

Tracing an Uneven History: Notes on Sources and Trajectories of Thai State Violence

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This research note outlines a series of questions about conducting research on state violence and human rights in Thailand. Taking as a central problem the recurrence of state violence across regimes both dictatorial and democratic in the 80 years since the end of the absolute monarchy, I argue that the failure to secure accountability for state violence can productively be placed at the center of researching and writing about modern Thai history. Unevenness is common both to the attempts to secure state accountability for state violence and to the available archival and other sources for writing histories of such violence. This research note examines the particular methodological and analytical difficulties and productive possibilities presented by the partial attempts and failures to secure state accountability and the equally partial available documentation of state violence.

Keywords state violence, human rights, methodology, archives, Thailand

If it is not too much to hope, perhaps one day there will be a book that a Thai will write on the topic of “memories after the era of dictatorship,” like the Argentines. Or, perhaps we will have to live our lives in a Thai-style nightmare, and pass the pride in Thai-style inhumanity that the guardian spirit of the country has given with unending compassion on from generation to generation? (Phakwadee 2553 [2010], 91)¹

In a review essay for *An* magazine, a Thai-language journal of progressive literature and cultural politics, Phakwadee Mai Mi Nam Sekun writes about memory and truth-telling in the aftermath of the dirty war in Argentina. She uses the questions, lacunae, and ambiguities documented by historians in the years following the transition and reconciliation processes in Argentina to raise resonant questions about the possibility of transition and truth-telling in the aftermath of the violent crackdown by the state on the red-shirted members of the United Democratic Front Against Dictatorship (UDD) in April-May 2010 in Thailand.² While the April-May 2010 violence was the immediate focus and impetus of Phakwadee’s article, she notes that a lack of accountability and

accounting for state violations of the rights of citizens has occurred throughout the 50 years of her life, beginning most explicitly with the state repression of the October 14, 1973 movement for democracy.³ The reason she despairs of whether it will be possible to write a book about “memories after the era of dictatorship” is that dictatorship continues to recur in Thailand. At the close of her article Phakwadee suggests that the best way for citizens to fight against state violence and the creation of a legacy of inhumanity is to refuse silence and to struggle to speak the truth about the repression one has experienced.

I share Phakwadee’s despair about the beginning of a period *after* a clear and decisive end to dictatorship in Thailand, and therefore also the difficulty of writing about past state violence in Thailand from the point of view of memory, rather than its repetition in the present. Since the transformation from absolute to constitutional monarchy on June 24, 1932, state violence has been a recurrent constant, rather than an aberration, within the Thai polity. Over the last 80 years, there have been ten successful coups, seven failed coup attempts, 27 prime ministers, and 18 constitutions. Modern Thai history is frequently periodized by these frequent coups and changes in government. Yet across this apparent political instability, state violence has remained relatively unchallenged. Across regimes, both dictatorial and democratic (sometimes only in name), those cast as enemies of the state have faced arbitrary detention, torture, disappearance, and assassination at the hands of state actors. While there have been investigations of a few cases of violence, there has never been a criminal conviction for extrajudicial violence or even a formal state apology to victims and citizens. Impunity—the failure to hold state actors accountable for their violent actions—has been produced and sustained in Thailand through the unwillingness of state officials to find their colleagues responsible, the intimidation of victims of violence and other citizens, and weak legal and other institutional structures. The public failure to hold those involved accountable serves as a reminder of how those affiliated explicitly and implicitly with the state remain above the law, and how a shifting range of people remain unprotected by the law in Thailand.⁴

