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**When Rights Work
Fragile Networks, Improbable Discourses and Unpredictable Globalizations of Law
A Contemporary Thai Case Study**

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The precarious authority of law

The cause lawyers I have been studying in Southeast Asia encounter the precarious authority of law when law most needed, in confrontations with government officials and other powerful adversaries. Law is not considered precarious in the United States or other stable and developed democracies; yet the question that set sociology of law on its path among scholars of my generation is whether law works (and if so why), anywhere, for any purpose, and a closely related question, what does law do? These questions are especially compelling in societies where law is an import and the path of legal development has been influenced by the politics of a new state very different from the old states of Europe and America.

The protagonist of this case study is a young Thai lawyer, Duean, who has found a way to make human rights work within a legal system in which an American lawyer would find it difficult to function. The primary purpose of the NGO for which she works is rescuing victims of human trafficking, but to achieve this end she engages in an equally difficult project of social construction. Duean creates authority for her NGO by means of a network, within and outside of government ministries, and a different discourse of law which accompanies each relationship within the network.

Globalization of law plays a part in this narrative. The international sources of funding and legitimacy for Duean's work emphasize a particular legalization of human rights represented by the United Nations anti-trafficking Protocol² and the U.S. legislation known as the Trafficking Victims Protection Act.³ Duean, and the NGO she works for, must negotiate the

¹ Frank Munger, is professor of law at New York Law School. Versions of this article, written with students Shanthi Nandam, Julie Kottakis, Renee Rivas, and Jesisca Kim were presented at the 2010 annual meeting of the Law and Society Association, the New York Law School Faculty Workshop, and East Asian Human Rights Workshop at Columbia University, November 2011, and the Eastern Sociological Society, February 2012. I would like thank members of all three audiences for their helpful comments. I am grateful to my colleagues Tai-Heng Cheng and Ruti Teitel together with students in their International Law Colloquium for careful readings of an earlier draft. I owe special thanks to David Engel not only for insightful advice and corrections which have saved me from many a careless error but also for encouraging this research from the very beginning. I am indebted to the many generous Thai collaborators and interviewees who have made this research possible by contributing time and much more to helping me understand their work and their society.

² Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

³ Trafficking Victims Protection Act of 2000, [Pub. L. No. 106-386 §2 A](#), 114 Stat. 1464 (2000) [TVPA], as supplemented by the Trafficking Victims Protection Reauthorization Act of 2003, [Pub. L. No. 108-193, 117 Stat.](#)

influence of these global resources on traditional sources of government authority and domestic law reform.

“Cause lawyer” is the term used by scholars Austin Sarat and Stuart Scheingold to describe lawyers guided by a “vision of the good society” (1998:1). Cause lawyers represent social movements, the politically unpopular, the weak and the marginal. In the United States, these lawyers are not as politically marginal as their causes or clients. Indeed, they are often admired, and that is part of their appeal for scholars. Cause lawyers in the U.S. may enjoy great respect and influence, empowered by politically independent courts and supported by a powerful profession.

In societies of the developing world, neither the security of cause lawyers, nor the authority of law can be taken for granted.

Cause lawyers are intrinsically interesting in legal systems unlike the court-centric system in North America where many cause lawyers have gained power and respect. Why would a young attorney take on causes using the symbolic power of law where courts are inaccessible or hostile, where the public and the profession pay little respect to lawyers for causes, and where political conditions may be far less secure?

But Duean’s story is also a point of entry to a larger question, namely how the authority of law is established and what difference it has made in conflicts over social change.⁴ Cause lawyers are few in number in any legal system, yet they are important. Because their social position is often a fragile one, lacking status or economic resources to mobilize in confrontations with those in power, they must place greater reliance on the symbolic power of law, when and where they can, to obtain outcomes for their causes. Thus, cause lawyers are my “canaries in the mine,” testing the outer limits of the law’s authority. Not only do their successes or failures help identify the boundaries of law’s symbolic power, but their strategies for making rights work reveal how law constitutes power, especially the power of the state.

The Trafficking Victims Protection Act and globalization of law

Duean has worked for an NGO named TRAFCORD, since 2002, two years after graduating from law school. TRAFCORD [an acronym for Anti-Trafficking Coordination Unit] was created in 2002 by a group of activists and “cause bureaucrats” to coordinate rescues of victims of human trafficking in Thailand’s nine northern provinces. During Duean’s ten years with TRAFCORD she has become central to its activities, rising from staff attorney, to project coordinator and, after TRAFCORD’s recent reorganization as FOCUS [Foundation of Child Understanding], its manager. Historically, the Thai government has invested few resources in remedying the growing problem of human trafficking, and so an important further purpose of TRAFCORD’s founders has been capturing funds from international sources. USAID and the

[2875](#) [2003 TVPRA], and the Trafficking Victims Protection Reauthorization Act of 2005, [Pub. L. No. 109-164, 119 Stat. 3558 \(2006\)](#) [2005 TVPRA] (codified at [22 U.S.C. §7101](#)).

⁴ This case study is taken from my interviews with cause lawyers, NGO staff members and social movement participants in Southeast Asia, especially Thailand. Other Thai cause lawyers in the study confront the same unreceptive legal system which provides uncertain authority for their efforts on behalf of social causes. Each of them attempts to forge a path for development of law’s authority (Ct. Dezalay & Garth 1995; Santos & Rodriguez 2005).

US Embassy have become important sources of funding authorized under the Trafficking Victims Protection Act.⁵

To its supporters, the Trafficking Victims Protection Act of 2000 puts teeth into international efforts to establish effective and humanitarian standards for prevention and suppression of human trafficking. To its critics, TVPA is a brazen attempt to globalize a policy of criminalization which is the outcome of “palace wars” among moral entrepreneurs in the U.S. TVPA appoints the U.S., in the words of one critic, a “global sheriff” of human trafficking (Chuang 2006). The Act’s goals are broad, including prevention, punishment and suppression of human trafficking, protection of victims and migrants, and public education, but the most specific standards describe law enforcement against traffickers. Countries not meeting the standards risk sanctions administered by the State Department Office to Monitor and Combat Trafficking in Persons. The Office issues annual Trafficking in Persons [TIP] Reports on compliance efforts of every country. Insufficient effort may result in loss of U.S. foreign aid or warrant intervention to block aid from international agencies. Thailand has received carrots under this statute in the form of funding for training and for NGOs like TRAFCORD, and it has also been a target of sanctions, having twice been placed on a “watch list” in danger of losing aid from the United States and other agencies.

As a signatory to early League of Nations and U.N. conventions (Limoncelli 2010), Thailand enacted a law regulating sex work in 1908, a prohibition on trafficking in 1928, and a law criminalizing prostitution 1960. These laws were minimally enforced while reform efforts ended in the wrangling among ministries and conflicted motives of Thailand’s leaders. Prior to 1960, prostitution was legal and widely tolerated in Thailand, even encouraged by patriarchal views of men and an understanding shared by many that women who enter the sex trade deserved their fate. Thai police made little effort to enforce the laws against trafficking, although, in some locations, prostitutes were regularly arrested under the 1960 law, forced to pay for their release and returned to the streets.⁶ A long standing custom among poor rural families in some Northern Thai communities has been to wink at daughters who disappear to the city, to send money home earned in ways the family will not discuss. During Thailand’s “American Era” during the Vietnam War, the sex trade became a major industry. Europeans were especially

⁵ In 2002, the U.S. Embassy offered a start-up grant from its discretionary funds for Thai projects. UNICEF also provided funding for TRAFCORD during its early years but in more recent years the primary source of funding has been USAID, which distributes funds authorized by the TVPA. The Asia Foundation [TAF], a pass through for USAID, World Bank, and other sources of government and quasi-governmental funds, also provided a substantial one-year grant in 2004. TAF staff members are enthusiastic supporters of TRAFCORD, and they have provided counseling and human rights training for its workshops. U.S. Embassy and TAF funds are made available through grants at the discretion of local staff members, who know TRAFCORD well. Since 2005, funding made available under the TVPA has become the major source of support for TRAFCORD. In 2005, USAID, under its TVPA authorization, awarded a total of \$652,000 to TrafCORD and three other NGOs to support Thailand’s integrated anti-TIP network for data collection, prevention and awareness campaigns, victim assistance, shelter capacities, legal aid, and repatriation. www.state.gov/documents/organization/47310.pdf. In 2009, USAID awarded TrafCORD \$125,000 for a 12 month long project to “coordinate government and non-governmental activities to combat sexual abuse of children and human trafficking in the nine provinces of the upper northern region of Thailand as well as their associated Burmese and Lao border regions.” At <http://www.state.gov/g/tip/rls/other/2009/131167.htm#eap>. In 2011 TRAFCORD received \$260,000 under the same program along with an expression of “continuing confidence” in its program.

⁶ Current arrest statistics show thousands of arrests with little apparent effects on number of prostitutes, estimated at more than 100,000 in Bangkok alone (Phongpaichit, Piriya-rangsana & Treerat 1998).

concerned about the number of Thai women being induced to travel there only to be trafficked into sex work, pressuring Thailand to address the problem from the 1970s, without success.⁷ More recently, desperately poor women from Burma and Laos seek work in Thailand, and end up in prostitution while poor Thai women have traveled abroad to Europe, America, or Japan, in search of work, and are sometimes trafficked into prostitution as well as other forms of poorly paid work.

The TVPA imposes on other countries moral choices which are contested even within the U.S. Women in sex work are to be punished as criminals unless they are able to demonstrate that they are victims. The complexity of Thai perceptions of gender and trafficking is evidenced by the size of the sex trade on one hand and the presence of a vibrant sex-worker movement on the other, neither of which seem compatible with TVPA's guiding moral vision or its rigid legal mandates (see Kinney 2006). Second, the TVPA "legalizes" moral choices by pressuring countries to adopt criminal sanctions and American style governance through courts. Increasing legalization undermines and limits the aspirational and flexible ideals of human rights which are made bureaucratically "legible" (to use James C. Scott's (1998) term for bureaucratic reduction of a complex local practice to a uniform policy) through its legal standards. Finally, the TVPA's assumptions about law enforcement reflect the initiative and power of U.S. prosecutors and courts, which characterize common law systems of jurisprudence and especially the legal system of the U.S. In each of these ways, the TVPA's rule of law ideology speaks in a language unfamiliar to, and at odds with, the political and legal environment of policy making in Thailand (cf. Merry 2003).

As explained in subsequent sections of this essay, the TVPA's ambitions for globalization of criminal law intersected a process of legal development and reform already long under way. Thailand has recently enacted criminal laws which fully comply with the TVPA's requirements; yet Thai officials and NGO staff have deep disagreements with the emphasis of American policy and a different understanding of what is to be accomplished through law reform. They have been understandably irritated by the aggressive moralism of U.S. policy and its anti-trafficking ambassador, and especially the U.S. State Department's attempt to embarrass Thailand through the Tier rankings. Ben Svasti, a key founder of TRAFCORD, commented on the Thai response to formal and informal pressure of the American government.

