

State and Personhood in Southeast Asia: The Promise and Potential for Law and Society Research

Lynette J. CHUA*

Assistant Professor of Law, National University of Singapore

David M. ENGEL**

SUNY Distinguished Service Professor, SUNY Buffalo Law School

Abstract

The diversity and pluralism of Southeast Asia make it an ideal subject for law and society researchers, but by and large they have not given the region the attention it deserves. In this article, we argue for a more intense and systematic linking of research about Southeast Asia and the field of law and society. We focus on the theme of *state and personhood* to suggest how some of the central concerns of law and society may be relevant to Southeast Asian peoples and cultures. We illustrate our argument by selecting nine excellent articles by Southeast Asian scholars who do not currently identify their work with the law and society field, and we demonstrate that their research is rich with implications for the field. We welcome in particular the ways in which they have portrayed personhood as an ongoing construction and have highlighted its contingent relationship with the state. Building on these themes, we conclude the article with a plea for a more far-reaching engagement between Southeast Asian studies and law and society research.

Keywords: identity, legal consciousness, personhood, legal pluralism, Southeast Asia

1. INTRODUCTION

Southeast Asia's very name¹ points to a lacuna. It tells us not what the region is, but what it is not—the peninsula and islands that lie “South” of China and “East” of India. True enough, Southeast Asia has been shaped historically by its neighbours, experiencing waves of

* Lynette J. Chua is Assistant Professor of Law at the National University of Singapore. She is an interdisciplinary scholar with research interests in law and social change, and law and social movements. Correspondence to Lynette J. Chua, Faculty of Law, National University of Singapore, 469G Bukit Timah Road, Eu Tong Sen Building, Singapore 259776. E-mail address: lynettechua@nus.edu.sg.

** David M. Engel is SUNY Distinguished Service Professor at the SUNY Buffalo Law School. He studies law, culture, and society in Thailand and the US, with particular attention to injuries and globalization. Funding was provided by the National University of Singapore's Academic Research Fund (Grant No. R-241-000-105-112). We wish to thank the three reviewers of this article as well as our research assistants in Singapore and Buffalo: Charlotte Kelly, Jennifer Sadeli, Khine Khine Zin, Lauren Gray, and Frances Stephenson.

1. We consider Southeast Asia to comprise 11 states—Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand, Timor-Leste (East Timor), and Vietnam—but acknowledge that the borders of these states are socially constructed and resisted.

influence from both the North and the West over many centuries in the form of Hinduism, Buddhism, Islam, and Christianity. It has absorbed Arabic, Indian, and Chinese culture. It has been dominated at times by European, Japanese, and American colonialism. All of these external influences have swept over the indigenous cultures and polities, the mountains and forests, the islands, deltas, and seascapes of Southeast Asia, bringing with them a distinctive understanding of both law and society. In some senses, it is this socio-legal multi-layering that makes the region of Southeast Asia most distinctive. Its very diversity seems a unifying quality. Yet the societies of Southeast Asia also share more than just their external influences. There is a common substrate of indigenous culture—a shared worldview that has always interacted with the influences from outside.

The dazzling diversity and pluralism of Southeast Asia make it an ideal subject for law and society researchers, but the region remains neglected by this expansive field.² Although self-described “law and society” scholars, scholarship, and scholarly associations flourish nearby in South Asia and East Asia (and elsewhere in the world), they are far less visible in the countries of Southeast Asia. This is unfortunate, since there are few regions of the world better suited to the themes and methods of law and society research.³ Much of the existing legal and social scientific scholarship about Southeast Asia is, of course, excellent, and some of it makes clear how great the intellectual rewards would be if its connections with the law and society literature were more thoroughly examined. The converse is also true—the field of law and society would be greatly enriched by the work of contemporary scholars who study Southeast Asia.

In this article, we argue for a more intense and systematic linking of research about Southeast Asia and the international field of law and society. We focus on the theme of *state and personhood* to suggest how some of the central concerns of law and society may be relevant to Southeast Asian peoples and cultures. We illustrate our argument by selecting nine excellent articles by Southeast Asian scholars who do not currently identify their work with the law and society field, and we attempt to demonstrate that their research is rich with implications for the field.

The focus of state and personhood provides us with a useful starting point, because it highlights a relationship that goes to the heart of law and society scholarship. A broad range of law and society studies explore the role of the state (or lack thereof) in relation to both state and non-state law and the persons or groups subject to those plural legal orders. Such mainstream law and society studies illuminate the social, legal, or political conditions that determine the quality of being a person within a situated context. This is what we have in mind when we speak of state and personhood and their connection to law. Law and society research has revealed the reach of the state, especially through the institutional force of law, as well as its limits in shaping personhood. It has also revealed the converse—the ways in which different understandings of personhood can shape state institutions and legal orders.

The twin themes of state and personhood, as defined and explored by mainstream law and society researchers, are highly relevant to the societies of Southeast Asia. With its diverse peoples and social groups, its complicated histories and geopolitics, and its overlapping state

2. Notable exceptions include Daniel Lev’s many studies of Indonesian courts, lawyers, and legal culture (see e.g., Lev, 1972), and Clifford Geertz’s classic writings on Indonesia’s agricultural systems (1969) and Balinese cockfighting (1973).

3. Also see Chua (2014a).

and non-state systems of meaning, belief, and practice, Southeast Asia constantly raises questions about who counts as a legal subject and how legal subjects get defined. Modern Southeast Asian states may claim the authority to set terms for belonging⁴—and thus control the definitions of personhood—but such official claims are continually challenged and resisted. The modern, independent states of Southeast Asia and their legal institutions are relatively new, emerging in the early to mid-twentieth century. Long before that, diverse rulers tried to occupy and govern different parts of Southeast Asia at different times. Both the modern and pre-modern polities had to reckon with indigenous peoples (lowland, highland, and forest dwellers), immigrant populations, and the descendants of European and other Asian nations. Some rulers claimed authority by right of the sword; others came bearing coin, merchandise, and religious scriptures. All of them have seen their powers wax and wane. Some left behind fortresses, temples, and ruins; others stamped their imprints in politics, law, ideology, and ways of life. All have contributed to understandings of state and personhood in the region.

