

Identity Paper/Work/s and the Unmaking of Legal Status in Mae Sot, Thailand

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Abstract

Arguing for renewed attention to legal status as a problem of material forms and the practices around them, this paper builds, from an examination of documents in use, a theory of how competing notions of personhood shape legal status for Burmese people in Mae Sot, Thailand. It finds that there exist in Mae Sot two modes of documentary practice through which the legal status of Burmese people is apprehended. “Modes of documentary practice” refer not only to records, papers, certificates, cards, and forms, but to the patterns of filling in, wielding, explaining, and referencing a variety of print matter. The two modes identified in this paper exist in a feedback loop, with the result that Burmese people in Mae Sot are increasingly individuated as being part of a group for whom legal status is irrelevant and legal indistinctiveness is the norm.

Keywords: Thailand, Burmese migrants, migration, legal status, paperwork, documentation

1. INTRODUCTION

What is valid proof of legal status? For legal actors in Mae Sot from lawyers and police to migrant workers and bureaucrats, the question of identification is most vexing. For Burmese people¹ moving into and through Mae Sot, it is also hazardous. This is because Mae Sot, a boomtown on the Thai–Burma border, thrives within the shadows of the Thai economy, in the blind spots and ellipses created by its dependence on and partial regulation of foreign labour.² For a Burmese person making a livelihood in these ambiguous zones, in quotidian

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1. In this article, “Burmese” refers to people of various ethnicities who have migrated from neighbouring Myanmar to Thailand; it is *not* to be confused with the ethnic category, Burman.

2. In 2012, there were 341 factories in Mae Sot, the majority of which produced garments (Interview, Representative of Union of Federated Industries, Tak Province). According to Arnold and Pickles, “a significant proportion” of these factories are subcontractors, manufacturing garments that can be labelled later in Bangkok (1,617). The town is flanked on its east by a range of mountains and on its west, less than ten kilometres from the town, by the Moei River, which at that stretch of its course, constitutes the Thai–Burma border. To get to Bangkok, which is approximately a 500-kilometre journey, there is one highway that crosses the mountains and heads south-east towards the capital city. The geographical position of Mae Sot—its proximity to an easily traversed river border with Myanmar and the relative difficulty of making

encounters at a police checkpoint, with an employer, or in court, the task of furnishing documentary evidence to prove her identity and legal status often represents her most risky interpellation as a Thai legal subject.

This essay focuses on the paperwork that mediates these risky interactions. It builds, from an examination of documents in use, a theory of how competing notions of personhood shape legal status in Mae Sot. It argues that the very instruments that are issued to prove legal personhood are the same instruments that, in circulation, unmake legal status. Analyses of the materials of law—its papers and forms and ephemera, as well the practices around the circulation of legal things—are too often made the chaff of legal analysis. This is especially and surprisingly true in the scholarship on identity papers, where ambiguous tropes about the foundational indeterminacies inherent to law recur as explanations for the fraught and unpredictable nature of identification processes.³ Such descriptions cast the legal as fundamentally enigmatic—a force whose formlessness evades analytical capture. Approaching identification processes in Mae Sot through the practices of and dispositions to documentation reveals a very different account for the inconsistencies and ambiguities inherent to the identification encounter. Rather than being expressive of a shapeless gap at the crux of law, this unpredictability has an anatomy—one that can be traced through the movement and practices of paper. By following these practices, this article makes a methodological intervention into the law and society literature on “state and personhood” (the theme of this edition of the *Asian Journal of Law and Society*). I maintain that we have to conceive of law as being *form-full*, rather than formless, in order to see that it is through its graphic mediations—its paperwork, documents, and documentary practices—that law actually materializes, in perhaps counterintuitive ways, the state and personhood.

In two years of ethnographic research at a legal aid organization that assists migrant claimants in Mae Sot,⁴ I noted the documents that Burmese people mobilize to negotiate identification encounters, observing their paper proofs to be heterogeneous, numerous, and occasionally surprising. They included work permits, passports, day passes, doctors’ notes from medical clinics in Thailand, factory identity cards, receipts that attest to a person’s enrolment in a Thai registration scheme, 10-year residency cards, UN-issued identity cards, letters from Thai bureaucrats, and cards issued by nonprofit organizations that work along the border. At border patrol checkpoints that periodically interrupt a 60-kilometre span of road between Mae Sot and Mae La Refugee camp, I saw people present university and school identification cards, in addition to the documents listed above, to soldiers checking travellers’ papers. In a court case concerning compensation for her son’s workplace injury and fatality, a

(*F*note continued)

road journeys to other parts of Thailand—has led scholars and some policymakers to refer to the town as an “economic dam,” which allows for the country to have a “Third World economy” and a “first world economy” in separate and discrete parts of the national body (Arnold & Pickles 2011). For many of these same reasons, Olson and Schjøtt have characterized Mae Sot as a labour camp within Thailand. See Olson & Schjøtt (2014), p. 64.

