

## Editors' Introduction

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**T**his special issue of the *Law & Society Review* grows out of a unique intellectual encounter: an attempt by the Association to reach beyond its usual geographical horizons and to listen to and engage in conversation with a group of scholars from a region of the world—Southeast Asia—that has received little attention within the law and society community. This conversation is significant for the Association in several ways. First, as our scholarly community becomes more aware of the globalization of our field and the interconnections between our interests and developments in other regions of the world, it behooves us to make new efforts to broaden our understanding of sociolegal issues that are important to the scholars and peoples of Asia, Africa, the Middle East, Latin America, and other world regions. Second, if the Association is to realize its aspirations to internationalize its membership, we should at the same time attempt to understand the scholarly interests and commitments of new colleagues with whom we seek to share our community. We must therefore find ways to listen to the voices of scholars in regions of the world whose work may not yet be familiar to the *Review's* general readership. Third, the infusion of new perspectives, new research issues, and new voices can enrich the dialogue among sociolegal scholars in many ways. Familiar topics—legal pluralism, the family, crime, the environment, civil rights—can be seen in a new light; and topics that now receive somewhat less attention among North American and European sociolegal scholars—indigenous peoples, law and religion, land rights—emerge as fundamentally important and deserving of renewed research interest.

## The Conference

The essays and discussion excerpts in this special issue reflect the proceedings of a small conference held in Chiang Mai, Thailand, 5–10 January 1992. The conference was organized by the Law and Society Association's Committee on International Participation, consisting of the three volume editors. This committee set out to identify regions of the world where scholarship on sociolegal themes was largely unfamiliar to members of the Law and Society Association and where scholarly communication and exchange with our members had been limited. We hoped to identify scholars and scholarly issues in those regions that would broaden the perspectives of Association members. We also hoped to encourage scholars from various countries and intellectual traditions to participate in scholarly networks, both to exchange information and to develop collaborative research projects on transnational issues and processes. The region we selected for our initial effort at this form of international outreach was Southeast Asia.

With funding from the National Science Foundation, the Ford Foundation, and the Wenner-Gren Foundation for Anthropological Research, and with the generous cooperation of Chiang Mai University, we planned a conference focusing on sociolegal themes and methods in Southeast Asia. "Conference" is perhaps too grand a word; the gathering was small enough to permit all the participants to sit around a single table and speak directly (and at length) with one another. Thus, only 30 to 35 people attended, and numbers fluctuated as some participants left and others arrived. Southeast Asian and other Asian scholars not only made up three fourths of the conference participants, but they also served as chairs and discussants in the majority of sessions. As a result, the discussions were driven by the interests and perspectives of scholars from the region rather than by Western scholars, who often tend by their very numbers to dominate the international conferences they attend.

Despite the committee's efforts to ensure participation of scholars from most of the countries of Southeast Asia, those who attended represented only a partial sample of the many nations and cultures that might participate in future efforts of this kind. Southeast Asian participants came from Indonesia, Malaysia, the Philippines, and Thailand (with late cancellations by scholars from Burma [Myanmar] and Vietnam). Other Asian participants came from Sri Lanka and Japan. Western participants came from the Netherlands and the United States.

The diversity of the presentations reflects the diversity of the participants and the differing social and political contexts in which they were writing. Although all the essays address core sociolegal themes around which the conference was structured,

they range in intellectual perspective from analyses of black-letter law and law reform, through sociological studies of legal processes, to sociological analyses of religion, feminist interpretations of law and society, and critical examinations of public policy. We felt that this diversity of perspectives accurately reflected contemporary Southeast Asian sociolegal scholarship, which—to the extent it can be identified at all as a separate subfield—has been shaped by concerns and events quite different from those that shaped the development of sociolegal scholarship in Western countries or even in Africa and South Asia.

One theme unites most of the contributions by Southeast Asian scholars. The concept of “engaged research” or scholar-as-activist emerged strikingly both in the essays and in the discussions. Some conference participants are active politicians or are connected to nongovernmental organizations rather than to colleges or universities. Even those affiliated with academic institutions tend to be extensively engaged in political movements or public policy debates and activities. The resistance to marking or maintaining a boundary between activism and sociolegal research that emerges in most of the conference papers and discussions reflects the deep concern felt by most participants about the social transformations occurring in their countries. These transformations—for example, in the status of indigenous peoples, in the identity and rights of women, in land rights and ownership, in the natural environment, in religion—became the focus of attention throughout the conference.

### **Format and Central Themes of the Special Issue**

The material in this volume is grouped into three sections, one on “Religion and Law in Southeast Asian Nation-States,” a second on “Women, Family, and the Law,” and a third on “Land and the Natural Environment.” Each section explores one aspect of the general conference theme of “legal pluralism”—the interplay between local, national, and transnational ideas and influences within Southeast Asia.