...the [Thai national anti-trafficking] subcommittee would laugh at the pressure thing as being very primitive, because these were issues that we in the subcommittee, we knew about for a long time, and we'd been fighting a lot of them for most of their professional careers on these issues with or without government support, with or without Washington. So we would be rather pissed off with suddenly to get these strong-arm tactics to come in to try to force Thailand's hand.

We'd be against the element of what we felt was interference in national sovereignty. These were important issues that we were going all out to put pressure on our government to do, and to some extent we were happy that the government was bending to U.S. pressure, but we weren't happy with them when we thought they were pushing around Thailand and its national sovereignty, because they were very simplistic, strong arm tactics without really understanding the issues involved.

⁷ P&J research.

*The money that came in for funding from America was definitely needed for the NGO's. NGO's all had to make value decisions when we sought American money. We didn't agree with American foreign policy. We didn't agree with Iraq, or a host of other American foreign policies.*⁸

Yet, for all these potential conflicts, TRAFCORD gets high marks from the State Department and the U.S. Embassy in Thailand. In its 2009 TIP Report, TRAFCORD's work is described among the handful of "Commendable Initiatives" featured for praise.⁹ On the Embassy website, TRAFCORD has been described as a "model partner."¹⁰ TRAFCORD staff members say that there are regular visits from State Department officials and Congressmen who listen, observe, and admire more than monitor TRAFCORD's work.

An area of potential conflict, which comes to light only in discussions behind the scenes, concerns numbers of rescued women and successful prosecutions. Taken from TRAFCORD's reports and its website, the numbers remain modest-not more than a handful in each report.¹¹ Yet there are hundreds of prostitutes working in brothels in Chiangmai alone. State Department officials sometimes want to know why evidence can't be obtained against more traffickers. A visiting Congressman asks, "Why aren't all the women you release from a brothel counted in your statistics as victims – they are all prostitutes aren't they?" What the American's see, of course, only scratches the surface of a more complex picture.

Cause lawyers in the Thai bureaucratic state

A court and lawyer-centric understanding of the rule of law ignores much of the unique history of non-colonial states such as Japan, China, and Thailand, and the roles that law might play.¹² Upham (2006) has argued that the private rights, judicial enforcement, and lawyer-driven model of the rule of law promoted by the so-called "Washington Consensus" is an "orthodoxy" not shared by Japan, or by much of the rest of world.¹³ Thailand has a vibrant network of cause lawyers and others who support Duean's work, but the network's efforts are infrequently directed toward litigation and attract neither the direct or indirect support of elites in their profession nor recognition from the public.

Understanding whether and how Duean "speaks law to power" (Abel 1998) requires closer examination of the sources of support for TRAFCORD, and especially its methods for achieving its goals when it is resisted by government officials.

⁸ Interviewed 6/22/09.

⁹ Found at <http://www.state.gov/j/tip/rls/tiprpt/2009/123130.htm> (last visited 9/17/12).

¹⁰ Citation to be supplied.

¹¹ For example, in 2011 TRAFCORD reported 10 prosecutions and 2 convictions.

¹² Law's value as a symbolic resource depends on the support of power holders with an investment in law according to the massive comparative studies of Yves Dezalay and Bryant Garth (2010). Dezalay and Garth also argue that elite lawyers hold the key to institutional change because they are most likely to have opportunities to deploy other types of social and economic capital into support for the symbolic authority of law (for further analysis see Munger 2011).

¹³ Moreover, different understandings of the rule of law have been equally effective from an economic perspective< for example, Japan, if not equally just from a Western perspective, as in the case of, for example, China.

Duean seems to face long odds when it comes to deploying human rights or the law to change the behavior of the police and other government officials on behalf of weak, marginal, and unpopular causes and clients. Westerners might be curious about why she has invested her career as a human rights advocate in *law*. Thailand is mentioned in the American media when its politics turn disruptive – which is not infrequent. Violent conflict between military and demonstrators in Bangkok recently filled the front page of the NY Times. The United Nations, Human Rights Watch, Amnesty International, the Asian Human Rights Commission have written recent reports about thousands of extra-judicial killings of suspected drug traffickers by the border police, about routine brutalization of criminal defendants by the domestic police, disappearances of human rights workers by the military and others, and apparently lawless violence by both military and police in the struggle for greater autonomy in Thailand's Muslim provinces adjacent to Malaysia. These and other impressions gained from western and global media seem to make Thailand a risky place to invest in a career as a human rights lawyer.

More mundane reasons also seem to weigh against becoming a cause lawyer. The Thai legal profession, in contrast to its U.S. counterpart, does not find it advantageous to invest in public interest work. Lawyers as lawyers are far less prominent, and law is not a typical route into politics, making public interest lawyering less important as a career step. The legal profession is subordinate in many ways to Thailand's powerful, century-old bureaucracy which runs the country even in times of crisis. Under Thailand's civil law jurisprudence, lawyers are also subordinate to judges as a professional group. Judges in turn are bureaucratic, civil servants schooled in a conservative legal methodology—statutory construction, and not given to displeasing superiors. They are unfamiliar with policy making under broad common law or constitutional mandates. Private litigation to make new policy is far less common in the civil law world (Garcia-Villegas 2006). And finally, Thailand has never ceased to be a Kingdom; the moral force of the monarchy, patron-client relationships, and other customary relationships make the power of law more complex.

The bureaucracy holds many trump cards when it comes to the authority of law. Governance in Thailand, notwithstanding periodic military coups and ineffective Parliaments, has been stabilized by its large and, since the 1960s, increasingly technically competent bureaucracy (Muscat 1994). While many have judged the rule of law in Thailand from the tumultuous course of Thai politics, it should be no surprise that, as in other semi-authoritarian Asian states, Thailand's dominating state administration has been important in determining the power of law and the expectations that influence the relationship between Thai citizens and the state. While military coups and constitutional reforms have made important changes in the balance of power among elites, until recently, few of the changes have penetrated deeply into Thai society. Bureaucrats have worked equally well with civilian and military governments. They have had the primary policy making and implementation responsibility with very little constraint by Parliament. Parliamentary enabling laws typically originate in the ministries of the government, and Parliament cedes broad discretion to administrators to determine specific standards and the means for implementation.

The power of Thai bureaucrats has deep roots in the founding of the modern state by the Thai monarchy in the late nineteenth century. Thai elites initiated importation of western law with the adoption of a bureaucratic state structure. Under the monarchy, the new bureaucracy

was intended to modernize and improve state administration but it was also intended to concentrate and preserve royal control, not to diminish it (Wyatt 1969). Former landed nobility became bureaucrats owing their position and loyalty to the monarch, not to a Parliament or the people.¹⁴ Early ministers and their subordinates were rent-seeking, funding their families as well as their agencies through revenues generated by administration. Ministries, the most important of which were given to political allies of the royal family, were insular and competitive. As servants of the King, bureaucrats were remote from ordinary people, a perception which has left its mark on modern Thailand.

Historically competitive relationships among ministries, their relative insularity and clientelistic internal structure have had long-lasting effects, even as administrators have become more professionally competent (Rubin 1980; Morrell & Samudavanija 1988; Chandarasorn & Dhiravegin 1987). Characteristics persisting into the twenty-first century include “deference, distaste for open confrontation or criticism, concentration of decision making at the top, the importance of old-boy networks and faction, nepotism, overlapping responsibilities, and poor coordination” (Muscat 1994:94) and patron-client loyalties (Ockey 2004). A partner in a leading Thai commercial law firm explained that bureaucrats and business leaders deal directly with one another, not through lawyers. He does not represent clients in dealings with the government because upper level bureaucrats frighten him, he says jokingly. He says they are powerful, arrogant and insular. The dominant position enjoyed by bureaucrats considerably narrows the space for lawyers to “speak law to power” on behalf of clients.¹⁵

Additional changes in law that might have legitimated law’s independence from the state were long discouraged not only by the self-contained bureaucratic polity but also by the influence of an imported legal ideology, freed from the influence of European natural law that placed law at the service of the state rather than above it (Lev 2000; Connors 2009). This underlying predisposition to subordinate the interpretation of law to the state’s will has been reinforced by the careful cultivation of the Thai monarch as a unifying symbol, even though after 1932 he reigned under constitutional law or at the pleasure of military dictators. As in many Asian societies, Thai rulers also drew on non-legal sources of legitimacy and power through vertical relational ties and social hierarchy, supporting the power of government administration but limiting the space for politics and accountability, expanding the power of administrators and reducing the space for political or judicial oversight (Jayasuria 1999). These traditional sources of legitimacy have been weakened by modernization of the bureaucracy and by the growing importance of private sector entrepreneurs. Nevertheless, the legitimacy of both parliaments and military dictatorships has been supported in no small measure by symbolic subservience to the monarch, with a corresponding reduction in government’s dependence on the legitimacy afforded by law.

The police and military are especially powerful. Both enjoyed privileged relationships with the U.S. during the Cold War and expanded in power through massive infusions of aid.

¹⁴ The literal meaning of the Thai word for bureaucrat is ‘servant of the king.’

¹⁵ As in Japan, businesses were connected with the state by a web of mutually beneficial relationships (Upham 2006). Thus, there was little pressure for bureaucratic rationalization, much less for oversight by third parties such as courts. This picture may be changing as the business community takes a stand against corruption and insider deals (see Ginsburg 2010).

Police train alongside the military, but they are now under the direct supervision of a politically elected prime minister. The legal system provides little oversight of the police; prosecutors largely defer to police investigation of crimes and selection of cases for prosecution (Asian Human Rights Commission 2006). Although the police are a national administration, district police are often linked to local power brokers and corruption is common place, especially favoring such a politically connected and lucrative businesses as prostitution and human trafficking (Phongpaichit, Piriyaangsan, & Treerat 1998). Thai police indifference to trafficking in adult women may be explained in part by the ambivalence in Thai culture about prostitution, condemning women in the trade but accepting men's use of prostitutes as inevitable.

Bureaucratic independence in Thailand resembles the French administrative state on which much of it was modeled, but there are major differences. The French Parliament is dominant over courts, executive and the administration. In contrast, Thai bureaucrats are not effectively overseen by Parliament, a situation which leads to ministerial autonomy and resistance to cooperation among ministries in coordinating the administration of policies. In France, public funding and close ties to jurists on the powerful Conseil d'Etat which supervises the administrative courts have empowered legal advocates for human rights in spite of the absence of effective private sponsorship for human rights advocacy (Kawar 2011). In contrast, Thailand long resisted establishing independent administrative courts.¹⁶ Although the Thai Council of State received petitions of complaint about government wrongdoing, there is no juridical culture of independent and effective supervision of government and the Council made no effort to encourage, much less sponsor, advocacy for rights.