3. E.g. Asad (2004), p. 282; Kelly (2006), p. 90; Poole (2004), p. 62.

4. I conducted ethnographic fieldwork in Mae Sot and in Bangkok between June 2010 and December 2012. While I was in Mae Sot, I was a participant observer at a legal aid office that served the migrant community in the town. I followed cases through the legal system, watched lawyers interact with claimants, and observed claimants, lawyers, and employees make cases in front of Labor Protection officials and judges. I also interviewed claimants and lawyers. On a weekly basis for a year, I rode in public taxis—on benches on the flat bed of a pick-up truck—to and from a refugee camp located 60 kilometres from Mae Sot. Travelling mostly with Burmese people who lived in the camp, I observed countless identification encounters and interviewed the truck drivers about checkpoints and documents.

claimant from Burma produced a letter from her village's headman. Translated into Thai, this letter was to suffice, in the absence of other evidence, as proof of her kinship to the deceased worker. Perhaps more striking than their variety is that these proofs of identity *can* "work," allowing people to pass checkpoints, appear in court or file police reports. Indeed, these documents were often felicitously furnished, and were therein placed in efficacious and meaningful circulation in the Mae Sot border region.

Despite the necessity and ubiquity of identity papers to the day-to-day lives of Burmese people in Mae Sot, these documents were regarded by my informants as fragile objects, subject, of course, to loss and decay but also potentially tainted by indeterminacy, fraudulence, or unintentional and unavoidable inaccuracy. In observing, daily, instances in which identity papers were presented, debated, accepted, and/or declined at checkpoints, in court, in front of government bureaucrats, in the legal aid office, I came to see that there existed a high threshold for documents that contained inconsistencies, blanks, and mistakes. This tension between the centrality of documentation in legal encounters in Mae Sot and the tolerance for their evidentiary frailties forms the contradiction at the heart of this article. Documents proliferated *and* legal actors dismissed or ignored the information contained within them. Why did people put so much work into the circulation of things that they also perceived with suspicion and sometimes disregard? If an identity document is understood to translate a body, its history and particularity into a stable, legible prosthetic, why did migrant workers, their lawyers, judges, and police officers tolerate illegible and incomplete prostheses?

I argue that the contradiction between the necessity of documents and the widespread doubts to which they are subject was in fact a trace of the inter-workings of two modes of documentary practice through which the legal status of Burmese people in the Mae Sot border region is discerned and adjudicated. "Modes of documentary practice" refer not only to records, papers, certificates, cards, and forms, but to the patterns of filling in, wielding, explaining, and referencing a variety of print matter. Implicit to documentary practices are the ways in which paper becomes peopled—how assumptions about personhood and polity are enacted via paper instruments.

In what follows, I contend that the differential value that actors assigned to signs of a person's singularity—birthdates, names, biometrics, photographs—manifests, in identity documents, the differences between these two modes of documentary practice. As will be expanded upon, the first mode reifies these markers, asserting them as connective tissue between a legal status and the person designated on the document. The second minimizes their import, invoking instead a typological approach to personhood. I develop the idea that these two modes of documentary practice exist in a fraught feedback loop, in which the practical inefficacies of the first mode reinforce the second. In so doing, I argue that documentary practices individuate Burmese people in Mae Sot not as bearers of a determinate status, but as one of a type of person whose legal status is largely insignificant to their personhood.

I develop my arguments in four sections. The first has a dual purpose: to explain how identification papers have come to be so central to Burmese people's lives in Mae Sot and to provide an overview of key debates in the emergent social theory on identity documentation. The second section describes the first mode of documentary practice, while the third section contrasts this first mode with a second mode. The fourth and final section considers the implications of the co-existence of these two modes of documentary practice on the legal status of Burmese populations in Mae Sot.

2. IDENTITY DOCUMENTS TAKE SHAPE

Since Thailand began regulating migration from Burma in the early 1990s, its mercurial policies have yielded a host of identity documentation instruments of variegated validity.⁵ No single Thai government ministry or agency is charged with the responsibility of designing or enforcing a stable body of immigration or labour statute. Instead, the Prime Minister, his or her Cabinet, and the Ministry of Labor issue policy decrees that follow and typically flip-flop in step with the vicissitudes of economic growth or decline, political in/stability, and voting trends.⁶

Beginning with a Cabinet decree in 1992, migrant workers were required to register with the government, a bureaucratic remand for which they received an identity document declaring their status as “illegal, pending deportation.” A 2004 Cabinet decree issued a policy to regularize some foreign workers already in the country. Only implemented in 2006, the programme provided for Burmese, Cambodian, and Lao⁷ workers to receive work permits provided they submit to a process called “nationality verification” in their country of origin. Having done so, a Burmese, Cambodian, or Lao national could be granted, by his/her home country, a temporary passport or certificate of identity, which could then be processed as the basis of a short-term Thai work permit. This avenue was only open to those in possession of proof of their pre-existing registration with the Thai government. In parallel, a process for recruiting low-skilled, credentialed foreign workers—those who, as a condition of gaining employment, were documented both in their home countries and in Thailand—was implemented. In 2008, immigration law and its preferred, or at least proffered, form of identity paper changed again, with the Thai government introducing two-year work permits, once more only to workers already enrolled with the Thai government. In what became a three-year mania concerning undocumented workers, and the subject of international censure, a new decree just one year later threatened mass deportation of all workers who had not registered and commenced the process of nationality verification by February 2010. On six different occasions between January and September 2010, orders from the Prime Minister, statements from the Ministry of Labor, or Cabinet decrees alternately granted or repealed amnesty extensions, finally settling on a two-year extension of the registration period, contingent on a worker’s obtaining additional documents verifying an “intention to enter national verification.”⁸ A similar extension was granted in 2012 and more recent steps, including mandating that workers return to their home countries for variably perfunctory

