

BODIES POLITIC:  
CIVIL LAW & FORENSIC MEDICINE IN COLONIAL ERA BANGKOK

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# BODIES POLITIC: CIVIL LAW & FORENSIC MEDICINE IN COLONIAL ERA BANGKOK

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This dissertation argues that the physical bodies of the dead and injured were an overlooked grounds of political contestation in the era of high imperialism. When Siamese (Thai) subjects were injured or killed under accidental or unnatural circumstances, their bodies became concrete demonstrations of both the disadvantaged status of Siamese subjects under extraterritorial law, and the nature of the state's constrained sovereignty. Officials in the Siamese state appealed to and appropriated new forms of medical and legal expertise in response to these events. In contrast to state-centric historical narratives of medicalization or the adoption of western forms of legal cultural and institutions, however, I argue that the actions of Siamese officials were overwhelmingly pragmatic and ad hoc. Moreover, I argue that law and medicine were themselves agentive, responding to and altering the sociohistorical conditions of life in fin de siècle Bangkok. To that end, I introduce a host of previously overlooked social actors and forms of agency that helped to transform the dead and injured into politicized bodies. These actors include the practitioners and advocates of these new forms of medico-legal expertise, including lawyers, physicians, and the semi-subaltern bureaucrats in the Siamese state who helped to mediate foreign forms of expertise, as well as new forms of urban mobility such as streetcars, which inflicted injury and death on the uninitiated. Finally, I argue that the dead and injured were themselves agents in this transitional period, though in the end the authoritative forms of

medico-legal knowledge that spoke on their behalf favored authoritarian and absolutist trends in Thai political life.

## BIOGRAPHICAL SKETCH

Quentin (“Trais”) A. Pearson III was born and raised in Connecticut, the second of four children. After high school, Trais studied Philosophy and Religion at Mary Washington College (now the University of Mary Washington) in Fredericksburg, VA, graduating in May 2001. After graduation, he travelled to Thailand in order to pursue an abiding interest in Theravada Buddhism. Trais taught English as a second language to middle and high school students at Pingkarattana School in Chiang Mai, and spent his summer vacation practicing meditation at a temple in Phrae Province. Upon returning to the U.S., he enrolled in a Master’s degree program in Religion at Wake Forest University in Winston-Salem, NC. He graduated in May 2005, and moved to Boston, MA, where he worked as an acquisitions assistant at the Harvard Law School Library. He began his coursework for the Ph.D. in the Department of History at Cornell University in 2007. After graduating in August 2014, he will hold the position of Andrew W. Mellon Foundation Postdoctoral Fellow in Asian History at Wheaton College in Norton, MA.

To my parents, Tog & Doreen.

And to my wife, Su-Ping.

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## NOTE ON TRANSLITERATION

I have followed the Royal Thai General System of Transcription (1999) with some minor changes: I have transliterated “จ” as “j” when it appears in initial position (as in *jao phraya* or *jao phanak ngan*). Other exceptions have been made to conform to recognized spelling conventions in the case of proper names (i.e., Chulalongkorn).

## INTRODUCTION

“The executioner himself is about the medium size, perhaps some fifty years of years [sic: age], but quick and active in movement, with a face which rather betokens benevolence and deep religious feeling than ought else. A look of determination and stern sense of duty was on his face as he approached the criminal, and before the latter could possibly be aware, with a single sweep of the sword in his right hand he severed the spinal column and the whole neck with the exception of a small portion of skin under the chin, which he afterwards cut with his sword. Eleven seconds after the blow was given Dr. T. Heyward Hays felt the pulse of the headless body, and ascertained that the radial pulse ceased to beat in 22 seconds, the dorsal in 43 after he had begun to count, or in all 33 and 54 seconds respectively. The head of the criminal was exposed then for a short time on a pole while the irons were being removed from the legs of the body by cutting off the heels with the special weapon spoken of previously. It lacked but two minutes to 8:30am when the fatal stroke was given, and at 8:35am the body had been doubled in the grave, the head thrown in, and covered with earth, and all traces of the recent event removed.”

From “A Siamese Execution,” *The Bangkok Times* 4 September 1889.

In the epigraph, a western journalist describes the execution of a Siamese criminal convicted of a brutal murder by bludgeoning while in the commission of a robbery. The journalist was one of a party of five foreigners who travelled south from Bangkok to Pak Nam, at the mouth of the Chao Phraya River, to witness the execution.<sup>1</sup> None had a personal stake in the crime, nor is there any suggestion that they were intent upon seeing justice done in the case of the nameless murderer. The story first appeared, evidently as news, in the 4 September 1889 edition of *The Bangkok Times*, the Siamese capital’s leading English language newspaper. The execution would have a peculiar afterlife, however, when it was reprinted as an appendix titled “A Siamese Execution” in

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<sup>1</sup> In fact, the same five individuals had travelled to the same temple five days earlier, when the execution was supposed to have taken place. On the first foray, they milled about on the grounds of Wat Makasan while preparations were made. Then, when the clock struck 10am and there was still no sign of the prisoner, they surmised that the main event would not proceed as planned and returned home. Without consulting one another, all five members of the group nevertheless appeared at the appointed place again on Friday morning, having been separately informed that the execution would take place then.

*The Directory for Bangkok and Siam*—which was lauded by its publishers as “a handy and perfectly reliable book of reference for all classes”—beginning in 1891.<sup>2</sup> Apart from sheer macabre fascination, there is no clear justification for the inclusion of the article in the almanac or, indeed, in any of the succeeding volumes—for the article continued to appear as an appendix year after year.<sup>3</sup>

The presence of the western physician in the scene is notable. Dr. T. Heyward Hays was an American doctor residing in Bangkok. In his professional life he attended primarily to foreign patients at the city’s premier hospital in the riverside district known as Bangrak, which hosted the city’s foreign consulates and trading houses. Hays’ professional attendance upon the convict lent an air of forensic concern to the execution, as modern medical expertise was called upon to assess if not the efficacy—the severed head was likely sufficient proof of that—then the humaneness of Siamese penal practices: that they brought about death swiftly and without prolonged suffering. Eyes fixed on the halting but rhythmic ticks of the seconds-hand on his watch, Hays kept count as the pulse of the deceased grew fainter under the pressure of his pointer and middle fingers. The execution was very much a Siamese affair, but like so many other aspects of life and death in late-nineteenth-century Siam, western science brought a new form of scrutiny to bear on it. The uninvited gaze of the foreign residents harkened a new manner of concern for the dead and dying in the Siamese capital.

In the present study, I identify the forms of knowledge, but also the social, material, and discursive conditions by which injured and dead Siamese bodies became the subjects of new

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<sup>2</sup> *The Directory for Bangkok and Siam for 1891: A Handy and Perfectly Reliable Book of Reference for All Classes* (Bangkok: Bangkok Times, [1891]).

<sup>3</sup> Nor is there any clear reason why the editors chose to include a section on “Capital Punishment” in the introductory section on “Siamese Times, Seasons, and Customs” at the front of the volume, which included otherwise practical ethnographic notes on “Agriculture,” “Rice Planting,” and “Irrigation” (ibid.).

forms of knowledge and concern in turn-of-the-twentieth-century Bangkok. At the same time, I am concerned with the contemporaneous process whereby those bodies were beginning to be recognized as constituents of a political body—albeit a political body under duress. What were the relevant institutions and forms of knowledge, and what were the historical conditions that made them appealing as novel forms of authority? I argue that in the context of the plural legal environment created by the unequal trade treaties, civil law and forensic medicine took on an elevated importance as forms of authoritative knowledge. By focusing on the dead and injured bodies of relatively anonymous Siamese subjects, this study identifies new forms of social agency and new registers of contestation in Siamese history during the era of high imperialism. Cases of accidental and unnatural death occasioned transnational and cross-cultural debates over the value and meaning of lost human lives. They allow us to see how a range of social actors asserted their own interests by engaging in practical ways with the changing sociotechnical conditions of their lives. This is a study then of the discourses, forms of expertise, and interests that were asserted over and with respect to the dead and dismembered. The resulting “assemblages” that were constructed around injured and dead bodies provide a new window onto the politics of sovereignty in turn-of-the-twentieth-century Siam.<sup>4</sup>

### **Thai Colonial Exceptionalism & Narratives of National Injury**

A simple exercise in etymology highlights the central problem of modern Thai history. The ethnonym “Thai” in the name of the modern nation-state of Thailand (Thai: *prathet thai*)

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<sup>4</sup> My usage of the term “assemblage,” defined below, follows David Turnbull, which is adapted from Deleuze and Guattari; see David Turnbull, *Masons, Tricksters, and Cartographers: Comparative Studies in the Sociology of Scientific and Indigenous Knowledge* (Amsterdam: Harwood, 2000), 44.

contains the secondary connotation of “free person.”<sup>5</sup> Thailand, as the kingdom of Siam became known in 1939, might therefore be understood to mean the “land of the Thai people” and/or the “land of the free.” Leaving aside the thorny issues of ethno-nationalism implied in the first usage, the second is suggestive of the deeply ingrained thread of exceptionalism that permeates modern Thai history. Siam, alone among the states of Southeast Asia, was never formally colonized during the era of high imperialism and much of modern Thai historiography has been an exercise in qualifying and coming to terms with this anomaly.

When confronting the question of how Siam remained independent, the first inclination of scholars was to look to the nation’s leaders, specifically the monarchs of the reigning Chakri dynasty. In the view of Thai historians like Prince Damrong Rajanuphap, King Mongkut (Rama IV, r. 1851-1868) and his son and successor King Chulalongorn (Rama V, r. 1868-1910) were clear-eyed and far-sighted leaders who ushered in reforms to anticipate and defuse the demands of the foreign powers for greater control over Siam.<sup>6</sup> Such historical narratives, which have been labeled the royal-nationalist mode of historiography, offered a narrative that glorified the kings and purported to identify the true genius of the Thai people: the selective adaptation of the foreign.<sup>7</sup> But by the mid-twentieth century, revisionist perspectives informed by Marxist theory

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<sup>5</sup> Andrew Turton, “Introduction to *Civility and Savagery*,” in *Civility and Savagery: Social Identity in Tai States*, ed. Andrew Turton (Richmond, Surrey: Curzon, 2000), 3-32, 13. Thanet Aphornsuvan, “Slavery and Modernity: Freedom in the Making of Modern Siam,” in *Asian Freedoms: The Idea of Freedom in South and Southeast Asia*, David Kelly and Anthony Reid, eds., (Cambridge: Cambridge University Press, 1998), 161-186, especially 181.

<sup>6</sup> Charnvit Kasetsiri, “Thai Historiography from Ancient Times to the Modern Period,” in *Perceptions of the Past in Southeast Asia*, Anthony Reid and David Marr, eds. (Singapore: Asian Studies Association of Australia, 1979), 156-170.

<sup>7</sup> On the idea of an identifiable and enduring “royal-nationalist” mode of historiography, see Thongchai Winichakul, “*Prawatisat thai baeb rachachat niyom*” [Thai History in the Royal-Nationalist Mode], *Sinlapa watthanantham [Art & Culture]* 23, no. 1 (2001): 56-65. The idea that the Siamese elite possessed a unique ability to selectively adapt western ideas continues to appear in scholarship on Thai intellectual history; see, for example, Thanet Aphornsuvan, “The

began to seep in from the margins of Thai historiography, injecting a degree of skepticism about royal-nationalist narratives explaining Thai exceptionalism.<sup>8</sup> In a well-known act of iconoclasm, scholar Benedict Anderson upended the celebratory narrative of Thai colonial exceptionalism by posing the question of whether Siam/Thailand was really better off than its neighbors for having retained its independence.<sup>9</sup> In spite of such revisionist provocations—and indeed because of them—the fundamental question of Thai colonial exceptionalism continues to occupy the attention of scholars working on modern Thai history.<sup>10</sup>

Perhaps no single event helps to demonstrate the persistent nature of imperial threats to the Siamese state better than the Pak Nam incident of 1893. In July of that year, the French sent an envoy of gunboats to exact territorial concessions from Siam in the wake of a series of skirmishes between French and Siamese forces over contested territories on the eastern bank of the Mekong River.<sup>11</sup> Upon arriving at the mouth of the Chao Phraya River (Thai: *Pak nam*), the

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West and Siam's Quest for Modernity: Siamese responses to nineteenth century American missionaries," *South East Asia Research* 17 (2009): 401-431.

<sup>8</sup> Jit Phumisak's *Chomna khong sakdina thai nai patchuban* [The Real Face of Thai Feudalism Today] (1957) is perhaps the best-known work; see Craig Reynolds' excellent translation and commentary, *Thai Radical Discourse: The Real Face of Thai Feudalism Today* (Ithaca, NY: Southeast Asia Program, Cornell University, 1987). See also, Craig J. Reynolds and Hong Lysa, "Marxism in Thai Historical Studies," *Journal of Asian Studies* 43 (1983): 77-104; and Craig J. Reynolds, "Feudalism as a Trope for the Past," in *Seditious Histories: Contesting Thai and Southeast Asian Pasts* (Seattle: University of Washington Press, 2006), 102-121.

<sup>9</sup> Benedict R. O'G. Anderson, "Studies of the Thai State: The State of Thai Studies," in *The Study of Thailand: Analyses of Knowledge, Approaches, and Prospects in Anthropology, Art History, Economics, History and Political Science*, ed. Eliezer B. Ayal (Athens, OH: Center for International Studies, Ohio University, 1978), 193-247.

<sup>10</sup> The efforts of historians attending to the Thai past—and likewise historically minded ethnographers and others who look to the Thai past to offer insights into contemporary social, political, and cultural life—continue to be shaped by the larger question of how Siam navigated the challenges of western imperialism. See, for example, Michael Herzfeld, "The Absent Presence: Discourses of Crypto-Colonialism," *South Atlantic Quarterly* 101 (2002): 899-926.

<sup>11</sup> Thongchai Winichakul, *Siam Mapped: History of the Geo-body of a Nation* (Honolulu: University of Hawai'i Press, 1994), 105-111. The initial engagement occurred in what is present-day central Laos, an area that had formerly maintained a tributary relation with Bangkok.

French requested permission to cross the sand bar and proceed upriver to the capital to conduct negotiations. The Siamese denied their request and warned the French naval commander that they would face the full force of Siamese defenses if they attempted to enter the river. The French steamed past the Siamese defenses and on to Bangkok, where they trained their guns on the royal palace. The Siamese elite were devastated—betrayed by their own insufficient defenses and by the diplomatic agreements that they thought would protect them from such incursions.<sup>12</sup> For Siam’s leaders, the event produced a “crisis of morale”; King Chulalongkorn in particular suffered a physical and emotional collapse in the aftermath.<sup>13</sup> The Siamese court was then presented with an ultimatum: surrender all claims to territory on the east bank of the Mekong River or face a naval blockade.<sup>14</sup>

The resulting territorial concessions have been conceived of as a radical amputation to the “geo-body” of the Thai nation,<sup>15</sup> and the perceived wound has been used to articulate powerful and productive claims to injury in nationalist historiography. As Lydia H. Liu has observed, “the state (or empire) is given the power not only to injure but also of being injured and making claims to that effect.”<sup>16</sup> The Pak Nam incident has thus served as a centerpiece for Thai nationalist sentiments and historical narratives alike, which pit the proud and peace-loving Siamese state against the wily and belligerent French. The Pak Nam crisis—along with a

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<sup>12</sup> Prior to the incident, the Siamese had been confident that Britain would come to their aid in any military disputes with France; the British instead urged Siam to concede to French demands (Thongchai, *Siam Mapped*, 141). See also, David K. Wyatt, *Thailand: A Short History* (New Haven: Yale University Press, 1982), 202-204.

<sup>13</sup> Noel A. Battyé quoted in Thongchai, *Siam Mapped*, 141.

<sup>14</sup> Chandran Jeshuran, “The Anglo-French Declaration of 1896 and the Independence of Siam,” *Journal of the Siam Society* 28 (1970): 105-126, 111.

<sup>15</sup> Thongchai, *Siam Mapped*, 143-150.

<sup>16</sup> Lydia H. Liu, “Injury: Incriminating Words and Imperial Power” in *Words in Motion: Toward a Global Lexicon*, Carol Gluck and Anna Lowenhaupt Tsing, eds., (Durham, NC: Duke University Press, 2009), 198-218, 214.

number of other diplomatic incidents in the era of high imperialism—have thus become part of a distinctive “plotting” of Thai history, one that is organized around the central theme of Thai colonial exceptionalism.<sup>17</sup> The response of the Siamese state to the crisis is cited as evidence of the apparently unified and strategic decision-making of the Siamese royal elite, who successfully steered the kingdom through the dangers of imperialism.

But while events such as the Pak Nam incident undoubtedly cast imperial politics into stark relief, there were other events and transnational engagements that deserve the attention of historians. If the perceived loss of the east bank of the Mekong River might be likened to a national anthem of mourning, other forms of injury and loss prompted more silent dirges that are nonetheless “critical events” for the study of Thai history in the era of imperialism.<sup>18</sup> The cases of injury and death under scrutiny in this study were transnational and cross-cultural in composition; they linked “global and local realities, crystallizing new forms of knowledge and action and realigning social relations in historically significant ways.”<sup>19</sup> In many ways, the response of the Siamese state, including its royal officials, subordinates, and intermediaries to the quotidian tragedies that resulted in the injury and death of Siamese subjects offers a more realistic depiction of sociopolitical life in turn-of-the-twentieth-century Siam than dramatic events like the Pak Nam crisis. They reveal the ad hoc nature of the efforts of Siamese officials to respond to the specific challenges posed by constrained sovereignty in the era of high imperialism. Moreover, they provide concrete demonstrations of how new forms of medical and

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<sup>17</sup> See Craig J. Reynolds, “The Plot of Thai History: Theory and Practice,” in *Patterns and Illusions: Thai History and Thought*, Gehan Wijeyewardene and E. C. Chapman, eds., (Canberra: Australia National University, 1992), 313-332.

<sup>18</sup> Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (Delhi: Oxford University Press, 1995), 5-6.

<sup>19</sup> Laurence Monnais and Harold J. Cook, eds., *Global Movements, Local Concerns: Medicine and Health in Southeast Asia* (Singapore: NUS Press, 2012), xxi.

legal expertise—and likewise universalizing notions about the metaphysics of legal liberalism—were locally mediated.

As I argue below, the plural legal arena created by extraterritorial law was the crucial sociohistorical context under which the Siamese state first became aware of the dead and injured bodies of its subjects. Siamese officials turned to new forms of expertise and institutions in order to address the immediate problems created by the compromised sovereignty of the Siamese state. The resulting institutions and practices—including civil law and inquests—might best be described as an “assemblage,” following David Turnbull’s use of the term to signify “an episteme with technologies added, but which connotes the ad hoc contingency of a collage in its capacity to embrace a wide variety of incompatible components.”<sup>20</sup> The assemblages that coalesced around the dead and dismembered bodies of Siamese subjects brought new forms of expertise to bear on them and likewise transformed the bodies into objects of political value. Fixed within these assemblages, the bodies of the dead and injured became crucial grounds for the contestation of Siamese sovereignty. Civil law and forensic medicine thus allow us to bridge the gap between the domestic and imperial facets of Siamese history in the era of high imperialism. They reveal how Siamese bodies came to the attention of officials in the Siamese state as bodies with political valence in on-going engagements with imperial powers—and this, in turn, shaped the political possibilities of those bodies. Before outlining the approach of this study to these “critical events,” however, it is necessary to consider how scholars have approached the subject of modernizing change in the areas of law and medicine, and particularly how they have depicted the causal mechanisms that led the Siamese state and its leaders to appeal to new forms of expertise and adopt new legal codes and institutions.

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<sup>20</sup> Turnbull, *Masons, Tricksters*, 44.

## Negotiating Sovereignty (II): Law & Medicine in Modern Thai History

Although Siam was never subject to formal colonial rule during the era of high imperialism, it nevertheless existed in a state of compromised sovereignty. Extraterritorial legal privileges, which were granted to foreign residents by a series of unequal trade treaties that Siam signed with European imperial powers and Japan beginning in 1855, are among the clearest indications of Siam's diminished sovereignty.<sup>21</sup> The history of the abrogation of those treaties has been a central concern for modern Thai historiography. Historians have tended to subordinate the narrative of modernizing legal change in Siam—variously described as the “westernization” or “Europeanization” of Siam's legal system, or more sanguinely as the “voluntary adoption of western laws”—to the logic of overcoming the ignominy of extraterritorial law as enshrined in the unequal trade treaties.<sup>22</sup> This causal framework for explaining the modernizing reform of the Siamese legal system operates retrospectively. Starting from the (presumably desired) outcome of a national justice system based on the principles of western legal liberalism, it demonstrates the steps necessary to reach that goal, namely the codification of modern legal codes.<sup>23</sup> Such studies have tended to regard imperialism as the only variable in the process of modernizing legal change in Siam; legal change was thereby reduced to the process of codification. In the

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<sup>21</sup> Tamara Loos, *Subject Siam: Family, Law, and Colonial Modernity in Thailand* (Ithaca: Cornell University Press, 2006), 40-43.

<sup>22</sup> See, for example, the path-breaking work of M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975); M. B. Hooker, “The ‘Europeanization’ of Siam's Law 1855-1908” in *The Laws of South-East Asia, Volume II: European Laws in South-East Asia*, ed. M. B. Hooker (St. Paul, MN: Butterworths, 1988), 531-607; for a contemporary articulation, see Francis Bowes Sayre, “The Passing of Extraterritoriality in Siam,” *American Journal of International Law* 22 (1928): 70-88.

<sup>23</sup> By “legal liberalism” I mean to suggest something like the “universal concepts of political modernity” and the legal institutions meant to protect them; see Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, second ed. (Princeton: Princeton University Press, 2008), *passim*.

capable hands of scholars like M. B. Hooker, this paradigm has served admirably for scholars seeking patterns applicable to legal change across Asia,<sup>24</sup> and the model persists in current scholarship on “legal transplantation.”<sup>25</sup>

Recent revisionist scholarship, which is attentive to the Eurocentric nature of this narrative and its teleological end of a monolithic Euro-American legal modernity, has added considerable nuance to the historiography of modern legal change in Siam.<sup>26</sup> In *Subject Siam*, for example, Tamara Loos locates other, previously obscured forms of agency and causality within the narrative of codification.<sup>27</sup> Firstly, with regard to agency, Loos highlights the work of foreign legal advisors who were employed by the Siamese state to assist in the process of legal reform.<sup>28</sup> The intellectual labor of these foreign advisors was largely neglected by the royal-nationalist historiography. Secondly, eschewing the predominant logic linking “Europeanizing” legal change with efforts to retain sovereignty and overcome extraterritoriality, Loos demonstrates that in matters of family law at least, Siam refused the inexorable logic of western modernity. Although Siam’s leaders understood that the nation’s “sovereignty was fundamentally a gender and legal issue as much as it was a political and economic one,” and that “Siam would not be free of burdensome extraterritoriality clauses until it ‘modernized’ its legal system, which ultimately meant adopting a ‘modern’ family law on monogamous marriage,” they neglected to do so until 1935, well after the other sections of its modern legal code had been

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<sup>24</sup> See, for example, the various contributions in *Asian Indigenous Law: In Interaction with Received Law*, ed. Masaji Chiba (London: KPI, 1986).

<sup>25</sup> See, for example, Andrew J. Harding, “The Eclipse of the Astrologers: King Mongkut, His Successors, and the Reformation of Law in Thailand” in *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, Penelope Nicholson and Sarah Biddulph, eds., (Leiden: Martinus Nijhoff, 2008), 307-341.

<sup>26</sup> Chakrabarty’s *Provincializing Europe* has been seminal for scholars who would question the ways in which modernity has been defined in inherently Eurocentric terms.

<sup>27</sup> Loos, *Subject Siam*.

<sup>28</sup> Loos, *Subject Siam*, 52-71.

codified.<sup>29</sup> Focusing on the work of “Siam’s leaders and people” to reconfigure “their moral and political landscape through debates about polygyny,” Loos thereby offers an alternative account of the production of legal modernity in Siam, one that rejects the teleology of the codification-to-overcome-extraterritoriality framework.<sup>30</sup>

David Streckfuss has located another facet of modern Thai legal history that complicates the logic of the “Westernization” paradigm. In *Truth on Trial in Thailand*, Streckfuss interrogates the history of Thai defamation law, finding an important continuity between its traditional and modern iterations.<sup>31</sup> Following Craig J. Reynolds’ exploration of “state poetics,” Streckfuss argues that traditional Thai culture maintained a hierarchical vision of access to truth, one that conformed closely to the social class structure.<sup>32</sup> Like Loos, Streckfuss is attentive to the role of foreign legal advisors, whom he argues introduced a sense of law as a tool of repression in the project of reforming Siamese laws. Arriving in Siam with this particular vision of law as their “intellectual baggage,” the foreign advisors were able to successfully merge the traditional Thai notions of truth to a modern legal regime.<sup>33</sup> Although Streckfuss succeeds in offering a narrative of modernizing legal change that is attentive to both Thai cultural conditions and the process of coming to terms with western legal culture, the analysis of law remains primarily confined to its codified expressions, and law continues to be a tool of the elite in their

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<sup>29</sup> Loos, *Subject Siam*, 101-2. Yet this reticence to adopt a family law code modeled on Western legal traditions was not a simple matter of (elite male) Siamese refusal to part with the privilege of polygyny. In fact, family law was explicitly exempted from the requisite legal reforms that imperial powers demanded in order to relinquish their extraterritorial privileges; the language of Siam’s 1897 treaty with Japan affirms this exception (Loos, *Subject Siam*, 107).

<sup>30</sup> Loos, *Subject Siam*, 103.

<sup>31</sup> David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-majesté* (London: Routledge, 2011), 80-84.

<sup>32</sup> Streckfuss, *Truth on Trial*, 22, 36. See Craig J. Reynolds, “A Seditious Poem and Its History,” in *Seditious Histories: Contesting Thai and Southeast Asian Pasts* (Seattle: University of Washington Press, 2006), 80-101.

<sup>33</sup> Streckfuss, *Truth on Trial*, 58, 80-84.

efforts to retain hegemony. Scholars have not managed to overcome this regard for law as a matter of codification by and for the aims of elite actors. This model of constrained agency and elite interests is largely true with respect to the historiography of modern medicine in Siam as well.

In the wake of Michel Foucault's suggestive work, medicine received a great deal of attention as a practical channel for the exercise of power. Beginning with *Madness and Civilization*, Foucault argued that by the end of the eighteenth century, the carceral and therapeutic functions of mental health institutions had been blurred.<sup>34</sup> In *The Birth of the Clinic*, Foucault pursued this insight by demonstrating how modern medicine as a field of knowledge fixated on the body also functioned as a pathway for emerging forms of power that acted on individual bodies.<sup>35</sup> While Foucault focused on historical conditions in early modern Europe, scholars soon recognized that his narrative of medicine as power was in some ways even more applicable to historical circumstances in the colonial world. Empirical studies followed that demonstrated the ways in which biomedicine was mobilized to produce docile and productive bodies under the conditions of colonial rule.<sup>36</sup> Of course, this rather monolithic model of explaining state interest in medicine has not gone unchallenged. Scholars attentive to subaltern forms of agency and resistance have demonstrated the ways in which colonial subjects both frustrated state efforts at control and likewise appropriated colonial forms of medical

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<sup>34</sup> Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Vintage Books, 1973 [1965]).

<sup>35</sup> Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (New York: Vintage Books, 1994 [1973]).

<sup>36</sup> One of the earliest and most successful of these studies is David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (Berkeley: University of California Press, 1993).

knowledge.<sup>37</sup> As Ellen Amster has recently argued, “the grand colonial medical schemes collapse in the social histories of colonial Africa and Asia, where unruly bodies eluded colonial control. Native patients often ran away from European hospitals, selectively used European cures while escaping (or ignoring) their ideological designs, or cheerfully extracted biomedical cures for re-integration within indigenous systems of healing.”<sup>38</sup> In spite of these challenges and qualifications, however, the Foucaultian paradigm of medicalization nevertheless remains an important model for explaining both state interest in modern medicine and the inevitable spread of medical modalities.

The Foucaultian model continues to shape narratives of modern medical science in Thailand. Important scholarship on the relationship between medicine and Thai sovereignty has placed medicine in the hands of elite actors who use the state to advance their own social, economic, and political interests.<sup>39</sup> Such is the narrative offered by Thai historian Davisakd Puaksom in his masterful study of the “medicalizing state” (*rat wetchakam*) in Thai society.<sup>40</sup>

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<sup>37</sup> See, for example, the essays collected in Poonam Bala, ed., *Biomedicine as a Contested Site: Some Revelations in Imperial Contexts* (Lanham, MD: Lexington Books, 2009); and Gyan Prakash, *Another Reason: Science and the Imagination of Colonial India* (Princeton, NJ: Princeton University Press, 1999), 143-156.

<sup>38</sup> Ellen J. Amster, *Medicine and the Saints: Science, Islam, and the Colonial Encounter in Morocco, 1877-1956* (Austin: University of Texas Press, 2013), 2. Sokhieng Au offers a similar perspective on the failures of colonial medicine; see her “Cultural Insolubilities,” in *Mixed Medicines: Health and Culture in French Colonial Indochina* (Chicago: University of Chicago Press, 2011), 181-191.

<sup>39</sup> Chatichai Muksong and Komatra Chuengsatiansup demonstrate how elite royal actors have used historiography to present themselves as patrons of modern medicine; see their “Medicine and Public Health in Thai Historiography,” in *Global Movements, Local Concerns: Medicine and Health in Southeast Asia*, Laurence Monnais and Harold J. Cook, eds., (Singapore: NUS Press, 2012), 226-245, especially 228-235.

<sup>40</sup> Davisakd Puaksom, *Chua rok rang kai lae rat wetchakam: prawatisat kan-phaet samai mai nai sangkhom thai* [Disease, the Body, and the Medicalizing State: The History of Modern Medicine in Thai Society] (Bangkok: Chulalongkorn University Press, 2007). For an abridged version of some of the central arguments of that work in English, see Davisakd Puaksom, “Of

According to Davisakd, in the early twentieth century Thai elites used medicine as a figurative yoke to domesticate the labor power of subordinate classes by producing docile and productive bodies.<sup>41</sup> By focusing on the efforts of the Siamese elite to appropriate modern medical science and apply it in projects of governance, Davisakd overcomes the tendency of earlier approaches to the history of modern medicine in Thailand, which were based on dependency theory, to attribute agency in medicalization to external forces.<sup>42</sup> But this move comes at great expense; by reducing medicine to “a discursive instrument of Siamese state hegemony,” it obscures other significant forms of agency, interest, and causation.<sup>43</sup> It likewise subjugates the history of medicine to the larger narrative of Thai colonial exceptionalism, where modern medical science is simply another tool employed by the Siamese elite in its prolonged encounter with western imperialism.

In conclusion, the histories of law and medicine in modern Thailand have to a large extent been formulated in response to the question of Thai exceptionalism. By focusing on codification and medicalization, both forms of expertise have been regarded largely as tools of the elite in political projects, both foreign and domestic. This dissertation aims to go beyond these monolithic and unidirectional models for explaining legal and medical change by attending to the socio-historical context for the introduction of specific forms of law and medicine, and by demonstrating the utilitarian nature of these forms of knowledge and their respective institutions in social life. The fundamental insight that allows this inquiry to rise above narratives of codification and medicalization is that law and medicine are not simply tools to be taken up in diplomacy or projects of rule; they are rather in themselves forms of agency that can be

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Germs, Public Hygiene, and the Healthy Body: The Making of the Medicalizing State in Thailand,” *Journal of Asian Studies* 66 (2007): 311-344.

<sup>41</sup> Davisakd, *Chua rok rang kai*, 6-8, 133-170.

<sup>42</sup> Davisakd, “Of Germs, Public Hygiene,” 312; *Chua rok rang kai*, 9-10.

<sup>43</sup> Davisakd, “Of Germs, Public Hygiene,” 312.

productive of new social and political realities. The following section outlines the theoretical justification for this insight and details the mode of inquiry employed in this study.

### **Body Politics: Law and Medicine Beyond Codification & Medicalization**

The roughly two decades surrounding the turn of the twentieth century (c. 1887-1907) coincided with a long moment of existential crisis for Siam as the kingdom's political leaders negotiated the persistent and multi-faceted threats posed by western imperialism.<sup>44</sup> It was also an interstitial moment, as the Siamese state was struggling to emerge from the chrysalis of its traditional bureaucratic structure and conform to the models of imperial bureaucratic governance that surrounded it.<sup>45</sup> In particular, the leaders of the Siamese state realized that their legal codes and institutions were a crucial indicator of the state's failure to adapt to the new global imperatives of liberal governance.<sup>46</sup> Although by 1892 the state was radically transformed to conform to the administrative models of surrounding colonial states, these dramatic changes belie the persistence of traditional models of authority, logic, and concern that continued to characterize the state bureaucracy.<sup>47</sup> The following chapters peer behind the façade of institutional reform

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<sup>44</sup> See Thongchai, *Siam Mapped*, 95-112.

<sup>45</sup> See Walter F. Vella, *The Impact of the West on Government in Thailand* (Berkeley: University of California Press, 1955), especially 340-350; and William J. Siffin, *The Thai Bureaucracy: Institutional Change and Development* (Honolulu: East-West Center Press, 1966), 6-90. David Engel has detailed the reform of the state legal institutions; see David M. Engel, *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (Ann Arbor: Center for South and Southeast Asian Studies, University of Michigan, 1975). For a study on parallel reforms in the Ministry of the Interior, see Tej Bunnag, *The Provincial Administration of Siam from 1892 to 1915: the Ministry of the Interior under Prince Damrong Rachanuphap* (New York: Oxford, 1977).

<sup>46</sup> Tamara Loos has described how this realization was framed in terms of an ideological dividing line between "traditional" and "modern" Siam (*Subject Siam*, 44-46).

<sup>47</sup> Akin Rabibhadana, *The Organization of Thai Society in the Early Bangkok Period 1782-1873* (Bangkok: Amarin, 1996). For a more detailed account of the functioning of hierarchical social relations, see Akin Rabibhadana, "Clientship and Class Structure in the Early Bangkok Period,"

and reveal the reality of an ongoing struggle to respond to the particular challenges of compromised sovereignty in the context of a protracted engagement with the imperial powers. They reveal how Siamese ministers, for example, appealed to new forms of expertise in ways that were shaped by pragmatism, not as part of a larger vision of coherent social or political change intended to bolster the Siamese state's claims to sovereignty.

The loss of life and limb—meaning here discrete instances of accidental death and dismemberment and unnatural death—forms the empirical basis of this study, which is concerned with the ways in which the physical bodies of Siamese subjects were invoked as part of an ongoing engagement with new social interests, institutions, and forms of expertise. My inquiry into the value and meaning of lost lives and limbs operates on two fronts: it attends to both practical negotiations between new social actors and the Siamese state, and also to the emergence of new pathways of interaction between the Siamese state and its subjects. As part of a broader effort to redefine the field of inquiry into the history of law and medicine in Siam, this study builds upon important insights from recent scholarship in science and technology studies, anthropology, and political theory.

To begin, in response to—and building on—recent revisionist trends in the study of modernizing legal change in Thai history, my work introduces three new trajectories of inquiry. Firstly, in response to what might be called a substantialist flaw in the traditional model of “westernization”—whereby law is regarded as a tool that is ready-at-hand, already existing in a codified state—I adopt a constructivist approach to legal change. The “Europeanization” paradigm views law as a set of codes and institutions that can be imported in order to address the needs of political expediency (this is the same sense of expediency discussed above, whereby

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in *Change and Persistence in Thai Society: Essays in Honor of Lauriston Sharp*, G. William Skinner and A. Thomas Kirsch, eds., (Ithaca, NY: Cornell University Press, 1975), 93-124.

western law was adopted in order to overcome the extraterritoriality provisions in the unequal trade treaties). By contrast, the present study attends to law outside of the process of codification, as it existed in a state of becoming through pragmatic encounters and negotiations. It is primarily concerned with the forms of social and cultural labor that are accomplished through law.<sup>48</sup> I pose the question: What did law look like on the ground? How did social actors engage with one another in the plural legal arena created by extraterritorial law, and what effects—if any—did these interactions have on the process of modernizing legal change in Siam? By attending to the social life of law outside of the process of codification, we can make room for contingency and uncover different and competing interests in the process of legal change. These interests include the professional and personal concerns of lawyers and physicians; the financial and legal stakes of foreign residents and elite Siamese alike, including their desires for indemnification against legal and financial liability; and the political agendas of the Siamese elite as they engaged with challenges to the Siamese state—both subtle and existential.

The second agenda concerns the question of social agency. Studies that focus on codification as the locus of legal change tend to fixate on elite actors working within state institutions. Initially, this made the subject of modernizing legal change in Siam susceptible to the gravitational pull of royal-nationalist historiography, which glorified the actions of the reigning Chakri monarchs in navigating Siam through the threats of imperial rule. Recently, revisionist scholarship has added important nuance to this narrative by highlighting the central role of foreign legal advisors in the process of codification, which helped to temper the exclusive

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<sup>48</sup> Sheila Jasanoff's work on contemporary American legal culture calls attention to how "the legal process mediates among conflicting knowledge claims, divergent underlying values, and competing views of expertise"; see her *Science at the Bar: Law, Science, and Technology in America* (Cambridge, Harvard University Press, 1995), xiv.

focus on the actions of the Siamese royal elite.<sup>49</sup> But in spite of the crucial ways in which these revisionist perspectives undermine the hagiography of the royal nationalist narrative, they are nevertheless unable to account for the social life of law outside of the state institutions and offices charged with revising legal codes. In order to move beyond these sequestered spaces of legal life, it is necessary to locate other actors and forms of historical agency. Legal history at the level of practice—as opposed to legislation (codification)—requires that we take seriously the work of plaintiffs, defendants, barristers, and juries as they confronted the challenges posed by technological and social change.<sup>50</sup> At the same time, it also requires reckoning with the agency of the dead and injured, whose lost lives and limbs became the provocation for discussion, debate, and action in both the legal and political realms. In practice, this second agenda implies a redefinition of the social life of law in two distinct ways; the first follows the familiar inclinations of the social historian, but the second requires some explanation and justification.

In the first case, redefining the social context of law means considering previously anonymous social actors and their experiences with law in both judicial and extra-judicial arrangements. As a methodological imperative, this implies locating historical agents who do not figure in narratives of codification, including those who appealed to legal channels to represent their own interests, the legal professionals who represented them, and the offices, institutions, and bodies that heard their appeals. In this respect, my work is informed by the

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<sup>49</sup> Loos, *Subject Siam*, 52-71; see also, Streckfuss, *Truth on Trial*, 80-84.

<sup>50</sup> In Japan, for example, “Legal practitioners working in the gray area between state and society connected litigants to new economic, political, and social systems in an urbanizing, commercializing, and industrializing world”; see Darryl E. Flaherty, *Public Law, Private Practice: Politics, Profit, and the Legal Profession in Nineteenth-Century Japan* (Cambridge, MA: Harvard University Press, 2013), 5.

concerns of the discipline of sociolegal studies.<sup>51</sup> David M. Engel, a pioneer in the field of sociolegal studies, has applied the concerns and insights of this emerging field to great effect in his extensive research on law and society in Northern Thailand. In his exploration of competing forms of civil justice in northern Thailand during the second half of the twentieth century, for example, Engel grappled with the relationship between codified and customary forms of civil law.<sup>52</sup> In that sense, his work is suggestive of the kinds of negotiation and translation that must have occurred a century earlier in Bangkok during the interstitial period under consideration in the present study when the Siamese state initiated legal reforms intended to institute modern codified state law. To date, however, historians have not pursued these dynamics—between custom and code—in the sociohistorical context of turn-of-the-twentieth-century Bangkok.

Secondarily, this redefinition of the social context of law implies expanding the scope of social life itself to include overlooked forms of agency. In the first place, this means attending to the effects of technological change on “existing human behaviors, institutions, and relationships.”<sup>53</sup> Technological advances such as passenger rail travel “enable new modes of conduct—and sometimes foreclose old ones—thereby calling into questions notions of fundamental significance to the law, such as agency, causality, rights, responsibility, and blame.”<sup>54</sup> Law, in such circumstances, can function as a mediator helping to domesticate

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<sup>51</sup> For an excellent and accessible introduction to the concerns and methods of sociolegal studies, see Simon Halliday and Patrick Schmidt, eds., *Conducting Law and Society Research: Reflections On Methods And Practices* (New York: Cambridge University Press, 2009).

<sup>52</sup> David M. Engel, *Code and Custom in a Thai Provincial Court* (Tucson: University of Arizona Press, 1978).

<sup>53</sup> Jasanoff, *Science at the Bar*, xiv. Jasanoff’s work seems to be inspired by the fundamental insight of Actor-Network Theory, which explicitly acknowledges the agency of non-human things as social actors; see Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2005).

<sup>54</sup> Jasanoff, *Science at the Bar*, xiv.

potentially threatening forms of social and technological change.<sup>55</sup> Specifically, this study deals with the introduction of a novel form of mobility technology by attending to the Bangkok Tramway Company.<sup>56</sup>

But when considering the work of law as mediator in turn-of-the-twentieth-century Bangkok, we must likewise consider other new and potentially disruptive forms of social agency. Foreign residents with extraterritorial legal privileges, limited liability corporations (especially those registered in foreign jurisdictions, which likewise enjoyed extraterritorial legal protections), and the institutions such as foreign consular courts that represented their interests must all be counted among the new social actors in late-nineteenth-century Bangkok. In addition, this study attends to the practitioners of new forms of expertise (legal, medical, and medico-legal), and the ways in which these actors likewise complicated the social arena of turn-of-the-twentieth-century Bangkok. The historical actors that people the following pages represent a broad and dynamic range of social status positions. Some, including Dr. Meng Yim, a Sino-Thai physician who assisted with forensic medical investigations for the Siamese police, might best be regarded as semi-subaltern figures who served uneasily at the behest of their superiors—both Siamese and foreign. Others, including British and American physicians, likewise served in the employ of the Siamese state at the behest of Siamese officials, but they

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<sup>55</sup> I am interested in the ways in which “scientific and technological developments slice into settled social relationships and compel a redefinition, through law, of established rights and duties (Jasanoff, *Science at the Bar*, 19).

<sup>56</sup> Michael M.J. Fischer has issued a clarion call to anthropologists to investigate “emergent forms of life” produced by technoscientific innovation in the twenty-first century (*Emergent Forms of Life and the Anthropological Voice* [Durham, NC: Duke University Press, 2003]), and specifically, the potentially disruptive effects of these changes, which Fischer calls elsewhere “ethical plateaus” (see his “Technoscientific Infrastructures and Emergent Forms of Life: A Commentary,” *American Anthropologist* 107 [2005]: 55-61). I contend that new socio-technical realities and the ethical problems that they generate are likewise a challenge for the social and cultural historian.

simultaneously enjoyed the very extraterritorial legal privileges that so vexed their superiors. Still others, such as the American and Sri Lankan attorneys in private legal practice in Bangkok, were marginalized by their professional peers as they worked to navigate the blurred lines between their personal interests and professional responsibilities. Social status is inevitably fluid and inherently relative, however, and there is good reason to consider even the elite Siamese royals who occupied powerful positions in the state bureaucracy as themselves semi-subaltern actors in the context of the ongoing debates over Siamese sovereignty in the era of high imperialism. The social positions occupied by these actors, each with their own unique constraints and often conflicting social interests, constitute an important addition to the historical record. They give flesh and diversity to the otherwise flat narratives of state interest, and help to highlight the human scale of even state politics.

Finally, I argue that the dead too can exert agency within the social world. This study calls attention to the various ways in which the dead—as well as the injured—can be said to intercede in and help to constitute new modes of social, cultural, and political life. When injured and dead Siamese bodies came to the attention of Siamese state officials, they simultaneously became the objects of medical and legal discernment and political concern—constituents within assemblages that linked both contentious realms of expertise and fickle forms of social and political interest. Figuratively, they were made to stand and testify to the disadvantaged status of Siamese subjects vis-à-vis foreign residents and their political and commercial concerns. The medical and legal assemblages that were constructed around the dead and injured thus became an arena for contesting Siam’s diminished sovereignty.<sup>57</sup> When we regard these neglected forms of

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<sup>57</sup> The peculiar nature of the agency possessed by the dead and injured was preeminently subject to what Michel Callon has called “*interessement*”: injured bodies and corpses were readily appropriated and made to stand for other forms of social interest; see his “Some Elements of a

agency as variables in a complex and rapidly changing social landscape, we begin to recognize Bangkok as a site of legal evolution in its own right—and realize that it can no longer be regarded as a fallow field waiting to receive the transplanted codes and institutions of foreign legal systems.

Scholarly fixation on the process of codification as the path to restoring Siamese sovereignty has privileged the articulation of positive legal rights. But Bangkok was a cosmopolitan port city long before serious efforts were underway to revise its legal codes, and its residents had to negotiate fundamental questions concerning social and commercial life across a dizzying array of cultural practices and beliefs. These negotiations inevitably included questions of liability and responsibility for loss, injury, and death, including the related issues of the value of a human life or a lost limb and the question of the obligations of the living to the dead. The narrative of codification is unable to account for these pragmatic interactions and the kinds of cross-cultural negotiations that they implied. Forms of extrajudicial action that evolved out of these practical deliberations constitute a particularly glaring blind spot for scholars interested in the social and cultural history of law in Siam. We also lack a clear sense of the indigenous precedents that correspond to civil legal process and action, and the ways in which practical forms of legal action were shaped in accordance with the logic of these Siamese antecedents.<sup>58</sup>

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Sociology of Translation: Domestication of Scallops and the Fishermen of St. Briec Bay,” in *Power, Action and Belief: A New Sociology of Knowledge?*, ed. John Law (London: Routledge, 1986), 196-233.

<sup>58</sup> As Chakrabarty has argued, “The universal concepts of political modernity encounter pre-existing concepts, categories, institutions, and practices through which they get translated and configured differently” (*Provincializing Europe*, xii). Attending to these precedents, and potential evidence of indigenous forms of legal liberalism in particular, can help us to avoid the inclination towards “primitivism” and paternalism in the study of traditional forms of Siamese legal life; see Uday Chandra, “Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Law,” *Law & Society Review* 47 (2013): 135-168.

But beyond these practical concerns, evolving legal devices and institutions impacted Siamese cultural life in other more subtle ways. When coming to terms with questions of liability for accidental injury and death in a multi-cultural arena, there was more at stake than simply negotiating a compensatory arrangement. Before the subject of remediation could be broached, the parties had to reach an agreement over the more ambiguous topics of fault and liability. This in turn required at least tacit agreement on the nature of the individual as a social and legal actor as well as the relevant forms of action that might constitute a civil offense. At the same time, discussions over fault and liability also required demarcating the realm—and indeed the extent—of human agency from forces and forms of agency that were regarded as natural and thereby independent of the social realm. These determinations amount to metaphysical and ontological decisions concerning the constitution of the world, and they are the unspoken backdrop to the practical conversations about fault and liability that took place in the wake of tragic accidents and unnatural death in turn-of-the-twentieth-century Siam. The investigation of these fundamental metaphysical and epistemological implications of law constitutes the third new trajectory in the study of law beyond codification.

If the impetus of this study of modern law in Siam is the desire to move beyond codification, my approach to the history of medicine is likewise intended to move beyond narratives of the medicalizing state. The theoretical foundations of this second aspect of the project are in many ways parallel to those that authorize my approach to law, beginning with greater attention to the social and political realities of “semi-colonialism” in turn-of-the-twentieth-century Bangkok.<sup>59</sup> Beyond the abstract sense of indignity that accompanied the

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<sup>59</sup> The mythology of Thai colonial exceptionalism has provoked a litany of critical terms used to qualify Siam’s political status in the era of high imperialism (Loos, *Subject Siam*, 17-18). Postcolonial theory had injected new life into the (old Marxist) debates about the value and

jurisdictional restrictions associated with extraterritorial law, how—specifically—was extraterritoriality a problem for the Siamese state? In answering this question, I attend to cases of injury and accidental and unnatural death in Bangkok. In the context of such quotidian tragedies, the value of a Siamese life or limb was juxtaposed with those of foreign residents; such were the moments when the disadvantaged status of Siamese legal subjects vis-à-vis foreign residents became most apparent. Moreover, the disparities between the legal rights of foreign residents and Siamese subjects were enforced by foreign legal institutions (primarily consular courts), which deployed forms of medico-legal expertise such as forensic medicine to ensure the privileged status of foreign lives and limbs. In the colonial world, forensic medicine was an authoritative form of knowledge that could be used to bolster the social and legal privileges enjoyed by the few.<sup>60</sup> By examining individual cases of injury and death, we can begin to grasp the operation of differential modes of concern for the dead and injured in a plural legal environment. Such disparities demonstrate the real effects of extraterritorial law on social and political life in Siam. And it was these specific challenges that prompted officials in the Siamese state to turn to new forms of medical and medico-legal expertise—albeit in what can only be described as a halting and ad hoc manner.

The pragmatic yet faltering nature of the Siamese state's engagement with forensic medicine belies the narrative of the modern medicalizing state. In his examination of the

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validity of applying semi-colonial analysis to Thai history; see, for example, Peter Jackson, "Autonomy and Subordination on Thai History: The Case for Semicolonial Analysis," *Inter-Asia Cultural Studies* 8 (2007): 329-348.

<sup>60</sup> Scholars working on colonial India have provided important evidence of this point; see Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010), especially chapter three, "'Indian Human Nature': Evidence, Experts, and the Illusive Pursuit of Truth" (108-141); and Jordanna Bailkin, "The Boot and the Spleen: When Was Murder Possible in British India?" *Comparative Studies in Society and History* 48 (2005): 462-493.

institution of legal medicine in nineteenth-century Egypt, Khaled Fahmy applies the logic of the medicalizing state, arguing “‘law’ and ‘medicine’ jointly rendered the body ‘open’ for the piercing gaze and touch of the medicolegal profession.”<sup>61</sup> For David Arnold the postmortem examination of suspected plague victims in India was likewise indicative of—and perceived by native South Asians as—part of a broader “assault” on the colonial body.<sup>62</sup> A careful examination of Siamese state documents from the late nineteenth-century, however, reveals that Siamese officials appealed to forensic medicine in a very different manner. While state interest in forensic medicine was at times prompted by public discourse concerning particular cases of death, the overwhelming weight of archival evidence nevertheless debunks the notion that this engagement was part of a larger vision of deploying medicine to serve a distinct political agenda. Instead, the manner in which Siamese state officials appealed to forensic medical expertise is in many respects parallel to the nature of legal change described above. Just as new forms of technology disrupted established patterns of social life and required mediation through law, so the arrival of new social actors with privileged legal status—and the political and legal institutions that were established to protect them—was similarly disruptive to the social world of Bangkok. Under conditions of social strife new forms of expertise can make appealing claims to truth and social utility.<sup>63</sup> When interpreted according to the logic of social utility, the adoption of

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<sup>61</sup> Khaled Fahmy, “The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth Century Egypt,” *Islamic Law & Society* 6 (1999): 224-271, quotation on 231. Fahmy sees the introduction of forensic medicine as part of a larger strategy of crime suppression through which Egyptian ruler Mehmed Ali hoped to court European support for Egyptian independence from Ottoman rule (231-233).

<sup>62</sup> Arnold, *Colonizing the Body*, 216-218, 220.

<sup>63</sup> This very argument has been made with respect to forensic medicine in modern Islamic jurisprudence; see Ebrahim Moosa, “Interface of Science and Jurisprudence: Dissonant Gazes at the Body in Modern Muslim Ethics,” in *God, Life and the Cosmos: Christian and Islamic Perspectives*, Ted Peters, Muzzaffar Iqbal, & Syed Nomanul Haq, eds. (Aldershot: Ashgate, 2002), 329-356.

forensic medicine by the Siamese state—and likewise other aspects of modern medical science—thus constitutes an implicit challenge to the model of the Foucaultian medicalizing state, revealing the diffuse forms of utility that often escaped the bounds of supposedly monolithic state interest in governing the population.

By highlighting contingency and pragmatism in the Siamese state's engagement with forensic medicine, however, I do not mean to diminish its political valence. Predominantly concerned with bodies in a state of injury or death, forensic medicine is not suited to the project of producing the docile and productive bodies desired by the medicalizing state. It does, however, create bodies that had value in the political projects of the Siamese elite. The same can be said of civil law. In the sense that civil law is fundamentally concerned with judging the conditions of social interaction and liability, and to the extent that forensic medicine is about knowing the nature of death by interrogating dead bodies, the real innovation of my work is to demonstrate how new forms of expert knowledge and associated institutions laid the epistemological groundwork for novel forms of political relations. When a Siamese subject was run down by a tramcar, for instance, or when a corpse was found floating in the city's waterways, civil law and forensic medicine constituted a new manner of state regard for such bodies. Both of these authoritative modes of knowing injured and dead bodies were initiated by the state. And through these new modalities, the state bypassed the hierarchical patron-client relations that had long mediated political life in Siam, and entered into a direct relation of concern with the bodies of its subjects.

By attending to civil law and forensic medicine as new and authoritative ways of knowing the dead, injured, and dying, my work contributes to ongoing efforts in science studies

scholarship to articulate the relations between epistemological and political order.<sup>64</sup> For scholars of science and society in the contemporary world, this connection has been used to illuminate the ways in which political subjects are educated to perceive the political order in particular ways.<sup>65</sup> Jasanoff has likewise identified distinctive “civic epistemologies,” which are suggestive of the processes whereby political constituencies are acculturated to think in a certain way and find certain kinds of arguments and evidence convincing.<sup>66</sup> Here I am concerned with the constitutional effects of knowledge on the political community—how new forms of expertise can act to shape the boundaries of both the political community and the social world more broadly. As the following chapters demonstrate, civil law and forensic medicine brought the injured and dead bodies of Siamese subjects to the attention of the state for the first time, and this encounter provides a unique vantage point for considering the question of state-subject relations and the evolution of a particular form of citizenship in Siam. Attending to the practical and corporeal ways in which subaltern subjects came to the attention of the state reveals alternative pathways of political inclusion. The political lives of dead and injured bodies in turn-of-the-twentieth-century Siam thus provide a crucial supplement to historical studies that privilege the articulation of positive legal and political rights.

The notion of “freedom” that highlights the centrality of colonial exceptionalism in nationalist narratives of Thai history is likewise a fraught category when applied to domestic developments in Thai political culture during the era of high imperialism. This is especially true

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<sup>64</sup> For a particularly clear articulation of this agenda, see Pauline Kusiak, “Instrumentalized Rationality, Cross-Cultural Mediators, and Civic Epistemologies of Late Colonialism,” *Social Studies of Science* 40 (2010): 871-902, 875.

<sup>65</sup> Yaron Ezrahi, *The Descent of Icarus: Science and the Transformation of Contemporary Democracy* (Cambridge, MA: Harvard University Press, 1990).

<sup>66</sup> Sheila Jasanoff, *Designs on Nature: Science and Democracy in Europe and the United States* (Princeton: Princeton University Press, 2005).

when considering the political status of Siamese subjects. During the Fifth Reign (1868-1910), specific social and institutional changes began to interrupt the traditional forms of hierarchical social relations that had predominated over Thai society. These changes—the abolition of slavery chief among them—severed the personal ties that connected “all the various categories of slaves and bondsmen” to their traditional patrons and transformed them “into citizens with a theoretically direct relationship to the state.”<sup>67</sup> But the developing notions of political liberty and freedom that accompanied these changes were not absolute. Instead, they were bound to and qualified by traditional forms of hierarchical social organization.

In his study of the relation between slavery and Thai notions of freedom, Thai historian Thanet Aphornsuvan makes the important observation that “The dominant aspect of the idea of freedom in Siam, when it was used in political discourse, was the persistence of the old and traditional ideas in favour of the state’s rights and privileges.”<sup>68</sup> “[A] notion of freedom as a positive social value for the common people,” in other words, was not the focus of efforts by the Thai royal elite as they sought to modernize legal institutions.<sup>69</sup> Tamara Loos likewise reveals how even after the introduction of a supposedly universal category of personal freedom in 1908, “a consequential and enduring link existed between Siam’s social hierarchy, on the one hand, and an individual’s ability” to make legal claims based on their inherent possession of personal freedom on the other.<sup>70</sup> Thus, the transition from political subject to something approaching citizen was crucially informed by the conditions of social and cultural life in Siam; it produced

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<sup>67</sup> Chris Baker and Pasuk Phongpaichit, *A History of Thailand* (Cambridge: Cambridge University Press, 2005), 61.

<sup>68</sup> Thanet, “Slavery and Modernity,” 179.

<sup>69</sup> *Ibid.*, 182.

<sup>70</sup> Tamara Loos, “Issaraphap: Limits of Individual Liberty in Thai Jurisprudence,” *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies* 12 (1998): 35-75, 42. See also Thanet’s discussion of the related notion of rights (*sitthi*) and its origins as a marker of elite privilege in “Slavery and Modernity,” 163-64.

what David K. Wyatt has called “a compromise or amalgam between the old concept of the ‘subject,’ stripped of the intermediaries that stood between the king and the peasant, and the modern concept of the ‘citizen.’”<sup>71</sup> In combination with associated discourses and forms of social and political contact, this uneasy amalgam effectively subordinated powerful new categories of political life to existing hierarchical social configurations. This is another facet of the assemblages that were constructed around the dead and injured bodies of Siamese subjects: although royal officials in the Siamese state responded to the challenges of compromised sovereignty in ad hoc ways, the outcomes tended to solidify their own interests. Thus, even apparently liberalizing developments in political culture contributed to the underlying persistence of traditional and even illiberal social and political configurations.

The argument that dead, dying, and injured bodies are integral to political life is not novel. For an important segment of contemporary political theory, the very notion of sovereignty is anchored “in the power and the capacity to dictate who may live and who must die.”<sup>72</sup> In a historical exegesis of the evolution of western political culture, Giorgio Agamben argues, “The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice and sacrificial life—that is, life that may be killed but not sacrificed—is the life that has been captured in this sphere.”<sup>73</sup> In his exploration of this notion of sovereignty as the power to take life in conjunction with the Foucaultian concept of biopower, J. A. Mbembe identifies the field of “necropolitics,” which denotes the practical and

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<sup>71</sup> Wyatt, *Thailand*, 217.

<sup>72</sup> J. A. Mbembe, “Necropolitics,” trans. Libby Meintjes, *Public Culture* 15 (2003): 11-40, 11.

<sup>73</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 83 (original emphasis omitted). See also, Stuart J. Murray, “Thanatopolitics: On the Use of Death for Mobilizing Political Life,” *Polygraph* 18 (2006): 191-215.

adversarial conditions under which the right to kill and let live is exercised.<sup>74</sup> But the lens of sovereignty and its concomitant emphasis on the power to *take* life does little to explain the ways in which the dead and dying can be mobilized in support of political projects.<sup>75</sup>

In recent years, scholars have begun to recognize the political power of the dead outside of the specific concerns of sovereignty as the power to take life, and they have introduced a number of different idioms for articulating the significance of the dead for political life. Katherine Verdery's "dead-body politics," for example, emphasizes the symbolism of (re)burial and death rituals, thereby revealing the central place of the corpse in post-socialist political projects.<sup>76</sup> Vincent Brown's "mortuary politics" eschews the topic of sovereignty and considers instead the ways in which the dead are "integral to both social organization and political mobilization, and therefore vital to historical transformation."<sup>77</sup> According to Brown, "Throughout the era of slavery, confrontations with death produced intense activities—macabre calculations of interest, rites of passage, and inheritance practices—that helped make a society in the midst of a human disaster."<sup>78</sup> My examination of injured and dead bodies under the purview of civil law and forensic medicine in turn-of-the-twentieth century Siam aims to integrate the

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<sup>74</sup> Mbembe, "Necropolitics," 12.

<sup>75</sup> Insights from comparative literature likewise lend credence to the growing interest in injured and dead bodies, beginning with what Elaine Scarry has identified as "the material anchoring of consent in the body." According to Scarry, it is peculiarly in states of passivity, including injury, sleep, anesthesia, and death, that we notice "the sudden grounding of rights, sovereignty, dignity"; see Scarry, "Consent and the Body: Injury, Departure and Desire" in *New Literary History* 21, no. 4 (1990): 867-897, 868. For a productive engagement with Scarry's work, see Liu, "Injury: Incriminating Words."

<sup>76</sup> Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Columbia University Press, 1999). For a more recent example of this perspective on the dead, see Anya Bernstein, *Religious Bodies Politic: Rituals of Sovereignty in Buryat Buddhism* (Chicago: University of Chicago Press, 2013).

<sup>77</sup> Vincent Brown, *The Reaper's Garden: Death and Power in the World of Atlantic Slavery* (Cambridge, MA: Harvard University Press, 2008), 6.

<sup>78</sup> *Ibid.*, 12.

concerns of political theorists for sovereignty with Brown's scale of attention to the sociocultural work of the living with respect to their dead. In order to capture the cultural, social, and political lives of dead and injured bodies I focus on the "metaphysics of loss" (part one) and the "semantics of death" (part two). Through these two idioms, my work moves beyond the symbolism of the dead and reveals the practical ways in which dead bodies occupied a critical point in the nexus between domestic and imperial politics in a colonial treaty port. These practical pathways of state concern for its subjects offer a unique perspective on the evolutionary mechanisms and operations of sovereign power.

### **Sources & Methods**

This study attends to death and dying in and through the archives in a manner that I hope will answer Ann Laura Stoler's call "to move away from treating the archives as an *extractive* exercise to an ethnographic one."<sup>79</sup> I approach the archives of unnatural death—inquest files compiled by the Ministry of the Capital in late nineteenth-century Bangkok—for what they might reveal about the nature and logic of state concern for death. "State sovereignty," according to Stoler, "resides in the power to designate arbitrary social facts of the world as matters of security and concerns of state. Once so assigned, these social facts... are dislodged from their contexts, flung into the orbit of a political world that is often not their own."<sup>80</sup> In the following chapters, I demonstrate how injury and unnatural death were dislodged from the forms of social and cultural life with which they had coevolved as they became subjects of increasing concern for the Siamese state. Injury and death, in other words, were among the places "where

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<sup>79</sup> Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), 47.

<sup>80</sup> Stoler, *Along the Archival Grain*, 26.

energies were expended”<sup>81</sup> by the state, and the impetus and implications of this new form of concern merit exploration.

A collection of documents labeled “Death by Various Causes” (*tai duai het tang tang*) provides the grist for this effort to make sense of death in turn-of-the-twentieth-century Bangkok.<sup>82</sup> In spite of their rather enigmatic title—a title that may in fact be indicative of the equivocal intentions of the state when it first began compiling the records in 1890—the collection is composed of the records of investigations into cases of what might be called unnatural death in the Siamese capital. The documents themselves do not refer to the deaths as “unnatural,” but the logic of the archive itself seems to be borrowed from foreign bureaucratic practices. In Britain, for example, the idea of an unnatural death was a death that did not initially result in criminal charges, but which was deemed to warrant closer consideration than cases of death resulting from apparently natural causes.<sup>83</sup> Inquests, or public investigations into the circumstances of an unnatural death overseen by the office of the coroner, were the state’s institutional response. The kinds of deaths that made it into the “Death by Various Causes” files roughly correspond to those identified by British law, and the Ministry of the Capital charged the Siamese metropolitan police with the investigation and documentation of such incidents beginning in September 1890.

In spite of their ready availability, scholars have ignored these documents. The lone study that makes extensive use of the collection is a social history of the Siamese capital that uses the inquest files to suggest changes in urban life by invoking evidence of novel forms of

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<sup>81</sup> Ibid., 35.

<sup>82</sup> NA R5 N 23. The documents, which are part of the records of the Ministry of the Capital (*Krasuang nakhorn ban*) from the fifth reign (*ratchakan thi 5*), are housed at the National Archives of Thailand.

<sup>83</sup> Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore: Johns Hopkins University Press, 2000), 3.

death.<sup>84</sup> The “Death by Various Causes” files seem to hide in plain sight among the extensively used documents at the National Archives, passed over perhaps because of their misleadingly frank designation. Upon requesting the first reel of microfilm, however, the historian is immediately struck by the richness of these documents, which speak to the levels of state bureaucracy—from the local police to the Minister of the Capital—layered on top of the evidence of the experiences and concerns of the city’s subaltern residents. In addition to the “Death by Various Causes” files, I have also made extensive use of official correspondence within and between Siamese government ministries in order to contextualize the role of the state as it adopted new institutions and forms of expertise and engaged in new modes of concern for the injured and dead. Also, discussions of injury and death in the press—primarily English language newspaper accounts—demonstrate the (often unexpected) discourses provoked by tragic cases of accidental death and the quotidian appearance of anonymous corpses in the streets and waterways of the capital city. Such corpses were the occasion for editorializing comments on the justice of judicial and extra-judicial compensatory arrangements, the relative merits of different European legal systems, and even judgments on the question of liability for lost lives and limbs.

In addition to inquests, injury and death increasingly found their way into the archive through the correspondence of Siamese officials. Their letters reveal how accidental injuries and civil legal engagements came to the attention of the state officials. They likewise demonstrate the ways in which Siamese officials appealed to new forms of knowledge and expertise in order to address apparent injustices created by extraterritoriality. Moreover, as Siam turned to foreign

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<sup>84</sup> Takashi Tomosugi, *Reminiscences of Old Bangkok: Memory and the Identification of a Changing Society* ([Tokyo]: The Institute of Oriental Culture, University of Tokyo, 1993), 131-150.

administrators with experience in colonial jurisdictions, the archive began to take on the dispositions and taxonomies of imperial rule, which were inscribed on social life in Bangkok. By attending to the socio-historical advent of the archival life of death, this study demonstrates the logic behind the quotidian loss of life and limb in turn-of-the-twentieth-century Bangkok.

## **Chapter Outline**

### Part One

If, as the work of David Strand suggests, the rickshaw can be taken as a simulacrum for social life in Republican Beijing, then part one of this study might aptly be called “Tramway Bangkok.”<sup>85</sup> The Bangkok Tramway Company instantiated some of the newest and most powerful forms of social agency in late-nineteenth-century Siam, including foreign technology in the form of novel modes of locomotion and mobility, foreign capital, and limited liability corporate ownership. The company also embodied the cooperation of Siamese elites with foreign entrepreneurs: King Chulalongkorn not only granted the original concession to build the tramway system, he was also an early investor. But while the tramway made possible new forms of mobility, it also introduced new and tragic forms of immobility, as passengers and pedestrians alike suffered injury along the tramway tracks. These unhappy consequences of transportation technology laid the ground for a new reckoning with civil legal liability and the value of human lives and limbs. Concentrating on the Bangkok Tramway Company as a feature of socio-technical life in late nineteenth-century Bangkok thus offers a particularly rich vantage point for considering the construction of the modern liberal legal subject in Siam. Chapters one to three of

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<sup>85</sup> David Strand, *Rickshaw Beijing: City People and Politics in the 1920s* (Berkeley: University of California Press, 1989).

this study therefore foreground the changing realities of legal and sociotechnical life in order to offer a new narrative of modernizing legal change.

