

# Michigan Law Review

---

Volume 77 | Issue 3

---

1979

## Litigation and Mediation in Thailand

Sally Falk Moore

*University of California at Los Angeles*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Comparative and Foreign Law Commons](#), [Courts Commons](#), [Dispute Resolution and Arbitration Commons](#), and the [Law and Society Commons](#)

---

### Recommended Citation

Sally F. Moore, *Litigation and Mediation in Thailand*, 77 MICH. L. REV. 363 (1979).

Available at: <https://repository.law.umich.edu/mlr/vol77/iss3/6>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# LITIGATION AND MEDIATION IN THAILAND

*Sally Falk Moore\**

CODE AND CUSTOM IN A THAI PROVINCIAL COURT. By *David M. Engel*. Tucson, Arizona: Published for the Association for Asian Studies by the University of Arizona Press. 1978. Pp. xiii, 230. Cloth, \$10.50; paper, \$4.95.

This book is only in a special sense about "code and custom" in Thailand. It is principally a book about private disputes and wrongs and their outcome in courts, in processes of mediation, in various forms of negotiation, and sometimes in the avoidance of action. What Engel's title refers to are the "new" (turn of the century) modern Thai law codes, which are based on Western models, and the customary way in which wrongs and disputes are often actually handled "on the ground" in the northern province of Chiangmai. What Engel sensitively describes is how the code is transformed by custom and how some traditions have been altered by the code.

Engel did his research over an eight-month period in 1975. He closely studied ten years of court records and interviewed lawyers, judges, and officials at all levels of local administration. He also generously acknowledges the work of other scholars of Thailand, on whose studies his own relies.

What is remarkable about this excellent book is that though it makes important points about Thai modes of processing disputes, points which have considerable theoretical significance, these are presented so modestly, so descriptively, that unless one knows in what ways they add to the literature, one might not be aware of Engel's theoretical contribution. He provides not comparisons, but rather a first-rate description of a specific and limited body of material. His is not in the full sense a field study, but a study of documents and records which is illumined by direct contact with persons who could interpret these written materials with the stuff of their own experience. These persons were not necessarily the protagonists in the cases he was studying; they were often officials or others who could comment with authority.

Two of the theoretically informative parts of the work stand

---

\* Professor of Anthropology, University of California at Los Angeles. B.A. 1943, Barnard College; LL.B. 1945, Ph.D. 1957, Columbia University.—Ed.

out: one is the analysis of the part played by patron-client (or other superior-inferior) social relations in mediation and negotiation; the other is the discussion of the way the provincial court may be used by villagers to protect themselves against public officials. Engel shows that in cases of private wrongs, mediation is attractive on several counts as an alternative to litigation. It is cheaper, more in keeping with the values of a society that deplores public displays of self-assertiveness, and perhaps most important of all, it permits the complaining party to retain some control of the process once it is set in motion. Thus, individuals tend to turn to patrons to mediate their grievances when they find themselves in difficulties which involve private wrongs, and such conciliation is one of the major services that a patron can offer his clients. Engel persuasively describes the ways in which this process at once conforms to and reinforces the hierarchical, ranked nature of Thai social structure. Engel's description also explains why very few private disputes come to court, and it puts the court in perspective.

The other side of code and custom is seen in the instances in which the "traditional" deference shown to rank is violated through the use of the modern court. When citizens come to the provincial court to complain that local public officials have overreached their powers and violated their paternalistic obligations to their clients through excessively self-serving behavior, Engel sees a redistribution of power at the local level. Thus Engel's account of the persistence of the "traditional" is a balanced one that does not ignore the modern context in which a selective use of "tradition" accompanies a selective use of the "modern."

Though court records are his point of departure, Engel analyzes them in the larger context of dispute, its avoidance, management, and pursuit in a changing society. Many case accounts illustrate that analysis, and his text is a model of readable, lucid prose. One of the tantalizing questions which the existence of this book raises is whether anyone could write a similar work on the operation of an American court in a specific social locale, and if not, why not? Are the layers and levels of complexity too great? All the more reason to tackle some part of the story and do it well. Though Engel has not himself asked those questions, one hopes that his book will be read by many persons interested in the sociology of law and that they will be stimulated to undertake comparative ethnographic and analytic studies on home territory.