Southeast Asian polities, therefore, have one thing in common. All have grappled with the extraordinarily pluralistic peoples, societies, and laws over which they attempt to assert control. And, with each such effort and each additional wave of external cultural influence, the plurality becomes more complex. The European imperial powers, for instance, devised measures within their colonial institutions to govern different religious and ethnic groups.⁵ But the legal regimes they created did not replace existing ones; instead, they became part of that plurality, adding more texture and layers. To this day, it is typical for people in Southeast Asia to negotiate multiple traditions of meaning and belief simultaneously⁶ and to resist the monopoly of state law by invoking non-state norms in their everyday lives and in their collective endeavours.⁷

In this article, then, we consider how scholars operating mostly outside the law and society tradition have approached the topic of state and personhood in the pluralistic societies of Southeast Asia. Some of their interests will be very familiar to a law and society audience, such as the theme of legal pluralism itself and the mutually constitutive relationship of state and personhood. Other emphases may be less frequently encountered in mainstream law and society scholarship, such as the frequent reminders that concepts of personhood evidenced by their research subjects often depart radically from the model of the autonomous individual who bears or should bear inalienable rights. Scholars who conduct grounded research in Southeast Asian societies very often find that individualistic views of personhood, rooted in the European tradition of liberal legalism, utterly fail to fit their data. The fluidity and contingency of personhood in the pluralistic societies of Southeast Asia may indeed be one of the most valuable contributions of the studies we will discuss.

The scholars we highlight in this article recognize that personhood in Southeast Asia is multidimensional, a product of legal pluralism that emerges from past and present contestations. Even among the laws of modern states in Southeast Asia, we see complexity and diversity, since the states in the region rarely display an undivided commitment to

4. Scott (2009).

5. Hooker (1975).

6. See e.g., Engel & Engel (2010); von Benda-Beckmann & von Benda-Beckmann (2013).

7. See e.g., Chua (2014b; 2015).

viewing personhood through the lens of liberalism and individual rights. The mixed messages of the state interact with other normative systems rooted in locality, in distinctive social arrangements, in religion, and in community and family. Personhood's relationship with the Southeast Asian state, therefore, is unstable. Sometimes, the contestations over personhood expose the fragility or ambiguity of state control. Other times, they demonstrate how powerful it can be.

In short, research concerned with state and personhood in Southeast Asia brings to the forefront the enduring preoccupations of law and society scholarship: studying "law in action" rather than simply analyzing law on the books⁸; and researching "law in context" rather than assuming the universality of law across the social landscape.⁹ As we examine state and personhood in Southeast Asian studies conducted far from the law and society mainstream, we welcome in particular the ways in which those studies have portrayed personhood as an ongoing construction and have demonstrated its contingent relationship with the state. Building on these themes, we conclude the article with a plea for a more far-reaching engagement between Southeast Asian studies and law and society research.

2. STATE AND PERSONHOOD IN MAINSTREAM LAW AND SOCIETY SCHOLARSHIP

In this section, we consider how mainstream law and society scholars have conceptualized the relationship between state and personhood. A quick survey of mainstream law and society books and journals¹⁰ suggests the relevance to our discussion of a number of streams of socio-legal research, including studies of rights and identities, legal mobilization, and legal consciousness. From these and other fields, we therefore begin by considering three types of insight on state and personhood derived from mainstream law and society scholarship: (1) state law affects the social construction of personhood; (2) different concepts of personhood influence in different ways the meanings and uses of state law; and (3) state law and personhood "recursively" shape one another. We shall examine each of these insights in turn.

The first set of insights from mainstream law and society research emphasizes the social construction of identities by state law. These law and society studies show that state law can shape personhood both overtly and covertly. Whether state law adopts or rejects the principles of legal liberalism, researchers have demonstrated that its enforcement can create dilemmas and unintended consequences for the rights and legal status of people who reside within its borders. For example, those who claim rights provided by the law must prove their differences or deviance from the norm while simultaneously asserting their equality.¹¹ Individuals often feel torn by this requirement, and many conclude that making such claims can damage their status and identity rather than protecting them—a paradox that shapes personhood in complex and sometimes troubling ways. Plane, for instance, analyzes how British colonial law in the US helped to construct the "ideal Indian."¹² He and Ng examine

8. Pound (1910); Abel (1973).

9. Selznick (2003).

10. We focused especially on the *Law & Society Review*, *Law & Social Inquiry*, and *Journal of Law & Society*, as well as leading books and monographs that are widely familiar in the field.

11. Minow (1991); Collier et al. (1995).

12. Plane (1998).

how judges in divorce cases make pragmatic decisions aimed at assisting Chinese women, who are disadvantaged by patriarchal norms, but still end up reinforcing the hierarchical constraints of gender.¹³ Studies of immigration laws find that they produce identities of “legal” immigrant,¹⁴ “asylum seeker,” and “refugee,”¹⁵ which are state-imposed categories that powerfully influence social perceptions of a person who moves to a new country and his or her subsequent interactions with others.

The second set of insights from mainstream law and society research emphasizes the converse—that personhood helps to shape the meanings and scope of state law. According to these studies, one’s personhood—meaning one’s pre-existing identities and prior experiences—can affect the ways in which one understands and responds to state law governing identities and rights.¹⁶ For example, in her study of harassing speech on the streets, Nielsen finds that women and racial minorities, because of their distinctive understandings of their own social identity, tend to view the constitutional protection of free speech with more scepticism than White men.¹⁷ Boittin shows that the social identity of being a sex worker influences women’s decision whether to make a legal claim against their abusers.¹⁸ Huang et al. demonstrate that a person’s level of income affects whether he or she seeks legal advice.¹⁹ Kirkland shows that the public identity of fat persons tends to exclude them from civil rights discourse.²⁰ Greenhouse et al., in their ethnographic studies of three American communities, explore the ways in which identities of insiders and outsiders and local norms about “good” and “bad” people influenced whether residents used the formal legal process to resolve disputes.²¹