In Chapter One accidental death, injury, and dismemberment on the tracks of the Bangkok Tramway Company serve to highlight the ethical challenges posed by new forms of technology. Accidents on the tramway tracks were the occasion for novel forms of cross-cultural engagement, which reverberated across the plural legal arena in turn-of-the-twentieth-century Bangkok. While foreign residents in Bangkok enjoyed extraterritorial legal privileges that were enshrined in a series of unequal trade treaties signed by Siam, the vast majority of the city's residents were subject to Siamese law, which at the time was in a state of flux between customary law and inchoate modernizing reforms. This lack of codified legal rights and institutions gave the company's foreign managers a great deal of leeway in dealing with the tragic consequences of new forms of mobility. When the dead and injured were Siamese subjects, I argue that the managers appealed to traditional Siamese practices of remediation in order to engineer extrajudicial arrangements that served to limit their liability. The value of lost Siamese lives and limbs were thus determined unilaterally, and in some cases the management of the Bangkok Tramway Company sought to formalize these compensatory arrangements through forms of legal documentation. The modes of action undertaken by the company's managers were not unprecedented; in crucial ways, they mirrored the actions of the Siamese elite, who also used their privileged status in negotiating compensatory arrangements with subaltern subjects. Moving beyond legal codes, this chapter reveals the messy cross-cultural practices of negotiating practical matters of liability and compensation as part of the overlooked history of modernizing legal change in Siam.

Chapter Two reveals the transnational scope and stakes of arguments over lost lives and limbs in late-nineteenth-century Bangkok. The chapter begins by demonstrating how the potential hazards of passenger rail travel were domesticated within British common law in the mid-nineteenth century. When faced with cases of injury and death on the tramway tracks in Bangkok, however, British juries in the British consular court ignored the precedents set in the metropole. This anomaly suggests that while technological innovation is always and everywhere a challenge to existing legal institutions, the specific dynamics of legal mediation remain local. As a legal environment, Bangkok presented its own peculiar challenges for the already complex task of assigning civil liability in cases of injury and death. Corporate ownership protected individual investors from liability, for example, and foreign corporations like the Bangkok Tramway Company enjoyed the same extraterritorial privileges as foreign residents, with the added ability to reincorporate under another nation's jurisdiction. Moreover, new forms of expertise including law and medicine, which were central to deciding matters of liability, were practiced by social actors with their own agendas and interests. Foreign residents party to the fractious issues surrounding the loss of life and limb in turn-of-the-twentieth century Bangkok looked to liberal legalism as a solution. Public discourse in the English language press advocated liberal legal reform, including codified individual legal rights and institutions to protect them. But the universality presumed by the discourse of liberalism itself proved utterly false. Instead of one universal liberal legal tradition, debates over life and limb in Siam were expressed in a cacophony of competing nationalist assertions, with Danes, Brits, and others making partisan assertions about the moral worth of their own legal cultures.

Chapter three considers the broader ramifications of debates over the value of life and limb in colonial era Siam by adopting a more abstract vision of the work of law. The

sociotechnical historical milieu of late nineteenth century Bangkok, and its status as a context for legal change, is ripe for a new kind of analysis, one that is attuned to “society’s collective habits of interpreting and ordering experience.”<sup>86</sup> Viewed through the “idiom of co-production,” the interactions of technology, law, and social life are implicated in the processes of “reinscribing the boundary between the social and the natural, the world created by us and the world we imagine to exist beyond our control.”<sup>87</sup> In turn-of-the-twentieth-century Siam, new technology along with foreign residents and their imported legal ideas and institutions meant that received notions of these metaphysical boundaries were subject to debate. What constituted a legal subject? What kinds of harm could one individual do to another? What kinds of misfortune did not involve human culpability, but could instead be attributed to sheer happenstance or purely natural forces? These and other foundational questions pertaining to civil law were worked out in the context of practical engagements and interactions, not as part of the elite intellectual labor of codification. In the midst of these legalistic debates the Siamese subject was identified first, before discourses on rights and citizenship would start to redefine the political subject; chapter three is therefore a study of the sociohistorical constitution of a form of liberal subjectivity.<sup>88</sup> But these negotiations over metaphysical ideas were also part and parcel of the project of rendering social life legible, as part of the “cultural technologies of rule” that characterized

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<sup>86</sup> Sheila Jasanoff, “Afterword,” in *States of Knowledge The Co-Production of Science and Social Order*, ed. Sheila Jasanoff (New York: Routledge, 2004), 274-282, 276.

<sup>87</sup> Sheila Jasanoff, “Ordering Knowledge, Ordering Society,” in *States of Knowledge: The Co-Production of Science and Social Order*, ed. Sheila Jasanoff (New York: Routledge, 2004), 13-45, 21. Karl Figlio articulates a similar position about how law embodies cultural distinctions between the natural and social worlds in “What is an Accident?” in *The Social History of Occupational Health*, ed. Paul Weindling (London: Croom Helm, 1985), 180-206, especially 197.

<sup>88</sup> Andrew Sartori, “The British Empire and Its Liberal Mission,” *The Journal of Modern History* 78 (2006): 623-642.

colonial modes of governance.<sup>89</sup> I focus on the notion of the accident as one important indicator of how a natural and secular metaphysics was introduced and articulated in Siam. I regard the “moment of the accident” in turn-of-the-twentieth-century Bangkok as evidence of the subtle imperial work of plotting a foreign social order against familiar taxonomies.<sup>90</sup>

## Part Two

The metal rails of the first tramway line in Bangkok were laid down on the surface of the so-called New Road (*thanon jaroen krung*), which ran roughly north to south parallel to the Chao Phraya River in central Bangkok. As the English name suggests, the New Road had only recently been constructed in order to meet the demands of the city’s foreign residents for a new form of mobility.<sup>91</sup> In response to the demands of foreign residents for a place to take their exercise on horseback, the Siamese state filled in and bridged over the canals and waterways that constituted traditional means of mobility in order to construct the New Road.<sup>92</sup> Leaving behind the pitted roads and the metal rails that traversed them, part two begins by peering down into the murky and tidal waterways that were the traditional channels of mobility in the Siamese capital. Just as the new mode of tramway mobility exacted a tragic toll, the rivers and canals that traversed Bangkok likewise claimed their victims. The bodies that were commonly found

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<sup>89</sup> Nicholas B. Dirks, “Foreword,” in Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), ix-xvii, ix.

<sup>90</sup> Roger Cooter, “The Moment of the Accident: Culture, Militarism and Modernity in Late-Victorian Britain,” in *Accidents in History*, Roger Cooter & Bill Luckin, eds., (Atlanta, GA: Editions Rodopi, 1997), 107-157.

<sup>91</sup> Construction was completed in 1869; see *Bangkok-Thonburi City Planning Project*, volume 3: “Historical Growth” ([Bangkok]: Litchfield, Whiting, Bowne & Associates, 1959), 7. On the petitions of foreign residents, see Dararat Mettarikanond, “*Kotmai sopheri ‘ti-tabian’ khrang raek nai prathet thai*” (The First Law of the Registration of Prostitutes in Thailand), *Sinlapa watthanatham* 5 (1984): 6-19, 10.

<sup>92</sup> The construction and maintenance of these roads was funded through a tax on prostitution, as revealed in Dararat, “*Kotmai sopheri*,” 6-19.

floating in these waterways moved within a distinct cultural world, travelling along their own physical and spiritual trajectories.<sup>93</sup> These journeys help to illuminate Siamese cultural beliefs surrounding “inauspicious” death (Thai: *tai hong*). The interruption of these riverine journeys, however, such as when corpses were rescued from the city’s waterways and subjected to forensic investigation, reveals how these modes of thought and action came into conflict with different cultures of concern for the dead, and new modes of engagement with corpses. Chapters four through six attend to these conflicts by narrating the introduction of medico-legal science in turn-of-the-twentieth-century Bangkok.

Death enters the archive in Chapter Four, which offers an ethnographic investigation of the Siamese state’s early efforts to intervene in cases of unnatural death. The Ministry of the Capital first charged Siamese police with the task of investigating cases of unnatural death in 1890, and the archival records for the ensuing three years demonstrate how death was caught in limbo between indigenous cultural practices and new modes of state concern and authority. State intervention—in the form of police inquests—disrupted local beliefs and practices, and marked an incursion onto a significant realm of local sovereignty, where figures of local authority such as the village headman (*phu yai ban*) and forms of cultural concern dominated social action in response to death. When unnatural death entered the archives, local sociocultural forms of concern for the dead became a palimpsest upon which more authoritative registers were inscribed. Police, for example, were untrained in forensic investigative techniques and thus relied upon the testimony of local witnesses to make sense of the deaths; the archival record thus bears traces of subaltern modes of concern and even resistance to state intervention. Archival

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<sup>93</sup> I am grateful to Clapperton Mavhunga for insightful comments on this aspect of my work during the workshop “Means of Transport: Technology, Mobility, and Energy in Modern Asia,” Harvard University, April 24-25, 2014.

records of state inquests likewise reveal the bureaucratic nature of state interest in death, as police reports circulated among layers of state officials in the Ministry of the Capital, eventually arriving on the desk of the Minister himself, who exerted a peculiar brand of executive authority over the “semantics of death.” Attending to the archive of unnatural death therefore allows us to discern the patterns of indigenous forms of authority in the hierarchical function of state ministries, and to trace the inherent connections between the social hierarchy and epistemological authority in Thai society.<sup>94</sup>

Chapter Five steps outside the archive of unnatural death and considers the context of its creation. Why did unnatural death become a concern for the Siamese state in the last decade of the nineteenth century? What conditions made forensic medicine an appealing form of authoritative knowledge at that time? I argue that forensic medicine promised a form of authoritative knowledge that was perfectly suited to the peculiar challenges of extraterritorial law. As in other colonial historical contexts, medico-legal evidence provided an added layer of protection for those with privileged legal status, but it also constituted a means for the Siamese state to challenge the inequities of extraterritorial law by providing objective evidence against suspected perpetrators of violence. Officials in the Siamese state came to appeal to forensic medicine as part of a pragmatic engagement with the realities of constrained sovereignty. But forensic medical science was appealing to other social actors beyond the confines of the Siamese state—including foreign residents and members of the Siamese elite—and it quickly circulated as a tool of indemnification. The particular case of forensic medicine in colonial era Bangkok therefore offers important qualifications to the theoretical model of the Foucaultian medicalizing state. It demonstrates how the authority of medical expertise was appealing to both state and

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<sup>94</sup> Streckfuss, “Truth and Treason in Old Siam,” in *Truth on Trial*, 58-84.

non-state actors alike. Moreover, chapter five advances a more general argument about science in a colonial context: since the rise of forensic medicine cannot be explained in terms of developments in medical science, we must look instead to the broader social and political context. “[S]cience’ and ‘society’” as Bruno Latour has argued, “are both explained more adequately by an analysis of the relations among forces... they become mutually inexplicable and opaque when made to stand apart.”<sup>95</sup>

Chapter Six returns to the ethnographic approach to the archive of unnatural death by exploring early efforts to institute forensic medicine in Siam. Who were the practitioners of this new science? What were their qualifications? How was their knowledge documented and received? This chapter enters the morgue of the Police Hospital in order to answer these questions. It reveals the foreign and transnational nature of forensic medical expertise, as well as the contested nature of medico-legal authority and objectivity. In the plural legal arena of treaty port Bangkok, forensic medicine was about more than just credentials and surgical know-how, it was also crucially a matter of documentation and translation. There were two distinct audiences for the authoritative knowledge of death that forensic medicine promised: on the one hand, new police procedures were needed to meet the standards of evidence established by the foreign consular courts, but on the other, the death certificates produced by physicians in the employ of the Siamese state had to pass muster with officials in the Ministry of the Capital. Each audience had its own interests, assumptions, and expectations. Moreover, the practitioners themselves struggled with the limitations of their science, and the death certificate and associated documents produced in the morgue therefore functioned as a “boundary object,” helping to mediate

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<sup>95</sup> Bruno Latour, *The Pasteurization of France* (Cambridge, MA: Harvard University Press, 1988), 7.

between different epistemological perspectives on the human corpse.<sup>96</sup> Finally, the practice of forensic medicine in turn-of-the-twentieth-century Bangkok is also an object lesson in the delicate nature of producing authoritative knowledge. Forensic medicine, like any scientific endeavor, was a social labor dependent on the collaborative relations between human actors and their instruments. But the same shifting political winds that helped to elevate forensic medicine as a socially valuable form of knowledge (as described in chapter five) would soon shift again, propelling a new paradigm of concern for the dead and dying in the early years of the twentieth century.

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In the following pages, we will adopt the posture of Dr. T. Heyward Hays, solemnly kneeling down to reckon with injury and death in turn-of-the-twentieth-century Bangkok. We will peer into the “space of death”<sup>97</sup>—like so many travelers who stopped to gawk at the charnel pageantry of Wat Saket<sup>98</sup>—in order to understand its primacy as a site of cross-cultural engagement for Bangkok’s cosmopolitan populace. As transnational contests over law and liability bring the anonymous bodies of the subaltern to the attention of the Siamese state, we will witness the rebirth of the Siamese body politic. Peopled by the trampled, mute, and inarticulate masses, the

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<sup>96</sup> On the idea of boundary objects in science studies, see Susan Leigh Star & James R. Griesemer, “Institutional Ecology, ‘Translation,’ and Boundary Objects: Amateurs and Professionals in Berkeley’s Museum of Vertebrate Zoology, 1907-39,” *Social Studies of Science* 19 (1989): 387-420.

<sup>97</sup> Michael T. Taussig, “Culture of Terror—Space of Death,” in *Colonialism and Culture*, ed. Nicholas B. Dirks (Ann Arbor: University of Michigan Press, 1992), 135-173.

<sup>98</sup> By the last quarter of the nineteenth century, Wat Saket was a well-known stop on the itinerary of any adventurous young foreign visitor to the Siamese capital city. “Oh! no I will not die here,” vowed the Marquis de Beauvoir after witnessing a corpse—seemingly resurrected—dance on top of a funeral pyre at the same temple, limbs flailing as the heat of the pyre scorched tendons and connective tissue; see his *A Week in Siam: January 1867* (Bangkok: The Siam Society, 1986 [1870]), 50. For a similar account from 1892, see Lucien Fournereau, *Bangkok in 1892*, ed. Walter E. J. Tips (Bangkok: White Lotus Press, 1998), 151.

Siamese “dead body politic” was born out of a pragmatic engagement with the conditions of constrained sovereignty in the era of high imperialism.

## CHAPTER ONE

### INJURY, DEATH, AND COMPENSATION IN SIAM:

#### THE BANGKOK TRAMWAY COMPANY

##### **“The Slow and the Dead”: Loss of Life and Limb on the Tramway Tracks**

On 10 August 1889, a concise report appeared in the “Local and General” news column of the *Bangkok Times* concerning a serious injury sustained by a passenger on the Bangkok Tramway line.

On Monday last a Siamese girl, named E. Nak, in stepping from a tramcar near the Royal Barracks missed her footing and fell, the wheels of the car passing over the calf of one leg and breaking the bone. The unfortunate woman was immediately placed in a carriage and taken to the Bangkok Hospital by Mr. [Aage] Westenholz [manager of the Bangkok Tramway Co.,] and it was there found necessary to amputate the limb.<sup>1</sup>

Apart, of course, from the fact of permanent disability, readers were assured that “The operation was successfully performed on Tuesday morning last and we understand that the patient is doing fairly well.” The young woman would not be the first or last person to be permanently maimed or killed by the tramcars that had begun plying the narrow, crowded, and pitted streets of the city in 1888.<sup>2</sup>

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<sup>1</sup> *BT* 10 August 1889. The microfilm holdings of the *Bangkok Times* at the National Archives of Thailand begin in January 1889. Those holdings came from the collections of the Siam Society in Bangkok. I was unable to locate earlier issues of the *Bangkok Times*—or any of the competing English language dailies published in Bangkok that might offer evidence about injuries immediately following the opening of the tramway in 1888. Aage Westenholz, the Danish manager of the Bangkok Tramway Company, did acknowledge that the early months of operation—when the tramcars were first unleashed on the city streets being towed behind untrained ponies—“were full of mishaps and accidents”; see Westenholz, “Street Railways in Siam, and Siamese Customs,” *The Street Railway Journal* 7 (Aug. 1891): 414-415, 414.

<sup>2</sup> Events such as this do not figure in the (admittedly limited) historiography of the Bangkok Tramway Company. Instead, written accounts tend to focus on the experiences of elite travelers, especially the first (and only) journey of King Chulalongkorn on the tramway in 1895 (see, for

The metal rails, ponies, and especially the electrical-powered motors of the tramway delivered to the Bangkok streets what Marc Bloch has described as “One feature, the most distinctive of all” that distinguishes “contemporary civilization” from its predecessors: *speed*.<sup>3</sup> Paul Virilio, standing on Bloch’s shoulders and gazing back at the wreckage of the twentieth century, suggested a second distinctive feature of modern society, which is corollary to speed: *the accident*.<sup>4</sup> According to Virilio, the “innovation of a motor or of some other substantial material” that makes rapid mobility possible is “equally the invention of the ‘accident.’”<sup>5</sup> But accidents are only known to us through “a process of fortuitous discovery”: “To invent the sailing ship or steamer is *to invent the shipwreck*. To invent the train is *to invent the rail accident* of derailment.”<sup>6</sup> In contrast to Virilio’s fixation on the accident as a vector of “archeotechnological invention,” I am interested in the socio-legal ramifications of the accident, namely the question of the agency of tramway technology in the process of legal evolution.<sup>7</sup> In this chapter, I demonstrate how tramway technology—and especially its attendant accidents—created a social space for a specific kind of cross-cultural engagement. Efforts to deal with the loss of human life and limb in the wake of tramway accidents provoked a new kind of reckoning with Siamese legal culture, one that would have important implications on modernizing legal change in Siam.

This chapter examines the Bangkok Tramway Company and the seemingly random and unconnected incidences of loss of life and limb on the tramway tracks in order to outline a new

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example, Chali Iamkrasin, *Mueang thai samai kon* [Thailand in the Past] (Bangkok: Samnak Phim Dok Mali, 1991), 107-112.

<sup>3</sup> Cited in Paul Virilio, *The Original Accident*, trans. Julie Rose (Malden, MA: Polity Press, 2007), 3.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, 9, 5.

<sup>6</sup> *Ibid.*, 10.

<sup>7</sup> I am grateful to Sakura Christmas, who urged me to address this point more explicitly.

mode of inquiry into the subject of modernizing legal change in Siam. The tragic events that occurred on the tramway tracks shed light on the indeterminate nature of civil law under a plural legal regime in turn of the twentieth century Siam, as the company attempted to participate in traditional Siamese compensatory practices in order to limit its financial liability in cases of injury and death. Empirically, the events discussed in this chapter tell us about how civil law was practiced before the modern national justice system was established in the early twentieth century. Theoretically, they reveal important aspects about Siam's colonial modernity, and help to lay the groundwork for an examination of law as social and intellectual activity in "a historical context emphatically marked by" high imperialism.<sup>8</sup> These cases reveal the ad hoc nature of civil law under extraterritoriality in Siam, and the gap that would have to be crossed before institutions modeled after western liberal legalism could be instituted.

In terms of the theoretical intervention in Thai historiography, in this chapter I make the case for a previously overlooked aspect of Siam's "semi-colonial" modernity: the existence of a form of customary law. The practice of civil law in the context of the plural legal arena of turn of the twentieth century Siam bears the marks of colonial customary law in practice. Who were the architects of this particular customary law in Siam? How did it come to be practiced? I argue that it was a practical "assemblage," fabricated by social actors from material at hand to meet specific strategic needs.<sup>9</sup> David Turnbull's rendering of "assemblage" (a term borrowed from Deleuze and Guattari) implies something like "an episteme with technologies added, but which connotes the ad hoc contingency of a collage in its capacity to embrace a wide variety of

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<sup>8</sup> Anne M. Blackburn, *Locations of Buddhism: Colonialism & Modernity in Sri Lanka* (Chicago: University of Chicago Press, 2010), 201.

<sup>9</sup> My use of "assemblage" comes from David Turnbull's adaptation of the term from Deleuze and Guattari; see Turnbull, *Masons, Tricksters, and Cartographers: Comparative Studies in the Sociology of Scientific and Indigenous Knowledge* (Amsterdam: Harwood, 2000), 44.

incompatible components.”<sup>10</sup> The practice of customary civil law that grew out of tragic cases of accidental injury and death on the tracks of the Bangkok Tramway Company was just such a collage. Among its “incompatible components” were traditional Siamese ideas and practices for dealing with loss, the example of elite Siamese subjects who interacted with these customary practices as privileged participants, and a distinctively legalistic sense of fault, liability, and associated documentary practices recognized and employed by the foreign managers of the Bangkok Tramway Company.

My examination of the assemblage of customary law in late-nineteenth-century Bangkok also provides much-needed historical specificity to the interactions of modern and traditional forms of law in Thai history. I demonstrate, for example, how traditional ontological and metaphysical notions about what constituted the individual were appropriated and operationalized in a specific historical context. When Siamese and foreign parties negotiated over the nature and meaning of compensatory payments for accidental injury and death, they inadvertently conjured up the spirits of the dead and injured and made them historical actors. In this chapter, then, the seemingly timeless and ahistorical constituents of the traditional Thai cosmology are brought to life through practical forms of legal—albeit often extrajudicial—engagement. I therefore argue that the tragic events along the tramway tracks were formative; the resulting assemblage of customary law substantiated and legitimated Siamese traditional conceptualizations of the individual. The operationalization of these customary modes of thought and action to address novel sociotechnical circumstances was undoubtedly part of a pragmatic effort at cross-cultural translation—an effort to find common grounds of intelligibility in the wake of tragedy. At the same time, however, and as I demonstrate, efforts on the part of

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<sup>10</sup> Ibid.

foreign actors to speak to the concerns of traditional Siamese beliefs were also calculated forms of action intended to advance distinct individual interests.

### **The Bangkok Tramway Company**

Four bells jangle on the harness of an approaching horse. The brassy tone of an infantry bugle pierces the air, signaling the approach of a southbound tramcar on the New Road Line.<sup>11</sup> Drivers coax their horses and ponies into motion, and a sea of pedestrians bearing fruit, vegetables, and dried fish and trailed by children parts around the iron tracks laid into the pitted road. The horse-carts, rickshaws, and any number of other improvised vehicles travelling the New Road tended to avoid the iron tracks installed by the Bangkok Tramway Company, preferring the wider and relatively unmarked road surface. The absence of street traffic quickly made the tramway tracks the de facto pedestrian thoroughfare along the heavily trafficked New Road, so long as pedestrians remained wary of the warning sounds of an approaching tramcar.<sup>12</sup>

The Bangkok Tramway Company was founded in 1887, when the government of the kingdom of Siam granted a concession to build a tramway to two foreign entrepreneurs who were long-time residents of the city.<sup>13</sup> The concessionaires, a British subject, Alfred John Loftus, and a Dane, Andre du Plessis de Richelieu, were granted “sole and exclusive right to construct and maintain... the Tramways hereinafter described... and to work and use the same

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<sup>11</sup> Aage Westenholz, “Street Railways in Siam,” 414. The management of the Bangkok Tramway Company realized soon after the introduction of the service that horse bells alone were insufficient to alert people of the oncoming cars, so bugles were introduced with different tunes to announce inbound and outbound tramcars.

<sup>12</sup> *BT* 2 November 1889.

<sup>13</sup> “Tramway Concession, Bangkok, 5<sup>th</sup> May 1887” (NA Microfilm R5 N/128). The signatories to the concession also included a British attorney named Edward Blair Michell (serving as notary); Michell’s professional career in Siam would continue to intersect with the tramway company in a number of different ways as described below and in the following chapters.

for 50 years from the date hereof.”<sup>14</sup> The concession allowed for the eventual construction of seven tramway lines, and fixed standard passenger rates of six *att* per three-mile interval (or twelve *att* for “superior” seats at the front of the car).<sup>15</sup> Tramway line number one, which would run for a distance of six miles roughly parallel to the Chao Phraya River from the commercial district of *Bang Kho Laem* point in the south of the city to *Tha Thian* pier near the southern walls of the Grand Palace in the north, would be constructed first (figure 1). The concessionaires were only allowed to construct a single rail track for each of the proposed tramway lines, meaning that tramcars travelling in opposite directions would pass one another at designated sidings along the route.<sup>16</sup>

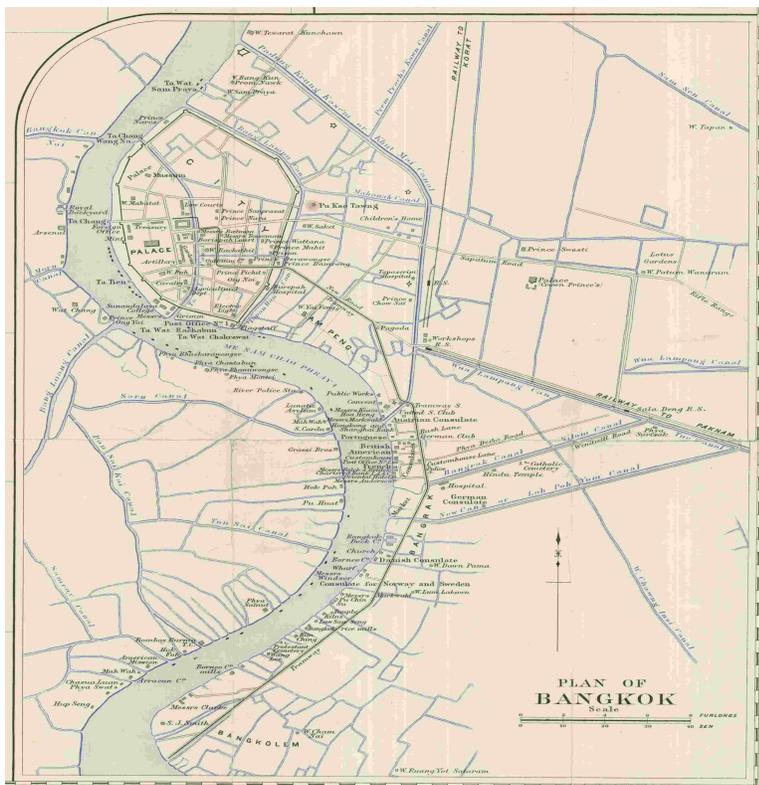


Figure 1: Map of central Bangkok circa 1900. The New Road tramway line is highlighted, running roughly north to south parallel to the Chao Phraya River. Source: *Map of the Kingdom of Siam and Its Dependencies* (Edinburgh: W. & A. K. Johnston, [1900?]), Olin Library Maps Collection, Cornell University.

<sup>14</sup> “Tramway Concession,” 1.  
<sup>15</sup> “Tramway Concession,” 12.  
<sup>16</sup> “Tramway Concession,” 6.

The concession stipulated that the New Road Line, (line number one), would have to be built within three years to meet the growing demand for passenger transit in the congested central part of the city, but the city's residents would not have to wait nearly that long. Loftus and Richelieu hired an ambitious young Dane named Aage Westenholz to serve as manager of the company and by 1888 tramcars were already plying the number one line, each car being towed by a team of ponies. By Westenholz's own admission, the "first two months," when the tramcars were first unleashed on the city streets being towed behind untrained ponies, "were full of mishaps and accidents."<sup>17</sup> In October 1890, after a spate of injuries along a particular stretch of the New Road line, police officers were posted to prevent passersby from stopping on the tracks, where they could peer into a newly established theatre (*lakhon*). In a letter to the district police chief at Sam Yaek station, Westenholz expressed his gratitude for the work of the police, and enclosed a reward of eight *Ticals* to be distributed among the officers.<sup>18</sup> In spite of these mishaps, the company, which was a public limited liability corporation, rewarded shareholders with a healthy semi-annual dividend, and within two years of its opening Westenholz was already laying out an ambitious scheme to introduce electric power along the New Road Line.

King Chulalongkorn (King Rama V, r. 1868-1910) himself was a major shareholder in the Bangkok Tramway Co., so when early plans for electrification were announced, the venture was regarded as a sure thing to gain the approval of the Siamese state (see figure 2). Unfortunately, as an American trade publication noted, the company was viewed as such a sure bet to succeed that "stock [was] not to be had at any price."<sup>19</sup> Westenholz travelled to Europe and the United States to study the operations of electrical tramcar systems and to visit the

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<sup>17</sup> Aage Westenholz, "Street Railways in Siam," 414.

<sup>18</sup> NA R5 N 8.1/21.

<sup>19</sup> "The Bangkok Tramways Company," *The Street Railway Journal* 9, no. 8 (1893): 510.

manufacturers of the required equipment, which included “dynamos, motors, line appliances, and trucks.”<sup>20</sup> He would eventually place an order with the Short Electric Railway Company in Cleveland, Ohio, for all the necessary equipment needed to electrify the New Road line with the exception of the posts for hanging the overhead lines—for those, local teakwood was used.<sup>21</sup> The first tramcars under electric power travelled the number one line on 20 February 1893; a full contingent of six cars was in operation under electric power only a month later.<sup>22</sup>

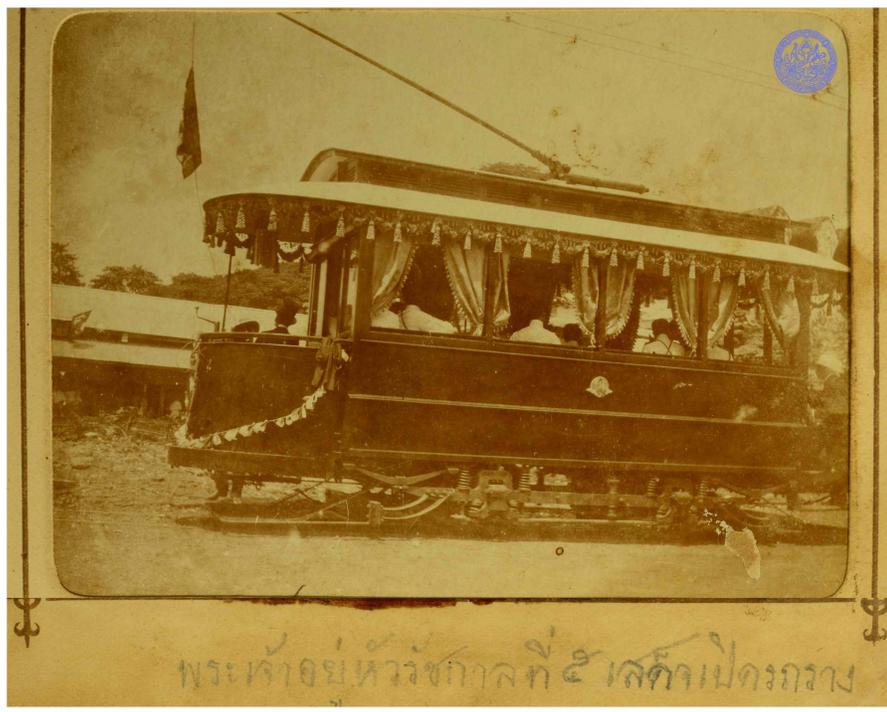


Figure 2: King Chulalongkorn, (or Rama V, left in top hat), boarding an electrified tramcar at the opening ceremony following conversion to electric power in 1893. Source: Prince Damrong Rajanuphap Library, Bangkok, Thailand (image # R105-091).

In spite of the commercial success of the company, hazards abounded along the New Road tramway line. Over its six-mile course, the line passed over a total of fourteen canal

<sup>20</sup> “Electric Railways,” *Western Electrician* 10-11 (April 30, 1892): 169; “The Bangkok Tramways Company,” 510.

<sup>21</sup> “Short Electric Railway Notes,” *The Street Railway Journal* 8 (May 1892): 317.

<sup>22</sup> “The Bangkok Tramways Company,” 510.

bridges, each of which acted as a choke point for traffic, including pedestrians.<sup>23</sup> The speed and weight of the tramcars were another hazard. Initially, drivers of the horse-drawn tramcars relied on a handbrake and likely shouted commands such as “*cha noi*” (“slow down”) to rein in the ponies at designated stops and intersections. In 1891, Westenholz engineered a footbrake that allowed the driver to exert more stopping pressure, which was presumably more efficient at slowing the tramcars.<sup>24</sup> After 1893 and the transition to overhead electric power along the length of the New Road Line, the driver would ease back on the throttle, slowing but not stopping the cars for passengers to disembark and board. Surveying the scene, Westenholz remarked, “it is a pleasure to see how well even old women with babies or trays of glassware in their arms jump on or off the” moving tramcars, whose “pace is slackened down to a walk” only “[i]f the [disembarking] passenger desire[s] it.”<sup>25</sup> In 1895, Westenholz was praised for speeding up transit times along the tramway line by ordering tramcar drivers to roll through all intersections and passenger boarding areas without coming to a stop. He thereby accelerated transit times along the length of the line by nine minutes (reducing the time required to travel the entire six-mile length of the line from fifty-five to forty-six minutes). “The acceleration,” the *Bangkok Times* noted, “is not obtained by actually running the cars more quickly, but by avoiding stoppages at the terminal and crossings, and also by putting a stop to the dawdling which has hitherto been so annoying.”<sup>26</sup>

Given these operating conditions, it is no surprise that in the early years of the Bangkok Tramway Company, death and injury along the tramway tracks were so commonplace that they gave birth to their own mythology. As early as November 1889, little more than a year after the

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<sup>23</sup> “Industrial and Trade Notes,” *Electrical World* 19 (April 30, 1893): 305.

<sup>24</sup> Westenholz, “Street Railways,” 415.

<sup>25</sup> Westenholz, “Street Railways,” 414.

<sup>26</sup> *BT* 4 April 1895.

tramway had commenced operations, the *Bangkok Times* reported on the growing suspicions of the company's Siamese employees concerning the ill-fated cars under their direction. Following three fatal accidents involving tramcar number five, employees of the company had come to a consensus that the number five was a particularly inauspicious number.<sup>27</sup> Interestingly, the article faults not the novelty of the technology, which clearly posed a danger to unaccustomed residents, but rather, the fact that Bangkok's denizens had already become inured to the warning calls of approaching tramcars and had become heedless. Under questioning at the Police Court, the man driving tramcar number five at the time of the most recent accident, "claimed that the bugle notice of the coming of the tramcar was sounded as usual, but" the newspaper notes, "it is notorious that familiarity with the tramcars has the usual effect of making people careless about keeping out of their way."<sup>28</sup>

In two separate incidents on the same ominous Saturday in February 1892, a Chinese man was injured while disembarking from a tramcar and an old Siamese man was run over and killed. The sardonic news item in the *Bangkok Times*—titled "The slow and the dead"—reported that in the latter case, "The driver blew his bugle, but the old fellow was blind, and deaf, and lame, and several other things, and he never knew what hit him. Mr. Westenholz, the tramway manager, gave his family a catty [80 Baht], however, to soothe their grief."<sup>29</sup> In the former case, the American Dr. T. Heyward Hays, chief physician at Bangrak Hospital, attended to the Chinese man, who "jumped gracefully off a tramcar on Saturday, without waiting for it to slow down. He

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<sup>27</sup> *BT* 2 November 1889.

<sup>28</sup> *Ibid.*

<sup>29</sup> *BT* 17 February 1892. The Siamese currency was in flux at this time. Foreign sources most commonly used the Portuguese/Malay loanword '*tical*' when referring to the Siamese currency until 1897, when it was standardized using a decimal system whereby one hundred *satang* equaled one *Baht*. The term "*catty*" (plural: *catties*; Thai: *chang*) referred to a larger denomination of the Siamese currency; it was based on a standardized Chinese measure of weight. One catty amounted to eighty Baht (or ticals).

alighted on his pigtail, and had to be galvanised into consciousness by Dr. Hays.” The press coverage of these cases of death and injury suggests an important distinction in respect to the victims of the tramcars: for the Siamese and ethnic Chinese who did not enjoy the extraterritorial legal protections enshrined by Siam’s trade treaties with the European powers, civil litigation against the Bangkok Tramway Company in the case of death or injury was not a viable option. The family of the old Siamese man killed by the train was awarded a single *catty* (eighty Baht)—apparently at the sole discretion of the company and its management—and the injured Chinese party likely received little more than free medical care from Dr. Hays, himself a major shareholder in the Bangkok Tramway Company.<sup>30</sup>

These anecdotes concerning the loss of life and limb on the tramway tracks help to situate the Bangkok Tramway Company within the indeterminate civil legal system in Siam at the turn of the twentieth century. Those who fell victim to the erratic jolts of the ponies pulling the cars, the errant traffic patterns on the city streets surrounding the tramway tracks, the negligence of the drivers, or who simply lost their footing on the ill-maintained roadways, all became subject to the brutal and unpredictable calculus of loss and liability in late nineteenth century Bangkok.<sup>31</sup> When the tramcars crushed and severed limbs and ended lives, the Bangkok Tramway Company and its managers understood the nature of their liability in the terms of western legal traditions,

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<sup>30</sup> Dr. Hays’ somewhat compromised position as both a shareholder in the Bangkok Tramway Company and the physician of first resort for those injured by the tramcars—not to mention his role as an expert medical witness in civil cases involving the company—will be discussed in chapter two (below). Hays will also reappear in the discussion of the introduction of forensic medicine in Siam (chapter five).

<sup>31</sup> The dismal state of the roads in Bangkok was a common complaint in the press. The *Bangkok Times* proposed “Holes, ruts, sloughs, puddles and occasional dry spots, (very treacherous ones though),” as the “special vocabulary” needed to describe them (*BT* 19 Oct. 1889). The condition of the roads was one reason why (foreign) residents called for the extension of tramway service provided by the Bangkok Tramway Company, which was solely responsible for maintaining the roadbeds wherever its tracks had been laid down.

but the plural legal environment created by extraterritorial law provided the opportunity to appeal to local customs and institutions in order to define their liability in more advantageous terms. Accidental death and injury along the tracks of the Bangkok Tramway Company therefore demonstrates the malleable nature of civil law in the context of a cosmopolitan colonial treaty port.

### **Liability and Compensation in Practice: The Bangkok Tramway Company & Traditional Siamese Civil Law**

In February 1892, a sixty-two year old Siamese man named Nai (Mr.) Ao, who worked as an undertaker, was struck and killed by tramway car number seven.<sup>32</sup> The incident occurred near a shrine erected by the Guantung Chinese community in Bangkok, at the Sam Yaek intersection on the New Road. Mr. Ao was likely killed immediately by the impact, as the documents concerning the death at the Siamese Ministry of Local Government do not contain any discussion of the administration of medical care in the case. The managers of the Bangkok Tramway Company sought out *Amdeang* (Ms.) Jan, a female relative of the deceased, and offered her a lump sum payment of eighty Baht (one catty) as compensation for the loss. Ms. Jan accepted the payment and had the body of Mr. Ao taken to Wat *Sam Jin* for burial.<sup>33</sup>

As the death of Mr. Ao demonstrates, in the immediate aftermath of an accidental death or dismemberment on the tramway tracks, the question of compensation was the predominant

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<sup>32</sup> NA R5 N 23/8.

<sup>33</sup> Wat Sam Jin, or “the temple of the three Chinese [men],” is today known as Wat Traimit (“the temple of three friends”); it is a large and opulent temple compound at the southeastern gateway to the city’s Chinatown. While cremation was the most common mode of disposing of the dead at the time, corpses were often buried soon after death to allow for decomposition, only to be disinterred at a later date—when only bones remained—in preparation for (often mass-) cremation rites.

concern, and it was addressed according to Siamese customary practices. Ms. Jan had accepted the payment offered by the company and Mr. Ao's corpse was already in the ground by the time Prince Naret, head of the Ministry of the Capital, learned of the incident in a handwritten letter received on 16 February. The letter states that "the Bangkok Tramway Company requests [permission] to make a 'funerary payment' to *Amdeang* Jan, a relative of Nai [Mr.] Ao, [the deceased]."<sup>34</sup> The memo therefore presents the payment as a proposed solution to compensate relatives for the loss of Mr. Ao's life; it implies that such compensatory actions required some degree of approval by the Minister of the Capital, who had geographical if not legal jurisdiction over such events. In actuality, however—and as the report later notes—the payment had already been offered and accepted; the evidence of the death, Mr. Ao's corpse, had already been interred in the cemetery at the temple. In spite of the seeming finality of these arrangements, they were in fact made outside of the purview of the Siamese officials who were responsible for the civil governance of the capital city. With respect to the monetary compensation, Prince Naret noted with approval "In this case, the company has paid a sum [amounting to] the funeral expenses (*bia pluk tua*) of the deceased to his relatives, which is appropriate."<sup>35</sup>

The payment made to Ms. Jan in the death of Mr. Ao is notable for two reasons. Firstly, there is the manner in which the payment corresponded with traditional Siamese practices of remediation in cases of accidental injury and death. The report submitted to the Ministry of the Capital uses the language of traditional Siamese civil remediation, describing the proposed payment as "*ngoen tham khwan*," or "money to restore the spirit" of the injured party. This description of the payment helps to situate the actions of the Bangkok Tramway Company in the

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<sup>34</sup> "*Kampani rot traem we kho ao ngoen tham khwan hai amdeang jan phi nong nai ao*" (NA R5 N 23/8, 2).

<sup>35</sup> "*Ruang ni kampani sia bia pluk tua phu tai hai kae yat ko khuan laeo*" (NA R5 N 23/8, 3-4).

wake of the accident within the cultural milieu of traditional Siamese ideas on injury, loss, and remediation. Prince Naret, for his part, helped to legitimize this mode of remediation when he referred to the compensatory payment as a “fee paid to cover the funeral expenses of the deceased” (*pia pluk tua phu tai*), an equivalent description of compensation used in traditional Siamese remediation practice, and in his recognition that the company had acted appropriately.<sup>36</sup> Indeed, in response to another report on the same case, Naret reiterates that “the company had already paid [a fee] to restore the spirit of the deceased to his relatives, and there is no need for further action.”<sup>37</sup>

There can be no doubt that in depicting the compensatory payment as a “funerary payment” the company sought to participate in extrajudicial compensatory practices that were rooted in Siamese tradition and based on the assumptions of Siamese metaphysics. The Siamese concept of unnatural death (Thai: *tai hong*) might be described as a wide-ranging system of beliefs and practices for dealing with the aftermath of sudden or unforeseen losses of human life.<sup>38</sup> It implied a complex metaphysical system for explaining the causes and implications of such tragedies, which was predicated on the fate of the spiritual component of the person (Thai: *khwan*).<sup>39</sup> The relevant concerns and actions taken in the aftermath of unnatural deaths were

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<sup>36</sup> NA R5 N 23/8, 3-4.

<sup>37</sup> “*Kampani dai tham khwan hai kae yat phu tai leao mai tong sang an dai to pai*” (NA R5 N 23/8, 6).

<sup>38</sup> Stanley J. Tambiah’s description of ideas and practices related to unnatural death in northeastern Thailand provides a good introduction; see *Buddhism and the Spirit Cults in North-East Thailand* (Cambridge: Cambridge University Press, 1970), 189-194 and 312-326.

<sup>39</sup> Grant A. Olson provides a comprehensive overview of ethnographic and philosophical literature on the Thai Buddhist metaphysics of the self, and makes critical distinctions about how these elements relate to psychological wellbeing (*khwan*) and the fate of the individual after death (*winyan*); see his “Filling the Void: Thai Khwan and Burmese Leip-pya, the Stuff of which Souls are Made,” in *Socially Engaged Spirituality: Essays in Honor of Sulak Sivaraksa on his 70<sup>th</sup> Birthday*, David W. Chappell, ed. (Bangkok: Sathirakoses-Nagapradipa Foundation, 2003), 271-302. These distinctions are not evidenced in the archival documents that I worked with, but

dictated by the circumstances of the death and the perceived repercussions that it would have for the community.<sup>40</sup> The concept of unnatural death implied the need to take action to placate and pacify the disembodied *khwan* for the good of the community. When death was caused by the neglect or default of another person, the Siamese notion of unnatural death invoked the principle of the *khwan* as the subject of remediation and compensatory action. These actions were characterized not by retribution or vengeance for the departed and their kin, but rather, in accordance with a restorative sense of justice, they were aimed at placating the harmed *khwan* and protecting the community from further loss.

The terms used to describe the kinds of culturally expected social action taken in the aftermath of sudden and unexpected losses of human life help to contextualize how people made sense of loss in nineteenth century Siam. The vocabulary of loss and remediation hints at the broader habits of mind that reveal the nature of personal loss as a spiritual problem rooted in a metaphysical belief system with broad ramifications for both social life and soteriological

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it may simply be that bureaucratic and legalistic discourses and forms of action were inattentive to the particularities of religio-cultural beliefs and viewed these beliefs as mere vehicles for socio-legal action. For an extensive overview of the lexical and cultural usage of *khwan*, see Wilaiwan Kanittanan and James Placzek, "Historical and Contemporary Meanings of Thai *Khwan*: The Use of Lexical Meaning Change as an Indicator of Cultural Change," in *Religion, Values, and Development in Southeast Asia*, Bruce Matthews and Judith Nagata, eds. (Singapore: Institute of Southeast Asian Studies, 1986), 146-167. Ruth-Inge Heinze offers an overview of aspects of ritual life focused on the *khwan* in *Tham Khwan: How to Contain the Essence of Life: A Socio-Psychological Comparison of a Thai Custom* (Singapore: Singapore University Press, [1982]). Shigeharu Tanabe describes how the *khwan* was a constitutive element of "the folk category of the person" in "The Person in Transformation: Body, Mind, and Cultural Appropriation," in *Cultural Crisis and Social Memory: Modernity and Identity in Thailand and Laos*, Shigeharu Tanabe and Charles F. Keyes, eds., (Honolulu: University of Hawai'i Press, 2002), 43-67, especially 44-49. Finally, Phraya Anuman Rajathon provides an auto-ethnographic perspective on the meaning and origins of the *khwan* in Thai culture in "The *Khwan* and Its Ceremonies," *Journal of the Siam Society* 50 (1962): 119-164.

<sup>40</sup> The discussion in this chapter will focus specifically on the practices of compensation and remediation in the wake of accidental injury or the unnatural loss of human life. These usages have been neglected by ethnographic scholarship on the terms (see op. cit. nt. 39). I offer a more general discussion of the culture of unnatural death in part two (chapter four, below).

concerns. Government documents from the late nineteenth century suggest that many of the terms were used in an essentially interchangeable manner.<sup>41</sup> In spite of the close semantic connections between the ideas, the most common terms can be grouped into broad categories based on their reference to the spiritual and bodily elements of the victim of sudden or unnatural death.

It is appropriate to begin with a term for compensatory action that contains within itself an explicit reference to the spiritual component of the human being, namely *kan-tham khwan*. This term, a nominalized form of the verb (*tham khwan*), refers to a broad range of ritual and compensatory actions aimed at restoring the spirit of an injured party, which had become disembodied through the trauma of injury or sudden death. In the late nineteenth century, the term *tham khwan* was often appended to the word for money, *ngoem*, making a compound that signified a compensatory payment for an injury or death (*ngoem tham khwan*). *Kan-tham khwan* signifies efforts to make the victim of unexpected trauma or loss whole again; it is best understood as a restorative action aimed at returning the victim to their rightful situation.<sup>42</sup> The notion of social differentiation is implied in the action as an essential part of the broader cultural context of the practice; the cost of restoring the *khwan* was related to the social standing of the individuals involved. As M. B. Hooker notes, traditional Siamese civil law was emphatically “status”-based (as opposed to “contract”-based), and did not assume the equal status of all legal

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<sup>41</sup> Although the terms were used interchangeably in government documents, there may have been more nuanced distinctions that dictated colloquial usage. The documents referred to include the inquest files of the Ministry of the Capital (NA R5 N 23). See also, the explanation of these terms offered by the British Consul to Siam in the late nineteenth century in William J. Archer, *Siamese Law on Disputes and Assault* (Bangkok: S. J. Smith’s Office, 1886), 2.

<sup>42</sup> David M. Engel, “Discourses of Causation in Injury Cases: Exploring Thai and American Legal Cultures,” in *Fault Lines: Tort Law as Cultural Practice*, David M. Engel and Michael McCann, eds., (Stanford: Stanford University Press, 2009), 251-268, especially 257.

parties.<sup>43</sup> In such a legal tradition, “one’s obligations were ascribed upon the basis of one’s rank in society.”<sup>44</sup> Therefore, one’s liability in the accidental death of another—as expressed through the amount of expected remediation—was likewise calculated according to the social standing of the parties.<sup>45</sup>

The next category of ideas associated with compensation for the accidental or unnatural loss of life includes a range of words signifying fees (*bia* or *kha*) paid to cover the cost of funerary expenses. The associated ritual expenses include the cost of cremation rites, which are referred to as the *bia* or *kha phao tua* (the fee or cost of cremating the body), and the cost of the wake or vigil for the deceased known as the *bia* or *kha pluk tua*.<sup>46</sup> Documents from this period suggest that the Thai term *phi*, which is today commonly rendered as “ghost,” was also frequently used with both of these expressions, i.e. *phao phi* and *pluk phi*. Although the literal translation would suggest (the cost of) cremating or waking the ghost, in actuality the terms signify something closer to the idea of feting the spirit of the deceased, and especially of performing religious rites to secure merit for the deceased in the interests of helping it to acquire a more auspicious rebirth. The Thai terms *kan-thot thaen* and (*kha*) *chot choie*, meaning to compensate and compensation, respectively, constitute another group of terms used to describe appropriate actions in the wake of an accidental injury or death.

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<sup>43</sup> M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975), 372.

<sup>44</sup> *Ibid.*

<sup>45</sup> In referring to the Thai feudal system of social ranking known as the *sakdi na*, Hooker notes “The rank also determined an individual’s liability in cases of damage” (*Legal Pluralism*, 373). Richard A. O’Connor offers some specific illustrations of how traditional law related to the system of feudal social ordering in “Law as Indigenous Social Theory: A Siamese Thai Case,” *American Ethnologist* 8 (1981): 223-237, 228-229.

<sup>46</sup> While ‘*phao tua*’ has all but disappeared in contemporary usage, ‘*ngan phao phi*’ remains a common colloquialism for describing a wake.

The second notable feature of the payment offered to Ms. Jan after the death of Mr. Ao is that it ostensibly put an end to the civil liabilities arising from the death. With the question of compensation settled, Prince Naret ordered an inquiry into whether the actions of the tramcar driver had played a role in the death of Mr. Ao. He ordered police to determine “the cause of the deceased’s being struck by the car.”<sup>47</sup> Some two weeks later, on 1 March, a police official named *Luang* Wisut informed Naret that the driver was, in fact, “at fault by means of [his] carelessness.”<sup>48</sup> Although police concluded that the actions of the driver played a contributing role in the death of Mr. Ao, the repercussions of such a judgment of culpability were anything but clear. Legal historians of Thailand have suggested that there was no formal distinction between penal and civil litigation in traditional Siamese law, so a finding of negligence would not necessarily result in any form of criminal or civil litigation—whether against the driver or his employer, the Bangkok Tramway Company.<sup>49</sup> Documents from the Ministry of the Capital, however, suggest that the question of the driver’s liability in the death of Mr. Ao was handled in an extrajudicial manner. Despite the finding of culpability by negligence, the police investigation into the death concluded with the note that Aage Westenholz, the Danish manager of the company, had dismissed the driver from service.<sup>50</sup> Thus, culpability in the death of Mr.

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<sup>47</sup> “*Thi khon khap rot ja mi khwam phit dai yu*” (NA R5 N 23/8, 6).

<sup>48</sup> “*Phu khap [rot traem we] mi khwam phit doi khwam luen loe*” (NA R5 N 23/8, 8).

<sup>49</sup> David M. Engel, *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (Ann Arbor: Center for South and Southeast Asian Studies, The University of Michigan, 1975), 61-2. Tamara Loos offers a complementary discussion of the introduction of a dichotomous system of law based on penal and civil litigation at the turn of the twentieth century; see her “Gender Adjudicated: Translating Modern Legal Subjects in Siam” (PhD diss., Cornell University, 1999), 80-89.

<sup>50</sup> See *Luang* Wisut’s final report on the matter (NA R5 N 23/8, 8).

Ao never extended beyond the driver of the tramcar, and did not result in any civil or criminal legal action.<sup>51</sup>

Documents concerning the death of Mr. Ao are indicative of the manner in which a foreign corporation was able to make use of local practices and expectations to help define the limits of their liability in cases of accidental death and dismemberment. The payment offered to the relatives of Mr. Ao amounted to an *ex gratia* payment according to western legal ideas: a payment made out of a certain sense of moral obligation without an acknowledgment of legal culpability.<sup>52</sup> Siamese officials were complicit in this arrangement in two ways: firstly, by approving payments proposed by the managers of the Bangkok Tramway Company as a sufficient and appropriate outcome in cases of death and dismemberment caused by the tramway cars; and secondly, by applying (or acquiescing to) a constrained sense of liability in such cases. The case of Nai Ao is indicative of a transitional period in Siamese legal history, when reforms had only recently been put in place to rationalize the structure and function of the judicial system

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<sup>51</sup> In the aftermath of the accident and after the matter of compensation had been decided, Luang Wisut's report on the incident noted: "due to the fact that the tramway company had built such a narrow bridge to its depot, there was a high probability that its cars would crush people [pedestrians crossing the bridge]" (NA R5 N 23/8). He observed that until the tramway company expanded the roadway over the bridge, it would continue to be a danger to the people. In the end, the Bangkok Tramway Company seems to have been compelled to take some action to prevent future deaths on its narrow bridges. The *Bangkok Times* noted that the company was "endeavouring by means of self-acting wicket to prevent the many accidents caused by people using their bridges as footpaths" (BT 23 May 1895). It should be noted that the original concession granted to Loftus and de Richelieu to construct and operate a tramcar system in Bangkok had specific regulations for the construction of bridges. These regulations, in fact, would seem to mitigate the responsibility of the company in cases of death resulting from inadequate infrastructure; see "Tramway Concession, Bangkok, 5<sup>th</sup> May 1887."

<sup>52</sup> "The idiom of *ex gratia* payments is of unilateral action, absence of obligation, ability to pay rather than fault, and need rather than entitlement"; see Marc Galanter, "India's Tort Deficit: Sketch for a Historical Portrait," in *Fault Lines: Tort Law as Cultural Practice*, David M. Engel and Michael McCann, eds. (Stanford: Stanford University Press, 2009), 47-65, 64.

and clear a backlog of cases.<sup>53</sup> Due to the transitional nature of the Siamese judicial system in this era, it is possible that the managers of the Bangkok Tramway Company had no other recourse than to attempt to conform to the tacit rules of compensation according to Siamese customs. But there is reason to suspect that the decision was also a strategic one, aimed at limiting the liability of the company for civil damages. It was part of a larger strategy whereby foreign actors utilized traditional Siamese civil law to construct the assemblage of Siamese customary law.

Traditional Siamese ideas and practices concerning remediation were not the only context for the actions of the managers of the Bangkok Tramway Company and the Siamese government officials in the aftermath of the death of Mr. Ao. The logic and vocabulary of such practices conformed in large part to the preeminent source of traditional Siamese law: the so-called *Law of the Three Seals*. The *Law of the Three Seals* (1805) was the product of a formal recension of a diverse array of extant law codes undertaken by King Rama I soon after the founding of Bangkok.<sup>54</sup> At the end of the nineteenth century, before modern law codes had been promulgated as part of the effort to construct a national justice system, the *Law of the Three Seals* was the only codified source of Siamese law.<sup>55</sup> The codified form of the *Law of the Three*

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<sup>53</sup> See Engel, “The Judicial Function,” chapter three (59-93) in *Law and Kingship*, for a complete picture of the judiciary system before, during, and after these reforms.

<sup>54</sup> See R. Lingat, “Note sur la Revision des Lois Siamois en 1805,” *Journal of the Siam Society* 23 (1929): 19-27. It was been reproduced as a five-volume set in *Kotmai tra sam duang* [Law of the Three Seals] (Osaka, Japan: National Museum of Ethnography, 1981).

<sup>55</sup> This discussion refers to Siamese law pertaining to lay people; religious life in Buddhist temples was governed by the *vinaya*, the laws for Buddhist renunciants (both male and female) that was part of the Pali canonical tradition. For discussions of the role of the *vinaya* in Theravada Buddhism, see Heinz Bechert, “Theravada Buddhist *Sangha*: Some General Observations on Historical and Political Factors in Its Development,” *The Journal of Asian Studies* 29 (1970): 761-78; Anne M. Blackburn offers a revisionist perspective in “Looking for the *Vinaya*: Monastic Discipline in the Practical Canons of the Theravada,” *Journal of the International Association of Buddhist Studies* 22 (1999): 281-309.

*Seals*, however, belies the ambiguous nature of its use and application in Siamese jurisprudence. The early historian of Southeast Asian law Lingat observed that “Siamese traditional laws came to us embodied in a single code, compiled in the early years of this century [the nineteenth]... Its provisions were really law [as opposed to custom], and were applied as such by Courts of Justice till the codes used to-day [modern legal codes] were promulgated [in the first quarter of the twentieth century].”<sup>56</sup> In actuality, historians simply do not know how the *Law of the Three Seals* was implemented and what sort of demographic or geographical reach it might have had in application.<sup>57</sup>

For much of the nineteenth century, only three copies of the codes existed and they were sequestered in places of royal power and not released to the public. Streckfuss notes that King Rama I, who ordered the codification of the codes, “might have wanted his dominions to follow the [*Law of the*] *Three Seals*, but part of its power was its limited accessibility.”<sup>58</sup> Another Siamese sovereign, King Rama III, allowed the codes to be printed by an American missionary in 1849, but quickly changed his mind and had all the copies gathered up and destroyed.<sup>59</sup> Eventually his successor, King Mongkut (Rama IV), would allow the codes to be printed and disseminated to the public beginning in 1863, but according to Loos, this wider dissemination transformed the *Law of the Three Seals*, which were henceforth “no longer a source of legitimacy

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<sup>56</sup> R. Lingat, “Evolution of the Concept of Law in Burma and Siam” *Journal of the Siam Society* 38 (1950): 9-31, 23.

<sup>57</sup> According to Loos “Implementation of the letter of the law, a foreign concept in any event, was also nearly impossible in practice. That is not to say that Siam was lawless, but that the regime of law did not operate primarily as an institution of codes emanating from Bangkok” (*Subject Siam*, 33-34).

<sup>58</sup> David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-majesté* (London: Routledge, 2011), 71.

<sup>59</sup> Streckfuss, *Truth on Trial*, 71; see also Thanapol Limapichart, “The Emergence of the Siamese Public Sphere: Colonial Modernity, Print Culture, and the Practice of Criticism (1860s-1910s),” *South-East Asia Research* 17, no. 3 (2009): 361-399, 371.

and sacred power that had to be secluded.”<sup>60</sup> The codes became instead “a source of applicable and practical law,” that would soon be rendered obsolete by the propagation of modern law codes.<sup>61</sup>

The cases of injury and death on the tracks of the Bangkok Tramway Company under consideration in this chapter fell within this transitional period, after the *Law of the Three Seals* had become part of the public domain but before the constitution of national institutions of justice and modern legal codes. For foreign residents seeking an understanding of Siamese civil law during this era, the *Law of the Three Seals* remained the preeminent source. Consular officials posted at the foreign legations of the imperial powers approached the *Law of the Three Seals* as part of an ethnography of law in Siam. William J. Archer, the British Consul in Bangkok, published annotated translations of the laws related to physical assault and debt.<sup>62</sup>

It is no surprise then, that when the Bangkok Tramway Company became embroiled in civil matters with Siamese legal subjects—who did not have the legal rights to file civil claims against it in the British consular court systems—it turned to the same laws to determine the appropriate mode of civil remediation. By doing so, the managers of the Bangkok Tramway Company helped to institutionalize traditional forms of socio-legal action as part of a system of customary law under the plural legal system established by extraterritoriality in Siam. Other cases of accidental death and dismemberment in late nineteenth century Siam involving the Bangkok Tramway Company reveal a similar engagement with traditional Siamese civil law as customary law. The company’s managers, however, were privileged participants in the

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<sup>60</sup> Loos, *Subject Siam*, 40.

<sup>61</sup> *Ibid.*

<sup>62</sup> See Archer, “*Siamese Law on Disputes*” (op cit.) and Archer, “*The Siamese Laws on Debts, translated by W. J. Archer of H.B.M.’s Legation* (Bangkok: S. J. Smith’s Office, Bangkok’olem Point, 1885).

traditional Siamese practices and they brought with them distinctive legalistic concerns, including a desire for documentation and indemnification that was inimical to the Siamese customs.

The death of *Jin* (Chinaman) Kim Hok (also known as *Jin Jai*) in May 1895 demonstrates the distinctive and exceptional nature of the ways in which transnational social actors interacted with Siamese customary law in late nineteenth century Bangkok.<sup>63</sup> On the afternoon of 20 May, Kim Hok went out on an errand to buy betel nut at the fresh market near *Pratu Sam Yot*. In order to reach the market, he had to cross over an iron bridge; but the bridge, as usual, was crowded with the traffic of horse-drawn carts and rickshaws. He decided to take a short cut by crossing over the section of the bridge reserved for the passage of tramway cars. As soon as he entered the bridge, however, he saw tramway car number two approaching from the opposite direction. Realizing his error, Kim Hok jumped to the side of the passageway and pressed himself against the wall to make way for the approaching tramcar. The passage was too narrow, however, and the tramcar crushed him against the wall, seriously injuring his head, shoulders, flank, legs, and toes.<sup>64</sup> Kim Hok's wife immediately had him placed in the tramcar and he was rushed to the care of Dr. Hays at Bangrak Hospital, where he died the next morning of injuries sustained in the accident.

In the aftermath of the accident, the managers of the Bangkok Tramway Company sought out Kim Hok's widow, a Siamese woman named *Amdaeng* (Ms.) Phring, and two of his male relatives, named Pin Thao and Hok Huai, who had also emigrated from China. As representative of the tramway company, Aage Westenholz offered the princely sum of three *chang* (two

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<sup>63</sup> NA R5 N 23/23.

<sup>64</sup> Kim Hok's injuries are described in a later police report compiled by Nai On (NA R5 N 23/23, 6).

hundred and forty Baht) to cover the funerary costs of Kim Hok; the payment offered by the company was described as a “*kha phao phi*,” or a “fee for the cremation of the spirit [of the deceased].”<sup>65</sup> But Westenholz insisted on obtaining some form of documentation verifying the payment, which would indemnify the Bangkok Tramway Company against future claims for damages related to the death.

On 24 May, presumably at the appointed time for receiving the payment, Ms. Phring and Kim Hok’s two male relatives arrived at the offices of the Bangkok Tramway Company, where they were greeted by a clerk named *Nai* (Mr.) Khien. Following the instructions of Westenholz, Khien accompanied them to the local police station, where he informed the district inspector, Inspector Sathonmorakha, of the events and asked him to draft up an “official contract” (*sanya pracham*) reflecting the agreement of the parties concerning the death and to stamp it with an official (state) seal.<sup>66</sup> Inspector Sathonmorakha refused to draft the requested document, explaining, “in cases of death such as these I am unable to write up a contract out of fear that there would be some mistake.”<sup>67</sup>

Khien, the company’s clerk, apparently understood that the notion of an “official contract” was the sticking point for Inspector Sathonmorakha. According to Sathonmorakha’s account, Khien accepted his refusal without argument and proposed instead that the inspector

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<sup>65</sup> The very fact that Westenholz offered 240 Baht at a time when most awards given out by the company were in the amount of 80 Baht, suggests that perhaps the company understood its liability to be somehow higher in this case than in others.

<sup>66</sup> It is interesting to note that Inspector Sathonmorakha uses an elevated register to describe the actions of Aage Westenholz, referring to him as “*than mister*” and describing the manner in which he dispatched Mr. Khien as “*chai ... hai*,” which signifies the type of hierarchical social relations that would obtain between a social superior and their client in the Siamese feudal social order.

<sup>67</sup> “*Kan-tai chen ni tham nangsua sanya prajam to hai mai dai klua ja mi khwam phi*” (NA R5 N 23/23, 2).

“depose” the interested parties.<sup>68</sup> Sathonmorakha evidently deemed this a much more appropriate sort of intervention for a police inspector in what amounted to a matter of civil law, and he agreed to draft up a statement of the essentials of the case and to record the names of the interested parties and witnesses. He submitted a copy of the resulting document, which the parties called a “letter of agreement” (*nangsue sanya*), to his superior officer at the police station and requested that it be forwarded to the Director and Deputy Director of Police.

The “letter of agreement” that Mr. Khien, on behalf of the Bangkok Tramway Company, extracted from Ms. Phring and Kim Hok’s Chinese relatives clearly reflects the legalistic concerns of the company and its shareholders in cases of accidental injury and death. It demonstrates the Janus-faced nature of the company’s interactions with Siamese subjects in matters of civil law: the company spoke the vernacular language of customary forms of compensation while demanding a legalistic explanation of the events and indemnification in ways that were in stark contrast with the former practices and discourses. In describing the actions of Chinaman Kim Hok on that fateful day, the letter says that after being unable to find a way across the public (*luang*) section of the bridge (or finding it too crowded with traffic to permit easy passage), “Jin Kim Hok took an illegal shortcut by crossing over the narrow channel of the steam-powered train bridge.”<sup>69</sup> The signatories of the letter—Amdaeng Phring, Jin Pin Thao, and Jin Hok Huai—were made to explicitly acknowledge “they all agreed that” Kim Hok was at “fault [in the accident] for walking on the pathway of the steam-powered train,” which

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<sup>68</sup> “*Hai jin pin thao jin hok huai amdaeng phring tham hai pen samkhan*” (NA R5 N 23/23, 2).

<sup>69</sup> “*Jin kim hok doen phit thang lat khun pai bon taphan rot ai fai fa thi chong khaep khaep*” (NA R5 N 23/23, 4). I highlight the fact that much of the correspondence on this case refers to the electric tramway cars as “steam-powered trains” (*ai rot fai fa*) to suggest something of the chasm between the agents of the company and the residents of the capital city who lived amongst the trains. By this time, the tramway cars were in fact powered by overhead electrical lines (see Figure 3); prior to that, they were drawn by horses. The cars had never been powered by steam engines.

had been granted to the tramway company.<sup>70</sup> Ms. Phring further stated that she did not bear ill will towards or have intentions of taking legal action against the tramway company.<sup>71</sup> Finally, the letter states that if any of the three concerned parties, Ms. Phring, Jin Pin Thao, or Jin Hok Huai, should attempt to file charges against the company in the future, the company could produce this letter and the parties in question would be subject to a fine and other punishment.



Figure 3: The New Road (*Thanon jaroen krung*) circa 1900. The tramway tracks are visible at right; electrical power lines run overhead. Image Courtesy of the National Archives of Thailand (photograph # ท.002 ทวญ.52/12).

