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# Trafficking in Law: Cause Lawyer, Bureaucratic State and Rights of Human Trafficking Victims in Thailand

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**Abstract:** *In this case study of a young, Thai “cause lawyer”, advocacy for human rights is considered in context. The most important elements of that context are the path of development of Thai political and legal institutions, globalisation of law, and the networks of relationships that penetrate the state. The case study shows that human rights advocacy by NGO lawyers can adapt creatively to unpromising conditions under which courts provide little access or oversight. At the same time, the case study raises profound questions about the ultimate independence of cause lawyers when the state must be made a partner in order to establish the authority of law needed to make human rights advocacy possible. The ambiguity of the lawyer’s position is apparent from the relative ineffectiveness of her interventions and her growing moral authority on behalf of best practices under law. Her position suggests the limitations on law imposed by the underpinnings of the Thai state itself.*

**Keywords:** *human rights, cause lawyer, human trafficking, Thailand*

## The Precarious Authority of Law

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 that accompanies each relationship within the network.

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“Cause lawyer” is the term used by American scholars Austin Sarat and Stuart Scheingold to describe lawyers guided by a “vision of the good society” (1998, p. 1).<sup>1</sup> 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 US may enjoy great respect and influence, empowered by politically independent courts and supported by a powerful profession.

In the developing world, neither the security of cause lawyers nor the authority of law can be taken for granted. Indeed, the law itself is a precarious symbolic resource. Duean’s story is 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.<sup>2</sup>

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 mobilise in confrontations with those in power, they must place more reliance on the symbolic power of law, when and where they can, to obtain outcomes for their causes. Thus, cause lawyers may be “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; their strategies for making rights work reveal how law constitutes power, especially the power of the state.

This article examines one lawyer’s strategies for deploying the power of law where formal systems of control of a bureaucratic hierarchy have been weak, in a country where courts have been relatively unavailable to compel routine bureaucratic compliance with law. In this analysis, law is described as a “symbolic resource” having authority only when supported by other power-holders. Lacking institutional support, the young Thai lawyer has found other means of giving law authority by constructing a network of contingent relationships with key actors inside and outside the government. In so doing she has infused law with qualities of the network itself, deriving authority from multiple sources with different implications for law’s meaning or enforcement. The analysis explores the implications of these complexities for legal advocacy and the rights of trafficked persons.

### **The Problems of Cause Lawyers in Thailand**

Duean has worked for an NGO called TRAFCORD since its foundation in 2002, two years after she graduated from law school. TRAFCORD [an acronym for Anti-Trafficking Coordination Unit] is located in Chiangmai, Thailand, and was created to coordinate rescues of victims of human trafficking in Thailand’s nine northern provinces. During Duean’s 10 years with TRAFCORD she has become central to its activities, rising from staff attorney to project coordinator and, after TRAFCORD’s recent reorganisation as the Focus Foundation, its manager. Over this period she has been the NGO’s principal coordinator and spokesperson.

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. 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 the world.<sup>3</sup>

Similarly, 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 the NGO's methods for achieving its goals when it is resisted by government officials. Duean seems to face long odds when it comes to deploying human rights or the law to change the behaviour 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 whenever its politics turn disruptive – which is not infrequent. Violent conflict between military and demonstrators in Bangkok filled the front page of the *New York Times* in 2010. The United Nations, Human Rights Watch, Amnesty International and the Asian Human Rights Commission have recently written reports about thousands of extra-judicial killings of suspected drug traffickers by the border police, about routine brutalisation 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 weigh against becoming a cause lawyer. The Thai legal profession, in contrast to its US 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 effectively 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 policymaking under broad common law or constitutional mandates. Litigation to make new policy is far less common in the civil law world (Garcia-Villegas, 2006). Finally, as Thailand has never ceased to be a Kingdom, the moral force of the monarchy, patron–client relationships and other customary relationships makes establishing the authority 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 stabilised 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 an important factor 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 these changes have penetrated deeply into Thai society. Bureaucrats have worked equally well with civilian and military governments. They

have had the primary policymaking 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 modernise and improve state administration but it was also intended to concentrate and preserve royal control, not diminish it (Wyatt, 1969). Former landed nobility became bureaucrats owing their position and loyalty to the monarch, not to a Parliament or the people.<sup>4</sup> 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 that 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). 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 factions, nepotism, overlapping responsibilities, and poor coordination” (Muscat, 1994, p. 94) and patron–client loyalties (Ockey, 2004). The dominant position of bureaucrats considerably narrows the space for lawyers to “speak law to power” on behalf of clients.<sup>5</sup>

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, which 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 since 1932 the King has reigned under either 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 (Jayasuriya, 1999). These traditional sources of legitimacy have been weakened by modernisation 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 US during the Cold War and expanded in power through massive infusions of aid (Baker and Phongpaichit, 2005). 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 mostly defer to the police, who decide which methods for investigation of crimes are proper and which cases will be selected for prosecution. Although the police are a national

administration, district police are often linked to local power brokers and corruption is commonplace, especially favouring such politically connected and lucrative businesses as prostitution and human trafficking (Phongpaichit, Piriyaangsan, and 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 modelled, 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 that 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'État 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.<sup>6</sup> 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. This case study suggests how the organisation of Thai bureaucratic administration might enable some forms of cause lawyering.