Questioning Impunity, Questioning Accountability

A persistent concern with the political and historiographic effects of impunity has caused me to spend much of the last 10 years focused on tracing the recent past and present of state violence in Thailand. From writing about the unsolved assassinations of the leaders of the Farmers’ Federation of Thailand from 1974 to 1975, to writing about the various ways in which law and extrajudicial violence intersect to foreclose accountability at different moments between the Sarit regime and the present, my concern throughout has been both documentary and analytic. What are the forms of violence that citizens experience at the hands

of state actors or their allies outside the state? What are the forms of legally-sanctioned violence, such as arbitrary detention, that citizens experience? What are the forms of law, such as amnesties or emergency decrees, that make it difficult for citizens to hold state actors to account for their violent actions? What do these experiences teach citizens about their relationship with the state and their own possibilities for participation in politics? What does not being held to account teach state actors and their allies outside the state who use violence against citizens? Finally, what are the histories—the meanings over time—produced by state violence? To place this within the framework of human rights, this is a series of questions about *when and how human rights are violated* and with what personal, social, political, and historical consequences.

Increasingly, and again for reasons both political and historiographic, I am concerned with a resonant but markedly different question: When and where do Thai state actors or institutions act to stem state violence and protect human rights? This can be elaborated into a further series of questions which parallel those above. What are the forms of redress for violence and protection of rights that citizens experience? When does the law act to limit the use of extrajudicial violence? When does the law facilitate the holding of state actors and their allies to account? What do these experiences teach citizens about their relationship with the state and their own possibilities for participation in politics? What does being held to account teach state actors and their allies outside the state who use violence against citizens? Finally, what are the histories produced by the protection of human rights? In contrast to the series of questions about the violation of human rights, this is a series of questions about *when and how human rights are protected* and with what personal, social, political, and historical consequences.

What makes these two series of questions compelling to me is their potential to illuminate the dynamics animating the relationships between the state and its citizens and the rulers and the ruled. At the moment of extrajudicial violence, in the instance of the state's violation of human rights, the limit of the state's ability and desire to protect citizens is sharply defined. Similarly, when state actors choose to affirm citizens' rights, the possibility of the state's ability to protect citizens is made real.

Yet answering these two sets of questions and tracing the dynamics they suggest is made challenging by the difficulties in accessing information about extrajudicial violence, human rights, and state practice in relation to both. While the question of sources is present in every research project, researching state violence and human rights presents a specific constellation of questions and potential obstacles. What are the sources for a history of state violence in Thailand? Particularly when state violence comes in the form of illegal, extrajudicial violence, where might it be documented or archived? Even if mention of it is present in state documents, does it exist in a place where scholars

and citizens might access it openly? Similarly, what are the sources for a history of the explicit interruptions of this history in the form of the consolidation of human rights? While citizen groups and non-governmental organizations (NGOs) often document their own work, what about the actions of state officials to do so, particularly when it necessitates challenging or coming into conflict with another part of the state? This question is particularly salient when we consider the argument of Craig Reynolds et al. (2012) that it is precisely the lack of unity within the Thai state that facilitates violence and makes securing accountability challenging.

Documents of Impunity

Sources about the violation and consolidation of human rights in Thailand (and elsewhere) frequently do not exist in the typical places; there is no set of indices at the National Archives on Samsen Road which covers these topics. Yet, this does not mean that information cannot be found—only that it cannot be found in the usual, expected places. What if, rather than obstacles, scholars took the challenges in locating sources as an invitation to deepen and expand our questions? In the cases of both the violation and the consolidation of human rights, querying the forms of documentation that do and do not exist, and our engagement with them, may raise fruitful questions of analysis.

In 2005, over a century of Guatemalan secret police files were found by accident in a dilapidated armory in Guatemala City. Nearly 10 years after the peace accords, the files have been restored and used by families and activists to piece together what happened to their missing and dead relatives and friends (Doyle 2007). Upon learning of this unexpected archive, I began to hope that a similar archive might one day be found in Thailand. Yet the lack of a hidden archive in a shophouse near the Internal Security Operations Command (ISOC) headquarters at Ruan Rudee intersection not far from Chitrlada Palace in Bangkok, for example, does not mean that there are no sources pertinent to state violence, but rather that we must be creative about finding and using sources that are available. For example, activist and human rights documents related to state violence can be found at the Thammasat University Archives and the library of the October 14, 1973 memorial. Unindexed files related to the October 6, 1976 case can be found at the library of the Office of the Attorney General, and documents related to the drafting of planned, and sometimes enacted, repressive legal instruments can be found at the Office of the Juridical Council.⁵ Outside document repositories, there are many other potential sources, including various periodicals of the state security forces (e.g., *Yutthakot*, The Journal of the Royal Thai Army), M.A. theses of army, police, Ministry of Interior and other officials, newspapers, and cremation volumes of state security actors.