Concerning the monetary compensation offered by the company to the relatives of Jin Kim Hok, the letter of agreement gracefully utilizes the discourse of customary Siamese compensation practice while taking care not to admit fault. The agreement states, “the employees (managers) of the company had compassion towards Jin Kim Hok, the deceased” and

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<sup>70</sup> “*Hen phrom kan wa... [Jin Kim Hok] mi khwam phit doen khao nai thang ai rot fai fa*” (NA R5 N 23/23, 4). The letter refers only obliquely to the legal rights granted to the tramway company by its concession, which was signed in 1887, through an abbreviated allusion [“*Sueng dai rap anuyat to lae oen oen*”]. I will discuss the legalistic language of the concession contract in greater detail in chapter two.

<sup>71</sup> “*Mai tit jai fong rong kam pa ni traem we*” (NA R5 N 23/23, 4).

had “paid money in the amount of three *chang* [240 Baht] as a funerary payment to Jin Kim Hok, the deceased.”<sup>72</sup> The letter explicitly—and repeatedly—describes the money as a payment made to the deceased, not his relatives. This is in conformity with customary laws of remediation, where the focus was on the spirit of the harmed or deceased party, not the wellbeing or rights of surviving family.<sup>73</sup> Also, the letter describes the payment as a “*kha phao phi*,” or a “fee (to pay for the cost of) cremating the spirit,” which is something of a departure from the standard vocabulary of compensatory actions—or, at the very least, an instance of the most colloquial of the terms used for compensatory actions. Finally, returning to the legalistic concerns that motivated the company’s desire for documentation, the letter states that Ms. Phring and Kim Hok’s two male relatives “willingly and gladly accepted the payment of three *chang* from the employees (managers) of the tramway company.”<sup>74</sup>

The “letter of agreement” concerning the death of Jin Kim Hok is a crucial document for what it reveals about civil law in Siam in the last decade of the nineteenth century. In cosmopolitan Bangkok, social actors possessed radically different expectations and operated on divergent understandings of the implications of accidental injury and death. The managers of the Bangkok Tramway Company sought to participate in the customary practices of the Siamese, by offering a funerary payment, while at the same time attempting to obtain legal documentation that would serve to indemnify the company against possible litigation in the future. When the company first started operations, Siam had not yet taken concrete steps to establish the national

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<sup>72</sup> “*Mi khwam metta kap jin kim hok phu tai ok ngoen sam chang hai pen kha phao phi kae jin kim hok phu tai*” (NA R5 N 23/23, 4).

<sup>73</sup> See, for example, the note concerning the actions “*pluk tua*” and “*pluk phi*” in Archer, *Siamese Law on Disputes*, 2, which likewise emphasizes the payments as an attempt to “do merit for the deceased.”

<sup>74</sup> “*Tem jai mi khwam yin di rap ngoen sam chang to nai hang kam pa ni tram wa pai*” (NA R5 N 23/23, 4).

legal institutions that were part of King Chulalongkorn's public vision of reform since 1888, so it is quite possible that the managers of the Bangkok Tramway Company simply did not know where to file official notices of their compensatory payments to victims and their relatives in the case of accidents.<sup>75</sup> But in the wake of the sweeping administrative reforms of 1892, a new Ministry of Justice had been established along with lower courts responsible for criminal and civil adjudication, respectively.<sup>76</sup> There is reason to suspect, however, that in spite of their new luster these institutions remained as opaque as courts under the former system—at least until a set of provisional rules governing civil procedure was promulgated in 1896.<sup>77</sup> Rather than appeal to the newly formed Ministry of Justice, then, Aage Westenholz continued to deal with the Siamese police force in Bangkok, which was an administrative unit under the Ministry of the Capital. This in itself might be an indication of a strategic decision; Westenholz and the foreign managers of the company may well have appealed directly to the police for the expressed purpose of avoiding entanglements with new legal institutions and bureaucrats who were less familiar to them. Individual police inspectors, however, were understandably reluctant to engage in legalistic documentary practices that did not fall under their mandate. The “letter of agreement” that resulted from this engagement demonstrates the willingness of Siamese subjects to engage with transnational social actors (including corporate entities) so long as they fulfilled their cultural expectations—spoke their language—and likewise the desire of transnational actors to accommodate local practices, so long as the outcome was advantageous.

The manner in which the Bangkok Tramway Company indulged local cultural expectations in dealing with matters of civil law concerning Siamese subjects suggests

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<sup>75</sup> On the planned institutional reforms and King Chulalongkorn's speech on the subject, see Loos, *Subject Siam*, 44.

<sup>76</sup> See Engel, *Law and Kingship*, 66-67.

<sup>77</sup> An official code of civil procedure would not be promulgated until 1908 (*ibid.*, 74).

something of the liminal position of the company in Siamese society. The company appealed to traditional Siamese compensatory practices as an exceptional participant, able to indulge in culturally appropriate modes of extrajudicial action while appealing to western legal practices and institutions for indemnification. This dual mode of action demonstrates that the company and its managers acted to secure their own best interests in such transactions, without paying heed to the social institutions that enforced cultural expectations about compensatory practices in Siamese society. This peculiar form of agency, namely the ability to engage with customary practices while remaining independent of the forms of sociocultural authority that made them obligatory, was characteristic of another segment of Bangkok's population as well: the Siamese elite.

#### **“Merry Natives” & Noblesse Oblige: Liability and Elite Privilege in Customary Law**

The sense of privilege that informs the perspective of the Bangkok Tramway Company's management in cases of accidental injury is revealed by the cavalier manner in which Aage Westenholz treated the payment of compensation for injured Siamese and Chinese passengers (see Figure 4). Writing in a western trade publication, Westenholz observed of indigenous use of the tramway: “While all the Siamese are extremely alert, some of the Chinese are clumsy and too pig[-]headed to listen to the conductor's directions, and, in consequence, you sometimes see them turn head over heels, to the great delight of the other passengers.”<sup>78</sup> Regarding compensation for injuries in such cases, Westenholz joked that the right to laugh at others unlucky enough to fall while exiting the tramcars was compensation enough. “On the whole,” he flippantly remarked, “I am disposed to believe that the amusement in seeing thirteen other men

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<sup>78</sup> Westenholz, “Street Railways in Siam,” 414-415.

fall more than compensates the inconvenience of one fall himself to one of these merry natives.”<sup>79</sup>



Figure 4: Aage Westenholz with his wife (Source: [http://www.scandasia.com/viewNews.php?news\\_id=8286&coun\\_code=dk](http://www.scandasia.com/viewNews.php?news_id=8286&coun_code=dk); accessed 11/20/2012).

In cases of more serious injury, however, and of accidents resulting in death, Westenholz was forced to find a more culturally appropriate idiom for responding to the loss experienced by the victims, as evidenced by the discussions of the cases of Mr. Ao and Jin Kim Hok. That is not to suggest, however, that Westenholz and the shareholders of the Bangkok Tramway Company were forced to bow to local attitudes and expectations. Rather, the actions of the company and its management in conforming to local customs are more accurately viewed as strategic behavior aimed at limiting the liability of the company in cases of accidental injury and death. The assumptions about liability and the practice of compensation that the Bangkok Tramway Company adopted in cases of injuries sustained by Siamese legal subjects articulated with a distinctive strand of Siamese cultural practices in cases of injury and death. In many ways, they mirrored the practices of elite Siamese, which reflected a privileged sense of liability and the purview to dictate the terms of their own exposure and the amount of compensation due to injured parties.

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<sup>79</sup> Westenholz, “Street Railways in Siam,” 414-415.

One salient case in demonstrating the nature of this privilege is that of a traffic accident involving a high-ranking royal official named *Krom luang* Phichit Prichakon, a half-brother of King Chulalongkorn, in February 1896.<sup>80</sup> An open horse-drawn cart (*rot keng*) was travelling along the main road (*Thanon fuang nakhon*) when a sedan drawn by a pair of horses (*rot kup thien ma khu*) abruptly pulled out in front of it at a busy intersection at *Ban Mo*—an area of the central city known for, and named after, its pottery industry. The horse-drawn cart violently crashed into the back of the sedan. In the impact, the driver of the cart, named Nai Pao, was thrown clear of the scene, injuring his left elbow and temple when he landed on the road. Jin Kuai, the sixteen-year-old Chinese laborer who was with Nai Pao in the cart at the time of the accident, however, remained seated on the cart. The horse drawing Nai Pao's cart evidently veered away from the sedan, but the impact of the cart broke the rear axle under the sedan and the weight of the rear of the sedan crashed down on Jin Kuai's chest.<sup>81</sup>

Nai Koet, the police officer who had been assigned to watch over the intersection, rushed to the scene of the accident and immediately apprehended the horses attached to the sedan so that the driver could not flee. The driver alighted from the sedan and approached the police officer, informing him that the sedan belonged to Prince Phichit, and that his highness was seated in the sedan at the time of the accident. Prince Phichit then identified himself and ordered the police officer to release his sedan.<sup>82</sup> The police officer recognized the prince and followed his command, allowing the Prince to go on his way. He then turned his attention to Nai Pao, ordering that he, his cart, and the young Chinese man be led to the local police station.

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<sup>80</sup> NA R5 N 23/30.

<sup>81</sup> NA R5 N 23/30, 3.

<sup>82</sup> NA R5 N 23/30, 4.

At the police station, Nai Koet assessed the injuries sustained by the two men. He first noted Nai Pao's bruised and scraped temple and elbow, and then continued with the injuries of Jin Kuai, which were considerably more serious. Jin Kuai's chest was bruised and bleeding and blood was running from his mouth and nose.<sup>83</sup> Nai Koet realized the possibility that the young man had sustained injuries "inside his chest" that were beyond his ability to discern, and he sent him to the Police Hospital, where he was attended to by the head physician, Dr. Meng Yim.<sup>84</sup> Meng Yim's report on the physical condition of Jin Kuai attests to the presence of what he called "bad blood" (*luat rai*) in his lungs.<sup>85</sup> Meng Yim despaired at his chances of recovery, acknowledging that he was unable to purge the bad blood.

Prince Naret, Minister of Local Government, was informed of the situation by police in the wake of their investigation. He wrote a private letter to Prince Phichit concerning the events. In the letter, Naret addressed the injuries sustained by Mr. Pao and Jin Kuai, and the inability of the doctors to purge the blood from the latter's lungs. Naret noted the possibility that the injuries could prove fatal.<sup>86</sup> In a telling passage, Prince Naret then suggested in deferential terms that Prince Phichit should show "kindness" (*khvam metta*) to the injured parties, and either "present a compensatory payment or make arrangements to take care of [the cost of] medical treatment."<sup>87</sup> He added that such were the appropriate measures given the circumstances, and according to

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<sup>83</sup> NA R5 N 23/30, 5.

<sup>84</sup> The letter reads: "*Tae thi khang nai na ok nan ja pen prakan dai lua thi ja phikro*" (NA R5 N 23/30, 5). The attending physician, Dr. Meng Yim, whose name suggests Chinese ancestry, was the head physician at the Police Hospital in central Bangkok from its inauguration in August 1892 (*BT* 31 August 1892). He would play a significant role in the introduction of forensic medicine in Siam, which I will discuss in chapter six, below.

<sup>85</sup> NA R5 N 23/30, 8. The diagnosis of 'bad blood' (*luat rai*) in the lungs is likely a description of a collapsed or punctured lung.

<sup>86</sup> "*Phikhro du na ja pen antarai [thueng chiwit] ko ja pen dai*" (NA R5 N 23/30, 11).

<sup>87</sup> "*Prathan ngoen tham khwan ru rap pai jat kan-raksa phayaban ko ja pen kan-di*" (NA R5 N 23/30, 11).

Naret's view of the situation, if the Prince showed "kindness and benevolence towards those common people who are suffering in the appropriate manner," then "[your highness] would be free from any fault that might lead others to criticize your highness."<sup>88</sup> Naret appended a copy of the police report and the opinion of the attending physician to his letter to Prince Phichit, so that there could be no doubt over the gravity of the injuries sustained by the other parties.

The supreme irony of this case—and what elevates it above the status of mere historical anecdote—is that Prince Phichit was at the time the Minister of the newly created Siamese Ministry of Justice (see Figure 5).<sup>89</sup> A high-ranking prince, Phichit had been singled out at a young age from among King Chulalongkorn's many siblings as having a legal mind, and served as an apprentice (to Prince Thewawong) during a formative era in the creation of the country's nascent national justice system. Unlike many of his siblings and royal contemporaries, however, Phichit was never sent abroad for his education; "For this reason," legal scholar David Engel suggests, "his ideas of justice were more strongly rooted in the traditional than was true in the case of his brothers and nephews."<sup>90</sup> During his long and distinguished legal career, Prince Phichit had already served as the head of the Supreme Court (*san dika*) and the central civil court in Bangkok (*san phaeng klang*). During his tenure as Special Commissioner (*kha luang phiset*) to Chiangmai in 1884 Phichit had been instrumental in establishing the International Court,

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<sup>88</sup> "Phon kho khwam sung ja mi phu ti tiem nai phra ong than phrao dai uea fuea karuna kae ratsadon thi jep buai nan tam somkhuang leao mom chan hen khwam dang ni" (NA R5 N 23/30, 11).

<sup>89</sup> The Ministry was formed on 25 March 1892, with another of King Chulalongkorn's brother's at the helm (Prince Svasti Sobhon); Prince Phichit was appointed in October 1894 (see Loos, *Subject Siam*, 49).

<sup>90</sup> David M. Engel, *Law and Kingship*, 9. Phichit's literary works also shed some light on what might be called his "traditional" mindset; see Thanet Aphornsuvan, "Slavery and Modernity: Freedom in the Making of Modern Siam," in *Asian Freedoms: The Idea of Freedom in East and Southeast Asia*, David Kelly and Anthony Reid, eds., (Cambridge: Cambridge University Press, 1998), 161-186, 180 and nt. 51.

which was invested with limited power to adjudicate commercial matters between Siamese and foreign (British) subjects in the northern capital.<sup>91</sup>



Figure 5: Prince Phichit Prichakon, Minister of Justice (Source: [th.wikipedia.org/พระเจ้าบรมวงศ์เธอ\\_พระองค์เจ้าดัดฉวีนางคฤศล\\_กรมหลวงพิชิตปรีชากร](http://th.wikipedia.org/พระเจ้าบรมวงศ์เธอ_พระองค์เจ้าดัดฉวีนางคฤศล_กรมหลวงพิชิตปรีชากร); accessed 11/20/2012).

Apart from the hypocrisy of a sitting Minister of Justice eschewing the halls of justice for the adjudication of his own civil affairs, the accident involving Prince Phichit is important for what it reveals about the logic and agency behind compensatory gift giving in cases of injury and death involving elite Siamese parties. When the party at fault in a civil matter (the tortfeasor) was a member of the Siamese elite, their social and economic status mitigated the effectiveness of traditional modes of compensatory reasoning and practice. Both the appeals to communal wellbeing—the “restorative” logic—and the hierarchical social channels through which the latter found productive expression were largely inapplicable when the tortfeasor was a member of the elite royal classes. In such cases the tortfeasor therefore had a great deal of latitude in deciding the appropriate outcome. And in this era of rapid legal change, recourse to the formal

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<sup>91</sup> Akiko Iijima, “The ‘International Court’ System in the Colonial History of Siam,” *Taiwan Journal of Southeast Asian Studies* 5, no. 1 (2008), 31-64, especially 53-4. Iijima offers a comprehensive history of the International Court at Chaingmai that focuses on Siam’s relations with British Burma and its “internal colonization” of northern provinces.

institutions of justice was evidently seen as an optional or voluntary course of action at best, even for an official whose entire career had been devoted to establishing such institutions.

When tortfeasors were members of the Siamese elite, they were essentially free to unilaterally assess their own liability and the value of the loss incurred by the victim—up to and including the value of the victim’s life—offering whatever compensation they deemed appropriate. Yet in spite of the fact that they enjoyed greater license in these transactions than average Siamese subjects, the Siamese elite nevertheless parsed their compensatory actions in the terminology of traditional forms of remediation aimed at repairing the social fabric in the wake of accidental loss in the community. That is to say, the compensatory gift-giving of the Siamese elite ostensibly fell within the range of culturally expected behavior in cases of accidental injury and death, and payments were described accordingly.

Insulated by extraterritorial treaty protections the Bangkok Tramway Company, its managers, and legal representatives, enjoyed a similar degree of license in their dealings with Siamese subjects and Chinese immigrants who experienced loss on the tramway tracks. Their compensatory gift giving conformed to the ethos of the traditional Siamese practices involved in communal mediation, yet they exercised a similar degree of latitude in deciding the terms and conditions of their payments and the extent of their participation. Incidents in October and November 1898, reveal that up until the final years of the nineteenth century the subject of compensation and liability in cases of injury remained a matter left largely up to the discretion of the Bangkok Tramway Company. On 17 October 1898, the *Bangkok Times* announced “The child who was run over recently by a tramway car has had its leg amputated, and is progressing favourably.” “As to the matter of compensation,” the article continued definitively, “everything

is in the hands of the Company's lawyers."<sup>92</sup> A few weeks later, a train was bearing down on an errant child playing on the tramway tracks when the child's grandmother rushed over to the rescue. She was too slow, however, and after being struck the tramcar ran over both her chest and the child's leg. The grandmother was killed instantly, while the child was not expected to survive the grave injuries. After registering their surprise that such "accidents in Bangkok are not more frequent," the editors of the *Bangkok Times* concluded, "In the present case the occurrence has all the appearance of being a sheer accident, and the officials of the Company have shown every kindness towards the relatives of the deceased."<sup>93</sup> The language employed by the *Bangkok Times* in describing these instances of death and injury and the subsequent calculation of compensation is suggestive of a peculiar legal subjectivity in traditional Siamese society. The Bangkok Tramway Company, like elite Siamese subjects, enjoyed substantial exemptions from the social mechanisms that enforced obligatory forms of action in lieu of civil litigation.<sup>94</sup>

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<sup>92</sup> *BT* 17 October 1898.

<sup>93</sup> *BT* 7 November 1898; the child died soon after the accident (*BT* 8 November 1898).

<sup>94</sup> There is also evidence to suggest that in some rare cases the Bangkok Tramway Company was able to capitalize on tacit forms of social allegiance (akin to the client-patron social relations enjoyed by Siamese elites) in order to mitigate its losses. In another of the many tragic accidents along the tracks of the Bangkok Tramway Company, an employee of the company lost his own daughter. On a Sunday afternoon in the middle of the hot season, in April 1894, "While No. 3 car was traveling at a good speed along the middle section of the electric system, the driver suddenly noticed a Siamese infant of about 12 months old creeping across the lines, a few yards in front of the car. He at once put on the brakes and did everything possible to stop the car, and then jumped on the cow-catcher in front, with the purpose of picking up the child, just as he bent forward to grasp the infant, a sudden jerk overwhelmed him, and he narrowly escaped being run over himself. The child was lying so close to the ground that the cow-catcher [a device intended to redirect would-be victims away from the wheels of the tramcar] failed to save it, and the car passed over it and caused instant death (*BT* 4 April 1894)." "The father of the child," the story notes in conclusion, "is employed by the Tramway Co. as a clerk." This particular case does not appear in the inquest files maintained by the Ministry of the Capital; the police evidently did not conduct an investigation into the death of the young girl and no mention is made of compensation paid by the company to the girl's father.

## **Conclusion**

When the Bangkok Tramway Company introduced passenger rail travel to the crowded streets of the Siamese capital in the final years of the nineteenth century, the alluring promise of urban transit was mired by the tragic loss of life and limb. The silent majority of those killed and injured were individuals who fell under the de facto category of Siamese legal subjects. In dealing with these legally and socially marginal victims, the foreign managers of the company worked through extrajudicial channels and offered forms of compensation that corresponded to traditional expectations arising out of Siamese social practices and cultural repertoires. The company's managers, who occupied a liminal status in the broader socio-cultural world inhabited by the majority of Bangkok's residents, appealed to these practices in order to limit their financial liability. For tortfeasors who were protected by extraterritoriality—including foreign residents and business ventures—the ability to partake in traditional extrajudicial modes of remediation for loss provided a considerable amount of leeway in acknowledging liability and determining appropriate compensation. With the tacit approval of officials in the Siamese Ministry of the Capital, these instances of loss did not amount to a challenge to the Siamese legal system, such as it was. Instead, the valorization of the practices by Siamese officials and the Siamese subjects who were the victims of accidental loss helped to create a new form of legal life—a realm of customary law—within the plural legal arena of treaty port Bangkok. Siamese customary law effectively extended the privileges enjoyed by elite Siamese social actors to foreign residents and their corporate endeavors; it also married these forms of privileged action with what were—in the Siamese context—unprecedented forms of documentation and indemnification. The forms of legal life that grew out of these practical encounters in what was

an interstitial era in Siamese legal history are an overlooked aspect of modernizing legal change in Siam. In addition to providing a window onto the realities of social life under extraterritoriality, they offer important insight into the process of modernizing legal change in Siam in the era of high imperialism.

The assemblage of customary civil law in Siam came together in a context that was in crucial ways devoid of authority. The cases discussed below demonstrate that the Bangkok Tramway Company and its managers were not sure to whom they should turn as an authority in matters of civil law. Documents suggest that they understood such civil matters to fall under the jurisdiction of the Ministry of the Capital, and the managers approached Prince Naret, head of that ministry, for approval when engaging with Siamese subjects according to traditional compensatory practices. But the company's representatives were not content with extrajudicial forms of remediation alone, and they sought legal documentation to valorize their actions and indemnify them against future liability. They willingly interacted with traditional Siamese civil law when it suited their interests, but they had their own concerns that could not be addressed adequately by such customary forms of socio-legal life. In these respects, the practice of customary civil law in Siam bears striking similarities with customary law throughout much of the colonial world.

Each case of the loss of life and limb on the tracks of the Bangkok Tramway Company was a discrete social entanglement that required practical cross-cultural labor to unwind. The individual outcomes—extrajudicial payments that suited the strategic interests of the company while appealing to the cultural sensibilities of Siamese subjects—were part of a broader pattern of cross-cultural engagements that were beginning to redefine social and political life in late nineteenth-century Siam. Although these encounters fall outside the purview of narratives of

modernizing legal change, they are nevertheless a crucial part of the story of the formation of a modern legal system in Siam; they allow us to glance the prehistory of the Siamese legal subject at a constitutional moment. By attending to these tragic events and their aftermath, we glimpse the inchoate Siamese legal subject at a unique historical moment, as it was simultaneously constituted as the object of different and competing cultural and social logics. These events reveal the Siamese subject as it was identified in practice—through pragmatic encounters—at a historical moment long before their rights and obligations were codified and articulated in theory in the form of modern legal codes.

The following chapter pursues the tragic but historically productive legacies of tramway technology in Bangkok by attending to cases of injury and death involving foreign legal subjects residing in Siam. It explores how the plural legal environment, combined with new forms of expertise and social agency, became a contested arena for discussions over the value of life and limb. Whereas this chapter demonstrated how competing interests and moral logics were asserted over the bodies of Siamese legal subjects, the injuries sustained by the city's foreign residents on the tracks of the Bangkok Tramway Company would likewise provoke antagonistic expressions of personal, professional, and national interest. For Siamese subjects, extrajudicial compensatory payments served to reconcile—for a time—competing visions of how to make sense out of human loss. But in chapter two, the injuries of foreign residents provoked jurisdictional politics that laid bare the tensions of liberalism in an age of competitive imperial projects.

CHAPTER TWO  
TREATY PORT TORT: MEDICINE, LAW, AND LOSS  
UNDER EXTRATERRITORIAL LAW

**Introduction**

While chapter one explored the negotiation of civil law through cases involving the death and dismemberment of Siamese legal subjects on the tracks of the Bangkok Tramway Company, this chapter interrogates the theory and practice of transnational civil law under extraterritoriality. When foreign residents fell victim to accidental injury and death in the Siamese capital, issues of legal subjectivity and questions of jurisdiction complicated the actuarial calculus of civil law and remediation. The proceedings were further tangled by the arrival of new species of social actors—including foreign legal subjects, barristers, physicians, journalists, and above all limited liability corporations such as the Bangkok Tramway Company. By foregrounding the ways in which technological change and the arrival of new social actors interrupted established social relations, and attempting to see these disruptions as the variables for the work of law as mediator, this chapter undermines the tendency to think of law as always authoritative and already institutionalized.

At stake is a new perspective on law in the context of modernizing legal change—its origins, function, and agents. To that end, this chapter foregrounds the social and material conditions of legal change, rather than focusing on codified legal ideas, procedures, and institutions. It privileges passenger rail travel, extraterritorial legal privileges, and competing legal jurisdictions over and above the process of adopting legal codes and institutions fashioned after western and colonial models. This chapter is, therefore, crucially, about understanding

Bangkok as a site of legal evolution, and not simply a site for the transplanting of legal changes that occurred abroad. It offers further demonstration of the assemblages that took shape around injured and dead bodies, and the forms of agency that acted on and through those assemblages to shape legal culture in turn-of-the-twentieth-century Siam.

### **Localizing Legal Change**

In the following pages, I explore the loss of life and limb on the tracks of the Bangkok Tramway Company from the perspective of the competing legal jurisdictions created by extraterritorial law and the incomplete sovereignty of the Siamese state. Lauren Benton's notion of "jurisdictional politics," which refers to "conflicts over the preservation, creation, nature, and extent of different legal forums and authorities," provides one scale for the inquiry.<sup>1</sup> Jurisdictional disputes were integral to the definition of cultural boundaries and were expressly manipulated by social actors for that reason, as the following discussion demonstrates. Although this chapter adopts Benton's scale of socio-legal interaction across competing jurisdictions and repeatedly invokes the plurality of the legal world in treaty port Bangkok, a crucial caveat is that none of the competing jurisdictions should be regarded as monolithic legal systems. The legal conflicts and discourses explored in this chapter confirm Benton's maxim that "no legal sphere (whether defined by jurisdiction, municipal law, religious affiliation, or legal cultures) constituted a closed world; in practice and in political imagination, legal relations always reached outside."<sup>2</sup> Even the British Consular Court, (which dominated the competition among the plural jurisdictions of the day), cannot be uncritically regarded as merely a local iteration of British metropolitan law in Siam;

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<sup>1</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), 10.

<sup>2</sup> Lauren Benton, "Law and Empire in Global Perspective: Introduction," *American Historical Review* 117, no. 4 (2012): 1092-1100, 1093.

crucial developments in British common law in the nineteenth century were left on the docks of London, and pivotal debates over loss and liability had to be played out anew in the British Consular Court in Bangkok, as the following discussion will demonstrate.

This chapter returns to the phenomenon of extraterritorial law in discourse and practice in order to locate other forms of agency and to consider the negotiation of Siam's legal modernity outside of the constraints of the narrative of codification and the abrogation of unequal trade treaties. Eschewing the halls of legislative authority, I analyze quotidian tragedies and the forms of social contestation that occurred in their wake. The framework of my investigation of law in a multi-cultural environment is adapted from Sheila Jasanoff's work on contemporary American legal culture, which calls attention to how "the legal process mediates among conflicting knowledge claims, divergent underlying values, and competing views of expertise."<sup>3</sup> Like Jasanoff, I am interested in the ways in which "scientific and technological developments slice into settled social relationships and compel a redefinition, through law, of established rights and duties."<sup>4</sup> The paradigm of the "Westernization" of Siamese law fails to account for the complex interactions of technology, expertise, and law during the interstitial period prior to the codification of modern legal codes. Moreover, it obscures the locally specific nature of debates over the implications of technology on social life, debates that were articulated in civil legal proceedings. Legal history at the level of practice—as opposed to legislation (codification)—requires that we take seriously the work of plaintiffs, defendants, barristers, and juries as they confronted the challenges posed by technological and social change.

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<sup>3</sup> Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Cambridge, Harvard University Press, 1995), xiv.

<sup>4</sup> Jasanoff, *Science at the Bar*, 19.

But complicating the role of law as mediator of sociotechnical change is the fact that “law and science are involved in constructing each other.”<sup>5</sup> It is therefore necessary to attend to the prominent role of medical and legal expertise in the debates over loss and liability that played out across the plural legal arena of late-nineteenth-century Bangkok. I approach these forms of expert knowledge through their professional incarnations, lawyers and physicians, and demonstrate the opaque interactions of the two in mediating the new social realities created by social and technological change. Lawyers in late-nineteenth-century Bangkok were opportunistic and worked to challenge tacit ideas of loss and liability that informed both legal practices and the tentative consensus of the cosmopolitan foreign community. But the legal profession itself was fractious and surprisingly diverse. Medical science, which acted in both a curative and authoritative medico-legal capacity in cases of injury and death, further complicated this already fraught legal environment. In the period under consideration, the plural jurisdictions in Siam were called upon to mediate not only the role of medical expertise per se, but peculiar incarnations of medical expertise in the form of social actors with their own interests in the affairs being adjudicated. That is to say, medical experts—in the same manner as legal experts—helped shape the legal context of medicine while also shaping the broader social world.<sup>6</sup> The foreign language press was a surprisingly critical voice, helping to untangle and articulate the vested interests of these experts, while constantly alluding to the broader imperial stakes of debates over law and liability in Bangkok, and in the colonial world at large.

In the final analysis then, these individual contests over legal liability and the value of a human life in Bangkok must be situated within the global historical context of high imperialism.

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<sup>5</sup> Jasanoff, *Science at the Bar*, 20.

<sup>6</sup> For an introductory discussion of such dynamics in science studies scholarship, see Bruno Latour, “Postmodern? No, Simply Amodern. Steps Towards an Anthropology of Science: An Essay Review,” *Studies in History and Philosophy of Science* 21, no. 1 (1990): 145-71, 147.

Scholars have recently come to recognize the fracturing of a European consensus on Empire in the late nineteenth century, and they have begun to demonstrate the heterogeneity of liberal imperial projects.<sup>7</sup> In addition to land grabs, competitive imperialism in this era was articulated through debates over liberal governance, which was the universalizing political ideology of the day. The trans-imperial contests discussed in this chapter help to bridge the gap between political theorists of liberal imperialism in the metropole<sup>8</sup> and the agents of empire who inhabited and acted upon these ideologies.<sup>9</sup> The arguments and actions of self-interested individuals were grounded in moralistic assertions about the superiority of particular forms of national-cum-imperial liberal legal culture. These practical debates over the value of life and limb must be understood as part of the patrimony of social, legal, and political change in twentieth-century Siam, and not merely in a discursive sense. These intersections of bodies, rails, medicine and law provide crucial insight into the “sociohistorical constitution of forms of liberal subjectivity” in Siam.<sup>10</sup>

### **“Moving to the Death”: Railways and Legal Change in British Law**

Railways were at the very center of debates over the limits of fault, negligence, and liability in metropolitan Europe throughout the nineteenth century. After steam power had revolutionized

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<sup>7</sup> See, for instance, the essays collected in Matthew P. Fitzpatrick, ed., *Liberal Imperialism in Europe* (New York: Palgrave Macmillan, 2012).

<sup>8</sup> See, for example, Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2006).

<sup>9</sup> Such arguments were not limited to the official ideologies of empire that were articulate in the metropole; they were likewise expressed by the non-official but still partisan proponents of particular empires linked to European nation-states—members of what Elizabeth Kolsky calls the “third face” of empire (see her *Colonial Justice in British India* [Cambridge: Cambridge University Press, 2010]).

<sup>10</sup> Andrew Sartori, “The British Empire and Its Liberal Mission,” *The Journal of Modern History* 78 (2006): 623-642, 624.

the production and movement of commodities in the early nineteenth century, it turned steamships and railways into passenger transport vessels, which increasingly became a threat to the public wellbeing. News of boiler explosions and the spectacular carnage that they wrought prompted public discussion of liability due to negligence in the context of industrial business ventures and public transportation. Passenger rail travel likewise produced highly visible cases of injury and death that prompted calls for greater legal oversight of industrial ventures, a more defined sense of liability, and a mandate for the compensation of victims. In mid-nineteenth-century Britain, the public nature of injury and deaths wrought by industrial steam power—and especially passenger rail travel—had a direct role in the transformation of traditional British legal ideas and practices concerning accidental death.<sup>11</sup>

The deodand was a legal instrument of British common law that could be applied by a jury that was convened by a coroner as part of an inquest into a case of sudden or unnatural death. It stipulated that in cases where “an animal or inanimate object caused or occasioned the accidental death of a human being,” the object in question had to be forfeited by its owner.<sup>12</sup> The deodand evolved within Common Law as a way to deal with certain kinds of human death, which were regarded as events whose effects “transcended mundane considerations, and entailed expiation in one form or another.”<sup>13</sup> In theory, the deodand, the surrendered object that had “moved to the death” of another person, was sold and the proceeds were used by the Royal

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<sup>11</sup> The following discussion will focus on changes in British law related to the introduction of passenger train travel, but these technology developments were equally transformative in other legal jurisdictions. See, for example, Robert A. Silverman, *Law and Urban Growth: Civil Litigation in the Boston Trial Courts, 1880-1900* (Princeton: Princeton University Press, 1981), especially chapter six, “Accidents.”

<sup>12</sup> Teresa Sutton, “The Deodand and Responsibility for Death,” *The Journal of Legal History* 18, no. 3 (1997): 44-55, 44.

<sup>13</sup> Jacob J. Finkelstein, “The Goring Ox: Some Historical Perspectives on Deodands, Forfeitures, Wrongful Death and the Western Notion of Sovereignty,” *Temple Law Quarterly* 46, no. 2 (1973): 169-290, 197.

Almoner to sponsor a religious rite (thus, the Latinate name “deodand,” meaning ‘God-gifts’).<sup>14</sup> In actual practice, the value of the forfeited item was often assessed and the owner was given the opportunity to pay a fine equal to the assessed value, which was often (though not invariably) given to the relatives of the deceased by the local authorities.<sup>15</sup> Although the deodand underwent significant change over time and showed considerable variance in its application across different jurisdictions, one crucial feature remained true: there was never a systematic relation between the deodand and the notion of fault. As a legal instrument intended to deal with “transcendent” aspects of loss and as a relic of “a more superstitious age,” the deodand resisted explicit articulations of causality and fault.<sup>16</sup> The fortunes of the deodand as a legal instrument waxed and waned over the centuries, culminating in the mid-nineteenth century, when it made a brief but spectacular revival before being finally abolished by parliamentary act in 1846.<sup>17</sup>

The mid-nineteenth century revival of the deodand was inextricably linked to railway disasters, which briefly transformed the deodand into a punitive instrument for assessing fault. In a single year, 1840, deodands awarded by coroner’s juries in cases involving railway operators increased exponentially, rising from nominal amounts to thousands of Pounds Sterling based on

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<sup>14</sup> Elisabeth Cawthon, “New Life for the Deodand: Coroner’s Inquests and Occupational Deaths in England, 1830-46,” *American Journal of Legal History* 33 (1989): 137- 147, 137. Finkelstein argues that the deodand is evidence of the British Crown assuming the responsibility of “vicar of transcendent concerns and values,” even over and above the Church, and that foremost among those values was the “transcendent value of human life,” the loss of which required an act of expiation (“The Goring Ox,” 183).

<sup>15</sup> Harry Smith, “From Deodand to Dependency,” *American Journal of Legal History* 11, no. 4 (1967): 389-403, 390.

<sup>16</sup> *Ibid.*, 389.

<sup>17</sup> By all accounts the value of the deodands awarded by coroners juries had become nominal by the middle of the eighteenth century (see Smith, “From Deodand,” 394), though Sutton suggests that there were important exceptions to this rule, which might be suggestive of an emerging trend in the use of the legal instrument (“The Deodand,” 49).

the value of railway engines, which had contributed to injury and death.<sup>18</sup> The catastrophic train wreck at Sonning on Christmas Eve in 1841 proved to be the deciding event that transformed the deodand into a de facto legal instrument for assessing fault and awarding compensation to victims.<sup>19</sup> In a decisive break from the tradition of deodand common law, the coroner's jury summoned to hear the inquest called the Sonning wreck "willful murder" and awarded a deodand on the railway engine, which was owned by the Great Western Railway, in the amount of one thousand pounds sterling.<sup>20</sup>

The development of a new and potentially maiming technology such as industrial rail travel was not alone sufficient to transform the British legal apparatus surrounding accidental death; social interests and actors also played a crucial role. For politicians and industrialists alike, the Sonning railway disaster revealed the incongruity of traditional legal practices in the age of industry. Railway deaths were so pervasive and railroads so capital-intensive that the notion of deodand became 'irrational' when applied to such deaths.<sup>21</sup> While debating the merits of legal change, members of the British Parliament described the deodand as "extremely absurd and inconvenient."<sup>22</sup> In the wake of these developments, and with pressure from industrialists, British Parliament abolished the common law of deodand in 1846, under the Deodand Abolition Act.<sup>23</sup>

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<sup>18</sup> Smith, "From Deodand," 395.

<sup>19</sup> Sutton, "The Deodand," 46-7;

<sup>20</sup> Smith, "From Deodand," 395; Sutton, "The Deodand," 46.

<sup>21</sup> Roger Cooter, "The Moment of the Accident: Culture, Militarism and Modernity in Late-Victorian Britain" in *Accidents in History: Injuries, Fatalities, and Social Relations*, Roger Cooter & Bill Luckin, eds., (Atlanta, GA: Editions Rodopi, 1997), 112.

<sup>22</sup> Sutton, "The Deodand," 46.

<sup>23</sup> That same year, Parliament also passed the Fatal Accidents Compensation Act, a comprehensive measure aimed at indemnifying the railways in the event of fatal injuries. Both acts were sponsored by Lord Campbell (John Campbell, 1st Baron Campbell, 1779-1861). The Fatal Accidents Act closed a vast loophole in British civil law, which stipulated that there could

The legal change surrounding the deodand reflects a reordering of the socio-cultural habits of thought associated with accidental death in the wake of the introduction of a new technology: passenger rail travel. The abolition of the deodand inaugurated a new era in civil law, the law of torts, whereby accidental death became a mundane violation of human civil law and culpability was transformed into a matter subject to measurement by degree.<sup>24</sup> The implications of this specific negotiation between technological change and socio-cultural life, however, were apparently not modular. Although parliamentary law had helped achieve stasis in matters of liability and compensation in British common law in Great Britain, juries in the British Consular Court in Bangkok asserted their own—often antagonistic—views of negligence and liability for death and injury when adjudicating cases involving the Bangkok Tramway Company.

### **The Third Rail: Accidents, Compensation, & Tort Law in the British Consular Court**

In late 1891, the five-member juries of the British Consular Court in Bangkok took notice of the spate of injuries on the tramway tracks and began to award punitive damages to plaintiffs who filed civil charges against the Bangkok Tramway Company. According to the *Bangkok Times*, the case of a British lawyer who had his foot run over by a tramcar helped set the precedent.<sup>25</sup> A British jury awarded the lawyer the princely sum of six thousand dollars in damages in addition

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be no civil charges filed if the victim of a tort were deceased. “Lord Campbell’s Act” (as it is often called) made provisions whereby the family of the deceased could be awarded damages in the case of an accidental death. For more on the sociotechnical context of these laws, see Finkelstein, “The Goring Ox,” 170-180.

<sup>24</sup> Finkelstein, “The Goring Ox,” 195.

<sup>25</sup> *BT* 27 January 1892.

to his legal expenses.<sup>26</sup> For Siamese subjects, suffering loss on the tramway tracks meant being placed at the mercy of the company's managers for compensation (as discussed in chapter one). For foreign residents, however—including the growing number of Asian immigrants who had registered as the legal subjects (commonly referred to as 'protégés' after the French institution) of foreign legations in Bangkok—falling from a tramcar could result in a windfall. The decisions of five-member juries convened to adjudicate civil cases involving injury before the British Consular Court, however, were in many ways inimical to the liberal sentiments that informed foreign residents' views of the relation between law and loss—or at least the public discourse surrounding these matters in the English language local press.

Despite the incredible carnage on the tramway tracks in its early years of operation, there was a decided shift in the coverage of the Bangkok Tramway Company and its legal fortunes in the local press some four years after tramcars began plying the streets in 1888. By early 1892, the solemn reportage of accidental deaths and injuries had given way to scathing editorials about the abuse of civil litigation at the British Consular Court in Bangkok. Foreign residents filing suit against the Bangkok Tramway Co. had become so commonplace that it was a matter of farce. In an article titled "The Law and the Profits," the editor of the *Bangkok Times* opined, "Considering the size of the European community in Bangkok there is just about as much litigation going on now as is to be found to the square mile anywhere [in the world]."<sup>27</sup> The article comments on the recent upsurge in cases of civil litigation for injury and libel in the British Consular Courts. After the rotating juries of five British subjects had proven charitable in

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<sup>26</sup> Although the *Bangkok Times* refers to the award in "dollars," the award was most likely in the amount of six thousand *ticals* or *baht*. 'Tical,' a Portuguese/Malay loanword, was the name most commonly used by foreigners to refer to the Siamese currency until 1897, when the currency was standardized using a decimal system whereby one hundred *satang* equaled one *Baht*.

<sup>27</sup> "The Law and the Profits," *BT* 27 January 1892.

awarding lavish damages to plaintiffs in civil cases involving injury and defamation, the caseload had increased. The Bangkok Tramway Company had become the prime target for Bangkok residents with the financial means and legal rights to file a civil suit in the British Consular Court. The *Bangkok Times* satirically noted that since “pathetic” Bangkok horse-carts could not muster sufficient power to cause injury to pedestrians, would-be plaintiffs were limited to filing suit against the Bangkok Tramway Co., “So the inoffensive tram-car has had to stand the judicial racket since the epidemic set in, last year [late 1891].”<sup>28</sup>

Not long after the damages had been awarded to the unnamed British attorney whose foot was run over, a Chinese man injured his collarbone in January 1892, apparently as a result of falling from a tramcar. The Chinese man in question appears to have been registered as a British subject, which allowed him to file a claim against the Bangkok Tramway Company at the British Consular Court in Siam—with its sympathetic juries—in the amount of two thousand *ticals* (Baht).<sup>29</sup> When the charges were filed with the British Court, the *Bangkok Times* noted sardonically that the tramcar in question had had the misfortune of injuring an ‘expensive Chinaman,’ meaning, presumably, a Chinese immigrant registered as a subject with the British Consulate who thereby gained the legal right to file a claim in front of the sympathetic juries of the British Court. The management of the Bangkok Tramway Company erred on the side of experience in the case, hiring the very same British lawyer with the injured foot who—as a plaintiff—had cost them six thousand dollars in damages only months before. The brazen lawyer balked at the Chinese man’s request for damages, and told “the jury that fifteen *ticals* was

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<sup>28</sup> Ibid.

<sup>29</sup> This seems to be a rather extravagant claim for what sounds like a broken collarbone—but it pales in comparison to the six thousand Baht awarded to the attorney only a few months before; both verdicts are in stark contrast to the compensatory payments offered by the Bangkok Tramway Company in cases involving the death of Siamese subjects, which were commonly limited to eighty Baht (see chapter one).

ample compensation” for the injury to his collarbone. The jury, however, “curled its lip scornfully and gave the Celestial [Chinese man] what he wanted, on the basis [precedent] created by the jury in the [British lawyer’s] Feet *cause célèbre*.”<sup>30</sup>

The *Bangkok Times*’ editors lamented what they saw as widespread abuse of all manner of tort litigation in Bangkok’s foreign consular courts, including the torts of libel and defamation. They remarked that “If this sort of thing goes on there will soon be but two classes of society here, the wealthy individuals with the soiled reputations or deteriorated feet, and the bankrupt parties who once expressed indiscreet opinions, and the insolvent tramway proprietors. And the Grand Panjandrum will be the lawyer man.”<sup>31</sup> And still—flouting the calls for tort reform in the Bangkok press—the tramway cars continued to maim and kill. In September 1892, when a Mr. Maclachlan was thrown from his horse onto the tramway tracks and barely escaped being crushed by an approaching streetcar, the editors wryly noted that in this way he had “escaped being made wealthy.”<sup>32</sup>

The discourse on the subject of civil litigation appearing in the English language press shows an overwhelming commitment to the tenets of nineteenth-century British liberalism. The verdicts awarded by British juries against the Bangkok Tramway Company were viewed as a misappropriation of the rule of law and a threat to private property. The editor of the *Bangkok Times* lamented the evolution of a new regime of civil law in the British Consular Court that he viewed as a contradiction to the natural (that is, British liberal) order of society. In actuality, the

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<sup>30</sup> “The Law and the Profits,” *BT* 27 January 1892.

<sup>31</sup> *Ibid.* The “Grand Panjandrum” seems to be a somewhat obscure literary or theatrical reference to a grandiose character.

<sup>32</sup> *BT* 19 September 1892. Maclachlan was himself a shareholder in the Bangkok Tramway Company; his stake in the company would come back to haunt him just a year later in an entirely different way, when he was the first shareholder to be sued by a lawyer attempting to test the limits of foreign incorporation (see below).

British juries in Bangkok had accomplished a rather incredible feat: they had managed to turn back the clock on half a century of legal change under Parliamentary rule in Britain, a period which had resulted in the eradication of an important element of British common law, the *deodand*. Through findings of liability and awards of punitive damages, juries in the British Consular Court in Bangkok had become a threat to the profitability of the Bangkok Tramway Company, and a drag on the dividends paid to its shareholders. But, as a registered limited liability corporation under British law, the Bangkok Tramway Company was not without rights.

### **Locating Liability (I): Jurisdiction**

In Bangkok, as in Europe, steam power likewise transformed commerce and transport. Industrial boilers burning rice husks and other biofuels were essential features of the mills that dotted the river's edge, where the rice from the central plains was milled into flour. Massive boilers on ships and railcars also fueled the steam-powered engines that moved people and goods around the globe in the late nineteenth century. Boiler explosions, the underside of this narrative of progress, were horrific, killing stokers and leaving engineers and others permanently scarred and disfigured by burns. News of high-profile industrial accidents in Europe reached Bangkok and prompted serious discussion of the regulation of risks associated with steam power in both industry and passenger transport.<sup>33</sup> In the final years of the nineteenth century, legislation governing negligence and liability had come to be seen as a requisite feature of the law codes of any country that aspired to the status of a "civilized" nation. Although corporate negligence and liability were discussed extensively in the Bangkok press at the time, the subject was never broached in relation to the proverbial elephant in the room: the Bangkok Tramway Company.

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<sup>33</sup> "Liability for Criminal Negligence," *BT* 30 May 1895.

The omission of the Bangkok Tramway Company from contemporary debates about negligence and liability remains something of a mystery. In many ways, the company was a natural target for legal actions aimed at defining (or expanding) the limits of liability in late nineteenth century Siam. Railways played a central role in the modern transformation of tort law in Anglo-American jurisdictions.<sup>34</sup> The peculiar exceptionality of the Bangkok Tramway Company from discussions of tort reform in Siam seems to have roots in the original contract granting the tramway concession, which was drafted and signed in 1887 between agents of the Siamese government (“The Committee of the Local Government,” precursor to the Ministry of the Capital) acting on behalf of the King and two foreign entrepreneurs residing in Bangkok (a British subject, Alfred John Loftus, and a Dane, Andre du Plessis de Richelieu).<sup>35</sup> That is not to say, however, that the granting of the concession was somehow exempt from legal reasoning. Far from it: the original tramway concession included extensive provisions governing the process of mediation over eminent domain land purchases, the value of property owned by the tramway concessionaires (in the event that the concession reverted to the state), and even the subject of reparations in cases where the tramway company damaged state-owned buildings. The question of liability in cases of injury, however, was left in a state of utter uncertainty that can only be explained with reference to the complicated matter of jurisdiction in a colonial treaty port subject to extraterritorial law.

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<sup>34</sup> As described above. For an overview, see R. W. Kostal, *Law and English Railway Capitalism, 1825-1875* (Oxford: Clarendon Press, 1994), especially chapters 7 (“‘The Instrumentality of Others’: Railway Accidents and the Courts, 1840-1875”) and 8 (“‘A Ruinous System’: Railway Companies and their Lawyers, 1825-1875”).

<sup>35</sup> King Chulalongkorn (King Rama V) himself was a major shareholder in the Bangkok Tramway Co., which might help to explain its peculiar inviolability when it came to discussions of negligence and liability. Edward Blair Michell, a British lawyer and sometimes-legal advisor to the Siamese state, served as notary on the occasion. Michell’s role in legal change will be discussed further below and in chapter three.

The original contract governing the tramway concession broaches the topic of liability for accidents and injuries in the third clause, concerning the use of roads and land where the tramway lines were laid. According to the contract, the “free right of way over all roads” and other places used to construct tramway lines is granted

Provided always that such rights will be exercised with a due regard to the convenience of all other vehicles or persons using the same roads or places, and that in case of any collisions or accidents occurring through the default or negligence of the Concessionaires or their workmen, or servants, the Concessionaires shall be liable in [sic] damages to be paid by [sic] the Tribunals having cognizance of such collisions or accidents in the same manner as if the said collisions or accidents had occurred through the default or negligence of a person not entitled to the benefit of this concession.<sup>36</sup>

The ambiguities of this clause are a direct reflection of the uncertain state of legal affairs in the Siamese capital at the time. Under extraterritorial law, jurisdiction was defined not by territory but by legal subject status. Injuries sustained by the residents of the Siamese capital could result in very different forms of legal (or often extrajudicial) action, which might likewise result in very different forms of remediation depending on their subject status.

In addition to the question of plural jurisdictions in the Siamese capital, the commonsensical reference to a normalized sense of “the default or negligence of a person” belies the fact that there was no agreement over these notions in cosmopolitan fin de siècle Bangkok. Notions of fault, negligence, and liability remained inextricably tied to distinct socio-cultural worlds and, in a few instances, the legal institutions that were established to represent those worlds in accordance with extraterritorial legal privileges.<sup>37</sup> But the lack of specificity concerning liability for damages in cases of accidental injury or death was not limited to Bangkok. Modern legal understandings of negligence and liability were still being worked out

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<sup>36</sup> “Tramway Concession, Bangkok, 5<sup>th</sup> May 1887” (NA R5 N/128).

<sup>37</sup> The metaphysical nature of such legal notions, and the process of their negotiation in Siam will be discussed at length in chapter three, below.

even in European metropolitan jurisdictions, and these ambiguities carried over to the consular courts established by foreign powers in Siam.

In an article on the topic of “Liability for Criminal Negligence,” the *Bangkok Times* observed that British law made provisions for such cases, while French law did not.<sup>38</sup> This meant that in cases of injury where a British subject was either harmed by or caused harm through negligence, the injured parties would have recourse to the British Consular Court. In cases such as a boiler explosion at a rice mill owned by a French protégé in May 1895, however, the victims, (who were Siamese subjects by default of not being registered as foreign subjects), had no apparent legal recourse. According to the *Bangkok Times*, “judging from the absence of inquests upon fatal accidents, and of prosecution where criminal negligence is apparent,” “French law makes no provision for such cases any more than does the Siamese”—a damning slight in the era of high imperialism, when law was regarded as an index of civilization.<sup>39</sup>

In the end, because the Bangkok Tramway Company was a limited liability corporation registered under British law, adjudication of civil cases against the company inevitably fell to the five-member juries summoned by the British Consular Court.<sup>40</sup> In effect, the expatriate British juries were called upon to use their legal power to mediate the effects of technological change in Bangkok. The introduction of a new technology, passenger tramways, had altered the realm of

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<sup>38</sup> *BT* 30 May 1895.

<sup>39</sup> *BT* 30 May 1895; Loos, *Subject Siam*, 103. Imperial rivalries often played out in the pages of the foreign language newspapers; see Hong Lysa, “‘Stranger within the Gates’: Knowing Semi-Colonial Siam as Extraterritorials,” *Modern Asian Studies* 38, no. 2 (2004): 327-354, 337.

<sup>40</sup> Civil cases in the British Consular Court in Bangkok were heard before five-member juries recruited from the relatively small number of British residents in the city. By the end of the century, the system had become problematic in the adjudication of assize cases at the British High Court in Singapore (*BT* 14 December 1900).

social possibilities in the city, and law was called upon to mediate these changes through the “redefinition... of established rights and duties.”<sup>41</sup>

### **Locating Liability (II): Transnational Corporate Law**

Before the abstract notions of negligence, liability, and fault could be debated in the aftermath of the arrival of passenger rail travel in Bangkok, the ramifications of corporate law would have to play out across the competing jurisdictions of the foreign consular courts. As British juries awarded onerous verdicts to plaintiffs, the management and shareholders of the Bangkok Tramway Company looked to the privileges of extraterritorial law for shelter. In an article published in a western trade publication, Aage Westenholz, the Danish manager of the company, acknowledged that in the wake of the “unreasonable verdict” of six thousand Baht in the case of the British attorney who “got his foot squeezed [by a tramcar]... desperate efforts have been made to get under some other [nation’s legal] protection.”<sup>42</sup> It was very likely Westenholz himself who hatched the plan to disband the Bangkok Tramway Company, a registered corporation under British law, and reincorporate as a Danish limited liability corporation in order to escape the punishing verdicts awarded to plaintiffs by British juries.

The move came during an “extraordinary” meeting of the management and shareholders at the home of the company’s director, Admiral Andre du Plessis de Richelieu, on 5 March 1892.<sup>43</sup> Those in attendance were likely focused on the first proposals mooted at the meeting, which concerned ambitious and expensive plans to introduce electric power on the New Road tramway line. The shareholders authorized the sale of 50,000 Ticals worth of bonds to pay for

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<sup>41</sup> Jasanoff, *Science at the Bar*, 19.

<sup>42</sup> Aage Westenholz, “Street Railways in Siam, and Siamese Customs,” *The Street Railway Journal* 7 (Aug. 1891): 414-415.

<sup>43</sup> “The Bangkok Tramway Company,” *The Straits Times*, 14 March 1892.

the improvements, which included the construction of a power generating station and the hanging of electrical lines along six miles of a heavily trafficked central artery. The agenda then turned to the question of the company's legal status as limited liability corporation under British legal protection. Three specific proposals were submitted, including (1) liquidating the assets of the Bangkok Tramway Company as currently constructed, (2) transferring and selling "this Company's business and property to another Company under Danish law with the same name and objects as this Company" with outstanding shares being converted as well, and (3) that the transfer be conducted under the stipulations of Section 204 of the (British) Straits Settlements Companies Ordinance 1889.<sup>44</sup>

While the resolution to introduce electric power seems to have passed without discussion, the dissolution and reincorporation of the company provoked some challenges. Perhaps wary of leaving the established institutional presence of the British Consular Court in Bangkok, shareholders questioned the wisdom of the move. Those responsible for the plot, (likely the two Danes, Westenholz and de Richelieu), allayed their fears by appealing to fundamental cultural differences between British and Danish law: "it was unprecedented, for a man, through an accident, being made rich in Danish courts."<sup>45</sup> They then appealed to standards of precedent in Danish tort law, asserting that "The highest damages heard of were a few thousand [K]roner; and

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<sup>44</sup> "The Bangkok Tramway Company," *The Straits Times*, 14 March 1892; "The Tramway Company's Troubles," *BT* 21 February 1894. For the British colonial legal codes, see Straits Settlements, *The Laws of the Straits Settlements 1835-1900: Revised up to and Including the 31st Day of December, 1919* (London: Waterlow & Sons, 1920).

<sup>45</sup> "The Bangkok Tramway Company," *The Straits Times*, 14 March 1892. The article does not attribute this phrase to anyone specifically, though it does seem to hint at a non-native command of English, and so might very well have been uttered by one of the Danes. Moreover, Westenholz's acquaintances report that he was "hesitant in his speech because he wanted to choose exactly the right words to express his thoughts"; see Susan M. Martin, *The UP Saga* (Copenhagen: Nordic Institute of Asian Studies, 2003), 20.

that man [the plaintiff in that case] was killed on the railway.”<sup>46</sup> By way of conclusion, the proponents of reincorporation cited the losses already incurred by the company due to the generous verdicts awarded by British juries. The resolutions were then put to a vote. They passed almost unanimously. The sole dissenting vote was cast by a Mr. J. Maclachlan, a British subject, “who said he was too patriotic” to vote in favor of abandoning British legal protection.<sup>47</sup>

The matter of the Bangkok Tramway Company’s incorporation underscores the contentious and nationalistic nature of debates over liberal forms of governance in a cosmopolitan port city. Efforts to shield the company and its shareholders from the costs of civil litigation gave rise to debates over the respective merits of political culture and business climate under particular national jurisdictions. The cold exigencies of personal financial interests intersected with the patriotic sentiments and longings of the expatriate entrepreneur. In the end, despite Maclachlan’s protest, the move to reincorporate under Danish legal protection was largely celebrated by those connected with the Bangkok Tramway Company. According to a visiting foreign correspondent from Singapore, a “native associated with the Company” cheered the move to change jurisdictions, observing that “[while] the ---- [British] Consul deals out justice with a heavy hand, the Dane is different.”<sup>48</sup> The anonymous native employee thereby registered a vote in favor of the business climate fostered by Danish corporate and civil liability law. Meanwhile, the manager, directors, and shareholders in the Bangkok Tramway Company all considered the scourge of punitive judgments awarded by British juries solved—until another accident occurred.

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<sup>46</sup> “The Bangkok Tramway Company, *The Straits Times*, 14 March 1892.

<sup>47</sup> “The Bangkok Tramway Company, *The Straits Times*, 14 March 1892. His name appears as ‘Machlachlan’ in the article but is consistently spelled ‘Maclachlan’ in the Bangkok press. In retrospect, Maclachlan’s dissent has an ominous quality, as the change in jurisdictions would soon become a matter of great personal concern to him, as discussed in the following section.

<sup>48</sup> “A Few Days in Bangkok,” *The Singapore Free Press and Mercantile Advertiser*, 7 July 1893.

### Expertise (I): “The Law and the Profits”

On the evening of 24 October 1893, “A child of about five years was run over by an electric tramcar... and sustained frightful injury.”<sup>49</sup> The little boy was rushed to nearby Bangrak Hospital and into the expert care of the American physician, Dr. T. Heyward Hays, who assessed the injuries and promptly took action. Dr. Hays “found it necessary to amputate both arms and one leg, unfortunately without avail, death supervening a few hours after the accident.”<sup>50</sup> Some two weeks after the boy passed away, Edward Blair Michell, an Oxford-educated attorney practicing law in Bangkok, filed a civil suit in British Consular Court on behalf of the father of the victim claiming two thousand Baht in damages (see Figure 6). The claim, however, was not filed against the Bangkok Tramway Company or even the attending physician who had amputated three of his child’s limbs. Instead, the suit was filed against Mr. J. Maclachlan.<sup>51</sup>

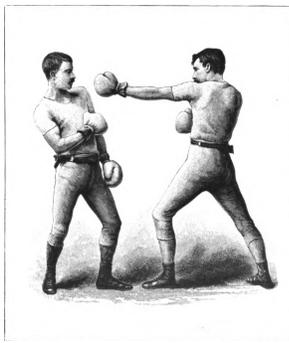


Figure 6: Illustration of a boxing maneuver from a manual written by E. B. Michell, who was a sporting enthusiast and recognized expert in boxing, rowing, and falconry. Source: E. B. Michell, “Boxing,” in *Fencing, Boxing, Wrestling* (London: Longmans, Greene, and Co., 1897), Figure IV (after page 130).

Maclachlan, a British subject working as a superintendent engineer at a rice mill in Bangkok, was not a manager, director, or even a driver in the employ of the Bangkok Tramway Company—nor was he present at the time of the accident or the ill-fated operation at Bangrak

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<sup>49</sup> *BT* 25 October 1893.

<sup>50</sup> *BT* 25 October 1893.

<sup>51</sup> *BT* 11 November 1893.

Hospital.<sup>52</sup> He was, however, a shareholder in the company (as noted above, in the discussion of the ‘extraordinary’ meeting of shareholders on 5 March 1892). In filing suit against Maclachlan, Michell mounted a challenge to the received ideas of liability in the British Consular Court. Specifically, his suit called into question the corporate status of the Bangkok Tramway Company and the limited liability enjoyed by its shareholders. As the *Bangkok Times* astutely observed, “the action against Mr. Maclachlan, a British subject, may be considered in the light of a test case.”<sup>53</sup> While assessing his clients’ legal options after the death of his son, Michell had likely initially explained that any claims against the newly reincorporated Bangkok Tramway Company would have to be argued in the Danish Courts in Copenhagen, where juries were reputedly more conservative in awarding damages.<sup>54</sup> At some point, however, Michell had seized on the idea that although the Bangkok Tramway Company “was formerly a registered public Company [under British corporate law]... [it] had since been wound up [dissolved] and had then become an unlimited partnership” (in terms of its de facto legal status vis-à-vis British law).<sup>55</sup> Under British corporate law, in an unlimited partnership—unlike in a limited liability corporation—

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<sup>52</sup> An entry for “Maclachlan, J.” appears in *The Chronicle & Directory for China, Corea [sic], Japan, The Philippines, Indo-China, Straits Settlements, Siam, Bornea, Malay States, &c. for the year 1892* (Hong Kong: The Daily Press, 1892), which lists his profession as “superintendent engineer, Hluang Narison Rice Mill” (587). By 1894, Maclachlan had moved to Wat Takien Rice Mill, where he worked as superintendent engineer for Chesug Teng (*The Chronicle & Directory... for the year 1894* [Hong Kong: The Daily Press, 1894], 328).

<sup>53</sup> *BT* 29 November 1893.

<sup>54</sup> There was no Danish Consular Court in Bangkok at the time, so a registered Danish limited liability corporation would have had the right to insist that all civil claims against it be adjudicated in Denmark. The managers of the Bangkok Tramway Company likely considered this as another form of deterrence in limiting their liabilities when they hatched the plan to reincorporate. The *Bangkok Times* would later draw attention to this injustice: “The [Bangkok Tramway] Company has a right to insist on any action against it being tried in Copenhagen. We do not say that they would do so, but a limited liability company has very little soul; its first duty is, or ought to be, to its shareholders; and it is not well that it should have such a power, practically putting it, if desired, beyond the reach of the law in the majority of cases” (*BT* 13 March 1900).

<sup>55</sup> *BT* 29 November 1893.

individual shareholders were liable for damages in excess of the value of their shares in the company. Michell decided to test his theory by filing a claim for damages against a British shareholder in the company in British Consular Court. In the coal mine of civil liability in turn-of-the-twentieth-century Bangkok, Maclachlan was chosen as the ill-fated canary.

Bangkok's lawyers could smell blood in the water, and shareholders in the Bangkok Tramway Company held their collective breath as Michell's brief went before the officials of the British Consul in Bangkok. Then, strangely—in spite of his own confidence in his legal argument and a general public consensus that the corporate charter and limited liability of the Bangkok Tramway Company had indeed lapsed—Michell abandoned his claims for damages against Maclachlan.<sup>56</sup> But the proceedings had already received too much attention in the Bangkok press, and had peaked the curiosity of the tiny and incestuous community of barristers. Before long, W. A. G. (William Alfred Goone) Tilleke, an ambitious Sinhalese attorney practicing law in Bangkok, took up the cause (see Figure 7). Tilleke filed charges in British Consular Court on behalf of a Chinese man whose daughter had received permanent injuries when she was struck by one of the Bangkok Tramway Company's horse-drawn cars. Ironically, Tilleke used Michell's own strategy of pursuing the individual British shareholders in the company against him: he named Edward Blair Michell, Esq., himself a shareholder in the Bangkok Tramway Company, as the defendant in his suit.<sup>57</sup>

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<sup>56</sup> *BT* 29 November 1893.

<sup>57</sup> The outcome of Tilleke's suit against Michell, which claimed 750 Ticals in damages, is unclear.



Figure 7: W. A. G. Tilleke. Source: *Twentieth Century Impressions of Siam: Its History, People, Commerce, Industries, and Resources*, eds. Arnold Wright and Oliver T. Breakspeare (London: Lloyd's, 1908), 95.

Several months later, Edward Henry French, H.B.M.'s consul in Bangkok, ruled in favor of Michell's claim that the Bangkok Tramway Company was no longer a limited liability corporation under British corporate law. French explicitly based his ruling on "the failure to produce proof that the Company had been properly [re]constituted a Danish one."<sup>58</sup> The ruling had grave implications for the shareholders in the Bangkok Tramway Company, particularly those who were British subjects. According to French's ruling, when the company was dissolved, it lost its legal status as a limited liability corporation and the protections provided by British corporate law.<sup>59</sup> This would not have been an issue had the company been properly reincorporated under Danish corporate law, but French ruled that there was not sufficient evidence to prove that it had in fact done so. In the absence of the legal protections provided by limited liability law under any foreign jurisdiction, French ruled that British shareholders in the Bangkok Tramway Company "were individually liable for damages" in the case of accidental

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<sup>58</sup> "The Tramway Company's Troubles," *BT* 21 February 1894.

<sup>59</sup> The *Bangkok Times* article ("The Tramway Company's Troubles," *BT* 21 February 1894) identifies the Limited Liabilities Act (1855) as the relevant legislation, but in fact the Companies Act (1862), which applied to corporations consisting of at least seven shareholders, was the relevant law governing companies in Great Britain (on the history of limited liability law in general, see Paul L. Davies, *Gowers and Davies: The Principles of Modern Company Law*, 6<sup>th</sup> Edition [London: Sweet & Maxwell, 1997]). British corporate endeavors in Asia, however, were more properly viewed as subject to the Indian Companies Ordinance 1866 (revised in 1882).

death or injury. While all the shareholders in the company were potentially at risk of civil litigation, British shareholders were in a particularly precarious position, lacking the protections of limited liability and vulnerable to the punitive awards of British juries at the consular court in Bangkok.<sup>60</sup>

In the wake of French's ruling—and with the specter of the looming civil suits over recent deaths and injuries—the management of the Bangkok Tramway Company convened an emergency meeting “for the purpose of considering the position of the British shareholders.”<sup>61</sup> Aage Westenholz took the lead in trying to secure evidence of the legal reincorporation of the company under Danish law. He soon acknowledged, however, that his efforts to get the Danish government to recognize the incorporation retroactively were not likely to succeed.<sup>62</sup> Public debate on the controversy focused on the procedural merits of corporate registration under Danish law. Danes in Bangkok claimed that the company did not need to be physically registered in Copenhagen in order to be considered a Danish company.<sup>63</sup> But the squabbles over the process of incorporation and changing flags of multi-national business ventures amounted to more than just a matter of immoderate British juries versus austere Danish ones. The public legal struggles over corporate law and registration masked a larger issue: the ambiguous and evolving sense of liability in western jurisprudence during the nineteenth century. The debates being played out across the competing jurisdictions of foreign consular courts in Bangkok struck

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<sup>60</sup> In order to participate in a corporate venture involving over seven shareholders, corporate registration was required by law; British shareholders in the Bangkok Tramway Company were therefore involved in “an illegal combination.” This unregistered status meant that British shareholders were liable to civil litigation in the British Consular Court in Bangkok; shareholders of other nationalities could at least rely on the protection of their foreign legations in such matters.

<sup>61</sup> “The Tramway Company’s Position,” *BT* 10 March 1894.

<sup>62</sup> “The Tramway Company’s Position,” *BT* 10 March 1894.

<sup>63</sup> *Ibid.*

at the very core of the emerging assumptions of legal liberalism in modern western juridical traditions, including fundamental questions about the legal rights of individuals and their obligations to one another. In late nineteenth century Bangkok, foreign barristers and physicians—not legislators—dictated the terms of the debate.