5. Laungaramsri (2014) identifies a longer history of “chaotic, inconsistent and arbitrary” identity card programmes, of which the documents disseminated to Burmese workers are but one strand (p. 156). Noting that at least 19 different document schemes have been initiated since 1967, each potentially issued in multiple batches over the years, Laungaramsri describes these articles of identification as “unevenly categorized, using random criteria of ethnicity, political ideology, or elevation” (pp. 151–6). Pongsawat (2007) attempts to impose some classificatory clarity to the “chaotic” list of identity documents. He proposes two categories: one for documents generated through worker registration programmes and another for the colour-coded identification cards that the Thai Ministry of Interior disseminated, in limited numbers, to various minority ethnic groups. He argues that the former produces registered illegal migrant workers and the latter produces minority illegal migrant workers, both of which possess a border partial citizenship, in Pongsawat’s terms. I discuss Pongsawat’s arguments in the final section of this article.

6. Rukhumnuaykit (2008), p. 8.

7. This policy arose from bilateral Memorandums of Understanding (MOU) between Thailand and three of the four countries with which it shares borders. Immigration procedures and facilities for Burmese, Cambodian, and Lao workers have emerged as distinct with separate offices being created to process Burmese, Cambodian, and Lao workers’ immigration paperwork.

8. Hall (2011); Huguet (2008); Human Rights Watch (2010); Rukhumnuaykit (2008).

periods (one month to three years), have been implemented in order to deal with workers who timed out on their permits.

In the face of these convoluted policies and their haphazard implementation, non-governmental organizations (NGOs), inter-governmental organizations and cross border activists in Mae Sot directed significant energy towards holding trainings, creating public awareness campaigns, and engaging with bureaucrats in order to understand and publicize the documentary burdens that workers had to meet. The Burmese people that I spoke with in the course of my research were either unaware of or nonplussed by the changing requirements. It is perhaps not surprising, therefore, that the only lesson that stuck from almost three decades of capricious policy is that migrants need correct paperwork. What qualified as correct paperwork and how it could be obtained was, for the legal actors with whom I interacted, a shifting and shrouded target. For me, the question was why correct paperwork persisted as a target at all, especially given that documented and undocumented workers received the same wages in Mae Sot⁹ and that the penalty of potential deportation did not exert the same spectral terror as it did in parts of Thailand further away from Mae Sot's exceptionally fluid border.¹⁰

Although the documentary media through which personhood is apprehended are central, in fact, to the operations of capital, the state, and power, the major theoretical traditions on capital, the state, and power have had little to say about identity documents and identification processes.¹¹ Writing on bureaucracy and surveillance, Weber¹² and Foucault¹³ refer generally to the role of files, documents, and cases in rationalized administration and subjectification, respectively. Both implicate the "network of writing"¹⁴ in which people are increasingly imbricated as a mechanism of domination "through knowledge," in Weber's famous formulation.¹⁵ Both also point to the self-perpetuating proliferation of paper forms, to the tendency of files to beget more files¹⁶—an apparently unceasing momentum towards increasing documentation that especially resonates with my observations on identity papers in Mae Sot.

In the past 15 years, a body of scholarship on identification and its artefacts has taken shape.¹⁷ Three arguments, against which my own thinking on the subject has developed, recur in this literature.

The first concerns the role of identity objects in realizing state, economic, or other collective projects. Scott et al., for example, argue compellingly that identity documents are one of many "synoptic technologies" that enable states to make their subjects "legible"—an operation that the authors argue is essential to modern, democratic state-making.¹⁸

9. Arnold & Hewison (2005).

10. Fieldnotes; Olson & Schjøtt *supra* note 10.

11. Caplan & Torpey (2001).

12. Weber (1978).

13. Foucault (1995 [1977]).

14. *Ibid.*, p. 189.

15. Weber, *supra* note 12, p. 225.

16. Szreter & Breckenridge (2012).

17. Caplan (2001); Caplan & Torpey, *supra* note 11; Ferme (2004); Gordillo (2006); Kelly, *supra* note 3; Kim (2011); Laungaramsri, *supra* note 5; McKeown (2008); Navaro-Yashin (2007); Scott (1998); Scott et al. (2002); Torpey (2000); Yngvesson & Coutin (2006).

18. Scott, *supra* note 17. A "synoptic technology" might include deeds, titles, tax payments, cadastral surveys, and identity documents that use standardized forms of identification to make individuals equally legible, "similarly-visible," to various governmental gazes.