The volume begins with the section on “Religion and Law,” because these essays and discussions provide an essential framework for understanding what follows. Concepts of women and the family and of land and the natural environment in Southeast Asia are often shaped, even in contemporary societies, by the dynamic interaction of religion and law. Classical conceptions of law in Southeast Asia were, of course, deeply rooted in religion. Indeed, the distinction between law and religion was all but inconceivable until the modern era. Even today, viewed from a sociolegal perspective, in Southeast Asia there are substantial overlaps (and tensions) between religious and political concepts of justice, legal legitimacy, and “rights.” This fact has been under-

scored in recent years by the rise of so-called fundamentalist movements among Muslims and Buddhists, who have challenged the laws and political institutions of Southeast Asian nation-states. Religion thus provides a framework for understanding traditional concepts of law and justice in Southeast Asia, and it also provides a discourse for new forms of legal and political resistance throughout the region.

The second section deals with "Women, Family, and the Law." Concepts of human identity, gender roles, and of the family are deeply rooted in the great religious traditions of Southeast Asia—Buddhism, Islam, and Christianity—yet other influences have also been important. Even within a given religious tradition and within the individual countries of Southeast Asia, there are dramatic local variations in cultural understandings of gender, marriage, families, children, and inheritance. Furthermore, Western legal norms have often provided alternative frameworks for defining the status of women and families. The generalized impact of global culture, the media, transnational women's movements, and international law have also presented alternative, nontraditional conceptualizations based neither on Southeast Asian religions nor on local cultures. Southeast Asians have thus experienced a proliferation of overlapping frameworks for understanding gender and family relationships, and their attempts to negotiate among and to reconcile these various frameworks take place within a process of dramatic social and economic change. Conference participants explored these tensions, conflicts, and continuities with great interest.

The third section deals with "Land and the Natural Environment." Here a number of themes are explored. One theme is the conflict between property regimes instituted by the nation-state and those based on local traditions or customary law. Such conflicts have been particularly important for small farmers throughout Southeast Asia. A second is the problem of the mismanagement of land and the natural environment—often with catastrophic consequences in the region. A third is the dilemma of indigenous peoples of Southeast Asia whose cultures rest on relationships to the land that often bring them into conflict with other population groups and with the government. The number of essays in this section and the intensity of interest associated with them suggest, accurately we believe, that this topic has a particular importance for sociolegal scholars in Southeast Asia.

In addition to formal essays, each section of this volume includes edited transcripts of conference discussions. Although the editors recognize that such materials have not previously been published in the *Review*, we decided they were important to include for two reasons: First, these discussions reflect the scholarly community that emerged during the conference. Because conference participants came from diverse countries, backgrounds,

and institutions, the papers they prepared before the conference tended to reflect their diversity, even though most authors revised their papers later. By contrast, the discussions reveal emerging areas of shared understanding. Second, the discussion transcripts capture the dynamic nature of the exchanges. Most discussions moved beyond the papers, exploring connections between papers and highlighting areas of shared insight and of fundamental disagreement. In editing the transcripts, we have tried both to preserve their spontaneity and to prune them down to essentials. And we have created apparent dialogues from comments made at different times because conference participants kept returning to specific issues of wider concern, such as polygamy or the plight of poor farmers driven from their lands.

### **Legal Pluralism**

The overarching theme for the conference and for this special issue is “legal pluralism” viewed from a transnational perspective. In organizing the conference around this general theme, we hoped to learn what significance—if any—a core law and society concept might have for scholars who live in dramatically pluralistic settings but have not participated in intellectual exchanges over “legal pluralism” with sociolegal researchers from Western countries. Further, we felt that Southeast Asian scholars might have much to contribute to current efforts to expand legal pluralism beyond its original conceptualization as a phenomenon primarily associated with individual nation-states.

More than a quarter-century after the founding of the Law and Society Association, European and North American sociolegal scholars have come to recognize that understanding interrelations between legal and social processes requires an appreciation of global interactions. This recognition calls for approaches that go beyond comparisons of sociolegal phenomena in different countries and cultures. Global processes must be studied globally. Adopting a global perspective on law and law-related processes sheds new light on familiar topics in the law and society field, including the topic of legal pluralism. If any region of the world has experienced the effects of transnational social and legal transformations, it is Southeast Asia.