Not long after he had abandoned the civil claims against Maclachlan on behalf of his client, the British attorney Edward Blair Michell mounted yet another legal challenge to the received notions of liability in the Siamese treaty port. This time the incident was a fatal stabbing on the grounds of the Borneo Company's holdings in Bang Kho Laem near the southern terminus of the New Road tramway line. Michell claimed damages against the Borneo Company in the death of a laborer named Maidin Picha, who died after being stabbed by another employee. While making his case for damages to be awarded to Picha's widow, Michell argued for a more expansive definition of liability in cases of injury or death. "Speaking of the question of legal responsibility," the *Bangkok Times* paraphrased Michell's argument, "in all cases where death or injuries occurred, they had, in considering who was responsible, not only to look [at] who actually caused the death, but to all persons concerned."<sup>64</sup> Michell's brief appealed to precedents set in cases against railway operators, noting "In railway accidents caused by the negligence or improper conduct of servants, railway companies had, in hundreds and thousands [sic] of cases, had to pay compensation for deaths and injuries, and the same law applied in this case."<sup>65</sup> In the end, the jury disagreed with Michell, returning a verdict of no fault against the Borneo Company in the death of Maidin Picha.

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<sup>64</sup> *BT* 31 March 1894.

<sup>65</sup> Michell's appeal to precedents set in cases of railway accidents was not an incidental part of his legal argument for enlarging the scope of liability in cases of injury and death. Railways were at the very center of debates over the limits of fault, negligence, and liability in metropolitan Europe throughout the nineteenth century (as discussed above in relation to the changing fortunes of the deodand in British Common Law).

While attorneys used their legal expertise to poke and prod at received definitions of liability and fault—as well as each other—they were lampooned in the English language press. The *Bangkok Times* was particularly fond of criticizing the tiny cohort of legal professionals who dominated legal proceedings in Bangkok.<sup>66</sup> The paper held the attorneys responsible for the unrestrained growth of civil litigation in the British Consular Court in the final decade of the nineteenth century.<sup>67</sup> In fact, there is reason to believe that the press was justified in its low opinion of the legal profession in Bangkok at the time, particularly the lawyers practicing law at the British Consular Court.

In 1894, reports surfaced about how British lawyers in Bangkok had conspired to keep their numbers small and to restrict the right to bring cases before British consular courts to lawyers who were British subjects.<sup>68</sup> W. A. G. Tilleke, (the Sinhalese lawyer who had sued E. B. Michell), who arrived in Siam in 1890, was particularly jealous of the legal privilege to try cases in the British Consular Court. For a time, in 1892, Tilleke was “Bangkok’s only [credentialed British] lawyer.” He seems to have been held in rather high regard at the time, and The *Bangkok Times* ran a report on his heritage, confirming rumors that he was, in fact, “a real Kandyan chief.”<sup>69</sup> Tilleke was a vehement defender of the proprietary rules that prohibited non-British barristers from trying cases before the British Consular Court in Bangkok. When an American attorney named Kellet arrived in Bangkok intending to start a private practice, Tilleke objected vociferously at the prospect of encroachment on his terrain.<sup>70</sup> Tilleke himself, however, was regarded as something of an imposter by members of the foreign community, who deemed that a

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<sup>66</sup> Strangely, the newspaper failed to indicate the farcical background of cases such as Tilleke vs. Michell (above), which seem ripe for satire.

<sup>67</sup> “The Law and the Profits,” *BT* 27 January 1892.

<sup>68</sup> “Philanthropy,” *BT* 14 April 1894.

<sup>69</sup> *BT* 6 August 1892.

<sup>70</sup> “Philanthropy,” *BT* 14 April 1894.

British barrister should not be a “product of local [Asian] manufacture” (and should presumably possess a whiter shade of skin tone).<sup>71</sup>

In time, Tilleke would nevertheless rise in esteem along with the growth of Siamese state legal institutions. He would eventually take the title of “Acting Attorney General” in his duties at the Siamese Criminal Court.<sup>72</sup> His rise within the legal apparatus of the Siamese administration was paralleled by his increased profile in the public sphere when he acquired ownership of the *Siam Observer*, the English language competitor to the *Bangkok Times*. Tilleke was accused of using his editorial powers to advance his legal interests, which made him a target for challenges from foreign legal professionals and his competitors in the press. When he was found to be in contempt of court for publishing editorial comments on a pending case in which he was involved, the *Bangkok Times* cheered the penalty against him, commenting, “here we have once more emphasized the incongruity of a person engaged in running a newspaper being employed as ‘Acting Attorney-General.’”<sup>73</sup> On the occasion of another dispute over Tilleke’s penchant for using his newspaper (“his organ”) as a forum for legal arguments, the *Bangkok Times* facetiously noted, “It is becoming more and more uncertain where Mr. Tilleke will go when he dies.”<sup>74</sup> Such instances of critical journalism cannot simply be attributed to—and dismissed as—commercial rivalry. In this and other cases, the foreign language press proved

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<sup>71</sup> *BT* 16 November 1895.

<sup>72</sup> *BT* 24 August 1898.

<sup>73</sup> *BT* 5 November 1897.

<sup>74</sup> *BT* 29 December 1894. Tilleke’s commercial endeavors were by no means limited to the legal profession and the press; in time he would also take an ownership stake in a shipping concern and own and manage the famed Oriental Hotel. The *Bangkok Times* helpfully indicated his “multifarious businesses” and “other concerns of a speculative nature in which he busies himself” when Tilleke’s health failed him in December 1899 (*BT* 21 December 1899). While Tilleke’s karmic fate may have seemed in doubt to his contemporaries at the *Bangkok Times*, his imprint on the practice of law in Southeast Asia endures to this day: a prominent law firm, Tilleke & Gibbins, still bears his name (see <http://www.tilleke.com/firm/history> [accessed 6/17/2014]). For more on Tilleke’s government service, see Loos, *Subject Siam*, 59-61.

itself to be a surprisingly astute observer and critic of the problematic wedding of expert knowledge and personal interests.

### **Expertise (II): Medicine & The Muddled Legality of Liability**

Those who fell victim to the tramway along the New Road had the good fortune to be hurt in the vicinity of Bangrak Hospital, by all accounts the premier medical institution in Bangkok at the time. The casualties of the tramway were either taken to the offices of the Bangkok Tramway Company at the end of the line or rushed directly to the hospital to be treated by the American physician Dr. T. Heyward Hays (see Figure 8). Hays, who arrived in Bangkok in October 1886 after having secured his medical credentials at the University of Maryland in the United States, had taken charge of Bangrak Hospital, where he held the title of Superintending Physician.<sup>75</sup> When the victims of tramcar injuries arrived at the hospital, Hays amputated limbs, dressed wounds, and performed emergency procedures. But complicating the issues of loss and liability in treaty port Bangkok was the fact that Dr. Hays was also a major shareholder in the Bangkok Tramway Company, and a constant presence at shareholder meetings.<sup>76</sup> An American trade publication referred to “an energetic American, Dr. T. H. Hays,” as the “president of the board of directors” of the Bangkok Tramway Company.<sup>77</sup> Hays is in many ways emblematic of the situation of medical expertise in the impossibly tangled web of law and loss in late nineteenth century Bangkok.

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<sup>75</sup> Hays was also “Chief Medical Officer to the Royal Siamese Navy” among other government appointments; see Arnold Wright, ed., *Twentieth Century Impressions of Siam* (London, Lloyd’s Greater Britain, 1908), 134, 275.

<sup>76</sup> See, for example, *BT* 9 May 1894 and *BT* 20 June 1898.

<sup>77</sup> John Barrett, “Street and Other Railways in Siam,” *The Street Railway Journal* 13, no. 7, p. 400. This designation might be false—or was at the most merely an interim appointment for Hays—as the position was most likely occupied by Admiral de Richelieu, the founder and holder of the concession.



Figure 8: Dr. T. Heyward Hays. Source: archives of the Ministry of Public Health, Nonthaburi, Thailand (photograph is reproduced in *Twentieth Century Impressions of Siam: Its History, People, Commerce, Industries, and Resources*, eds. Arnold Wright and Oliver T. Breakspeare [London: Lloyd's, 1908], 134).

For Siamese subjects who were injured on the tramway tracks, the medical expertise of Dy. Hays was often their only consolation. For British subjects and protégés who were injured and who filed suit against the Bangkok Tramway Company, however, Hays was not only a physician but also an expert medical witness, who was often called upon to present evidence concerning the extent of injuries sustained by victims of accidents under his care. His testimony often proved decisive for establishing the extent of liability faced by the Bangkok Tramway Company in cases of accidental injury. In spite of his very active and public involvement as an investor in the company, however, Hays' status as an impartial expert medical witness in cases of injury involving the Bangkok Tramway Company seems to have gone entirely unchallenged in the British Consular Court in Bangkok. In all of the cases where Hays was called to give testimony, the question of his impartiality as an expert medical witness seems to have come to light only once, when the case moved outside of Bangkok on appeal.

On Wednesday, 29 June 1892, an appeal in the case of Teo Ah Paeng versus the Bangkok Tramway Company was heard before the British Court of Appeal of the Straits Settlement in Singapore. In the original case, Teo Ah Paeng claimed that he had sustained serious injury on 4 December 1891, when a passing tramcar rode up an embankment and overturned onto him as he

waited to board. The plaintiff claimed that the accident had “render[ed] him insensible, and inflict[ed] serious injuries which prevented him following his employment and had [thereby] caused him considerable expense.”<sup>78</sup> To the outrage of the Bangkok Tramway Company, the jury that heard the case in the British Consular Court in Bangkok found the company liable by negligence and awarded two thousand *ticals* in damages to Teo Ah Paeng.

The Bangkok Tramway Company appealed the decision before Justices Wood, Goldney, and Collyer of the British Supreme Court in Singapore claiming “the damages awarded (2,000 *ticals*) were excessive.”<sup>79</sup> Mr. Napier, attorney for the Bangkok Tramway Company, questioned both the accuracy of Teo Ah Paeng’s reported lost income during his convalescence after the accident, and the medical evidence that Teo Ah Paeng had submitted concerning the seriousness of his injuries. Napier argued that “the injuries [received by the plaintiff] were very slight and the damages claimed, considering the [financial] position of the respondent, were excessive.” The crux of the appeal, however, rested on the expert testimony of Dr. T. Heyward Hays, whom Napier introduced as “the leading doctor of Bangkok.” Hays submitted what Napier called “conclusive” evidence at the original trial to the effect that the injuries sustained by Teo Ah Paeng were “very slight.” Upon hearing Napier’s appeal, however, Justice Goldney interjected simply: “Doctor Hayes [sic] is the Company’s doctor.” Napier, perhaps stunned at hearing the Justice’s candid appraisal of Hays’ bias, retorted

There is no evidence of that. The Company simply paid Dr. Hayes [sic] for attending to the plaintiff. Dr. Hayes thought plaintiff was shamming and, on testing plaintiff, was convinced that such was actually the fact. In this case the jury would only grant such injuries as plaintiff actually sustained [i.e. no punitive damages]. The question is “what is his loss?” and for that you have to depend on his own statement, which is uncorroborated. The evidence goes to show that he has a small shop and goes himself or sends his son into the country occasionally. As a matter of fact the plaintiff’s son has

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<sup>78</sup> “Supreme Court,” *Straits Times Weekly Issue*, 5 July 1892, p. 3.

<sup>79</sup> “Supreme Court,” *Straits Times Weekly Issue*, 5 July 1892, p. 3.

carried on the business while plaintiff was sick [convalescing]. I submit that the damages are excessive, and such as no reasonable jury would have granted. I submit that your Lordships should order a new trial.<sup>80</sup>

The Justices, however, were not to be swayed by the testimony of a medical doctor who appeared to be on the payroll of the appellant. They conceded that the damages awarded might have been dear, but they refused to overturn the judgment of a jury in an inferior court. While the entanglement of medical expertise and financial interests may not have been an issue in Bangkok, the British Supreme Court in Singapore was unwilling to overlook the issue.

Hays was not alone in this problematic nexus of medical expertise and personal financial interests. The Scottish physician Dr. Peter Gowan, a close friend and sometime business partner of Hays who had formerly served as King Chulalongkorn's personal physician and who also served as an attending physician at Bangrak Hospital, was likewise a shareholder in the Bangkok Tramway Company.<sup>81</sup> Gowan, in fact, was serving as a member of the board of directors for the company in April 1899, when he was called upon to amputate part of the foot of a Siamese man named Nai Wan, whose foot was irreparably damaged by a tramcar.<sup>82</sup> Like Hays, Gowan clearly maintained commercial interests that could at times come into conflict with his role as a medical professional.<sup>83</sup>

Medical expertise presented a challenge in public life as well, when claims to authoritative knowledge could be used to avoid legal entanglements. In June 1895, Dr. Hays'

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<sup>80</sup> Ibid.

<sup>81</sup> On Gowan's service to the king, see NA R5 S 24/2.

<sup>82</sup> BT 16 February 1899; and BT 28 April 1899.

<sup>83</sup> It is worth noting that this view of Gowan as a man with diverse commercial interests is in stark contrast to his reputation as a scholarly ascetic, who helped to plant the seeds of asceticism in the Prince-Patriarch Vajiranan Wororot. See Craig J. Reynolds' translation of the Prince's autobiography in Prince Vajirananavarorasa, *Autobiography: The Life of Prince-Patriarch Vajirananana of Siam, 1860-1921*, translated, edited, and introduced by Craig J. Reynolds (Athens, OH: Ohio University Press, 1979).

horse-carriage struck a Siamese child who was walking in the road accompanied by his mother. Hays immediately alighted from his carriage and gave the child a cursory medical examination on the spot. Perhaps unsurprisingly, Hays deemed the child to be perfectly unscathed in the accident, “and of this he assured the mother.”<sup>84</sup> But before Hays could be on his way, a member of the Siamese police force intervened and demanded that Hays accompany him (presumably to the American Legation, where the incident would have to be reported because Hays was an foreign resident under American legal protection). Hays objected, and instead mounted his carriage intending to be on his way, at which time “the constable seized the pony’s head and made more demands [of Hays]. This made the Doctor use naughty words—and his whip.”<sup>85</sup> In the end, nothing appears to have come of the incident, and the *Bangkok Times* sardonically notes that the police officer was left “wondering why he cannot perform works of supererogation during the day and remain in his verandah, deaf to all calls, during the weary hours of the night.”<sup>86</sup> But the incident demonstrates that Hays’s medical expertise was operative not only in the context of legal proceedings, but in everyday life as well. In both cases, medical expertise functioned as a shield of sorts, protecting him from liability in cases of accidental injury. In an era when law was still in formation, the authority of medical expertise could have important consequences both inside and outside of the courtroom.

## **Conclusion**

Careful attention to the jurisdictional politics of accidental injury and death in late-nineteenth-century Bangkok reveals the far-reaching work of law mediating the effects of social and

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<sup>84</sup> *BT* 20 June 1895.

<sup>85</sup> *BT* 20 June 1895.

<sup>86</sup> *BT* 20 June 1895.

technological change in a multi-cultural environment. It also reveals that the most fundamental notions of civil law remained abstract, ill defined, and actively disputed in the transnational legal context created by extraterritorial law. In the wake of personal misfortune or tragedy, legal actions in Bangkok's plural legal environment were negotiations aimed at finding a consensus on the extent and location of fault and liability. Before liability could be assigned, however, the very legal definitions of social actors were tried and tested. Jurisdictional politics created an arena where even codified corporation law was not the bottom line for isolating the liable party: like foreign subjects residing in Siam, foreign registered corporations had extraterritorial legal rights and the ability to engage in "legal jockeying" to seek out the most favorable jurisdiction.<sup>87</sup> Once the liable party and appropriate jurisdiction were located, however, the subject of negligence and the notion of fault were found to be inconsistent and lacking unanimity. In short, there was no place for the discourse of "justice" when the very metaphysical rudiments of civil law were still very much in doubt.

The disputes discussed in this chapter demonstrate that legal change is more complex and multi-faceted than the historiography of legal reform under the threat of imperialism has allowed to date. Historians of law in Euro-American jurisdictions—and practitioners alike—take for granted the fact that legal change occurs in conjunction with and in response to social and technological change.<sup>88</sup> To date, however, scholars have ignored the socio-technical context of legal change in Siam, viewing it as a barren field for the "transplanting" of western legal

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<sup>87</sup> Benton, *Law and Colonial Cultures*, 29.

<sup>88</sup> For a particularly clear example of this reasoning in practice, see Sheila Jasanoff's discussion of the legal ramifications of the Bhopal gas disaster in "Bhopal's Trials of Knowledge and Ignorance," *Isis* 98, no. 2 (June 2007): 344-350, 346.

traditions.<sup>89</sup> This chapter has examined the extraterritorial legal arena in Siam as a crucial site for the negotiation of civil law in Siam. When viewed from outside of the overarching narrative of codification, the history of legal change in Siam reveals the same messy evolutionary processes as those that characterize Euro-American jurisdictions. It is therefore relevant to consider parallel legal changes in Britain as law mediated social change in the wake of new technologies, and to demonstrate that the same processes held in Siam—but in a complex arena of competing jurisdictions and novel forms of expertise.

In addition to making the case for Bangkok as a site of legal evolution in its own right, this chapter has also demonstrated the imbrication of the global and the local in these processes. Local disputes over civil law and liability intersected with ongoing global arguments over the merits of particular nationalist modes of liberal governance in the era of high imperialism. At first glance, these were pragmatic debates over which nation's laws and institutions were best placed to offer protection to expatriate commercial ventures. But evidence of nationalistic pride underscores the ways in which these debates were likewise a matter of moral concern for foreign residents in cosmopolitan Bangkok. When Danes made anecdotal arguments about the limits of compensatory payments for accidents in their courts they were making implicit assertions about the virtues of their own national law, which they touted as a system that protected private property and shunned legal entitlements.<sup>90</sup>

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<sup>89</sup> Andrew J. Harding, "The Eclipse of the Astrologers: King Mongkut, His Successors, and the Reformation of Law in Thailand" in *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, Penelope Nicholson and Sarah Biddulph, eds., (Leiden: Martinus Nijhoff, 2008), 307.

<sup>90</sup> I am grateful to Ray Craib, who offered helpful comments on this aspect of public debates over injury and compensation at the History Department Colloquium, Cornell University, February 28, 2013.

In spite of the global nature of these debates, and the fact that they played out primarily in the foreign language local press and foreign consular courts, they are nevertheless indicative of important changes in social life in Bangkok, and deserve to be considered as part of the wellspring feeding nascent conversations about legal and political reform in Siam. Tragedies on the tracks of the Bangkok Tramway Company, along with the “jurisdictional politics” and competitive debates over legal liberalism that they incited, are a crucial part of the sociohistorical context out of which efforts to construct a national legal system emerged. By attending to these events, we can see evidence of the ways in which new forms of technology, social agency, institutions, and forms of expertise announced their presence in the Siamese capital. The public debates over law and liability that occurred in their wake—and especially the contentious and discordant discourses surrounding competing forms of liberalism—are an overlooked part of the discursive context for the nascent project of constructing a national legal system.

Whereas this chapter has concentrated on the socio-technical agents (limited liability corporations, passenger rail travel, foreign barristers, juries, and physicians) and the transnational social context (consular courts and jurisdictional politics) of modernizing legal change in Siam, the following chapter (chapter 3) moves into the ethereal realm of ideas. The transition from traditional forms of Siamese compensatory action for accidental injury and death (discussed in chapter one) to something approaching Western civil law required a radical reconceptualization of human actors as legal subjects and an alteration of tacit assumptions concerning the nature of agency and causality. At the same time as barristers like E. B. Michell challenged received notions of liability in the British Consular Court in Bangkok, they also struggled to locate Siamese analogues for the foundational terms of Western civil law, ideas concerning the subject, actions, and even the kinds of agency and causality recognized by tort law. In the following

chapter, I attempt to narrate an epistemological history of civil law in late-nineteenth-century Siam, by attending to the shifting “metaphysics of loss,” which involved the reconfiguration of the boundaries between the natural and social worlds.

## CHAPTER THREE

### THE METAPHYSICS OF CIVIL LAW BETWEEN CODE & CUSTOM

“In every well-drawn code of laws allowance is made for what are termed ‘Acts of God’ and for purely accidental occurrences.”  
From “Liability for Criminal Negligence,” *Bangkok Times* 30 May 1895.

#### **Introduction**

In early November 1898, a child accompanying her grandmother on an errand along the New Road wandered off to play on the tramway tracks.<sup>1</sup> Amidst the din of the traffic and crowds, the child—likely lost in play—failed to notice the sound of the approaching tramcar. When the tramcar was almost upon her, the child’s grandmother came rushing over and attempted to rescue her at her own peril. The tramcar struck the grandmother, running over her chest and killing her, and though she was able to save the child from the brunt of the impact, the tramcar nevertheless ran over the child’s leg. The child was not expected to survive the radical amputation.

According to the report in the *Bangkok Times*,

One can only wonder that accidents in Bangkok are not more frequent, considering the speed with which gharries [horse-drawn coaches] and tramway cars are often driven. In the present case the occurrence has all the appearance of being a sheer accident, and the officials of the Company have shown every kindness towards the relatives of the deceased.<sup>2</sup>

The idea of the “sheer accident” was effective precisely because it was seemingly natural and objective: discernable to all, without the mediation of any expert knowledge. A sheer accident could be recognized by the general public and the press, and was not a matter of legal judgment. Moreover, by naturalizing the events, the notion of a sheer accident eliminated the need to

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<sup>1</sup> *BT* 7 November 1898. The language of the story is gender neutral, but I have rendered the child as a female for the sake of narrative clarity.

<sup>2</sup> *BT* 7 November 1898.

consider culpability and liability in cases of tragic injury and death. It thereby helped to codify a specific sort of occurrence, one that could be handled through the sort of *ex gratia* compensatory payments that were discussed in chapter one as part of the culture of noblesse oblige that surrounded minor tragedies in Siamese life.

This chapter is concerned with precisely this sort of metaphysical reasoning concerning the quotidian tragedies of social life in a cosmopolitan city. It investigates law as a site of cultural production, whereby the social world of human interactions was defined with respect to the backdrop of a natural world.<sup>3</sup> Of course these contestations over human agency and responsibility were not limited to issues of sheer legality; they were also weighted with moral implications. Nile Green, for example, explores how different social and religious groups in early-twentieth-century Bombay used the occasion of a building collapse to voice competing moral visions.<sup>4</sup> In late-nineteenth-century Siam, quotidian tragedies and related issues of fault and liability were likewise the occasion for contentious debates over both metaphysics and morality. These negotiations, which took place on the plane of common sense and tacit knowledge, found normative expression in the language of law and the logic of civil legal institutions. The foreign language press provides an archive of these debates, and was a repository for surprisingly subversive perspectives on questions of law and the associated problems of moral and metaphysical order. The metaphysical categories associated with legal liberalism carry with them some of the fundamental “secular-rational calculations” and assumptions that are common to both “modern European political thought and the social sciences,” namely that “the human is ontologically singular, that gods and spirits are in the end

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<sup>3</sup> David Delaney, “Making Nature/Marking Humans: Law as a Site of (Cultural) Production,” *Annals of the Association of American Geographers* 91, no. 3 (2001): 487-503.

<sup>4</sup> Nile Green, “Moral Competition and the Thrill of the Spectacular: Recounting Catastrophe in Colonial Bombay,” *South Asia Research* 28, no. 3 (2008): 239-251.

‘social facts,’ that the social somehow exists prior to them.”<sup>5</sup> In the end, the logic of civil law and naturalist reasoning must be understood as among the forces that worked to subjugate alternative moral economies and their associated metaphysics in favor of the totalizing vision of Post-Enlightenment political modernity.<sup>6</sup>

This chapter builds on the work of chapters one and two to offer a new perspective on the transformation of civil law in Siam. Moving beyond the idea of a paradigm shift accompanying the process of legal codification, it gives modernizing legal change a Siamese—rather than simply imperial—past. The chapter begins with a consideration of how the actors, actions, and metaphysical background of civil law were rendered into a vernacular register in the Siamese language. Next, I consider other seminal ideas in the practice of civil law, such as the notion of the “accident,” (which functions as a crucial mediator for notions of loss, fault, and liability), and other legal ideas surrounding civil wrongs, which constitute crucial facets of the metaphysics of legal liberalism. The epigraph at the start of his chapter suggests something of the normative nature of the metaphysics associated with legal liberalism; it also reveals the degree to which religion continued to pervade even notions about the natural world. I contend that the metaphysics of legal liberalism in Siam were articulated prior to and independent of the conversations that took place at elite levels of the state concerning the compilation and promulgation of modern legal codes.

Beyond the etymological evidence of these changes, there are still other forms of evidence of changing ideas about the intersections of social and legal life that anticipated the process of codification. These stages include the refinement of ideas about events in the natural

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<sup>5</sup> Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2008), 12, 16.

<sup>6</sup> *Ibid*, *passim*.

world, on the one hand, and the criminalization of negligent human actions, on the other. Both developments emerged at the end of this interstitial period, when the justice system of the Siamese state began to assert its authority over the ambiguous nature of liability for injury and death. This chapter calls attention to such intermediate phases in the broader process of translating a natural and secular metaphysics as stages that paved the way for the formation of a modern system of justice.

### **Agency and Causality: the Accident**

The individual legal subject imbued with rights is the atomic element in western legal liberalism. But the system of law that protects and constrains the individual legal actor consists not only of mandates and proscriptions, it is also predicated on a distinctive sense of the nature of causal relations among social actors in the natural world. Legal liberalism possesses its own metaphysics.<sup>7</sup> In spite of its resistance to codification, this backdrop is nonetheless a crucial element of the ideas and institutions that constitute the liberal legal order.<sup>8</sup> The foundations of this metaphysical system of thought are closely correlated to scientific naturalism, and constitute something like the tacit substrate for making legal sense out of the actions and engagements of social life. Because of this correlation, the history of the spread of legal liberalism is also the story of the diffusion of normative ideas concerning the distinction between the natural and social worlds and the kinds of actions and agency peculiar to each sphere. Bruno Latour has

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<sup>7</sup> Gary Peller regards this metaphysical backdrop as “a deep metaphoric structure for interpreting the social world. I refer to this structure as the subject/object dichotomy, the notion that the social world can meaningfully be described by separating subjective and objective realms of social life”; see Gary Peller, “The Metaphysics of American Law,” *California Law Review* 73, no. 4 (1985): 1151-1290, 1154.

<sup>8</sup> Nancy A. Weston has analyzed the implicit theoretical foundations of modern tort law in “The Metaphysics of Modern Tort Theory,” *Valparaiso University Law Review* 28, no. 3 (1994): 919-1006.

described the inscription of these boundaries as constitutional decisions, which are historically and culturally contingent.<sup>9</sup>

The method of intellectual genealogy that animates Michel Foucault's early work was directed precisely at the construction and evolution of these sorts of cultural boundaries, and the ways in which they functioned as conditions of possibility governing what could be asserted in a particular place and time.<sup>10</sup> Inspired by Foucault's methodology, scholars have identified the notion of the "accident" as just such a boundary marker between the natural and social worlds. They have begun to investigate the accident not only as an agent of historical change, but as an historical entity in its own right. Roger Cooter, for instance, tried to locate the genealogical origins of a contemporary culture of the accidental, what he calls the "moment of the accident."<sup>11</sup> Cooter's work reveals the diverse social and cultural forces that provoked a "deep cultural anxiety" in late-Victorian England, which in turn helped produce an explosion in discourse surrounding the accidental.<sup>12</sup> He argues that the generalized sense of social and cultural disorder in late nineteenth century urban England found expression in a "'civilianization' process," which mobilized military habits of mind and action to confront threatening facets of urban social life. Judith Green offers a competing genealogy of the accident. Instead of teasing out the various threads of "cultural anxiety," Green looks to the shifting strategies and technologies of municipal

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<sup>9</sup> Bruno Latour, *We Have Never Been Modern* (Cambridge, MA: Harvard University Press, 1993).

<sup>10</sup> See Michel Foucault, *Madness and Civilization: a History of Insanity in the Age of Reason* (New York: Pantheon, 1988 [1965]); and his *The Order of Things: An Archeology of the Human Sciences* (New York: Vintage Books, 1994 [1970]).

<sup>11</sup> Roger Cooter, "The Moment of the Accident: Culture, Militarism and Modernity in Late-Victorian Britain," in *Accidents in History*, Roger Cooter & Bill Luckin, eds., (Atlanta, GA: Editions Rodopi, 1997), 107-157.

<sup>12</sup> Cooter, "The Moment," 116.

governance.<sup>13</sup> According to Green, “a watershed moment in the history of ‘accidents’ came in 1840, when [the epidemiologist William] Farr [1807-1883] recommended an inquiry into the cause of violent death.”<sup>14</sup> Farr’s search for order in the seemingly random tragedies within London eventually evolved into “an international system of classification... beginning with the 1863 division of accidents that occurred in mines and around railways.”<sup>15</sup>

For a moment, historical scholars in the Anglophone world thought that the historicization of the accident would become its own field, with links to the social history of medicine, labor, and medical jurisprudence. Indeed, valuable studies of related ideas such as “accident proneness” have grown out of a reengagement with the cultural history of the accident and accidental reasoning on the part of scholars in science and technology studies.<sup>16</sup> Continental historical scholars, however, were dismissive of the project of historicizing the accident. François Ewald, among the French scholars who claim the closest intellectual affinity to Foucault, objected that the historical “moment of the accident” and its associated metaphysics within liberal legalism were but a transitional moment in the long course of socio-political changes associated with the concept of risk as an aspect of governmentality.<sup>17</sup> For Ewald, the moment of the accident was little more than a passing phase on the way to the articulation of the modern welfare state, whereby national solidarity took precedence over personal responsibility

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<sup>13</sup> Judith Green, “Accidents: The Remnants of a Modern Classificatory System,” in *Accidents in History*, Roger Cooter & Bill Luckin, eds. (Atlanta, GA: Editions Rodopi, 1997), 35-58, 49. See also, Judith Green, *Risk and Misfortune: A Social Construction of Accidents* (London: University College London, 1997).

<sup>14</sup> Green, “Accidents,” 49.

<sup>15</sup> Green, “Accidents,” 49.

<sup>16</sup> John C. Burnham, *Accident Prone: A History of Technology, Psychology, and Misfits of the Machine Age* (Chicago: University of Chicago Press, 2009).

<sup>17</sup> François Ewald, *L’Etat Providence* (Paris: B. Grasset, 1986); see also his “The Return of Descartes’ Malicious Demon: An Outline of a Philosophy of Precaution,” in *Embracing Risk: The Changing Culture of Insurance and Responsibility*, Tom Baker & Jonathan Simon, eds. (Chicago: University of Chicago Press, 2002), 273-301.

as technological and political change spread risk out over a population. But it is premature to dismiss the genealogical study of the accident, particularly since scholars have not yet attempted to consider its history in comparative and cross-cultural contexts.

The following discussion attempts to provide just such an examination of the “moment of the accident” in the context of turn-of-the-twentieth-century Siam. This investigation, however, amounts to more than simply a non-European iteration of the Victorian moment of the accident; it is more than simply a “nativist ethnohistory.”<sup>18</sup> I take the appearance of the accident in fin-de-siècle Siam as an indication of the spread of the homogeneous sense of metaphysics associated with western legal liberalism. The diffusion of the term is corollary to and indicative of the broader reach of a particular historical and cultural iteration of the distinctions between the natural and social worlds, one that remains integral to western legal thought and practice. The accident therefore deserves to be considered alongside of other “powerful imperial words that moved from West to East” in the late nineteenth century as part of an imperial lexicon.<sup>19</sup> Bernard Cohn has identified the ways in which the colonial world was “not only a territory but an epistemological space as well.”<sup>20</sup> In South Asia, British colonial administrators looked to discover “self-evident” “facts” about Indian society that would allow for efficient governance.<sup>21</sup> In Siam, foreign residents, administrators, and consular officials were likewise seeking ways to render social life more recognizable and manageable. I contend that the accident was part of a normative metaphysical grid for understanding social interactions. Of course, like so many other

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<sup>18</sup> David Wade Chambers and Richard Gillespie, “Locality in the History of Science: Colonial Science, Technoscience, and Indigenous Knowledge,” *Osiris* 15, no. 1 (2000): 221-240, 229.

<sup>19</sup> Carol Gluck, “Words in Motion,” in *Words in Motion: Toward a Global Lexicon*, Carol Gluck and Anna Lowenhaupt Tsing, eds. (Durham, NC: Duke University Press, 2009), 5.

<sup>20</sup> Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 4.

<sup>21</sup> *Ibid.*

fundamental categories of European political modernity, its application was problematic; in practice, the new metaphysics of liberal legalism had to be translated and reconfigured in the face of seemingly incommensurate “concepts, categories, institutions, and practices.”<sup>22</sup> Moreover, like the forms of knowledge produced by Orientalist scholar-administrators in colonial India, it was an inherently conservative grammar of rule. Although the notion of the accident had the effect of helping to codify the definition of a Siamese legal subject, it did so without introducing a new regime of legal rights: the subject of civil law in Siam was therefore defined negatively, through a constrained sense of agency, rather than positively as part of a broader effort to articulate legal rights.

This genealogy of the accident in turn-of-the-century Siam will proceed in four parts. Firstly, in the way of context for considering how ideas such as the accident were introduced as part of the metaphysical background of civil legal reasoning in Siam, it is necessary to consider early efforts to identify the legal actor and relevant actions. How were Siamese social actors and actions rendered into a legalistic idiom, and by whom? Secondly, having established the origins of the civil legal subject and associated actions through etymological and historical linguistic evidence, this chapter offers a cultural and discursive examination of the “the moment of the accident” in the manner of Cooter’s work. Next, I will turn to an examination of the genealogy of the accident in practice, which will demonstrate the origins of accidental reasoning as a facet of municipal governance. This second stage parallels Judith Green’s approach to the genealogy of the accident, but it is also attentive to theoretical works concerned with the intersection of risk and governmental power (as explored in the work of Ewald, for example). Lastly, I will introduce some of the other salient categories of the metaphysics of civil law and consider

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<sup>22</sup> Chakrabarty, *Provincializing Europe*, xii.

evidence of their translation and localization in the Siamese context as part of an imperial lexicon of governance.

### **Translating Tort: The Search for a Subject**

From within the midst of the muddled legality of law and medicine in late nineteenth century Siam, foreign lawyers practicing law in Bangkok attempted to impose order on the chaos of individual misfortune through civil law. The challenge was not only a matter of locating the proper jurisdictional context for civil actions, but more fundamentally of using the categories of western civil law to interpret the interactions of social life in Siam. In the era before codification, this amounted to an unsystematic search for Siamese analogues to the fundamental principles of western civil law. There was no single authority responsible for forging such equivalencies and the efforts to translate civil law were diverse and inconsistent. Collectively, however, they suggest the novelty of the categories of civil legal reasoning and the outlines of ethnographic knowledge about Siamese social life and metaphysical ideas.

The intellectual labor of Edward Blair Michell, the British barrister who challenged the boundaries of liability in cases of injury and death on the tramway tracks (discussed in chapter two), provides a window onto the problem of regularizing civil law in late nineteenth century Siam. In 1892, Michell, a champion rower, boxer, and a renowned expert on falconry, published a bilingual dictionary of the Siamese language. Michell's *A Siamese-English Dictionary For the Use of Students in Both Languages* helps elucidate the process of translation—both literal and cultural—that helped to shape Siamese civil law in the era before codification. Although Michell prefaced his dictionary by remarking that it was intended to be a practical guide for students, and that he had therefore “designedly omitted” “many technical words, especially

theological and mythological,” his dictionary nevertheless makes a significant intervention one area of philosophical importance: jurisprudence.<sup>23</sup>

As a practicing barrister in Bangkok, Michell undoubtedly undertook the challenge of finding Siamese analogues for the terms of British civil law as a matter of practical necessity.<sup>24</sup> In order to translate these ideas, he looked to traditional Siamese terms describing metaphysics and remediation for civil wrongs. When confronted with the task of translating different forms of tort, Michell settled on the Siamese notion of the *khwan*. He identified the *khwan* as the subject of the tort of slander, which he defined as ‘*nintha khwan*’ (to gossip [against] the *khwan*) and ‘*klao khwan*’ (‘to speak [against] the *khwan*). Michell’s dictionary likewise associated compensatory actions with the same vernacular metaphysical principles. He equated the Siamese compensatory practices for accidental injury or loss (*tham khwan*), for example, with “reparation, satisfaction” (presumably in the sense of having one’s grievances appropriately addressed).<sup>25</sup> His dictionary defines the verb “[*kan-*]*tham khwan*” as “to indemnify,” which further substantiates the association between the *khwan* as both the object of civil wrongs and the subject of indemnification or compensation for such wrongs.<sup>26</sup> The compensatory actions

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<sup>23</sup> E. B. Michell, *A Siamese-English Dictionary For the Use of Students in Both Languages* (Freeport, NY: Books for Libraries Press, 1973 [1892]).

<sup>24</sup> Further evidence of Michell’s practical struggle to mediate western law in the Siamese context can be found the marginalia of his personal copy of *The Directory for Bangkok and Siam Directory for the year 1892* (Bangkok: Bangkok Times, [1892]), where he scribbled notes about specific aspects of Siamese civil and penal law (see the first page of the “Advertisements” section after the final appendix). The volume, which is part of Cornell’s Kroch collection, bears the initials “E.B.M.” in the inside front cover, and likely belonged to the attorney.

<sup>25</sup> Michell, *A Siamese-English Dictionary*, 36.

<sup>26</sup> Other common contemporary Thai language terms for acts of remediation in the wake of civil loss or wrongs, such as “*chot choei*” and “*chot chai*,” for example, are entirely missing from Michell’s dictionary (Michell, *A Siamese-English Dictionary*, 111). “*Thot thaen*,” another related term is defined as “reward, recompense,” which seems to be a more vernacular term lacking the legal implications of indemnification for example. Other related terms, such as “*top thaen*,” are missing in Michell’s dictionary.

associated with the *khwan* are also distinct from forms of penal action, such as monetary sanctions (*prap*, *kha prap*), which Michell translates as “to fine.”<sup>27</sup> Moreover, the appeal to the *khwan* in the act of making compensation for civil wrongs is favored over other vernacular and idiomatic descriptions of compensatory action, such as “*plop jai*,” for instance, which describes the action as an effort to subdue, pacify, or calm the *heart* of a (wronged) individual.

In the preface to his dictionary, Michell points to his compatriot Henry Alabaster (1836-1884) as “the only authority” quoted in his work.<sup>28</sup> According to Michell, Alabaster’s “‘Wheel of the Law’ contains a mine of copious and accurate information respecting the meaning of Siamese words, especially bearing upon religious or philosophical learning.”<sup>29</sup> Michell’s notion of the *khwan* as the subject of civil law, however, is not evidenced in Alabaster’s work on Thai Buddhist metaphysics.<sup>30</sup> The discussion of Buddhist metaphysics in Alabaster’s work hails from the rationalist reinterpretation of Buddhist doctrine relayed to him by *Jao Phraya* Thiphakorawong, a member of the Siamese elite whose Thai language works have been a crucial source for writing the modern intellectual history of Thailand.<sup>31</sup> Alabaster’s *The Wheel of Law* focuses on canonical Pali metaphysical terms (in Thai transliteration), notably the *winyan* and *jit*,

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<sup>27</sup> Michell, *A Siamese-English Dictionary*, 151.

<sup>28</sup> Michell, *A Siamese-English Dictionary*, xviii.

<sup>29</sup> Michell, *A Siamese-English Dictionary*, xviii.

<sup>30</sup> Henry Alabaster, *The Wheel of Law: Buddhism Illustrated from Siamese Sources* (London: Trübner & Co., 1871).

<sup>31</sup> Part one of *The Wheel of Law* is a reprint of Alabaster’s earlier work, *The Modern Buddhist*, which was a translated and annotated version of Thiphakorawong’s *Nangsu sadaeng kitchanukit* [A Book Explaining Various Things] (Bangkok: Khuru Sapha, 1971 [1867]), a catechism on changing conceptions of the world from a Buddhist perspective. Thiphakorawong’s work figures prominently as the evidence of intellectual change in Craig J. Reynolds’ pioneering work on Thai intellectual history; see his “Buddhist Cosmography in Thai History, with Special Reference to Nineteenth-Century Culture Change,” *Journal of Asian Studies* 35, no. 2 (1976): 203-220, especially 214-218.

two of the constituent elements of human consciousness according to Buddhist doctrine.<sup>32</sup> His work eschews vernacular conceptions of the spirit-substance such as the *khwan*, in keeping with the recognizable “Protestant presuppositions” that informed orientalist understandings of Buddhism during the nineteenth century.<sup>33</sup> In spite of his acknowledged debt to Alabaster, Michell’s dictionary actually takes a radically different stance on crucial metaphysical questions by favoring vernacular metaphysical ideas. As a practicing barrister, the matter of translating the subject and actions of civil law into Siamese was a matter of practical importance for Michell, but other dictionaries from the turn of the twentieth century evince a similar tendency to identify the *khwan* as the subject of civil actions, suggesting that it was more than just an idiosyncratic association forged by one attorney.

Dr. Samuel Smith, a lifelong resident of Siam whose language skills would likely have been far more advanced than Michell’s, published his own more comprehensive English-Siamese dictionary in five volumes spanning almost a decade.<sup>34</sup> Like Michell, Smith associates the action of “*tham khwan hai*” and “*kan-tham khwan hai*” with the verb “to indemnify” and “reparation,” respectively.<sup>35</sup> Moreover, Smith’s work contains other definitions that rely on the same link between aspects of Siamese vernacular metaphysics and emerging patterns of civil legal action. “Compensator [noun],” for instance, is defined as “the person or thing that makes reparations

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<sup>32</sup> Alabaster, *The Wheel of Law*, 223, 236.

<sup>33</sup> See Gregory Schopen, “Archaeology and Protestant Presuppositions in the Study of Indian Buddhism,” *History of Religions* 31, no. 1 (1991): 1-23.

<sup>34</sup> Thai language studies of the life work of Samuel Smith include Boem Bangphli, “*Khru samit, pho so 2363-2452*” (Rev. Smith, 1820-1909), *Sinlapa watthanatham* 28, no. 3 (2007): 130-145; and Surapong Jankasamepong, “*Bot bat thang kan-phim lae khun upakan khong mo samit to sangkhom thai*” (The Benefaction of Dr. Smith to Thai Society and his Role in Printing), *Sinlapa watthanatham* 27, no. 9 (2006): 78-92.

<sup>35</sup> Samuel J. Smith, *A Comprehensive Anglo-Siamese Dictionary* (Bangkok: Bangkok Press, 1899 [1899-1908]); see Vol. III, 89, and Vol. IV, 132.

(*tham khwan*) [by offering] means of making amends for an error.”<sup>36</sup> Another dictionary, compiled by George B. McFarland, an American physician and professor of medicine who was employed by the Siamese state, evinces the same association between forms of remediation under civil law and Siamese vernacular metaphysics. McFarland’s father was a missionary and educator in Siam, so George spent much of his upbringing there—apart from a sabbatical to complete his higher education in medicine and dentistry in the United States—and appears to have been fluent in the language. Long after his retirement from government service in Siam, McFarland compiled a Siamese language dictionary, based in part on a dictionary that his father had first published in 1865.<sup>37</sup> Although the younger McFarland’s dictionary shows a more developed sense of the vocabulary of civil law, it is nevertheless rooted in the kinds of associations first pioneered by Michell, namely between civil infractions and remediation and the *khwan*. Like Michell, McFarland associates the *khwan* with the torts of slander and libel.<sup>38</sup> In describing compensatory actions, McFarland defines “*bia tham khwan*” as “money or a fine paid

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<sup>36</sup> “*Phu rue sing thi tham khwan khruang chai hai kae phit khlat*”; Smith, *A Comprehensive Dictionary Vol. 1*, 775. It should be noted, however, that in some ways Smith’s dictionary offers a divergent view of the subject of civil legal actions in his translation of the civil wrong of “libel.” In Smith’s work, libel is no longer an action against the *khwan*, but is instead against the person (“*than phu uen*,” 357).

<sup>37</sup> The elder McFarland published the first edition of the dictionary in 1865; see Samuel Gamble McFarland, *An English-Siamese Dictionary* (Bangkok: American Presbyterian Mission Press, 1865). Samuel Gamble McFarland and George B. McFarland, *An English-Siamese Dictionary Containing 14,000 Words and Idiomatic Expressions* (Bangkok: American Presbyterian Mission Press, 1903 [1865]). George B. McFarland later published a larger expanded version in Bangkok in 1941, which was then republished in the United States beginning in 1944; see George Bradley McFarland, *Thai-English Dictionary* (Stanford: Stanford University Press, 1960), especially the “Foreword to the Second Printing” by Mary R. Haas (no pagination).

<sup>38</sup> McFarland, *Thai-English Dictionary*, 144-5. It is perhaps no accident that McFarland follows Michell on this and other counts related to law, since McFarland evidently purchased the rights to Michell’s dictionary and incorporated much of it while compiling his own; see Mary R. Haas’ review, “*Thai-English Dictionary* by George Bradley McFarland,” *Journal of the American Oriental Society* 65 (1945): 270-273, 270.

by one party to another; in lieu of damages done; amount paid as a compensation.”<sup>39</sup> Given its publication date (1941), George B. McFarland’s dictionary suggests that this semantic mapping of civil law over vernacular metaphysics was somewhat durable, although it was not the language adopted by the modern civil codes that were promulgated beginning in 1935.<sup>40</sup>

### **The Moment of the Accident in Siam**

Among the first instances of the English word “accident” to appear in the archives of Thai history are in the formal contracts that governed transnational commercial life. It was here that western assumptions about the nature of risk and liability first took root. In these documents, the notion of the accident was primarily related to the fate of investment capital; its use evinces an effort to construct a defined sense of the unforeseen factors that might affect a given commercial venture. Notable examples include the contracts of the royal concessions that established the right to operate a tramcar service in Bangkok (granted in 1887) and the right to produce and sell electrical power (granted in 1898). In the case of the tramway concession, the scope of the “accident” was limited to traffic accidents that might occur along the course of the proposed routes.<sup>41</sup> The Bangkok Electric Company’s concession, however, employs the more expansive idea of an “Act of God,” which might intervene in the company’s ability to produce and

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<sup>39</sup> McFarland, *Thai-English Dictionary*, 489.

<sup>40</sup> On modern Thai law codes concerning tort, see *Thailand Civil and Commercial Code, Title V: Wrongful Acts*, Chapter I: Liability for Wrongful Acts, and Chapter II: Compensation for Wrongful Acts; on compensation, see Sections 442-444, and on Section 223: Chapter II: Effect of Obligations. See also, David M. Engel & Jaruvan S. Engel, *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford: Stanford University Press, 2010), 53-4; and for a critical discussion of the limitations of Thai interpretations of tort law, see Isara Lovanich, “Personal Injury and Damages for Non-Pecuniary Loss in the Law of Torts and the Product Liability Law,” (MA Thesis, Thammasat University, 2011).

<sup>41</sup> “Tramway Concession, Bangkok, 5<sup>th</sup> May 1887” (NA R5 N/128).

distribute electricity to its customers.<sup>42</sup> This particular sense of the accident—the idea of an unfortunate event that is beyond the bounds of human intention, foresight, and responsibility—was slow to spread beyond the confines of commercial transactions involving transnational actors.

In terms of its translation, over the course of the second half of the nineteenth century the ‘accident’ gradually began to be associated with a recent Thai neologism, *ubatihet* (along with more elegant forms at a higher register of the language, *upatiwahet* and *upathawahet*). *Ubatihet*, like many of the terms coined to translate foreign concepts and technologies in the nineteenth century, was borrowed from Pali, the language of the Theravada Buddhist canon. According to the Thai Buddhist scholar-monk Ven. Prayut Payutto (*Phra* Bhrmagunabhorn), the Thai term comes from the Pali word “*ubattihetu*” (*uppatti* + *hetu*), meaning simply an event that occurs.<sup>43</sup> Margaret Cone defines the Pali *uppatti* as “arising, coming into being, birth.”<sup>44</sup> Similarly, according to T. W. Rhys Davids and William Stede the term signifies “coming forth, product, genesis, origin, rebirth, occasion”; they define *hetu* as “cause, reason, condition.”<sup>45</sup> As a dependent determinative compound (Pali: *tappurisa*, Sanskrit: *tatparusa*), the Pali terms means “the cause of an occurrence.”<sup>46</sup> Payutto offers an example of how the term might have been used historically in the context of Buddhist monastic life: “one should offer sermons appropriate to events, which is to say that [one should] demonstrate the *dharma* [Buddhist teachings] in such a

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<sup>42</sup> NA R5 N 21/1, 27ff.; clause 6, which mentions “Acts of God,” appears on page 40.

<sup>43</sup> “*Het thi koed khun, hetkan thi koed*”; Prayut Payutto, *Photjanukrom phutthasasanam chabab pramuan sap* [Dictionary of the Buddhist Religion, Collected Terms] (Bangkok: Maha Chulalongkorn University, 2527 [1984]), 433.

<sup>44</sup> Margaret Cone. *A Dictionary of Pāli, Part I* (Oxford: Pali Text Society, 2001), 493-4.

<sup>45</sup> T. W. Rhys Davis and William Stede, *The Pali-English Dictionary* (London: Luzac, 1959 [1921]), 151, 733.

<sup>46</sup> Steven Collins, *A Pali Grammar for Students* (Chiang Mai, Thailand: Silkworm, 2005), 131-2.

way that it coheres with *things that happen* [in everyday life].”<sup>47</sup> The Theravada Buddhist commentarial tradition, however, can offer greater insight into the precise meanings and implications of the compound form, *uppattihetu*.

To begin, Rhys Davids and Stede note that in older Pali canonical texts, the use of the term *hetu* is synonymous with *paccaya*, which in philosophical terms meant “reason, cause, ground, motive, means, condition.”<sup>48</sup> Over time, however, the meanings of the two terms diverged from one another as evidenced by the *Netti-Pakarāṇa*, which distinguishes between *hetu* as “cause” and *paccaya* as “condition.”<sup>49</sup> This distinction seems to conform to efforts to differentiate between moral forms of causation (*hetu*) and natural conditions as causation (*paccaya*).<sup>50</sup> Such philological interventions in the commentarial tradition help to provide a sense of the historical development of notions of causation in the Theravada Buddhist world, and hint at the ways in which the lexicon of Buddhist metaphysical thinking was adapted to encompass new notions of causation.<sup>51</sup>

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<sup>47</sup> “*Khuan thetsana hai mo kae upattihetu khue sadaeng tham hai khao kap ruang thi koet khun*”; Payutto, *Photjanukrom*, 433 (my emphasis).

<sup>48</sup> *Pali-English Dictionary*, 733, 384. The *Visuddhimagga* seems to confirm this early conflation of the terms; see George D. Bond, *The Word of the Buddha: The Tipiṭaka and Its Interpretation In Theravada Buddhism* (Colombo: Gunasena, 1982), 130.

<sup>49</sup> Edmund Hardy, ed. *The Netti-Pakarāṇa, with Extracts From Dhammpāla's Commentary* (London: Pali Text Society, 1961 [1902]), 78. For an English translation, see *The Guide (Netti-Pakarāṇam) According to Kaccāna Thera*, trans. Bhikkhu Nāṇamoli (London: Pali Text Society, 1977 [1962]), 109-110.

<sup>50</sup> See *The Guide (Netti-Pakarāṇam)*, 111, nt. 456/2; and Rhys Davids & Stede, *Pali-English Dictionary*, 733, which cites evidence from the *Abhidhamma* as confirmation of *hetu* as a kind of “moral condition.”

<sup>51</sup> In the early twentieth century, efforts to translate new words through translation, transliteration, and neologisms would be centralized in state institutions like The Royal Institute (Ratchabanditaya sathan). See Prince Wan Waithayakon, “Thai Word Coining,” *Journal of the Siam Society* 89 (2001): 90-93; and Nitaya Kanchanawan, “Changing to the New World: High-tech Verbalization in Thai,” in *Papers from the Fourth Annual Meeting of the Southeast Asian Linguistics Society*, Udom Warotamasikkhadit and Thanyarat Panakul, eds., (Phoenix, AZ: Arizona State University, Program for Southeast Asian Studies, 1998), 143-156.

Returning to the contemporary Thai usages of the term, Prayut Payutto notes that it is not only the orthography of the term that has changed over time—from the original Pali *uppattihetu* to the Thai *ubatihetu*—but the actual meaning of the word has changed considerably as well.<sup>52</sup> Outside the hermeneutical contexts of the Buddhist commentarial tradition, it came to take on a radically different meaning, which is closer to the English language sense of an ‘accident.’<sup>53</sup> The novelty—and perhaps rarity—of this particular Thai language neologism in the second half of the nineteenth century is evidenced in part by its absence from bilingual dictionaries that attempted to gloss the English term “accident” in Siamese. *English and Siamese Vocabulary*, a bilingual dictionary published by the American Presbyterian Mission in Bangkok in 1865, offers a periphrastic definition of the term, defining it as an unexpected event—‘that which occurs without prior knowledge’—rather than offering a lexical one (i.e. an equivalent term from the Siamese language).<sup>54</sup> When Samuel Gamble McFarland, a missionary who was a long-time resident and educator in Siam, compiled a vocabulary list of some 14,000 terms at around the same time, he omitted the Siamese word for accident altogether.<sup>55</sup> E. B. Michell, who vociferously objected to “The fanciful innovations which some busy-bodies are attempting to introduce into the Siamese language,” included an entry for “*upatti*”—which he rightly noted

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<sup>52</sup> “*Bat ni khien ubatihetu lae chai nai khwam mai thi tang ok pai*” (Prayut, *Photjanukrom*, 433).

<sup>53</sup> Another Pali-Thai dictionary, compiled by Prince Kitiyakara Krommaphra Chandaburinarunath, ignores the mismatch between the original Pali meaning of the word and its connotations in contemporary Thai (see *Pathanukrom bali thai angkrit sansakrit* [Pali-Thai-English-Sanskrit Dictionary] (Bangkok: King Mahamakut’s Academy, 1977).

<sup>54</sup> “*Kan-sueng koet thi mai mai ru kon*,” *English and Siamese Vocabulary* (Bangkok: American Presbyterian Mission Press, 1865), 5.

<sup>55</sup> McFarland and McFarland, *An English-Siamese Dictionary*. Samuel compiled the dictionary in the 1860s and his son, George, who worked as a physician and professor at the Royal Medical College in Bangkok, later expanded upon it; see George Bradley McFarland, *Thai-English Dictionary* (Stanford: Stanford University Press, 1960 [1941]). By the mid-twentieth century, there was greater consistency concerning the translation of “accident”; the younger McFarland’s edition of the dictionary contains a sub-entry for “*ubatihet*,” which he defines as “an accident; a causal incident; an accidental event” (*Thai-English Dictionary*, 1006).

was derived from Pali, and translated as “misfortune, ruin”—but does not include an entry for “*ubatihet*.”<sup>56</sup>

The newly coined Siamese terms for accident do, however, appear in Monseigneur Jean Baptiste Pallegoix’s dictionary, which offers Latin, French, and English translations for Siamese terms. The original edition of Pallegoix’s dictionary, which was published in 1854, contains an entry for “*ubati het*” (sic: it appears as two distinct words in the subentry under “*ubati*”, “to be born, to issue from”), which it defines as “accident, event.”<sup>57</sup> The same entry appears in a later edition of the dictionary, which was edited and published by Pallegoix’s successor at the head of the Catholic Archdiocese of Bangkok, Monseigneur Jean-Louis Vey, in 1896.<sup>58</sup> The inclusion of the term, and its definitive association with “accident” at this early date is somewhat anomalous, however, when viewed in light of other historical linguistic evidence from the second half of the nineteenth and into the early twentieth century. In a Thai-Thai dictionary compiled by the American minister Jesse Caswell and expanded by J. H. Chandler in 1846, there is a single entry for the closely related terms “*upathawa*” and “*ubat*,” which are glossed as “dangerous, as per the Pali [language usage].”<sup>59</sup>

Moreover, other evidence suggests that the ‘accident’ was likewise a novel term or idea for native speakers of the Siamese language as well, not just for long-time foreign residents who were not native speakers of the language. When an elite Siamese official, *Luang Ratanayati*

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<sup>56</sup> Michell, *A Siamese-English Dictionary*, xvii, 310.

<sup>57</sup> Jean Baptiste Pallegoix, *Sapha phajana phasa thai: Dictionarium Linguae Thai* (Paris, 1854), 842. The title itself seems ahistorical in its reference to the language as “Thai.” Along with the subtitle of the dictionary, “*Sive Siamensis*” [“without Siamese”], this seems to suggest that Pallegoix compiled his dictionary with a view to excluding certain (antiquated or colloquial?) aspects of the language.

<sup>58</sup> Jean Baptiste Pallegoix, *Siphot phasa thai: Siamese-French-English Dictionary*, edited by J. L. Vey (Bangkok: Printing Office of the Catholic Mission, 1896), 1085.

<sup>59</sup> “*Nan khue wa antarai tam bali*”; J. Caswell and J. H. Chandler, *A Dictionary of the Siamese Language* (Bangkok: Chulalongkorn University Press, 2544 [2001] [1846]), 960.

(secretary of the Siamese legation in London), sat down to compile his own English-Thai dictionary, he evidently did not deem the Siamese neologism *ubatihet* an adequate equivalent to the English idea. Ratanayati defined ‘accident’ as a matter of happenstance or chance: “*khwam phan oen pen, khwam phan oen.*”<sup>60</sup> When King Chulalongkorn surveyed the “Causes of Premature Death” in an essay he contributed to the Thai language journal *Wachirayan wiset* in 1888, he focused on threats such as inborn disease, intemperance, and illness.<sup>61</sup> The ‘accident’ is conspicuous in its absence. The oversight is perhaps a reflection of the comparatively sheltered life of elite segments of the Siamese population, for whom run-ins with new forms of maiming technology or the mishaps of industrial labor were not a real concern.<sup>62</sup> Yet it is also suggestive of the fact that the idea of a purely “accidental” loss of life was not yet a commonplace idea, and that its precise meaning and lexical equivalent were still being negotiated.

## ***ii. The Accident in Practice: Becoming a Social Fact***

Although etymological evidence of the “moment of the accident” in Siamese cultural life is somewhat ambivalent, the notion has a clearer provenance within the more confined context of the state bureaucracy. The “accident” first appears in the archives of the Ministry of the Capital

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<sup>60</sup> Luang Ratanayatti (Sangop), *Dikchanari phasa angkrit plae pen thai: English-Siamese Dictionary* (Krungthep: Rong phim luang, Ro. So. 120 [1901]), 6. Ratanayatti uses the same term to define the word “casualty” (75).

<sup>61</sup> King Chulalongkorn, “*Wa duai het haeng khwam tai nai tham klang ayu*” (Concerning the Causes of Death in Middle Age), *Wachirayan wiset* (2431 [1888]).

<sup>62</sup> Which is not to say, however, that elites did not suffer accidental deaths. In one well-known incident, one of King Chulalongkorn’s consorts, Queen Sunantha, a younger sister of Queen Saowapha, lost her life in a boating mishap while travelling by river barge to the retreat palace at Bang Pa-In in 1880. See Prayut Sithiphan, “*Khadi phra nang rua lom*” (The Case of the Capsized Princess), in *San thai nai adit* [Thai Courts in the Past], second ed. (Bangkok: Sang san buk: 2551 [2008]), 227-236; and Nonthaphorn Yumangmi, “*Wipayok klang sai nam kap ruang lao ‘Sadet mae Sunantha’*” (Tragedy in Mid-Stream and the Story of Royal Mother Sunantha), *Sinlapa watthanatham* 31, no. 1 (2009): 76-101.

as a new mode of classifying death, which arrived in Bangkok from the British colonial world. The moment of the accident in Bangkok implied the naturalization of certain sociotechnical realities in the capital city associated with the arrival of industrial business ventures, steam power, and transportation infrastructure. At the same time, however, it was part and parcel of the new attempts to locate and define the limits of negligence and liability for personal misfortune or loss in the emerging civil legal system. This section focuses on the moment of the accident from the perspective of the “investigative modalities” of the modern state.<sup>63</sup> The confluence of British colonial policing strategies and technologies with Siamese municipal governance in the final years of the nineteenth century became the context for the reification of the accident in social life.

The genealogy of the “accident” as a term used in modern Siamese metropolitan governance can be traced back to the arrival of a single bureaucrat. In April 1897, A. J. A. Jardine, a British subject working in the police force of British Burma, was commissioned on loan to serve as Inspector General of Police for Bangkok.<sup>64</sup> He was hired in order to bring about the reformation of the municipal police force along the model of British colonial policing in India and Burma. Jardine’s service in British India began in 1879, where he worked on famine relief in the Bombay Presidency while serving as a lieutenant in the transport department of the

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<sup>63</sup> Bernard S. Cohn, *Colonialism and its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 5.

<sup>64</sup> The loan of British officers to Siam was a common practice. During the last decade of the nineteenth century, the Bangkok metropolitan police force was increasingly staffed by Sikh and other ethnic South Asians who had served under the British in India (see Hong Lysa, “Indian Police Subalterns in King Chulalongkorn’s Kingdom: Turn of the Twentieth Century Bangkok Pantomime” in *Khu khwam phumjai* [With Pride], Sirilak Sampatchalit and Siriporn Yodkamolsat, eds. [Bangkok: Sansan, 2545 (2002)], 453-473). French observers took this as an affront, and they considered the Siamese police force to be a de facto standing British army in the Mekhong Valley, which was in direct conflict with treaty provisions concerning Siam’s independence (see, for example, “The French Authorities and the Police,” *BT* 20 December 1898).

military.<sup>65</sup> An opportunity arose in 1882 to enter into the British Indian police force as a probationary officer, and Jardine was appointed. After serving in several different locations, Jardine rose to the position of assistant district superintendent of Police for Belgaum in Mysore in April 1884, where he began to make a name for himself through his pursuit of criminal organizations. He quickly rose to prominence in Belgaum for his role in tracking down a gang of thugs (“thuggee”), arresting all but the leader of the group, who absconded across the imperial border into the jurisdiction of the independent Nizam of Hyderabad.<sup>66</sup> In April 1887, Jardine was transferred to British Burma where he became the first district superintendent of police in Meiktila in central Burma. By 1891, Jardine was said to have effectively rid the city of the dacoits that had long been endemic to the region. After several more successful appointments in Burma, Jardine was transferred to Pegu in January 1897, where he was promoted to deputy commissioner of the Salween district in Lower Burma, his final post before accepting reassignment to the government of King Chulalongkorn in Siam.

When Jardine began his duties as Inspector General of Police for Bangkok in June 1897, he found himself at the helm of a metropolitan police force that, in his assessment, had apparently “never been trained, or educated in any way.”<sup>67</sup> The first order of business for the reformation of the police was to come to a firm statistical grasp of the constitution of the force and the qualifications of its officers. To that end, Jardine conducted a survey on the education of the officers and enlisted men, noting that in Bangkok there were 12 officers (out of a total of

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<sup>65</sup> “Mr. A. J. A. Jardine: Officer who Reorganised Siam Police,” *The Straits Times* 2 October 1914, page 2.

<sup>66</sup> On the role of borders in imperial policing in the late nineteenth century, see Eric Lewis Beverley, “Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire,” *Comparative Studies in History and Society* 55, no. 2 (2013): 241-272.

<sup>67</sup> A. J. A. Jardine, *Report on the Police Administration of Bangkok, Suburbs, and Railway Divisions for 1898-1899*, 4. See NA R5 N/96 Box 6.

130) and 278 enlisted men (out of 1,247) who were illiterate.<sup>68</sup> His survey divided the personnel at various levels of the police force according to race/ethnicity and religion (rendered in the Thai language translation of his reports as *chat* and *sasana*, respectively). He recorded, for example, the number of officers and clerks (*jao phanak ngan*) who were followers of Buddha (*sasana phra samana khotama*) versus the prophet Mohammed (*sasana mahamanden*).<sup>69</sup> As a model of action, Jardine clearly looked to the British colonial police force; he effectively imported the same assumptions about race and ethnicity—the ideology of martial races—that were foundational principles in staffing the British colonial military and police forces.<sup>70</sup> Among his first proposals, submitted just days after his tenure began, was to hire “a few experienced European Police Officers in the higher grades of the service... [and to establish] a force of 200 natives of India [Sikhs], to be armed and trained so as to cope with riots and demonstrations made by [Chinese] Secret Societies, and to assist in drilling and training the Siamese Police.”<sup>71</sup> On top of these proposals for reconstituting the force through the recruitment of personnel from abroad, Jardine noted that the Metropolitan police did not possess any rules or guidelines for “Police officers as to their duty or their powers to arrest and search.”<sup>72</sup> He therefore set out to

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<sup>68</sup> The numbers in the suburban and railway divisions of the metropolitan police force were far worse: in the suburbs, “Out of 79 officers 42 are illiterate, and out of 260 [non-commissioned] men 99 can read and write”; and among the railway force: “Out of 60 officers and 330 men, 28 officers and 31 men only can read and write, leaving 32 officers and 299 men who are illiterate; most of the men and some of the officers in the Railway Police are Laos and have had no education at all” (Jardine, *Report... for 1898-1899*, 16).

<sup>69</sup> See the Thai language translation of Jardine’s *Report... for 1898-1899* at NA R5 N 8.6/3, 29-30.

<sup>70</sup> Heather Streets-Salter, *Martial Races: The Military, Race, and Masculinity in British Imperial Culture, 1857-1914* (Manchester: Manchester University Press, 2004).

<sup>71</sup> Jardine, *Report... for 1898-1899*, 86.

<sup>72</sup> *Ibid.*, 89.

compile a police manual, aimed at establishing procedural rules for the metropolitan police force.<sup>73</sup>

In addition to the British colonial fixation with ‘martial races’ for staffing police and military forces, Jardine also arrived in Bangkok with preconceived ideas about the causes of social disorder, which he had likewise acquired during his time in India and Burma. Looking at the mess of social life in Siam, Jardine saw analogues for all of the problems that British colonial police had encountered in India and Burma, namely a focus on banditry and organized crime, which he mapped onto Chinese immigrants and laborers in Siam. Jardine attributed a great deal of the criminal activity in Bangkok—as well as a great deal of the unnatural deaths—to Chinese Secret Societies (Thai: *ang yi*). “Nearly every Chinaman belongs to some Secret Society,” according to Jardine, “and there are daily feuds and rows between these societies.”<sup>74</sup> More broadly, he noted

The Chinese are under very little control, have practically no master, there is no regulation, no census, and no restrictions; they are lighter taxed than the [native] people of the country, and in most cases when employed in large numbers are a terror to their employers... The numerous gambling dens, opium dens, and drinking shops and public brothels, especially in the Chinese quarter of Sampeng [Sampheng], are the cause of a good many violent crimes.<sup>75</sup>

His description of the Chinese in Siam is redolent of British views of “thuggee,” dacoits, and other threats to the British colonial state in India and Burma, and is therefore suggestive of how

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<sup>73</sup> Ibid. In his dissertation, Samson W. Lim discusses Jardine’s efforts to establish and train a detective unit within the Metropolitan Police Force; see “The Aesthetics of Evidence: Crime and Conspiracy in Thailand’s Popular Press” (PhD diss., Cornell University, 2012), 94ff. Police manuals of the sort envisioned by Jardine are a crucial part of Lim’s argument about the constructed nature of ‘facts’ as evidence in early twentieth century Siamese police work.