My interviews with social cause advocates such as 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 that incorporate both NGOs and members of the bureaucracy itself may play this role.

### **Constructing “Chains of Contingent Activity”**

Duean's principal responsibility is to rescue women from brothels and attend to their welfare and other needs after their liberation. Rescues are controversial among human rights advocates, in part because victimisation is questioned by advocates for sex workers (EMPOWER, 2003; Kinney, 2006), but also 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 that 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 manoeuvring within a hierarchy of public institutions. Interpretation almost always has to be reinforced by investments in roles and relationships establishing connections which support the authority of law. For a cause lawyer the social construction of law's authority may be the greatest challenge and the most important goal.

Across different societies, institutional support for the authority of law is derived in a variety of ways (see Dezalay and Garth, 2010). Arthur Stinchcombe has described the legitimacy of authority (and indeed all structure) as being built upon "chains of contingent activities", through which "third parties interven[e] in case of need" (1968, pp. 150–51). In other words, law is legitimate when its authority is supported by other power-holders. Establishing relationships with power-holders that support the cause 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 – that is, stories about each relationship – are essential elements of an activist network, for they convey 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, organised 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 are 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 with particular clarity 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: stories 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 TRAFCORD depend not only on the material and symbolic resources provided by TRAFCORD's funders 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 storytellers are Duean and her core collaborators who maintain the network's relationships.

Some, but not all, of Duean's most important relationships have existed over many years, and might be described as "multiplex", based on shared experiences and mutual commitments. Although her career is still in its early stages, Duean has a growing network of female (and some male) friends – both lawyers and non-lawyers – who have become involved in her work for TRAFCORD. Her network includes government officials, such as immigration authorities and border police, but most importantly it includes 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.<sup>7</sup>

Duean's network story begins with her 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 that channel human rights aspirations and Thai government agencies, especially the police. The formulation, combining government authority and NGO expertise and resources, was repeated almost verbatim by the legal director of a partner NGO, the Center for Protection of Child Rights [CPCR], which helped organise TRAFCORD,<sup>8</sup> and it is echoed by an undercover policeman,<sup>9</sup> a police commander,<sup>10</sup> and the medical expert<sup>11</sup> and the chief social worker in TRAFCORD's network.<sup>12</sup> Unstated, but taken for granted, is a characteristic lack of initiative and sense of responsibility to the public on the part of many government officials, and which the NGO is understood to supply (see Ockey, 2004).

The second and related element of TRAFCORD's foundational story is the multidisciplinary team, a concept developed in Western societies and promoted by CPCR at high levels in the Thai government as well as among other NGOs. Perfectly adapted to overcoming one of the most persistent barriers to law reform – namely, the insularity, lack of initiative and self-interest of Thai bureaucracies – the multidisciplinary 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 multidisciplinary team has become the justification for cooperation between 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.<sup>13</sup> Duean points out that determining whether a woman has been victimised as a sex worker is often a matter of the woman’s underlying motivations, and investigation requires a skilful interrogator. When police officers handling a case fail to comply with the law, a call to the district commander in the network may be all that is required to re-orient the officers towards their proper duty.<sup>14</sup>

Adding new participants and links to new agencies and organisations 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 a matter of high-level members of Thailand’s entrenched and secure bureaucracy coming forward to assist the network.<sup>15</sup> 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, criticise 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.<sup>16</sup>

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 brothels. Cooperation with the network requires initiative independent from Bangkok superiors, and departure from narrow and ministry-serving interpretations 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, agencies share a similar humanitarian perspective and are comfortable with its rescues, prosecution of operators, and care for the rescued women. At the same time, participation of agencies that 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 that explain TRAFCORD's relationship to different role players in its network.