With respect to documentation by the state, while the Thai National Archives has extensive holdings on the period before June 24, 1932, available police, army, and interior documents covering the last 80 years are scarce. There are very few state documents—such as arrest records, detention records, manuals, etc.—that might point to the production of extrajudicial violence inside the state. Within this vacuum, however, there are unique items present in the National Archives. For example, copies of the 1974 report about the burning to the ground of Baan Na Sai village, which was suspected of being a Communist stronghold, or the 1975 report commissioned by the Ministry of Interior about the Red Drum (*thang daeng*) killings in which several thousand citizens were arbitrarily arrested, accused of being Communists, tortured and then burned to death in Phatthalung province are not available. What is instead available, in the news clippings section of the National Archives, is close to 200 pages of newspaper articles about the violence experienced by citizens in each instance, the public exposure and demand for investigation of each of these events, and the failure of the reports to be released to the public. In other words, the National Archives holds the media documentation of the conscious decision not to secure accountability and instead to produce impunity for state violence in both these cases. Yet, at the same time, the presence of the news clippings in the Archives ensures that the memory of the courage of citizens to speak out, despite the ultimate failure to secure accountability, is preserved.

Documents of Accountability

The question of sources for analysis of the interruption of state violence and the consolidation of human rights by the state presents a different challenge. Rather than attempting to obscure information about protecting human rights, states are often interested in highlighting their actions in support of them. The Thai state is no different. One clear source is the reports that different state bodies have prepared as part of Thailand's compliance with international human rights standards. These include the *United Nations Human Rights Yearbook*, published between 1946 and 1988, reports prepared for individual international treaties to which Thailand is a state party, such as the Convention to End All Forms of Discrimination Against Women (CEDAW), and the reports prepared for the Universal Periodic Review (UPR) process.⁶ Yet, these may be more accurately examined as the state's self-representation of its actions in the service of human rights, rather than an unquestionable source of evidence about the consolidation of human rights. Reading shadow reports of NGOs side-by-side with state reports provides a corrective picture of the gaps between the state's self-representation and the people's lived experience.

Similar to researching human rights violations, researching the consolidation

of human rights requires reading against the grain of expected and available sources. For example, with respect to arbitrary detention of individuals deemed to be “hooligans” (*anthaphan*) during the regime of Field Marshal Sarit Thanarat, a Supreme Court decision emerges as an unexpected source both documenting action in the service of human rights and also documenting tension, or at least conflicting views, among different state bodies around arbitrary detention. Under Orders 21 and 43 of Field Marshal Sarit, issued in 1958 and 1959, “hooligans” could be held for indefinitely renewable terms of detention and training, without ever being formally charged in a court or appearing before a judge. Detention was to be reviewed and the “hooligan” either released or the detention renewed every three months; within Bangkok the Metropolitan Police Commander was responsible for signing off on detention, and in the provinces the provincial governor was responsible. Orders 21 and 43 remained in force until after October 14, 1973, at which time the unchecked power they gave to the Metropolitan Police Commander and provincial governors was declared to be in grave tension with democracy.