<sup>74</sup> Jardine, *Report... for 1898-1899*, 40.

<sup>75</sup> Jardine had evidently been successful at getting a legal measure called the “Secret Societies Act” passed to address this issue, but he noted with frustration that little had been done in the way of enforcement (Jardine, *Report... for 1898-1899*, 40, 49).

imperial taxonomies of problematic forms of social life were transferred to Siam through policing.<sup>76</sup>

Perhaps even more troubling than the dismal state of the police force itself, in Jardine's assessment, was the state of legal affairs in the Siamese capital. Bangkok was in effect a colonial treaty port where foreign subjects enjoyed extraterritorial legal privileges. In addition to the difficulties created by a transnational and plural legal system, however, there was also a glaring lack of authority in matters of law or procedure for Siamese subjects. After almost two years on the job, in 1899, Jardine lamented that there was still "no regular Criminal Procedure Code, or a Penal Code," and that although "the old Police Act is supposed to be in force... I have failed to get an official reply as to whether I can enforce it."<sup>77</sup> In order to address this quandary, Jardine made a series of recommendations for the reformation of the legal grounds of the metropolitan police force, including specific regulations governing police work, inquests, relations between police and local authorities within the capital (*nai amphoe*), traffic, weapons, and rules of criminal procedure.<sup>78</sup> Jardine submitted his recommendations concerning the legal foundations of policing the capital directly to the head of the Ministry of the Capital, Prince

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<sup>76</sup> See the work of Kim A. Wagner, including *Stranglers and Bandits: A Historical Anthology of Thuggee* (New York: Oxford University Press, 2009), and *Thuggee: Banditry and the British in early Nineteenth-Century India* (New York: Palgrave Macmillan, 2007). For an example of British colonial police perspectives on these threats, see, for example, E.R.C. Bradford, *Statements of the Crimes of Dacoity and Poisoning in British Territory for the Year 1875* (Simla: Government Central Branch Press, 1877).

<sup>77</sup> Jardine, *Report... for 1898-1899*, 88.

<sup>78</sup> According to Jardine's report, he had made the following seven proposals on these dates: "30<sup>th</sup> November 1897—I. Police Act; 2<sup>nd</sup> October 1897—II. Rules for Inquests; 10<sup>th</sup> November 1897—III. Rules for the better working of the "Ampurs" [sic: *amphoe*] and Police; 1<sup>st</sup> February 1898—IV. Hackney Carriage Act; 16<sup>th</sup> March 1898—V. Jinricksha [a law regulating the (Chinese) rikshaw drivers] Act; 23<sup>rd</sup> February 1899—VI. Criminal Procedure Amendment Act; 7<sup>th</sup> March 1899—VII. Arms Act" (Jardine, *Report ... for 1898-1899*, 89). The subject of inquests is discussed in detail in part two of this dissertation (below).

Naret Worarit.<sup>79</sup> He apparently understood—quite rightly—that judicial and executive powers were confused in the role of Minister of the Capital, and had not yet become the concern of a national judiciary body or the nascent Ministry of Justice, which had been created only a few years before his arrival.<sup>80</sup>

Beyond the issues of personnel and legal institutions, Jardine’s model of efficient police administration was also crucially concerned with the introduction of documentary practices. As the head of the Bangkok Metropolitan Police, Jardine counted the keeping of records and the compilation of statistics as among his primary duties. In this regard, his *Report on the Police Administration of Bangkok, Suburbs, and Railway Divisions for 1898-1899* was an integral part of his efforts to overhaul the organization of the metropolitan police force. He intended the ninety-two-paged document, which he touted as “the first report of its kind ever submitted” in Siam, to be the foundation of a new archive that would be capable of producing “statistics which can be relied on, and will then be able to show a true record of crime and the working of the Police Force under my control, and from which the [effects of] government or otherwise in the administration will be easily seen.”<sup>81</sup> This documentary impulse is reflective of more than simply a desire for the greater bureaucratization of the police force; it is indicative of the spread of what has been called a European “culture of fact”—epistemological trends towards statistical and probabilistic thinking that were reflected in the application of risk calculation at the level of population.<sup>82</sup>

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<sup>79</sup> Jardine likewise voiced his disappointment directly to Naret when he observed that his proposals had failed to make any sort of impact on the prince’s administration (Jardine, *Report ... for 1898-1899*, 89).

<sup>80</sup> See Engel, *Law and Kingship*, 23.

<sup>81</sup> Jardine, *Report... for 1898-1899*, 1.

<sup>82</sup> See the work of Ian Hacking, especially *The Taming of Chance* (Cambridge: Cambridge University Press, 1990). Mary Poovey, *A History of the Modern Fact: Problems of Knowledge*

Jardine's documentary impulse amounted to a desire to compile a taxonomy of aspects of social life in the capital. As a police administrator, his chief concern was with criminal actions under his jurisdiction, so he began by compiling records of such activity in quarterly and annual increments. But not all events were easily identifiable as the result of criminal actions. British Common Law, for instance, had long recognized the need to investigate forms of death that were deemed "unnatural."<sup>83</sup> When calculating the number of victims of violent crime in the city each year, Jardine also had to take into account cases of "unnatural death," since he suspected that "a good many of these are victims of Secret Societies"—who were adept at making violent deaths appear natural or accidental—"and therefore [evidence of foul play was] hard to detect."<sup>84</sup> Jardine's death registry for the year 1898-1899 included figures for murder (thirty-three), drowning (twenty-two), and "other causes" (twenty-nine), which included those who "die in the streets from opium eater's-dysentery [sic]."<sup>85</sup>

In the following year's report, however, Jardine noticed some glaring discrepancies in his new system of classifying and counting deaths. The most pronounced among the year-on-year deviations were increases of eighteen in the number of recorded suicides and twenty-three in the

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*in the Science of Wealth and Society* (Chicago: University of Chicago Press, 1998), documents the emergence of a "culture of fact" in early modern Europe. Tong Lam, *A Passion for Facts: Social Surveys and the Construction of the Chinese Nation-State, 1900-1949* (Berkeley: University of California Press, 2011), reveals a parallel cultural shift in the construction of social scientific knowledge in early twentieth century China.

<sup>83</sup> See Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore: Johns Hopkins Press, 2000). The institution of investigations into cases of unnatural death in late nineteenth century Siam is the focus of part two of this dissertation (below).

<sup>84</sup> Jardine, *Report... for 1898-1899*, 77.

<sup>85</sup> Jardine, *Report... for 1898-1899*, 77. Inquest records for the Ministry of the Capital confirm Jardine's description of opium-eater's dysentery: "habitual opium eaters become poor, are unable to purchase the drug, and from the want of it get dysentery [sic] and die very suddenly" (77). The category of deaths by "drowning" was also suspect in this era before forensic medicine and inquests; police performed only cursory examinations on corpses found floating in the waterways of the city, in search of obvious signs of violent injury (see chapter four, below).

number of “accidental deaths.”<sup>86</sup> According to Jardine, the fluctuations could be explained as a clerical error, whereby the district inspectors responsible for Bangkok, the Railway, and the Suburbs, had all included suicides in their total number of accidental deaths.<sup>87</sup> Clerical errors aside, the report suggests something of the novel nature of this governmental project of discerning among different forms of death and calculating statistics applicable to the entire population of the capital and surrounding environs.<sup>88</sup>

When Jardine’s report was translated into the Thai language, the registry of accidental deaths appeared as a table with the label, “list of people who died by ‘accident’ in the year 118”—with the English word “accident” transliterated into the Thai alphabet and set apart with quotation marks (see Figure 9).<sup>89</sup> For a time, the “accident” referred to a certain kind of fatality that existed in the Siamese language only in transliterated form in the Siamese language translation of the annual reports submitted by Inspector General Jardine to Prince Naret. It was utilized by those in positions of executive power to describe a particular category of the loss of human life. Significantly, the term was employed by two officials of the Siamese state with extensive experience abroad: Jardine, an officer on loan from the British Indian Constabulary, and Prince Naret, who had worked in the Siamese legation in London. The persistent use of the

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<sup>86</sup> A. J. A. Jardine, *Report on the Police Administration of Bangkok, Suburbs, and Railway Divisions for 1899-1900*. See National Archives document number N R5 N/6-97, 90, 94.

<sup>87</sup> Jardine noted, “Suicides have been wrongly shewn [sic] on this return by D.S.P.’s [Deputy Superintendents of Police]” for each of the three districts, and when suicides were subtracted the figures amounted to four fewer deaths than the previous year (*Report... for 1899-1900*, 94).

<sup>88</sup> There were other inaccuracies in Jardine’s figures. He notes, for instance, “It is surprising to find that there was not a single fatal carriage accident, or case of being run over by the tram in Bangkok during the past year” (*Report... for 1899-1900*, 94). In actuality, there had been at least one deadly accident on the tramway tracks; a Chinese man was run over and killed near *Sam Yaek* in May of that year (the new year began in April according to the Siamese calendar; *BT* 11 May 1899).

<sup>89</sup> “*Banchi khon thi tai doi aek si den nai pi 118* [Registry of people who died by accident in the year 118]”; see NA R5 N 8.6/5, 105.

English term transliterated into the Thai alphabet reveals the process whereby foreign ideas were mapped onto indigenous social reality.

แบบ ๑๑ บัญชีคนที่ตายโดย "แอกสิเด็น" ในปี ๑๑๘ และ ๑๑๗ คังมีแจ่งก่อไปนี้

แผนก	จำนวน "แอกสิเด็น" ในปี ๑๑๗	จำนวน "แอกสิเด็น" ในปี ๑๑๘	ทิวซัน	ลคคก
ซันโน	๕๘	๗๔	๑๖	—
ซันนอถ	๕	๘	๓	—
รถไฟ	๕	๙	๔	—
รวมยอด	๖๘	๙๑	๒๓	—

Figure 9: “Table 11, Registry of people who died by 'accident' in the year 118 and 117 [sic],” from the Thai translation of Jardine's report for the year 1899-1900 (NA R5 N 8.6/5, 105).

The idea of an accident as a part of Siamese metropolitan governance should be considered in light of theoretical paradigms concerning the emergence of new forms of governmentality in modern Europe. The moment of the accident in Siamese metropolitan governance is related to efforts to gain statistical control over life and death in the European metropole that have been described as part of a new form of biopolitics.<sup>90</sup> Over the course of the nineteenth century in Britain, figures like William Farr and John Snow helped to usher in a revolution in statistical knowledge of the body politic.<sup>91</sup> Advances in statistical and geographical reasoning helped advance epidemiological knowledge, which in turn transformed individual deaths into a matter of concern for the agents and institutions of municipal governance.

<sup>90</sup> Michel Foucault, “Governmentality,” in *Power: Essential Works of Foucault, 1954–1984, Vol. III*, James D. Faubian, ed., (London: Penguin, 2001), 201–222. For an examination of modern Thai state medicine that is firmly committed to a Foucaultian biopolitical paradigm, see Davisakd Puaksom, “Of Germs, Public Hygiene, and the Healthy Body: The Making of the Medicalizing State in Thailand,” *Journal of Asian Studies* 66, no. 2 (2007): 311-344.

<sup>91</sup> On Farr's contributions to “British vital statistics,” see Hacking, *The Taming of Chance*, 53. Steven Johnson offers a narrative account of John Snow's work in epidemiology in *The Ghost Map: The Story of London's Most Terrifying Epidemic and How it Changed Science, Cities, and the Modern World* (New York: Riverhead Books, 2007).

Subsequent revisions of the mortality figures in Victorian Britain would eventually result in a standard classification of types of death, including a detailed classification of accidental deaths that tried to account for differential risks according to occupation.<sup>92</sup> Jardine's attempts to grapple with the criminal and accidental loss of human life in Bangkok was part of a broader shift in the nature of sovereign governmental power in Siam, one that witnessed the emergence of a modern state focused simultaneously on the geographical extent of its will and concerned with the biological strength of its populace. Counting violent and accidental deaths is one small facet of what Michel Foucault called "the entry of life into history," one instance of a broader trend whereby sovereign power transformed into the "manager of 'the biological existence of a population.'" <sup>93</sup>

Jardine himself did not perceive his efforts as part of a watershed in the nature of governance in the Siamese capital. In fact, at the time when he submitted his first report circa April 1899, he was becoming increasingly frustrated with the lack of traction and attention that his proposals concerning police personnel, laws, and procedures had garnered to date. In spite of his optimism for the future of Bangkok once a European-modeled police force—and European officers—had arrived, he concluded the report on a disappointed note: "owing to none of my proposed [legal] Acts being passed, the work is not encouraging, and I am inclined to stop going outside my ordinary duty when I find it does no good, and is not appreciated, or taken any notice

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<sup>92</sup> Green, "Accidents: The Remnants," 49. For a more comprehensive work on classification with particular reference to the International Classification of Diseases, see Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things Out: Classification and its Consequences* (Cambridge, MA: M.I.T. Press, 1999).

<sup>93</sup> Michel Foucault's ideas from *The History of Sexuality, Volume 1: An Introduction* (New York: Vintage, 1990 [1978]), quoted in Brian C.J. Singer and Lorna Weir, "Politics and Sovereign Power: Considerations on Foucault," *European Journal of Social Theory* 9, no. 4 (2006): 443-465, 450.

of.”<sup>94</sup> What Jardine could not know, was that some of his strategies and efforts were taking root in more subtle ways. Jardine helped to usher in the use of these bureaucratic technologies for accounting for life and death at the level of the population. Under his tenure, a new decree regarding the registration of deaths in Bangkok was announced on 18 April 1900.<sup>95</sup> Moreover, his efforts to impose a taxonomy on the loss of life in the capital was part of the broader transformation of Siamese social life, under the converging trends of new forms of governance and legal reasoning.

### **Distilling Agency: Accidents & Negligence**

At the same time as the notion of accidental occurrences was rising to prominence as part of nascent trends in governmentality in the Siamese capital, more diffuse ideas about the nature and limits of human agency were beginning to surface. Like in British Common Law during the early nineteenth century, the earlier fatalistic or transcendental views of the causes of individual misfortune were beginning to coalesce into a mundane continuum of human fault (as described in chapter two). This continuum, which was marked by human intention on the one end and accidental occurrences of the natural world at the other, was likewise being translated into a corresponding spectrum of liability in the context of the nascent Siamese justice system. This period might be likened to the process of distillation, whereby the metaphysics of liberal legal culture had the effect of reducing and concentrating—distilling—received notions of the limits of human agency. I return in this section to cases of injury and death involving the Bangkok Tramway Company in order to suggest how patterns of discourse surrounding such events were gradually shifting alongside of changing governmental strategies.

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<sup>94</sup> Jardine, *Report... for 1898-1899*, 89.

<sup>95</sup> *BT* 18 April 1900.

### *i. The “Pure” Accident*

As depicted in this chapter, the metaphysics of civil law constituted an implied backdrop for making sense of the interactions of human social life. The notion of the accident was a crucial part of the taxonomy for making sense of personal misfortunes and liability. But not all accidents were created equal; some accidental occurrences were more readily identifiable than others. As the English language press revealed, this gradation was readily apprehended and became a part of public discourse in the wake of tragic misfortunes along the tramway tracks. By the turn of the twentieth century, however, even sheer or “pure” accidents required some adjudication as quotidian tragedies persisted unabated and incited a widespread desire for a new form of accountability.

On the morning of 21 August 1901, “A child had its leg cut off by being run over by an electric [tram]car at Sam Yek [sic: *Yaek*]” on the New Road line.<sup>96</sup> The driver of the tramcar, a Siamese man named Nai Choi, had recently been involved in another incident when the tramcar he was driving had run “over and killed a Chinese beggar” in Banthawai district. The *Bangkok Times* does not explicitly make the connection, but it seems that this recent history contributed to the desire to see Nai Choi arraigned on (unspecified) criminal charges before the municipal Police Court. At the arraignment, however, “The Court, after characterising the affair as a pure accident, dismissed the accused.”<sup>97</sup> For the accident-prone driver at least, identifying “pure” accidents was beginning to become a matter for the magistrates.<sup>98</sup> In other cases, the drivers

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<sup>96</sup> *BT* 21 August 1901.

<sup>97</sup> *BT* 21 August 1901.

<sup>98</sup> As John C. Burnham demonstrates, the suggestion that a particular driver might have been more prone to accidents than another is likewise an idea with its own peculiar cultural histories; see Burnham, *Accident Prone*.

themselves helped to differentiate between “pure” and other kinds of accidents through their own actions.

Even an ostensibly “pure” accident became a legal matter when the driver fled the scene. In the early evening hours of 17 September 1901, as a Chinese man was crossing the New Road near the intersection with Oriental Avenue in Bangrak, he was caught by the wheel guard on the front of a passing tramcar and knocked to the ground.<sup>99</sup> The tramcar passed over his head and one of his hands, “death of course being instantaneous.”<sup>100</sup> Unfortunately, since the spate of tramcar accidents had recently provoked the ire of the police and nascent criminal justice system in the Siamese capital, drivers had taken to fleeing the scene in the chaotic aftermath of tragedy. “As in the previous fatal accident of a similar nature,” the *Bangkok Times* reported, “the driver of the car on seeing what had occurred took off his [company-issued] hat and coat and bolted.”<sup>101</sup> Although “The affair” was apparently deemed to have been “a pure accident,” the act of fleeing constituted a challenge to the public verdict of a “pure” accident, and a warrant was issued for the driver’s arrest.

## **ii. Negligence**

If “pure” accidents defined one pole of the emerging spectrum of the causes of human misfortune, with intentional actions at the other extreme, the idea of negligence could be found in the middle. Negligence was a crucial intermediary in the creation of a legal distinction between misfortune wrought by natural forces and those caused by human agency. Jardine introduced the accident as part of a governmental reckoning with social life in the Siamese capital, but it was his successor, Eric St. J. Lawson, who intervened in cases of death and

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<sup>99</sup> *BT* 18 September 1901.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

dismemberment to articulate a new form of liability: criminal negligence. In this context too, the Bangkok Tramway Company makes an instructive case. At the turn of the twentieth century, the emerging governmental techniques in Bangkok converged into a new problematic for interpreting the loss of life and limb on the tramway tracks as negligence was criminalized. But extraterritoriality and limited liability continued to be definitive features of this new effort to locate and define responsibility for individual misfortune. Efforts to criminalize negligent behavior were prompted by the public discourse over the need for accountability, on the one hand, and the challenges posed by the corporate and extraterritorial legal rights of the Bangkok Tramway Company, on the other.

One of the more visible incidents that prompted this negotiation happened not on the tramway tracks but outside of the company's power generation station for the New Road Line tramway at Ames Bridge.<sup>102</sup> In early February 1899, two Siamese laborers unloaded a delivery of wood at the power plant from their boat, which was anchored in the new canal (*khlong khut mai*). In what became known in the press as the latest "Tramway Horror," an employee of the Bangkok Tramway Company opened the exhaust vents on the boilers that supplied electrical power to the tramcars, spewing steam and boiling water into the canal. The two deliverymen, who were resting unawares in their boat after the morning's hard labor, were grievously scalded in the incident and later died at Bangrak Hospital.<sup>103</sup> The *Bangkok Times* noted with outrage, "There have already been too many accidents of this sort, and nobody has inquired too curiously

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<sup>102</sup> "Shocking Accident," *BT* 8 February 1899. Incidentally, the bridge was named for Captain Samuel J. Bird Ames, a British police officer who had been hired on loan from Singapore to oversee police in Bangkok in 1864 for a term of three years. Ames stayed on, however, and eventually retired in 1890 after twenty-six years on the job (*BT* 29 October 1901).

<sup>103</sup> "A New Danger in Klong Kut Mai," *BT* 8 February 1899; *BT* 9 February 1899.

if anybody is directly responsible.”<sup>104</sup> With no small hint of facetiousness, the paper then stated what had become a truism in cases involving the Bangkok Tramway Company: “Of course no blame attaches actually to Europeans, but the Tramway authorities would seem now to consider that by a payment to the relatives of poor people killed or injured their responsibility [in cases of accidental injury and death] ceases.”<sup>105</sup> The *Bangkok Times* pushed for “extradition” [sic] of the Danish subject who was apparently at fault in the case. It asserted—without attribution—“The Acting Consul-General for Denmark will hand the accused over, if proof of his guilt is furnished.”<sup>106</sup>

Such public discourses about liability were beginning to coalesce around a novel sense of human culpability for seemingly accidental loss and misfortune. Etymologically, there is some evidence to suggest that the introduction of a new sense of liability through negligence can be dated to the turn of the twentieth century. Pallegoix’s dictionary (1854) contains several Siamese language entries that he associates with “negligence,” but in each case they refer to a vernacular sense of the term, as in careless or shoddy work.<sup>107</sup> Similarly, in Msgr. Vey’s redaction of Pallegoix’s dictionary (1896), *pramat*, the term that has come to mean ‘negligence’ in contemporary Thai, is defined as a matter of social indiscretion: “To presume, to dare, to have

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<sup>104</sup> “Shocking Accident,” *BT* 8 February 1899.

<sup>105</sup> *Ibid.*

<sup>106</sup> *BT* 15 February 1899.

<sup>107</sup> See Pallegoix, *Sapha phajana, passim*. Examples include “*e aen*” (“Negligent.—To act with negligence.—To stagger in walking, not straight,” 130), “*loe*” (“Negligent; negligence;” related terms, including *loen loe*, are defined “Without precaution, negligent, imprudent,” 405), “*tabit taboi*” (“To act with negligence,” 769), and “*talip taloi*” (“To work with negligence,” 775). There are other examples where Pallegoix translates other colloquial (non-Pali/Sanskrit) Siamese words using “negligence” or the French term “negligence,” but none suggest legal implications for careless actions (e.g., 181, 188, 195, 222, 397, 477, 576, 837, 877, 884).

confidence in one's self, to despise."<sup>108</sup> Vey also glosses the term according to a more colloquial register, associated with clumsiness or carelessness (“*pramat luem ton*: to forget one's self”).<sup>109</sup> Even in attorney E. B. Michell's dictionary (1892), which includes an entry for *pramat*, the term is defined in vernacular—as opposed to legalistic—terms, as “careless, besotted, stupid.”<sup>110</sup> It is not until *Luang Ratanayati's* English-Thai dictionary (1901) that we begin to see the possibility of a more legalistic sense of negligence beginning to emerge. Ratanayati's dictionary offers two Thai language equivalents for the English term: “*khwam mai ao jai sai, khwam loen loe*.” The former is a colloquial rendering suggesting a lack of attention, while the latter might suggest a more legalistic understanding, since “*loen loe*” is often appended to “*pramat*” in order to convey the full legal sense of criminal negligence.<sup>111</sup> The dictionary of Rev. Dr. Samuel Smith offers the first instance of “*pramat*” together with “*loen loe*,” and might therefore be the earliest instance of the contemporary legalistic sense of “*pramat loen loe*” as “criminal negligence.”<sup>112</sup>

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<sup>108</sup> Pallegoix, *Siphot phasa thai*, 768. Prayut Payutto notes that the Thai term “*pramat*” comes from the Pali *pamâda*, meaning heedlessness, carelessness, negligence, indolence, remissness (*Potjanukrom putthasat chabab pramuan tham* [Bangkok: Mahachulalongkorn University, 2528 (1985)], 389). He defines this original Pali sense of the term as equivalent to the contemporary Thai terms “*khwam loen loe, khwam phloe, khwam khat sati, khwam ploi pla la loei*” (*Potjanukrom putthasanam chabab pramuan sap* [Bangkok: Mahachulalongkorn University Press, 2536 (2522)], 149).

<sup>109</sup> Ibid.

<sup>110</sup> Michell, *A Siamese-English Dictionary*, 150.

<sup>111</sup> Ratanayati, *Dikchanari phasa angkrit*, 332. There is the possibility, however, that the association of “*pramat*” with “(*khwam*) *loen loe*” in legalistic terminology was a later development, and that at the turn of the twentieth century “*khwam loen loe*” retained a fundamentally colloquial sense. The early dictionary of the Presbyterian Mission in Siam (1865), for example, defines “negligence” as “*khwam loen loe*” (*English and Siamese Vocabulary*, 193).

<sup>112</sup> “Negligence” appears in volume 3 of Smith's 5-volume dictionary, which was published in 1905 (*A Comprehensive Dictionary Vol. III*, 682). “Negligence” remains ill-defined in the modern Thai Civil and Commercial Code, leaving legal scholars to work with a comparable definition from the Penal Code; see Engel & Engel, *Tort, Custom, Karma*, 53. Elsewhere, David M. Engel notes an interesting ethnographic observation on the usage of the term in contemporary northern Thai culture: “The Thai word for negligence is *pramaat*, which is also a legal term, but

The development of a legal language for describing criminal negligence roughly paralleled police efforts to legally enforce the new taxonomy of culpability.

On the morning of 5 March 1900, the newly installed police inspector Eric St. J. Lawson charged two drivers in the employ of the Bangkok Tramway Company with “with rash and furious driving” that had resulted in the injury of a man named Ishmael.<sup>113</sup> The charges were filed in the metropolitan Police Court (Thai: *san polisapha*), which was an anomalous venue for hearing a case of criminal negligence, since the court was in effect a small claims court dealing with petty criminal and civil offenses.<sup>114</sup> Moreover, the case against the drivers was further hampered by the fact that there were no legal standards concerning the driving of the tramcars, so a finding of criminal negligence against the drivers would have had to rely on the subjective opinion of the magistrate(s). Given these conditions, the case against the drivers must be viewed as a preliminary stage in efforts to criminalize negligent conduct. Indeed, Lawson’s true intention in filing the charges seems to have been geared towards obtaining some kind of legislative provision governing the speed of the tramcars. After evidence had been presented in the case, “Mr. Lawson asked the Court to make an order, or give an opinion, that the cars should

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its colloquial meaning in Thai is more complex than it is in English. When individuals cited the injurer’s negligence as one cause of their injury, they usually hastened to add that they themselves had also been negligent. Negligence on the part of both parties—injured and injurer—appeared to be linked conceptually in the minds of ordinary people in Thailand”; see his “Landscapes of the Law: Injury, Remedy, and Social Change in Thailand,” *Law & Society Review* 43, no. 1 (2009): 61-94, 75.

<sup>113</sup> *BT* 5 March 1900, 2.

<sup>114</sup> David M. Engel refers to the institutions, which were founded in 1893, as “misdemeanors” courts; see his *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (Ann Arbor: Center for South and Southeast Asian Studies, University of Michigan, 1975), 68-9. For more detailed information on the establishment and jurisdiction of these courts, consult the *Prachum kotmai prajam sok* [Collected Laws, Arranged Chronologically], compiled by Sathian Wichailak (Bangkok: Niti Wet, 1935-1953), volumes 14-15.

not travel faster than 6 or 7 miles an hour. This was about the pace of [horse-drawn] carriages driving, and should be enough for the tramcars.”<sup>115</sup>

While the city awaited a verdict in the case, rumors circulated that the magistrates of the Police Court would refuse to pass judgment on the drivers on account of (a) the limited mandate of their court and (b) the lack of any formal laws governing the speed of tramcars.<sup>116</sup> The magistrates, however, surprised observers when they ruled that although legally “the [tram]cars may be driven at any speed, however fast, ... they may not be driven as to inflict bodily injury on any one.”<sup>117</sup> The judgment of criminal negligence against the two drivers meant, according to the *Bangkok Times*, that employees of the Bangkok Tramway Company would have some degree of “personal responsibility” for cases of injury and death.<sup>118</sup> Although the finding resulted in only a “small” fine against the drivers, the case was celebrated as a landmark decision in the press in so far as it was seen as a check—however small—against a company that appeared increasingly untouchable. The *Bangkok Times* opined,

If the Borispah [sic: “*Porisapha*,” Police] Court had decided that it was powerless in the matter, the only remedy in such cases [of injury and death on the tramway tracks] would have lain in suing the Tramways Company. And unfortunately that Company is able practically to put it out of the power of nine-tenths of possible claimants to get judgment one way or the other. [As a registered corporation under Danish law,] The Company has a right to insist on any action against it being tried in Copenhagen. We do not say that they would do so, but a limited liability company has very little soul; its first duty is, or ought to be, to its shareholders; and it is not well that it should have such a power, practically putting it, if desired, beyond the reach of the law in the majority of cases. It is satisfactory therefore that the law in Bangkok has been able to reach the employees of the Company.<sup>119</sup>

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<sup>115</sup> *BT* 5 March 1900.

<sup>116</sup> *BT* 13 March 1900.

<sup>117</sup> *BT* 13 March 1900. The ruling seems to be based on the original concession granted to the Bangkok Tramway Company, which included language concerning negligent operation resulting in injuries to “other vehicles or persons using the same roads or places” (discussed above, in chapter two; see “Tramway Concession, Bangkok, 5<sup>th</sup> May 1887” [NA R5 N 21/1]).

<sup>118</sup> *BT* 13 March 1900, 2.

<sup>119</sup> *Ibid.*

In short, findings of criminal negligence against Siamese drivers in the employ of the Bangkok Tramway Company had become a (somewhat toothless) proxy for efforts to hold accountable a transnational limited liability corporation. In effect, the civil liabilities of a transnational corporation had become the criminal liabilities of its Siamese employees.<sup>120</sup>

Lawson's efforts to criminalize negligent driving are redolent of the same sort of constitutional decision-making that had helped to define the accident during Jardine's tenure. The idea of the "pure" accident had the effect of normalizing—and naturalizing, in the sense of making them a part of the natural world outside of human control—tragedies and misfortunes along the tramway tracks. The criminalization of the driver's negligent behavior, on the other hand, was an attempt to identify some form of human agency and culpability in certain kinds of tragic events. It represented a pragmatic negotiation with the realities of limited liability corporate law in an extraterritorial legal arena.

## **Conclusion**

The process of introducing legal liberalism amounted to a ground-up project of constructing a new metaphysical understanding of the boundaries between the natural and social worlds. Before modern civil legal codes and institutions could be erected to govern social life, lawyers

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<sup>120</sup> Similarly, when a Chinese man was killed on the tramway tracks on 17 September 1901, (the aptly-named) chief police inspector Sheriff delivered the driver to the Police Court and filed charges of "negligent and furious driving" against him. Some two months later, on 13 November, the driver was found guilty and sentenced to one year in prison. The *Bangkok Times* again celebrated, suggesting, "This decision should be useful 'pour encourager les autres'" (*BT* 13 November 1901). The editors of the *Bangkok Times* evidently found the French idiom to be most appropriate when it came to discussing issues of public safety in the condescending mode of the "*mission civilisatrice*." The same idiom appears in commentary on similar legal cases involving subaltern Siamese subjects, including in reference to the above "Tramway Horror" (*BT* 15 February 1899).

had to identify Siamese analogues for the agents and actions of codified civil law. This was not an academic exercise, but a matter of practical necessity for foreign lawyers attempting to carve out a sphere of civil legal reasoning from the chaos of social life in a cosmopolitan treaty port. The practical matter of coming to terms with the realities of social life in the Siamese capital also characterized the work of police officials, who arrived in Siam from the British colonial world and attempted to transpose the ideologies and habits of imperial policing on social life in the Siamese capital. These disparate efforts were united by a common metaphysics, a shared sense of the boundaries between social life and agency on the one hand, and the natural world and its independent forces on the other. By displacing the concern with codification with greater attention to more diffuse forms of intellectual change, this chapter has offered a new perspective on the historical relations between code and custom in Siamese civil law in the late nineteenth century.

This chapter has adopted a social-constructivist perspective on the work of civil law in late-nineteenth-century Siam. The epistemological labor of mapping social life onto the normative metaphysical grids of legal liberalism included discrete efforts to define the legal subject, for example, and to identify the limits of human agency through the notion of the accident. Further research is needed to situate this work within the longer arc of intellectual change in Siam. Law—civil law or otherwise—can function as a secularizing technology in so far as it operates to clarify the definitions of humanity and to cleanse the socio-cultural world of forces and forms of agency that do not conform to normative ideas about the social and natural worlds.<sup>121</sup> This mode of inquiry into the history of law will serve as an important addendum to

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<sup>121</sup> This is Bruno Latour's characterization of the cultural work that "moderns" have purported to do, which amounts to a "purification" process aimed at distinguishing the human from the

current scholarship on intellectual change in Siam, and contribute to the project of charting the secular modern in Siam.

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natural worlds; see his *We Have Never Been Modern* (Cambridge: Harvard University Press, 1993).

CHAPTER FOUR  
FROM INAUSPICIOUS TO SUSPICIOUS:  
UNNATURAL DEATH IN THE ARCHIVES

**Introduction**

In September 1890 unnatural death entered the archives of the Siamese state. What had previously been the preserve of cultural beliefs and social forms of action became a matter of state concern. The archival life of unnatural death in late-nineteenth-century Siam speaks to what Ann Laura Stoler has identified as a crucial facet of state sovereignty, namely “the power to designate arbitrary social facts of the world as... concerns of the state.”<sup>1</sup> The very existence of a cache of inquest files, or documents related to the investigation of unnatural deaths, is a testament to the fact that unnatural death—a feature of social life—was becoming a matter of political concern for the Siamese state. The causes of this new facet of state concern for the dead will be discussed in chapter five, but here I am concerned primarily with the nature of this transition as documented in and through the archive. From an ethnographic perspective, the inquest files compiled by the Siamese Ministry of the Capital contain valuable evidence for understanding the nature of early forensic investigations and how they came into conflict with traditional forms of concern for the dead, the nature of authority within the Siamese bureaucracy, and the implications of the inquest on Siamese political life.

Firstly, this chapter depicts the emergence of a clash of cultures of concern for the dead in the early years of the archive (September 1890 to December 1893), when the state first became interested in unnatural death. It begins with an overview of the traditional non-state

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<sup>1</sup> Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), 26.

forms of thought and practice associated with unnatural death, surveying the broad taxonomy of such deaths and the cosmopolitan nature of the practices and the diverse ethnic traditions that informed them. Next, it turns to consider the first case investigated by police in September 1890, when the Siamese state instituted a new bureaucratic mode of engaging with unnatural death in the capital city. In order to investigate the circumstances of unnatural deaths the metropolitan police first had to locate and sequester the corpse—actions that were anathema to the logic and sentiment surrounding inauspicious death. The forensic mode of concern for the dead that was intrinsic to the investigative work of the Siamese police thus put them at odds with the concerns and practices of local residents. In spite of their different modes of concern, however, the Siamese police nevertheless relied upon witness testimony to make sense of individual cases of unnatural death, and the archive bears traces of subaltern modes of concern and resistance to the forensic concern of the state and its agents.

Secondly, this chapter examines the inquest files compiled by the Siamese police for what they reveal about the nature of authority and expertise within the Siamese bureaucracy. The police were charged with investigating cases of unnatural death at the scene and compiling reports intended to explain the causes and circumstances of such deaths. Their reports were then submitted to the administrative body in charge of civil governance in the capital, where they passed through bureaucratic channels before eventually reaching the desk of the senior-most official. Although police were empowered to investigate cases of unnatural death at the scene, in practice the authority to decide the cause and meaning of such deaths, what I term the “semantics of death,” rested firmly with elite officials in the early years of the police inquest. For the Siamese state, the investigation of unnatural death was about forensic truth, but it did not involve expertise—at least initially. Instead, executive authority was paramount in making sense of

unnatural death. Thus, although this forensic concern for the dead was new, it nevertheless operated through and articulated with long-standing patterns of social organization that characterized both Thai society and the state bureaucracy.<sup>2</sup>

Thirdly, I argue that the investigation of unnatural death was an early—and unlikely—site of direct interaction between the state and its subjects. This new manner of forensic concern for dead Siamese bodies had the effect of bringing previously anonymous subjects to the attention of the Siamese state in a novel way. The inquest brought agents of the state into direct relations of concern with its subjects, thereby sidestepping the hierarchical social relations that characterized the traditional socio-political order in Siam. Unlike *corvée* labor and taxation, for example, which were mediated by the social relations of the feudal order<sup>3</sup> and the tax-farming system,<sup>4</sup> respectively, unnatural death brought subaltern Siamese subjects into direct relations of concern with state officials. In spite of the fact that unnatural death became a new interface between the state and its subjects, however, it was not a trajectory that tended towards democratic politics or the formation of recognizable forms of civil society. Instead, the new channels of concern maintained and even bolstered traditional forms of authority and authoritative political culture within and outside of the state bureaucracy.

### **Dealing with Death (I): Inauspicious Death**

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<sup>2</sup> See William J. Siffin, *The Thai Bureaucracy: Institutional Change and Development* (Honolulu: East-West Center, 1966), 110-111.

<sup>3</sup> Akin Rabibhadana, *The Organization of Thai Society in the Early Bangkok Period 1782-1873* (Bangkok: Amarin, 1996).

<sup>4</sup> Hong Lysa, *Thailand in the Nineteenth Century: Evolution of the Economy and Society* (Singapore: Institute of Southeast Asian Studies, 1984), chapter four.

The Siamese notion of “inauspicious death” (*kan-tai hong*) constitutes both a taxonomy of types of death and a repertoire of actions for dealing with and making sense of those types of death.<sup>5</sup> In the broadest terms, it is concerned with relations between the human social world and the realm of spirits, which were believed to be the spiritual remnants of human lives lost through sudden or unnatural means.<sup>6</sup> Historically, the notion encompassed a broad range of causes of sudden or unnatural death, including murder, drowning, suicide, certain forms of particularly

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<sup>5</sup> The cultural beliefs and practices surrounding ‘inauspicious’ death in late nineteenth century Siam do not correspond to any single religious tradition or canon, and must therefore be reconstructed based on contemporary survivals and ethnographic evidence that is highly politicized. With respect to the latter, there are two genres of early literature on spirits left behind by the departed: (1) rationalist accounts penned by members of the sociocultural elite intent on debunking the widespread beliefs in such spirits, and (2) ethnographic and auto-ethnographic accounts dating to the early twentieth century. Important examples of the rationalist literature include *Chao Phraya Thiphakorawong’s Nangsue sadaeng kittchanukit* [A Book Explaining Various Things] (Bangkok: Khuru Sapha, 1971 [1867]) and Prince Si Saowaphang’s *Wa duai amnat phi lae phi lok* [On the Power of Spirits] (Krungthep: Rong phim luang nai phra borom maha ratchawang, 2464 [1921])” (published posthumously). In terms of orientalist ethnography, the early topology of malevolent spirits offered by A. J. Irwin in a paper titled “Some Siamese Ghost-Lore and Demonology” (*Journal of the Siam Society* 4, no. 2 [1907]: 19-46) has held up remarkably well (Irwin cites Saowaphang [op. cit.] as a source for his article). The auto-ethnographic work of *Phraya Anuman Rajathon* offers a more empirical account of Siamese cultural practices and beliefs. Another useful source is Robert B. Textor, *Roster of the Gods: An Ethnography of the Supernatural in a Thai Village*, vols. 1-6 (New Haven, CT: Human Relations Area Files, 1973). Finally, recent ethnographic scholarship has tried to come to terms with a revival in aspects of the culture of unnatural death, specifically the idea that the conditions of (post-)modernity have produced a proliferation of the spirits of bad deaths (*phi tai hong*); see, for example, Andrew Alan Johnson, “Rebuilding Lanna: Constructing and Consuming the Past in Urban Northern Thailand” (PhD diss., Cornell University, 2010), 204, 237-244; and Rosalind Morris, *In the Place of Origins: Modernity and Its Mediums in Northern Thailand* (Durham: Duke University Press, 2000), 159, 195-6.

<sup>6</sup> Perhaps the most important characteristic of the culture of ‘inauspicious’ death is its heterogeneity and cosmopolitan nature. It was sufficiently indeterminate as to capture and combine elements of different religious traditions, including animism and Buddhism, with different practices from distinct ethnic groups. This flexibility, which has been referred to as “syncretism” has long been among the defining characteristics of Thai religious life. See, for example, Donald Swearer’s classic *Buddhist World of Southeast Asia*, second ed. (Albany: SUNY Press, 2010). For a recent challenge to the “syncretic” paradigm in the study of Thai religious culture, particularly with respect to recent developments, see Pattana Kitiarsa, “Beyond Syncretism: Hybridization of Popular Religion in Contemporary Thailand,” *Journal of Southeast Asian Studies* 36, no. 3 (2005): 461-487.

virulent illness (such as cholera and symptoms associated with opium withdrawal), death in childbirth, accidents (such as those due to a fall from a tree or a natural event), and animal attacks. The common denominator in these diverse forms of death was impaired consciousness; death took the deceased largely unawares—or, as in the case of suicide, the deceased’s consciousness was exceedingly troubled at the moment of death. The impaired or disturbed consciousness of the deceased was unable to move on in the process of reincarnation, and had the potential to become a malevolent spirit.<sup>7</sup> Such spirits tended to adhere to the location where the death occurred, and they posed a threat to humans, perhaps by taking another life in order to secure the release of the spirit. The overwhelming logic of dealing with such death was a notion similar to contagion: because inauspicious deaths had the potential to leave behind malevolent spirits that might harm others, they were seen as a threat to the community. Inauspicious death therefore required social action aimed at protecting the community from further effects. This regard for the potentially malevolent spirit of the deceased also translated into a distinctive sense of locality; in the aftermath of an unnatural death, members of the local community had to be attuned to the potential resting places of the spirits left behind.

On a practical level, the sense of contagion surrounding unnatural death translated into a general unwillingness to interact with corpses that were left behind by what were deemed sudden or unnatural causes of death. According to Stanley Tambiah’s ethnography of religious life in rural Northeast Thailand, burials for such corpses were “devoid of ritual.”<sup>8</sup> A body left behind by unnatural death was quickly buried “so that the earth may contain its dangerous powers,” and

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<sup>7</sup> For more contemporary ethnographic accounts of these beliefs, see *Phra Khru Anusaranasasanakiarti* and Charles F. Keyes, “Funerary Rites and the Buddhist Meaning of Death: An Interpretive Text from Northern Thailand,” *Journal of the Siam Society* 68, no. 1 (1980): 1-28; and Stanley J. Tambiah, *Buddhism and the Spirit Cults in North-East Thailand* (Cambridge: Cambridge University Press, 1970), 189-194.

<sup>8</sup> Tambiah, *Buddhism and the Spirit-Cults*, 189.

monks were called to officiate over rites intended “to invest the deceased with merit and grant protection to the living” from the potentially dangerous spiritual remnants of the deceased.<sup>9</sup> Tambiah also notes emphatically that the special treatment given to the dead in such cases was not a matter of taboos related to the impurity of dead flesh, but was predicated on the widespread fear of the malevolence of the spirit of the deceased, which “hovers dangerously” after death and “may attack the closely related living kinsmen because of its previous attachment to kin, property, and house.”<sup>10</sup>

The burden of placating the dispossessed spirit of the dead fell upon the bereaved family, which was expected to sponsor appropriate ritual actions to placate the spirit and protect the community. The logic of this arrangement might best be explained through an appeal to what Shigeharu Tanabe has called “community culture,” the pervasive belief that individual physical injury “can damage the community as a whole.”<sup>11</sup> The primary ethic of concern in cases of

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid., 193. Over time, foreign residents in Bangkok became acquainted with the customs associated with inauspicious death, which became part of the ethnographic lore about the Siamese that circulated among its foreign residents. Aage Westenholz, the Danish manager of the Bangkok Tramway Company, for example, noted that when Siamese rivercraft capsized, bystanders tended to shy away from assisting, for “reasons of religious superstition” (Aage Westenholz, “Street Railways in Siam, and Siamese Customs,” *The Street Railway Journal* 7 [Aug. 1891]: 414-415, 414.). The fact that the city’s Chinese residents refused to allow dead bodies to enter their homes was another common observation (see, for example, *BT* 10 August 1895). These beliefs might help to explain morbid reports that appeared in the foreign press from time to time, such as the occasion where upon seeing the corpse of a newborn baby floating in a basket in the canal next to a temple, a group of Siamese children hurled rocks trying to sink the basket (*BT* 23 May 1895).

<sup>11</sup> Shigeharu Tanabe, “The Person in Transformation: Body, Mind and Cultural Appropriation,” in *Cultural Crisis and Social Memory: Modernity and Identity in Thailand and Laos*, S. Tanabe & C. F. Keyes, eds., (Honolulu: University of Hawai’i Press, 2002), 43-67; cited in David M. Engel, “Landscapes of the Law: Injury, Remedy, and Social Change in Thailand” in *Law & Society Review* 43: 1 (2009): 61-94, 67. Engel’s own ethnographic work on personal injury, law, and justice suggests that these beliefs surrounding the communal implications of individual injury persisted in Northern Thailand well into the late twentieth century; see his “Globalization

unnatural death was communal wellbeing rather medico-legal certainty; when confronted with a corpse, Bangkok residents sought restorative action over forensic truth. But this logic was upset by the arrival of Siamese police tasked with investigating unnatural death in the capital.

### **Death Enters the Archives**

On 23 September 1890, a Nai (Mr.) Mak hired three laborers to take down a ceremonial arch that had been constructed on the occasion of King Chulalongkorn's birthday celebration. The arch, which was decorated with festive garlands, had been erected at the edge of the Chao Phraya River on the premises of a warehouse owned by a member of the Siamese elite.<sup>12</sup> It was intended to serve as a backdrop for the king's ceremonial procession along the river. At just after four in the afternoon, one of the laborers, a Siam-born ethnic Chinese man named *Jin* ("Chinaman") Pao cut one of the two wooden support beams holding up the arch. The arch immediately collapsed and all three laborers fell towards the river. One of the laborers, Jin Ma, was fortunate to fall in the vicinity of a passing boat, and was able to cling to the side of its hull. The second laborer, whose name was not known, fell straight down and caught hold of the riverbank. Jin Pao, however, disappeared into the brackish tidal river. *Phraya* Intharathibodi Siharat-rongmuang, in his capacity as head of the Police of the Eastern Districts of the city (*jao krom kong trawaen khwa*), dispatched a single police officer to go and investigate the matter along with the district official (*nai amphoe*). The records of the case do not offer a detailed account of the methods of investigation employed by the police officer, but they do not appear to

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and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand," *Law & Social Inquiry* 30, no. 3 (2005): 469-514, 482-3.

<sup>12</sup> NA R5 N 23/1.

have been very detailed or scientific. Locating the body of Chinaman Pao was not the first priority in the investigation.

Three days later, on 26 September, a man named Mr. Chum spotted a corpse floating downriver near the mouth of the Toei Canal (*khlong toei*). The sighting was reported to police, who fished the body from the water. The police paid a visit to Jin Ma, one of the two surviving laborers, and asked him to come and identify the body. Ma refused, claiming that he was still recovering from injuries sustained in the accident. The police then halted the investigation, and the official documents do not make any mention of what happened to the body of Jin Pao. There is no mention, for instance, of whether the body was inspected for evidence of injuries that would suggest foul play, even though this had long been an established practice in cases of unnatural death.

The death of Jin Pao marks a significant change in the nature of state concern for cases of unnatural death in Siam. It is the first case that appears in the “Death by various causes” (*tai duai het tang tang*) files of the Ministry of the Capital. The somewhat generic designation of these files speaks to the ambiguous nature of the archive in the early years of its existence. In so far as the files contained within it are records of police investigations into cases of untimely or unnatural death, the logic of the archive corresponds to the British inquest, a medico-legal institution that Prince Naret Worarit, head of the Committee for Local Government, may have learned about during his tenure at the Siamese legation in London.<sup>13</sup> Although there are no archival records that speak to the original decision to begin investigating such deaths in Bangkok, the fact of its creation suggests a juridical orientation that was quite opposed to the

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<sup>13</sup> Naret would likely also have learned about inquests when he visited Singapore along with King Chulalongkorn in 1890, in order to study British municipal governance and policing; see Samson W. Lim, “The Aesthetics of Evidence: Crime and Conspiracy in Thailand’s Popular Press” (PhD diss., Cornell University, 2012), 84-87.

traditional beliefs surrounding inauspicious death. In the early years of the inquest in Siam, however, these juridical inclinations remained unvoiced. It was not until March 1893 that we begin to see evidence of the explicit logic behind these investigations, when Prince Naret used the term “suspicious” (*na song sai*) to describe the conditions surrounding a double-suicide in the same household.<sup>14</sup> But the “Death by Various Causes” files retain their original ambiguity until much later, when in March 1895 Dr. Meng Yim, a physician in the employ of the Siamese police referred to an inquest investigation as pertaining to a “[Siamese] subject who died under suspicious circumstances.”<sup>15</sup> In statements such as these the juridical logic of the “Death by Various Causes” files was slowly articulated, but in its early years the institution remained inherently ambiguous in both its conception and execution. This ambiguity is indicative of the faltering nature of the Siamese state’s early regard for the dead; it adopted the trappings of European institutional forms of concern without articulating the intention or significance of the reforms.

As the case of Jin Pao demonstrates, the entrance of unnatural death into the archives was likewise an ambiguous development in terms of execution. First, the documents related to the case reveal the cursory and improvisational nature of police investigational techniques at the time. Secondly, the case of Jin Pao, and numerous others from the early era of record keeping, shows that the corpse was rarely the focus of police inquiries, which regarded the corpse only in passing and instead hinged on witness testimony. Finally, although the entrance of death into the archives marks a significant development in the state bureaucracy in terms of both oversight and documentation, it did not correspond to progress in the areas of forensic science or legal

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<sup>14</sup> NA R5 N 23/11.

<sup>15</sup> “*Ratsadon phu tai duai het song sai*” (NA R5 N 23/151).

medicine. In spite of these limitations, the inquest was nevertheless an innovation that bore potentially important implications for political life in Siam from its very inception.

The inquest was a novel form of engagement between the state and its subaltern subjects in and around the capital city. In the case of Jin Pao, the arrival of police on the scene effectively brought the corpse of a previously anonymous laborer into a direct—though not reciprocal—relation with the state. There were, of course, other transactions and forms of obligation and imposition through which the Siamese state had traditionally interacted with subjects of little social standing. Firstly, there was the institution of *corvée* labor.<sup>16</sup> By the end of the nineteenth century, however, the system was in a state of dramatic decline.<sup>17</sup> Moreover, *corvée* could not really be considered a channel of direct interaction between the state and its subjects, since the conscription of manpower had always operated through the feudal *sakdina* system.<sup>18</sup> *Corvée*

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<sup>16</sup> *Corvée* obligations were twofold: on the one hand, every free individual was responsible to a patron to whom they rendered service a few days a year; on the other hand, they were also obligated to serve the state for a longer period each year, and that service was often defined according to the status of their patron within the state. For a particularly clear and succinct explanation of this system and how it evolved from a feudal to a bureaucratic institution, see Walter F. Vella, *The Impact of the West on Government in Thailand* (Berkeley: University of California Press, 1955), 328-31.

<sup>17</sup> By the end of the nineteenth century, the peasant classes (*phrai*) and especially the patrons or lords who controlled their labor power with the feudal *sakdina* system had increasingly opted to commute their *corvée* obligation through a cash payment; see Pasuk Phongpaichit and Chris Baker, *Thailand: Economy and Politics*, second ed. (New York: Oxford, 2002), 24-26. According to Pasuk and Baker, efforts to evade *corvée* service were so widespread that “By the 1870s, *corvée* was useless as a method even for raising the army” (25).

<sup>18</sup> For newly arrived Chinese laborers, Jin Pao perhaps among them, whose ranks had been growing rapidly since the mid-nineteenth century, there was an obligatory triennial “head tax,” which was justified as a tax levied on those who were exempted from the obligation to provide *corvée* labor service to the state; see G. William Skinner, *Chinese Society in Thailand: An Analytical History* (Ithaca: Cornell University Press, 1957), 128. The Siamese state profited enormously from this arrangement, imposing numerous taxes on Chinese laborers and their consumption habits, while using their labor to develop the kingdom. According to Skinner “for a period of at least fifty years, during which Siam achieved a modern government, a thriving economy, and entered the world economy and family of nations, almost half of the government’s

labor obligations to the state were therefore mediated by more personal forms of hierarchical patron-client relations.<sup>19</sup> The peculiarly Thai institution of debt slavery was another form of social life that brought the subaltern to the attention of the state. Under the conditions of debt slavery in Siam, which was distinct from the chattel slavery practiced in much of the colonial world, the owner of the debt had complete mastery over the labor of the slave; debt slaves were therefore exempt from *corvée* labor obligations.<sup>20</sup> This exemption made debt slavery a challenge to the state's ability to muster manpower, and thus the institution was of some interest to the state.<sup>21</sup> But with the exception of military conscription, these forms of mediated state-subject relations were slowly waning as the fifth reign witnessed the ascension of more absolute forms of monarchical rule.<sup>22</sup> Viewed in the context of these declining forms of mediated relations, police inquests into cases of unnatural death—much like the contemporaneous rise of civil legal interest in cases of accidental injury and death discussed in part one—are remarkable. They are evidence of a new form of engagement between the state and its subaltern subjects, one that would increasingly come to be dominated by novel modes of authority and forms of expertise.

## Dealing with Death (II): The Police Inquest

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revenues was derived directly or indirectly from the comparatively small Chinese minority” (125).

<sup>19</sup> See Akin Rabibhadana, *The Organization of Thai Society in the Early Bangkok Period 1782-1873* (Bangkok: Amarin, 1996).

<sup>20</sup> See Andrew Turton, “Thai Institutions of Slavery,” in *Asian and African Systems of Slavery*, ed. James L. Watson (Berkeley: University of California Press, 1980), 251-292, especially 262-72.

<sup>21</sup> By the late nineteenth century, the Ministry of the Capital kept tabs on such debt contracts; officials records can be found in NA R5 N 26, *Chabab nangsue samkhan* (Records of Contracts) (unfilmed).

<sup>22</sup> David Feeny has argued that these changes represent part of a concomitant decline of one regime of property rights (rights in man) and the rise of another (rights in land); see David Feeny, “The Decline of Property Rights in Man in Thailand, 1800–1913,” *Journal of Economic History* 49, no. 2 (1989): 285-296.

It is fitting in many ways that the death of Jin Pao, the first case that would find its way into the archive of unnatural death in Siam, occurred in the river. In contrast with the tramway tracks that foregrounded the discussion of injury and death in part one, the rivers and canals that crisscrossed the city were the quintessentially Siamese mode of mobility. And, like the tramway, the city's waterways claimed their share of victims, whose corpses became the object of concern for both inauspicious death and the forensic investigations of police into suspicious death.<sup>23</sup> In order to conduct an inquest, police often had to retrieve corpses from these waterways. In seeking out—as opposed to shunning—the corpse, police inquests clearly implied a radically different manner of concern for the dead body than the culture of inauspicious death. But beyond their willingness to engage with the corpse, the “Death by Various Causes” files reveal that the actual practice of forensic investigation in the early days of the inquest left much to be desired. Moreover, the state's archive of unnatural death also demonstrates that although the state bureaucracy was prepared to administer the paper trail of investigations into cases of unnatural death, the police were often unwilling to take up the burden of dealing with corpses.

A little over a year after the death of Chinaman Pao, in October 1891, the body of an unidentified woman was found floating in the canal next to *Wat Saket*, a prominent temple located just outside the city walls that was well known for its functions in funerary rites.<sup>24</sup>

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<sup>23</sup> Bodies floating in the rivers and canals were a common occurrence in fin de siècle Bangkok. They appeared as often as every other week in the “Local and General” news columns of the *Bangkok Times* as well as in the “Death by various causes” files of the Ministry of Local Government. In the latter case, the bodies were most often observed by the police themselves (usually the ‘water police’), and then retrieved. In the former case, however, reports of corpses drifting downstream seem to be based on local gossip and likely often went unreported to the police (only a small number of such reported drownings actually appear in the state inquest files).

<sup>24</sup> NA R5 N 23/6. As described in the Introduction, *Wat Saket* was infamous among western travellers to Bangkok in the nineteenth century; for a detailed and particularly graphic account of the temple grounds and its funerary functions see Lucien Fournereau, *Bangkok in 1892*, edited and translated by Walter E. J. Tips (Bangkok: White Lotus Press, 1998), 147-156.

Although it appears in the inquest files, this particular case is notable not as an inquest—the investigation of a case of unnatural death—but simply as a case of an errant corpse. The inquest file does not contain any information about an investigation into the cause of death or an examination of the body of the young woman. The central document in the file is from a monk at *Wat Bowoniwet*, a prominent royal temple located some distance from *Wat Saket* and the floating corpse. On 19 October *Phra* (Venerable) Phrasit of *Wat Bowoniwet* wrote to the police ordering them to come and remove the body that very evening.<sup>25</sup> He explained that monks from *Wat Saket* had reported the matter to police two days prior to his letter, and that police had not taken any action to remove the corpse. *Phra* Phrasit castigated the police, noting that the situation “was entirely unseemly” and warning them not to allow this to happen again in the future.<sup>26</sup> In the early days of police inquests, it was not at all uncommon for corpses to linger, as police were reticent to take charge of death.<sup>27</sup>

In cases where police did arrive in a timely manner and attempt to investigate the cause or circumstances of death, early records in the “Death by various causes” files convey a sense of the ad hoc nature of forensic investigations at the dawn of police inquests in Bangkok. To begin, the police and district officials charged with investigating the cases had no specialized knowledge or training in forensic investigational techniques or medico-legal expertise in matters of death. When police arrived at the scene of an unnatural death, they would secure the corpse and conduct an on-site postmortem examination, a procedure known as “investigation (by means

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<sup>25</sup> “*Hai jat jaeng ao asop thi klao ma ni khun sia hai phon nai lam khlong nai kham wan ni*” (NA R5 N 23/6).

<sup>26</sup> “*Mai pen kan-somkhuan loei*” (ibid.).

<sup>27</sup> The *Bangkok Times* would often report corpses lying in the street for days before police would intervene (see, for example, *BT* 12 October 1898). There were also jurisdictional disputes over cases of unnatural death, whereby Siamese police would engage in arguments with local officials, including the tax farmers who owned the gambling dens that where cases of sudden and unnatural death often occurred (see, for example, NA R5 N 23/151).

of) turning over the body” (*kan-chanasut phlik sop*). In the late nineteenth and early twentieth century, before the vocabulary and spelling conventions for these investigative techniques had stabilized, there was a great deal of variety in the spelling and terminology employed to describe police inquests.<sup>28</sup> As in the nomenclature, there seems to have been a lack of uniformity in the actual conduct of forensic inspections of corpses. The colloquial sense of “flipping the body over” (*phlik sop*) seems to be an accurate description of the post-mortem examinations conducted by police and district officials, which were often limited to inspecting the outside of the body for obvious signs of violence—or, in cases of suspected suicide or drug overdose, for signs of physical compulsion. Thus, the postmortem investigations conducted by police were quite accurately referred to as “turning over the corpse to inspect for injuries” (*phlik sop truat du bat phlae*).<sup>29</sup>

Another indication of the ad hoc or vernacular nature of early police inquests was the fact that postmortem examinations were limited to on-site viewings of the body, often in outdoor, public spaces. The police and district officials charged with the investigation often chose a nearby Buddhist temple (Thai: *wat*) to conduct the postmortem examination. In many cases, the temple was the original location where the corpse was discovered, making it the obvious choice for the examination. Buddhist temples attracted the desolate, diseased, and destitute of Bangkok society. Open-air temple pavilions (Thai: *sala*), intended as a shady refuge for passing travelers, provided some shelter for those without means or relatives to care for them. The Buddhist faithful provided charity cases with food, care, and basic comforts, while allowing them to reside at the temple pavilions in their hour of need—or, very often, in their final hour. Charity and

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<sup>28</sup> The “Death by various causes” files show an almost endless variation in the spelling of the terms “*sop*” and “*asop*” (corpse), the latter spelling being an archaic form closer to its Pali-Sanskrit roots.

<sup>29</sup> See, for example, NA R5 N 23/9.

compassion made the temple *sala* an attractive destination for the terminally ill or suicidal, who were in effect entrusting their corpses to the care of the temple's benefactors, confident that their remains would be handled appropriately. In cases such as these, on-site postmortem examinations had to be performed in the open, accessible grounds of the local *wat*. Evidence from the "Death by various causes" files suggests that postmortem examinations were often well attended, to the point where police were not able to record the names of all the witnesses present.<sup>30</sup>

In other cases, however, when the death did not occur within temple grounds, the *wat* was nevertheless chosen as the site for the postmortem examination. Temples were deemed public space, readily appropriated by police and local officials as a convenient landmark and gathering place.<sup>31</sup> At a time when Bangkok was still known to foreigners as the "Venice of the East" and waterborne transport remained a key mode of conveyance, temples often had readily accessible frontage to rivers and canals. Another virtue of the temple as a locale for forensic investigations was that temples, especially those located outside of the city walls, were already associated with

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<sup>30</sup> See NA R5 N 23/7 for an account of a particularly crowded postmortem examination on temple grounds. The fact that crowds gathered on the occasion of police inquests is in some respects counter-intuitive to the logic of inauspicious death. It seems plausible, however, that the presence of police somehow had the effect of defusing or deactivating the menace posed by the corpse; perhaps villagers understood that through their willful interference with the corpse police had taken the risk upon themselves.

<sup>31</sup> Moreover, many police stations were—and still are—located next to temples, from which they derive their names (for example, in *Suan Phlu* in central Bangkok). This connection may simply be reflective of a longstanding mutual relationship that began with ad hoc local arrangements. When Police Inspector Jardine arrived in Bangkok (see chapter three), he noted with frustration that most of the local police stations in the western divisions of the city (on the left bank of the Chao Phraya River) were "either broke down bamboo sheds or 'Salas' [temple pavilions] etc. lent by the Priests" to the local police officers (A. J. A. Jardine, *Report on the Police Administration of Bangkok, Suburbs, and Railway Divisions for 1898-1899*, 68; see National Archives document number N R5 N/96 Box 6). Even as late as March 1899, Mr. E. W. Grove, a foreigner serving as assistant divisional superintendent of police for the western districts of the city (Thonburi) was using a temple *sala* to oversee police business for the eleven stations under his charge (*BT* 8 March 1899).

death.<sup>32</sup> Temples like *Wat Saket* administered a diverse (and hierarchical) array of funerary services, from charnel grounds where the bones of the destitute were picked clean by vultures, to burial grounds where bones were interred in preparation for cremation, to elaborate funeral pyres and mausoleums prepared on the occasion of deaths among the social elite (Figure 10). Along with monks, who catered to the ritual needs of the deceased and their relatives, such temples employed in-house undertakers (Thai: *saparue*) who tended to the less ceremonious aspects of death in late nineteenth century Bangkok.<sup>33</sup>



Figure 10: An undertaker tends to a corpse in the charnel grounds at Wat Saket circa 1900; source: National Archives of Thailand, image # กค.พต.2/33.

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<sup>32</sup> Of course open-air examinations at temples also had the added advantage of ventilation. Corpses that had languished in the city's waterways for several days were likely already well on their way to putrefaction.

<sup>33</sup> Among the responsibilities of the undertakers was the preparation of bodies before they were entrusted to birds of prey in the charnel grounds. Fournereau offers a graphic account of the undertaker's duties at this time, which included cutting "the flesh in long strips" and 'launching' the pieces "as hard as he can to the dogs and the vultures which do not leave the temples." In cases of cremation, the undertaker had to 'take the precaution' of severing the joints of the corpse; if he should fail to do so, once on the funeral pyre "the dead flesh appears to be born again and twitches; the electrified limbs stir, twist and relax; the dead, resurrected, grimaces and atrociously thrashes about on his bed of brands. Oh, horror!" (Fournereau, *Bangkok in 1892*, 151).

For these reasons, the temple became the de facto site for postmortem examinations in cases of unnatural death that were removed from the site of death. The most common cases of this nature were those of bodies found floating in the city's waterways. When floating bodies were observed by or reported to police, they were secured by police and taken to the nearest temple (unless they were spotted in the immediate vicinity of a police station, in which case they were sometimes taken to the station). Although the reports are not specific about the procedures for retrieving the bodies, archival evidence suggests that they were not removed from the water; instead, they were likely secured with ropes and towed to the boat launch of the nearest temple. Having reached the temple, the police would secure the body with ropes to the nearest tree on the temple grounds. It is not difficult to imagine these early postmortem examinations—those referred to as “turning the body over to inspect for wounds”—conducted with sticks as the body bobbed around at the end of a course hemp rope. The police then left the body—often unattended (as the discussion below will reveal)—in order to go off in search of witnesses or relatives of the deceased, who might be able to provide a narrative for the death and take charge of making funerary arrangements.

Given the limited and ad hoc nature of the postmortem examination, it is not surprising that police tended to rely on other means of gathering information in the investigation of cases of unnatural death, notably by collecting witness testimony. The new mandate of the police to investigate cases of unnatural death undercut local autonomy and interrupted the sociocultural habits of thought and practice associated with “inauspicious death.” In effect, police intervention usurped the authority to forge meaning and take action in the wake of unnatural death from relatives, neighbors, and local authorities (such as elite patrons or village headmen). Yet the police nevertheless relied upon the testimony of these very same people to create their own

narrative of the cause and meaning of cases of unnatural death. After securing and inspecting the body for evidence of injuries, the police would branch out in search of witnesses who could identify the deceased or help to clarify the circumstances surrounding the death. The crucial investigational tactic employed by police was “the search for local witnesses” (*kan-sup phayan rangwat*). In their search for witnesses, the police employed a sense of locality that was distinct from the culture of inauspicious death, with its concern for the topography of human-spirit interaction, yet in practice it seems to have retained some commonalities.

The fixation on proximity in the search for witnesses is perhaps best illustrated by police canvassing efforts in cases of bodies found floating in the city’s waterways. After receiving reports about waterborne corpses—sometimes already secured by rope to a local pier or tree, but more often still adrift in the brackish waters of the city’s rivers and canals—police would take custody of the body, check for injuries, and then set out in search of relatives or witnesses. Regardless of the degree of decomposition (Thai: *nao*) of the body—a recognized indicator of how long the body had been in the water—police concentrated their canvassing efforts on the immediate vicinity where the body was discovered. In cases of reported drownings police showed a clear understanding of the tidal influences of the river and they immediately connected corpses appearing downstream with such reports.<sup>34</sup> The “Death by various causes” files reveal, however, that police searching for local witnesses never applied this insight in their search for the original site of a drowning or the home village of the deceased. The idea of a ‘local witness’ seems to have been somehow inextricably—and irreparably—linked to the discovery of the corpse and its final resting place.

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<sup>34</sup> Cases showing evidence of police awareness of the tendency of corpses to drift downstream are numerous; see, for example, the cases of Nai Pao discussed above, as well as the case of a criminal who jumped into the river in order to evade police (NA R5 N 23/72).