The third set of insights from mainstream law and society research on personhood and the state views the two concepts as mutually constitutive. Interactions with state law, shaped by one’s identity and prior experiences, influence subsequent decisions about whether and how to mobilize the law. Engel and Munger describe this approach as a “recursive theory of rights and identity.”²² In their study of Americans with disabilities, who generally avoided the formal invocation of anti-discrimination laws, the authors propose that identities and rights are one another’s precursors *and* consequences and conclude that identities and rights continuously transform one another. Applying their theory to the relationship between state and personhood, we find similar orientations underlying other law and society studies. For example, the race, class, and gender of a working-class, Black woman in Ewick and Silbey shaped the way she experienced a courtroom trial that was unjustly brought against her.²³ When she was sentenced to community service, she evaded the punishment by suggesting to the court officer that she work at a church where she had been volunteering anyway. In one

13. He & Ng (2013).

14. Sterett (2004).

15. Coutin (2001).

16. Engel & Munger (2003).

17. Nielsen (2006).

18. Boittin (2013).

19. Huang et al. (2014).

20. Kirkland (2008).

21. Greenhouse et al. (1994).

22. Engel & Munger, *supra* note 16.

23. Ewick & Silbey (1992).

sense, she covertly resisted legal authority, yet her resistance kept her subordinated within the legal system. In a similar vein, Gilliom found that welfare recipients silently resist state regulations and use loopholes to gain small advantages that avoid detection and outright challenges.²⁴ By doing so, they also end up reinforcing both state power and their own subordinate social positions.

While these three types of insight into the relationship between state and personhood have yielded a deeper understanding of the legal power of the state and its limits, they tend, nevertheless, to draw on a concept of “personhood” that assumes an autonomous, rights-bearing individual, albeit one who may not attempt to invoke those rights. Most of the studies that we examined do not explicitly articulate what they mean by personhood but, when they do, they either refer to or acknowledge the dominance of this classic conception of liberal legalism.²⁵ The idealized concept of the autonomous, rights-bearing individual appears even in studies that demonstrate how rarely rights are invoked or highlight the importance of non-state legal orders, such as gender or community-based normative systems.²⁶ Law and society scholarship, perhaps influenced by researchers with roots in Western liberal democracies, also generally assumes that this concept of personhood is typically shared by state actors. Therefore, researchers may think that claims framed in terms of individual rights are more likely to enjoy political legitimacy, regardless of whether they ultimately succeed or fail.²⁷

There are, of course, exceptions—law and society studies that extensively explore conceptions of personhood other than those reflecting the assumptions of liberal legalism. Such exceptions—works, for example, by Boittin²⁸ and He and Ng,²⁹ discussed above—are revealing and relevant to our discussion of the potential for law and society research in Southeast Asia. Within Southeast Asia, researchers cannot easily assume rights-based notions of personhood, since their research subjects very often do not subscribe to or aspire toward a personhood framed in terms of liberal legalism. The same is true of the states that try to assert control over them. The governments of Malaysia, Singapore, Thailand, and Vietnam, for example, have modernized their economy and infrastructure but rejected an across-the-board liberalization of civil and political rights.³⁰ Thus, for the individuals and the states in which they reside, alternative conceptions of both state and personhood demand scholarly recognition and analysis. Distinctive forms of personhood in Southeast Asia produce distinctive patterns of claiming and avoidance in relation to state institutions. Claims asserted or foregone constantly reconstruct the relationship between state and personhood—and the law.

Of course, some mainstream law and society scholarship in contexts other than Southeast Asia does indeed consider legal pluralism and the influence of non-European law in its analysis of the relationship between state and personhood. But such considerations are inescapably important in Southeast Asia—because of the region’s extraordinary pluralism and its lack of a strong tradition of liberal legalism. Scholars of Southeast Asia *must* routinely

24. Gilliom (2001).

25. See e.g., Dunn & Kaplan (2009); Merry (1995); Milner (1989); Coutin et al. (2002).

26. See e.g., Merry (2000); Albiston (2010).

27. See e.g., Scheingold (1974).

28. Boittin, *supra* note 18.

29. He & Ng, *supra* note 13.

30. See e.g., Harding (2012); Rajah (2012); Streckfuss (2011); Sidel (2009).

account for the role of non-state law in shaping state and personhood; and they must also allow for, accept, and even embrace a more nuanced, less legalistic, and more culturally based concept of personhood. We see this tendency most clearly among the few scholars of Southeast Asia who identify their work with the field of law and society. For example, Chua examines how activists in Singapore negotiate legal restrictions on civil-political liberties as well as unwritten political norms to avoid retaliation by an illiberal state and make claims for sexual minorities.³¹ Moustafa finds that Malaysian Muslims' lay interpretation of fundamental Islamic principles hinders the efforts of women's rights activists to reform state law governing Muslim marriages.³² In the von Benda-Beckmanns' work,³³ the people of Minangkabau navigate between multiple legal orders that shape them as subjects of Indonesian state law and as adherents of *adat*. Although they manage to produce an ideological compromise between the two contradictory legal orders on issues of inheritance, the compromise is disregarded by both state inheritance law and practices adopted by state courts and Minangkabau villages. In contrast, Engel and Engel discover that the people of northern Thailand increasingly avoid state law and deal with their injuries based on religious and customary norms in ways that have become less and less intertwined with liberal legalism.³⁴

It appears, then, that there are some distinctive qualities associated with research conducted by the few self-identified law and society scholars of Southeast Asia. The cultures and societies of the region encourage them to look beyond the conceptual framework of liberal legalism in their explorations of state and personhood. Yet, we are aware that many other scholars do not identify themselves as law and society researchers but study Southeast Asia using similar research concepts and methodologies.³⁵ We believe that some of their work bears directly on law and society research, including the relationship between state and personhood. To borrow the famous phrase from Moliere's *The Bourgeois Gentleman*, these Southeast Asian scholars may have been speaking law and society all their professional lives without ever knowing it. We focus the rest of this article on a sampling of these works in order to highlight their significance for law and society research and to encourage making connections between these scholars of Southeast Asia and law and society scholars worldwide.

3. STATE AND PERSONHOOD IN SOUTHEAST ASIAN SCHOLARSHIP

In this section, we discuss nine articles written by Southeast Asian specialists who, like most Southeast Asianists, do *not* identify their work with the law and society field. We have selected these articles somewhat at random from a much larger study of literature about the region.³⁶ As a group, they provide insights into a number of the countries of the region, and they reflect a number of different academic disciplines and research methods.