Yet, long before the two orders were repealed, a Supreme Court decision challenged the very basis of arbitrary detention. In late November 1959, a resident of Surin province, Mr. Yiem Phunman, was arrested and detained under Order 21. He was placed in a vocational training center for “hooligans” in the compound of the Surin police station. On August 3, 1960, he escaped from detention. Only three days after escaping he was apprehended and charged with fleeing detention. The public prosecutor brought a case against Mr. Yiem and he confessed that he had fled. Despite his confession, he was found innocent by the Court of First Instance. The Surin provincial officials had failed to follow the guidelines of Orders 21 and 43 which specify that the detention of a given “hooligan” must be renewed every three months. After the initial order declaring Mr. Yiem a “hooligan” in need of reform, there were no further provincial orders regarding him. Therefore, the Court found that he fled from detention that was itself illegal, and so he could not be guilty of violating the law. The prosecutor appealed and argued that Orders 21 and 43 granted broad powers of detention to officials. The Appeal Court again found in favor of Mr. Yiem and cited the illegal, arbitrary nature of his initial detention. The prosecutor then appealed to the Supreme Court. In 1963, the Supreme Court affirmed the two lower court decisions and ruled that, given that there was no additional order of renewal of detention after the initial provincial order, the detention of Mr. Yiem was illegal. All charges against him were dismissed (Haberkorn 2013).

How might we assess this unexpected moment of constraint of unbridled state power and action in the service of human rights? The decision did not lead to the immediate repeal of Orders 21 and 43, and did not necessarily affect anyone other than Mr. Yiem Phunman. In an unexpected moment, the Supreme Court acted to both limit—and name as excessive—the absolute power of the

executive. Is this an interruption of state violence? Or, does the fact that the two orders were not repealed for another 11 years—only after October 14, 1973 and the transition from dictatorship to democracy that it engendered in Thailand—mean that this court decision and its relatively limited effect must instead be read as a confirmation of the state’s ability to restrict the rights of citizens? Put broadly, with respect to both those actions from outside and inside the state which challenge state violence: If accountability is not secured and violence emerges again, then is state violence actually interrupted?

Towards an Account of Impunity and Its Interruption

Rather than choosing only one of these interpretations—that every instance of accountability for state violence is significant, or any instance of accountability which does not engender large-scale change is necessarily insignificant—what if scholars choose, think and write with both in mind? The sources for an analysis of the violation and consolidation of human rights—much like the actions themselves—are uneven. The task before scholars is to embrace this unevenness, and further, to ask what it might tell us. The unevenness becomes a question, rather than a conclusion. The partial effects, then, of the Ministry of Interior carrying out an investigation into an instance of state violence, even if it remains unreleased and locked inside a filing cabinet away from citizen’s eyes, and a Supreme Court decision limiting executive power which only affects one person, can be interrogated. Paying attention to the unevenness and the unexpected questions it holds, in terms of both violence and actions to stem violence, has the potential to be the basis for a different kind of political history, and also to provide resources to make people safer from state violence. The two outcomes are necessary in order to sustain the struggle to one day both write accounts of, and more importantly, live, what Phakwadee (2553 [2011]) so eloquently calls “memories after the era of dictatorship.”

Notes

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1. Author’s translation. Thai-language sources include both the Buddhist Era date, followed by the Common Era date in [].
2. See Montesano, Aekapol, and Pavin (2012) for analysis of the events of March-May 2010 in Bangkok, their background, and their lingering effects.
3. See Charnvit 2544 [2001] for a detailed account of the citizen and student protests during early October 1973, which catalyzed an end to dictatorship and ushered in a

brief, three-year period of democracy, until the October 6, 1976 coup brought a return to dictatorship.

4. In focusing on state violence here, I am not arguing that state actors hold a monopoly on extrajudicial violence in Thailand. They do not. However, an inquiry to examine the trajectory of violence committed by non-state actors is a different one than this one. Similarly, non-citizens, whose circumstances are not addressed here, are often far more vulnerable than citizens in Thailand (as elsewhere).

5. On the documents at the library of the Office of the Attorney General, see Thongchai Winichakul 2554 [2011].

6. To read the most recent Thai state report under CEDAW, please see <http://daccess-ods.un.org/TMP/3734485.50701141.html>. To read both the Thai state submission for the most recent Universal Periodic Review and summaries of NGO and other stakeholders' concerns, please see <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/THSession12.aspx>.

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