The stories that 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 strength of the networks with individual police and police units varies considerably. Some of this variation is explained by Duean as evidence of "bad" police, but even good police may resist her interpretations of their responsibility to provide protection for the rights of victims. As hard as she works to change their perspectives, even she 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 police cooperation is and how central it is to her work, but the rhetorical stance of network participants, which is what I think she was paraphrasing, is a position of deference and an effort to minimise conflict, even to the point where TRAFCORD's actual effectiveness might be limited. Two factors intervene to limit the NGO's effectiveness: the unwillingness of police to perceive the women as victims, even women already identified as victims through informants; and the terrain of untouchable trafficking activity reserved for the "big fish", criminal gangs.

Duean's story of respect for police is rendered credible by a few influential ranking police officers who have contributed to the development of the national interagency MOUs and who support her work in the Northern District. Resort to higher-ranking police or other powerful bureaucrats rarely happens. Typically, they are needed to nudge lower-level police after a rescue, and, in truth, there are few raids, which occur at great cost to Duean and her colleagues and have only modest success. One of the main limitations on the effectiveness of her networks – and one for which she has few answers – is the reluctance of police to investigate allegations of trafficking properly.<sup>17</sup>

Ben, the staff director, offers a pragmatic explanation of the accommodations TRAF-CORD has made with the police. The police in general are simply uninterested in the human rights of adult women prostitutes, but they do believe that children are always victims. Thus, according to Ben, a key to securing police cooperation is demonstrating that children are involved. But this is not what Duean emphasises. 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 storyline 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 they are interested in the opportunity it presents to help their families, but equally terrified of retaliation by the owner of the brothel and brutality by the police.<sup>18</sup> 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 – unlike courts in Myanmar – offers at least some chance of protection.

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, but 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 it is 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 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... 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 the meaning of victimisation and the gap in the law between “victim” who was coerced by obvious use of force and “criminal” who willingly 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 these women 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 defence, but that is secondary in her representation of her role. Thai law requires cooperation from the victims 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 characterisation 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, seems 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 that characterises 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, she believes in its moral correctness under law. She knows that the true status of “victim” can be distinguished or hidden from the law by fear and by the law’s own ambiguity, and yet she can suggest that a true victim would 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.<sup>19</sup> 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. 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 the relevance of the law to her decisions varies considerably – sometimes even being completely irrelevant – even though, as a formal matter, the law might be applicable to 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 that 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 grey 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" that 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 US or other societies of the Global North (see Epp, 2009). Instead, her chains of contingency, if they work at all, end mostly in personal commitments.

Stereotypical characterisations of Asian societies often emphasise structures built 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. Nevertheless, as previously described, Thai bureaucrats still defer to personal ties, hierarchical loyalties and clientelism, and bureaucracies are insular and lack initiative. Historically, Thailand lacked a system of administrative courts or a strong parliamentary system, reducing the likelihood of oversight. The 1997 liberal Thai Constitution created a system of administrative courts, in part to provide much-needed oversight, but the system is still in its infancy. Parliament was often in disarray during the first decade of the twenty-first 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 and sympathetic fellow travellers, and have found an effective "Thai way" to construct personalistic ties through encounter group workshops in order to expand the authority of TRAFCORD's interpretation of law's moral authority.<sup>20</sup>

The authority of law that TRAFCORD has created does not yet extend much beyond the network. Duean acknowledges that there are some types of human trafficking 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 organised crime and all forms of trafficking. Criminal organisations, 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, targeting the larger prostitution rings run by well protected criminals is beyond TRAFCORD's capacity. Police tip-offs from within the TRAFCORD network have declined in part because TRAFCORD has 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 professionalisation 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. Although her sympathies lie with victims, determining who is a victim is difficult, and she says that staff members have discussed this question a lot. Prior to enactment of the new law, she had more discretion, but the new law is detailed, and she finds it difficult to apply to actual

cases. The grey 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 victimisation to investigators or a judge. Traffickers exploit the grey 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.

Her understanding of 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 victimisation 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 victimisation, 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.

Duean not only has the difficult job of assisting with the determination of who is a victim, but must also prepare women for court appearances to testify about their victimisation – testimony that 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 emphasised 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 include assisting the police in their investigation. Second, she simultaneously shapes the outcome of the investigation to make sure that evidence of victimisation 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 that 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 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 such as Duean mobilise the authority of the state by invoking the patron–client power of higher-level bureaucrats and collaborations with lower-level officials, based on longstanding 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. Cooptation 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, philanthropists 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.<sup>21</sup> Therefore, such investments may persist.

At the same time, an understanding of the role of social cause advocates such as 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 organisation.<sup>22</sup> While Duean and TRAFCORD have charmed donors and the Thai public,<sup>23</sup> their victories remain largely symbolic.

Duean and TRAFCORD are considered an exemplary anti-trafficking project, in part because they enjoy 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 centre 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 such high-level sponsorship that has helped to create the pathways of TRAFCORD's influence.