Yet, there are still reasons why we might expect activism within the Thai administrative state even though there is a notable absence of support for causes for rights by the elite members of the legal profession. The tendency to embed activists in the state might have been particularly pronounced in Thailand because of the state's domination over the evolution of both law and politics. Until very recently, government bureaucracy provided the best career opportunities by far for educated Thai who might have become social advocates outside the state if the private sector had offered equivalent (or even modest levels of) prestige, security, and opportunity (see Munger 2008-9). This case study suggests how the organization of Thai bureaucratic administration might enable some forms of cause lawyering.

My interviews with social cause advocates like Duean repeatedly led back to networks of activists that permeated the formal boundaries of the state. Although courts have seldom been involved in controlling or bringing about changes in government action, interviews suggest that networks which incorporate both NGOs and members of the bureaucracy itself may play this role.

Generations of moral entrepreneurs

In 2006, a long-time Thai staff member of the Asia Foundation in Bangkok described TRAFCORD as one of the best "Thai-style" NGOs. The staff member meant that, in her view,

¹⁶ The 1997 constitution created a system of administrative courts. Parliament enacted an Organic Act in 2000 and the courts began accepting cases in the same year. Although the system is in its infancy, it has the potential to change the politics of bureaucratic decisions.

TRAFCORD has the capacity not only to collaborate with government but, more controversially, capacity to manage and direct the government's interventions to protect victims of human trafficking. From a sociological perspective, the central issue is how TRAFCORD has acquired its power and to what degree its influence reflects the growing power of law as a symbolic resource.

The answer to this question lies in part on a pattern of increasing access to government by activists through networks of mutual support and influence. Law is one discourse promoted by these networks, but not their only means of exercising influence. In turn, these networks have grown in proportion to opportunities created by economic and political change for moral entrepreneurs to establish careers and the means to support them. Since mid-twentieth century, establishing a path for activism in one generation has led, directly and indirectly, to greater career viability and more receptive responses from those in positions of bureaucratic and political power in the next generation. One key to the Thai pattern has been, of course, the stability and power of bureaucracy itself, where many bureaucrats have long and powerful careers. The bureaucracy is often viewed as a barrier to change, but as we shall see, it may also become a facilitator of "Thai-style" change.

The starting point for these generational stories of activists is the October 1973 student uprising which toppled an American-backed military dictatorship, an event widely viewed as a critical turning point in modern Thai history (Baker and Phongpaichit 2005). The uprising must be understood as part of a longer history of social and economic change, especially the post-war decades during which Thailand experienced rapid economic growth and expansion of higher education. Thailand is a prime example of cold war development underwritten by the United States in an effort to create a showcase for capitalism as well as a military ally in Southeast Asia. Contemporary development theory directed massive foreign aid to rebuilding infrastructure, medical services, and primary education in critical areas near the Thai-Lao and Thai-Cambodian borders and elsewhere (Hess 2003). U.S. foundations supported the expansion of higher education with large grants for program development and training. Entire Thai university departments were sent to the U.S. for further education and numerous scholarships were offered to Thai students seeking higher education (Muscat 1990).

In the late 1960s and early 1970s, Thammasat University in Bangkok became a center of the student unrest. Thammasat University was established in 1933 by the idealistic Prime Minister who led the overthrow of the absolute monarchy the year before. The University was the first public institution of higher education open to commoners, and its mission was to train future government officials in law and the spirit of public service. In the 1960s, Thammasat's mission drew politically progressive faculty and students (see Munger 2008-9), but many more students were simply from backgrounds without wealth or privilege ready for a society in which opportunities were wider and freer. Well before the uprising, students, graduates, and professors, especially those associated with Thammasat, began visiting the countryside to learn about Thailand's vast rural majority who lived in poverty, lacked many basic services, and suffered from oppressive treatment by local landlords and officials. Before the uprising, this program and others had already begun to broaden the range of students' intellectual inquiry and involvement in the welfare of their own society. After the uprising these experiences became important resources for collaboration and action.

The first institutions to feel the effects of expanded access to education were government ministries whose top bureaucrats and technicians were offered opportunities for training at universities in Europe and the U.S. Although Thai who were sent abroad were exposed to ideas about democratic government and individual rights, not all who benefited have become what we might term “cause bureaucrats” with a vision of a transformed Thai society or government (nor are all cause bureaucrats western trained). Yet, there were few viable, alternative career lines for activists. Both before and after the October uprising, many individuals motivated by a desire for social change entered government service to become “cause bureaucrats.”¹⁷

A cause bureaucrat

Dr. Saisuree Chutikul is a leading cause bureaucrat. Saisuree grew up in a patriarchal Chinese-Thai shop family. Her strong-willed mother became a Presbyterian herself and sent her daughter to study at a Presbyterian college in the U.S. and to earn a Ph.D. in education at Indiana University.¹⁸ On her return, in the early 1960s, she was appointed Dean of a new faculty of education at what later became Khon Kaen University, in Thailand’s impoverished northeastern provinces adjacent Laos and Cambodia. With USAID funding, Saisuree set up a demonstration school, which controversially taught young Thai girls to be less subservient.

Saisuree benefitted from her Cold War value to the US, but other international developments also influenced her career. In 1975, the U.N. sponsored the first International Conference on Women in Mexico City, which gave full voice to the intentions of developing countries to participate in deliberations about the position of women in development. Soon after, the international women’s movement began to gather momentum, supported in part by post-Cold War development funding from the UN and wealthier countries.¹⁹ In the late 1970s, as Thailand strove to repair its damaged international reputation on human rights, Saisuree was ideally positioned to be named a senior member of Thailand’s National Working Group on Women, then to its National Commission on Women in 1984. Her spiraling career included appointments to the UN Commission on the Status of Women in 1989, and later to the Commissions appointed under the Convention on the Rights of the Child and Convention to End All Forms of Discrimination Against Women. Making known her interest in law reform, she was asked to assume a cabinet level post in 1991 as the Prime Minister’s spokesperson on women and to assist the Prime Minister with long-postponed reforms of the Thai criminal and procedural laws governing human trafficking and child abuse.²⁰

¹⁷ Other members of this first generation of cause activists were lawyers with unusual dedication who became solo practitioners or formed small firms to represent political prisoners, labor unions, and the poor, sometimes combining law practice with other professions such as journalism. This hearty group became mentors to younger generations of practitioners who practiced under more favorable conditions.

¹⁸ Indiana University hosted many Thai students in this period, supported by USAID and sources of funds. Saisuree herself wanted to become a concert pianist, but her practical mother convinced her that having a viable day job was more important.

¹⁹ Of particular importance was the support of the Canadian International Development Agency [CIDA] for the first working group on women in the early 1980s and continuing support for organizations which focused on women’s rights.

²⁰ The significance of Saisuree’s own sponsorship by “liberal-royalist” prime ministers (Anand and Chuan) as part of their program to maintain the political strength of the monarchy is examined further in the concluding part of this essay.

Saisuree's timely symbolic capital and outspoken approach to colleagues reaped benefits for activists in two ways. First, she used her position to build relationships with younger, next-generation, activists whom she moved into committee and advisory roles. Second, throughout the 1990s, Saisuree led a comprehensive law reform effort, revising the criminal laws governing child labor and exploitation, human trafficking, prostitution and procurement, the procedural laws governing investigation and protection of witnesses, and finally a second expansive revision of human trafficking laws after the Palermo Protocol was adopted by the U.N. in 2000.

As an experienced bureaucrat, Saisuree understood the insularity and impunity of her country's bureaucrats, and she began to build alternative structures from within and without – a Thai style blend. Law reform efforts, even for an activist with her influence, encountered historical dilemmas of Thai rule of law, as previously described, a lack of centralized oversight and external control. Thailand promised reforms in the 1970s, under pressure from European countries which were destinations for Thai women who became prostitutes, efforts which ended repeatedly in wrangling between ministries and inaction. At mid-twentieth century, bureaucrats who dominated policy making followed practices established under the bureaucracy's royal mandate to govern. Since that time, even as political and economic conditions required taking account of an expanding circle of new political actors, bureaucrats have continued to dominate by virtue of their permanence and relative competence. Legislation drafted by Thai ministries was (and still is) typically subject to approval by the Cabinet and Parliament. The Cabinet, which consists of the Ministers and Deputy Ministers of each governmental ministry, is a weak political body, in which each ministry is cautious about inviting retaliation by disapproving another ministry's proposed legislation. Real power lies with the powerful heads of individual ministries (Funston 2001). The result is that Thai ministries often write, as well as oversee implementation of, the law. Bureaucratic inaction undermines law reform and law enforcement.

Saisuree understood these workings of the Thai government as few others on the Working Group, the National Commission on Women, or the law reform committees appointed in the 1990s. Her modus operandi reflected the political limitations. As early as the mid-1980s, Saisuree met informally but on a regular basis with key players in a number of agencies, creating an informal consensus that the Cabinet and Parliament could not supply.²¹ In 1994, guided by conversations within the group, Saisuree became a founding member of a new interagency Anti-Human Trafficking Working Group and a few years later organized an interagency task force to draft three memorandums of understanding [MOU] about ministry, police, and NGO responsibilities, each signed by the ministers of the relevant departments. Lower level bureaucrats more readily follow policies which they believe their superiors are fully committed to, and the MOUs converted issues of legal authority into issues of bureaucratic patron-client relationship.

After obtaining MOUs binding the police and other agencies to cooperation with NGOs, law enforcement still stalled. Local police commanders seemed to have difficulty finding resources to enforce a policy that they deemed an extremely low priority. To address the problem, Saisuree persuaded her cabinet-level police collaborators to create special local criminal investigation units for trafficking cases, preempting local police chiefs reluctant to make such assignments.

²¹ The Majestic Group, named for the hotel in which it met, continues to assemble periodically more than twenty-five years later.

Saisuree has shifted power downward in ways that benefit TRAFCORD's relationships with key players. But still other problems remain which cannot be solved by Saisuree's influence within the highest levels of the central government. That is the story of Thai-style NGOs and TRAFCORD.

Thai-style NGOs and the lawyers who work for them

Thai-style NGOs had their birth in the experiences of the students who spent time in the countryside or urban slums before and following the October uprising. Some who left the jungle in the late 1970s returned to villages and slums to organize movements and protests against oppression, neglect, and arbitrary government policies. Others became founders of "Thai-style" NGOs, providing a new link between society and government officials unresponsive to public needs and seldom held accountable under existing laws. Many of the students who became this next generation of activists worked closely with a small group of charismatic faculty members of Saisuree's generation, who, like Saisuree, had the benefit of symbolic capital earned at European or American universities, a vision of a less authoritarian Thai society, and access to philanthropy (Pichaikul and Klein, 2005; Munger, 2008-2009).