Subjects are made visible because they are represented through standard, repeatable textual forms like serial numbers, stable patronyms, and ID cards; these acts of translation allow subjects to be seen similarly and made comparable across multiple state entities. As technologies of identification are refined, the state, according to Scott et al., becomes increasingly literate, reading subjects not just synoptically, but panoptically.¹⁹ In making the important connection between identification processes and modes of state power, the authors gloss over the practices through which identity papers are used, read, and circulated. Rather than acknowledging the uncertainties either of the identification encounter or of the economy in which documents are given value, Scott et al. presume that proofs of identity, once generated, do in fact make subjects more legible and states more powerful. Ends and means collapse. Discussions of documentation in Mae Sot, in NGO reports and more rigorous academic treatments, often succumb to this same problem of conflating telos and process, rendering identity papers as inert media that passively enact, without substantive divergence, the social structure (of vulnerability, exploitation, capitalist development, geopolitical fissure, racism, and so on).²⁰

The second argument is that identity documents, far from being passive objects, “split subjectivity,” creating an administrative avatar detached from an embodied counterpart. Jacob,²¹ for example, advances the concept of a “form-made person,” while Kelly²² maintains that identity cards “acted like masks” in his research site. The third analytical trope concerns how people attribute sorcerous or mystical powers—even a sacral authority in one study²³—to a document. All too often in these latter two accounts, complicated questions about faith, representation, and performance are reduced to a characterization of identity papers as fetish objects²⁴—things whose material form is misunderstood as itself powerful. Those who wield identity papers are exposed as misapprehending the social relations in which their documents take part. In both of these arguments, paper abstracts. It creates relations of estrangement. It hides a purportedly true state of affairs.

My analysis presents an alternative account of identity documents—one that does not invest identity papers with the power to transubstantiate bodies or to mask the real. There is no “real” that is divided or distorted, nor do its pulp-doppelgangers require analytic demystification. At the same time as it eschews the magical realism of documents, my analysis also moves away from regarding identity objects as faithful vehicles of good or bad social engineering. Instead, I favour an approach that, first, examines the practices of identity artefacts in Mae Sot (the modes of documentary practice) and, then, considers how such practices shape possibilities for Burmese people in this border town. This is my attempt to build theory *out of* an examination of the materials of law, without presuming their significance as either inert actors of the social or as misunderstood fetishes.

19. *Ibid.*, p. 37.

20. Arnold & Pickles, *supra* note 2; Hall, *supra* note 8; Human Rights Watch, *supra* note 8; Fu Yang (2009); Olson & Schjøtt (2014), p. 60; Pearson & Kusakabe (2012); Pongsawat, *supra* note 5.

21. Jacob (2007).

22. Kelly, *supra* note 3, p. 100.

23. Rosental (2012).

24. E.g. Navaro-Yashin (2007).

3. DOCUMENTARY PRACTICE, MODE ONE

In mid-July 2012, Nazir²⁵ came to the legal aid clinic. A few days before our meeting, Nazir had been detained and charged with assisting eight people to illegally enter Thailand. After posting bail in the amount of 75,000 Thai Baht (roughly \$2,362), Nazir sought the clinic's help in defending himself. A Burmese national, at least according to an identity card issued by the Thai government, Nazir had been arrested while driving a truck carrying eight passengers from Mae La refugee camp to Umphiem refugee camp. All eight people possessed what is widely called, using English, a "camp card" or a "UN card," which indicated their residence in Umphiem camp. Camp cards are plastic identity cards that were issued through a convoluted administrative arrangement between the Thai Ministry of Interior and the UN.²⁶ The card's official English title is "ID Card for Displaced People" (บัตรประจำตัวผู้หนีภัยการสู้รบจากพม่า is its Thai designation) and contains the following information: name, photograph, nationality, date of birth, camp location, date of issue and expiry, thumbprint, a number indicating registration in Thailand's administrative rolls, and a number indicating registration in the UN's administrative rolls. Printed on the back of the card are the caveats that the card neither implies the bearer's legality in Thailand (จะไม่ได้รับสิทธิ์หรือสถานะ) nor authorizes his or her travel outside of the camp without additional approval from a government official.

Nazir's passengers were travelling with the required additional approval in the form of a letter from the Thai Ministry of Interior, written and signed by an official whose jurisdiction Umphiem camp falls within. This letter stated that Nazir was to drive, on 7 July, eight people whose names and ID card numbers were reported in the text, to a religious ceremony in the larger and more cosmopolitan Mae La camp and that he was to furthermore drive the party back to Umphiem before 9 July. Nazir had frequently performed similar errands for people from Umphiem, deriving a supplementary income from the work. On their return journey on 8 July, after easily passing numerous border patrol checkpoints on the heavily surveilled route, the Provincial Police stopped Nazir's truck at one of their checkpoints, examined his and his passenger's documents, and, finding them lacking, accused Nazir of abetting (ให้ความช่วยเหลือ) the groups' unlawful passage into Thailand. Nazir and his passengers spent the following two nights in jail. The bureaucrat who issued the permission letter facilitated the release of the group of eight who then returned to Umphiem under his recognizance. Only after Nazir was charged and posted bail was he released.