At a time when forensic investigations into cases of unnatural death were limited to inspecting the corpse for external signs of injury and locating local witnesses, witness testimony was key to forging a meaningful narrative. The formal title for offering witness testimony in cases of unnatural death was “to offer legal testimony concerning the inspection of the corpse” (*hai thoi kham kotmai chanasut phlik sop*). The colloquial idea of “inspecting the corpse by turning it over” (*chanasut phlik sop*) was thus common to both lay witness testimony regarding cases of unnatural death and the forensic investigative practices of police and district officials. This suggests that there was no qualitative distinction made between forensic evidence offered by police or district officials and that offered by equally untrained lay people who happened to be nearby at the time of the discovery of the body.

Transcriptions of witness statements make up a significant portion of the documents archived in the “Death by Various Causes” files of the Ministry of Local Government. Even the comprehensive police reports that introduce the inquest files are often little more than paraphrased recitations of the original statements offered by witnesses, which are included in the files. The statements given by witnesses in cases of unnatural death reflect vernacular modes of thought and the colloquial expressions of local cultures of death. But these statements were then collated by police into reports of the findings of the investigation, which were submitted to their superiors in the Ministry of the Capital. Witness testimonials in cases of unnatural death constitute a rare archive of the words, thoughts, and experiences of the subaltern masses in late nineteenth century Siam. Burgeoning state interest in death effectively created a bureaucratic channel and an archival space for recording subaltern voices. In many cases, the statements were physically composed by clerks or local mediators, and bear only the signature or mark of the unlettered witness. Such statements were likely shaped by a process of homogenization, as

police coerced, cajoled, or simply directed witnesses, mediators, and translators to exact a particular kind of statement about the circumstances surrounding the death. Although the rough edges of colloquial speech and local concerns in cases of death were likely blunted by these interventions, the documents are nevertheless a significant archive of subaltern perceptions and concerns, as well as a record of the changing conditions of daily social and commercial life.<sup>35</sup>

When they canvassed the local community in the wake of an unnatural death, the Siamese police encountered witnesses whose testimony brought different assumptions and concerns to the experience of being near to death than those of the police and officials in the state bureaucracy. Police officials, or their clerks, would compose a report offering an overview of the facts in the case, including the testimony—both forensic and otherwise—of local witnesses. Their reports did not differentiate between forensic evidence offered by local witnesses and that of police and district officials. Adding to the social—even civic—nature of these early inquests was the fact that forensic investigations took place in the open air in public spaces in full view of the curious and concerned public. In spite of the intervention of the police and district officials, early police inquests in Bangkok seem to have been inextricably rooted in local meaning and practice. Police and local witnesses alike conducted forensic investigations and offered testimony on the cause of death. How then, was a single homogenous sense of meaning distilled from the *mélange* of voices, cultures, and habits that constituted the early Siamese police inquest?

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<sup>35</sup> Takashi Tomosugi, the only other scholar who has worked with the inquest files compiled by the Ministry of the Capital, used the documents as evidence of the changing nature of urban lives at that time; see his *Reminiscences of Old Bangkok: Memory and the Identification of a Changing Society* ([Tokyo]: The Institute of Oriental Culture, University of Tokyo, 1993), 131-150.

## **The Semantics of Unnatural Death: Meaning by Executive Fiat**

The institution of police inquests in cases of unnatural death in late nineteenth century Bangkok did not imply a revolution in the actual investigation of such cases. Police records betray the improvisational nature of forensic methods. Although the state had usurped the authority from local officials and villagers to make sense of such cases of death, its agents continued to rely on vernacular forensic practices and colloquial witness testimony. District officials who were called upon to inspect corpses alongside of the police acknowledged that conducting forensic postmortem examinations was “beyond their capabilities” (*luea wikhro*).<sup>36</sup> Moreover, there appears to have been no fundamental sense of agreement at different levels within the state bureaucracy over the meaning of such deaths or the need for police investigation. Neglecting for the moment the question of how the cosmopolitan populace of the capital city responded to state intervention in the administration of unnatural death, it is doubtful that even the Committee for Local Government, the senior Siamese Police officials, and district officials (*nai amphoe*) shared a common sense of the meaning and import of unnatural death in the early years of state involvement. When state authority first became involved in the investigation of unnatural deaths in the capital, it was left to the highest reaches of the Committee for Local Government and the office of the King himself to make sense of death. In the early era of police involvement, the semantics of death were decided by executive fiat.

Each of the early cases in the “Death by Various Causes” files crossed the desk of Prince Naret Worarit, a younger brother of King Chulalongkorn who presided over a recently reformed bureaucratic body charged with governing the capital city. The Committee for Local Government (*khomitti krom phra nakhorn ban*) replaced the former governing body, known as

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<sup>36</sup> See, for example, *Rai ngan kan-prachum senabodi sapha ro. so. 111* [Minutes of the Meetings of the Government Ministers for the year 1893], vol. 1 (Krung thep: Amarin, 2550 [2007]), 210.

the Capital Department (*krom muang*), in 1886. Prince Naret, who had recently returned from serving as the head of the Siamese legation in London and an extended tour of the United States, was appointed to the committee.<sup>37</sup> When the committee was transformed into the Ministry of the Capital (*krasuang nakhorn ban*) as part of the sweeping government reforms of 1892, Naret was charged with heading up the new institution. From the start, the Ministry of the Capital was concerned with many of the same functions that had occupied its antecedents, including overseeing the administration of taxes,<sup>38</sup> policing,<sup>39</sup> and medicine.<sup>40</sup> In the coming years, sanitation and public works would become a crucial part of the ministry's mandate, accounting for nearly half of its expenditure by 1906.<sup>41</sup> When viewed through the lens of financial expenditures, however, it is easy to overlook important shifts in the governmental work of the ministry. Alongside of capital expenditure on public works projects archival records reveal that the ministry was increasingly concerned with the wellbeing of its living residents and the material fate of the deceased. In the last decade of the nineteenth century, for example, the archives of the Ministry of the Capital show a dramatic increase in documents related to the oversight of the cattle industry and slaughterhouses<sup>42</sup> as well as causes of death and burial

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<sup>37</sup> Naret alone was in charge of municipal governance beginning in 1889; see David K. Wyatt, "Family Politics in Nineteenth Century Thailand," *Journal of Southeast Asian History* 9, no. 2 (1968): 208-228, 226.

<sup>38</sup> See James A. Warren, *Gambling, the State, and Society in Thailand c. 1800-1945* (New York: Routledge, 2013), especially chapters three and five.

<sup>39</sup> Naret's own efforts to reform the municipal police force date back to 1889; see NA R5 N 8.1/1 and N 11.3/1.

<sup>40</sup> Early documents from the hospital department (*krom phayaban*) pertaining to Cholera and vaccination, for example, can be found at NA R5 N 49.3/1ff.

<sup>41</sup> Porhpant Ouyyanont, "Bangkok's Population & The Ministry of the Capital in Early 20<sup>th</sup> Century Thai History," *Southeast Asian Studies* 35, no. 2 (1997): 240-260, 256.

<sup>42</sup> See, for example, NA R5 N 5.2/6-7; N 5.2/14; NA R5 N 5.7/1-2; N 5.7/5; N 5.7/8; N 5.7/11; N 5.7/13ff.

practices.<sup>43</sup> Part one of this dissertation demonstrated how accidental death and injury on the streets and transportation infrastructure fell under the purview of the Ministry of the Capital, but in addition to mediating the often extrajudicial implications of such cases the ministry was at the same time beginning to focus its resources and attention on the investigation and administration of unnatural death.

If expenditures are a potentially misleading metric of the work of Ministry of the Capital, then sheer volume of documentation might offer a more reliable quantifier. The “Death by Various Causes” files compiled by the Ministry of the Capital, which occupy twenty-five boxes (seven reels of microfilm) and are perhaps its single largest collection of documents, suggest that unnatural death was a topic of great concern to those responsible for governing the capital.<sup>44</sup> Throughout his tenure in the top office of the ministry, Prince Naret apparently spent a considerable amount of his time pouring over inquest files compiled by the Siamese police as part of their investigation of cases of unnatural death in Bangkok. In the coming years, he would invest significant energy and political capital in reforming the procedures involved in investigating such cases (these developments are chronicled in chapters five and six). In the early years of the 1890s, however, Prince Naret exercised a near-complete authority over the cases, scribbling judgments at the end of each file that would either corroborate police findings in the case or offer an alternative interpretation of the causes and significance of the death in

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<sup>43</sup> See NA 5 R N 8.1/151, which contains a monthly registry of burials and cremations at city temples; NA R5 N 8.1/165, which deals with efforts to prohibit the burial of Cholera victims; and NA R5 N 8.11/1-34, which contains records of requests to move corpses in and out of the city for the purpose of burial.

<sup>44</sup> The microfilm reels for the “Death by Various Causes” files are labeled “NA R5 N,” and they span reel numbers 328-334.

question. Prince Naret's "verdicts" were submitted to the private secretary of King Chulalongkorn for royal endorsement.<sup>45</sup>

Documents concerning the death of a thirty-three year old monk named *Phra* (Venerable) Mongkhon by self-immolation in January 1892 reveal an early iteration of the role of executive authority in metropolitan police inquests.<sup>46</sup> According to his sister, *Amdeang* Deang (who was a debt slave working as a household servant), *Phra* Mongkhon had been ordained as a monk for at least nine years, having taken up his most recent residence at *Wat Khruawan* some four years before.<sup>47</sup> *Amdaeng* Daeng noted, however, that her brother had not been well mentally for some time, long before the fateful morning of 4 January 1892, when she was summoned to the temple to find him lying scorched and lifeless beneath a Papaya tree under the window of his monastic chamber. Police were summoned and a postmortem examination took place on site, attended by the district official, police officers, monks from the temple, *Phra* Mongkhon's sister, and several other unnamed male and female bystanders. Witnesses noted that the corpse was covered in burns that penetrated to the bone on all parts of the body save for the left foot, which was not burned. Nearby, they found a square metal canister, which was empty but smelled distinctly of oil.

The following day, police submitted documents concerning the case to the Committee for Local Government. Upon reviewing the documents, the committee immediately found them to

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<sup>45</sup> What I refer to as Prince Naret's "verdicts" in cases of unnatural death are brief comments appended near the final page of many of the "Death by various causes" files of the Ministry of Local Government; they are sometimes titled "decision" (*kham tat sin*), but more often appear as telegraphic remarks without any introduction, but usually bearing his signature.

<sup>46</sup> NA R5 N 23/7. The death of Chinaman (*Jin*) Bua in May 1891 is another interesting case for considering the role of executive authority over unnatural death (NA R5 N 23/3). In responding to police documents concerning the (rather complicated case) Naret teases out the distinctions between murder and manslaughter (unintentional homicide) and their respective penal or civil repercussions.

<sup>47</sup> NA R5 N 23/7.

be lacking, and so a committee member (*Phra Anatinarakorn*) drafted a letter to the senior police officer, *Phra Thep Phlu*, complaining that the police report was not sufficiently clear.<sup>48</sup> He therefore summoned *Phra Thep Phlu*, along with the district official who had helped to collect the witness testimony in the case, to come before the Committee in order to give a more complete account of the causes of this “strange event.”<sup>49</sup> He instructed the two officials to arrive at the appointed time and place—eleven a.m. the following morning, January 6, at the Police Court—on time, and not to waste official government time. The meeting amounted to an official state inquest into the death of *Phra Mongkhon*, which was conducted at the highest levels of the newly formed metropolitan government administration. The inquest proceedings, however, were sequestered in the halls of state government—in marked contrast to the postmortem examination and on site investigations conducted by police.

Once the details of the case had reached the desks of the officials who comprised the Committee for Local Government, it became a matter of executive authority, with the district official submitting to an interrogation by the members of the Committee.<sup>50</sup> Following the inquest proceedings at the Police Court, Prince Naret ordered a new copy of the police report to be compiled, reflecting the revised testimony as recorded in the minutes of the inquest proceedings.<sup>51</sup> Finally, the redacted report of the inquest into the death of *Phra Mongkhon* was submitted to the office of the secretary of the king on January 20. The final report relies on the testimony of *Phra Mongkhon*’s sister and his fellow monks, and it constructs a narrative whereby *Phra Mongkhon* “had lost his mind [and had become] manic, and had never

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<sup>48</sup> “*Nai rai ngan khong than ha dai khwam krajat chad khwam talod mai*” (NA R5 N 23/7, letter dated 5 January 1892).

<sup>49</sup> “*Nam het thi mi het plaek palat ni khun*” (NA R5 N 23/7).

<sup>50</sup> The case file contains the minutes of the inquest held at the Police Court on the morning of January 6, 1892 (NA R5 N 23/7).

<sup>51</sup> “*Kae tam kham jaeng ni toem khwam long mai leao nam rang thawai*” (NA R5 N 23/7).

recovered.”<sup>52</sup> His death, the report concludes, was a confirmed suicide, with no one else having done him any harm. The case of *Phra Mongkhon* reveals the authoritative role of the Committee for Local Government in cases of unnatural death, which involved the compilation of a definitive narrative stating the cause of death.

Although the governing body and procedures behind the exercise of this authority would change during the early years of police inquests, the nature of this mode of executive authority over cases of unnatural death in the capital city would not. When Prince Naret was appointed Minister of the newly founded Ministry of the Capital in April 1892, he found himself invested with the full authority formerly wielded by the committee. In some cases, Naret’s verdicts did not extend beyond his role as the head of the metropolitan police: for instance those that pointed out shortcomings in the police reports and demanded further investigation. In other cases, however, Naret’s role was not unlike the office of the coroner in Anglo-American legal medicine: after reviewing evidence collected by police, Naret constructed plausible narratives explaining the causes of death and submitted those judgments to the highest authority in the land, the king.<sup>53</sup>

Documents recording the accidental drowning of an elderly monk named *Phra Jong* at Wat Suthat in central Bangkok similarly reveal Naret’s role in collating the evidence gathered by police.<sup>54</sup> *Phra Jong* was reported missing before dawn on the morning of 24 April 1892 by junior monks who had come to his quarters to rouse him for the morning observances. The same monks then went in search of *Phra Jong*, eventually finding his lamp at the edge of the well where they later recovered his body. Upon being informed of the death, *Phraya Intharathibodi*,

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<sup>52</sup> “*Sia jarit khum di [khum] rai ha prokati mai*” (NA R5 N 23/7).

<sup>53</sup> On the office of the coroner, see Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore, MD: Johns Hopkins University Press, 2000).

<sup>54</sup> NA R5 N 23/9.

of the metropolitan police, dispatched two district officials to the temple in order to conduct a postmortem examination. The officials inspected the body for signs of injury, and, not finding any, they presumed that *Phra Jong* had gone to fetch water during the night, had become faint, tripped, and fallen into the well where he drowned. After reviewing the evidence, Prince Naret entered his “verdict” in the case; he sent a letter to King Chulalongkorn on 2 May 1892, informing him that he agreed with the police report, citing the lack of marks on the monk’s body and *Phra Jong*’s reported habit of fetching water late at night.

When two members of the same household died under unusual circumstances in March 1893, Prince Naret took a more active role in creating a narrative that would explain the deaths. In the early hours of 2 March 1893, police were informed that *Amdaeng Mon*, aged 46, had used a white cloth to asphyxiate herself in the home of her husband.<sup>55</sup> Sometime after her death, *Jin To Than*, her nephew by marriage, consumed a lethal combination of alcohol and opium in his uncle’s home. Police were informed and *Phraya Intharathibodi* dispatched officials to the home, where they found the bodies of *Amdeang Mon* and *Jin To Than*—the latter having died while police were in route that morning. After examining the bodies, officials found no evidence of injury to *Amdeang Mon*, and likewise no evidence of compulsion or foul play in the death of *Jin To Than*. They therefore concluded that the former had hung herself and the latter had taken an overdose of alcohol and opium in apparently unrelated events.

When the documents pertaining to the case reached Prince Naret, however, he viewed the circumstances from afar, with a different sense of causation. In Naret’s verdict, which is undated, he observed that the coincidence of the two deaths was “suspicious” (Thai: *na song sai yu*). Given the unlikely concurrence of the two deaths in the same household on the same day,

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<sup>55</sup> NA R5 N 23/11.

Naret speculated that there must have been a link between them: “Perhaps they were illicit lovers together, since after *Amdaeng* Muan [sic: Mon] hung herself, *Jin To Than* consumed poisonous drugs and was dead before the following dawn.”<sup>56</sup> Naret instructed the police to continue the investigation, and to inquire among those in the household whether they could offer any explanation for the simultaneous deaths. He specifically ordered *Phraya* Intharathibodi to canvass the neighbors and ask whether they had ever observed any “course behavior” (*kiriya yaep*) between the two that would confirm his suspicion that they were surreptitious lovers. Whatever the outcome of this particular case—the documents end with Naret’s instructions to the police to continue the investigation—it clearly shows that as Minister of Local Government Prince Naret acted as arbiter over cases of unnatural death with the Siamese capital, and his dominion went beyond the oversight of the police under his command. In his efforts to uncover the reasons behind cases of unnatural death, Naret at times passed over the physical evidence and witness accounts, and looked instead for other patterns of causation that escaped the notice of the police and bystanders.

Other records of Prince Naret’s interventions into police inquests show an awareness of the lack of medical expertise possessed by state officials investigating cases of unnatural death. In the case of *Amdaeng* Lap, who died of suspected poisoning in June 1892, for example, Naret reviewed the conflicting witness accounts and the conclusions reached by the police. Although Naret concurred with the police that it appeared to be a case of poisoning,<sup>57</sup> he added that it was an unusual case of death, which required a complete investigation.<sup>58</sup> He then ordered police to

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<sup>56</sup> “*Bang thi ja pen chu det khrai kan phro amdaeng muan phuk kho tai laeo Jin to than ko kin ya phit tai nai wan rung khun dang ni*” (NA R5 N 23/11).

<sup>57</sup> “*Kan-ruang ni phikhro tam nai ruang khwam ko do pen na ja thuk ya bua mao jing*” (NA R5 N 23/10).

<sup>58</sup> “*Hen wa khwam ruang ni pen khwam tai doi phit prokati thamada*” (NA R5 23/10).

re-interview all of the witnesses, and to speak with the two physicians who were called in to tend to all of the victims who were poisoned along with *Amdaeng* Lap, paying special attention to the symptoms that the physicians observed when they arrived at the scene. Naret's verdict in the case of *Amdeang* Lap was the first instance where the police were directed to seek the input of medical practitioners in the investigation of an unnatural death by the metropolitan police. Although the physicians in this case were consulted not because of their expertise per se, but simply because of their proximity to the case as witnesses, the role of medical expertise would nevertheless increase in the coming months.

Prince Naret later interceded when a corpse found floating in a canal led to a disagreement between police and physicians working for the Hospital Department. When a male corpse was found floating in the Mahanak Canal in central Bangkok, police canvassed the area and soon learned that the man, named *Nai Jui*, had been a long-term resident of the hospital at *Wat Thepsirin* where he was being treated for cancer (*rok mareng rai*).<sup>59</sup> Neighbors told police that *Nai Jui* often left the hospital grounds to bath at the canal's edge, where he may have slipped, fallen in, and drowned. The physician in charge of the hospital, a minor royal named Dr. Wong (*Momratchawong Wong*), told police that *Nai Jui* had indeed been a patient of the hospital, but that he was released after his cancer had been cured. The police, skeptical of the doctor's account, conducted a postmortem examination, claiming to have seen evidence of cancerous lesions on the man's face, body, and feet. They faulted Dr. Wong and the hospital administration for allowing patients to leave the hospital grounds. Naret's verdict in the case, dated 19 September 1893, rejects the testimony of the police officers, noting that they were not

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<sup>59</sup> NA R5 N 23/16.

used to performing such medical diagnoses. He advised the police that there is no use arguing with physicians over such matters, and ordered an end to the investigation.

In conclusion, Naret's verdicts reveal a great deal about the nature of forensic investigations in the early years of the police inquest and the status of authority within the Siamese bureaucracy. To begin, they go a long way towards concealing the messy reality of early police inquests into cases of unnatural death in Bangkok. Naret's executive authority over the meaning of death allowed him to disregard the forensic findings of the rudimentary—and communal—postmortem examinations conducted at the river's edge. His verdicts likewise eliminated the dissonant voices of witness statements, with their lay judgments concerning forensic evidence. In short, Naret articulated a new semantics of death, substituting executive authority for the rough edges of vernacular inquests.

Naret's role as the final arbiter over the semantics of unnatural death in state inquests also provides important insight into the nature of authority within the Siamese bureaucracy during a time of radical transformation. In the final years of the nineteenth century, the administrative structure of the Siamese state underwent a thorough reformation intended to “rationalize” the bureaucracy by organizing distinct ministries according to function rather than geography.<sup>60</sup> But in spite of these sweeping changes in the structure and function of the bureaucracy, William J. Siffin has argued that in many respects the deeper organizational characteristics of the traditional bureaucracy persisted, particularly the hierarchical nature of social relations within the bureaucracy. “As the Reformation [of the bureaucracy] proceeded,” Siffin argues, “continued reliance upon the hierarchical principle as the prime basis for defining and ordering relationships

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<sup>60</sup> For an overview of these changes, see William J. Siffin, *The Thai Bureaucracy: Institutional Change and Development* (Honolulu: East-West Center Press, 1966), 51-90.

was unquestioned.”<sup>61</sup> Naret’s verdicts, which often supplanted the work of police officers and silenced the voices and concerns of subaltern witnesses, demonstrate how elite social status implied a unique form of authority. The new form of state concern for the dead and its attendant procedures, in other words, did not upset longstanding patterns of authority.<sup>62</sup> Although Naret’s verdicts, scribbled as marginalia on police reports, belie the ambiguous findings of the police and testify to the power of executive authority, they nevertheless fail to repress dissenting voices in the “Death by various causes” files. The following section discusses evidence of dissent and resistance to state intervention in cases of unnatural death.

### **Registers and Resistance in the Transition from Socio-Cultural to Juridical Concern**

State intervention into cases of unnatural death in the Siamese capital at the end of the nineteenth century did not go unchallenged. The transition from the local, vernacular mode of concern for “inauspicious” death to the new forensic logic of “suspicious” death administered by police and state officials required uprooting and supplanting longstanding habits of mind and custom.<sup>63</sup> Reading against the logic of “suspicious” death, the inquest records compiled by the Ministry of

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<sup>61</sup> Ibid., 110. Siffin suggests that in time status within the bureaucracy did take on some meritocratic characteristics (becoming “a function of duties and responsibilities and the adequacy with which these were executed”), but while “the old hierarchical status system was rationalized and adapted... it was never transcended” (111).

<sup>62</sup> This would not be true in the coming years, however, when the social and political conditions of extraterritorial law in Siam combined to elevate forensic medical expertise; the executive authority of Siamese officials would then yield to new forms of expertise (as described in chapters five and six).

<sup>63</sup> This disparity between vernacular and legalistic modes of thought can be found in contemporary Thai civil law as well, where discourses about causality can differ wildly between colloquial contexts and state legal institutions. According to David M. Engel, “Familiar, culturally based explanations of the causation of injuries and illness may differ significantly from formal legal concepts and usages”; see his “Discourses of Causation in Injury Cases: Exploring Thai and American Legal Cultures,” in *Fault Lines: Tort Law as Cultural Practice*, David M. Engel and Michael McCann, eds. (Stanford: Stanford University Press, 2009), 251-268, 251.

the Capital contain archival traces of the persistence of local sociocultural ideas pertaining to death. In spite of the arrival of police and state officials who spoke a more bureaucratic language inflected by the forensic concerns of “suspicious” death, local residents continued to make sense of unnatural death in their own terms. Careful reading of the colloquial register of witness testimonial statements compiled by the police reveals the logic of “inauspicious” death. Moreover, when it came to dealing with corpses—the cultural object of local, vernacular forms of forensic interest—they resisted the new forms of state intervention.

For witnesses who were party to a case of unnatural death, locality was a preeminent concern. In their statements to police, witnesses focused on the place where the death had occurred, often noting the position of the body with respect to a tree. Recall, for instance, the case of Phra Mongkhon (discussed above), whose sister’s testimony stated that the body was found “under a papaya tree” (*tai ton malako*) outside the window of his monastic chamber.<sup>64</sup> Witnesses noted the type of tree and its proximity to the body because they understood that unnatural death had the potential to leave behind a malevolent spirit that would naturally adhere in that tree. In cases of suicide by hanging, for example, witnesses statements show a tendency to identify the type of tree from which the deceased was found hanging, and to repeat this identification in their statements. When a commoner named *Nai Won* committed suicide by hanging in an orchard near his home, his wife learned of the death from relatives and went to see for herself. In her testimony given to police, she reported having found her husband “hanging dead from the branch of a mango tree in the orchard of *Nai Nak*.”<sup>65</sup> Similarly, when *Amdaeng*

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<sup>64</sup> NA R5 N 23/7.

<sup>65</sup> “*Hen nai won phuk kho tai yu thi king mamuang suan nai nak*,” NA R5 N 23/7, letter dated 2 May 115 [1896].

Im committed suicide by hanging, her husband's statement given to police shows a marked fixation with the fact that she was found hanging from the branch of a durian tree.<sup>66</sup>

It is worth noting once again that the extant witness statements in the inquest archives compiled by police were shaped by the conditions of their composition. In most cases, the statements were transcribed by clerks (Thai: *samian*) who accompanied the police during such investigations—since many of the people providing statements were undoubtedly illiterate—or were recorded in translation, having been mediated by a translator. The clerks, for their part, likely did not have the same fixation on place, and may have scrubbed witness statements of some of these repetitive elements. Witnesses would perhaps also have engaged in a degree of self-censorship as well, suppressing elements of their testimony in accordance with the perceived interests of police.<sup>67</sup> Still, when taken collectively, the traces that do survive provide evidence of subaltern modes of concern for the dead, marked by a fixation on the specific location of the corpse—as evidenced by the recurring identification of tree types in witness testimony.

Witness testimony referring to bodies hanging from Mango (*mamuang*), Durian (*thurian*), Persimmon (*tako*), Guava (*farang*), Ashoka (*sok*), Mulberry (*khoi*), and Bullet wood (*phikun*) trees, among others, are more than a naturalistic catalog of fruit-bearing trees in turn-of-the-twentieth-century Bangkok.<sup>68</sup> They constitute a tacit testament to the persistence of long-standing sociocultural habits of mind associated with the Siamese culture of unnatural death. In

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<sup>66</sup> NA R5 N 23/221.

<sup>67</sup> For a demonstration of how this process operates in contemporary civil proceedings, see Engel, "Discourses of Causation," 251.

<sup>68</sup> See also, NA R5 N 23/127; NA R5 N 23/207; NA R5 N 23/208; NA R5 N 23/214, NA R5 N 23/224; NA R5 N 23/227; NA R5 N 23/236; NA R5 N 23/244; NA R5 N 23/260; NA R5 N 23/266; NA R5 N 23/284. Several of the trees, including *sok* and *phikun*, are among those listed by Anuman Rajathon in his catalog of inauspicious trees that are not to be grown within the grounds of a private dwelling; see Anuman Rajathon, "Some Siamese Superstitions about Trees and Plants," *Journal of the Siam Society* 49, no. 1 (1961): 57-63, 57-59.

so far as the culture of inauspicious death focused on potential interactions between humans and spirits, the location of spirits in the human world was of great concern for those who were party to a case of unnatural death. Trees, which were thought to serve as abodes for spirits—malevolent and otherwise<sup>69</sup>—were therefore an important feature of the topographical map of the intersection of the realm of spirits and that of humans.<sup>70</sup> Such is the force of the testimony, for example, when a debt slave found her compatriot, a runaway named *Ai Am*, dead after apparently committing suicide by hanging, and she identified a persimmon tree (*ton tako*) in an orchard belonging to their shared owner as the location;<sup>71</sup> or a distraught husband, upon finding his wife hanging dead from a tree behind their home, who lingers over the fact that it was a guava tree that he had cut her down from and under which he had tried to resuscitate her.<sup>72</sup> These passages suggest that for bystanders the shock of an untimely and unnatural death was perhaps mitigated by the sense of fear and dread that they associated with a haunting spirit. For local residents who bore witness to unnatural death in late-nineteenth-century Bangkok trees marked the potential abode of such spirits, and the fixation on these trees is a testament to their distinctive forms of concern for unnatural death.

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<sup>69</sup> See Anuman Rajathon, “Some Siamese Superstitions.”

<sup>70</sup> For a more contemporary ethnographic description of beliefs about tree-inhabiting spirits in rural Thailand, see “Supernatural Objects that Dwell in Trees” in Textor, *Roster of the Gods*, 552-564. To this day, trees remain a fixture of local spiritual beliefs, with ordinations held for auspicious trees and offerings made to threatening ones. See, for example, Andrew Alan Johnson, “Naming Chaos: Accident, Precariousness, and the Spirits of Wildness in Urban Thai Spirit Cults,” *American Ethnologist* 39, no. 4 (2012): 766-778. Trees are also at the center of Buddhist-informed conservation efforts; see Susan M. Darlington, “The Ordination of a Tree: The Buddhist Ecology Movement in Thailand,” *Ethnology* 37, no. 1 (1998): 1-15. Ethnographic evidence from contemporary Northern Thailand reveals that trees—and the spirits believed to inhabit them—still play a role in discourses about causality for misfortune; see Engel, “Globalization and the Decline,” 481; “Discourses of Causation,” 259; and David M. Engel & Jaruwat S. Engel, *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford: Stanford University Press, 2010), 21-32.

<sup>71</sup> NA R5 N 23/207.

<sup>72</sup> NA R5 N 23/208.

In addition to the surviving traces of the culture of unnatural death in the statements given by witnesses, and the ways in which these local concerns were at odds with those of the state when it came to administering unnatural death, there is evidence of more direct resistance to the new state intervention. The new mandate of the Siamese police to investigate cases of unnatural death, which amounted to a new forensic concern with corpses, provoked forms of outright resistance from those invested in a culture of inauspicious death. In one particularly striking case, local Siamese residents cut the same corpse loose from its temporary moorings on at least two separate occasions after it had been retrieved from the river.<sup>73</sup> In that case, the *Bangkok Times* explained, “The fact of the body having been twice cut adrift was... due to the customs and superstitions of the Siamese, who[,] believing that the deceased’s spirit might somehow affect them if left near their houses, naturally objected to the presence of the corpse.”<sup>74</sup> Indeed, evidence suggests that typically these traditional beliefs concerning the potential danger of spirits associated with corpses held sway when the city’s residents observed bodies floating in the river, and local residents permanently entrusted the corpses to the river.

The “Local and General” news column of the *Bangkok Times* is rife with reports of waterborne corpses during the last decade of the nineteenth century.<sup>75</sup> In most cases, the reports were based on “rumors” and there is no indication of what became of the corpse. Cases of voluntary intervention, on the other hand, were rare, and worthy of special note in the local press. In December 1901, the *Bangkok Times* ran a story noting “The dead body of a Chinaman floated

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<sup>73</sup> “The Mysterious Disappearance,” *BT* 5 September 1894, 3. The fate of this particular corpse, the body of a foreign resident named J. J. Grant, will be discussed in more detail in chapter five.

<sup>74</sup> *Ibid.*

<sup>75</sup> See, for example, *BT* 18 May 1895; *BT* 20 June 1899;

down Klong Kut Mai yesterday afternoon. It was, however, brought ashore by some kindly disposed person for cremation. There were no marks of violence.”<sup>76</sup>

Apart from police intervention in cases of unnatural death, there is also evidence of local resistance to early instances of medico-legal inquiries conducted by physicians.<sup>77</sup> In December 1889, when physicians at the Bangrak Hospital conducted a postmortem examination on the body of an ethnic Chinese man named Ah Heng, a crowd of “about 300 or more Chinese were congregated outside waiting for the verdict of the doctors.”<sup>78</sup> In August 1898, the body of a suspected murder victim went missing from the police morgue before the physician arrived to conduct a postmortem examination.<sup>79</sup> The editors of the *Bangkok Times* surmised, “the relative of the murdered man had carried the body home,” perhaps in protest to the interruption of traditional funerary practices or the prospect of postmortem medical procedures.

Resistance to the state’s intervention, however, was not limited to non-state actors. Siamese police were likewise reluctant to take up their new burden as overseers of unnatural death. Dereliction of duties and jurisdictional disputes over the dead provide evidence of police reticence to fulfill their new mandate. Two cases in June 1900 help to demonstrate the ways in which police could eschew their new responsibilities to the dead. On 5 June 1900, the *Bangkok Times* noted “The body of a dead Chinaman was lying by the tramline near Wat Rajabophit this morning. There was a small crowd around it, evidently waiting till a policeman should happen to come along from some quarter to remove the body.”<sup>80</sup> Later that month, the corpse of an ethnic

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<sup>76</sup> *BT* 23 December 1901.

<sup>77</sup> This transition will be discussed in detail in chapter six (below). For the purposes of this discussion, it is sufficient to note that local resistance to state administration of unnatural death persisted even after the corpse was removed from the vicinity.

<sup>78</sup> *BT* 7 December 1889.

<sup>79</sup> “WANTED[:] A CORPSE,” *BT* 10 August 1898.

<sup>80</sup> *BT* 5 June 1900.

Chinese man, which was observed “lying by the side of the road near the Sam Yek [sic: Yaek] police station,” where it had been left to fester for over twenty-four hours.<sup>81</sup> Although the body was evidently in sight of the central police station in Bangrak, police overlooked it, ignoring even “the relations of the dead,” who “[F]or some time before [its] removal... were burying gold paper etc. by the side of the body.”<sup>82</sup>

Finally, the question of responsibility for dead bodies prompted a number of disputes—jurisdictional and otherwise—between police and quasi-state officials as well as private residents in the capital. In August 1895, the *Bangkok Times* noted a spate of corpses found dead in rickshaws around the city.<sup>83</sup> The brief notice concerned a recent case where “A Chinaman in a collapsed condition was found in a rick’sha [sic] yesterday morning, and taken by a constable to the Bangrak Police Station, where, after having been seen by a doctor, he died. On the remains being conveyed to their late home they were, in accordance with the Chinese custom of refusing the entrance of a dead body, denied admittance.”<sup>84</sup> While the editors of the paper evidently understood the refusal to accept the body as part of a Chinese taboo, they nevertheless posed the rhetorical question of “whether this practice of putting dying men into rich’shas is also a Chinese method of preventing deaths taking place inside lodging houses?”<sup>85</sup>

It was not only owners of boarding houses who were reluctant to take responsibility for those who might perish while residing in their premises; the tax farmers who ran gambling parlors likewise wanted to avoid the added expense and trouble of dealing with the dead. In spite of their ostensibly official standing as representatives of the Siamese state, Chinese tax farmers

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<sup>81</sup> *BT* 29 June 1900.

<sup>82</sup> *Ibid.*

<sup>83</sup> *BT* 10 August 1895.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

fought the police when corpses appeared in the areas surrounding their businesses.<sup>86</sup> Early state intervention in the administration of unnatural death was thus marked by both outright and tacit forms of resistance to a new mode of concern for the dead and its associated responsibilities.

## **Conclusion**

In late-nineteenth-century Bangkok, unnatural death entered the purview of the Siamese state. Siamese and ethnic-Chinese residents of the city tended to view such deaths as “inauspicious”: the body of the deceased was viewed as a threat to the community and was therefore shunned, while its spirit was placated in order to quell its potentially malevolent powers. Siamese officials, however, were beginning to view unnatural death from a more juridical perspective, as a matter of suspicion that merited police investigation and documentation. With the institution of police inquests into cases of unnatural death in 1890, the municipal authorities of the Siamese capital instituted a new archive for records of such investigations. The “Death by various causes” files of the Ministry of Local Government contain evidence of the improvisational nature of early police investigations, including casual attention to the corpse, vernacular postmortem examinations, and a reliance on witness testimony. These early proceedings, entirely lacking in medical or forensic expertise, were documented by police and submitted to the officials responsible for the administration of the capital. The elite Siamese officials who wielded executive power over police inquests helped to collate police evidence and witness testimony in order to create a single authoritative narrative for each case of unnatural death. These narratives, recorded in the judgments of the officials of the Ministry of Local Government, suggest a new

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<sup>86</sup> NA R5 N 23/151, for instance, relates a dispute between police and the Chinese owner of a gambling den over who was responsible for removing a corpse from the street in front of that establishment.

sense of meaning surrounding cases of unnatural death, but one that did not go unchallenged. The state archives of unnatural death also provide a record of dissent and diversity among the cosmopolitan populace of Bangkok and the police officials charged with the administration of death in the capital.

Beyond providing a record of a new facet of state concern for the dead and the resulting forms of subaltern dissent, however, the “Death by Various Causes” files also suggest an important development in Thai political culture. When Siamese police were dispatched to investigate reports of an unnatural death in the capital city, they in effect instituted a new means of engagement between the state and its subaltern subjects. It was not, however, a reciprocal encounter, but rather one through which the state interrupted socio-cultural forms of concern for the dead and obstructed local forms of sovereign agency. By seizing the corpse and imposing a new regime of juridical concern for unnatural death, the state barred the culture of “inauspicious” death and asserted its own preeminence over the semantics of death. Executive authority had thus effectively displaced the hierarchical patron-client relations that had formerly served in this role, and foreclosed other possibilities of civil organization and interaction with the state. In the coming years, however, these new forms of state concern for the dead would become embroiled in transnational forms of legal and political contestation. These developments would invite new forms of expert knowledge to intervene in and mediate the political relationships between state and subject.

In much the same way that the new juridical culture of concern for the dead—and the new interest of the Siamese state in unnatural death—interrupted the Siamese culture of “inauspicious” death, the coming years would witness a challenge to the executive authority of Siamese officials over the semantics of death in the capital city. Imperial politics and the plural

legal arena in Bangkok would give rise to a new, medico-legal regime of concern for death, characterized by the rise of forensic medicine as an authoritative mode of knowing death. Executive authority over the semantics of death would thus become untenable, as specialized medical knowledge was brought to bear on corpses. Amidst these changes, and within the context of the plural legal arena created by extraterritoriality, the dead would rise to occupy a position of prominence in transnational politics.

## CHAPTER FIVE

### FORENSIC MEDICINE & SOVEREIGNTY IN SIAM

#### Introduction

An entry in the journal of Ernest Satow, the British consul to Siam, on 25 March 1884 foreshadows the impending politicization of forensic medicine in late-nineteenth-century Bangkok.<sup>1</sup> According to Satow's account, two representatives of the Siamese government, including *Phraya* Thep Phlu, an official with the Siamese police, came to visit him in order to inquire about legal proceedings against a British subject who was suspected of causing physical harm to a Siamese subject, which resulted in death.<sup>2</sup> According to Satow, the Siamese official complained "that sufficient notice had not been given to him to send down an officer to the inquiry at the Agency [sic: Consul] this morning." Satow informed them that the legal proceedings that day were "merely a preliminary inquiry, & that if it appeared necessary to indite [sic: indict] the accused for manslaughter, a trial w[ou]ld take place with assessors [sic: a jury?], presided over by myself when due notice sh[ou]ld be given to" the Siamese state. On the matter of procedure, Satow then

Told him [Thep Phlu] it is necessary to get Drs. Gowan & Deuntzer [foreign physicians in the employ of the Siamese state at the time] to make a postmortem [examination] in order to ascertain the real cause of death, w[h]ich ought to have been done at once (the deceased died on the 21<sup>st</sup>), & that if the assault was of such a serious nature as alleged, a complaint sh[ou]ld have been made [to British Consular officials] at once.

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<sup>1</sup> Nigel Brailey, ed., *The Satow Siam Papers: The Private Diaries and Correspondence of Ernest Satow, Vol. 1, 1884-1885* (Bangkok: The Historical Society under the Patronage of H.R.H. Princess Maha Chakri Sirindhorn, 1997), 15. I am grateful to Chalongsorn Soontravanich for suggesting this source.

<sup>2</sup> Although the entry itself is rather cryptic, this seems to have been the reason why the Siamese officials called upon Satow.

The Siamese officials, according to Satow's account, "agreed to get the doctors to hold a postmortem exam[inatio]n & then to decide whether he [they] w[ou]ld ask for a prosecution for manslaughter" in the British Consular Court.

As discussed in chapter four, unnatural death had a range of social and cultural implications for Siamese subjects, who tended to view such corpses as a threat to communal wellbeing. For them, the corpse left behind by an unnatural death was an "inauspicious" object, and it was treated accordingly. Satow's journal entry suggests that foreign residents in Siam had a very different sense of concern for the dead, and it reveals how these different modes were in some respects indicative of misaligned agendas. For foreigners living in the Siamese capital, who enjoyed extraterritorial legal privileges and whose interests were represented by consular officials, unnatural death was primarily a medico-legal concern: the implications had more to do with juridical suspicion than inauspiciousness. By invoking the standards of medico-legal evidence upheld by the British consular court in order to protect a British subject suspected of involvement in the death of a Siamese subject, Satow helped to politicize unnatural death in Bangkok. He signaled to Siamese officials that in the absence of clear forensic evidence British consular officials would not allow the Siamese state to pursue charges against British subjects in the British consular court. The encounter therefore revealed forensic medicine as a new field of contestation in the ongoing negotiations over extraterritorial law and diminished Siamese sovereignty.

After having followed unnatural death in and through the archive in chapter four, this chapter steps back and considers the conditions surrounding the creation of that archive. Why did the Siamese state begin to take an interest in unnatural death in the last decade of the nineteenth century? And how did Siamese officials come to view forensic medicine as an

important form of authoritative knowledge? I argue that in the final years of the nineteenth century, as the ranks of foreign residents grew and political status became malleable in a context of increasingly fraught imperial competition, the pursuit of justice in cases of unnatural death was effectively transformed into a matter of transnational political concern. In this altered social, legal, and political environment, the standards of evidence recognized by foreign consular courts became hegemonic, and the Siamese Ministry of the Capital was ultimately forced to try and assimilate foreign (primarily British) standards and practices for the investigation of cases of unnatural death in the capital city. But the imperial context of the Siamese state's engagement with forensic medicine complicated this transaction. The supposed objectivity of medico-legal science and evidence would prove to be chimera: there were unforeseen barriers to entry that were not part of the discourse of scientific objectivity. The standards of objectivity for evidence in consular courts were about more than professional credentials: they touched upon race and nationality as well.

Thus, a positivist view of forensic medicine as the scientific labor of investigating the conditions of death does not begin to capture the diverse variables and forms of causation that gave rise to new forms of state concern for the dead in late-nineteenth-century Siam. Moreover, such a constrained and transactional vision of forensic medicine likewise obscures the ways in which the medico-legal investigation of death can be mobilized to serve other social and political agendas. In order to properly understand the conditions that fostered novel forms of scientific interest in the dead, the social and political ends to which this science was mobilized, and indeed the various forms of agency involved in these developments—including that of the corpse itself—it is necessary to once again invoke the notion of an assemblage. Within the context of constrained sovereignty, unnatural death became a sphere of agency for the Siamese state, as its

officials invited and sought to master new forms of authoritative knowledge and mobilize them as part of ongoing efforts to respond to the challenges of constrained sovereignty. While forensic medicine served to unite Siamese corpses and medical expertise, however, the assemblages were flexible and capacious enough to admit other forms of interest and contestation.

### **The Wayward Corpse: Contesting Forensic Concern for the Dead**

One night in late August 1894, a British subject residing in Bangkok went missing from his riverside home.<sup>3</sup> According to the *Bangkok Times*, the missing man, named J. J. Grant, was a relatively recent arrival in Siam by way of Rangoon in British Burma. In spite of being of “respectable antecedents,” Grant had failed to gain admission to the Royal Military Academy Sandhurst and so had set out in search of a career in Asia.<sup>4</sup> Upon arriving in Bangkok, Grant presented letters of introduction to members of the British community, and eventually secured a position working for the holders of the Opium Tax Farm in Bangkok.<sup>5</sup> Rumors quickly spread that his disappearance was related to his line of work, and that foul play was involved.<sup>6</sup> Others,

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<sup>3</sup> *BT* 1 September 1894, 2.

<sup>4</sup> “The Mysterious Disappearance,” *BT* 5 September 1894, 3.

<sup>5</sup> “Tax farming” was a system of state revenue collection whereby the state would accept competitive bids on the right to collect a certain tax in a specified jurisdiction for a given period of time. The tax farm was awarded to the highest bidder, who paid a lump sum to the state and was allowed to keep whatever tax revenue they collected. By the end of the nineteenth century, the tax farming system was primarily oriented towards the “vice economy”—including taxes on opium, alcohol, prostitution, and gambling—and tax farms were often granted to foreign residents (especially ethnic Chinese). On the evolution of the tax farming system in general, see Hong Lysa, *Thailand in the Nineteenth Century: Evolution of the Economy and Society* (Singapore: Institute of Southeast Asian Studies, 1984). For a detailed discussion of the tax on prostitution, see Dararat Mettarikanond, “*Kotmai sopheri ‘ti tabian’ krang raek nai prathet Thai* [The First Law of the Registration of Prostitutes in Thailand]” *Sinlapa Watthanatham* 5 (1984): 6-19.

<sup>6</sup> “The Drowning Case,” *BT* 5 September 1894, 2.

however—including the editors of the *Bangkok Times*—suspected that the “disappearance” was in fact nothing more than a tragic but common case of drowning in the Chao Phraya River.

On Thursday 30 August, when Siamese police in the area of Wat Chan recovered a body from the river, there was hope that the suspicions about the nature of Grant’s disappearance would soon be quelled. The police towed the body to the riverside and secured it with rope to what was likely the nearest pier, at the kerosene depot owned by a private firm by the name of Markwald & Company. After officials at the British Consulate learned of the discovery of the corpse, they immediately summoned a physician, bought a coffin, and embarked downriver from the launch at the Oriental Hotel at 8:45pm, intent on inspecting and collecting the body. Upon arriving, however, the British officials learned to their consternation that the body had evidently been cut loose from the pier by an unknown local bystander and set adrift on the river. Police at stations downstream were informed to be on the lookout for an errant corpse.

The following afternoon Siamese police in the area of Paklat recovered a corpse from the river, and once more it appeared as if “The mystery concerning the disappearance of Mr. J. J. Grant” would be solved.<sup>7</sup> The police evidently dragged the body towards the river’s edge and used a rope to secure it to a tree on the bank. The body was left unattended, bobbing at the end of a rope in the tidal shallows at the river’s edge, awaiting the arrival of officials from the British Consulate. Upon learning that the corpse had been found late on Friday afternoon, British officials set off downriver with haste. Just as the previous day, they intended to inspect the corpse on site for any signs of violence or other evidence of foul play, then transfer it to a coffin and return it to the city for burial in the Protestant Cemetery in Bang Kho Laem the following

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<sup>7</sup> “The Mysterious Disappearance,” *BT* 5 September 1894, 3. The area referred to is unclear, though it is undoubtedly downstream from Bang Kho Laem and north of Samut Prakan (*Pak nam*).

morning. When they arrived at the scene, however, the British officials found that “those who had recovered the corpse had tied it in front of a neighbor’s house” to await collection. The neighbor, however, evidently objected to having the corpse in such close proximity to his home and had “set it afloat again.”<sup>8</sup> For the second time in as many days, the efforts of police and British officials were foiled as locals entrusted Grant’s corpse to the mighty, murky river.

Not to be deterred, British officials and several of Grant’s co-workers at the Opium Tax Farm, including his employer, a Mr. van Caylenberg, continued to search for Grant’s corpse through the night. *Nai Phoon*, the superintendent of the local police station at Wat Chan, sent out a search party of three boats manned by Siamese police officers. They finally located the body—for the third time—sometime on Saturday morning. Word was sent to police headquarters in Bangkok by wire, and then to Inspector Sherriff at Bangrak Police station, who informed officials at the British Consulate by telephone that the corpse had been located at Paknam. Gaethke, an official with the British Consulate in Bangkok, learned from the police at Wat Chan while en route to Paklat that the body had again been secured with rope to the west bank of the river some 600 yards upstream of the “pagoda” at the Buddhist temple. The third time was indeed the charm and Gaethke recovered the body, arriving with the corpse at the Protestant Cemetery in Bang Kho Laem at 8pm that evening.

The story of Grant’s wayward corpse is suggestive of the existence of competing cultures surrounding unnatural death—what might be called different regimes of concern for the dead. Chapter four discussed how the police inquest—part of a new juridical regime of “suspicious” death—was at odds with indigenous habits of thought and practice in relation to unnatural death. But such conflicts were even more stark when indigenous beliefs and practices are juxtaposed

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<sup>8</sup> Ibid.

with the habits and expectations of foreigners residing in Siam. When foreign residents succumbed to sudden or unnatural death, their corpses garnered a great deal of official attention and forensic concern. But, as the travels of Grant's body and the travails of the British officials in pursuit of it suggest, forensic concern for the dead could provoke subaltern Siamese resistance. As the *Bangkok Times* noted in the case of Grant's death, "The fact of the body having been twice cut adrift was... due to the customs and superstitions of the Siamese, who[,] believing that the deceased's spirit might somehow affect them if left near their houses, naturally objected to the presence of the corpse."<sup>9</sup> There is also the issue of the Siamese police and their rather haphazard efforts to recover and secure the corpse.<sup>10</sup> Although it was the police who recovered the body from the river on all three occasions in accordance with the wishes of the British Consulate, they nevertheless evinced less forensic concern than foreign consular officials would have liked. The contested recovery of Grant's corpse demonstrates another way in which forensic medicine was becoming a matter of political concern in late-nineteenth-century Bangkok. The emerging connection between forensic medicine and politics, however, was a development with important historical precedents and parallels.

### **The Politics of Forensic Medicine**

The link between forensic medicine and politics is not as obscure as it might, at first glance, seem. The medico-legal investigation of cases of unnatural death, an institution known as the

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<sup>9</sup> Ibid.

<sup>10</sup> Again, the *Bangkok Times* reported, "We are also informed that the corpse had not been sent adrift by the police, as it was never fastened [to a dock or tree] at any of the police stations" (ibid.).

inquest, is deeply imbricated in the history of constitutional politics in British history.<sup>11</sup> Although inquests initially began as a safeguard for the king's financial interests in cases of unnatural death, the institution eventually became a part of civic life and a guard against the excesses of autocratic rule.<sup>12</sup> By the early nineteenth century, the inquest had come to be viewed as a crucial facet of constitutional politics, and a central feature in radical democratic political rhetoric.<sup>13</sup> Inquests were held in public spaces, usually a pub, and allowed for a sort of local sovereignty over the legal and economic repercussions of cases of unnatural death.<sup>14</sup>

The relationship between forensic medicine and politics was perhaps even more salient in the colonial world, where medical science was an important channel for articulating imperial ideologies. Throughout the colonial world, arguments about European racial and moral superiority were substantiated through medical discourses about indigenous bodies.<sup>15</sup> David Arnold, for example, has identified a significant shift in medical discourse in British India over the course of the nineteenth century, whereby environmental explanations of disease and ill-health were supplanted by “explanations which gave greater prominence to the peculiar characteristics of Indian society, morality, and culture.”<sup>16</sup> In this way, medicine became a

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<sup>11</sup> The following discussion relies on Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore: Johns Hopkins University Press, 2000).

<sup>12</sup> *Ibid.*, 23-28.

<sup>13</sup> *Ibid.*, 16-51.

<sup>14</sup> This element of local sovereignty could also extend to the moral repercussions as well, for example in cases of apparent suicide. See Elisabeth Cawthon, “Thomas Wakley and the Medical Coronership: Occupational Death and the Judicial Process,” *Medical History* 30, no. 2 (1986): 191-202, 193 nt. 11; and Thomas R. Forbes, “By What Disease or Casualty: The Changing Face of Death in London,” *Journal of the History of Medicine and Allied Sciences* 31 (1976): 395-420, 416-417.

<sup>15</sup> See, for example, Warwick Anderson, *Colonial Pathologies: American Tropical Medicine, Race, and Hygiene in The Philippines* (Durham, NC: Duke University Press, 2006).

<sup>16</sup> David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (Berkeley: University of California Press, 1993), 42. Warwick Anderson charts a similar shift in the early twentieth century; see *Colonial Pathologies*, 74-103.

seemingly objective means of giving voice to politicized and racialized “truths” about native bodies. In a medico-legal context, the discursive effects of colonial medicine often meant that Asian bodies without European legal status were assumed to be drug-addled and inherently diseased unless proven otherwise.<sup>17</sup>

With respect to the particular case of forensic medicine, beyond its discursive effects, forensic medicine also played a crucial role in the more practical task of maintaining forms of racial privilege within colonial legal institutions. Although equality before the law was a pivotal tenet in the liberal justification of imperial rule, in practice colonial judicial systems inevitably served to bolster forms of racial privilege, as evidenced by recent scholarship into cases of interracial violence and homicide throughout the British Empire.<sup>18</sup> Elizabeth Kolsky has demonstrated how the “third face” of imperialism—the class of non-official colonists who made colonial rule profitable through their entrepreneurial endeavors—appealed to forensic medicine in their efforts to game the colonial justice system.<sup>19</sup> In a social environment plagued by everyday violence, the testimony of forensic experts could be used to mitigate “European criminal culpability in murder trials” by transforming a criminal act of homicidal violence into an ‘accidental’ death.<sup>20</sup> Indian medical jurisprudence, which was based upon highly-politicized “[c]olonial ideas about Indian people, bodies, and culture,” produced a “medical discourse about the peculiar vulnerabilities of India bodies [that] helped ensure that European murderers got of

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<sup>17</sup> See, for example, Jordanna Bailkin, “The Boot and the Spleen: When Was Murder Possible in British India?” *Comparative Studies in Society and History* 48 (2005): 462-493, 477-78.

<sup>18</sup> Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870-1935* (Cambridge: Cambridge University Press, 2009).

<sup>19</sup> Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010).

<sup>20</sup> Kolsky, *Colonial Justice*, 135.

the hook.”<sup>21</sup> “[T]he status of medical evidence was a major preoccupation of colonial courts” in British India, and medical jurisprudence was a crucial tool for the preservation of white privilege in cases of interracial violence.<sup>22</sup>

Standards of forensic evidence in foreign consular courts in Siam played a similar role in bolstering the legal privileges enjoyed by foreign residents. As officials in the Siamese state came to terms with this situation, they turned to forensic medicine as an authoritative form of knowledge that might help to mitigate the injustices of extraterritorial law. In the following discussion I highlight two crucial variables that helped to make unnatural death and forensic medicine a site of political contestation in Siam: (a) extraterritorial legal rights and the associated problem of differential standards of medico-legal evidence in foreign consular courts, and (b) the registration of Asian immigrants as foreign residents (*protégés*).

### **Evidence on Trail: Extraterritoriality & Consular Courts**

The Anglo-Siamese Bowring Treaty (1855) and other unequal trade treaties signed in its wake established extraterritorial legal exemption for foreign subjects residing in Siam.<sup>23</sup> Extraterritoriality gave the European imperial powers “the right to protect their citizens according to their own forms and process of law and treat them as if they resided within territory

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<sup>21</sup> *Ibid.*, 24. Jordanna Bailkin’s work on a particular subset of homicide cases in British India spanning the late nineteenth and early twentieth centuries confirms this argument. According to Bailkin, “Medical jurisprudential debates about the status of evidence in India were key in illustrating that white violence—even when deadly—was not to be judged as murder”; see her “The Boot and the Spleen,” quotation on 476.

<sup>22</sup> Bailkin, “The Boot and the Spleen,” 477. Of course, for both Kolsky and Bailkin part of the political significance of Indian medical jurisprudence was the fact that it provided a form of evidence that was untainted by supposedly unreliable native witnesses.

<sup>23</sup> Loos, *Subject Siam*, 42-44. See also, Hong Lysa, “Extraterritoriality in Bangkok in the Reign of King Chulalongkorn, 1868-1910: The Cacophonies of Semi-Colonial Cosmopolitanism,” *Itinerario: European Journal of Overseas History* 27, no. 1 (2003): 125-146.

actually subject to their jurisdiction.”<sup>24</sup> Extraterritorial legal privileges in Siam (as elsewhere in the colonial world) were conferred based on the political status of the individual. Foreign residents who registered as political subjects with the consulates of any of the imperial powers who had signed unequal trade treaties with Siam were eligible for extraterritorial legal status while residing in Siam.<sup>25</sup> In practice, the extraterritorial rights of a foreign resident were protected by consular officials and legal institutions established by their home nation. In the event that the foreigner was named as a defendant in a criminal or civil action, any legal proceedings would have to take place in a foreign consular court. Foreign consular courts are therefore one important factor in explaining how forensic medicine rose to prominence as a point of political concern in late nineteenth-century Siam.

In August 1892, a murder trial was staged at the British Consular Court in Bangkok. An ethnic Malay man named Salim who was living in Siam under British legal protection was brought before the British consular court charged with the murder of a Siamese subject.<sup>26</sup> Salim’s defense counsel—none other than British attorney E. B. Michell—mounted a vigorous attack on the standards of medico-legal evidence and expertise recognized and employed by the Siamese state.<sup>27</sup> Witnesses providing testimony on the nature of the injuries sustained by the deceased included the Siamese district official (*nai amphoe*), who admitted that he “made a *post-mortem* examination because he was told to do so by the authorities [his superiors],” but he

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<sup>24</sup> J. B. Scott, quoted in Jeshuran Chandran, “British Foreign Policy and the Extraterritorial Question in Siam, 1891-1900,” *Journal of the Malaysian Branch of the Royal Asiatic Society* 38 (1965): 290-313, 290.

<sup>25</sup> Unequal trade treaties establishing extraterritorial legal privileges were signed with Britain (1855), the United States (1856), France (1856), Denmark (1858) and ten other European nation-states, as well as Japan (1898); see Tamara Loos, *Subject Siam: Family, Law, and Colonial Modernity in Thailand* (Ithaca, NY: Cornell University Press, 2006), 43.

<sup>26</sup> *BT* 6 August 1892.

<sup>27</sup> *Ibid.* Michell was a seminal figure in debates over tort law and compensation during the same period (see chapters one to three, above).

personally possessed “no medical knowledge.”<sup>28</sup> An unidentified Siamese woman (likely a bystander or relative of the deceased) gave similarly non-expert evidence concerning the cause of death. Lastly, a Chinese man named Duan, who was employed by the Siamese state as the wound “dresser” at Bangrak Hospital, noted a broken wrist, a cut to the head, and an injured bladder when describing the injuries sustained by the deceased. Duan also testified that the abdomen and side of the deceased’s body were discolored, and, according to the account published in the *Bangkok Times*, he asserted, “These injuries were the cause of death.”<sup>29</sup> Under cross-examination, Michell attacked Duan’s credentials, revealing that although he had been working as a wound dresser for seven years he lacked any formal medical training or credentials.<sup>30</sup>

The crux of Michell’s defense came when he argued before the jury that when deciding a case as serious as murder, definitive forensic evidence was required to determine the cause of death. In his closing remarks, “Mr. Mitchell... dwelt at length on the necessity for clear proof of such a serious charge before convicting. [According to Michell,] [t]here had been no reasonable proof of the cause of death—no *post mortem* examination—nothing to show that death was not due to the excessive use of opium or any act of the deceased’s own.”<sup>31</sup> The jury evidently concurred, finding Salim not guilty of murder, and likewise of the lesser charges of manslaughter and aiding and abetting. In the end, the verdict became a *de facto* referendum on the standards of medico-legal evidence in Siam. The jurors appended a brief statement to the verdict, noting

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> The American Dr. T. Heyward Hays, the superintending physician at Bangrak Hospital (see below), would normally have been called upon to inspect the wounds and offer evidence in court, but on this particular occasion he was away from the hospital on quarantine duty on Si Chang Island (*ibid.*).

<sup>31</sup> Ibid. The appeal to opium as a latent cause of death is just one way in which notions of race and morality were smuggled into the apparently objective science of forensic medicine.

“The jury wish to express their [sic] opinion that it would have been very much better if there had been some medical testimony as to the cause of death” presented in the case.<sup>32</sup> A postscript to the trial report in the *Bangkok Times* reads: “In consequence of the report on this verdict made by Chief [Police] Inspector Sheriff to the [Siamese] authorities, we understand, the police officials have been authorized to call in regular medical men in future, in cases where Siamese subjects have died from injuries supposed to be inflicted by foreigners.”<sup>33</sup>

Transnational legal cases such as the trial of Salim were the unspoken backdrop for conversations among Siamese officials concerning the need for higher standards of medico-legal evidence in Siam. After the early years of Siamese police inquests, which were characterized by a high degree of executive authority over the meaning and outcome of cases of unnatural death, extraterritorial law and foreign consular courts began to make an impression on the Siamese officials who governed the capital city. Cases such as the trial of Salim constituted another demonstration of the need for a new form of juridical expertise in the investigation of unnatural deaths above and beyond the executive authority of Siamese officials. The fact that Salim was Malay points to another important factor in the rise of forensic medicine as an authoritative form of knowledge: namely the enrollment of Asian subjects as foreign residents with extraterritorial legal privileges.

### **Western Subjects, Asian Bodies: The Demographics of Extraterritoriality**

The unequal trade treaties that instituted extraterritorial legal privileges for foreign residents also increased commercial activity in Siam, which became a desirable destination for a diverse group of immigrants from across South and East Asia. In the ensuing half-century after the first treaty

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<sup>32</sup> *BT* 6 August 1892.

<sup>33</sup> *Ibid.*

was signed in 1855, a huge influx of laborers and merchants from British colonial territories in Asia and from coastal regions of southern China added to the cosmopolitan composition of Bangkok.<sup>34</sup> Moreover, the British annexation of Upper Burma in 1868, and the creation of French Indochina in 1887, brought a dramatic surge in the number of Asiatic immigrants who could potentially claim extraterritorial legal status as the subjects of foreign powers. Between 1887 and 1895, British consular officials added 9,281 new British subjects to their rosters, in addition to untold numbers of subjects who had failed to register formally but who would nevertheless claim extraterritorial privileges if involved in legal proceedings.<sup>35</sup> The English language press kept tabs on the growing ranks of French Asiatic legal subjects; in August 1896, the *Bangkok Times* wryly noted, “The manufacturing of FRENCH SUBJECTS [sic] goes on at a merry rate. This morning the neighborhood of Custom House Lane [outside of the French consulate in the Bangrak area] was crowded with aspirants for that honour [sic].”<sup>36</sup> The dramatic increases in the number of registered foreign residents in Siam became a bone of contention between the British and French, who had opposing views on the question of extraterritoriality and how best to leverage it in their relations with Siam—and with each other.

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<sup>34</sup> On Chinese immigration to Siam, see the definitive work of G. William Skinner, *Chinese Society in Thailand: An Analytical History* (Ithaca: Cornell University Press, 1957).

<sup>35</sup> Chandran, “British Foreign Policy,” 300. Only 381 of these had been born in Siam, the vast majority being immigrants from territories under the authority of the Government of British India. “Asiatic” British subjects quickly came to outnumber those of British birth; by 1902, there were 2,198 Asiatic British subjects recognized by the British Consulate in Bangkok, no more than 350 of whom were of European provenance (Hong Lysa, ““Stranger within the Gates,”” 333).

<sup>36</sup> *BT* 28 August 1896. Not long after, one particular case of false registration would provoke the ire of the English language press in Bangkok: a man named Kadir (alias Nai Day), the son of a Siamese official, was able to register himself as a (Cambodian) French protégé while working as captain of a French vessel (*BT* 11, 12 September 1896).

The French maintained a legalistic and expansive interpretation of their rights under extraterritoriality, which they applied to the process of registering new legal subjects.<sup>37</sup> This was especially true after the French took control of former Siamese territories on the west bank of the Mekong River in 1893. By 1895, they had established consular offices in the northern and eastern Siamese regions of Nan and Korat, which the British feared they would use as “centers from which large numbers of Siamese subjects of Cambodian or Annamite stock might be registered as French protégés to hinder Siamese authority.”<sup>38</sup> From the British perspective, French registration had turned Siam into the stage for a kind of imperial battle by proxy waged through the logic of demographics, with the enrollment of legal subjects as armaments. Each new French Asiatic subject became a de facto outpost of French jurisdiction, and therefore an extension of its demographic—if not territorial—influence in Siam.<sup>39</sup>

The British, on the other hand, adopted a more conciliatory stance, hoping to ingratiate themselves to the Siamese.<sup>40</sup> As early as 1884/5, Ernest Satow, soon to be appointed the British Minister to Siam, expressed in a private memorandum his desire to effect “[t]he limitation of British protection to such persons as are actually entitled to it, taking into acc[oun]t however the circ[umstance]s of those persons who have hitherto been allowed to enjoy it, and applying the strict rules only to persons who may hereafter solicit it.”<sup>41</sup> Of course this relatively conservative British position was also a matter of sheer economy, since asserting extraterritorial rights for the

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<sup>37</sup> Chandran, “British Foreign Policy,” 303.

<sup>38</sup> Chandran, “British Foreign Policy,” 295.

<sup>39</sup> Ironically, although British officials in Siam and in London were fixated on the threat of the increasing numbers of French protégés in Siam, the British had far more foreign subjects in Siam than the French (Chandran, “British Foreign Policy,” 300). This demographic anomaly, however, was likely outweighed by the French tendency to assert their privileges according to the most liberal reading of the treaties.

<sup>40</sup> Chandran argues that this softening of the imperial stance was in part due to the perceived threat of German imperial designs on the Malay Peninsula (“British Foreign Policy,” 294).

<sup>41</sup> Nigel Brailey, ed., *The Satow Siam Papers*, 106-110.

vast numbers of Shan and Burmese laborers who had immigrated from Burma to Siam would have overrun the limited resources of the British consular court in Bangkok.<sup>42</sup> The British therefore acquiesced to Siamese proposals to institute a “mixed court” in the north, known as the International Court at Chiang Mai, with jurisdiction over civil cases involving Siamese and British subjects residing there.<sup>43</sup> The French objected to the International Court—which they saw as a challenge to the institution of extraterritoriality—and lamented the fact that the British had given up their claims to extraterritoriality for so many of their subjects in Siam.<sup>44</sup>

British consular officials also recognized the implications of this kind of warfare by enrollment on the Siamese psyche. In August 1895, Maurice de Bunsen, the ranking British official in Siam, wrote, “it cannot but be extremely galling to the self-respect of Siam to be deprived of jurisdiction over a large proportion of its entire population, made up by Asiatics, who, by birth, are as far removed as the Siamese themselves are from European ideals of justice.”<sup>45</sup> De Bunsen also questioned the logic of allowing new immigrants to transfer extraterritorial privileges to their descendants indefinitely, given that they would presumably become assimilated in Siam over successive generations.<sup>46</sup> Extraterritoriality undoubtedly represented a “stigma of inferiority” for Siam, and was “a major preoccupation” for its leaders.<sup>47</sup>

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<sup>42</sup> Chandran, “British Foreign Policy,” 292.

<sup>43</sup> This was not an unqualified relinquishing of extraterritorial rights, but it was a step towards greater jurisdictional sovereignty for Siam (ibid., 292). See also, Akiko Iijima, “The ‘International Court’ System in the Colonial History of Siam,” *Taiwan Journal of Southeast Asian Studies* 5:1 (2008), 31-64.