In the 1960s and 1970s, Western sociolegal scholars studying legal pluralism tended to emphasize the differences between, and the coexistence of, plural legal systems within nation-states rather than studying the complex interrelations among conflicting and overlapping normative orders in local, regional, and global space. Scholars, for example, tended to emphasize the differences between colonial and customary laws and practices, the differing “levels” of law and legal practices within individual nation-states, or the coexistence of different normative systems

within the same social field (Pospisil 1958, 1971; Collier 1973; Moore 1973, 1986; Griffiths 1986). Building on Durkheim's (1933 [1960]) argument that in each society there are legal frameworks corresponding to different subgroups, Western scholars used the concept of "pluralism" as a tool for explaining distinctions in these frameworks—although Moore, in particular, and especially through her notion of "semi-autonomy" (1973), moved beyond a pluralism model to write about continuities and connections between normative orders, a theme that is repeated in Collier's (1973:52–53, 254–55) discussion of the interdependence of legal levels (see also Nader 1965:6 for a discussion of interpenetration of legal levels).

In the 1980s, Western scholars interested in "legal pluralism" began to move from a focus on the differences between indigenous and European law, and on the coexistence of what were understood as distinct legal systems in colonial and postcolonial contexts, to a concern for the interpenetrations of "private government" (Macaulay 1986) and public ordering in the industrialized world (see Merry 1988:872–79 for a discussion of differences between what she terms "classic legal pluralism" and the "new legal pluralism"). Moore's (1973) concept of the "semi-autonomous social field" played a key role in this shift because it provided a way to analyze the interpenetration of the "external" and the "internal," while recognizing that the boundary between these "spheres" was a blurred one. Kidder (1979:296 ff.) also contributed to this more complex understanding of legal pluralism through his analysis of "levels of externality" and of the differential extent to which indigenous law may be experienced as imposed.

In our conference, we hoped to extend these more complex understandings of legal pluralism by focusing on transnational legal processes that cross the boundaries of industrialized and nonindustrialized countries and that force us to develop new conceptual frameworks for analyzing the "internal" and the "external." In particular, we hoped to pay attention both to world-system considerations in explaining the construction of local knowledge and practices, and to the influences of local epistemologies, local politics, and local histories in shaping regional and international responses. We wanted to focus on the interpenetration and on the dynamics of mutual influence, while retaining a sense of the local as shaped by distinct regional experiences within the Southeast Asian context.

### **Southeast Asia as a Site for Sociolegal Research**

It is difficult to imagine a region of the world better suited to sociolegal research on legal pluralism than Southeast Asia. The extraordinary multiplicity of ethnicities, languages, and local

practices within most of the modern states of Southeast Asia creates a situation of pluralism that challenges both scholars and local rulers who have attempted to establish centralized legal and political institutions. Internal diversity is one of the characteristics most widely shared by the countries of this region. It is not surprising, then, that Hooker (1978:14) has concluded, "The striking feature of modern South-East Asian law is a legal pluralism." The peoples of Southeast Asia over the centuries have developed their own distinctive ways of coping with the plurality of influences and epistemologies with which they come in contact in their daily lives. As Keyes (1977:1) notes:

The sociocultural diversity of mainland Southeast Asia is obvious to the people of the region as well as to outsiders. Southeast Asians have developed a number of indigenous models in their attempts to make sense of this diversity.

Europeans defined Southeast Asia as a world region in reference to what they conceived as the more important countries beyond its borders. European mapmakers and imperialists defined the region as "South" of China and "East" of India, and thus made it a kind of residual category. Scholarship on Southeast Asia for many years tended to reinforce this perception of marginality, emphasizing the heavy borrowings from Indian and Chinese culture by various Southeast Asian countries and the relative obscurity and unimportance of the region in the modern world. Contemporary scholars have, however, questioned some of these assumptions. It may be no more than a coincidence, but Southeast Asia's increased economic and political prominence in the last several decades has occurred just as social scientists have published revisionist characterizations of Southeast Asia as a significant source of influence and cultural development in ancient and in modern times.

Southeast Asia is made up of ten countries: Brunei, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. Historical, religious, and geographical differences have created two generally recognized subregions: the island countries of Brunei, Indonesia, Malaysia, the Philippines, and Singapore; and the mainland countries of Burma, Cambodia, Laos, Thailand, and Vietnam. Despite their many differences, the countries of Southeast Asia share some important historical experiences.