When Duean was first interviewed, at age 26 in 2006, she said that her work had been “for the King and the law”. The substantive rationality of Duean’s story about the law, in all its forms, is this simple formulation. Public virtue depends on identity with the King’s interests. 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 nineteenth 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 recognised as valid alongside laws made by Parliaments (Streckfuss, 2011). For Duean, law is a 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.<sup>24</sup>

Duean may also be at the leading edge of an important change. The very term in Thai for “bureaucrat” means servant of the King. Thais understand the difference between bureaucratic virtue and deep-seated corruption or arrogance. Where the claim for bureaucratic authority is supported by human rights-inspired policymaking 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 that the term for bureaucrat implies and at the same time adds moral force to the rule of law. Of course, the trajectory of such changes will depend on subsequent generations of officials and a public that infuses the moral authority of law with more liberal values.

I concluded earlier that Duean has become increasingly entangled with the requirements of the law, especially those that 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 this sense, been “trafficked” by the legalism of global human rights norms, she has also strengthened the authority of Thai law’s moral foundation in humanitarian aspirations.

## Notes

1. The concept “cause lawyer”, like the term “public interest law”, arises from American models of legal advocacy. Although they have been applied internationally, they have been subject to critique and, this article suggests, may have limited usefulness for describing practices in other legal cultures (Baxi, 1989; Munger, 2010).
2. This case study is taken from my interviews with cause lawyers, NGO staff members and social movement participants in Southeast Asia, especially Thailand. For a further description of this research see Munger (2008–09).
3. As Upham (2006) has argued, different understandings of the rule of law have been equally effective from an economic perspective (for example, in Japan and China) if not equally just from a Western perspective.
4. Indeed, a literal translation of the Thai word for bureaucrat is “servant of the King”.

5. A partner in a leading Thai commercial law firm explained that bureaucrats and business leaders typically deal directly with one another, not through lawyers (Interview, 8 December 2010). As in Japan (Upham, 2006), close relationships between businesses and bureaucrats mean little pressure for bureaucratic rationalisation and much less for oversight by third parties such as courts. This picture may be changing as some sectors of the business community take a stand against corruption and insider deals (see Ginsburg, 2010).
6. The 1997 Constitution created Administrative Courts. Parliament enacted an organic law in 2000, and the Administrative Courts began to accept cases the same year. Although the system is in its infancy, in the long run the new courts can potentially change the politics of bureaucratic decisions.
7. A formal basis for such cooperation exists in Memorandums of Understanding [MOUs] reached at a high level within agencies with formal responsibilities for responding to human trafficking. 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.
8. Interviews, 14 February 2008 and 20 July 2011. CPCRC's legal director is Duean's close friend and mentor.
9. Interviews, 13 December 2009 and 2 July 2011.
10. Interview, 1 July 2011.
11. Interview, 2 July 2011.
12. Interview, 14 December 2009.
13. 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.
14. The network does not reach all government authorities with the same effectiveness; in other words, the story that 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 who acknowledged the force of the MOU and ordered the border patrol to allow them to pass.
15. 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 of it, namely X.
16. Police Colonel M, one of the key figures in her network, repeated this rationale almost word for word.
17. Trafficking arrests, prosecutions and convictions are few in proportion to the size of the sex industry. Phongpaichit et al. estimated the presence of more than 100,000 sex workers in Thailand in the 1990s (1998). According to a confidential source, police arrested 19 sex traffickers in 2008, 56 in 2009, 58 in 2010, and 26 in 2011. Arrests, in turn, have led to only a handful of prosecutions. For example, in 2011 TRAFCORD reported nine sex traffickers arrested but only two convictions.
18. The status of Burmese migrants in Thailand, both as non-Thai and as migrants, places them at a great disadvantage, and may well add to the difficulties they encounter when confronting not only Thai police, prosecutors and judges but Duean herself. See Boonmongkon (2003).
19. In the NGO community, TRAFCORD itself 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.
20. The term "Thai way" is Duean's, articulated after working with me on this project for some time.
21. Further, social cause advocacy can help government officials to resolve one of the most vexing problems of globalisation, by "delegating" management of conflicts between domestic political expectations and the rule of law expectations of Western governments and agencies to NGO staff members.
22. See note 16.

23. TRAFCORD has won praise from USAID as an example of “best practices” in the TIP Report and as a “model partner” on the US Embassy website. Duean herself has also charmed the domestic audience, as a “talking head” and recent honouree on the King’s birthday, an award of monumental significance for ordinary Thai.
24. Duean therefore appears to believe there is a high degree of consistency between the law and trafficking victims’ human rights. 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.

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