31. Chua (2012; 2014b).

32. Moustafa (2013).

33. von Benda-Beckmanns & von Benda-Beckmann, *supra* note 6.

34. Engel & Engel, *supra* note 6.

35. We use the terms "socio-legal" and "law and society" interchangeably.

36. Our analysis of the nine articles forms part of a larger project, still underway, that aims to understand how Southeast Asian scholars who do not identify with law and society scholarship write about "law." For the larger project, we survey articles from journals that are not specifically law and society in focus, book chapters, book reviews, and books dealing with Southeast Asia published from 2002 to 2012. From these texts, we sample publications that address

Despite considerable variation in their methods and focus, the nine articles have much in common when they address the relationship between state and personhood. Directly or indirectly, they reveal the contingent nature of that relationship: sometimes the state's reach is pervasive and oppressive, and sometimes it recedes to the background. Frequently, state power is contested as its purported subjects strive for control over their own personhood. The relationship is highly variable, for personhood is multidimensional and ever-changing. As the nine articles demonstrate, multidimensionality and instability arise from the contradictions and diversities that weave together Southeast Asia's fabric of plurality. Unsurprisingly to us, none of the articles focuses solely on the "citizen" of the modern state or the autonomous individual with inalienable rights, who is widely presumed in a great deal of law and society scholarship based in Europe or North America. What is more, these articles go beyond the usual sociological categories of race, class, and gender to take into account other factors such as the nature of social relationships, rural or urban settings, age, occupation, religion, community, and family.

The nine articles dealing with state and personhood that are discussed in this section are:

1. Aguilar Jr, Filomeno V. (2011) "Between the Letter and Spirit of the Law: Ethnic Chinese and Philippine Citizenship by Jus Soli, 1899–1947"
2. Asis, Maruja Milagros B., Shirlena Huang, and Brenda S.A. Yeoh (2004) "When the Light of the Home Is Abroad: Unskilled Female Migration and the Filipino Family"
3. Huong, Lê Thu (2010) "A New Portrait of Indentured Labour: Vietnamese Labour Migration to Malaysia"
4. Mohamad, Maznah (2011) "The Islamic Divorce Contract and a Flawed Axiom of Masculine Protectionism"
5. Ngidang, Dimbab (2005) "Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak"
6. Nisa, Eva F. (2011) "Marriage and Divorce for the Sake of Religion: The Marital Life of *Cadari* in Indonesia"
7. Panya, Opart & Solot Sirisai (2003) "Environmental Consciousness in Thailand: Contesting Maps of Eco-Conscious Minds"
8. Thawngmung, Ardeth Maung (2011) "The Politics of Everyday Life in Twenty-First Century Myanmar"
9. Vorng, Sophornvay (2011) "Beyond the Urban–Rural Divide: Complexities of Class, Status and Hierarchy in Bangkok"

Although this scholarly sample is quite small in size, it covers six out of the 11 states with the largest territories, and its diversity of methods and social settings enable us to isolate three salient themes about state and personhood in the region: (1) locality and the social terrain; (2) religion; and (3) reconstituting personhood: community and family. These three

(*F*'note continued)

law, broadly defined to include customary, religious, and other forms of non-state law. Then we winnow the sample further by selecting for analysis those that contain certain terms of interest to socio-legal analysis, such as "family," "dispute," "custom," and "land."

themes resonate with socio-legal research conducted elsewhere in the world, but they also provide a good introduction to the distinctive qualities of Southeast Asia as a research setting and suggest the unique contributions Southeast Asian scholars could make to the field of law and society as a whole.

3.1 *Personhood, Locality, and the Social Terrain*

Six of the nine articles in our analysis feature concepts of personhood closely linked to physical and social places, or what we call “locality” and “social terrain,” respectively. Together, they suggest that, in Southeast Asia, who one is depends on where one is. *Localities* help to constitute personhood through the cultures, communities, and sacred things situated there. They determine the social status and identity of persons, families, and groups, thus shaping personhood both individually and collectively. Similarly, the social terrain determines how people interact with one another, thereby constituting one’s personhood in relation to other people. Moreover, the social terrain is significantly affected by physical features of the locality—sacred shrines, fields, mountains, markets, and houses—all of which are marked by their association with spirits and the supernatural. Together, the physical and spiritual aspects of particular localities and the social terrain mutually constitute one another and shape the personhood of those who live in such settings.

The articles by Ngidang and by Panya and Sirisai highlight the connection between personhood and physical place, specifically the locality where one dwells or makes a living, and the consequences for personhood when the state intervenes and imposes its laws to transform those places. In his study of land tenure in the Malaysian state of Sarawak on Borneo Island, Ngidang traces changing state policies toward land rights in relation to parallel conceptions under *adat* or customary law. Although the colonial administration made some effort to integrate customary *adat* concepts with Anglo-European principles of land ownership, the end result was a dramatic legal discontinuity. Modern-day administrators supplanted traditional practices entirely with commodified, market-based principles. As a result, they damaged the longstanding cultural connection between personhood and physical place. Ngidang observes that “People are territorial by nature” and *adat* imagined “place” as a cultural field within which human identities and relationships were managed. He also points out that “human relations are tied to culture and it is extremely difficult to codify culture into laws.”³⁷ On the contrary, the new state-imposed land laws attempted to create radically different imaginings of personhood which were not rooted in locality and were independent of one’s connections to the land.