Sulak Sivaraksa, trained as a barrister in England, has had a long and well-known career as a social critic and Buddhist teacher. As professor of Political Science at Thammasat University in the 1960s and 1970s, he became editor of the *Social Science Review*, the leading Thai periodical for intellectual exchange. Sulak gathered a group of like-minded students and graduates who discussed new ideas, developed projects to address Thailand's social conditions, and studied Buddhism, especially mindfulness which requires openness toward one's enemies. The Komol Khemthong Foundation, named for a student who gave his life while helping villagers, served as an umbrella for the *Review*, for publications for a wider audience which featured articles on social conditions in Thailand, his students' projects, and a bookstore. When the military returned to power in 1976, Sulak and his Foundation became targets. Sulak was forced to flee, and the Foundation and bookstore were shut down soon afterward.²² Nevertheless, the influence of Sulak's collaborations with students has been profound. Graduates who worked for Sulak included future founders of several of Thailand's earliest and most influential Thai-style NGOs. Their success, in turn, created mentors and expanded the political space for a next generation of Thai-style NGOs like TRAFCORD capable of advancing reforms for which there no effective direct political or judicial support.

One of the most important NGOs formed by Sulak's protégés has been the Center for Protection of Child Rights [CPCR].²³ Samphasit Koompraphant graduated just before the student uprising, but after students took to the streets, he left his job in a bank and joined Sulak's group to conduct research. After the military's return in 1976 drove Sulak from the country and closed the foundation, Samphasit and other members of the group combined their projects, seeking cover in a cause that was acceptable to military dictatorship by calling the new NGO the Foundation for Children. Samphasit's focus on child labor broadened, and in 1984, with

²² Former students who witnessed the closing of the Foundation recall that in the military's obsession with communism every book with a red cover was burned.

²³ Others not discussed here include, among others, Siriporn Skrowbanek, who established the Foundation for Women, Teeranart Kanchan-aksorn, later professor of economics at Chulalongkorn University, a founder of Friends of Women Foundation and key organizer of the Women and Constitution Network (Tantiwiramanond and Pandey, 2008), and Pipob Thongchai, longtime activist and "yellow shirt" leader.

European funding, he created CPRC. From its founding, CPRC's relationship with the government has been characteristic of Thai-style NGOs – independent, even contentious, on one hand and mentoring and collaborative on the other.

CPRC's power to deal with lower level government officials arises from the symbolic capital of its non-Thai funders, its expertise derived partly from international sources, and the professional training of its staff. CPRC maintains a legal staff which pressures local official to enforce existing laws and litigates when necessary. CPRC was especially unpopular with the Thai Department of Public Welfare for presenting Thailand in a bad light by documenting the Department of Public Welfare's ineffective interventions. The NGO also serves as a conduit for ideas and expertise available from the international community of social welfare specialists. In the 1990s, Samphasit attended international seminars, learning about coordinating law enforcement, social welfare, protection, training, and other expert services to provide follow up and problem-solving for abused children during his trips abroad to participate in conferences. Over time, the "multi-disciplinary team" approach has been conveyed "up" to Thai policy makers like Saisuree who incorporated the concept into her law reforms.²⁴ Since the early 1990s, CPRC has also played an increasing role in training and education by partnering with U.N. and U.S. funding agencies to train officials as well as civilians about the problems and responses to child victimization and abuse. Administering a budget of over a million dollars in mostly foreign funding, the NGO also functions as a partner with government, enhancing its capacity to provide effective services.

Although CPRC has the credibility to talk directly to lower government officials, the multi-disciplinary team approach requires interagency and agency-NGO cooperation which is immensely difficult for entrenched and insular Thai bureaucracies. Even after the adoption of the Child protection Act in 2003, there was a considerable gap between law on the books and the practices of local agency staff and local police. CPRC's answer to this gap lies in part with its legal staff members, most of whom we can call third generation activists. Wassana Kaonoparat graduated from Thammasat University in 1991, a faithful disciple of the October generation, inspired by teachers and classmates who kept the spirit of the revolution alive. Typical of post-1973 activists, she had connections and choices among a small number of well-established NGOs. She joined the staff of CPRC in 1991, rising in the organization to become legal director. Notwithstanding the increasingly comprehensive laws and MOUs created by Saisuree and her colleagues, Wassana has had to improvise ways to make the law work, and absent express legal mandates, to carry out the mission of CPRC to protect the welfare of children.

CPRC has maintained an aggressive law-enforcement role, organizing and conducting "rescues," i.e. raids on brothels to release trafficked children, and pressuring local officials to observe the letter and spirit of protective laws. Over time, Wassana has developed a network of local police officers who assist with arrests and, in theory, the follow-up measures to safe guard, rehabilitate, and reintegrate (or repatriate) victims. To maintain the cooperation of local police, Wassana sometimes asks for assistance from NGOs founded by other protégés of Sulak which

²⁴ Saisuree incorporated some of the ideas which CPRC was promoting into the 1997 Measures of Protection Act by requiring careful consideration of the status of abused women and children before criminal prosecution, but full incorporation of the approach was not achieved until enactment of the Child Protection Act in 2003.

are also focused on human trafficking and have developed relationships with police in other parts of the country.²⁵

Wassana, and Duean who is a close friend, often say that they are partners with government because government has authority but lacks expertise, while NGOs have expertise but lack authority. Although this explanation of TRAFCORD's success elicits widespread agreement from TRAFCORD's network partners, their description oversimplifies the relationship. Most importantly, both NGOs have developed strategies for obtaining cooperation from government officials.

One of Wassana and Duean's most important forms of influence is their ability to invoke the symbolic authority of law through the preemptive approval of higher level bureaucrats, based in part on prior agreement such as the MOUs but often based on more personal relationships. Wassana and the directors of other NGOs in this small network have contacts all over Thailand which Duean may need when she leaves her home base in Chiangmai. Saisuree also claims that the NGO directors sometimes requires a letter from her office on behalf of the Prime Minister when other avenues of influence fail to obtain cooperation. Duean invokes these multiple levels of hierarchical authority when she needs them.

More often, however, Thai-style NGOs invoke a different form of authority, which can be termed the authority of "professional consensus" (Cohen, 2011). As I describe below, TRAFCORD has been especially effective at developing its network through careful selection of partners in particular agencies, by using training as a means of selecting like-minded individuals, and instilling professionalism among members of a "team" – the multi-disciplinary team assembled to address victim welfare, but also the interagency team needed for law enforcement, immigration, military, and welfare cooperation. Understandably, the professional consensus approach has been far more successful with some agencies than others.

Founding TRAFCORD

Ben Svasti Thompson is the son of a British business man and a Thai woman who is a member of the Thai royal family. Ben would be a third generation activist, like Wassana, if he had grown up in Thailand, and he shares many generation three characteristics. He chose a career path inspired in part by the legacy of Western activism of the 1960s and 1970s, and responsive to Thailand's social crises after U.S. withdrawal. In the 1980s, he began by working with refugees from Cambodia and Laos who suffered human rights abuses in camps along the border. In Bangkok, Ben became a major player in the community of activists concerned about the treatment of women and children. In the early 1990s, he established the Mother Child Concern Foundation after becoming deeply involved in the campaign to prevent the spread of

²⁵ The position of CPCR is strengthened by the presence of other successful NGO's which have attracted Western funding and which were founded by other members of Sulak's group. End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes [ECPAT] grew from research conducted in Europe by another of Sulak's protégés. Fight Against Child Exploitation [FACE International], founded by the same woman, long received USAID support to pressure police to prosecute trafficking crimes. The Foundation for Women and Friends of Women Foundation were organized in the 1980s and 1990s by other members of this group. Some of the founders have been beneficiaries of Saisuree's patronage, but her support was by no means the only reason for their rise or their influence. CPCR has at times been a strident critic of government policy makers, is the oldest of these Thai-style NGOs and its legal director now has a position on the National Anti-Trafficking Committee, a vehicle for peak bargaining among government agencies and NGOs to facilitate the MOUs.

HIV/AIDS. As a result of his efforts, he was well-aware of the futility of government interventions that failed to reach trafficked sex workers and especially child victims.

Saisuree's law reform efforts made the gaps in law enforcement clearer. One continuing problem was the complexity of the law itself, which required, as Saisuree's was well-aware, inter-agency coordination and commitment. Another effect of the law's complexity was that the police were now required to make informed distinctions between victims and illegal migrants, between women willing to testify and those who should not be pressured, and among welfare programs for different classes of victims. A further problem was long standing police resistance, partly a matter of training and partly corruption.

MOUs only partly addressed the first problem. Government agencies were unfamiliar with one another and not used to cooperating. Unless higher level officials could be called into back up an MOU, lower officials who are unused to any external oversight might not treat them as a mandate for action and cooperation because, as Ben described the problem, "every Ministry was very possessive of their own turf, and, also wanting to get credit for different things...and, then, let alone, talk of bringing NGOs. Between government and NGOs was considerable mistrust." Chiangmai Province in northern Thailand presented an opportunity for more effective cooperation. A number of "cause bureaucrats" were already on the scene in Chiangmai city – October generation activists who were working within their own agencies to address abuse of women and children. Ben's friend from his refugee work, now the powerful provincial governor of Chiangmai Province, provided the solution. At Ben's urging, using his own authority, the governor directed agencies under his influence to establish a Chiangmai Coordination Center to bring local officials from each agency together, well before Saisuree's MOU's went into effect. The Center was established as a part of the municipal government of Chiangmai City. It was overseen by a large interagency task force, but this first step only revealed how difficult the problem of interagency cooperation could be. Ben describes the Coordination Center as unready to work on particular cases, much less as a multi-disciplinary team.

We were on a much bigger level, quite an unwieldy committee, but we were getting the political will behind us to work together. We were making friends....We started to work together with police stations where we were friends with the superintendent. We weren't required to, nor could we go into police stations that we didn't know and say, "Can we sit and do an interview?" We didn't know the person. So we had successes. We still had a lot of problems.