<sup>44</sup> For a brief moment in 1894, British and French competition focused on the question of who would have jurisdiction over Japanese subjects in Siam; the subtext being that if the Japanese were allowed to hand over their subjects to the French, then the vast number of Chinese residents might be next (Chandran, “British Foreign Policy,” 299).

<sup>45</sup> Chandran, “British Foreign Policy,” 297.

<sup>46</sup> Ibid.

<sup>47</sup> Hong Lysa, “Extraterritoriality in Bangkok,” 126 (nt. 9), 128.

Although it was not a part of the explicit discourse of state officials surrounding legal medicine and justice in turn of the twentieth century Siam, these shifting demographics of political belonging also help to explain how forensic medicine rose to prominence as a new form of authoritative knowledge. The registration of Asian residents in Siam as legal subjects of European imperial powers—so-called protégés—effectively blurred the racial and ethnic lines that had previously helped to define political belonging and its correlate, legal subjectivity.<sup>48</sup> When foreign consular officials in Siam extended the extraterritorial legal privileges enjoyed by European- and American-born residents to Asian immigrants, it had the unintended effect of projecting the inequities of differential legal rights onto the dead: no longer could a dead Asian body be presumed to be a Siamese subject.<sup>49</sup> This situation heightened the need for expertise in dealing with the dead; it called for the intervention of forensic medicine and medico-legal expertise. Implementing the new standards of expertise fell to senior officials in the Siamese state, who had to come to terms with, and try to assimilate the new standards of forensic evidence.

### **The Politics of Unnatural Death in Late Nineteenth Century Siam**

When the Committee for Local Government instituted police inquests in cases of unnatural death in September 1890, it did so without offering clear justifications for the new practice. The

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<sup>48</sup> When it came to legal matters in British India, for example, complexion mattered. According to Jordanna Bailkin, although “The judicial methods for establishing the racial identity (and thus the legal privileges) of defendants” in British imperial courts “were never systematic,” “The defendant’s plea that he was a European British subject was accepted by the High Court if it were satisfied by his physical appearance that his claim was true” (“The Boot and Spleen,” 473).

<sup>49</sup> Contemporary observers were already attentive to racial difference in death; a typical report in the *Bangkok Times*, for instance, notes “The dead body of a fair-skinned female child was seen floating in the river, past Messrs Kiam Hoa Heng’s, yesterday” (*BT* 16 May 1898). Corpses were commonly identified as “Chinese” as well, perhaps by the telltale queue hairstyle (see, for example, *BT* 23 August 1893; *BT* 18 May 1895; *BT* 9 June 1898; *BT* 3 February 1899).

decision to begin investigating such deaths and to compile an archive seems to suggest that Siamese officials were beginning to adopt a more medico-legal mode of concern for unnatural death, but there is no clear archival evidence attesting to this change. It was not until some two years later, in December 1892, that we begin to find documentation in the form of correspondence between government ministers that provides a clear indication of the reasons and logic behind the growing interest in forensic medicine. Moreover, as the ministers appealed to forensic medicine in order to confront the distinct challenges of extraterritoriality in Siam, they began to perceive and articulate a consolidated sense of Siamese subjectivity in opposition to the privileged status of foreign residents in Siam.

In a letter addressed to *Jao Phraya Phasakorawong* (then Minister of Religious Affairs) dated 7 December 1892, Prince Naret maps the landscape of extraterritorial jurisdiction in Siam. The letter begins by articulating the thorny issue of legal complaints filed by Siamese subjects against foreign residents enjoying the legal protections of extraterritoriality. Naret observes, “These days, legal cases often arise whereby people under foreign protection kill people under Siamese protection (Thai: *khon fai sayam*). In such cases, those under Siamese protection have to file a complaint [against the perpetrator] in consular court according to the dictates of the foreign treaties.”<sup>50</sup> Thus far, the letter seems to introduce a general complaint against the system of extraterritorial law in Siam, which was stipulated by the foreign trade treaties that Siam had signed with the European powers, the United States, and Japan.<sup>51</sup> In the final decade of the nineteenth century, however, Siamese government ministers were well accustomed to the system and they understood that a daunting series of comprehensive legal reforms would be needed

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<sup>50</sup> “*Duai thuk wan ni mak ja mi khadi khwam thi khon nai bangkhap tang prathet kha khon fai sayam tai boi boi khon fai sayam tong pen jot fong khwam yang san kong sun hai phijarana tam nangsue sanya*” (NA R5 S.Th. 8.2.๑/1).

<sup>51</sup> Loos, *Subject Siam*, 43.

before they might hope to challenge it.<sup>52</sup> Prince Naret's letter, however, goes beyond the general injustice of extraterritorial law to name a much more specific point of contention: the shortcomings of the Siamese state's manner of dealing with certain kinds of death.

The subject of Prince Naret's letter is in fact the emerging disparity between the standards of forensic evidence as implemented by the Siamese state versus those employed by foreign consular courts in Bangkok. "The foreign legations, which abide by the standards of international law" in deliberating evidence and deciding whether or not to try a case, "do not accept the testimony of [Siamese] district officials (*phanak ngan amphoe*) regarding postmortem examinations as evidence because those [Siamese] officials cannot clearly state the cause of death."<sup>53</sup> In cases of unnatural death, Naret observed, foreign consular courts would only accept the forensic testimony of a medical doctor in the western tradition (Thai: *phaet*) who had conducted an autopsy in order to determine the precise cause of death. The implication, Naret realized, was that "In cases where the Siamese side does not send a physician to inspect the corpse [and] conduct an autopsy revealing the cause of death, the [foreign] consular courts simply throw the matter out."<sup>54</sup> Foreign legations in Bangkok were well within their rights to simply dismiss cases of suspected foul play against their subjects in the event that the Siamese

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<sup>52</sup> By this time, it was generally understood that the Siamese would have to adopt a system of law modeled on western principles, codes, and institutions before the issue of extraterritorial rights would be reexamined by European powers; see Loos, *Subject Siam*, 43-45. This logic is likewise clear in earlier scholarship on Siamese legal reform; see, for example, P. W. Thornely, *The History of a Transition* (Bangkok: Siam Observer Press, 1923), 119. In fact, by the last decade of the nineteenth century Siam had already begun to establish the legal institutions that would help it to overcome extraterritorial exclusions in the far north of the country (ibid., 120-124).

<sup>53</sup> "Fai kong sun tat sin khadi doi kotmai nana prathet mai fang ao kham chanasut phlik sop khong phanak ngan amphoe pen lakthan phro wa mai sap akan chat wa tai duai het prakan dai" (NA R5 S.Th. 8.2.๗/1).

<sup>54</sup> "Tha khwam ruang dai fai sayam mai dai hai phaet truat chanasut pha sop jaeng akan thi tai nan laeo kong sun ko yok khwam sia" (ibid.).

state was unable to arrange for an autopsy performed by a medical doctor to determine the cause of death. In these instances, relatives of the deceased Siamese subject would have no further legal recourse. “This state of affairs,” Prince Naret rightly observed, “has been to the detriment of the Siamese side (*fai sayam*).”<sup>55</sup> In the coming months, as ministerial discussions over the standards of evidence employed by the Siamese versus the foreign consular courts would escalate, the notion of people on the “Siamese side” “losing advantage” to foreign residents in Siam would become a refrain, and at times a rallying cry, for efforts intended to address the justice-imbalance.<sup>56</sup>

Adding injury to the insult of the disparity created by extraterritorial law in Siam, Naret simultaneously recognized that Siamese courts of law had been convicting Siamese subjects on the basis of forensic evidence that would have been thrown out of consular courts. Domestic courts, according to Naret, had been deciding against Siamese subjects in cases where they were accused of involvement in an unnatural death “based on postmortem examinations conducted by Siamese district officials, finding fault in each case according to the law” and their own—more lenient—standards of forensic evidence. From the Siamese perspective, the inequity of extraterritorial jurisdiction and higher standards of evidence in foreign consular courts in the last decade of the nineteenth century was being compounded by the fact that Siamese courts continued to apply the law in the prosecution of Siamese suspects more rigorously than the consular courts. This imbalance of justice between the vast majority of Bangkok’s residents and the few who enjoyed privileged political and legal status as foreign residents helped consolidate a sense of Siamese subjectivity based on the recognition of collective disadvantage. Armed with

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<sup>55</sup> “*Pen kan-thi khon fai sayam sia priap khon tang prathet yu*” (ibid.).

<sup>56</sup> The terms recur, sometimes with slight variation including references to Thai people (*khon thai*, as opposed to *khon* or *fai sayam*), in the correspondence as evidenced below.

this insight into the shifting effects of extraterritorial law on Siamese subjects, Prince Naret turned to forensic medicine as a means of addressing the injustice.

### **Bureaucratizing Death Investigations**

The social and political realities of late-nineteenth-century Siam—including extraterritoriality, foreign consular courts, and the growing ranks of Asiatic protégés—all conspired to make forensic medicine a significant form of authoritative knowledge. On the one hand, the standards of medico-legal evidence upheld by foreign consular courts became the last line of defense for foreign residents accused of harming Siamese subjects. On the other hand, officials in the Siamese state realized that forensic investigative procedures might be utilized in order to challenge and overcome the obstacles that prevented it was obtaining justice in foreign consular courts. But while forensic medicine was touted as the answer to many of the inequities instituted by extraterritorial law, the question of how to actually implement this new form of expertise remained. In order to explain how forensic medicine was implemented in this period, we must look to Prince Naret and his role within the rapidly changing state bureaucracy. These conditions helped to determine both the extent to which forensic medicine was implemented by the Siamese state and likewise the nature of elite interest in Siamese bodies.

Naret's letter (dated 7 December 1892) to *Jao Phraya* Phasakorawong, which lays out the contentious matter of political subjectivity under extraterritorial law and provides evidence of a consolidation of notions of political belonging in Siam, also points to the potential solution to the problem. According to Naret, the solution lay in reforming the standards of forensic evidence in Siamese courts and introducing forensic medicine as part of the Siamese police inquest. Proposing the matter to Phasakorawong, Naret called for “royal permission to have the

[Metropolitan] Police Division summon a physician along with the district official in order to inspect [and] conduct a surgical autopsy of corpses that bore evidence of foul play (*hai truat chana sut pha sop thi mi antarai*) where a foreign subject is suspected of harming a Siamese subject.”<sup>57</sup> Not wanting to burden the state with the added expense of dealing with the remains, Naret suggested that once the autopsy was completed, the relatives of the deceased (literally, the “corpse’s owners,” *jao khong sop*) could come and take the body away for burial; the evidence would be preserved in the event of a legal inquiry into the death (presumably requested by the Siamese state in a foreign consular court). The crux of Prince Naret’s letter, however, is the question of who could be called upon to conduct autopsies for the Siamese police in cases of unnatural death that would meet the evidentiary standards of foreign consular courts.

The fact that Naret’s letter was addressed to Phasakorawong suggests that he had already come up with a solution. In December 1892—in the wake of the recent reformation of the government ministries in April of the same year—the Hospital Department (*krom phayaban*), which was responsible for overseeing physicians who were hired by the Siamese state, was still an administrative division under the Ministry of Religious Affairs (*krasuang thammakan*), which was headed by Phasakorawong.<sup>58</sup> Foreign physicians employed by the Hospital Department served as doctors and hospital inspectors, but they were also responsible for the education of medical students at the newly founded medical college. The doctors were educators, and the Hospital Department was therefore housed within the Ministry of Religious Affairs, which was responsible for education.<sup>59</sup> If Prince Naret wanted an economical solution to the challenge of

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<sup>57</sup> NA R5 S.Th. 8.2.๑/1, letter dated 7 December 1892.

<sup>58</sup> Fred W. Riggs, *Thailand: The Modernization of a Bureaucratic Polity* (Honolulu: East-West Center, 1966), 117.

<sup>59</sup> In the coming years, the oversight of ecclesiastical matters would take a secondary role to education, and in 1902 the Ministry of Religious Affairs (*krasuang thammakan*) would become

meeting the standards of medico-legal evidence established in the foreign consular courts, he needed the help of Phasakorawong in reassigning a physician in the employ of the state to the task of conducting autopsies. Naret had one particular physician in mind: the American T. Heyward Hays.

Dr. Hays was the obvious candidate for several reasons. First, and perhaps most importantly, he was already in Bangkok, working under contract on a fixed salary for the Hospital Department as Superintendent of Government Hospitals.<sup>60</sup> Prince Naret understood the terms of Hays' contract with the Hospital Department to be sufficiently vague as to allow them to add autopsies to his burden without incurring any additional expense. According to Naret, performing autopsies in cases of unnatural death was "the responsibility of Dr. Hays on account of his salaried appointment with the [Siamese] Hospital Department, which was charged with caring for the injuries and illnesses of the people."<sup>61</sup> In cases where a foreign subject was suspected of having killed a Siamese subject, Naret proposed that the police would summon Dr. Hays, who would then go and inspect the corpse (at the scene) and later conduct a surgical autopsy (presumably at a government hospital) to determine the exact cause of death. Hays would then compile an inquest report and give a copy of the report to police officials, who would preserve it as evidence in the event of any legal case that might arise in the consular courts. The plan had the virtue of thrift; it allowed the Siamese state to conduct inquests and collect forensic

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the Ministry of Education/Public Instruction (*krasuang sueksathikan*); see David K. Wyatt, *The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn* (New Haven: Yale University Press, 1969), 234.

<sup>60</sup> Hays' job title as recorded in the *Bangkok Times*, 1 April 1893. Elsewhere, Hays refers to his position as "Surgeon in charge of H.S.M. [His Siamese Majesty's] Hospitals" (see his recruitment letter to Dr. George B. MacFarland at NA R5 S.Th. 8/43, letter dated June 21, 1891).

<sup>61</sup> "Mo he [Hays] dai rap ngoen duean pen mo nai krom phayaban khuan pen na thi chanasut sop tam het thi krom phayaban pen na thi samrap raksa khai jep khong mahachon nan" (NA R5 S.Th. 8.2.๑/1, letter dated 7 December 1892).

evidence that would presumably meet the standards of foreign consular courts without requiring any new expenditures. Unfortunately, the very thrift of the plan would be its downfall, hampering the progress of forensic science and medicine in Bangkok for several years, and leading to revealing conversations about who was qualified to present medical forensic testimony before the consular courts.

Days after Prince Naret submitted his plan to Phasakorawong, it was clear that Dr. Hays was unwilling to accept the new role as coroner to the Siamese state. *Khun* Phisitsaphawijan, a minor official in the Hospital Department (*nai wen phayaban*), was sent to inform Hays of the plan. He returned with a counter-proposal. On 16 December 1892, Phasakorawong was informed that Dr. Hays had suggested that the state employ medical students from the newly founded medical college to conduct postmortem examinations and autopsies in cases of unnatural death.<sup>62</sup> According to Hays, there were four students in particular who had been trained in surgery and were capable of performing the duties. Hays suggested that they might share the duties of inspecting corpses as needed by the Ministry of Local Government on a rotating basis. He, did, however, add one concession to Prince Naret's original plan: if a particular case should prove too difficult for the medical students, then Dr. Hays would accompany them and supervise in the examination.

The proposal that reached the ears of Dr. Hays was geared towards addressing the specific problem of reforming Siamese inquest procedures in such a way that they would produce evidence that met the standards of foreign consular courts. The Siamese police needed to produce appropriate documentary evidence in cases of unnatural death so that foreign courts could no longer simply dismiss criminal complaints against foreign residents suspected of having

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<sup>62</sup> NA R5 S.Th. 8.2.๑/1, letter dated 16 December 1892.

harmed Siamese subjects. The proposal arrived in a period of significant changes in the Siamese government, however, and Dr. Hays seems to have misunderstood the scope of the proposed changes. In his response to Prince Naret, Hays stated that he would not be able to perform both his current duties as inspector of government hospitals and the additional responsibilities of the newly proposed role, which he understood to be that of a “regular medical officer of the court” (*mo prajam samrap san*). Hays repeated his offer to recommend students from the medical college to fulfill the role of coroner and suggested that, “in important cases,” he “or another European physician could be assigned to assist in the investigation.”<sup>63</sup> Yet Hays’ recommendations went still further, overstepping the ambitions of Naret and helping to demonstrate the precise nature of the Siamese state’s interest in forensic medicine at the time.

Hays suggested that the Ministry of the Capital might institute inquest procedures for *all* cases of unnatural death—“not just in cases where foreigners killed Thai people [sic: *khon thai*], but in all cases including even the lowliest serf.”<sup>64</sup> If such a system were put in place, Hays thought that the graduates of the newly established Siamese royal medical college would be able to fill this new role, which required a person knowledgeable in medicine (*phu ru wicha phaet*). Medical students signed a contract as part of their enrollment in the college, which required them to work as civil servants for the government for a period of three years after their graduation.<sup>65</sup> Since many of the students were unable to find appropriate medical work within the Siamese government upon graduation, he reasoned, they might each be given a district where they could

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<sup>63</sup> “*Tha pen kan-yai kan-samkhan ja hai mo he [Hays] rue phaet yurop khon nueng khon dai pai chuai truat*” (NA R5 S.Th. 8.2.๑/1, letter dated 17 December 111 [1892]).

<sup>64</sup> “*Mai jam pho tae khon tang prathet kha khon thai yang diao thueng phrai fa pra ratchakon duai kan*” (Ibid.).

<sup>65</sup> Nai Chum, among the inaugural students at the Royal Medical College, cited (and reproduced) his contract when he attempted to appeal his first civil service assignment after graduation in March 1893; see NA R5 S.Th. 8/1, records of the Hospital Department (*Krom phayaban*, Ministry of Public Instruction).

support themselves through fees charged to the state for each autopsy (and presumably other medical services provided to the populace at large). In effect, Hays' proposal called for the application of forensic medicine at the level of population governance in a normative sense; he advocated extending forensic investigation to all cases of unnatural death in Siam. Discussions within the Siamese state over forensic medicine, however, trended in the opposite direction. Juxtaposing Hay's proposal with the ensuing plans made by Naret reveals a point of inflection in the relations between medical science and Siamese political life in the last decade of the nineteenth century.

For Naret and other Siamese officials, the emerging question of their political responsibility to a group of people who were, by default, Siamese legal subjects was still determined by the exigencies of imperial politics. Naret was interested in forensic medicine only in so far as it might be useful in addressing the conditions of the Siamese state's diminished sovereignty. For him, forensic medicine provided an important form of leverage in those rare cases of unnatural death that had the potential for transnational legal repercussions. An autopsy allowed the Siamese state to present expert medico-legal evidence against foreign residents suspected of having injured or killed a Siamese subject. This pragmatic, transactional arrangement with a new form of expertise was not indicative of a shift towards a broader, more encompassing sense of political solidarity and responsibility to the Siamese body politic. In many ways, it corresponded to long-standing patterns of elite interest in new and foreign sources of knowledge.<sup>66</sup> By calling attention to the (dead) bodies of Siamese subjects, forensic medicine did not level or undermine the hierarchical nature of social and political life in Siam; instead, in many ways it seems to have reinforced it by allowing Siamese elites to martial Siamese bodies

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<sup>66</sup> See Tony Day & Craig J. Reynolds, "Cosmologies, Truth Regimes, and the State in Southeast Asia," *Modern Asian Studies* 34, no. 1 (2000): 1-55.

more effectively in the course of political projects intended to bolster the absolute authority of the Siamese sovereign.

The consolidated sense of Siamese subjectivity that emerged from the engagement with forensic medicine is emphatically not the sort associated with individual agency and the constitution of political life that normative understandings of civil society would have us expect.<sup>67</sup> Instead, what we see in Naret's burgeoning interest in forensic medicine is an elite bureaucrat coming to terms pragmatically with a political challenge to the state. While individual Siamese bodies were the focus of forensic medical expertise, the real arena of their invocation was imperial politics. The interests of the subaltern dead were passed over in favor of those of the state and its elite agents. Even in light of the constrained scope of Naret's initiative, however, conforming to the new standards of medico-legal expertise would nevertheless prove to be a much more vexing question than the Siamese government ministers realized.

### **A Question of Credentials?: Race, Objectivity, & Expertise**

Hays' subtle but steadfast refusal to accept new responsibilities as a coroner in December 1892 sparked a new conversation among Siamese officials about the nature of medico-legal expertise. Prince Naret's original proposal, which was meant to address the emerging gap in standards of evidence between Siamese and foreign consular courts, assumed that Dr. Hays would be able to determine and specify the cause of death in a way that would be acceptable to the foreign courts. The proposal was essentially an attempt to reform the standards of Siamese evidence law in

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<sup>67</sup> See Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger with Frederick Lawrence, trans. (Cambridge, MA: MIT Press, 1989), 27–56. For a critical exploration of this model in the Thai historical context, see Thanapol Limaphichart, “The Emergence of the Siamese Public Sphere: Colonial Modernity, Print Culture, and the Practice of Criticism (1860s-1910s),” *South East Asia Research* 17 (2009): 361-99.

practice without addressing the question in theory.<sup>68</sup> For Naret, medico-legal expertise evidently appeared to be strictly a matter of qualifications and documentation. When asked by Phasakorawong whether he thought that the Siamese state should employ a foreign or Siamese physician to conduct autopsies, Naret replied that he had “no preference in the matter whatsoever, so long as the doctor who performs the autopsies has sufficient knowledge to be able to speak to the symptomatic causes of death so that the foreign consular courts will believe him.”<sup>69</sup> Prince Naret’s sole concern was that the person appointed be sufficiently credible “so that the consular courts will not overrule the cause of death and throw out the case as has happened before.”<sup>70</sup> His thoughts on the issue of medical credentials for graduates of the newly founded Siamese medical college clearly support this view of medical expertise.

For Hays, the only roadblock to appointing Siamese physicians as state medical examiners was the matter of credentials. It was paramount, Naret cautioned, that the Ministry of Religious Affairs, which was responsible for medical education, administer the qualifying examinations at the medical college and the medical licensing process (*ok nangsue samkhan jaeng khwam-ru phaet*) in such a way that foreigners would trust in it. Until such standards were in place, however, Prince Naret insisted that Dr. Hays accept the added responsibilities of performing autopsies in cases of unnatural death involving foreign subjects, and of compiling

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<sup>68</sup> At the time, Siam still did not have a law of evidence, for example, which would not be promulgated until February 1895 (*BT* 14 Feb. 1895).

<sup>69</sup> “*Phu thi pha truat sop ja pen phaet thai rue phaet yurop ko dai khap pha jao mai mi khwam-rang kiat sing dai loei tae phaet phu thi ja truat pha nan tong pen phaet thi mi khwam-ru pho thi ja bok het haeng akan tai hai san kong sun tang prathet chua thao nan*” (NA R5 S.Th. 8.2.๑/1, letter dated 14 January 111 [1894]).

<sup>70</sup> “*Phuea mi hai kong sun yok het khuen tad sin khwam haeng akan tai dang chen thi khoei tat sin hai yok khwam sia*” (*ibid.*).

reports of his findings to be submitted to the foreign consular courts.<sup>71</sup> Perhaps out of compromise in the face of Hays' repeated refusals, Naret suggested that Hays might bring medical students along with him when called to perform an autopsy, which would lighten his burden somewhat and provide an educational opportunity for advanced medical students. He stressed, however, that Dr. Hays should himself perform all the documentation duties himself so that the consular courts would accept the evidence provided by the Siamese police and justice would be served for Siamese subjects murdered at the hands of foreigners.<sup>72</sup> Based on his letters, it seems clear that Prince Naret did not view the question of expertise and medico-legal evidence in foreign consular courts as a matter permitting racial bias or discrimination. His reservations about appointing Siamese medical students to conduct autopsies concerned the relatively tractable issues of credentials and experience, not the more indelible problem of racial prejudice. Still, the task of appointing a coroner to the Bangkok metropolitan police and advancing forensic investigations in cases of unnatural death remained.

On 27 January 1893, after almost two months of continued debate over proposals to appoint him as coroner to the metropolitan police, Dr. T. Heyward Hays responded directly to Phasakorawong. He rankled at Phasakorawong's most recent letter in which "You... instruct me to examine any persons dead or alive when I may be called upon to examine [them] by the [Ministry of] Local Government [sic: Ministry of the Capital], and inform me that I am to

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<sup>71</sup> Naret refers to such documents as 'a report of the findings of the autopsy' ("*tham nangsue rai ngan jaeng khwam tam het thi truat dai*"). The notion of a formal medico-legal document recording the cause of death, a death certificate, had apparently not yet entered the lexicon of Siamese officials. It would soon appear (in transliteration) in the "Death by various causes" archives once formal autopsies began in May 1896 (as discussed in chapter seven, below).

<sup>72</sup> "*Hai tham rai ngan jaeng khwam tam het thi truat dai*" (NA R5 S.Th. 8.2.๑/1, letter dated 7 December 111 [1892]).

consider such work as part of my duty.”<sup>73</sup> Hays then recited the terms of his original contract with the Hospital Department (which had been negotiated with Prince Damrong Rajanuphap, who headed the Hospital Department at the time). According to Hays, his duties included providing medical and surgical services at the government hospitals in the capital city along with the state orphanage and the newly established “lunatic asylum,” providing the same services to the royal court in the absence of the court’s private physician (Dr. Peter Gowan), managing the affairs of the American Dispensary (in which Hays had previously been a managing partner, and which Hays himself had sold to the Siamese government before entering into civil service), and educating medical students at the new medical college. Hays complained that since Dr. Gowan had left the service of the royal court, his duties had already proven “much more onerous” than he had anticipated. “It is therefore needless for me to state,” Hays concluded, “that I absolutely decline to consider the services, which you call upon me to render to the [Ministry of L]ocal Government[,] as part of my duties.” For Hays, the new responsibilities being proposed by Prince Naret clearly amounted to a new office above and beyond his role with the Hospital Department and he expected to be compensated accordingly.<sup>74</sup>

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<sup>73</sup> NA R5 S.Th. 8.2.๑/2, letter dated 27 January 1893.

<sup>74</sup> Hays informed Phasakorawong that he would be willing to perform all of his original duties in addition to the new responsibilities of state medical examiner, but only at a salary of 15 *catties* per month (an increase that amounted to a doubling of his salary at the time of 7 *chang* 40 *baht*). Failing that, Hays proposed a schedule of fees for individual services that the state might require of him in addition to his regular duties. The list included some of the duties that might be expected of a medical examiner: post-mortem examinations would be billed at \$100 each, “examinations of persons injured” requiring a certificate documenting the injury would cost \$10, and “attendance in court as witness” would cost the state \$5 per hour. Forensic tests, such as “examination of blood stains &c.,” would cost \$50. Other medical and surgical services included in Hays’ proposed schedule of fees were diagnostic physical examinations (\$10), visits to the Royal Palace (\$15 per hour or part of an hour), “accompanying His Majesty” when travelling (\$50 “per day, with board and comfortable lodging”), “simple accouchement [delivery]” (\$50), operative accouchement (\$100), and abortion/miscarriage (*kan-thaeng luk*) (\$50). Hays would eventually submit itemized bills for his services to the royal court, including

Internal letters within the Hospital Department offer other explanations for Hays' new salary demands. A letter dated 25 February 1893, for example, records Hays' complaint that conducting autopsies was difficult work, which could also be dangerous if the physician were exposed to "poisons" in the blood of the deceased.<sup>75</sup> The same letter also notes Hays' desire to resign his teaching duties at the medical college, owing to his poor command of the Siamese language, which made communicating with the students difficult. Finally, officials within the Hospital Department observed that Dr. Hays had been "distracted" (*woon wai*) for some time by his involvement in civil proceedings charging him with libel.<sup>76</sup> Since learning of the charges, the author remarked, Hays "had thought only of money."<sup>77</sup>

Siamese officials were clearly losing patience with Dr. Hays, but he retained the upper hand in the negotiations through his long-standing involvement with Bangrak Hospital, which was the crown jewel of the Siamese government hospitals at the end of the nineteenth century. Bangrak Hospital served Bangkok's wealthy foreign residents, who were willing to pay for room, board, and medical care, but demanded in return to be treated by qualified European or American physicians.<sup>78</sup> Siamese officials were worried that if Hays left government service

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one bill for four visits to the royal palace in April 1893 amounting to 100 *Ticals* or *Baht* (NA R5 S.Th. 8/4).

<sup>75</sup> "Mo he [Hays] *klao dang ni prasong rueang ngoen yang diao duai tang tae phae khwam mis toe wi thon* [Mister Weedon] *laeo yu khang ja wun wai mak*" NA R5 S.Th. 8.2.๑/2, letter dated 25 February 1893.

<sup>76</sup> The charges were filed in the American Consular Court by an American minister named L. A. Eaton, who was represented by E. B. Michell. Hays appears to have lost the case—a strange affair involving an allegedly libelous remark made by Hays in a private letter written to a friend in the United States—and was forced to pay punitive damages (*BT* 13 January 1892).

<sup>77</sup> NA R5 S.Th. 8.2.๑/2, letter dated 25 February 111 (1893).

<sup>78</sup> The hospital was originally established by the British legation in Bangkok; it was funded by subscription and run by a committee chosen from among its patrons. The hospital was handed over to the Siamese government's Hospital Department in October 1891 under several strict

altogether Bangrak Hospital would be left without a foreign physician.<sup>79</sup> They likewise understood that Hays had seized upon this opportunity to ask for a raise because of a dearth of Western physicians in Bangkok at the time.<sup>80</sup> The only other European doctor was a Dr. Doiser (?) who the Siamese officials understood was “not highly respected and whom Europeans [residing in Bangkok] did not like to consult, with the exception of a few people from Denmark and Germany.”<sup>81</sup> These factors meant that Hays’s services were in high demand, and Europeans preferred his care to other doctors because his services were more “private”; he was thus able to demand more money for his services from the Siamese state.<sup>82</sup> Dr. George McFarland, another American physician, was also employed by the Hospital Department at the time. In addition to his primary duties teaching at the medical college, he occasionally treated patients at Bangrak Hospital as well. Siamese officials understood, however, that European patients at the hospital thought that McFarland was too young and inexperienced to serve as a primary physician.<sup>83</sup>

In short, efforts to reform state forensic practices had turned into a petty dispute over a single civil servant’s contract and obligations. Hays’ stewardship of the hospital would only carry him so far, however, and by May 1893 his continued threats to resign and demands to be compensated for services outside of his contract would reach the ears of the king himself. On 4 May 1893, a high-ranking prince would pass along King Chulalongkorn’s judgment on the matter to Phasakorawong, writing “Dr. Hays requests too much money and he should not be

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conditions meant to ensure that the hospital would still provide care to foreign residents in Siam (NA R5 S 24/6).

<sup>79</sup> NA R5 S.Th. 8.2.๑/2, letter dated 25 February 111 [1893].

<sup>80</sup> “[Hays] *mak ja klao khwam tang tang nai wela ni thi pen okat di sueng mai mi mo chao yurop nai krung thep*” (ibid.).

<sup>81</sup> “*Mi tae mo doi soer [Doiser?] pen phu mai mi athayasai an di chao yurop mai chop ja chai mi tae phuak denmark kap yer man chai yu bang*” (ibid.).

<sup>82</sup> “*Khon yurop uen hai mo he [Hays] raksa thaen mo [Willis] mo [Gowan] sia mak phro mi thang raksa prai wet [private] mak khuen jueng dai len tua kho ngoen khun*” (ibid.).

<sup>83</sup> “*Khon yurop ko yang ti wai num pai yang mai chamnan pho*” (ibid.).

allowed to carry on in this manner. If he wishes to resign, let him resign.”<sup>84</sup> Hays would eventually get his way; he retained control of Bangrak Hospital and was relieved of his other duties.<sup>85</sup> But for the time being, the unresolved issue of finding a physician to conduct autopsies in cases of unnatural death would continue to fester.

In June 1893, less than a month after King Chulalongkorn had issued an ultimatum in response to Dr. Hays’ demands, events would force the issue of investigating cases of unnatural death to the fore once more. Some time in late May 1893, a fight had broken out at a rice mill between two employees, a Siamese man named *Nai Khram* and a South Asian (Thai: *khaek*) named Ali, who was under British legal protection.<sup>86</sup> Three days later, the Siamese man died after a bout of uncontrollable vomiting. The doctors treating the man concluded that he had died as a result of some underlying illness, and not from injuries sustained in the fight.<sup>87</sup> Lacking other options, the Siamese police summoned Dr. Hays to perform an autopsy and determine the

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<sup>84</sup> “*Mo hays ja riek ngoen lua koen lae klao pen kan-len tua mak mai khuan anuyat ja la ok ko hai ok pai*” (NA R5 S.Th. 8.2.๑/2, letter dated 4 May 112 [1893]).

<sup>85</sup> That is not to say that all issues in the relationship between Hays and the state were resolved. In the coming months, there would be serious disputes about revenues and expenditures at the American Dispensary (which Hays had been running) and the Bangrak Hospital (see NA R5 S.Th. 8.2.๑/5). Moreover, Hays continued to submit bills for any medical services that he provided outside of his rounds at Bangrak Hospital. Documents also suggest that Hays rather unceremoniously abandoned the children at the state orphanage and the mental patients at the “lunatic asylum” when he resigned his duties, leaving them without medical care (NA R5 S.Th. 8/15). And by May 1895, Hays would again be complaining about his salary (NA R5 S.Th. 8/54).

<sup>86</sup> NA R5 S.Th. 8/9. Perhaps because the deceased died while receiving medical care and police were not called to the scene, this case did not make it into the inquest (“Death by various causes”) files of the Ministry of Local Government.

<sup>87</sup> The victim in this case exhibits what a layman today might recognize as classic symptoms of brain trauma (concussion) as the result of a blow to the head. The physicians, however, attributed the death to illness and not the wounds sustained during the altercation (NA R5 S.Th. 8/9). In spite of all the debates over reforming Siamese inquest procedures and the need for forensic medicine in order to collect evidence that would be acceptable in the consular courts, the standards of such medicine were evidently still quite low.

cause of death. Hays acquiesced, and he too attributed the death to an unspecified illness.<sup>88</sup> Naret accepted the doctor's judgment that this particular case involved an underlying chronic illness and not a fatal injury inflicted by a foreign subject, but the case nevertheless prompted a renewed discussion of Naret's earlier proposals regarding the appointment of a physician to conduct autopsies.<sup>89</sup> In cases of death that involve bodily injury, Naret argued, "it is absolutely essential to quickly appoint a physician to inspect the body, so that there would be no doubt. Otherwise, conditions will result in the loss"—presumably of evidence and medico-legal certainty, but also of the opportunity to file charges in consular courts.<sup>90</sup> But Naret was tired of dealing with Hays' repeated refusals and financial demands. He began to look around for other options, a move that would highlight a new facet of the transnational debates over medico-legal expertise.

In his frustration with Hays, Naret asked Phasakorawong to appoint a Siamese physician, *Luang* Damrong Phaetyakhun, to take over the duties of medical examiner.<sup>91</sup> Phasakorawong responded that the idea of appointing "*Luang* Damrong to take over the duties of inspecting corpses and conducting autopsies instead of Dr. Hays seems like a good one," but he had one reservation.<sup>92</sup> Phasakorawong was afraid that "even though it is true that Damrong Phaetyakhun was indeed trained and certified in medicine he was also a Thai and a servant of the King" of

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<sup>88</sup> Afterwards, Hays resumed his demands for extra compensation for performing the autopsy (in the amount of 15 *chang*; NA R5 S.Th. 8/9, letter dated 4 June 1893).

<sup>89</sup> Although Naret accepted Hays' judgment in the case, he nevertheless criticized his forensic investigation and the knowledge it produced as not worth the expense ("*Khran ja jang hai mo he* [Hays] *pha sop ko pen ngoen mak nak hen wa prayot thi ja dai sap mai thao kan-thi ja sia ngoen*"; *ibid.*).

<sup>90</sup> "*Jam tong rip jad kan ruang phaet truat sop hai pen thi man khong sia jueng ja di tha mai rip jad mi het to pai na ja sia kan*" (NA R5 S.Th. 8/9, letter dated 4 June 1893, page 2).

<sup>91</sup> NA R5 S.Th. 8/9, 1. Damrong Phaetyakhun (Chuen Phuthaphaet, 1881- 1953), was later elevated in rank to *Phraya* (1923), and served as the first Dean of the faculty of medicine at Chulalongkorn University (1947-1950).

<sup>92</sup> NA R5 S.Th. 8/9, 4; letter dated two days later, on 6 June 1893.

Siam.<sup>93</sup> Phasakorawong feared that foreign consular courts therefore might not accept forensic medical evidence that was produced and attested to by *Luang* Damrong. He suggested that they might instead try to hire another European physician who had recently entered the service of the Ministry of the Palace, whom the foreign legations might view as more trustworthy than a Siamese subject. Failing that, Phasakorawong thought that Dr. George B. McFarland, an American doctor who was teaching at the medical college, might also be suitable—although he noted that McFarland was young and new to Bangkok, and his expertise lay in dentistry, not surgery or forensic medicine. Finally, Phasakorawong noted that McFarland, like Hays, might ask for more money to perform autopsies, on account of the difficulties and risks inherent in the job.

This exchange reveals that although much of the debate remained unchanged from the time of Prince Naret's first proposal to address the growing gap in medico-legal standards of evidence in December 1892, the intervening months had seen some significant developments in the efforts of the Siamese state to reform forensic investigations in Bangkok. Naret continued to insist upon finding the most economical solution to the state's problem of insufficient medico-legal expertise; thus his persistence in trying to enlist Dr. Hays to examine cases of unnatural death. At the same time, however, Naret was beginning to grasp the key issue of speed in inspecting bodies and determining the cause of death. He realized that carrying out the autopsy in a timely manner was equally important as having a qualified physician determine the cause of

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<sup>93</sup> “*Hen duai klao wa luang damrong thueng rien phaet dai nangsue samkhan ko jing tae pen kha thun la ong thuli phrabat pen khon thai*” (ibid.). Damrong Phaetyakhun had recently returned from studying medicine abroad in England, and upon his return he had initially taken up government service in the Ministry of Defense, where his salary was 5 *chang* per month. Presumably discontent with his work there, he had resigned and accepted a position at the Ministry of Agriculture and Commerce, where he worked as a translator for half as much money (30 *chang* per year; NA R5 S.Th. 8.2.๑/2).

death. Promptness, along with appropriate medical credentials and documentation, was added to the growing list of requisites for medico-legal evidence that would meet the standards of the foreign consular courts. But just as the Siamese officials came to terms with the essentials of forensic medical investigations, the parameters of authority and credibility seemed to be shifting, as Phasakorawong astutely suspected.

The plural legal regime created by extraterritorial law in Siam meant that the Siamese state had to conform to the standards of evidence upheld by the foreign consular courts if they hoped to pursue criminal charges against foreign subjects residing in Siam. The discourses of modern legal medicine and the tacit standards of evidence in the foreign consular courts had thus become hegemonic. Yet Phasakorawong realized—well before Naret—that there were other, extra-judicial factors involved when foreign consular courts assessed evidence in a case of unnatural death, and deliberated whether to bring charges against a foreign resident. Not all medical credentials were created equal, and the professional credentials of Siamese physicians did not guarantee that consular courts would recognize their authority. In recognizing the fact that the race of the physician mattered when it came to inspecting bodies and submitting medico-legal evidence to the foreign consular courts, Siamese officials were coming to terms with one of the most pervasive features of knowledge production in the colonial world. As Pauline Kusiak has argued, “debates about what counted as knowledge, and about who counted as legitimate knowledge producers, were written into the very fabric of colonial socio-technical systems.”<sup>94</sup> Moreover, in spite of the discourse of scientific objectivity, and the belief that a physician could ascertain the exact cause of death through forensic investigation, consular courts also seemed to take into account political affiliations when assessing forensic evidence. This amounted to

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<sup>94</sup> Pauline Kusiak, “Instrumentalized Rationality, Cross-Cultural Mediators, and Civil Epistemologies of Late Colonialism,” *Social Studies of Science* 40, no. 6 (2010): 871-902, 873.

another strike against Siamese physicians who would submit forensic evidence against a foreign subject before a consular court. In order to participate in the new system of authoritative expert knowledge—and to protect their subjects from the injustices of extraterritorial law—the Siamese state had to hire foreign medical professionals and ensure proper documentation in cases of unnatural death.

By the middle of the last decade of the nineteenth century, senior officials in the Siamese state were coming to terms with the shifting nature of authority over death and the new standards of evidence and expertise established by the foreign consular courts. Recognizing the gap in standards of evidence between Siamese and foreign courts, they took action to try and mitigate the perceived disadvantage that this situation created for Siamese legal subjects. Of course, this turn to forensic medicine was ultimately part of a pragmatic engagement with the conditions of extraterritoriality in turn of the twentieth century Siam. The changes in political rhetoric as the Siamese state adopted forensic medicine to address the injustices of extraterritoriality were not absolute; they applied very selectively to legal cases involving dead Siamese legal subjects that required engagement with the local legal institutions of the imperial powers. Imperial politics determined the nature and extent of the Siamese state's engagement with forensic medicine, and the relations of science and sovereignty were definitively marked by this context. Public interest in this new form of expertise, however, quickly surpassed the confines of state institutions. The chapter therefore concludes with an analysis of how other social actors came to appeal to medico-legal intervention in their own affairs.

### **Indemnification: Legal Medicine outside of the State**

The above discussion focused on how Siamese officials turned to forensic medicine to address the growing sense of injustice they perceived in the operations of extraterritorial law in Bangkok. These efforts at reform suggest the emergence of a new sense of political responsibility for Siamese legal subjects on the part of the state—at least in legal cases with transnational implications. But juridical channels were not the only means by which the authority of medico-legal science began to spread in the final years of the nineteenth century. The era also witnessed a shift whereby police involvement in investigations of unnatural death became a strategic mode of action employed by certain members of the public—foreigners and wealthy Siamese individuals alike—who sought out police involvement as a way to safeguard their interests. This development complicated the nascent politics of state responsibility that had only started to take root in elite discourses concerning cases of unnatural death involving Siamese subjects. This section presents two episodes in 1896 as a means of exploring this new public appeal to legal and medico-legal expertise as a form of indemnification.

On 24 May 1896, an elderly Chinese man was found dead in a small shed inside a compound owned by another Chinese man named *Jin Yi*, who was a registered French protégé.<sup>95</sup> Upon hearing rumors that a Chinese man had hung himself on the property of *Jin Yi*, Siam's Police Inspector B. M. Sheriff inquired about the matter to the French legation on 25 May 1896. He received a reply from a French official named "R. Reau," who enclosed a formal deposition offered by Yi.<sup>96</sup> The English translation of Yi's (original French) account reads:

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<sup>95</sup> NA R5 N 23/65. See also *BT* 26 May 1896.

<sup>96</sup> The official in question appears to be Cardinal (Monseigneur) Raphaël Réau. Prior to the 1905 law separating the Church and State, French diplomacy and consular affairs in Siam were handled by members of the clergy. Réau's journals during his tenure as diplomat have been published; see Philippe Marchat, ed., *Jeune Diplomate Au Siam (1894-1900): Lettres de mon Grand-père Raphaël Réau* (Issy-les-Moulineaux: Muller, 2009).

Chin [*Jin*] Soan [the deceased] was a relative of my servant. He was a poor man and he had been mad for some years. On the 24<sup>th</sup> May at four o'clock in the afternoon he came to my house in an almost naked state exciting thereby the ridicule of everybody. He lay down in a little shed behind my house. At Eleven [sic] o'clock I found him there unconscious. I had the ampho [sic: *amphoe*] called who certified that Chin Soan was dead. The body was lying at full length on the ground. There was no indication to lead one to suppose that Chin Soan had died a violent death. I caused the poor man to be buried next day at Eight [sic] o'clock in the morning. This is the truth. Signed Chin Yi.

There is some ambiguity over the actual process whereby forensic expertise became involved in the death. According to *Jin Yi*'s account, he personally summoned the district official (*nai amphoe*) to come and inspect the body before disposing of it the next morning. Documents in the police inquest file, however, suggest that Inspector Sheriff took the initiative in contacting the French legation after hearing rumors of the death. While clearly indicative of the uncertain nature of forensic expertise and the exact procedures mandated by the state in cases of unnatural death, the incident nevertheless reveals the protection provided by foreign legal registration, and, more importantly, the desire of an individual with such protection to summon forensic expertise as a means of protecting himself from potential legal ramifications of unnatural death.

The sudden death of a vagrant in July 1896 likewise provides a window on how non-state actors came to see legal medicine as a tool of indemnification.<sup>97</sup> Documents related to the case record that an unnamed middle-aged man was walking in the street in front of the home of a Siamese official, when he suddenly collapsed and died. Although the Siamese police had recently taken a more active role in investigating and documenting cases of unnatural death in Bangkok, this particular case, which seems to have been a case of fatal opium withdrawal (a not uncommon fate for Bangkok's more transient residents at the time), would likely not have made it into the archives of the Ministry of the Capital were it not for the intervention of a lawyer named *Khun Phiphit*. Identifying himself as an attorney (*thanai*) representing the unnamed

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<sup>97</sup> NA R5 N 23/82.

Siamese official and his wife, who is called *Khun ying* Ngoen, Phiphit offered a sworn statement concerning the death to the Siamese police. According to his account, upon being informed of the death by her servants, the lady of the household sent notice to the Siamese district official (*amphoe*) asking him to come and inspect the body (*chanasut phlik sop*) so that the official would be able to offer evidence along with Ngoen and her attorney “in the event that relatives of the deceased or others should come forth and make a legal claim against *Khun ying* Ngoen, the owner of the property.”<sup>98</sup>

These cases are evidence of a new public regard for medico-legal science. They suggest a departure from the authoritative collection of evidence by the police, whereby residents had been compelled to offer testimony concerning the body in order to comply with royal law. Cases of unnatural death such as that outside of the home of *Khun ying* Ngoen and inside the compound of *Jin Yi*, evince a very different role for legal expertise: the impulse to call upon a new form of expert knowledge of death was not a matter of political responsibility, it was instead indicative of a desire for personal indemnification against potential civil legal claims through the intervention of experts.<sup>99</sup> The actions of *Khun ying* Ngoen and *Jin Yi* in the aftermath of unnatural deaths reveal a growing recognition of the independent power of legal institutions to govern events in social life—at times in a potentially threatening manner for those of some financial means. We can also begin to see how just as the legal rights of individuals—situated in

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<sup>98</sup> “*Tha suep pai mua na chai phu mi chu thi tai mi yat phi nong khong chai mi chu thi non tai lae phu nueng phu dai ja ma rong fong wa klao khun ying ngoen jao khong ban*” (NA R5 N 23/82).

<sup>99</sup> There is evidence to suggest that a similar situation prevailed in Egypt, where by the 1870s, “knowledge of the important role played by forensic medicine often prompted litigants to ask for its application, rather than wait for the police to do so”; see Khaled Fahmy, “The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth Century Egypt,” *Islamic Law & Society* 6:2 (1999): 224-271, quotation on 252.

the body<sup>100</sup>—were beginning to become a matter of political concern for the state, there was a corresponding rise in public awareness of such rights. And as awareness of these rights and their protections became more commonplace, so too did forms of expertise that could be called upon to make the body “speak” in legally binding language.

## **Conclusion**

This chapter has made the case that forensic medicine played a decisive role in giving discursive shape to a new form of state-subject relations in Siam at the turn of the twentieth century. The plural legal environment created by extraterritoriality had long been perceived as a challenge to Siamese political and jurisdictional sovereignty, but different standards of medico-legal evidence upheld by Siamese and foreign consular legal institutions demonstrated a new facet of Siamese “disadvantage”: namely, the inability to bring criminal charges against foreign residents suspected of transgressions against individual bodies. This imbalance of justice helped the Siamese ministers of state to perceive individual dead bodies as part of a body politic, which became the impetus for discussions about the reformation of Siamese standards of medico-legal evidence and investigational procedures.

The power imbalance created by unequal trade treaties and the threat—both implicit and at times explicit—of military intervention meant that the standards of medico-legal evidence upheld by the European consular courts became hegemonic.<sup>101</sup> Siamese state officials were forced to try to conform to these standards in order to seek justice for Siamese subjects who

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<sup>100</sup> Elaine Scarry, “Consent and the Body: Injury, Departure and Desire,” *New Literary History* 21 (1990): 867-896.

<sup>101</sup> On the very real threats to Siamese territorial and political sovereignty during this period, see Thongchai Winichakul, *Siam Mapped: History of the Geo-body of a Nation* (Honolulu: University of Hawai’i Press, 1994), chapter eight.

might be harmed at the hands of foreign residents who enjoyed extraterritorial legal protection. Forensic medicine thus became a new arena for challenging the injustices of extraterritorial law and asserting the rights of Siamese dead bodies, but there were unforeseen barriers to entry that were absent from the discourse of objectivity related to forensic medicine and evidence. Medical credentials alone did not guarantee that evidence collected in cases of unnatural death would be acceptable to foreign consular courts; race and political allegiance amounted to unspoken checks against objectivity in the production of forensic evidence. In order to ensure that Siamese subjects did not suffer injustice at the hands of foreigners protected by extraterritorial rights, the Siamese state needed to undertake radical reforms in its investigative procedures.

Like many contests over expertise and authoritative forms of knowledge, the question of how the standards of western forensic medicine became hegemonic is a matter more of contextual factors than of developments within medical science. The dynamics created by the unequal foreign trade treaties that established extraterritorial rights for foreign residents and the transnational political environment characterized by competitive imperial projects were the driving force behind the emergence of a new form of authoritative expertise over death. The Siamese state attempted to conform to the standards of forensic medicine recognized by foreign consular courts as part of a pragmatic effort to address the particular problem set created by extraterritorial jurisdiction. And while debates over the standards of medico-legal evidence helped Siamese state officials to perceive and assert their political responsibility to the bodies of Siamese legal subjects, the practical nature of this encounter—especially the concern for cases of death involving foreign subjects suspected of harming Siamese bodies—had the effect of constraining the demographic reach of forensic medicine on Siamese society. Whereas the fate of forensic medicine was tied to radical democratic politics in Great Britain, the politics of

imperialism meant that the Siamese adoption of medico-legal expertise was part of a narrow pragmatic engagement with the injustices created by extraterritorial law, and would not contribute to a broader transformation of Siamese political culture at that time.

The early history of forensic medicine in Siam interrupts the logic of the Foucaultian “medicalizing state,” and related theories of medical expertise and state power. In contrast to historical narratives that view the introduction of western medical science in general—and forensic medicine in particular<sup>102</sup>—as part of a state-centric attempt to make the population visible and governable in new ways, the Siamese state’s early interest in forensic medicine was determined by its pragmatic engagement with the realities of extraterritoriality and compromised juridical sovereignty. The state did not apply forensic medicine as a tool in the surveillance and subjugation of bodies. Instead, differential standards of medico-legal evidence and forensic expertise helped elucidate the state’s relation to certain bodies as *Siamese* bodies. Those bodies constituted a political body that was defined by its disadvantage status vis-à-vis foreign residents. Moreover, before the state had even established working procedures for the limited and strategic application of forensic medicine, the implications of differential political and legal rights and plural legal institutions had already moved beyond the context of state control. The Siamese case demonstrates that interest in forensic medical expertise was not limited to the state and imperial legal institutions; non-state actors also appealed independently to legal medicine as a form of expertise that could ensure indemnification against civil legal claims. The cases of unnatural death involving a wealthy Siamese subject and a French protégé substantiate this form of agency in the rise of forensic medicine.

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<sup>102</sup> Khaled Fahmy makes precisely this argument concerning the introduction of forensic science in Egypt; see Fahmy, “The Anatomy of Justice.”

In the final analysis, medico-legal concern for the dead on the part of the Siamese state should be understood as yet another register by which arguments—both discursive and performative—were made in favor of Siamese sovereignty in the era of high imperialism. To date, scholars have identified such arguments based on legal,<sup>103</sup> cultural,<sup>104</sup> and geographical<sup>105</sup> forms of reasoning, as well as more tacit arguments based on elite consumption habits.<sup>106</sup> In most cases, these new modes of articulating and performing sovereignty were predicated on the deployment of scientific and social-scientific knowledge and practice, including ethnography, architecture, and mapping.<sup>107</sup> Battles over Siamese sovereignty were not just territorial and geographical; they extended to the very identification of the constituents of the Siamese state and the constitution of the Siamese body politic. In these arenas, geographical reasoning and mapping were useless; forensic science was a key modality by which the Siamese state came into a new relation with its populace.

The efforts of the Siamese state to appropriate forensic medical expertise as part of a pragmatic engagement with the realities of compromised jurisdictional sovereignty, and by wealthy individuals to secure legal indemnity, demonstrate important factors in the rise of forensic medical expertise. But there were other important social dynamics in this transition, specifically the actual practice of forensic medical examination and its documentation within the

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<sup>103</sup> Loos, *Subject Siam*.

<sup>104</sup> Thongchai Winichakul, “The Quest for *Siwilai*: A Geographical Discourse of Civilizational Thinking in Late Nineteenth and Early Twentieth-Century Siam,” *The Journal of Asian Studies* 59, no. 3 (2000): 528-549.

<sup>105</sup> Thongchai, *Siam Mapped*.

<sup>106</sup> Maurizio Peleggi, *Lords of Things: The Fashioning of the Siamese Monarchy's Modern Image* (Honolulu: University of Hawai'i Press, 2002).

<sup>107</sup> The Siamese elite employed ethnography as an aid to projects of self-differentiation in general cultural terms (Thongchai, “The Quest for *Siwilai*”) and in the service of its imperial agenda (Loos, *Subject Siam*, 72-99); Peleggi explores the use of architecture in constructing the modern image of the monarchy (*Lords of Things*, chapters 3-4); the reference to mapping refers, of course, to Thongchai, *Siam Mapped*, chapter 6.

Bangkok police morgue. Whereas this chapter accounted for changes in the Siamese state's relation to unnatural death through debates about jurisdiction and justice, chapter six offers an emic description of the operations of forensic science.

## CHAPTER SIX

### FORENSIC MEDICINE & THE MEDICO-LEGAL SEMANTICS OF DEATH

#### **Introduction**

On 24 May 1896, members of a Siamese family heard a ruckus coming from the quarters of their servant, a twenty-five year old debt slave named *Amdaeng Si*.<sup>1</sup> Rushing to the room, they found her listless and incoherent. They summoned a doctor, who tried to care for her, but she could not speak and their efforts were in vain: eventually her heart stopped and she died. At first glance, the case of *Amdeang Si* is entirely unremarkable within the context of the “Death by various causes” files of the Ministry of the Capital; it was simply another case of the death of a Siamese subject under unnatural but not overly suspicious conditions.<sup>2</sup> This case, however, would be different. What distinguishes the inquest into the death of *Amdeang Si* from the dozens of others that came before was the intervention of forensic medicine: hers was the first documented case of unnatural death to receive an autopsy and a full medical forensic investigation conducted by physicians working for the Siamese state in conjunction with the metropolitan police force.

Beginning in May 1896, corpses were moved out of temples and public space and into the morgue at the Bangkok Police Hospital where doctors—as opposed to police and district officials—were charged with identifying the cause of death. These changes amounted to a

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<sup>1</sup> NA R5 N 23/64.

<sup>2</sup> With further investigation, the police might have collected witness statements and other clues to suggest that—as in so many other cases—the deceased had been suffering from chronic disease or had chosen drugs as an escape from the oppressive conditions of a life in debt bondage. Debt slaves, of course, were not the only people who looked to suicide as a final solution to their troubles; members of the royal ranks likewise consumed various forms of poison in order to end their lives during the fifth reign. See Lawan Chotamara, *Moradok thai: ruam rueang rao khong watthanatham na ru thi an sanuk yang mai nai chua* [Thai Heritage: A Collection of Entertaining and Incredible Stories about Our Culture], (Bangkok: Samnak phim Ratchawadi, 2536 [1993]), 199-205.

significant—if admittedly short-lived—shift in the meaning and practice of handling death in the Siamese capital, as the executive authority of elite officials gave way to the medical expertise of physicians and the medico-legal judgment of the courts. Who were the practitioners of forensic medicine who wielded this new form of authority over death? How did they fit into the larger context of professional medicine in turn-of-the-twentieth-century Siam? And, more importantly, how was medico-legal authority over death enacted in practice? How did it fit into the bureaucratic logic of the Siamese state? This chapter addresses these questions through an ethnographic examination of forensic medicine within the confines of state bureaucracy.

### **Entering the Morgue**

According to *Mo* (Dr.) Meng Yim, one of the physicians in attendance at the autopsy of *Amdaeng* Si, the procedure began just after 8:00am on Friday, 25 May, the morning after she died.<sup>3</sup> The autopsy took place in the morgue (*thi pha sop*) of the Police Hospital (*rong phayaban krom kong trawaen*) located near *Sam Yaek* (where the so-called New Road [*Thanon jaroen krung*] forks near *Lamphunchai* Road) in central Bangkok. After the initial surgical incisions had been made, Dr. P. A. Nightingale, the other physician in attendance, performed a thorough investigation, “inspecting the body in every manner.”<sup>4</sup> Dr. Nightingale then took the extra step of removing the stomach from the body and placing it inside of a wide-mouthed glass jar, which he intended to take home for further consideration.<sup>5</sup> In this early era of forensic medicine, the chain of custody and an antiseptic laboratory space were luxuries, and the chemical analysis of stomach contents readily became homework.

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<sup>3</sup> NA R5 N 23/64.

<sup>4</sup> NA R5 N 23/64, 4.

<sup>5</sup> It is not clear exactly what procedures Nightingale planned to use in order to test the stomach, but he likely intended to try and identify harmful substances within the contents of the stomach.

There are notable discrepancies in the documentation surrounding the forensic medical procedures conducted during the investigation into the death of *Amdaeng Si*. The first hint that something was amiss in the investigation is that the documents appear in two separate places within the “Death by various causes” files, suggesting that there was some delay in the production and submission of the documents.<sup>6</sup> This oversight might be accounted for by considering the time that had elapsed between the autopsy procedure and the compilation of the original English autopsy report by Dr. Nightingale, and the subsequent preparation of a Thai language translation of the documents by Dr. Meng Yim. A closer reading of the documents, however, reveals that there were other reasons for the delay in ascertaining the cause of death. The Thai language death certificate (dated 28 May 1896) concludes, “when the autopsy was conducted, I [Nightingale] discovered the symptoms of disease in the deceased, who died as a result of disease in the lungs and heart.”<sup>7</sup> In the police report, however, two senior police officials, *Phraya Intharathibodi* and *Phra Thep Phlu*, note that at the time of the autopsy Dr. Nightingale was unable to determine the cause of death.<sup>8</sup> According to their report, having finished the autopsy, but without a cause of death to enter in the death certificate, Nightingale decided to remove the deceased’s stomach for further testing.<sup>9</sup> If Nightingale discovered anything in the course of testing the stomach contents, they concluded, he would submit an

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<sup>6</sup> Documents concerning the death of *Amdaeng Si* appear at both NA R5 N 23/64 and NA R5 N 23/67.

<sup>7</sup> “*Mua pha laeo ko dai phop akan rok khong khao [khao] dai tai doi pen rok nai pod lae pen rok nai hua jai*” (NA R5 N 23/67).

<sup>8</sup> NA R5 N 23/64, 3.

<sup>9</sup> “*Mo nai tin gen [Nightingale] pha sop truat do ko ha dai khwam wa pen arai tai mai mo dai ao krapho ahan pai truat ik*” (NA R5 N 23/64, 3). It would not be the last time that Nightingale would remove the stomach from a cadaver in the wake of an (apparently inconclusive) autopsy at the police hospital; see NA R5 N 23/124 and NA R5 N 23/135.

additional report to the Ministry of the Capital, which oversaw the Siamese police and compiled archival records of police investigations into cases of unnatural death.

The death certificate of *Amdaeng* Si states with conviction that evidence of (presumably fatal) symptoms of disease was discovered during the initial autopsy, but the police report suggests that no cause of death was discovered at that time. Was this contradiction perhaps evidence of a conflict between police officials and the vanguard of forensic medicine in Bangkok? Or is it simply evidence of a failure in the practice of forensic medicine? A careful study of the realities of forensic medicine in the service of the Siamese state in this period reveals that such inconsistencies were not unique. In fact, irregularities in practice and incongruities in documentation were typical of the early implementation of forensic medicine in Siam. They are indicative of the peculiar challenges of mediating a new form of expertise—challenges that went well beyond internecine disputes within the investigative and medical arms of the Siamese police force, as this chapter demonstrates. Dr. Nightingale, failing to find a cause of death during the initial autopsy, hypothesized that the cause of death might yet be discovered hidden in *Amdaeng* Si's stomach contents. When his theory failed to pan out, however, Nightingale was forced to amend the autopsy report, and proclaim—possibly fabricated—symptoms of disease as the cause of death. In this case at least, the juridical need for certainty in discerning a cause of death apparently trumped the empirical maxim of “seeing with one's own eyes” during the autopsy.<sup>10</sup> Clearly, at its outset, this new form of authoritative medical knowledge left much to be desired.

In spite of these shortcomings, the case of *Amdaeng* Si nevertheless marks a significant break with earlier police investigations into cases of unnatural death, which relied upon witness

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<sup>10</sup> The term “autopsy,” from the original Greek roots, had the etymological sense of seeing (*optos*) for one's self (*autos*).

testimony and the observations of police and district officials who possessed no medical expertise whatsoever. But the moment when corpses entered the morgue at the Police Hospital likewise marked the end of the system of executive authority over the meaning of unnatural death in Bangkok. By appealing to medical expertise, Siamese officials were acknowledging that it was no longer sufficient for them to forge meaning out of the cacophony of colloquial discourses on death found in witness testimony and vernacular investigational techniques.<sup>11</sup> In May 1896, officials in the Siamese state effectively elected to adopt the standards of evidence of the foreign consular courts, and to accept the authority of medical expertise in its investigations. This chapter examines the implications of this decision in practice. It introduces the practitioners as well as the other forms of social agency that both constructed the assemblage of forensic medicine in turn-of-the-twentieth-century Bangkok and ultimately undermined it.

### **The Practitioners of Early Forensic Medicine**

If May 1896 marks the start of a new era in Siam, when elite officials abdicated their authority in cases of unnatural death to the certainty of forensic medicine, then it is essential to consider the practitioners of this new science. In theory and discourse, medico-legal expertise was a matter of scientific objectivity and professional credentials. In practice, however, Siamese officials understood that there were significant barriers to entry for those who would submit scientific evidence to consular courts (as discussed in chapter five). For foreign legations in Siam it was clear that the credibility of evidence submitted by Siamese subjects was compromised by their political allegiances and diminished by their Siamese medical credentials. The only viable option, it seemed, was to capitulate and hire a foreign physician to conduct medical examinations

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<sup>11</sup> On this din of voices, idioms, and registers in the colloquial witness statements, and the efforts of Siamese officials to create authoritative meaning out of them, see chapter four (above).

as part of police investigations into cases of unnatural death. But forensic medicine was a new form of authoritative knowledge in Bangkok, and one that required a significant degree of mediation for the Siamese elites who were about to relinquish their authority over the semantics of death. Meeting the standards of evidence of foreign consular courts therefore meant hiring a foreign physician capable of producing authoritative readings of dead bodies and finding a translator with sufficient medical knowledge to be able to mediate the new form of expertise to Siamese officials.

Dr. Meng Yim, who helped to conduct the autopsy in the case of *Amdaeng Si*, makes his first appearance as a civil servant in the employ of the Siamese state in August 1892. On Saturday 27 August of that year, Meng Yim was introduced by Prince Naret, the Minister of the Capital, as the attending physician at the opening of the new Police Hospital at *Sam Yaek* on the New Road.<sup>12</sup> *The Bangkok Times* credited *Luang Visudh Borihan* (also known as “Captain Plian”), the superintendent of Police, with organizing the hospital, which was located on property seized from a Chinese Secret Society (Thai: *ang yi*).<sup>13</sup> Meng Yim’s role at the Police Hospital was initially a therapeutic one; he oversaw the medical care of injured and ill police officers.<sup>14</sup> Forensic medicine had not yet become a priority for the police or the Ministry of the Capital. Postmortem examinations were still conducted at the site of death or on the grounds of the nearest temple—often in the open air—by police and district officials, and corpses were then sent to the temple cemetery for burial or cremation, not the morgue.

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<sup>12</sup> *BT* 31 August 1892. A *Nai* (Mr.) Seng was also named as attending physician during the ceremony.

<sup>13</sup> *BT* 31 August 1892.

<sup>14</sup> See Naret’s original proposal concerning the position of the Chief Physician (*phaet yai*) (NA R5 N 8.1/1). When a new police hospital opened in August 1898, press reports focused on the number of policemen being treated there (*BT* 9 September 1898).

There is no record of Meng Yim's qualifications for the role of attending physician at the hospital, nor of his medical credentials—though he is consistently referred to as 'doctor' (Thai: *mo*) in subsequent documents from the Ministry of the Capital. And in his autopsy reports Meng Yim always identifies himself as the "head physician" (*phaet thi nung*) at the Police Hospital. His name betrays his Chinese ancestry, but Meng Yim's language skills—he was fluent in English and Siamese (which will be discussed below in relation to his duties as translator)—suggest that he was raised in a multilingual environment in cosmopolitan Bangkok. Judging by his language skills and medical education alone, it seems likely that Meng Yim was from a family of some financial means.<sup>15</sup> Whatever Meng Yim's credentials were, he served as physician at the Police Hospital for several years before corpses began to arrive at the morgue as part of standard police procedure in cases of unnatural death and forensic medicine began to occupy more of his time. At that point, however proficient he might have been in meeting the medical needs of the Siamese police force, Meng Yim's Asian ancestry and Siamese language skills marked him as somehow deficient for the task of obtaining medico-legal evidence in cases of unnatural death. The Ministry of the Capital therefore needed a foreign presence to document the procedures in the morgue at the Police Hospital.

Dr. P. A. (Percy Athelstan) Nightingale, an English physician of minor noble parentage, was eventually hired by the Ministry of the Capital to join Meng Yim in the morgue of the Police Hospital. Born in 1867, Nightingale hailed from a long line of British nobility, and had studied medicine at what was perhaps the premier institution at the time, the University of Edinburgh

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<sup>15</sup> Like other wealthy Chinese in Bangkok, he may well have even enjoyed extraterritorial legal rights as a registered foreign resident under French (or, more likely in his case given his English language skills) British protection.