Panya and Sirisai highlight a similar tension in their study of Thai conceptualizations of persons in their physical surroundings. Traditional Thai concepts of communal land ownership treat land and one’s physical surroundings as an integral part of human culture. Yet the state’s binary legal categories of state-owned versus individually owned land tend to displace the traditional understandings. Among rural people, the authors find a persistence of the traditional concepts, although they have largely disappeared among city-dwellers. In rural settings, locality still defines both personhood and human society, and state law fails to achieve its desired transformation. As was the case for Ngidang’s subjects in Sarawak, rural Thais view land as inseparable from culture, and “nature” for them carries a sacred

37. Ngidang (2005), p. 50.

significance. As two of Panya and Sirisai's interviewees stated, "Nature and human are like fish and water" and "cannot be separated."³⁸

Instead of analyzing the relationship between *physical* place and personhood, the article by Sophornvay Vorng discusses the significance of *social* place. In her subtle examination of face-to-face interactions among Bangkok residents, Vorng invokes Erving Goffman's classic studies of social identity to demonstrate how personhood emerges from an intricate process of negotiating hierarchical relationships even in the most quotidian interpersonal dealings. As one of her informants explains,

You're constantly interacting with other people, and gauging what level you are, and what level they are ... [thinking of] how to address a person, whether you need the politeness marker, or not, how courteous you have to be to them, how low you have to bow when you walk in front of someone. Everyone does it automatically, and they really don't think about it.³⁹

The key to navigating the Thai social terrain is *kalathesa*, a social code whose name combines terms referencing both time and place. *Kalathesa* is used to define "one's status position relative to others in public contexts," determine who is "high" and "low" and who commands authority and respect, and thus prescribe "how to behave in different places."⁴⁰ In Vorng's study, "place" refers to the social terrain of urban Thais, who constantly move from one social setting to another and must ascertain *in that setting* who they are in relation to the persons with whom they interact. Removed from the physical and natural environments of rural Thailand, which traditionally gave meaning to human relationships, Thais in Bangkok derive their personhood instead from their fluid and constantly shifting interactions with others. While navigating the social terrain, Thais rely on the norms contained in the social code of *kalathesa* to shape their personhood. By contrast, state laws that might promote different concepts of human relationship—based on legal rights—recede to the background. Vorng suggests that, if we could understand the navigation of this terrain from which personhood emerges, we might better interpret the political tensions and struggles for state control among different social groups in contemporary Thailand.

If personhood is significantly affected by locality and social terrain, what happens when individuals move to a different place, to a new locality, and an unfamiliar social terrain? Migration, as we indicated in the introduction, is nothing new to Southeast Asia, though it has accelerated significantly in recent years. Urban areas in Southeast Asia have expanded dramatically as tens of thousands of villagers have moved to the cities. Migration also crosses national borders, as people migrate into Southeast Asia or relocate from one Southeast Asian state to another. Southeast Asian researchers have focused a great deal of attention on such movements, especially insofar as they involve workers, refugees, and asylum seekers. The next three articles ask how concepts of personhood rooted in familiar places are transformed when people depart to live and work elsewhere.

Aguilar addresses this question historically by examining the changing legal status of ethnic Chinese in the Philippines from 1899 to 1947. Philippine courts had initially recognized personhood on the basis of an individual's link to Filipino "soil," or *jus soli*, which highlights the concept of locality by determining legal status according to the place

38. Panya & Sirisai (2003), pp. 63, 64.

39. Vorng (2011), p. 682.

40. *Ibid.*, p. 684.

of birth. The entry of ethnic Chinese complicated the state's position in this regard, particularly for the offspring of Chinese fathers and Filipino mothers. Aguilar traces the gradual shift in state law from *jus soli* to *jus sanguinis*, which gives bloodlines the "determinative power" to establish citizenship. State law in the Philippines, as in Ngidang's Sarawakian study, eventually decoupled personhood from locality.

Huong explores a more recent instance of migration and its effects on personhood in her study of Vietnamese men and women who travel to Malaysia to work. She shows how the physical movements of workers, from their initial recruitment in Vietnam to their arrival and employment in Malaysia, entail a "gradual loss of autonomy."⁴¹ Indeed, these mostly rural and poorly educated workers in search of financial betterment soon find themselves bound within "triple inter-connected contracts" that obligate them to a creditor (the bank), a Vietnamese recruiter, and a Malaysian employer.⁴² Their triple obligations are so constraining that the migrant workers cannot change their circumstances, cannot back out and return freely to Vietnam, and cannot challenge the exploitive practices of their employers. The laws of two states, Vietnam and Malaysia, ironically transform the personhood of those who choose to be mobile by *immobilizing* them in their new locality, suspending their freedom and independence until their legal obligations are fulfilled.

Asis et al. demonstrate how changes of locality—enabled by state laws governing migration—reconfigure the social terrain and thereby create entirely new concepts of personhood. According to their study, Filipino women who travel to Singapore to engage in domestic work have to negotiate with their families concerning "their family roles, identities and relationships relative to one another."⁴³ In the Philippines, the migrant women's personhood had been largely imagined in relation to their social status and relationships as mothers and wives in their families. Paradoxically, however, in order to strengthen their families' wellbeing, they must leave the household and work far away. Migration transforms the women's personhood, but at the same time it transforms the personhood of their husbands, who remain behind and, for the first time, assume many hitherto gender-coded responsibilities. In interviews with both the migrant women and their Philippine families, Asis et al. find that it is precisely because family bonds are so strong that men accept this "inversion of family roles."⁴⁴ Although this transformation of the Philippine family was not intended by the Singaporean and Philippine authorities who created the legal framework for migrant labour, a dramatic consequence of movement across the spaces of Southeast Asia has been a reconceptualization of the social terrain, a redefinition of "who and what constitutes 'family'."⁴⁵

3.2 Personhood and Religion

The remaining three articles explore the connection between personhood and religion. Southeast Asia is indeed a home to countless forms of religious practice, ranging from the great world religions—Hinduism, Buddhism, Islam, and Christianity—to animism, spirit

41. Huong (2010), p. 881.

42. *Ibid.*, p. 885.

43. Asis et al. (2004), p. 201.

44. *Ibid.*, p. 207.

45. *Ibid.*, p. 209.

worship, astrology, shamanism, fortune telling, and hundreds of other forms of engagement with the sacred or the supernatural. The invocation of a particular religion may, in different contexts, prove to be either empowering or disempowering. An individual's relationship to the state can also be affected by different forms of religious engagement, since the state may actively encourage or attempt to reinforce some forms of religious practice but not others.⁴⁶ Furthermore, as we have seen, state law can weaken or transform longstanding cultural institutions and behaviours—many of which are rooted in religion—and thereby change the structure of families and communities as well as the identities of individuals. Finally, one's religious affiliations can affect one's willingness to engage with state institutions (including courts) and can shape one's perception of the legitimacy of state legal institutions.

