese models. The Chinese monarch, ruling over a vast empire, conceptualized himself in a more universalistic fashion, and his role as dispenser of universal justice more abstractly, than the Siamese king, who, of course, ruled over a comparatively much smaller domain. In Siam, the king was more inclined to take his "lord-of-life" or fatherly image more literally, and was consequently able to resort to more concrete legal provisions in the administration of justice.

Law became a more personal and substantive norm—though it still very much reflected the abstract ideal of the natural order. Usually more personally involved in governmental processes than his Chinese counterpart, the Siamese monarch was more apt in interpreting lofty, idealistic legal principles in a more concrete fashion: one may instance the *Ratchasatra* provisions, which though essentially based on the abstract ethical-moral ideals of the *Dharmasatra*, were basically pragmatic in operation. In short, one finds in the Siamese legal treatises fewer tendencies towards abstract ethical considerations and more towards concrete and immediate requirements than in those of the Chinese. As a result, even the legal language sounds more direct and practical in the Siamese texts.

There is no denial that Siamese law had been greatly influenced by moral-religious influences of Buddhism and Hinduism. But with the flexible and “down-to-earth” philosophy of the Siamese, the blend of universalism and particularism in the law produced a rather pragmatic legal framework.

(c) **Absence of clear-cut distinctions between public and private laws.** Both Siamese and Chinese legal philosophies were predicated upon the notion of protecting the prerogatives of the few and, at the same time, upholding order in society at large. In this respect, law was understandably a prohibitive tool. Both systems recognized social gradation and based the operation of law on the basis of proportional retribution. Law upheld the principle of propriety, as the individual's worth was determined in accordance with his social standing. Consequently, one's actions were almost always directly or indirectly tied in with one or more aspects of society, and law itself was made to operate principally in this public sphere.

(d) **Comprehensiveness of coded law.** Both Siamese and Chinese laws developed through the ages by accretion, and came to cover a comprehensive range of human conduct and behavior (including minute and seemingly insignificant details). Traditional legal pronouncements

were, in most instances, predictable, being specific in definition and description in contrast to the modern practice of keeping law vaguely worded; they represented the sum total of the operational values and standards, as well as of applicable customs and attitudes, of society. In this regard, law served not merely as a prohibitive regulation with punitive sanction, but also as a description or elaboration of societal norms and conduct. (Consequently the legal treatises can make for interesting supplementary literary reading.)

(c) **Corruptibility of the system.** Operating, as they did, in a setting of monarchical absolutism, both the Siamese and Chinese legal systems were inevitably susceptible to abuses, despite their presupposed foundation upon a divine set of ethics and morality. The main problem was, of course, human frailty. No matter how perfect a structure for the administration of justice could be drawn up, under the operating system of *pouvoir arbitraire*, the human element was ever ready to undermine it. Consequently, the main drawbacks to the traditional systems stemmed from such factors as unscrupulous judges and other officials concerned with the administration of justice, including the king himself¹⁰⁸.

In spite of the undisputed fact that law served as an effective instrument to perpetuate arbitrary monarchic rule, always at the expense of the individual's rights, the Siamese and Chinese systems remained in force over centuries. Today, even though such institutions have been supplanted by new legislation in a Western democratic dress, the

108) As mentioned above, Siamese law recognized this danger and allowed for appeals to the king against improper conduct of judges in trials. As for the ruler who, according to written laws was to be the upholder of justice, there were numerous instances when he acted in the most remote fashion from this expectation. Several Siamese kings have been noted to mete out summary executions in a fit of uncontrolled anger. See illustrations in the popular literature written in Ayudhaya times by the noted *literatus* Suntorn Pu (สุนทรภู่) called *Khun Xang Khun Paen* (ขุนช้างขุนแผน), vols. I, II (Bangkok, Tai Press, 1925).

traditional spirit of justice continues to operate strongly, and democratic tendencies are still far from paramount. This gives rise to the obvious assumption that, while the traditional legal norms might have been arbitrary in fact, they fitted the socio-political orientation of the time. And, after all, whatever tendencies towards *pouvoir arbitraire* were present in the legal system, it was not meant to serve only the exclusive interests of the ruler, but was also somehow geared towards ensuring peace and order for the populace. This may be demonstrated by the fact that in Siamese history, there was never a popular revolt against the ruling regime.

APPENDIX

Ratchasartra legislation in the Ayudhaya dynasty

1. Ramatibodi (รามธิบดี ๑) *Laksana Payarn* (A.D. 1351); *Ayaluang* (1356);
Luck-pa (1356); *Joan* (1360); *Bet-set* (1360);
Pua-mia (1361-62); *Joan* (1368)
2. Rachatirat II (ราชาธิราช ๒) *Aya-suek* (อาญาสุก; 1436)
3. Trailoknart (ไตรโลกนาถ) *Sakdina Fai Polaruan* (1455); *Sakdina Fai Taharn* (1455); *Kabot* (1458);
Ayaluang (n.d.), *Montienbarn* (1459)
4. Ramatibodi II (รามธิบดี ๒) *Rub Fong* (1513)
5. Pra Chaiya Rachatirat (พระไชยราชาธิราช) *Laksana Lui Nam Lui Fai* (1536);
6. Pra Maha Chakrapad (พระมหาจักรพรรดิ) *Ayaluang* (1550);
7. Ekatosarot (เอกาทศรถ) *Kabot* (1593);
8. Songtham (ทรงธรรม) *Pra Tammanoon* (1614)
9. Prasart Thong (ประสาธทอง) *U-torn* (1625); *Tars* (1616); *Ayaluang* (1626); *Gu Nee* (1627);
10. Narai (นารายณ์) *Rub Fong* (1661); *Kojmai Samsib-hok Kor* (1678);
Pra Racha Kamnod Kao (1663)
11. Petracha (พระเพทราชา) *Vivart* (1680); *Samsib-hok Kor* (1692);
Tulakarn (1696);
12. Taisra (ท้ายสระ) *Samsib-hok Kor* (1717); *Tulakarn* (1718); *Vivart* (1722)
13. Barommakot (บรมโกศ) *Vivart* (1724); *Tars* (1725); *Samsib-hok Kor* (1724); *Kamnod Kao* (1728)

Ratchasatra legislation in the Chakkri dynasty

- Rama I (พระพุทธยอดฟ้าจุฬาโลก) *Pra Racha Kamnod Mai* (1804); *Kojmai Pra Song* (1804)

Source: *Pra racha pongsawadan* (พระราชพงศาวดาร), (Bangkok, Thai Mai Press, 1932), pp. 706-715.

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