



**LEGAL
TRADITIONS OF
SOUTHEAST ASIA**

Preface

The Meeting on Legal Traditions of Southeast Asia was conducted at SEAMEO Regional Centre for History and Tradition on 7 November 2002. Five researchers from Malaysia, Myanmar, Philippines, Thailand and Vietnam attended the Meeting and participated in this project agreed to prepare research papers detailing the development over time of customary law in its social context in their respective countries. The researchers tried to bring out deep-rooted judicial practices and legal concepts that form the essence of Southeast Asian states and communities in five Southeast Asian countries.

This publication is a collection of the research papers on the legal traditions of Malaysia, Myanmar, Philippines, Thailand and Vietnam.

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Traditions of Law and Justice in the Philippines

Aurora Roxas-Lim*

Necessity for Social Control and a System of Governance

Humans by their very nature are social beings. They are dependent on the family and the community for survival, nourishment and training. From infancy to adulthood each individual is inextricably tied to family, kinship group, and society at large to obtain daily sustenance, for mutual protection and the furtherance of individual development. It is therefore imperative that social cohesion and cooperation is fostered. For this reason the individual is bound and must submit to some form of social control. Regardless of individual strength, talent, inclinations, temperament and other personal qualities no individual is totally free to do what he or she likes. Each and every member must submit to the rules, regulations and precepts of the family, the society and the culture to which he or she belongs. Considering the variability of humans it is inevitable that controversies and conflicts arise within the family and more so in a large and complex society like the Philippines whose population is composed of various ethnic, linguistic and cultural groups possessing different economic and political systems in various stages of development. Society thereby imposes rules and procedures in social interaction and defines modes in the resolution of conflicts. Indeed most societies are organized and raise the young in such a way that conflicts can be avoided, minimized and resolved with as little use of force. And if conflicts do arise and erupt into violence, there are methods of adjudication by which those aggrieved are compensated in order to restore peace and social harmony.¹

Rules, regulations and precepts that grants or denies rights to certain people under specified circumstances, rewards and punishments for certain types of behavior, legitimate use of force by whom and in what

* Former Professor and Dean, Asian Center, University of the Philippines

¹ Robert McIver, *The Web of Government*, New York, Free Press, 1965.

The Thai Legal Tradition

Kittisak Prokati*

The problem of competition between legal cultures, especially between the traditional and the modern, is not new or unknown for the Thais. At least they had already faced it in the long course of Thai history. This occurred in the 13th Century as the Thai faced the Indian and Khmer influences and lately they have faced the western modernization during the great reform of King Rama V at the end of the 19th century to the beginning of 20th century. And this is still relevant for the reform in Thailand today. Although this has always been a topic of academic interest¹, in our rapid changing world nowadays it requires more updating discussions and better understanding on this issue. It is still open to discussion, whether, how and how far a legal culture could be transplanted, appropriated or modified by another culture. It is also important to point out, whether there is any kind of receptive or resisting or modifying force for legal transformation in a legal culture. In this regard, Thai legal culture - in its long course of interrelationship to different high cultures in the history - can serve as an example.

Head of Civil Law Department, Faculty of Law, Thammasat University, Bangkok, Thailand; Fellow of Alexander-von-Humboldt Foundation, Germany, Fellow of Association for Advanced Legal Studies, United Kingdom; Honorary Corresponding Member of the German Association for Comparative Law, Germany.

¹ See, Dhani Nivat, Prince, The Old Siamese Conception of the Monarchy, *Journal of Siam Society* 36, 1947; (2) 91-106; Robert Lingat, Evolution of the Conception of Law in Burma and Siam, *Journal of the Siam Society* 38, 1950: (I) 9-31; Michael B. Hooker, Legal Pluralism, An Introduction to *Colonial and Neo-colonial Laws*, Oxford, 1975, pp.372-389; see also same author, *A Concise Legal History of South-East Asia*, Oxford 1978, ch.1, 6; David M. Engel, *Code and Custom in a Thai Provincial Court, The Interaction of Formal and Informal Systems of Justice*, Tucson Arizona, 1978; Preedee Kasemsup, *Reception of Law in Thailand, A Buddhist Society-*, in: Masaji Chiba (ed.), *Asian Indigenous Law, In Interaction with Received Law*, London, 1986, pp. 267-300; Sompong Sucharitkul, *Thai Law and Buddhist Law*, 46 *Am.J.Comp.L.* 1998, pp. 69-86.



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