In Thawngmung's article about everyday resistance to state order in modern-day Myanmar, religion both protects and reconstitutes personhood. Thawngmung shows that some of the tactics that people in Myanmar use to deal with disagreeable state practices are based in religion, specifically in the "world of the spirits in everyday life."⁴⁷ For instance, individuals consult astrologers for assistance when they make important life decisions or attempt to ward off danger, or they turn to Buddhist monks and popular literature about the supernatural. In addition, she finds that, when the state fails to offer social security and support, social networks founded on shared spiritual practices and associations step in as more reliable alternatives.

The articles by Mohamad and Nisa, on the other hand, focus on Islam, a religion that has received much attention from scholars who study Indonesia and Malaysia. In those two countries, both the modern state and European colonizers created distinct legal regimes to regulate specific aspects of their Muslim subjects' lives, thus establishing a complicated relationship among Islam, state law, and personhood. Mohamad's study of Islamic divorce contracts in Malaysia demonstrates how the incorporation of Islamic precepts into centrally administered state law in the late twentieth century altered the personhood of both men and women. Her article begins with a statement that sets the critical tone for her analysis: "The sphere of Syariah⁴⁸ Family law is one of the most formidable bastions of formal gender inequality."⁴⁹ On the basis of her examination of 77 case files from Syariah courts in Malaysia, Mohamad concludes that the formal characterization of women as "weaker" and obedient to men creates an essentially imaginary family structure. Far from protecting the Muslim subjects, however, the law actually places stress on those who cannot sustain the idealized roles that state-imposed religious norms assign them:

[T]here is an ultimate social cost to be paid in the sustenance of gender-unequal marriage laws, primarily in the form of socio-cultural dissonance, when men are not able to live up to their end of the bargain as head of the family, but forced to imagine a situation in which they should or ought to do so. On the other hand, the manufacture of the obedient female is also seldom successful as material conditions (such as wealth, and social safety nets) do not always exist for obedience to be exchanged with protection.⁵⁰

46. Engel (2015).

47. Thawngmung (2011), p. 653.

48. Syariah is the Malay spelling of "Sharia."

49. Mohamad (2011), p. 821.

50. *Ibid.*, p. 823.

Whereas Mohamad emphasizes the sometimes negative impact of state religious regulation on personhood, Nisa turns her attention to Muslims who resist state law. The subjects of her ethnographic study are a group of Indonesian women affiliated with two “ultra-conservative” revivalist movements, Tablighi Jamā’a and Salafism, which embrace a strict and pious form of Islam. Nisa’s interviews with *cadari* women, those who have chosen to wear face-veils, show how they navigate through and around the legal regulations of the state in order to achieve their own goals of personhood: the ideal wife, husband, and married couple within a self-contained religious minority community. For example, the *cadari* strongly support “early marriage.” This is a practice justified on the basis that the Prophet Muhammad married Ā’isha when she was only six years old, but it contravenes the Indonesian state’s prohibition of marriage by women younger than 16 and men younger than 19. Nisa does not dwell on the tension between state law and religion in the construction of personhood. Her sympathetic portrayal of the *cadari*, however, explains how the maintenance of in-group associations, including marital relationships among fellow believers, strengthens their bonds and makes it possible for them to live out their idealized conceptions of personhood in defiance of the state.

3.3 *Reconstituting Personhood: Community and Family*

Nisa’s study illustrates an issue that is taken up either explicitly or implicitly by many Southeast Asian scholars: the reconstitution of personhood as understandings of community and family undergo transformation in the complex and rapidly changing societies of Southeast Asia. As we have seen, place and religion are integral to the construction of personhood. These localities, social terrains, and religious norms are, in turn, tied to institutions of collective life such as community and family, which give meaning to who one is, how one belongs, and how one relates to other people. When the state enforces its laws on a community, when villagers move to urban areas, or when workers migrate across state borders, not only is the constitution of personhood disrupted, but arrangements of collective life are also transformed. Nonetheless, the bond between personhood and the collective remains strong. Southeast Asians find ways to redefine communities and families, often in the shadow of state law and sometimes in outright opposition to it, and thus reconstitute personhood in new forms.

In her article, Nisa implies that globalization has changed the social terrain so greatly that it has alienated some Indonesian youth, who seek more traditional forms of personhood. Hence, these devout young Muslims create the *cadari* as an alternative form of community based on shared adherence to “the most original and the purest version of Islam compared with the Islam practised by their parents”⁵¹ and in tension with the state’s conception of Islamic personhood. To sustain a collective life drawing on their preferred marital roles and relationships, they intentionally segregate themselves from what they consider to be the social mainstream. Therefore, even though the *cadari* and their idealized roles of men and women are conceived as highly traditional, their community is itself a phenomenon of modernization—a deliberate conservative reaction against global secularism and the concepts of personhood fostered by the modern state.

51. Nisa (2011), p. 803.

We see a similar reconstitutive process in the article by Asis et al. There, migrant women and their families fashion an understanding of “family” that could accommodate the absence of the mother for a number of years, the transformation of the father’s gendered role within the household, and the raising of children while their mothers work in a faraway country. Like Nisa’s *cadari* women, these Filipino families make themselves over; they invent a transnational family constituted by new kinds of “persons” playing unprecedented roles in the collectivity. Their reconstituted forms of personhood are also direct responses to the conditions of life in the late twentieth and early twenty-first centuries. As drastic economic changes propel people across borders to seek livelihoods and provide for their families, they end up situating their personhood within disadvantageous state institutions that regulate migrant labour. Yet, they imagine and attempt to enact alternative forms of collective life that reclaim and redefine a personhood capable of transcending state-imposed restrictions and prevailing over adversity.

4. MUTUAL ENGAGEMENT: LAW AND SOCIETY AND SOUTHEAST ASIA

We conclude by addressing two themes we discussed earlier—the ongoing construction of personhood and its contingent relationship with the state. These themes help to connect two literatures that have largely failed to engage with one another, namely mainstream research on law and society in a number of national and transnational settings, and research on Southeast Asia by scholars who do not identify with the law and society field. We argue that these fields of scholarly activity would both profit from stronger mutual engagement. We therefore close this article by inviting scholars to take up this call and join the authors of this special issue in their efforts to build on the themes of state and personhood and to carve out future directions for law and society research on Southeast Asia.