The earliest inhabitants of Southeast Asia were culturally and technologically inventive and may have exported aspects of their advanced civilization—such as the development of wet-rice agriculture (Keyes 1977:15)—to their neighbors rather than being the passive recipients of influence from outside, as historians often portrayed them:

It now seems clear that the original inhabitants of the area had developed an autonomous civilization and had established an indigenous societal order long before the first migrations into the area by outsiders from China and India. Indeed, there is evidence that the movement of technologies may have been from Southeast Asia to China as much as the other way around. (Neher 1987:9)

Waves of migration into Southeast Asia over many centuries brought new cultures, religions, and concepts of governance. From India, Hindu-Buddhist concepts of law and kingship pervaded much of the region. Later, Islam came to predominate in Malaysia, Indonesia, and parts of Thailand and the Philippines. Theravada Buddhism was particularly influential in Burma, Thailand, Laos, and Cambodia. Mahayana Buddhism and Confucianism were particularly important in Vietnam. The original peoples and cultures did not simply disappear, however. Elements of indigenous practices and belief systems persisted, reshaping and assimilating with external cultural influences (Riggs 1991:13). Indigenous peoples intermarried with the newer Southeast Asians or retreated into the highland areas where they maintained—and still attempt to maintain—a semi-autonomous existence.

The pluralism and diversity of Southeast Asia derive in large part from this long history of migration and cultural interaction involving peoples and ideas from various regions and civilizations. The more recent history of the region contributed further to the legacy of pluralism. European colonizers carved Southeast Asia into separate spheres of influence: the Spanish (and later the Americans) in the Philippines; the British in Burma, Malaysia, and Singapore; the French in Indochina (Vietnam, Cambodia, and Laos); and the Dutch in much of Indonesia. Each Western colonizer brought a different concept of centralized governance, yet each faced the same dilemma of creating what they considered a “nation-state” in a region marked by extraordinary diversity. The Thai rulers in the late 19th century, although avoiding colonial rule, confronted similar challenges in their efforts to construct a Western-style government and legal system and to extend its influence throughout the newly defined state of Siam (later Thailand) where a variety of political, cultural, and religious practices had previously existed.

World War II brought new influences and models of governance. Japanese occupational troops, although rarely welcomed by the peoples of Southeast Asia, displaced European occupiers and suggested new possibilities for Asian peoples to free themselves of Western imperialist control. The defeat of Japan led eventually to independence for the nations of Southeast Asia, but the postcolonial governments became enmeshed in problems and conflicts of their own. The wars in Indochina transformed the region, injecting American influence and emphasizing new ideo-



logical divisions among the countries and peoples of Southeast Asia. Conflicts elsewhere in Southeast Asia reflected the region's legacy of pluralism and diversity: the slaughter of ethnic Chinese in Indonesia, Marcos's violent and corrupt martial rule in the Philippines, political isolation and repression in Burma, conflict between democratic and antidemocratic forces in Thailand.

In the 1980s and 1990s, Southeast Asia has emerged—some would say triumphantly—despite these conflicts and instabilities into an era of unprecedented growth. From 1965 to 1990, the economic growth rates of some Southeast Asian countries, such as Indonesia, Malaysia, and Thailand, have been among the fastest in the world (see Hawes & Liu 1990:632). Ideological divisions among Southeast Asian countries notwithstanding, commercial relationships have flourished, not only among the ASEAN allies and their global trading partners but between the ASEAN countries and Vietnam, Cambodia, and Laos as well. Industrialization has expanded rapidly and has brought with it the familiar problems of environmental and social dislocations in economies once based largely on agricultural production. Wealth has flowed to the middle and upper classes, but the economic boom has brought little benefit to those living in poverty (Crone 1993:57).

The dramatic economic transformations in some Southeast Asian countries such as Indonesia, Malaysia, and Thailand (others, such as Burma and the Philippines, have experienced far less economic "success"), raise new questions about the role of law and legal institutions in these complex and diverse societies. Industrial expansion has been accompanied by environmental degradation, urban growth has been accompanied by rural landlessness, the emergence of a prosperous, consumption-oriented middle class has been accompanied by the disappearance of distinctive ethnic minority cultures and by challenges to the traditional lifestyles of indigenous highland peoples, and the growing acceptance of democratic principles of governance has been accompanied by the suppression of political dissent.

Studies of legal pluralism in contemporary Southeast Asia thus face issues that are new to the region as well some that are very old. Sociolegal scholars must take into account the centuries-old processes of cultural syncretism as well as the quite recent effects of Southeast Asia's economic transformation and the globalization of perspectives and lifestyles. They must consider a multiplicity of ideas and images springing from many different sources and interacting in sometimes unpredictable ways with one another. The recent transformations of some Southeast Asian societies have made this task even more complicated, as international norms and perspectives interact with those at the local level.

In our conference, we attempted to explore these issues by focusing our attention on three substantive topics that Southeast

Asian scholars themselves consider particularly important in the region: law and religion; women, family, and law; and law, land, and the natural environment. Many other topics might have been chosen, but these three provide an effective introduction to Southeast Asia as a region and to the efforts of Southeast Asian scholars to address issues of legal pluralism in their complex and rapidly changing societies.

### **Conference Participants**

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