The police (and military when needed) were the most difficult to integrate into a multi-agency group. Police and military trained together and as a result, the police maintain a distinctive culture of masculinity and militarization. The law reforms accomplished by Saisuree and her committee in the late 1990s were based on models imperfectly implemented even in more developed countries with more responsive police, and they created immense problems of enforcement in Thailand. For example, a procedural reform permitted police detention of a victim for up to ten days to allow factual clarification of an offense. The provision openly encouraged detention in order to coerce witnesses to testify in spite of legitimate fears of retaliation. Further, immigration and trafficking laws had conflicting mandates, requiring different treatment of "trafficked women" and "illegal immigrants" although there was a large overlap between these groups. Police officers, even police officers in the special anti-trafficking

units created by Sasisuree's working group, never considered anti-trafficking a serious crime or a way to advance their careers. Officers working in anti-trafficking units are promoted at a slower pace and receive lower pay as opposed to those officers working in "hard crime" (Kinney 2006). Even police assigned to special trafficking investigation units claim they believe adult prostitutes are seldom trafficking victims and, therefore, deserve criminal punishment, not protection.²⁶ Few police officers become versed in the law, and most are unaware of new anti-trafficking laws and regulations.

The senior social worker on the Coordination Center Committee, Rosukon Tariya,²⁷ says that she and Ben were the first to decide that the prevalence of human trafficking in northern Thailand required a specialized organization to coordinate cases of human trafficking, from investigations, to rescue, to protection of the victims, prosecution, and public education. When a U.S. embassy staff member mentioned that funding might be available under TVPA, a small group led by Ben and Rosukon decided to create a new NGO to coordinate human trafficking cases and to seek UNESCO and U.S. funding. In 2002, TRAFCORD was created as spin off from the Coordination Center.

Constructing "chains of contingent activity"

Duean's principal responsibility is to rescue women from brothels and attend to the welfare and other needs of those she deems victims after their liberation. Rescues are controversial among human rights advocates in part because victimization itself is questioned (Kempadoo, Sanghere & Pattanaik 2011; EMPOWER 2003), and in part because the rescue and its consequences place other human rights values in jeopardy.

Duean and her partners have created an extensive network of support for rescues, including "good" police, cooperative judges (needed to issue warrants to enter the brothel), dedicated social workers, medical personnel, immigration officials, prosecutors, and, if needed, attorneys to help prepare or represent the women in judicial proceedings which follow the rescues. Duean's elaborate preparations, some of them stretching over months and even years before undertaking a rescue, remind us that invoking the authority of law requires interpretive maneuvering within a hierarchy of public institutions. Interpretation almost always has to be reinforced by investments in roles and relationships establishing connections which support for the authority of law. In different societies, support is derived from existing institutions in very different ways.

Sociologist Arthur Stinchcombe has described the legitimacy of authority (and indeed all structure) as built upon "chains of contingent activities," through which "third parties interven[e] in case of need" (1968:150-1). In other words, law is legitimate when its authority is supported by other power-holders. Establishing relationships with power holders that support the cause

²⁶ Interviews with three undercover police 7/2/11 and 7/9/11 in Chiangmai and Bangkok.

²⁷ Rosukon is a generation two activist who, like Saisuree, works for the government. Rosukon chose an assignment in Chiangmai, rather than Bangkok, because of the independence it provided to work on social issues which were meaningful. She is now a supervisor of the unit in the Department of Public Welfare which maintains a liaison with TrafCORD. As describe further in the text, the other members of TrafCORD's inner circle are also cause bureaucrats, many of whom are generation two activists.

lawyer's understanding of rights may thus be the essence of all cause lawyering, but especially in the Global South where courts and the legal profession are weak.

Following Stinchcombe's lead, we may view Duean's work as nothing less than constructing the authority of law based upon chains of contingent activity. The chains take the form of a network with diverse participants linked through mutual exchanges. Networks are undefined structures that must be continually shaped and reinforced through repeated contact and exchange of narratives or stories about the nature of the relationships within the network.

Discursive constructions, a story about each relationship, are essential elements of activist networking, for they *represent* to each participant in the loose structure comprising the network the purposes and limits of relationships among the participants (Cf. Riles 2002). A complex network, such as TRAFCORD's, organized for the purpose of rescuing victims and prosecuting traffickers, is based on many different types of relationships. As we shall see, differently structured relationships in this network are explained by participants *to each other* through different stories. TRAFCORD's stories create a role for law, but they also depend, to different degrees, on mutual investments and other "chains of contingent activities."

Some stories work while others do not. Different stories speak of mutual commitments in different terms with different contingencies. To work, some stories seem more dependent on multiple mutual investments than others. Having relationships in the same network supported in different ways and having different stories associated with them creates ambiguity about common purposes. The network's ambiguous purpose is reflected especially in Duean's descriptions of her own role and her identity as an advocate for the law.

Network stories

I describe three different ways stories constitute and shape the authority of TRAFCORD: representing relational commitments (by which I mean commitments contingent upon an assumed larger structure of authority); potentially conflicting stories which reveal hierarchy, inequality, and the subordination of the law to other values; and stories in which Duean explains the moral authority of law and her identity as a lawyer.

Stories of commitment to the network

Duean and Ben are the most important members of TRAFCORD's staff, although there are many other important players in TRAFCORD's supporting network. Ben, the founder and staff director, is not a lawyer, but he is able to draw upon social capital accumulated over three decades as a respected leader of the child and women's protection movement and also, when needed, as a member of the extended royal family. Duean, the focus of our analysis here and a lawyer, has the difficult task of finding authority for her work in spite of the conflicting interpretations of authority held by TRAFCORD's funders, members of its supporting network, her partners and benefactors within the Thai government, and her own interpretation of human rights.

Duean and TRAFCORD depend not only on the material and symbolic resources provided by TRAFCORD's funder and sponsors, but also on the continuing relationships that enable TRAFCORD to function. In one sense, the network may be said to serve a formal purpose, stated in memorandums of understanding among agencies and NGOs brokered at a high

level as far back as 1998. In practical terms the network's personal connections and commitments determine what is valued and what is possible, and the most important interpreters and story tellers are Duean and her core collaborators who have recruited and maintain the network's relationships.

Some, but not all, of the most important relationships have existed over many years, and might be described as "multiplex," based on shared experiences and mutual commitment. Although Duean's career is still in its early stages, she has a growing network of female (and some male) friends, many of whom are lawyers, who have become involved in her work for TRAFCORD.

TRAFCORD's network also includes government officials, who are less obvious candidates for close relationships, such as immigration authorities and border police, but most importantly the local police. Seeking out sympathetic individuals in these agencies and bringing them into the network has been one of TRAFCORD's most important objectives.²⁸

Duean's network story begins with the statement that her goal is to "set up a system together."

[We have to] know our strengths and weaknesses. Our strength is that we are flexible, have a budget, skill, and equipment... We don't have authority. Government doesn't have budget or staff but has authority.

This is the foundational story of the TRAFCORD network, and it refers to the critical divide between NGOs which channel human rights aspirations and Thai government agencies, especially the police. It was repeated almost verbatim by the legal director of a partner NGO, CPCRC which helped organize TRAFCORD²⁹ and echoed by an undercover policeman,³⁰ a police commander,³¹ the medical expert,³² and the chief social worker in TRAFCORD's network.

²⁸ The most recent, and most comprehensive MOU (2007), was proposed and drafted by a high-ranking police officer who saw a need to overcome government agencies' reluctance and inability to cooperate with each other and with an NGO to address the problems of trafficking. The MOU provides a formal policy requiring participation by certain agencies and a justification for further recruitment of lower level official identified as sympathetic and ready to become a network member. But as already explained, the mere existence of an MOU at a high level falls far short of guaranteeing respect for human rights or even compliance with law at lower levels of the Thai bureaucracy, especially the police.

²⁹ The legal director is an important player in the construction of relationships between foreign funders, NGO expertise and high level government officials sympathetic to the cause for both political and moral reasons. She is a close friend and mentor to Duean. This is a foundational story within a portion of TRAFCORD's network that involves the police.

³⁰ These twin aspects of the network story are reinforced in the explanations of TRAFCORD's closest contact among police who work the streets. Interviewed 7/2/11. The detective, although trained in paramilitary police school and exposed to the unresponsive, bureaucratic style of Thai administration, is exceptional in that he fully accepts the best practices multi-disciplinary philosophy which largely defines TRAFCORD's expertise in human rights and the complementary competencies that draw police, other ministries, and most importantly NGOs together.

³¹ At the command level, TRAFCORD's principal sponsor is a police chief who worked on early versions of MOUs with high level government reformers, whose career, like him and many others in the network, was shaped by the opportunities created by foreign funding and political pressure to address trafficking in the 1980s and 1990s after disastrous publicity about treatment of prostitutes, exploitation by tourists, and pressure from foreign governments.

The second, and related, element of TRAFCORD's foundational story is the multi-disciplinary team, a concept developed in Western societies and promoted by CPR at high levels in the Thai government as well as among NGOs. Perfectly adapted to overcoming one of the most persistent barriers to law reform, namely insularity, lack of initiative, and self-interest of Thai bureaucracies, the multi-disciplinary team substitutes the language of professional expertise for the language of bureaucratic authority and ministry jurisdictions. This discourse, unlike the discourse of government authority, has the capacity to bridge differences among ministries and between government and NGOs. The multi-disciplinary team has become the justification for cooperation among agencies.

Both elements of the network's story, complementary competencies and the value of a multidisciplinary team, shift the emphasis away from law as a jurisdictional limit and toward law as an aspiration, opening space for human rights values. At the same time, there are different ways of telling this story to describe different relationships in the network. Different versions of the story create greater or smaller space for human rights goals and, indeed, for the authority of law itself.

Duean says police investigations are a prime example of the network story. The police lack motivation to investigate, assigning low level priority to trafficking prostitutes by comparison with "real" crime. After a raid, police investigations of the status of individual women are often defective, either because of lack of interest or lack of skill.³³ Duean points out that victimization from trafficking is often a matter of the woman's underlying motivations and investigation requires a skillful interrogator. When police officers handling a case fail to comply with the law, a call the ranking district commander in the network may be all that is required to reinforce the network's understanding of the officer's proper duty.³⁴

As spokesperson for TRAFCORD's policy mandate within the regional police, this ranking officer helps train new recruits, negotiates with judges who fail to understand the underlying purposes of the law and, as a self-described "new style" police officer, is open to listening to input from NGOs. Interviewed 7/1/11.

³² The main medical expert in Duean's network, while a firm believer in the human rights of victims, is a trained forensic's expert, and indeed found his way into Ben and Duean's network by way of his own expanding career opportunities through training at one of CPR's early workshops on rescues, multi-disciplinary teamwork, and trafficking prosecutions. At this workshop he met Ben and the lead social worker who became the principal co-founders of TRAFCORD. Interviewed 7/3/11.

³³ Duean observed that the police are interested in arrests, not in what is often a complex investigation to determine who are victims and who are criminals under the law.