Understandings of state and personhood form—to quote C. Wright Mills—at the intersection of history and biography.⁵² Our examination of mainstream law and society literature highlighted its interest in the social construction of personhood and the mutually constitutive and recursive relationship that binds state and personhood together. In our analysis of research on Southeast Asia, we observed that the multidimensionality of personhood reflects the region’s pluralism and directly challenges the notion of a rights-bearing, autonomous individual, commonly presumed in law and society scholarship. Furthermore, research on Southeast Asia provides a useful reminder that identity is not fixed, that individuals constantly negotiate their personhood as they encounter the law and other governmental and social forces.

Therefore, both sets of literature indicate the persistent contestations over personhood and its ever-shifting relationship with the state. Together, they illuminate the limits and the reach of law, both state and non-state. For law and society scholars, Southeast Asia offers a daunting but rewarding challenge. Law and society’s already sophisticated understanding of social construction and recursivity can be further enriched by incorporating a much more multidimensional personhood—one that is interwoven not only with state law and the familiar socio-legal categories of gender, race, and class, but also with such other

52. Mills (2000).

considerations as locality, social terrain, religion, and the collective arrangements of social life. The analysis may then produce an even more nuanced understanding of state and personhood. For example, state laws that appear irrelevant to personhood, such as the management of natural resources, agrarian policies, and urban development, may actually have significant implications for people's identities, sense of belonging, and social relationships. Just as importantly, the analyses may shed light on why some resist with such firm resolve against apparently material or external changes—for they affect the very meaning of who they are.

In particular, we call for more attention to law and religion by both law and society and Southeast Asian scholars. Except for research concerned with Islam or Islamic societies, law and society researchers have generally displayed little interest in other aspects of religion in Southeast Asia. While non-law and society Southeast Asianists have more consistently addressed religion in one form or another, they often overlook the connections between religion and law—other than Islam—and seldom explore the legal implications of Buddhism, Hinduism, Christianity, or localized or indigenous religious traditions. Thawngmung's article on the use of religious-based tactics and social networks in everyday Myanmar suggests how rewarding it might be for law and society researchers to explore in greater depth the hundreds of systems of belief and normative ordering in Southeast Asian societies in order to trace the links among religion, state law, and personhood. We see promise in studying, for example, how Buddhist and other non-Abrahamic religious concepts of action, consequence, and responsibility influence the way people relate to rights and to the law and society paradigm of “naming, blaming, and claiming.”⁵³

In highlighting the pluralism of Southeast Asia and its multidimensional perspectives on personhood, we also wish to emphasize the importance of maintaining a critical view of the permutations and many faces of power. By now, most scholars have undoubtedly become vigilant about the state and the violence that may lurk behind even its most well-intentioned legal institutions. State law as a source of oppression has become widely recognized and critiqued.⁵⁴ But we also caution against romanticizing *non*-state laws and traditional normative orders when they offer ideological resistance against the modern state and its legal impositions. Like state law, they can be both empowering *and* disempowering, both liberating *and* constraining. For example, Nisa's study of resistance by *cadari* women raises troubling questions about gender equality in their religious practices; and Vorng's study of the Thai social code of *kalathesa* points to the reinforcement of hierarchical relationships in the evasion of modern legal norms. Inherent in the multidimensions of personhood in Southeast Asia are many strands of inequality, oppression, and disempowerment. As law and society scholars, we should seize upon Southeast Asia as a kaleidoscopic window that offers an extraordinary view of how the legal power of the state and other sources of authority operate, how they relate to one another, and how human agency can overcome the complex web of plural legal power—or succumb to it.

Finally, we caution against the temptations of exceptionalism. To law and society scholars, we urge that Southeast Asia be treated as more than an interesting “other” case, too remote to be considered in theoretical debates central to the field.⁵⁵ To Southeast Asian

53. Felstiner et al. (1981).

54. See e.g., Foucault (1995); Cover (1986); Kairys (1998).

55. See also *supra* note 3.

scholars, we offer a similar caution. We often encounter Southeast Asian specialists who describe their research subjects or study sites as too complicated for outsiders to understand. We worry about the exoticization of Southeast Asia in ways that inhibit researchers from speaking across disciplines and fields. With this article, we hope to have persuaded scholars to the contrary. The ongoing constructions of personhood and contestations of state power in Southeast Asia, and their connection to legal pluralism, embody the essence of the law and society project—its concerns with human struggles and the knowledge it seeks about social change in the twenty-first century.

REFERENCES

- Abel, Richard L. (1973) "Law Books and Books about Law." 26 *Stanford Law Review* 175–228.
- Aguilar Jr, Filomeno V. (2011) "Between the Letter and Spirit of the Law: Ethnic Chinese and Philippine Citizenship by Jus Soli, 1899–1947." 49 *Southeast Asian Studies* 431–63.
- Albiston, Catherine (2010) *Institutional Inequality and the Mobilization of the Family and Medical Leave Act: Rights on Leave*, New York: Cambridge University Press.
- Asis, Maruja Milagros B., Shirlena Huang, & Brenda S.A. Yeoh (2004) "When the Light of the Home Is Abroad: Unskilled Female Migration and the Filipino Family." 25 *Singapore Journal of Tropical Geography* 198–215.
- Boittin, Margaret L. (2013) "New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China." 47 *Law & Society Review* 245–78.
- Chua, Lynette J. (2012) "Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore." 46 *Law & Society Review* 713–48.
- Chua, Lynette J. (2014a) "Charting Socio-Legal Scholarship on Southeast Asia: Key Themes and Future Directions." 9 *Asian Journal of Comparative Law* 5–27.
- Chua, Lynette J. (2014b) *Mobilizing Gay Singapore: Rights and Resistance in an Authoritarian State*, Philadelphia: Temple University Press.
- Chua, Lynette J. (2015) "The Vernacular Mobilization of Human Rights in Myanmar's Sexual Orientation and Gender Identity Movement." 49 *Law & Society Review* 299–332.
- Collier, Jane F., Bill Maurer, & Liliana Suarez-Navaz (1995) "Sanctioned Identities: Legal Constructions of Modern Personhood." 2 *Identities: Global Studies in Culture and Power* 1–27.
- Coutin, Susan Bibler (2001) "The Oppressed, the Suspect, and the Citizen: Subjectivity in Competing Accounts of Political Violence." 26 *Law & Social Inquiry* 63–94.
- Coutin, Susan Bibler, Bill Maurer, & Barbara Yngvesson (2002) "In the Mirror: The Legitimation Work of Globalization." 27 *Law & Social Inquiry* 801–43.
- Cover, Robert M. (1986) "Violence and the Word." 95 *Yale Law Journal* 1601–29.
- Dunn, Kerry, & Paul J. Kaplan (2009) "The Ironies of Helping: Social Interventions and Executable Subjects." 43 *Law & Society Review* 337–68.
- Engel, David M. (2015) "Rights as Wrongs: Legality and Sacrality in Thailand." 39 *Asian Studies Review* 38–52.
- Engel, David M., & Frank Munger (2003) *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*, Chicago: University of Chicago Press.
- Engel, David M., & Jaruwat Engel (2010) *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand*, Palo Alto, CA: Stanford University Press.
- Ewick, Patricia, & Susan S. Silbey (1992) "Conformity, Contestation, and Resistance: An Account of Legal Consciousness." 26 *New England Law Review* 731–49.
- Felstiner, William L.F., Richard L. Abel, & Austin Sarat (1980–81) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." 15 *Law & Society Review* 631–54.
- Foucault, Michel, trans. Alan Sheridan (1995) *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books.