Nazir's entanglement with the Thai legal system continued for months after his arrest, costing him time and worry, and took many twists and turns that I will not be able to adequately treat in this paper. For the purposes of my argument here, what is significant about the case is that it turns on ten identity documents—Nazir's card, the camp cards of his eight passengers, and the letter written by Umphiem camp's presiding bureaucrat. The acquisition of these documents was the condition of possibility for the group's travel and their failed mobilization at a police checkpoint was the basis for the group's detention and Nazir's prolonged legal problems. I suggest that the production and circulation of these ten

25. I have changed the names of all of my informants to protect their confidentiality.

26. Eighty-eight thousand of these identity cards were distributed in 2007 as part of a one-off measure, reportedly at a cost of one million USD (www.unhcr.org).

documents exemplify one mode of documentary practice that configures the legal identities of Burmese foreigners in the Mae Sot area.

What are the characteristics of this mode of documentary practice? Most significant is a semiotic ideology²⁷ concerning how identity papers should work: all ten documents purport to index their referents through a relationship of sameness that is based on particularity. Thus, a name, a photograph, a birth date, and a thumbprint—information specific to one person—as well as registration numbers, also ostensibly singular, are listed on the documents. They “individuate” the bearer of the document, placing him or her among a series of others who wield the same document but who nevertheless may be known by their respective particulars. In Scott’s language, these features are the grammar of a “legible” subject. The fact that Nazir’s identity card, his eight passengers’ camp cards, and the letter from a camp official individuate Nazir and the eight travellers in this way is the basis for establishing the legality of their actions. If the eight are who their cards say they are—namely particular persons who are residents of Umphiem camp—and if the letter identifies and permits that set of particular persons to travel to Mae La camp, then Nazir, within the semiotic logic of these documents,²⁸ is simply their driver, not a criminal courier of illegal immigrants.

What distinguishes the documentary practice that Nazir and the eight passengers enacted in their trip to Mae La camp is not only the semiotic ideology at its basis, but also the preparatory measures—and the attendant implications on the timescales of mobility—that all nine people undertook. The letter from the camp bureaucrat was dated 2 July 2012, five days before the group undertook the one hundred and six-kilometre journey. Nazir stated that the imam of a mosque in Mae La camp requested permission from the Umphiem camp bureaucrat in mid-June, weeks before the religious activity was scheduled. Actually procuring their permission letter required all eight travellers to present themselves and their camp cards to the camp bureaucrat. While some scholars would suggest that Burmese people become “immobilized”²⁹ or “confined”³⁰ in the Mae Sot region, it is at the very least clear

27. Keane theorizes semiotic ideology as the “basic assumptions about what signs are and how they function in the world” (2003, p. 419). Among these assumptions are “the role that intentions play in signification ..., what kinds of possible agents (humans only? Animals? Spirits?) exist to which signification might be imputed, whether signs are arbitrary or necessarily linked to their objects, and so forth” (*ibid.*, p. 419).

28. The notion that an identity document could or should stand as a “record of uniqueness” has a historicity that is worth noting (Caplan & Torpey, *supra* note 11, p. 8). Identification through traces of particularity—of the “elusive qualities of individuality” in Ginsburg’s formulation—emerges in the mid-nineteenth century as a technique of policing and surveillance (1980, p. 25). “No one must remain unknown to the police,” Fichte declared, proposing that every citizen carry a “pass” containing a detailed description of himself produced and signed by a government official (1796 [1869], p. 378). Then, Siam’s developing corrections system was very much of its time in its embrace of particularizing identification techniques—in particular, fingerprinting—which allowed the emergent bureaucracy to track its criminal classes and to increase punishment for recidivists. In 1901, a Fingerprints Division opened in Bangkok. By 1903, fingerprint checks became standard practice for employment in Thai government jobs (Ramasoota, 2000).

Policing, albeit targeted not towards criminals within its society, but towards immigrants on its border, continued to be an important impetus for increasingly elaborate identification documentation for residents of Thailand (Chodok, 1983). A Ministry of Interior memo from 1962 stated, for example, that the rationale for a comprehensive national identity card scheme was the need to expeditiously and authoritatively determine Thais from the (apparently) phenotypically similar Lao and Vietnamese who were entering the country in ever larger numbers in the 1960s (Tiang, 1965). In the intervening years, the concept that an identity card identifies by noting information particular to its designee and that everyone in the country is obliged to hold some form of documentation that performs this function has become so routinized to the average Thai, as Ramasoota (2000) has argued, that it is only in spaces like the Mae Sot border region where the operant practices of identification, particularly as they pertain to foreigners, are evident.

29. Olson & Schjøtt (2014).

30. Pongsawat, *supra* note 5.

that the work required *to prepare to present* documents—the mandated forethought required for document mediated encounters—significantly gums up mobility for foreigners in Mae Sot and its surrounding areas, prolonging the lead-time required for even short journeys. Revealingly, on Nazir’s first trip to the law clinic, he repeatedly asked the legal aid worker what documents he would need to prevent a repeat arrest on a subsequent journey. He had already started preparing for his next trip.