³⁴ The network does not reach all government authorities with the same effectiveness, in other words, the story which legitimates the blending of police and NGO missions does not always work. Returning from a raid with rescued women in her care, Duean was stopped on one occasion by a military unit near the Burmese border. Although the Northern MOU includes a promise of cooperation by the military, the border patrol was unfamiliar with the MOU. In effect, the MOU had never been implemented by the military in this region. No easy solution presented itself, but the local police, who were better informed, allowed the women to sleep in the local jail until a sufficiently high ranking military officer could be found to who acknowledged the force of the MOU and ordered the border patrol to allow them to pass.

Adding new participants and links to new agencies and organizations illustrates one of the most important steps in transforming this story into authority for TRAFCORD's work and its effectiveness in bringing otherwise resistant government officials into line with its mission.

Finding participants for the network within the security agencies has not been a matter of recruitment but rather self-identification and pro-active assistance from members of Thailand's entrenched and secure high level bureaucrats.³⁵ Long time network members are veterans of many stages of this evolution, but new members are initiated through workshops. Duean carefully distinguishes the workshops from compulsory government training and from some NGO workshops conducted at government, which lecture, criticize, or arrange confrontational meetings with victims or clients. Her workshops use some of the techniques of encounter groups to break down stereotypes and to build trust. Duean's goal is to encourage open exchange, which achieves her primary goal, for each participant to "know and trust" other members of the network. Once familiarity and trust have been established among the participants, workshop participants are also exposed to the law and social facts supporting TRAFCORD's mission, placing criminal law enforcement in a broader human rights framework. But the more important work of the workshops is to build relationships based on trust and, to varying degrees, belief in TRAFCORD's moral and legal authority.³⁶

Network relationships are needed to form a "team" to plan raids requiring complex coordination among many agencies involved in entry, investigation, arrests, handling immigration issues, and caring for the women released from the brothel. Cooperation with the network requires initiative independent from Bangkok superiors, departure from narrow and ministry-serving interpretation of agency authority to allow support for these activities

Through networking TRAFCORD has obtained the cooperation of many agencies, but these relationships are reciprocal, requiring accommodation and negotiation when there are differences in point of view. Some, but not all, of the agencies share a similar humanitarian perspective, comfortable with the goals of its rescues, prosecution of operators and caring for the rescued women. At the same time, participation of agencies which do not always believe in the importance of these goals, such as the police and other security agencies, has been required and, remarkably, obtained. In return, TRAFCORD maintains an ongoing dialogue about priorities and values on which they may differ.

Conflicting representations of legal duty

All versions of the founding story share another quality. TRAFCORD's founding story justifies TRAFCORD's mission to conduct rescues in order to prosecute traffickers. The role of prosecutions in their mission not only makes their work controversial among human rights advocates, it is also a source of contradiction among versions of the story which explain TRAFCORD's relationship to different role players in its network.

³⁵ Duean describes the recruitment process in this way: first ask existing network members, for example social workers, who the "good" police are, say Mr. X. Talk to Mr. X. Send a letter to his/her boss suggesting that the boss could easily comply with the new MOU policy by appointing someone to take care it, namely X.

³⁶ The ranking police officer in her network repeated this rationale almost word for word.

The stories which underpin, explain, and focus different parts of Duean's network of relationships can have quite different implications, placing their subjects in different relationships to the authority of law and the human rights mission of TRAFCORD.

Police stories

Exerting authority with, and therefore over, the police to strengthen commitment to new values and new actions is a key factor in the success or failure of this "Thai-style" NGO. Relationships with police do not always go well. Duean carefully bypasses the "bad" local police who are corrupt or who ignore their duty to cooperate with TRAFCORD. The networking which has involved building credibility of a story about shared commitment to TRAFCORD's mission (or some version of it) is far weaker with some individual police and police units than others. Some of this variation is explained by her as evidence of "bad" police.

But even good police may resist her interpretations of their responsibility to provide protection for the rights of victims which identify TRAFCORD's distinctive mission under the law. As hard as she works to *change* their perspective, she also places the police in a position of moral authority.

My work is to cooperate with [police and prosecutors] and look at the problem together with them. Actually, the police already knew their responsibility, how to enforce law. But my job is to cooperate with them and let them understand my point – something like perception sharing.

[When there are differences in their perspectives] a meeting will be held..together as an integrated group...If the police have a different idea,we will try to find agreement and mutual understanding.

We sometimes had different ideas, but we ultimately have to accept and understand the responsibility of police, and if so, everything will be fine...but if their action violates the women's rights, I need to let them know. However, if they do not change their action, I will report it their boss to stop them, but such situation has not frequently happened.

At other times, Duean acknowledges how problematic and central to her work police cooperation is. But the rhetorical stance of network participants, which is what I think she was paraphrasing, is a position of deference and minimizing conflict, to the point where TRAFCORD's actual effectiveness might be limited. Two factors intervene to limit the NGOs effectiveness, the willingness of police to perceive the women as victims, the women she identifies, and the large areas of trafficking activity reserve for the "big fish" which TRAFCORD cannot touch.

Duean's story of respect for police is strengthened by the role a few influential and higher ranking police officers have played in the development of MOUs and in supporting her work in the Northern District as authority of last resort. But resort to higher ranking resources happens so rarely because she invokes it only after TRAFCORD has conducted a rescue, and

TRAFCORD, because of the structural constraints I have mentioned, conducts few raids, at great cost and with modest success.³⁷

Ben, the staff director, who, as we have explained, is not a lawyer, offers a pragmatic explanation of the accommodations TRAFCORD has had to make with the police to get something done when the law is ineffective. The police in general are simply uninterested in making the human rights objectives of TRAFCORD a priority for adult women prostitutes, but they do believe that children are always victims. Thus, the key to cooperation is demonstrating children are involved, according to Ben. But this is not what Duean emphasizes. Instead, she describes “bad” police who do not share her moral sense of the authority of the law, and “good” police who understand the law correctly. She said in concluding her story about going over the local officer’s head, “It is important to have a network with good police.” But even “good police” sometimes have different priorities. Duean struggles with the representation of network relationships – their stories – as law and human rights.

Victim stories

The story line of Duean’s relationship with the police is quite different from her description of her relationship with Burmese women who make up the majority of the women she rescues. These women are desperately poor, sometimes (perhaps mostly) ambivalent about sex work itself because of the opportunity it presents to help their families, and equally terrified of retaliation by the owner of the brothel and brutality by the police. There are enough examples of both to make such fears credible. Further, they have no knowledge of the Thai laws, much less human rights norms, which may protect them, or of Thai legal process, which offers at least some chance of protection unlike courts under Myanmar’s dictators.

Duean’s sympathy for them is rooted, perhaps, in her own experiences growing up in a very poor household with a hardworking single parent. She has embraced her work rescuing women from trafficking (which is by definition coercive). Yet, she is far from a sex worker advocate, and seems comfortable with criminal punishment for women engaged in truly voluntary prostitution.

Duean has learned a great deal through perceptive observation. She believes that sex work is “mostly unfree,” even when voluntarily sought out as a form of employment and even when the women fail to take what seem to be opportunities for easy flight from a brothel.

One thing that I found many years ago is, I found by myself and with my colleague, when we rescue a girl or a young girl or a woman, especially a young girl, that at first it seems like they seem like they are willing to work as a sex worker and we send them to start in a...shelter, at first they are unhappy, but when the time pass, we follow up case, about re-integration, follow up about law process, you know? One thing I found is, their

³⁷ Numbers of trafficking arrests, prosecutions and convictions are tiny in comparison with the size of the sex industry. In the late 1990s, Phongphaichi, et al. estimated that there were more than 100,000 sex workers in Thailand (1998). In response to U.S. pressure under T.V.P.A., Thai police gather annual arrest statistics that surely must place the police in the most favorable light. According to a confidential source, in 2008, police reported 19 arrests for sex trafficking, 56 in 2009, 58 in 2010, and 26 in 2011. Only a handful of the cases reported each year are sufficiently documented for prosecution. For example, in 2011 TRAFCORD reported 9 arrests for sex trafficking and two convictions.

childhood in themselves. How to say? At first when we saw them in a brothel, they are like a woman, right? They are willing to work, they work as a sex worker and they claim as. But after we send them to the... shelter, when the time pass, one month, two months, three months, four months and we go back to meet them, we can see the childhood in their eyes...They became children again!

Her experience, she feels, has given her a broader understanding of of the meaning of victimization and the gap in the law between “victim” who was coerced by obvious use of force and “criminal” who willing entered into employment as a prostitute.

They come to work as a sex worker because they have to send money to their home. There are many reasons. This is a point. If a government official doesn't understand this point, if they interview, if the police interrogation interview the girl, “You work, you come to work here, someone lure you or not, someone force you or not?” If girl says, “No, no one. I work by myself.” So, they might think she is non-victim. Even though, she appears in the court, the judge might see that she is willing to work, so it's involved with the evidence to punish someone. It's sensitive. I would like to say, trafficker exploit human being from this gap.

Despite her sophisticated understanding, the representation of her relationship to them takes a very different turn as she serves the needs of the network. In her official role as their advocate and minder after rescue, she gathers information critical to their defense, but that is secondary in her representation of her role. Thai law requires cooperation from the victim's in the prosecution of the trafficker. The women, for reasons Duean understands well and described as the “gap” between express wording and the law's intent, at least from the seeming perspective of TRAFCORD's mission, fear testifying. She says,

No one wants to cooperate with the law...Because law takes a long time. Fear of owner...[Yet] the government needs their cooperation. That's my duty.

Q: To government or the victim?

My duty is to deal with this problem. My duty is with the law.

If the girl says “I don't care” then she selects better witnesses. Those who cooperate, she says, are the “real victims.” Although she denies using this characterization to bring pressure to bear on the women, her clear communication of priorities, including their duty to serve the needs of the law, together with their own experiences of repressive authority at home, seem to send a clear message.

Thus, TRAFCORD's foundational story has different implications for those who are differently placed in its network. The police have latitude to negotiate their responsibilities not only because they have the power to be independent, but because they have, in Duean's view, proper authority to do so.

By contrast the story which characterizes her relationship with the potential victims of trafficking, and derivatively the story she communicates about their rights, gives victims far less room to choose outcomes than the story of police authority. Not coincidentally, Duean has power

over all the contingencies that affect the women, making negotiation of a new story broadening their range of choices unlikely.

Although her role vexes her, as I take up next, she believes in its moral correctness under law. On one hand she knows that the true status of “victim” can be distinguished or hidden from the law by fear and the law’s own ambiguity, and yet she can suggest that a true victim will cooperate. She knows the police may not respect or value the human rights of trafficking victims, yet she is willing to negotiate the boundaries of their authority rather than use the authority of law to confront them, except in the limited case of violations of the letter of post-rescue procedural law that fall clearly within her technical expertise and where she has the support of a superior officer.