- Geertz, Clifford (1969) *Agricultural Involvement: The Processes of Ecological Change in Indonesia*, Berkeley: University of California Press.
- Geertz, Clifford (1973) "Deep Play Notes on the Balinese Cockfight," in C. Geertz, ed., *The Interpretation of Cultures*, New York: Basic Books, 412–54.
- Gilliom, John (2001) *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy*, Chicago: University of Chicago Press.
- Greenhouse, Carol J., Barbara Yngvesson, & David M. Engel (1994) *Law and Community in Three American Towns*, Ithaca: Cornell University Press.
- Harding, Andrew (2012) *The Constitution of Malaysia: A Contextual Analysis*, Oxford: Hart Publishing.
- He, Xin, & Kwai Ng (2013) "Pragmatic Discourse and Gender Inequality in China." 47 *Law & Society Review* 279–310.
- Hooker, M.B. (1975) *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*, Oxford: Clarendon Press.
- Huang, Kuo-Chang, Kong-Pin Chen, & Chang-Ching Lin (2014) "Do Rich and Poor Behave Similarly in Seeking Legal Advice? Lessons from Taiwan in Comparative Perspective." 48 *Law & Society Review* 193–223.
- Huong, Lê Thu (2010) "A New Portrait of Indentured Labour: Vietnamese Labour Migration to Malaysia." 38 *Asian Journal of Social Science* 880–96.
- Kairys, David, ed. (1998) *The Politics of Law: A Progressive Critique*, 3rd edn, New York: Basic Books.
- Kirkland, Anna (2008) "Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement." 42 *Law & Society Review* 397–432.
- Lev, Daniel S. (1972) *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, Berkeley: University of California Press.
- Merry, Sally E. (1995) "Resistance and the Cultural Power of Law." 29 *Law & Society Review* 11–26.
- Merry, Sally Engle (2000) *Colonizing Hawai'i: The Cultural Power of Law*, Princeton, NJ: Princeton University Press.
- Mills, C. Wright (2000) *The Sociological Imagination*, New York: Oxford University Press.
- Milner, Neal (1989) "The Denigration of Rights and the Persistence of Rights Talk: A Cultural Portrait." 14 *Law & Social Inquiry* 631–75.
- Minow, Martha (1991) *Making All the Difference: Inclusion, Exclusion, and American Law*, Ithaca, NY: Cornell University Press.
- Mohamad, Maznah (2011) "The Islamic Divorce Contract and a Flawed Axiom of Masculine Protectionism." 39 *Asian Journal of Social Science* 821–44.
- Moustafa, Tamir (2013) "Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia." 38 *Law & Social Inquiry* 168–88.
- Ngidang, Dimbab (2005) "Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak." 43 *Southeast Asian Studies* 47–75.
- Nielsen, Laura Beth (2006) *License to Harass: Law, Hierarchy, and Offensive Public Speech*, Princeton, NJ: Princeton University Press.
- Nisa, Eva F. (2011) "Marriage and Divorce for the Sake of Religion: The Marital Life of Cadari in Indonesia." 39 *Asian Journal of Social Science* 797–820.
- Panya, Opart, & Solot Sirisai (2003) "Environmental Consciousness in Thailand: Contesting Maps of Eco-Conscious Minds." 41 *Southeast Asian Studies* 59–75.
- Plane, Ann Marie (1998) "Legitimacies, Indian Identities, and the Law: The Politics of Sex and the Creation of History in Colonial New England." 23 *Law & Social Inquiry* 55–77.
- Pound, Roscoe (1910) "Law in Books and Law in Action." 44 *American Law Review* 12–36.
- Rajah, Jothie (2012) *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore*, New York: Cambridge University Press.
- Scheingold, Stuart A. (1974) *The Politics of Rights*, New Haven: Yale University Press.
- Scott, James C. (2009) *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*, New Haven, CT: Yale University Press.
- Selznick, Philip (2003) "'Law in Context' Revisited." 30 *Journal of Law and Society* 177–86.

- Sidel, Mark (2009) *The Constitution of Vietnam: A Contextual Analysis*, Oxford: Hart Publishing.
- Sterett, Susan (2004) "Immigration," in A. Sarat, ed., *The Blackwell Companion to Law and Society*, Oxford: Blackwell Publishing, 345–68.
- Streckfuss, David (2011) *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté*, London: Routledge.
- Thawngmung, Ardeth Maung (2011) "The Politics of Everyday Life in Twenty-First Century Myanmar." 70 *The Journal of Asian Studies* 641–56.
- von Benda-Beckmann, Franz, & Keebet von Benda-Beckmann (2013) *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation*, London: Cambridge University Press.
- Vorng, Sophornvay (2011) "Beyond the Urban–Rural Divide: Complexities of Class, Status and Hierarchy in Bangkok." 39 *Asian Journal of Social Science* 674–701.