Insofar as preparing and presenting papers which link status with a particular person wielding a document comprise one mode of documentary practice, Nazir’s arrest and the detention of his eight passengers mark a complete failure of this framework. Why did it fail? Why weren’t Nazir and his passengers recognized as authorized travellers? Why were they arrested? The literature on identity documents focuses heavily on their intrinsic precariousness and explains breakdowns in identity verification according to five underlying phenomena: the risks inherent to any moment of recognition; indeterminacy that is inherent to law; uncertainty that is inherent to documents; contingency of the mood or disposition of identity gatekeepers; and/or the capriciousness of sovereignty.³¹ From these perspectives, identification processes will always be susceptible to inconsistency because of the foundational inscrutability of the law and its human and paper mediations.

4. DOCUMENTARY PRACTICE, MODE 2

Perhaps a breakdown in one mode of documentary practice signals not only the existential vulnerabilities to which proofs of status can fall victim, but the success of a different framework. Though Nazir and his eight passengers possessed the right papers with names, photographs, and biometric data necessary to establish the singular registers of their identities and to authorize their travel, the Provincial Police officer disregarded their documents and detained all nine individuals on the suspicion that their movement was—despite all documentary evidence—illegal. In this case, it is not that identification did not occur, but that identification by particularity failed and was, instead, superseded by legal practices that identified the travellers by type. Likely because of their skin colour and the long facial hair on the male members of the party,³² Nazir and his passengers were recognized as Burmese, not as individuals with particular legal statuses. Keyes,³³ Winichakul,³⁴ Pongsawat,³⁵ and other scholars’ work on ethnicization as an exclusionary technique that the Thai state has long used to other people from Burma supports this reading. For example, Arnold and Pickles, writing on current attitudes towards migrant workers, argue that “the political project of racialization in Thai history has represented Burmese people through a singular national identity as having negative social and personal traits.”³⁶ As such, it is very plausible that Nazir and the group of

31. Das (2004); Jeganathan (2004); Kelly, *supra* note 22, p. 107.

32. In his testimony to the court, the arresting officer stated that he stopped Nazir’s truck because he could see that it contained eight passengers of “Burmese race and nationality” (มีคนต่างด้าวเชื้อชาติและสัญชาติพม่าโดยสารถมา จำนวน 8 คน). Skin colour almost certainly played a role in the officer’s apprehension of the passengers in the passing vehicle.

33. Keyes (2002).

34. Winichakul (2005).

35. Pongsawat, *supra* note 30.

36. Arnold & Pickles, *supra* note 2, p. 1614.

eight's particular claims—their articles of identification and the indications of legal status contained therein—were made marginal to the checkpoint encounter.

Were this an exceptional incident of a Provincial Police officer's prejudice, the event could be dismissed as an isolated act of stereotyping. However, I argue that stereotyping is a facet of a broader mode of documentary practice, the second that I elucidate in this paper, that parses the legal personhood of foreign people in Mae Sot. Unlike the first mode that distinguishes people through particularity, the second mode instantiates a logic of type, whereby people are perceived of as members of a group. Insofar as the first mode of documentary practice uses signs of a person's individuality as the link between the subject and the status designated by a document, this second mode of documentary practice devalues signs of a person's individuality as being pertinent to establishing his or her legal status. What is especially noteworthy about the situation in Mae Sot is that this typological thinking is mediated through the very identity documents that ostensibly identify a person by his or her singularity. In fact, it becomes bureaucratized in what I provisionally call *stereo-typos*—errors, slippages, blanks, and inconsistencies—which come to define this second mode of documentary practice.

Let me explain further with illustrations from my fieldwork. On various occasions, I observed legal actors, both foreign claimants and Thai legal aid workers, expressing indifference towards inconsistencies and gaps in documents concerning the legal status of the former. This apathy took various forms. A first step for many Burmese workers seeking legal redress in Thailand is visiting one of the legal aid organizations that have, in the past decade, begun facilitating foreign workers' access to Thai courts. Typically, when a claimant first arrived at the legal aid clinic that I observed, she would relate her grievance to a legal aid worker who, upon establishing that the organization could assist in the case, would enter information about the claimant's identity on the organization's standard intake forms. The legal aid worker would also request to photocopy whatever identity documents the claimant possessed. These papers became the basis of a file that roots the claimants' case in the statements and documents that she presented when she first came to the legal aid clinic, even as the case transformed and developed as it made its way through Mae Sot's complex legal channels. Despite the seeming importance of the intake procedure, information about claimants was notated with remarkable insouciance. Lines were customarily left blank. Ages were noted down inaccurately. Minimal effort was expended in transliterating claimants' Burmese names into Thai in any consistent manner. Names would either take on a (very) loose phonetic approximation or, quite commonly, the legal aid worker would simply record several permutations of the same name. Clarification or verification from the person to whom the name belonged was rarely sought, so it was not surprising, then, to attend hearings in which a confused claimant would listen to the judge and attorneys refer to her by an unrecognizable name. In one case, a claimant was referred to, in all the legal proceeding and documents concerning her case, as “either Tolae or Toleng” (โตนเลหรือ โทเลง). Her name, as she told me many days after we met, was Soe Lay. Often, legal aid workers and other legal bureaucrats—judges, translators, and officers alike—would bypass claimants' names altogether, referring instead to an individual in the third-person singular (เขา) or in the abstract as “a worker” (คนงาน).