A critic might argue that networking has resulted in Duean’s acceptance of potentially human rights-eviscerating interpretations of law by the police on one hand and assertion of the moral superiority of the law over her own humanitarian instincts on the other. These consequences of her successful network stories seem to leave her with a narrowing platform of formal legality to support her more expansive articulation of the human rights of victims.

Law stories

Duean is concerned about the law. As the principal legal advisor and trainer for new members of the network, it falls to her to interpret the law for other members of the network whenever it may be relevant. Yet, TRAFCORD advocates rescue and humanitarian treatment of trafficked women (and men), a human rights goal not shared widely in Thai society, and only recently established in law.³⁸ After all this, just how important *is* the law in defining her work and her identity as an advocate? She sometimes deploys its authority and sometimes works around it. She is pushed to find different meanings in the law, and her own identity as a lawyer, by conditions of her funding, the formal limitations of Thai law and legal institutions, interpretations of mentors, allies, or networked collaborators, and her instincts about her mission to protect the human rights of the women who have been trafficked.

For nearly ten years, Duean’s most expansive view of TRAFCORD’s mission has included human rights ideals embodied only recently in Thai law.³⁹ In her mind, however, the Preamble to the 2008 Anti-Human Trafficking Law is connected to the aspirations of Thailand’s 1997 constitution, the so-called “People’s Constitution, which contained Thailand’s first bill of rights. More importantly, the 1997 constitution was embraced widely by the people, and, Duean believes, it changed their expectations. The new law’s preamble, she says, is “constitutional” in its aspirations, and it is this sense of purpose that she seeks to instill in the police and other government agencies.

Notwithstanding Duean’s often expressed view of the importance of law for her work, her narrative suggests that there are moments when the law is more relevant and less relevant, or even irrelevant, to her decisions, even though as a formal matter the law might be applicable to

³⁸ In the NGO community, TRAFCORD has been accused of committing human rights violations by its use of coercion, denying women an opportunity to work, but virtually arresting them, even if they are declared victims, and by failing to protect them from further coercion by the police and courts after rescue (EMPOWER 2003).

³⁹ [Quote]

all. As I have just explained, the formal, hierarchical connections between the offices held by some individuals within the TRAFCORD network have become reciprocal (and less hierarchical) network relationships which allow mutual access and collaboration. Duean describes these relationships in terms of legal requirements, but prior to enactment of the 2008 Anti-Trafficking Law, and the 2007 comprehensive Northern MOU, that law was a patchwork with many potential gray areas. Duean's role depended on the understanding of TRAFCORD's mission shared by her closest colleagues as much as it did on law. In Duean's view, her requests for assistance may have reflected the force of law, but they depended on the presence of network participants in each agency with personal commitment built over years of collaboration or through trust-building workshops.

We may pause at this point to contrast the support Duean and TRAFCORD have created for law with experiences closer to home. The "chains of contingent activities" which support the legitimacy of law and her mission are not anchored ultimately in institutional oversight or in political support, as they might be in discussions among her counterparts in the U.S. or other societies of the Global North. Instead, her chains of contingency, if they work at all, end mostly in personal commitments.

Stereotypical characterizations of Asian societies often emphasize structures build on clientelism, family, and other particularistic relationships. A study of Thai bureaucracy in the 1970s (Rubin 1980) revealed sharp differences between Thai, US, and French bureaucrats' reliance on rules to structure and support authority. Thai bureaucrats were, above all oriented to personal ties rather than rules. Rapid evolution has infused the Thai bureaucracy with Western-educated professionals, and the demands of a rapidly growing economy and society have encouraged technical proficiency. Even after such evolution, characterizations of Thai bureaucracies speak of the importance of personal, hierarchical loyalties (Ockey 2004). Historically, Thailand lacked a system of administrative courts or a strong Parliamentary system, reducing the likelihood of oversight. The 1997 liberal Thai constitution adopted a mandate for administrative courts which resulted in passage of an organic act in 2000 and inception of the system shortly afterward. The system is in its infancy but seems to promise a new route for activists. Parliament has been in disarray during the first decade of the 21st century, superseded by a military coup in 2006 and weakened by deep political dissension since formal restoration of democracy in 2007.

Under these conditions, it is perhaps less surprising that Duean and Ben have cobbled together friends, patrons, sympathetic fellow travelers and have found an effective "Thai way" to construct personalistic ties through encounter group workshops in order to expand the authority of Traford's interpretation of law's moral authority.⁴⁰

The support which TRAFCORD has created does not yet extend the authority of law much beyond the network. Duean acknowledges that there are some types of human trafficking

⁴⁰ The term "Thai way" is Duean's, which she offered with a look of delight, having come to this conclusion after working with me on this project for some time. The "Training for Trainers" workshops were previously conducted in other setting by staff members of the Asia Foundation, who have mentored Duean and guided the development of Traford's adaptation of this method of encouraging "rule of law" changes in Thailand. Interview with TAF staff member 12/21/06.

where the law seems irrelevant, namely, in her words, the “big fish.” The UN Protocol on Human Trafficking is part of a larger UN accord on control of organized crime and all forms of trafficking. Criminal organizations, whether internationally or locally based, still have influence over the police. Although there are far fewer tip-offs to brothel owners by the police prior to a raid than there used to be, the larger prostitution rings run by well-protected criminals are beyond TRAFCORD’s capacity. Police tip-offs from within their network have declined in part because they have earned the respect of police over time, but also, Ben thinks, because new laws and increasing public condemnation of child prostitution have created pressure for professionalization of police handling of trafficking cases.

Law’s relevance for Duean’s work is clearest during investigations following a raid and subsequent preparation of women who have agreed to testify. Though her sympathies lie with victims, determining who is a victim is difficult, and she says that the staff members have discussed this question a lot. Prior to enactment of the new law, she had more discretion. The new law is detailed, and she finds it difficult to apply to actual cases.

The gray area in the law between victim and non-victim places great responsibility on Duean. She is concerned about the fairness as well as thoroughness of an interrogation. The police are ill-equipped to do proper investigations. Her job, she says, is to obtain the “best representation,” by which she means creating the best opportunity for the women to present evidence of their victimization to investigators or a judge. Traffickers exploit the gray area between what is clearly considered trafficking under the law (for example employing underage prostitutes or physically abusing women) and what is more difficult to detect – subtle threats of retaliation for attempts to escape and psychological abuse. She gives an example of young girls who had been trafficked but who would not seize an opportunity to escape through an open door.

Duean is intimately familiar with the details of the new anti-trafficking law, and how thoroughly it dominates her work with her network. While she believes in the law’s legitimacy, she struggles with the gaps and contradictions in the law, which place women she rescues at risk. The new law has greatly increased the difficulty of gathering evidence and making this decision, and she wishes that she did not have to attend to its more complex criteria.⁴¹

Her opinion about who deserves to be considered a victim has been further influenced by the expectation created by the law that the women will testify about their victimization by the brothel owner. The law places pressure on the women by granting immunity from prosecution under the criminal and immigration laws only if they are declared a victim, and in turn this determination may require testimony and examination by a judge. There are many reasons why the women are reluctant to testify, most obviously because of their fear of retaliation against them or members of their family. While Duean understands their reasons for resisting having to testify, she believes that true victims will testify and those whose uncertain status cannot be clarified without their testimony must be prosecuted or deported. Whatever her uncertainty about applying the law’s criteria for victimization, her interpretation of the human rights of the women seems to turn in part on the women’s cooperation with prosecution of the brothel owner.

⁴¹ I used some of Carol Gilligan’s moral dilemmas as examples – stealing to obtain medicine for a sick parent, and Duean struggled with them, as we all do. For her, such decisions have consequences. To find this form of duress a grounds for excusing a woman from the crime of prostitution is extremely difficult for her.

Duean not only has the difficult job of assisting with determination of who is a victim, but she must also prepare women for court appearances to testify about their victimization, testimony which may be used against the brothel owner. US funding, which has been important for TRAFCORD's survival, requires prosecution of brothel owners, and prosecution is emphasized under the new Thai law. Many poor Burmese women rescued by TRAFCORD know nothing about law and courts, so Duean recruits her friends to role play prosecutors and judges in a mock trial to prepare the women for court. Sometimes the proceedings make so little sense to the women that Duean must repeat the role play and her explanations.

When asked whom she represents in these proceedings, the trafficked women, the prosecution, the corporate interests of TRAFCORD, or something else, her answer has four parts. First, she has specific duties, which includes assisting the police in their investigation. Second, she simultaneously shapes the outcome of the investigation to make sure that evidence of victimization is thoroughly and properly considered. Third, when the police improperly question a woman, another role comes into play. She goes over their heads to correct that practice. Fourth, she urges the women to do something they are often unwilling to do, and prepares them for a proceeding which is often meaningless to them, a judicial hearing. When asked whom she represents, she answers "the law, I am for the law."

It could be said that Duean's representation of TRAFCORD's authority through the multiple stories of TRAFCORD's network undermines much of the aspirational quality she admires in Thailand's new constitutional law and in human rights for the sake of a few successful rescues. She seems to have limited options for having it all "make sense" as both human rights and law. Yet, as I conclude in the final section of this essay, at home, in Thailand, Duean's commitment to the "the king and the law," notwithstanding the ambiguous effects of her networking on the achievement of human rights goals, provides a more than adequate explanation, or representation, of her work.

Conclusion: The moral authority of law

Duean helps construct multiple and contradictory stories about the purpose and authority of law in her anti-human trafficking strategies. The network on which this authority relies is robust. Social cause advocates like Duean mobilize the authority of the state by invoking the patron-client power of higher-level bureaucrats and collaborations with lower-level officials, based on long-standing mutual support.

The implications of such strategies for longer-term construction of state power may be subtle but they are potentially important and a partial explanation for legal evolution. Co-optation of key frontline officials in a Thai ministry may not survive the particular players in the network. Nevertheless, over time, strategic advocacy may lead to more stable social construction of authority based on investment by mutually interacting players, often anticipated by longer standing but unenforced formal rules, and that either reduces conflict with or wins the support of influential outsiders. This may be especially the case, but by no means a prerequisite for change, if the NGO's approach is reinforced internally, for example, by a few frontline officials with a sympathetic understanding of the NGO's cause, or externally, for example, by the discourses and pressures from Global North agencies, governments, scholars, media,

philanthropies, and other social advocacy groups. NGO activity that brings about short-term investments by officials at different levels of government may reduce agency costs as workloads and work routines are adjusted to the mutually agreed norms.⁴² Therefore, such investments may persist.