Medical School.<sup>16</sup> After receiving his doctorate, he set off for Bangkok, arriving in late May 1894 at the age of twenty-seven, intending to start a private practice.<sup>17</sup> Soon after his arrival, however, Nightingale learned that the position of physician in attendance to the British Legation in Bangkok was vacant, and he applied for the post.<sup>18</sup> His application was successful, and he was appointed to that position at the end of July 1894 at a salary of £300 per year.<sup>19</sup> At around the same time, Nightingale also entered into a partnership with a British entrepreneur named G. Kennedy Reid, serving as “Consulting Physician” at the English Pharmacy in Bangkok.<sup>20</sup>

Not long after his appointment as physician to the British Legation, Nightingale’s credentials would be tested in his new role as de facto medical examiner. In September 1894 he became embroiled in a public debate over the proper circumstances for ordering an autopsy in cases of unnatural death. In late August of that year, a British subject living in Siam named J. J. Grant had gone missing from his riverside home during the middle of the night.<sup>21</sup> Grant worked for the opium tax farm in the city, and given the nature of that business it was natural to suspect

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<sup>16</sup> His family had held the baronet of Newport Pond in Essex County since its creation in 1628. One of his predecessors, Sir Robert Nightingale (d. 1722), the fourth baronet, had served as director of the East India Company some two hundred years before, perhaps setting the precedent for travelling abroad in search of one’s fortune. See Charles Mosley, ed., *Burke’s Peerage, Baronetage & Knightage*, 107th edition (Wilmington, DE: Genealogical Books Ltd., 2003), volume 2, page 2897-98.

<sup>17</sup> *BT* 30 May 1894.

<sup>18</sup> *BT* 30 May 1894. Dr. W. Willis was the medical attendant of record in 1894, but due to his extended absence from Siam, the American Dr. T. Heyward Hays had served as “Acting Medical Attendant” to the legation prior to Nightingale’s appointment (*The Directory for Bangkok and Siam for 1894*).

<sup>19</sup> *BT* 28 July 1894.

<sup>20</sup> See the listing for “Physicians and Surgeons” in *The Directory for Bangkok and Siam for 1895*.

<sup>21</sup> *BT* 1 September 1894. The meanderings of Grant’s corpse were discussed above, in chapter five.

that foul play might have been involved in his disappearance.<sup>22</sup> The corpse was finally recovered several days later—after some tribulations due to the resistance of local villagers—floating naked in the river downstream at Samut Prakan (*Pak nam*).

The *Siam Free Press*, a local newspaper that was widely regarded as being anti-Siamese and -British and pro-French,<sup>23</sup> pounced on the opportunity to criticize the investigational practices of the Siamese police and British officials alike.<sup>24</sup> According to the *Bangkok Times*, the *Siam Free Press* was in the habit of using “every incident, capable of being put to such use, as a weapon against officials, whether English or Siamese.”<sup>25</sup> In the case of Grant’s death, the *Free Press* lambasted officials for not conducting a postmortem examination of the body. They editorialized that “[A] grave omission has been clearly evident in the treatment of this case, and a lamentable want of consideration and foresight on the part of our Consular Officials, who cannot feel very surprised if their conduct does not meet with general approval among the British

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<sup>22</sup> The *Bangkok Times* quotes from the *Siam Free Press* regarding the incident: “The feeling is gaining ground... that foul play has been resorted to” (“The Drowning Case,” *BT* 5 September 1894). On the evolution of the tax farming system in general, see Hong Lysa, *Thailand in the Nineteenth Century: Evolution of the Economy and Society* (Singapore: Institute of Southeast Asian Studies, 1984).

<sup>23</sup> See, for example, Anonymous, “The Press,” in Arnold Wright and Oliver T. Breakspear, eds., *Twentieth Century Impressions of Siam: Its History, People, Commerce, Industries, and Resources*, 293-297 (London: Lloyd’s, 1908), 295.

<sup>24</sup> During the final decade of the nineteenth century, political tensions between pro-British and pro-French interests in Siam ran high. Disputes between the two factions would often converge over the actions of the Siamese police, which the French regarded as a de facto arm of the British military, owing to the high numbers of British officers recruited from British India—primarily consisting of British administrators and Sikh officers. Although the disputes would reach an all-time high during the *Paknam* crisis of 1893, they would reverberate for some years to come (see, for example, *BT* 20 December 1898; see also Hong Lysa, “Indian Police Subalterns in King Chulalongkorn’s Kingdom: Turn of the Twentieth Century Bangkok Pantomime” in *Khu khwam phumjai*, Sirilak Sampatchalit and Siriporn Yodkamolsat, eds. [Bangkok: Sansan, 2545], 453-473, p. 461).

<sup>25</sup> “The Drowning Case,” *BT* 5 September 1894. Newspaper holdings at the Thai National Archives for this period are limited to the *Bangkok Times*, so my account must rely on one side of the debate.

community.”<sup>26</sup> The *Free Press* accused the British—incorrectly, as it happens—of failing to even dispatch a medical examiner to the scene once the body had been retrieved from the river. In actual fact, according to the *Bangkok Times*, Dr. Nightingale, in his capacity as physician to the British Legation, had been summoned to the scene; it was quickly determined, however, that “no examination of the body in the state of decomposition in which it was found, would have availed anything.” The *Bangkok Times* concluded, “the Doctor exercised, in our opinion, a wise discretion in advising immediate burial.”<sup>27</sup>

The disputes surrounding the procedures involved in investigating Grant’s death highlight the differential nature of investigations into cases of unnatural death in colonial era Bangkok. In this one case involving the death of a foreign resident, no fewer than three separate investigations were conducted. Firstly, according to the *Bangkok Times*, there was an investigation carried out by the Siamese police at the request of the British consulate. The paper does not report on the investigative techniques that were employed by the Siamese police, but they likely amounted to interviewing Grant’s house servants and a cursory search of the surrounding area for the body. Secondly, Grant’s employer, the holder of the opium tax farm, commissioned a private investigation that involved interviews with Grant’s household servants, neighbors, and his landlord, all of whom testified that they had not heard any noise during the night that Grant disappeared. Finally, the British consulate conducted its own independent investigation, which included retrieving the body and calling upon Dr. Nightingale to perform a postmortem examination—which he declined on account of the advanced state of decomposition of the

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<sup>26</sup> The *Free Press*, quoted in “The Drowning Case,” *BT* 5 September 1894.

<sup>27</sup> *BT* 5 September 1894.

body.<sup>28</sup> In the end, despite the furor in the *Siam Free Press*, forensic medicine was something of an afterthought in the case of J. J. Grant. Only one of the three independent investigations—that carried out by the officials of the British Consulate—even attempted to use forensic medicine to gather evidence in the case.<sup>29</sup>

In the aftermath of the debates prompted by the death of Grant, the authorities of the British Legation in Bangkok would call on Nightingale in his role as medical attendant to perform postmortem examinations in several other cases. Nightingale assisted Dr. Hans Adamsen, a physician in the employ of the Siamese Hospital Department, with a postmortem examination in the case of a shooting in Chinatown (*Sampheng*) in February 1895.<sup>30</sup> He was also called upon by the Siamese government to care for Siamese subjects in police custody on at least one occasion before he had entered the employment of the Ministry of the Capital.<sup>31</sup> Sometime before January 1896, Nightingale was appointed by the Siamese government as “inspector to control the slaughtering of cattle for food” and he began to appear in newspaper reports concerning the surprisingly contentious issue of the inspection of cattle at privately owned slaughterhouses in the city.<sup>32</sup> He was formally appointed “Chief Doctor of the Police

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<sup>28</sup> It seems possible, however, that Nightingale might never have actually seen the body, which had already been sealed in a coffin by the time he arrived at the scene (*BT* 5 September 1894).

<sup>29</sup> Given the contemporary standards of medico-legal evidentiary laws in England, it comes as no surprise that public debates did not include discussion of Nightingale’s qualifications to act as a forensic pathologist. In this era, standard medical training and proximity alone were sufficient to qualify a physician as expert medical witness. See Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore, MD: Johns Hopkins University Press, 2000), 109.

<sup>30</sup> *BT* 2 February 1895.

<sup>31</sup> *BT* 8 December 1894.

<sup>32</sup> Although Nightingale’s credentials to work as a forensic pathologist would go unquestioned during his time in Bangkok, his qualifications to serve as a cattle inspector and veterinary surgeon for the Siamese government would not. In a few years’ time, Nightingale would leave Bangkok in the aftermath of a legal battle related to this issue (see below). The inspection of cattle was a particularly thorny issue in late nineteenth century Siam. Foreign residents

Department”—or, “Medical Officer of Health” as the role was more often called after the British office—in March 1896, and it was in that capacity that he oversaw the autopsy of *Amdaeng Si*, the first documented case of a surgical autopsy conducted by the Siamese state, alongside Dr. Meng Yim in the morgue at the Police Hospital.<sup>33</sup>

Doctors Meng Yim and Nightingale likely shared a similar sense of both the potential and limitations of forensic medicine in the waning years of the nineteenth century. They understood that medical training and credentials gave them a distinct advantage over Siamese police and the officials of the Ministry of the Capital in ascertaining the cause of death in cases of unnatural death. They also understood the importance of properly documenting the procedures in order that their conclusions might serve as evidence in the foreign consular courts of the Siamese capital. But their tacit sense of the nature of forensic medicine at the turn of the twentieth century had to be communicated to officials in the Siamese government who had their own ideas and expectations. In that respect, translation was essential to the localization of medico-legal science in treaty port Bangkok. The following sections will discuss these practices of documentation and translation, which were so seminal to the rise of forensic medicine in late nineteenth century Bangkok.

### **Documenting Death**

From the earliest proposals to reform forensic investigation in Siam, the issue of documentation was crucial. Even Prince Naret, the Minister of the Capital, who did not initially grasp the

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demanded better oversight of the meat sold for consumption at city markets, but regulation was complicated by the fact that butchers—most of whom were foreign residents who enjoyed extraterritorial protection—enjoyed the right of refusal to pay taxes or submit to searches by Siamese authorities.

<sup>33</sup> *BT* 21 March 1896. Nightingale retained his appointment as medical attendant to the British Legation in spite of his position with the Siamese government (*BT* 6 December 1901).

necessity of hiring foreign physicians to conduct autopsies, came to understand the gravity of properly documenting postmortem examination procedures and their findings. Naret tried to implement a procedure whereby a foreign doctor, T. Heyward Hays, would be present at the autopsy and responsible for documenting the procedures and findings in cases where a foreign subject killed a Siamese subject.<sup>34</sup> Proper documentation was the only chance of obtaining a fair hearing for criminal allegations against a foreign resident in the consular courts of treaty port Bangkok. Thus, when police investigations into cases of unnatural death were finally routed through the morgue at the Police Hospital beginning in May 1896, documentation was a preeminent concern.

In order for the Siamese state to provide the kind of forensic evidence that would meet the standards of foreign consular courts in Bangkok they needed to hire foreign physicians to conduct postmortem examinations that would produce a definitive statement of the cause of death. The cause of death had to be articulated in the terminology of Western medical science—in the English language—in the form of a death certificate. Dr. Nightingale's presence in the morgue at the Police Hospital lent the requisite sense of expertise to the proceedings, and his signature on the death certificate authorized the findings as to the cause of death in a manner that conformed with the standards of the foreign legations and their consular courts.

While English language certificates of death matched the expectations of foreign consular courts however, the forensic medical investigations conducted by the Metropolitan Police had another crucial audience: Siamese officials. For this reason, when an autopsy was performed at the morgue of the Police Hospital the resulting death certificate had to be translated into the Thai language as well. In official documents, the term “death certificate”—rendered into Thai

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<sup>34</sup> Naret's early efforts to enlist Hays and institute these procedures were discussed in chapter five.

through a mixture of translation and transliteration as “*nangsue soe te fi ket*” (certificate letter)—quickly replaced the diverse and unwieldy terms that had previously been used to describe reports of postmortem examinations submitted by police, district officials, and witnesses. The very novelty of this new bureaucratic medium is revealed by the long-standing use of the transliterated term in official reports originating at the morgue of the police hospital.<sup>35</sup> The vernacular practice of the postmortem examination (*kan-chanasut phlik sop*) and its associated documentation, which was conducted by police, officials, and witnesses alike, was no longer adequate. Causes of death in cases of unnatural death had to be determined with a greater degree of certainty in the sequestered space of the morgue and under the auspices of medical expertise. The death certificate recorded the findings of the surgical autopsy (*kan-pha sop*) and was authored by a foreign physician.<sup>36</sup> It was an object imported from a different culture, a signifier in a different semantics of death. For these reasons, it required mediation and translation.

Each certificate of death was introduced by an autopsy report (*nangsue rai ngan*) in the Siamese language authored by Dr. Meng Yim. In addition to documenting the autopsy procedures themselves, Meng Yim’s reports served as a brief for the officials at the Ministry of the Capital who would review and file the documents. At the same time, the autopsy reports chronicle the chain of custody in the case, from the discovery of the body to its arrival at the morgue, through the autopsy procedure, and finally, the arrangements made for the disposal of the corpse. In this respect, Meng Yim’s reports also served to link the proceedings in the morgue

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<sup>35</sup> The novelty and foreign nature of the term is also evidenced by later documents that reflect muddled pronunciation and misspellings of the word, including references to a “*sio li ket*” [หนังสือชิวลิเกษ] a year after the introduction of autopsies and death certificates (NA R5 N 23/151, 3).

<sup>36</sup> In this transitional period, Meng Yim also referred to the forensic medical investigation into cases of unnatural death as “surgical investigation” (*kan-chanasut pha sop*), which combines the terms for the vernacular investigation conducted by police (*kan-chanasut*) with the surgical methods of postmortem examination (*kan-pha sop*); see NA R5 N 23/95, 7.

at the Police Hospital with the realm of legal medicine and the evidentiary standards in the foreign consular courts.

For the historian, Meng Yim's autopsy reports constitute important evidence for deconstructing the ethos of forensic medical investigation in late nineteenth century Bangkok. On the one hand, they are formulaic documents that record the actions taken by the attending physicians at the Police Hospital to investigate and document the cause of death. Their stock sequencing and phrasing suggest that Meng Yim and the officials at the Ministry of the Capital understood the importance of chronology in documenting forensic evidence. They also demonstrate the senior position of the foreign physician, Dr. Nightingale, both in the proceedings at the morgue and in the documentary record that officials hoped to compile for cases of unnatural death. Each report begins with the arrival of the corpse at the morgue, with Meng Yim recording the date and time as well as the names of the police officers who delivered the corpse. Next, the reports offer a brief account of the nature of the death in question and the circumstances that merited a postmortem examination as related to Meng Yim by the police. The reports then stress that Meng Yim "right away" (*than dai*) summoned Dr. P. A. Nightingale to conduct the autopsy. In some cases, Dr. Nightingale was able to attend to the autopsy promptly, but in other cases he wrote back to Meng Yim appointing a later time for the procedure to take place. In every case, Meng Yim is careful to report that the two physicians arrived "simultaneously" (*phrom duai*) at the morgue in order to conduct the autopsy.<sup>37</sup> This aspect of the autopsy reports suggests that Meng Yim had some awareness of the importance of custody and chains of evidence in conducting forensic investigations. Officials in the Ministry of the Capital likewise must have understood that consular courts would throw out forensic

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<sup>37</sup> This is true even in cases where the autopsy was postponed to a later date or time; see, for example, NA R5 N 23/106.

medical evidence if it were revealed that Nightingale was not present at the time of the autopsy. Such strict adherence to the principle of the chain of custody of evidence is in stark contrast to the case of *Amdeang Si*, and the forensic analysis of her stomach (discussed above). These procedural developments might therefore be taken as evidence of the performative nature of forensic medicine in this period, as the Siamese state and its agents aspired to meet the standards set by the foreign consular courts.

After the autopsy procedure was complete (the reports do not describe the surgical aspects of the examinations in great detail), Meng Yim records that he requested a death certificate (*nangsue soe te fi ket*) from Nightingale, which would be “preserved as evidence” (*wai pen lak than*). Although Meng Yim refers to himself as the “head physician [of the Police Hospital]” (*phaet thi nung*), this portion of his autopsy reports shows his deference to Dr. Nightingale, who is clearly in charge of the proceedings in the morgue. Next, the autopsy reports note that Meng Yim translated the original English language death certificate and submitted the original and his translation along with his autopsy report.<sup>38</sup> Meng Yim’s reports inevitably end with a preemptive apology for any inaccuracies in his translation. He seems keenly aware of the possibility of error—not at the level of parole, but rather in terms of semantic elements (*nua khwam*) that might have been lost in translation (*ja khlat khluen prakan dai*). Finally, Meng Yim documents what became of the corpse after the autopsy.<sup>39</sup>

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<sup>38</sup> In most cases, Meng Yim’s autopsy reports were addressed to *Phra Anannoparak*, an administrative official with the police (*jao krom kong trawaen fai kong raksa*) in the Ministry of the Capital.

<sup>39</sup> The financial burden of disposing of the corpse most often fell to Dr. Meng Yim (who was presumably reimbursed by the Siamese government). This includes both cases of unidentified corpses and cases in which family members came to the morgue to plead poverty and ask for his help in paying for funerary costs. Standard burial costs amounted to four *Baht*, which included hiring the undertaker of a local temple (usually *wat phlap phla chai*) to cart the body away and

Meng Yim's autopsy reports were an important part of the process of documenting cases of unnatural death in late nineteenth century Bangkok. They provided context for the Siamese officials in the Ministry of the Capital, including Prince Naret and his subordinates, who would review the files and preserve them as evidence. The reports also helped to couple the forensic medical practices of the Siamese metropolitan police with the requirements of legal medicine as practiced in the consular courts. They established the chronology and chain of custody for the corpse, the focus of the forensic medical investigation, as well as the chain of command in the conduct of the forensic medical investigation. But for all the insight that these documents provide to the institutional practice of forensic medicine, they are clearly secondary to the English language death certificate, the authoritative statement of medical science in cases of unnatural death.

### **Translating Authority**

When Siamese officials first awakened to the problem of different standards of evidence between Siamese and foreign consular courts in Bangkok in the final decade of the nineteenth century, they saw forensic medicine as one potential solution. Once the morgue at the Police Hospital opened, however, the Siamese elite may have been disappointed to learn that the supposed authority of forensic medicine was not as advertised. Early cases reveal evidence of indeterminacy and ambiguity in the original English language death certificates composed by Dr. Nightingale. Instead of a straightforward record of the surgical procedure and a definitive statement of the medical examiner's findings about the cause of death, many of the certificates hedged. In other cases, Nightingale's certificates included extraneous observations that had no

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bury it at the temple cemetery, where the bones would be disinterred and cremated en mass at a later date.

clear basis in forensic pathology. Translation played a crucial role in mediating between the expectations of the Siamese elite and the realities of a forensic medicine that was still in its infancy. It also functioned as mediator between western and Siamese medical systems, as Dr. Meng Yim worked to render Nightingale's death certificates in an idiom that would be intelligible to their superiors in the Ministry of the Capital.

Documents concerning the death of a prostitute named *Amdeang Wan* (also referred to as "Ing" by Nightingale) from a suspected drug overdose in January 1897 merit close consideration for what they reveal about the cross-cultural translation of medical authority.<sup>40</sup> After conducting an autopsy in order to determine the cause of death in the case, Dr. Nightingale acknowledged the ambivalence of his findings in the death certificate. The original English language death certificate summarizes the physical condition of the deceased based on the state of her internal organs, noting "both lungs were slightly diseased and the heart was fatty, while the various abdominal organs were much congested and irritated."<sup>41</sup> Nightingale cites these general physical symptoms of pathology in the clinical language of western anatomy, but he plainly acknowledges his inability to determine the exact cause of death. Dismissing witness accounts that suggested an opium overdose, Nightingale revealed that, "The contents of the stomach were examined, but no trace of opium could be found. I am of opinion that death was due to some irritant poison, though I could not determine its exact nature."<sup>42</sup> Nightingale's death certificate contested the findings of the original police investigation, but it failed to offer a definitive conclusion based on medical science. For the officials of the Ministry of the Capital, the death

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<sup>40</sup> NA R5 N 23/135.

<sup>41</sup> NA R5 N 23/135, 10.

<sup>42</sup> NA R5 N 23/135, 10.

certificate would clearly have failed to instill confidence in the methods employed by the medical examiner.

Dr. Meng Yim, in his role as translator, had to work to conceal the authoritative breaches in the original English versions of some death certificates while rendering the findings of the autopsy into a medical cosmology more familiar to his superiors. Where Nightingale unapologetically announced his lack of conviction regarding the outcome of an autopsy, Meng Yim intervened in translation to reassure the Siamese authorities of the certitude of forensic medicine. In the case of *Amdaeng Wan*, Meng Yim editorializes in his translation, making Nightingale's uncertainty sound like an aberration. In his Thai translation of the death certificate, Meng Yim also admits the absence of evidence of opium use, but he is not so cavalier in admitting the failings of the medical investigation. Meng Yim interpolates, "I [Nightingale] am of the opinion that the symptoms causing death were related to a disorder of the fire element, which was poisoned by some substance. Unfortunately, as of yet, I am unable to state [the cause of death] with absolute certainty in the usual manner."<sup>43</sup> The reference to the "fire element" is a clear deviation from the western medical terminology that characterizes the original document. It refers to Siamese traditional medicine, which identified four elements that make up the human constitution, illness being a result of imbalance of these elements.<sup>44</sup> Meng Yim's translation departs from the strictly physiological basis of Nightingale's forensic examination, and reverts to what was perhaps a more colloquial manner of conveying the cause of death. But beyond rendering Nightingale's findings in the terms of traditional Siamese medical cosmology, Meng

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<sup>43</sup> "*Khap pha jao mi khwam hen wa akan sueng dai tai nan tai duai fai that phikan pen phit duai bang sing thueng kranan ko di khap pha jao ja wa yang yuen hai pen nae thi dieo tam thamada yang mai dai*" NA R5 N 23/135, 11.

<sup>44</sup> Jean Mulholland, "Thai Traditional Medicine: Ancient Thought and Practice in a Thai Context," *Journal of the Siam Society* 67, no. 2 (1979): 80-115.

Yim's translation also claims exceptionality for this particular case, as a deviation from the "usual manner" in which forensic inquiry is able to render an exact cause of death. It is also possible that evoking the elemental theory of health was likewise a strategy for Meng Yim to avoid the admission of inconclusive physiological evidence from a western medical perspective.

In addition to such authoritative breaches, Nightingale's English language death certificates challenged the skill of his translator in other ways. Some documents, for example, contain elaborate grammatical constructions that would have required a high degree of fluency to translate. In the case of a young Chinese beggar who dropped dead outside of a Chinese theatre, for example, Dr. Nightingale's death certificate records plainly that "I made a postmortem examination on the body of a Chinaman at the Police Mortuary, and found that death was due to disease of the lungs and liver."<sup>45</sup> Nightingale ventures beyond the confines of the morgue and the empirical findings of the postmortem examination, however, adding that "the man had probably been a confirmed [sic] opium smoker."<sup>46</sup> Dr. Meng Yim skillfully translates the supposition in his Thai language version of the death certificate: "The individual shows symptoms suggesting that it is possible that [...] he was an opium smoker."<sup>47</sup> Meng Yim's fluency is beyond doubt, and yet he inevitably included the preemptive apology in his autopsy reports for any potential deficiencies in his translations—perhaps suggesting to his superiors the opaqueness of the English language death certificate, the crucial medium of forensic medicine. Whatever Meng Yim's medical credentials, perhaps his most crucial role was as a mediator helping to present an image of forensic medicine to his superiors as accessible and authoritative at a time when it was anything but.

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<sup>45</sup> NA R5 N 23/150, 5.

<sup>46</sup> Ibid.

<sup>47</sup> "*Khon phu ni hen akan pen jing dai wa* [illegible] *pen khon sup ya fin*" (NA R5 N 23/150, 6).

The translations produced in the morgue reveal that the death certificate could at times function as a “boundary object,” allowing those who inhabited different sociocultural worlds to engage differentially with the knowledge created by a single form of scientific practice.<sup>48</sup> Foreign physicians in the employ of the Siamese state inhabited the world of forensic science comfortably; they understood the expectations of foreign consular courts, and yet were aware of and seemingly untroubled by the limitations of forensic medicine in practice. Agents of the Siamese state, on the other hand, experienced the individual failings of forensic medical expertise as a threat to the authority of medico-legal science and certainty. They therefore worked to conceal authoritative breaches in the knowledge produced in the morgue.

The English language death certificate—along with its Thai translation—did not replace the colloquial witness accounts and the reports of the vernacular police investigations into cases of unnatural death. All three types of documents continue to appear in the “Death by various causes” files of the Ministry of the Capital after the introduction of forensic medicine in May 1896. Nor did autopsies replace police work at the scene of death. In fact, autopsies were conducted in a relatively small number of reported cases of unnatural death.<sup>49</sup> Death certificates did, however, bring a new kind of closure to the investigations. They constituted an authoritative conclusion that was often lacking in cases documented in the early years of Siamese police inquests as documented in the “Death by various causes” files. Moreover, there can be no doubt

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<sup>48</sup> On the idea of boundary objects in science studies, see Susan Leigh Star & James R. Griesemer, “Institutional Ecology, ‘Translation,’ and Boundary Objects: Amateurs and Professionals in Berkeley’s Museum of Vertebrate Zoology, 1907-39,” *Social Studies of Science* 19, no. 3 (1989): 387-420.

<sup>49</sup> In the period between May 1896 and September 1898, forensic medical examinations were performed in seventeen cases out of a total of 144 inquests included in the “Death by Various Causes” files; see NA R5 N 23/64 (and 67, which contains documents pertaining to the same case); 95; 106; 121; 124; 125; 135; 150; 151; 153 (missing autopsy report); 157 (medical examination, but no autopsy); 164 (missing autopsy report); 171; 178; 183 (missing autopsy report); 193 (missing autopsy report); 198.

that the finality of the death certificate served to displace other voices within the case files. Witnesses with their peculiar concerns for the locality of the death, police fixated on external signs of violence, and district officials made aware of the limitations of their own knowledge, would all be muted by the authoritative findings recorded by the hand of a foreign physician in the morgue of the Police Hospital.

Marginalia in the “Death by various causes” files are suggestive of this process whereby Siamese officials came to accept the authority of forensic medical findings in cases of unnatural death. The case of *Amdaeng* Wan (discussed above) is again instructive in this context. When the documents concerning the death of *Amdeang* Wan reached the authorities in the Ministry of the Capital, it entered the “Death by various causes” files as something of an enigma. Prince Naret reviewed the documents, but there was no definitive cause of death to be found in either the witness statements gathered by police or the death certificates produced by Drs. Nightingale and Meng Yim. Both the colloquial investigative techniques of the police and the scientific tactics of the physicians had failed to identify the cause of death. Faced with conflicting evidence, Naret sided with the findings of the forensic medical investigation over those of police and witnesses. He dismissed the consensus opinion of numerous witness accounts that *Amdaeng* Wan had taken opium on the grounds that the medical investigation yielded no evidence of opium in her stomach. Naret reasoned that if she had died as a result of ingesting drugs, “then whatever she had consumed would either appear in the contents of her stomach or [would appear] in the harmful effects that it had wrought on her stomach and intestines,” and there was no such evidence in Dr. Nightingale’s investigation.<sup>50</sup> “Deaths that occur under suspicious circumstances such as this,” Prince Naret’s marginal note continues, “require that we investigate

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<sup>50</sup> “*Sing an sueng boriphok ko ja mi prakot yu nai krapho ahan ru kratham hai krapho ahan lae lam sai pen antarai*” (NA R5 N 23/135, 12).

the facts thoroughly, because death [sic: murder?] is a capital offense.”<sup>51</sup> Prince Naret then ordered *Phraya Intharathibodi* and the police to investigate the matter further and to obtain more detailed testimony from the witnesses involved, including *Amdaeng Wan*’s lover and the wife of her lover.

Although the forensic medical investigation into the death of *Amdaeng Wan* had not produced any definitive conclusions and there was no latitude for furthering that investigation after the disposal of the corpse, Prince Naret nevertheless sided with the authority of modern medicine in the case. His verdict in the matter reflects an implicit trust in the ability of forensic medicine to root out the cause of death, in spite of the fact that the findings of physicians in the morgue of the police hospital had been anything but definitive to date. Naret’s verdict further corroborates the shift whereby Siamese officials abdicated the privilege of executive authority in favor of the expertise of medico-legal science, effectively ushering in a new regime of authoritative knowledge in cases of unnatural death.

### **‘Table for Two’: The Social Nature of Forensic Medicine**

During the two years that Drs. Nightingale and Meng Yim worked together conducting autopsies in the morgue at the Police Hospital they helped to establish forensic medicine as a central part of the investigation and documentation of cases of unnatural death in the Siamese capital. Through a confluence of credentials, expertise, and skillful translations, they displaced forensic investigations from the public arena of the temple cemetery and the jurisdiction of executive authority into the sequestered space of the morgue under the auspices of professional Western medicine. It was no longer necessary—or viable—for Siamese authorities to collate and edit

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<sup>51</sup> “*Het tai thi pen kho songsai yang ni khuan tong tai suan kho khwam doi la iad phro khwam tai pen khadi mi thot luang yu* (NA R5 N 23/135, 12).

colloquial witness testimony and vernacular police investigations into a coherent narrative of death. Henceforth, the practitioners of medical science would provide their own definitive narrative as cases of unnatural death entered a new era of medico-legal jurisdiction. But the era would prove to be short-lived, and the progress made in medico-legal science was revealed to be dependent on the fragile working relationship of Drs. Nightingale and Meng Yim over the autopsy table. When their partnership ended, the new habits of investigation and documentation of cases of unnatural death quickly unwound.

After two years of working with Meng Yim in the morgue at the Police Hospital, Dr. Nightingale took an extended leave of absence from his office and returned to England. He left Bangkok on 25 April 1898, four months after having lost a libel case that he had brought against the proprietor of the *Bangkok Times*.<sup>52</sup> After losing the highly public case, Nightingale apparently decided to spend some time away from Bangkok, and he booked his passage home. With Nightingale gone, another British physician, Dr. H. Campbell Highet, took over the duties of Medical Officer of Health for the Siamese government. Highet also filled in for Nightingale alongside of Dr. Meng Yim as medical examiner in the morgue of the Police Hospital, but it was not to be a lasting partnership.

According to Meng Yim's account, when Highet first arrived at the Police Hospital (likely in late April or May 1898), the two physicians worked together in the same manner as

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<sup>52</sup> The libel case hinged on Nightingale's competence to act as a cattle inspector and veterinary surgeon for the Siamese government. Charles Thorne, the editor of the *Bangkok Times*, had questioned Nightingale's credentials in print—pointing out that he was not, in fact, a veterinarian—and Nightingale had filed suit in the British consular court (*BT* 31 January 1898). Thorne won the suit, but he would later apologize (in print) to Nightingale for his comments (*BT* 3 October 1899). See also Nightingale's account of the dispute in his report on the work of the Local Sanitary Department for the year 1897 (report is dated 21 January 1898; NA R5 N 5.6/2, 2-13).

Meng Yim and Nightingale had before.<sup>53</sup> But then, some time in early September 1898, in the presence of the Inspector General of Police (A. J. A. Jardine), Dr. Highet introduced administrative changes at the Police Hospital and informed Meng Yim that he would be transferred to a new branch. Just a few months after Nightingale's departure, on 9 September, a new Police Hospital had opened at *Sala Daeng* (at the eastern end of Windmill Road [*Thanon silom*]), several kilometers away from the first location at *Saam Yaek* on the New Road.<sup>54</sup> Meng Yim, who had been working as the head physician at the original location for six years, was not happy with the transfer order.<sup>55</sup> He informed Highet that it would be a hardship for him to move his family to the *Sala Daeng* Police Hospital, and that he could see no benefit from the move, so he refused his transfer. It is not clear whether Highet proposed the transfer as a result of friction between himself and Meng Yim (to which the latter was apparently blind), but from that moment on their working relationship quickly deteriorated.

In a letter of complaint addressed to Prince Naret, (head of the Ministry of the Capital), Meng Yim claimed that from that day forward, Highet constantly accused him of insubordinate behavior.<sup>56</sup> For his part, Meng Yim maintained that he continued to perform his duties at the Police Hospital as before. Faced with Meng Yim's refusal to accept his new post, Highet told him that he would speak with Jardine, the Inspector General of Police, to see if they could allocate money to cover the cost of Meng Yim's commuting expenses (so that he would not have to move his family). Placated by the gesture and the promised commuting allowance, Meng Yim accepted the transfer and began reporting to work at the new police hospital at *Sala Daeng*. He

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<sup>53</sup> NA R5 N 5.6/4, letter dated 18 December 117 (1898).

<sup>54</sup> *BT* 9 September 1898.

<sup>55</sup> NA R5 N 5.6/4, letter dated 18 December 117 (1898). In the days (long) before the Skytrain and the elevated expressway, this would have been a formidable commute, and it would have made Meng Yim's habit of lunching at home impossible.

<sup>56</sup> "*Khat khong mai yu nai amnat*" (ibid.).

worked mornings at the Police Hospital, and afternoons at the office of the Department of Local Sanitation (*krom sukhaphiban*). Meng Yim claimed that although he never disobeyed Highet's orders, Highet remained dissatisfied with him and continually threatened to fire him and find a replacement.<sup>57</sup> At his wit's end, and with no other recourse, Meng Yim wrote to Prince Naret to request a transfer within the Department of Local Sanitation and outside the authority of Dr. Highet.<sup>58</sup>

Nothing seems to have come of the tussle during Dr. Nightingale's absence, but he returned the following year to find a letter from Meng Yim outlining his troubles with Highet. Meng Yim's entreaty, dated July 27, 1899, recounts the entire episode that had played out in Nightingale's absence, and is worth quoting at length. He writes, with perhaps undue humility,<sup>59</sup>

Sir, As Dr. Highet expressed himself this morning of being very sick of me, and used very indecent language such as the word damn was given to me many times, Such [sic] word I should think with my little education, is fit to be used only with coolies, and not expressed by a Dr. [sic] who holds a position such as Dr. Highet. Previous to your return from Europe he has many times befraned [sic: defamed?] to me in the same manner, and expressed himself so far as to get a new man for my place. May I now be allowed to approached [sic] you with a request for your Kind [sic] permission to allow me not to attend the Police Hospital [at *Sala Daeng*] any further for which service I do not feel inclined to spend any more money [for commuting costs] out of my own pocket for which I receive no returns [sic: added compensation?] and for which I am not paid [reimbursed] for, and in return of which I receive nothing was [sic: but] damn. Hoping you will not refuse to favor me with the requested permission otherwise I will be obliged to apply to the higher authority.

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<sup>57</sup> During this time, in cases where Highet was called away on other duties, Meng Yim assisted other Western physicians in conducting autopsies at the Police Hospital, including a Dr. J. Fuguson Lis (NA R5 N 23/178); he also appears to have conducted autopsies by himself in other cases (NA R5 N 23/193).

<sup>58</sup> NA R5 N 5.6/4, letter dated 27 July 118 (1899). The event precipitating this new request seems to have been the autopsy of a thirty-one year old Chinese woman who died of an apparent opium overdose on 22 July 1899; see NA R5 N 23/198.

<sup>59</sup> Ibid.

Meng Yim signs his letter, “Yours most obediently, Chin [*Jin*] Meng Yim,” using the ethnic marker for a Chinese man rather than referring to his credentials as a physician or his rank as head physician of the Police Hospital.

A week later, on 3 August 1899, Nightingale wrote directly to Prince Naret, dismissing Meng Yim’s allegations and presumably denying his request for a transfer.<sup>60</sup> Meng Yim had apparently stopped going to work at the Police Hospital after submitting his most recent transfer request to Nightingale. Nightingale informed Prince Naret of Meng Yim’s absence for the past week and repudiated his allegations against Highet, calling them “a piece of impertinence.”<sup>61</sup> Moreover, Nightingale seems to have accepted Highet’s evaluation of Meng Yim’s work, adding “Dr. Highet has reported to me that [Meng] Yim is quite useless to him, as he not only constantly neglects his duties, but on more than one occasion has come in a state quite unfit to even try and perform them.”<sup>62</sup> Although Meng Yim staunchly defended his professionalism in the face of Highet’s complaints, there is evidence to suggest that he had perhaps lost interest in his work in the morgue at the Police Hospital.

One day in early September 1898, several months after Nightingale had left Bangkok, the metropolitan police found the body of a Chinese beggar lying dead on the side of the road.<sup>63</sup> The police examined the physical condition of the corpse and upon finding it emaciated in the manner of opium addicts (*rang kai phom haeng*), they surmised that he had likely died of opium withdrawal (*pen rok long daeng tai*).<sup>64</sup> Unable to locate any relatives—who would presumably take custody of the body and make burial arrangements—the senior police official, *Luang*

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<sup>60</sup> NA R5 N 5.6/4, letter dated 3 August 1899.

<sup>61</sup> Ibid. It should be noted, however, that this would not be the only instance of friction between Dr. Highet and his direct reports. See NA R5 N 5.3/11, regarding an incident from April 1905.

<sup>62</sup> NA R5 N 5.6/4, letter dated 3 August 1899.

<sup>63</sup> NA R5 N 23/210.

<sup>64</sup> NA R5 N 23/210, 2.

Wisutborihan, ordered police officers to take the body to the Police Hospital so that Dr. Meng Yim could perform an autopsy.<sup>65</sup> When the body arrived at the morgue, however, Meng Yim refused delivery, and gave the police officers a letter to bring back to their superiors explaining his refusal.

Meng Yim's letter (dated 7 September 1898) is a marvel of bureaucratic obstruction and a testament to the Kafkaesque muddle into which forensic medicine had stumbled during Nightingale's absence.<sup>66</sup> It was likely written in the days following Highet's announcement that Meng Yim would be transferred to the new branch of the Police Hospital at *Sala Daeng*, and it clearly suggests Meng Yim's state of mind. He begins by explaining, "At this time, I have yet to receive word of any sort of formal authorization respecting the inspection of corpses or the conduct of autopsies."<sup>67</sup> "If, therefore," the note continues, "events [cases of unnatural death] should happen to occur in your district, *Luang* [Wisutborihan], I would advise you to make your own arrangements according to government protocol."<sup>68</sup> Meng Yim signs the note, and then adds a postscript: "Moreover, the autopsy table and the instruments used for conducting autopsies and various other items have all been sent together to the [newly built] *Sala Daeng* Hospital."<sup>69</sup> The body of the Chinese beggar had arrived in the midst of the opening of the new branch of the Police Hospital and it gave Meng Yim an opportunity to voice his displeasure over

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<sup>65</sup> In cases such as this, where police had good reason to suspect drug use as the cause of death—and in the absence of clear evidence of violence—it is possible that the police looked to the Police Hospital as an expedient means of disposing of the body. Chapter five described police reluctance to deal with dead bodies and disputes over jurisdiction in such cases.

<sup>66</sup> NA R5 N 23/210, 6 (letter dated 7 September 117 [1898]).

<sup>67</sup> "*Kan-thi ja pha sop nan lae truat sop nan ko yang mai dai rap kham sang amuyat prakan dai nai pen kan-nae non nai rawang wela ni*" (ibid.).

<sup>68</sup> "*Tae wa tha khun luang mi het koet khun nai thong thi khong khun luang leao rap than hai khun luang jat kan tam thang ratchakan khong khun luang thoen*" (ibid.).

<sup>69</sup> "*Anueng to samrap wang sop lae kan-thi ja chai samrap nai kan-pha sop rue sing khong tang tang nan ko phrom yu thi rong phayaban sala daeng nan laeo*" (ibid.).

the newly proposed changes through bureaucratic civil disobedience. Without calling attention to his own plight, Meng Yim focused on issues of protocol and the tools of the trade, specifically the autopsy table.

When word of the incident reached the higher offices of the Ministry of the Capital, the officials in charge were perplexed. *Phraya* Thoraninarubet, (a senior police official who oversaw inquests for a time instead of Prince Naret), wrote to both *Luang* Wisutborihan and Inspector General of Police Jardine and asked what had become of the standing order to deliver corpses to the morgue for an autopsy in cases of unnatural death.<sup>70</sup> Thoraninarubet suspected that the problem was simply a matter of outdated protocol: “the autopsy table (*to samrap pha sop*) had already been taken to [the] *Sala Daeng* [branch of the Police Hospital], but the old standing order [to deliver corpses to the main branch at *Sam Yaek*] had not yet been rescinded.”<sup>71</sup> Reinstating forensic medical practice in the Bangkok metropolitan police, however, would not be as simple as rerouting bodies to the new morgue. In the following discussion, I consider the autopsy table as a crucial node in the sociotechnical network of forensic medical expertise in late nineteenth century Bangkok.<sup>72</sup>

Bruno Latour has focused on the tendency of sociologists to “invoke the power of social explanations” without acknowledging the inherently fragile and transitory nature of social relations.<sup>73</sup> He argues that theories of social power are always already predicated on a broader definition of the social, which includes the material (non-human) elements that allow congeries

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<sup>70</sup> NA R5 N 23/210, 4-5, (see note appended to *Luang* Wisutborihan’s report).

<sup>71</sup> “*To samrap pha sop nan dai nam pai wai thi sala daeng laeo tae kham sang doem yang mai dai thon*” NA R5 N 23/210, 5.

<sup>72</sup> The following discussion relies on the insights of science studies scholars into the constitution of networks of social power; see Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2007), 63-86.

<sup>73</sup> See Latour, “Third Source of Uncertainty: Objects too have Agency” in *Reassembling the Social*, 63-86, quotation on 68.

of social relations to endure and project power. Latour's response is Actor-Network Theory (ANT), which insistently asks "Since every sociologist loads things into social ties to give them enough weight to account for their durability and extension, why not do this explicitly instead of doing it on the sly?"<sup>74</sup> From the perspective of ANT, the autopsy table-in-transit provides a further opportunity to reflect on the delicate nature of scientific expertise. Forensic medical expertise in late nineteenth century Bangkok was contingent on the (already quite fragile) working relationship of Drs. Nightingale and Meng Yim and their documentary habits, which allowed them to project the authority of postmortem examinations outside of the morgue to the foreign consular courts but also up the chain of command within the Siamese Ministry of the Capital. But in addition to these conditions of possibility, the project of constructing and projecting forensic medical expertise was likewise made possible by the autopsy table and associated instruments with which incisions were made, organs inspected, and medico-legal evidence created. All of these must be regarded as essential nodes in the new semantics of death that emerged from the morgue of the Police Hospital.<sup>75</sup>

Although the autopsy table and equipment would eventually arrive, and a morgue was established at the new branch of the Police Hospital at Sala Daeng, the procedures and documentation habits previously practiced by Drs. Nightingale and Meng Yim did not. After the transfer to the new hospital, autopsy reports and death certificates no longer appear in the "Death by various causes" files of the Ministry of the Capital. Forensic investigation into cases of

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<sup>74</sup> Ibid., 68.

<sup>75</sup> Jonathan Saha's work on the role of subordinates in colonial medicine in Burma provides an alternative way of accounting for social friction in the practice of forensic medicine in Siam. According to Saha, "corruption and misconduct should not be understood as epiphenomenal to the imposition of Western medicine by the colonial state: instead they were an intrinsic part of its making"; see his "'Uncivilized Practitioners': Medical Subordinates, Medico-legal Evidence and Misconduct in Colonial Burma, 1875–1907," *South East Asia Research* 20, no. 3 (2012): 423–443, quotation on 426.

unnatural death once again became the domain of untrained police officers—sometimes aided by the undertaker of the local temple<sup>76</sup>—performing vernacular forms of investigation at the scene. Some of the files contain references to autopsies being performed, but there is no documentation of the procedures—whether in Thai or English. Absent too are the death certificates that had become the authoritative document in the inquest files, linking Siamese police investigations to the standards of legal medicine practiced in the foreign consular courts.<sup>77</sup> In their place, the executive authority of the Siamese officials over cases of unnatural death seems to reassert itself, along with the ad hoc practices of making meaning out of the scant evidence assembled by Siamese police in their investigations. The tentative inroads made by modern forensic medicine into the realm of unnatural death in the Siamese capital had given way once more to the authority of elite officials. And this reversal in the fortunes of medico-legal expertise was, perhaps, not coincidental. The concern for justice in the plural legal environment created by extraterritorial law had driven the forensic investigation of cases of unnatural death, but a new form of concern was in ascendance, and it would provoke a new regime of state interest in the dead.

### **Conclusion: A New Paradigm of Concern**

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<sup>76</sup> See, for example, NA R5 N 23/253 and NA R5 N 23/261.

<sup>77</sup> In other cases, where physicians did become involved in the investigation, there is evidence that they were all too willing to bypass the morgue and the surgical procedures required by an autopsy. In one case involving the death of a vagrant in October 1898, for example, a physician named Dr. Li was consulted by police and he was content to accept the word of the temple undertaker that the deceased had “suffered from the disease of good living” (*jep doi rok sujarit*, this seems to be a euphemism, since *sujarit* implies morally good conduct) and that “a postmortem examination was unnecessary” (*mai tong pai truat dok*; NA R5 N 23/219, 3).

Authoritative forms of knowledge such as forensic medicine inhabit peculiar institutional ecologies and are inherently rooted in the collaborative work of social actors.<sup>78</sup> On account of the hegemonic nature of standards of evidence in the foreign consular courts (as outlined in chapter five), the Siamese state had to employ a foreign physician whose reading of a corpse would be sufficiently authoritative as to meet the standards of evidence in foreign consular courts. In practice, this meant that forensic medicine inhabited a fragile social context, dependent on the working relationship of a foreign physician and a translator who was capable of both participating in the production of forensic knowledge and rendering it legible to the Siamese officials who oversaw affairs in the capital. The documentary existence of forensic knowledge in Siam, particularly in the legible form of the death certificate, helped to mediate between its various social and institutional lives. In the end though, this new authoritative mode of knowing death proved fragile, dependent not only on the collaborative work of social actors and their documentary habits, but also on the material tools that made their science possible. For a time, forensic medicine successfully “embrace[d] a wide variety of incompatible components,” and constituted an epistemic field that was capable of being mobilized in support of divergent social and political interests.<sup>79</sup> But undermined by the inherently fragility of social relations and the shifting sands of political concern, it would not prove to be a durable assemblage.

Whatever the cause of Meng Yim’s falling out with Dr. Highet and his superiors within the Ministry of the Capital, his fall from grace marked the end of an era—albeit a brief one—in forensic medicine in Bangkok. It is not clear what became of Meng Yim in the aftermath, but it

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<sup>78</sup> See, for example, the essays collected in Steven Shapin, *Never Pure: Historical Studies of Science as if it was Produced by People with Bodies, Situated in Time, Space, Culture, and Society, and Struggling for Credibility and Authority* (Baltimore, MD: Johns Hopkins University Press, 2010).

<sup>79</sup> David Turnbull, *Masons, Tricksters, and Cartographers: Comparative Studies in the Sociology of Scientific and Indigenous Knowledge* (Amsterdam: Harwood, 2000), 44.

seems likely that his tenure in the Hospital Department ended soon after. Nightingale resigned from his positions at the British Legation and as Medical Officer of Health to the Ministry of the Capital in December 1901.<sup>80</sup> Dr. Highet replaced him as the Chief Medical Officer of Health—as well as the chief medical attendant to the British Legation.<sup>81</sup> Highet, however, was a new brand of physician, whose training and interests lay more in public health and the British field of “medical policing” than medical jurisprudence.<sup>82</sup> Under his tenure, the Ministry of the Capital would adopt a more interventionist agenda. The brief rise and fall of forensic medical authority in Siam corresponded with the arrival of a new paradigm of state concern for the dead.<sup>83</sup> In the ensuing years, concerns over obtaining justice for Siamese subjects in the plural legal arena created by extraterritorial law gave way dramatically to a new fixation on the threat of contagious disease.<sup>84</sup>

Reported outbreaks of Bubonic Plague in India and in the ports of Hong Kong and Canton in southern China had alarmed Siamese officials and Bangkok residents since at least

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<sup>80</sup> *BT* 6 December 1901.

<sup>81</sup> “Appointments,” *The Lancet*, 28 June 1902, page 1867.

<sup>82</sup> When Highet requested a full-time appointment as the Medical Officer of Health in the Siamese Ministry of the Capital in June 1903, he highlighted this aspect of his credentials, noting “besides my usual Medical qualifications I hold the London Degree of Doctor of Public Health, a degree which entitles me to hold a similar position in any city in England” (NA R5 N 5.3/8).

<sup>83</sup> Davisakd Puaksom discusses this transition in terms of the “the birth of public sanitation,” which he dates to May 1897; see his “Of Germs, Public Hygiene and the Healthy Body: The Making of the Medicalizing State in Thailand,” *Journal of Asian Studies* 66 (2007): 311-44, 318-319. For a more detailed examination of this topic, see Monruethai Chaiwiset, “*Prawattisat sangkhom: suam lae khrueng sukkhaphan nai prathet thai (pho. so. 2440–2540)*” [Social History: Lavatories and Sanitary Ware in Thailand, 1897–1997], (Master’s thesis, Thammasat University, 2542 [1999]); or the published version, *Prawattisat sangkhom: wa duai suam lae khrueng sukkhaphan nai prathet thai* [Social History: Lavatories and Sanitary Ware in Thailand], (Bangkok: Matichon, 2545 [2002]).

<sup>84</sup> Nightingale would participate in this new mode of state medical concern in absentia; he served as the Siamese delegate to the International Medical Conference at Brussels in 1903, and was awarded “the Insignia of the Fourth Class of the Royal Siamese Order of the White Elephant” for this act of service to the Siamese state (“The Annus Medicus,” *The Lancet*, 26 December 1903, page 1823).

1894.<sup>85</sup> The Siamese state instituted quarantine procedures for arriving ships and built a hospital on an island (*Ko Phai*) in the Gulf of Thailand to handle suspected cases of plague on those vessels.<sup>86</sup> In May 1898, rumors circulated the city, eventually ending up in the press, that plague had arrived in Bangkok.<sup>87</sup> The case would eventually prove to be a false diagnosis, but the fear of an outbreak was very real, and it had profound effects on the nature of state medicine in Siam.<sup>88</sup> From that point forward, experience with contagious disease became one of the primary prerequisites for hiring new medical personnel.<sup>89</sup> In the end, it was not a concern for (in)justice that would prompt greater state oversight of death in the capital, but concern for the spread of disease.<sup>90</sup> Within two years, the Siamese state would adopt new procedures for recording the cause of death in all cases of death within the capital.<sup>91</sup> State concern for the dead had shifted

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<sup>85</sup> *BT* 23 May 1894.

<sup>86</sup> *BT* 9 June 1894.

<sup>87</sup> “The Alleged Case of Plague,” *BT* 11 May 1898.

<sup>88</sup> *BT* 16 May 1898. Plague finally arrived in Siam in 1904; see Davisakd, “Of Germs,” 324-328.

<sup>89</sup> In his “Eighth Annual Report of Medical Officer of Health for the Year 123 [1 April 1904 – 31 March 1905],” Hightet notes that a new medical officer had been hired, a Dr. Modern Carthew, noting that he “has seen a great deal of plague in India” (NA R5 N 5.5/14). Moreover, the new primacy of public health expertise is evidenced by the unsolicited applications from physicians seeking an appointment within the public health administration. See, for example, a letter from Richard Harding Brewridge, who touts “I can therefore claim both by experience and my qualifications to be very fully equipped to carry out all medical examinations both before and after death; also to discover the origin and cause of Epidemic disease” (NA R5 N 5.3/13, letter dated 11 February 1906).

<sup>90</sup> Plague was not the only scourge: Beri Beri (Thai: *rok nep cha* or *rok buam*), which at the time was mistakenly considered a contagious disease, was likewise a focus of public health officials (see Hightet, “Sixth Annual Report of the Medical Officer of Health... for the Year *ro. so.* 121 [1 April 1902 – 31 March 1903],” NA R5 N 5.5/11, 10-25). State officials were equally concerned with outbreaks of contagious disease among livestock too, including Rinderpest, Foot and Mouth, and what would become known as Anthrax (see NA R5 N 5.7, *passim*).

<sup>91</sup> The announcement in the *Bangkok Times* reads, “We heard that by direction of His Majesty instructions have been given to the police to report to Headquarters all deaths that occur within the districts of the different stations in Bangkok, with the cause of death in each case. This should be the beginning of a proper registration of death” (“Registration of Deaths,” *BT* 18 April 1900, 3).

from the necropolitics of forensic concern in a plural legal arena to the biopolitics of concern for health at the level of population.

CONCLUSION  
(DEAD) BODY POLITICS

This dissertation has made the case that injured and dead bodies were the constituents of a new iteration of the Siamese body politic—what might be called a dead body politic—that emerged in the final years of the nineteenth century. The peculiar sociohistorical conditions of semi-imperialism—particularly the differential nature of legal subjectivity under extraterritorial law—were the conditions that allowed Siamese officials to perceive some injured and dead bodies as bodies that mattered to the Siamese state. Siamese officials subsequently came to see civil law and forensic medicine as specialized forms of knowledge that would allow them to assert the rights of those bodies in the service of assertions of state sovereignty. Debates and contests over accidental death and injury and unnatural death as articulated through civil law and forensic medicine thus reveal the ways in which the bodies of subaltern Siamese subjects were crucial to ongoing forms of political contestation in the era of high imperialism.

In a global and comparative study of law in the colonial world, Lauren Benton has identified the prototypical path whereby “over the course of the long nineteenth century, formally plural legal orders were transformed into state-dominated legal orders.”<sup>1</sup> According to Benton, “this process involved everywhere an extended historical moment in which the question of the legal standing of the most marginal people in the colonial order became symbolically central to the development of legal culture and the broader realignment of the political order.”<sup>2</sup> In the Siamese historical case, the centrality of the subaltern was not a mere matter of

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<sup>1</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), 209.

<sup>2</sup> *Ibid.*

symbolism; the corpses of injured and dead Siamese subjects figured prominently in the “broader realignments” of the legal culture and political order in turn-of-the-twentieth-century Siam. These reconfigurations pertained to both the reassertion of Siamese sovereignty on the one hand, and a redefinition of the relations between state and subject on the other.

Efforts to assert Siamese sovereignty in the era of high imperialism can be traced back to a state of injury.<sup>3</sup> Building on Wendy Brown’s analysis of the ways in which disenfranchised groups appeal to injury in order to gain political leverage, Lydia H. Liu has argued that the state can likewise use the discourse of injury to its political advantage.<sup>4</sup> In *Siam Mapped*, Thongchai Winichakul demonstrated how the trauma of territorial loss in late-nineteenth-century Siam gave rise to powerful nationalist sentiments.<sup>5</sup> The analysis of civil law and forensic medicine presented in this study revealed how the loss of life and limb incurred by individual Siamese subjects became the grounds for novel projects intended to support Siamese sovereignty. Civil legal proceedings and forensic investigation were tools that allowed the Siamese state to recognize and respond to the disadvantaged status of its subjects with respect to foreign residents. These efforts to intervene in and bring order to the loss of life and limb became new pathways of unmediated relation between the state and its subjects. Through civil law and inquests, the Siamese state brought new forms of expertise to bear on the bodies of its subjects. Early efforts by the Siamese state to construct a civil legal regime and medico-legal institutions that would protect the rights of individual subjects were therefore predicated on claims to injury

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<sup>3</sup> See Lydia H. Liu’s discussion of how “the discourse of injury, which has figured so importantly in Western liberal and legal theories of the past few centuries... helped to shape modern theories of subjectivity as we know them today” in her “Injury: Incriminating Words and Imperial Power” in *Words in Motion: Toward a Global Lexicon*, Carol Gluck and Anna Lowenhaupt Tsing, eds., (Durham, NC: Duke University Press, 2009), 198-218, 200-1.

<sup>4</sup> *Ibid.*, 213-4.

<sup>5</sup> Thongchai Winichakul, *Siam Mapped: History of the Geo-body of a Nation* (Honolulu: University of Hawai’i Press, 1994), chapter eight, “Geo-Body and History.”

in the context of constrained sovereignty. And these peculiar conditions helped to forge a novel form of political subjectivity, one that effectively subordinated the rights and interests of injured and dead bodies to the political agendas of the Siamese royal elite. Whether understood as an “amalgam” of traditional subjectivity and modern citizenship<sup>6</sup> or a “third zone” between subjectivity and objecthood,<sup>7</sup> this new political reality was born out of a practical engagement with the conditions of restricted sovereignty in the era of high imperialism, and must be considered part of the genealogy of modern Thai political life.

On the surface then, a paradox seems to haunt the early history of civil law and forensic medicine in Siam. On the one hand, these new forms of concern for injured and dead bodies brought subaltern subjects to the attention of the state, and seemed to open up the possibility of more direct forms of state-subject relations through institutions meant to protect the rights and interests of individual subjects. In reality, however, at the very moment when these injured and dead bodies came to the attention of state officials as constituents of the new Siamese dead body politic they were simultaneously—and doubly—rendered mute by both the forms of expertise that spoke for them and the kinds of interests that were asserted on their behalf. This is the crux of my analysis of dead body politics in turn-of-the-twentieth-century Bangkok: under conditions of constrained sovereignty the assemblages constructed around dead and injured bodies became an expedient means for expressing elite social and political interests. Novel forms of expertise, including civil law and forensic medicine, allowed royal officials to view the dead and dismembered bodies of Siamese subjects as a new field of contestation in ongoing struggles with the imperial powers. This pragmatic wedding of expertise and elite interests, which came together organically in the form of assemblages surrounding the injured or dead Siamese body,

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<sup>6</sup> David K. Wyatt, *Thailand: A Short History* (New Haven: Yale University Press, 1982), 217.

<sup>7</sup> J. A. Mbembe, “Necropolitics,” *Public Culture* 15, no. 1 (2003): 11-40, 25-6.

thus proved itself to be amenable to the traditional and hierarchical patterns of Siamese political culture. In this respect, however, civil law and forensic medicine were by no means unique; historical scholarship has revealed that the Siamese elite have consistently appropriated and rendered new forms of expertise subservient to elite interests.<sup>8</sup> These very patterns of expert knowledge wedded to elite interests would come to typify political realities in Siam in the early twentieth century with the rise of the absolute monarchy.<sup>9</sup>

We should not be surprised by this tendency of new and potentially subversive forms of political life to be domesticated by and rendered subservient to the hierarchical patterns that typified traditional forms of political culture. As Thanet Aphornsuvan has argued, the abolition of slavery in Siam did not convey the status of unconditioned freedom to subaltern Siamese subjects. Instead, abolitionism was ideologically coopted by the Siamese elite, who used slavery as a foil for constructing a new hegemonic vision of Thai national culture.<sup>10</sup> Similarly, in their work on legal liberalism in contemporary northern Thailand, David and Jaruan Engel have revealed how the introduction of purportedly universal legal rights and the institutions intended

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<sup>8</sup> This point has been made clearly with respect to geography, law, and medicine; see, respectively: Thongchai, *Siam Mapped*; Tamara Loos, *Subject Siam: Family, Law, and Colonial Modernity in Thailand* (Ithaca, NY: Cornell University Press, 2006); and Davisakd Puaksom, *Chua rok rang kai lae rat wetchakam: prawatisat kan-phaet samai mai nai sangkhom thai* [Disease, the Body, and the Medicalizing State: The History of Modern Medicine in Thai Society], (Bangkok: Chulalongkorn University Press, 2007).

<sup>9</sup> See, for example, Kullada Kesboonchoo Mead, *The Rise and Decline of Thai Absolutism* (London: RoutledgeCurzon, 2004), and Chaiyan Rajchagool, *The Rise and Fall of the Thai Absolute Monarchy* (Bangkok: White Lotus, 1994). Tony Day and Craig Reynolds have argued that there is a long history of this manner of appropriating foreign knowledge systems in Southeast Asia; see their “Cosmologies, Truth Regimes, and the State in Southeast Asia,” *Modern Asian Studies* 34, no. 1 (2000): 1-55.

<sup>10</sup> Thanet Aphornsuvan, “Slavery and Modernity: Freedom in the Making of Modern Siam,” in *Asian Freedoms: The Idea of Freedom in South and Southeast Asia*, David Kelly and Anthony Reid, eds., (Cambridge: Cambridge University Press, 1998), 161-186, 177. In practice, freedom from debt slavery severed the ties between client and patron, resulting in more abject forms of poverty and new forms of bondage (176).

to support them does not necessarily result in the homogenization of legal culture.<sup>11</sup> Engel and Engel find that rather than adopt the discourse of rights and appeal to state civil legal institutions for redress, present-day residents of northern Thailand tend to fall back on longstanding metaphysical beliefs in order to make sense of personal injury and loss.<sup>12</sup> They are thereby alienated from the state and likewise from traditional forms of remediation and forced to internalize the fault for their losses.

These historical and ethnographic cases reveal two distinct ways in which the potentially liberating implications of discourses or institutions can be rendered inert. In the first instance, we see something like the Gramscian notion of hegemony in operation, whereby the potentially subversive effects of abolition became a mark of the purported “intellectual and moral leadership” of the Siamese elite.<sup>13</sup> In the second case, we see evidence of the kinds of “life-worlds” posited by Dipesh Chakrabarty, which can challenge and interrupt “the secular-institutional logic” of Post-Enlightenment notions of political modernity.<sup>14</sup> When civil plaintiffs in Chiang Mai appeal to ‘ghosts’ and ‘karma’ to explain their misfortunes,<sup>15</sup> one might hear echoes of the bereaved in late-nineteenth-century Bangkok, who fixated on the trees where friends and loved ones lost their lives—and who, in response to accidental deaths, demanded compensatory actions to placate the spirit of the deceased.

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<sup>11</sup> David M. Engel & Jaruwan S. Engel, *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford: Stanford University Press, 2010).

<sup>12</sup> *Ibid.*, 77-94.

<sup>13</sup> Antonio Gramsci, *Selections from the Prison Notebooks* (New York: International Publishers, 1971), 57.

<sup>14</sup> Chakrabarty, *Provincializing Europe*, 66, 4. “Life-worlds” are Chakrabarty’s shorthand for forms of life that “interrupt and punctuate the run of capital’s own logic” (64); they are likewise indicative of the “the pre-existing concepts, categories, institutions, and practices through which” “the universal concepts of political modernity” are translated and reconfigured (xii).

<sup>15</sup> Engel & Engel, *Tort, Custom, Karma*, 23-28.

In this dissertation, I have argued in favor of a third field of agency, that of the assemblage, which likewise had a significant impact on new discourses and institutions associated with legal liberalism. Casualties sustained by Siamese subjects offered concrete demonstrations of the disadvantaged status of Siamese subjects and the nature of the state's constrained sovereignty. Siamese officials appealed to new forms of expertise to address these challenges, including civil law and forensic medicine. The resulting assemblages, comprised of Siamese bodies and medico-legal expertise, were crucial nodes in transnational forms of commerce between the Siamese state, foreign residents, and their representatives. In this way, limbs severed by fate and lives lost to chance became the immediate grounds for contests over state sovereignty. These tragic but haphazard events prompted forms of state action that can likewise only be described as ad hoc and halting. Siamese officials appealed to and appropriated new forms of expertise and authoritative forms of knowledge in pragmatic ways in response to these events. They came to understand the conditions of compromised state sovereignty during the era of high imperialism in part through the quotidian challenges of dealing with lost lives and limbs.

For the historian, recovering evidence of these forgotten tragedies and demonstrating the sometimes obscure and unexpected actions that they provoked is a worthwhile pursuit. Attending to the forms of knowledge and concern that rendered corpses into political bodies yields a historical narrative that both belies celebratory narratives of Thai colonial exceptionalism and offers a more nuanced and inclusive depiction of historical agency in the colonial world. Medical and legal professionals—acting both in private practice and on behalf of the state—as well as the semi-subaltern figures who mediated new forms of expertise for their superiors in the Siamese state, were an important nexus in the transnational field of contestation

over the dead. Police, bureaucrats, lawyers, doctors, consular officials, entrepreneurs, investors, and journalists: all attended to the dead and dying in late-nineteenth-century Bangkok. And with each intervention, the bodies came into contact with distinctive modes of concern: bureaucrats applied foreign taxonomies to quantify death; physicians brought forensic science to bear, attentive to the status of their findings as medico-legal evidence; lawyers invoked the dead and injured as part of professional squabbles while simultaneously challenging received notions of fault, liability, and jurisdiction; editorialists criticized them all. The sheer diversity of these encounters between the bodies of the dead and injured and new forms of expertise and concern is proof enough that the outcomes were never predetermined—even if, in the end, these assemblages proved singularly amenable to cooptation by elite interests.

By foregrounding the sociohistorical conditions of life and death in late-nineteenth-century Siam, this study has revealed crucial facets of legal and political transformation that are overlooked by studies focused on the articulation of positive legal and political rights. We should not expect the evolution of rights and privileges to conform to the idealized narratives of classical political theory—nor indeed should we attempt to measure these changes against the supposedly universal or normative examples of political change in the West. A conscious effort is required to break with the supposedly universal models of democratizing political change; it requires acknowledging, “how universalistic thought was always and already modified by particular histories, whether or not we could excavate such pasts fully.”<sup>16</sup> But it is likewise important that we move beyond the study of both the discursive articulation of legal and political rights and transformations of the institutions that constrained individual freedoms in order to consider evidence of other vectors of change in Siamese political life. The foregoing study of

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<sup>16</sup> Chakrabarty, *Provincializing Europe*, xiv.

civil law and forensic medicine in turn-of-the-twentieth-century Bangkok has revealed such ancillary pathways to political change. It has highlighted extraterritorial law and constrained sovereignty as the conditions by which Siamese subjects entered into new relations with the state—relations that were not grounded in discourses of rights or institutional change. At the same time, it has decentered state institutions and the work of elite actors in favor of a more diffuse vision of social agency. By focusing on corporate managers, medical and legal professionals, and the semi-subaltern agents in the employ of the state, this dissertation has offered a novel perspective on both the historical realities of compromised sovereignty in Siam and the modes of action through which the state engaged with those conditions.

In the end, the ways in which Siamese ministers and their subordinates responded to death and injury offers a more realistic vision of how the state responded to imperial politics than historical narratives fixated on state-driven processes such as codification and medicalization. Critical events like accidental and unnatural death are clear indicators of the day-to-day challenges of compromised sovereignty, and the subsequent appeals to legal and medical expertise clearly demonstrate the inherently pragmatic and ad hoc nature of state responses to these realities. But these were not straightforward instances of state-driven or elite-directed projects of domination; the assemblages that were forged out of the intersections of injured bodies and expertise provided opportunities to assert conflicting visions of meaning and value, and they were capable of being mobilized to support a broad range of social and political interests. Moreover, injured and even deceased Siamese subjects were likewise agents in these transactions, and they too helped to shape the political realities that emerged out of injury. The excavation of these quotidian tragedies and their aftermath bears enormous potential for the

study of the past. In the colonial world and beyond, histories that reveal the valuation of human life and limb speak volumes about secular modernity.

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Division 5.5 Department of Sanitation. Reports.  
Division 5.6 Department of Sanitation. Division of Physicians.  
Division 5.7 Department of Sanitation. Disease Inspection and Prevention.  
Division 8.1 Metropolitan Police.  
Division 8.6 Metropolitan Police. Miscellaneous Reports.  
Division 21 Tramway.  
Division 23 Death by Various Causes.  
Division 26 Records of Contracts.
- S. Ministry of Public Instruction (*Krasuang Sueksathikan*)  
Division 24 Hospitals.
- S.Th. Ministry of Public Instruction/Religious Affairs (*Krasuang Sueksathikan/Thammakan*)  
Division 8 Hospital Department. Records.  
Division 8.2.๑ Hospital Department. Bangrak Hospital.

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