Such practices were not limited to paperwork generated in the legal clinic. Claimants regularly proffered identity documentation with erroneous or absent information, which was partly related to the prevalence of fake papers. On one occasion, a legal aid worker chuckled at the obviously inaccurate age denoted on a claimant's government issued card, but did

nothing to rectify the inconsistency as it was processed into the clinic's records. Little attention typically was paid to obvious mistakes or to the resolution of divergences among biographical information indicated on the intake form, biographical information indicated on an identity paper or court document, and biographical information indicated by the claimant.

How can we interpret this unconcern? It would be folly to mark as insignificant the practices that leave documents riddled with blanks or errors, given the frequency with which I observed documents being created and circulated in this way. It would be equally unsatisfactory to associate these documentary practices with the carelessness or malfeasance of bureaucrats, legal aid workers, and judges, who were largely committed to the diligent discharge of their respective duties. Analysts have offered various explanations for what may appear to be a half-hearted approach to form-filling. Garfinkel, for instance, makes an argument about efficiency.³⁷ In his analysis of a psychiatric clinic, he finds that changing institutional protocol render the fixed details called for on a form irrelevant, their notation an inefficient waste of time, and form-filling a devalued knowledge practice.³⁸ Reed, in a paper on intake records at a prison in Papua New Guinea, points to the ways in which prison forms can be over-determined, their answers always implicit and therefore marginal to the exercise of completing a form.³⁹ Neither prisoners nor wardens are inclined, according to Reed, to complete every space on the intake documents because the form's very format already defines what about the prisoner is germane to his incarceration.⁴⁰ Both Garfinkel and Reed's accounts resonate with my observations on the practices around identity papers in Mae Sot.

I ultimately came to interpret actors' indifference to the accurate documentation of a migrant claimant's singular characteristics as part of a disposition to identity documents quite at odds with the first mode that I earlier described. In this second mode of documentary practice, an identity document need not signify a relationship of likeness to its designee through the notation of signs of that person's singular characteristics. Much to the contrary, this alternative mode is defined by a high tolerance for not knowing, for ignoring, or for mistaking a person's "records of uniqueness," such that a subject's singularity is bracketed as irrelevant to the task of identification. As a result, the typos, blanks, gaps, disparities, and errors—the stereotypography, to push forward with the neologism, of this alternative documentary framework—create an outline, in stark contrast to Thai nationals, of a class of actors whose status need not and cannot be identified by paper prostheses. Indeed, names, ages, and biometrics that compose the foreground of identity papers—the instruments putatively designed to stabilize and communicate individuality as a basis for legal identification—are blurred as the lens of this second mode of practice zooms out to view a Burmese person in Mae Sot as one among a group of nondescript actors.

5. THE DIALECTICS OF DOCUMENTS

Moving back and forth between the zoomed-out view of this second mode of documentary practice and the zoomed-in view of the first allows us to grasp the vastly different figurations

37. Garfinkel (1967).

38. *Ibid.*, pp. 186–207.

39. Reed (2006), p. 168.

40. *Ibid.*, pp. 165–8.

of personhood envisioned through these two documentary frameworks. If the first mode grounds personhood in an individual's particular and unique characteristics, the second mode binds it to a group, a class, a type. If the first is particularizing, the second is typologizing. Tacking between these two views was precisely, I found, what actors in Mae Sot were doing when it comes to establishing the legal status of Burmese people, for these two modes of documentary practice around identification co-exist, sometimes even structuring different moments of a single interaction, as I would argue was the case with Nazir's arrest. As such, they relate to each other as two inputs in a feedback loop, wherein the practical agility of the second approach to paper and legal identity undermines the fragile idealism of the first approach which, in turn, justifies the stereotypographical techniques of the second and so on.

The dialectics of documentary practice—the relationship between the two modes—result in a challenge to the epistemological grounding on which legal status for Burmese people in Mae Sot can be determined. This is the unmaking to which the title of this article refers. If the logic of documentary practice mode one presumes an identity document's capacity to link the person who bears a document to authenticating markers indicated on that document, on the one hand, and a status, on the other, the scepticism, doubt, blanks, errors, and stereotypography that are characteristic of mode two undermine this capacity so as to make an identity document insufficient to the task of proving legal status. In short, legal status was asserted *and* undone, uncertainty and unpredictability injected directly into the forms and practices that determine it.