At the same time, an understanding of the role of social cause advocates like Duean must be tempered by a realistic understanding of Thai politics and institutional change. Even though TRAFCORD's network is robust, by any statistical measure little is being accomplished, either by TRAFCORD or by any similar organization attempting to adapt a portion of police and bureaucratic authority to the humanitarian cause of trafficking victims.⁴³ While Duean and TRAFCORD have charmed donors and the Thai public,⁴⁴ their victories remain largely symbolic.

Duean and TRAFCORD have succeeded because they have enjoyed, both indirectly and directly, high level sponsorship within the Thai government and its elite. Some scholars argue forcefully that Thailand's liberal reforms of the past two decades, including the growing presence of constitutionalism and emergence of a discourse of rights, have owed much to liberal royalists who struggle to maintain the role of a modern monarch within the center of power by sponsoring projects reflecting modern, liberal values (McCargo 2005; Hewison 1997). My narrative of growth of activist networks since the October Revolution of 1973, intersects smoothly with such high level sponsorship, through figures such as Dr. Saisuree Chutikul and her collaborators who have helped to create the pathways of TRAFCORD's influence. The substantive rationality of Duean's story about the law, in all its forms, is her simple formulation, "for the King and the law." Public virtue depends on identity with the King's interests.

When Duean was first interviewed, at age 26 in 2006, she said that her work has been "for the King and the law." For a Thai this is an unremarkable statement, but one that is loaded with meaning. The King occupies a revered, semi-sacred position in Thai society, based as a formal matter on Buddhism which ranks the King's merit above all others, but also on the charisma he possesses in Thailand's traditionally hierarchical society, even in its modern form. The King, and the bureaucracy established by the monarchy in the late 19th century, create a stable government administration and give legitimacy to the law under which it operates. The law does not exclude the possibility of other forms of legitimate power, demonstrated by Thailand's history of military coups (19 of them since the establishment of the constitutional monarchy), all of which preserved the King as head of state and often created law by decree which is still recognized as valid alongside laws made by Parliaments.⁴⁵ For Duean, law is a

⁴² Further, social cause advocacy can help government officials resolve one of the most vexing problems of globalization, by "delegating" management of conflicts between domestic political expectations and the rule of law expectations of Western governments and agencies to NGO staff members.

⁴³ TRAFCORD reported ten prosecutions, one of which was for forced labor unrelated to prostitution, and two convictions in 2011. See also note 36.

⁴⁴ TRAFCORD has won praise from USAID as an example of "best practices" in the TIP Report and the US Embassy as a "model partner" on their website. See *supra* notes 6 and 7. Duean herself has also charmed the domestic audience, as a "talking head" and recent honoree on the King's birthday, an award of monumental significance for ordinary Thai.

⁴⁵ Streckfuss 2010.

moral authority, just as the King is the essence of virtue in Thai society, and not a mere device or tool for achieving a higher order purpose, such as human rights or for limiting government abuse as a civil rights lawyer might perceive.⁴⁶

Duean may also be at the growing tip of an important change. The very term in Thai for “bureaucrat” means servant of the King. Thai understand the difference between bureaucratic virtue and deep seated corruption or arrogance. Where the claim for bureaucratic authority is supported by human rights-inspired policy making and carried out by individuals with personal histories rooted in Thailand’s “October generation” or with years of service in “Thai way” projects to bring a humanitarian perspective to government policies, even if only at the margin, the work of bureaucrats takes on some of the better values which the term for bureaucrat implies. Of course, the trajectory of such changes will depend on subsequent generations of officials and a public which infuses the moral authority of law with more liberal values.

Duean has become increasingly entangled with the requirements of the law, especially those which seem potentially at odds with the human rights of victims, as TRAFCORD’s critics among sex-worker advocates have stridently proclaimed. While she has, in a sense, become “trafficked” by the legalism of global trafficking norms, she has also enriched the authority of Thai law’s moral foundation in humanitarian aspirations.

⁴⁶Duean, therefore, appears to believe there is a high degree of consistency between trafficking victims’ human rights and the law. Her belief may be grounded in part in her perception that the 1997 “People’s Constitution” increased public awareness of human rights, making human rights “legal” or at least achievable within the law rather than a mere universal aspiration requiring contentious advocacy about the meaning of core societal values or institutions.

References

- Abel, R. (1998) "Speaking law to Power, Occasions for Cause Lawyering," in A. Sarat and S. Scheingold (eds), *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press, pp. 69-117.
- Asian Human Rights Commission. 2006. Thailand: Police Reforms Mean Command Responsibility. Found at <http://www.humanrights.asia/news/ahrc-news/AS-313-2006/?searchterm=Thailand%20police%20and%20prosecutors> (last visited 9/17/12).
- Baker, C. and P. Phongpaichit. 2005. *A History of Thailand*. Cambridge: Cambridge University Press.
- Chandarasorn, V. and L. Dhiravegin. 1987. Policy Implementation in the Thai Public Bureaucracy. *Southeast Asian Journal of Social Science* 15:96-106.
- Chuang, J. 2006. The United States As Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking. In *Michigan Journal of International Law*. 27: 437-494.
- Cohen, A. (2011) "On Being Anti-Imperial: Consensus Building, Anarchism, and ADR," *Law, Culture and the Humanities*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1999319, downloaded on December 17, 2011.
- Connors, M. (2009) "Ambivalent About Rights: 'Accidental Killing Machines,' Democracy and Coups d'etat," Working Paper Number 102, Hong Kong: City University of Hong Kong.
- Dezalay, Y. and B. Garth. 2010. *Asian Legal Revivals: Lawyers in the Shadow of Empire*. Chicago, IL: University of Chicago Press.
- EMPOWER. 2003. *A report by Empower Chiang Mai on the human rights violations women are subjected to when "rescued" by anti-trafficking groups who employ methods using deception, force and coercion*. Found at <http://www.nswp.org/sites/nswp.org/files/Empower%20report%20on%20forced%20rescue.pdf> (last visited 9/8/12).
- Epp, C. 2009. *Making Rights Real: Activists, Bureaucrats, and the Creation of a Legalistic State*. Chicago, IL: University of Chicago Press.
- Funston, J. 2001. Thailand: Reform Politics. In J. Funston (ed) *Government and Politics in Southeast Asia*. Hong Kong: Institute for Southeast Asian Studies: 328-371.
- Garcia-Villegas, M. 2006. Comparative Sociology of Law: Legal Fields, Legal Scholarships, and Social Sciences in Europe and the United States. In *Law and Social Inquiry* 31(2): 343-382.
- Ginsburg, T. 2010. The judicialization of administrative governance: causes, consequences and limits. In T. Ginsburg and A.H.Y. Chen (eds) *Administrative Law and Governance in Asia*. London: Routledge: 1-19.

- Hess, G. 2003. Waging the Cold War in the Third World: The Foundations and the Challenges of Development. In L. Friedman and M. McGarvie. *Charity, Philanthropy, and Civility in American History*. Cambridge: Cambridge University Press: 319-340
- Hewison, K. 1997. The monarchy and democratization. In K. Hewison (ed) *Political Change in Thailand: democracy and participation*: 58-74.
- Jayasuria, K. 1999. Introduction: a framework for the analysis of legal institutions in East Asia. In *Law, Capitalism, and Power in Asia*, ed. Kanishka Jayasuria. New York: Routledge.
- Kinney, E. 2006. "Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS," *Berkeley Journal of Gender Law and Justice*, 21, 158-194.
- Kempadoo, K., J. Sanghere, and B. Pattanaik (eds). 2011. *Trafficking and Prostitution Reconsidered 2d Edition: New Perspectives on Migration, Sex Work, and Human Rights*. Boulder, CO: Paradigm Publishers.
- Lev, D. S. 2000. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. The Hague: Kluwer Law International.
- Limoncelli, S. The Politics of Trafficking: *The First International Movement to Combat the Sexual Exploitation of Women*. Stanford, CA: Stanford University Press.
- McCargo, D. 2005. Network monarchy and legitimacy crises in Thailand. In *The Pacific Review* 18/4:499-519.
- Merry, S. 2003. Constructing a Global Law—Violence Against Women and the Human Rights System. *Law & Social Inquiry* 28:941-977.
- Morrell, D. and C. Samudavanija. 1988. *Political Conflict in Thailand: Reform, Reaction, Revolution*. Cambridge, MA: Oelgeschlager, Gunn & Hain
- Munger, F. 2008-2009. Globalization, Investing in Law, and the Careers of Lawyers for Social Causes—Taking on Rights in Thailand. In *New York Law School Law Review* 53: 745-802.
- _____. 2009. Global Funder, Grassroots Litigator – Judicialization of the Environmental Movement in Thailand. In *International Review of Constitutionalism* 9:75-105.
- _____. 2011. Globalization through the Lens of Palace Wars: What Elite Lawyers' Career Can and Cannot Tell Us about Globalization of Law. *Law & Social Inquiry* 37:476-499.
- Muscat, R. J. 1994. *The Fifth Tiger: A Study of Thai Development Policy*. New York: M.E.Sharpe.
- _____. 1990. *Thailand and the United States: Development, Security, and Foreign Aid*. New York: Columbia University Press.
- Ockey, J. (2004) "State, Bureaucracy, and Polity in Modern Thai Politics," *Journal of Contemporary Asia*, 34: 143-162.

- Phongpaichit, P., S. Piriyarangsan, and N. Treerat. 1998. *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy*. Chiangmai, Thailand: Silkworm Press.
- Pichaikul, R. and J. Klein. 2005. *Legal Literacy for Supporting Governance. Legal Empowerment: Advancing Good Governance and Poverty Reduction*. Bangkok, Thailand: The Asia Foundation.
- Riles, A. (2001) The virtual sociality of rights: the case of 'women's rights as human rights.' In M. Likosky and A. V. Lowe. *Transnational Legal Processes*. London: Butterworths: 420-439.
- Rubin, H. (1980) "Rules, Regulations, and the Rural Thai Bureaucracy," *Journal of Southeast Asian Studies*, 11, 1, pp. 50-73.
- Santos, B. and C. Rodriguez-Garavito. 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge: Cambridge University Press.
- Sarat, A. and S. Scheingold (1998) *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press.
- Scott, James C. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale University Press.
- Stinchcombe, Arthur. 1968. *Constructing Social Theories*. Chicago, IL: Harcourt, Brace & World, Inc.
- Tantiwiranond, D. and S. Pandey. 2008. *Does Advocacy Matter? Women's Advocacy Campaigns in Thailand*. Bangkok: Friedrich-Ebert Stiftung.
- Upham, F. (2006) "Myth-making in the Rule of Law Orthodoxy," in T. Carothers (ed), *Promoting the Rule of Law Abroad, Washington, D.C.:* Carnegie Endowment for International Peace, pp. 75-104 .
- Wyatt, D. (1969) *The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn*. New Haven: Yale University Press.