These findings generally support the consensus that the processes underway in Mae Sot pull Burmese immigrants into the global economy as subordinated, fungible workers whose capacity to labour, as opposed to live or thrive, is privileged.⁴¹ Pongsawat, to take the most historically detailed account of this argument as exemplary, advances the concept of “border partial citizenship” to characterize both the position of Burmese workers in Mae Sot and in Mae Sai, a smaller and less industrialized town on the Thai–Burma border, and the particular spatialization of capitalist development in those towns.⁴² Border partial citizens lack the entitlements, protection, and freedom of mobility of “full” citizens or workers. The partiality of their citizenship is correlated with their classification vis-à-vis the Thai state. Many possess one of 16 colour-coded identity cards, artefacts of previous registration schemes. According to Pongsawat, these cards immobilize their bearers in two ways, first in the district in which the document was issued and second in a state of perpetually unrealized citizenship-to-be.⁴³ This is one form of border partial citizenship. Another form is based on having a work permit—a document that designates its holder as an illegal, registered worker. The work permit is even more restrictive in that it confines its holders not only geographically, but to the employer who sponsors the permit. Of both of these citizenship regimes, Pongsawat argues that they are “a certain form of social relation as production [that] was invented to ensure the maximum profit via exploitation by the prevention of citizenship rights.”⁴⁴

41. Arnold and Pickles, for example, write about the “production of surplus populations” in Mae Sot (*supra* note 2). Olson and Schjøtt hold that Burmese immigrants are illegalized, “a mechanism that disciplines them into a highly disposable labor force” (*supra* note 2, p. 20). See also Arnold & Bongiovi (2013); Pearson & Kusakabe, *supra* note 20.

42. Pongsawat, *supra* note 30.

43. *Ibid.*, p. 169.

44. *Ibid.*, p. 142.

The tendency that I discuss in this paper to recognize Burmese workers as legally unknowable or to mark their legal status as irrelevant could be seen as a trace of this “form of social relation as production.”

However, a consideration of identity paperwork and how identity papers work in Mae Sot raises questions about this reading and, more generally, about the prevailing social theory on the town. I again take up Pongsawat because his is an exemplary and seminal analysis. What are his assumptions about paperwork? If Pongsawat places identification instruments at the centre of his theory, he does so without asking about the relationships among graphic media, their circulation, and the documentary practices that constitute their meaning. If the 16 identity cards and the work permits are building blocks of two border partial citizenship regimes, they are conceptualized as robust objects, capable of “imposing upon [their bearers] the partial status assigned by the state.”⁴⁵ If proofs of identity signify the Thai state’s intention to alienate and exploit certain populations in the service of capital, they are characterized as, in Pongsawat’s account, faithful mediums of this mission.

My research advances a contrasting perspective on the work of identity documents in Mae Sot. Prone to performative misfires, indeterminacy, errors, and doubt, identity proofs and the practices around them bequeath sufficient uncertainty to the identification process as to make the categorical stability of *status* untenable. As I have argued in this article, legal status and the categorical certainties implied therein are eroded through the documentary practices that call them into being. Might this suggest that work permits and identity cards would be hard pressed to construct, in practice, citizenship categories, howsoever partial? Given the feedback loop that I describe in this paper, could an identity artefact mediate a status or categorical stability in Mae Sot? These questions are not to say that border partial citizenship is not a useful analytic, but that its relationship to identification regimes needs to be more thoroughly explored. Documents are not inert entities enacting the agendas of capital, but express modes of documentary practice that undo, frame, and destabilize both paper artefacts and the projects of which they are a part.

Netted in a feedback loop between two modes of documentary practice, my Burmese informants in Mae Sot were caught in a double bind. They were mandated to be identifiable, via their papers, as singular individuals, while being produced, through the stereotypical practices that infiltrate those very same forms, as indistinct members of a group. The graphic artefacts employed in identification processes were so shot through with blanks, scepticism, and indifference that their value was undermined, making the successful enactment of the documentary mandate even more slippery. Out of this feedback loop, an ambiguous status for Burmese people in Mae Sot took shape—one in which identity papers were simultaneously required *and* marginalized; the markers of a person’s particular characteristics were normatively called for *and* ignored as signs of her personhood; and her ability to live and labour in the town could never be confidently supported by the documents she bore. Legal status here does not reside in the documents, its determination only needing to be revealed in the identification encounter. Neither does it emerge *de novo* from the interactional dynamics of the identification encounter. Rather, it takes shape in the material flows of people, authority, semiotic ideologies, and paper that pre-exist, enact, overtake, and outlast the identification encounter.

45. *Ibid.*, p. 183.

What this feedback loop forebodes for the possibilities of the rule of law or for the ameliorating role of identification processes in the structuration of capital are questions that I cannot fully address in this essay. However, it should be noted that a lack of papers is frequently pathologized as a factor in the easy exploitation of migrants and the stateless. Diagnosed in this way, poor documents pose a problem that can only be solved by more and better documents. In human rights discourse, the goal of universal credentialing—the idea that everyone should have a legal identity and documents to bear out that identity—is becoming increasingly axiomatic. In Mae Sot, the proliferation of paper proofs of legal status over the past ten years has been heralded by many, Burmese and their advocates alike, as a sign of progress, as a trend that mitigates the Burmese populations' precarity in the region. "Hallelujah!" one resident of Umphiem camp exclaimed⁴⁶ when he received his camp card—the same document, incidentally, that betrayed eight of his neighbours as they were attempting to return to Umphiem with Nazir. My arguments greet their enthusiasm with reserve.

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