

## Comments and Discussion

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### Causes of Agricultural and Environmental Problems

During the presentation and discussion of papers, conference participants identified several interacting causes of such social problems as increases in conflicts over land, growing rural poverty, environmental degradation, and loss of land by small farmers and tribal minorities. The following excerpts reflect the multiple sources of problems: population growth, incompatibilities between state law and local customs, government efforts to extend control over rural areas, the replacement of subsistence crops by commercial ones, economic development schemes, state policies favoring industry over agriculture, export of capital, government inefficiency, and government corruption.

AKIN RABIBHADANA

Because of the increase in population in Thailand in the past 50 years—a terrible increase—there has been a heavy demand on land resources. With more people and fewer resources, it is more difficult to settle conflicts by compromise or by moving away.

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SCOTT CHRISTENSEN

Thailand is a very centralized state and a very decentralized society. The way things work at the local level is very different from official perceptions about the way things ought to work. Over the past 10 years, open access land has disappeared, and conflicts over land have increased. The efforts of the state to manage land resources and create more efficient or preferable property-rights laws have helped only to incite conflict over official versus local practices.

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AKIN RABIBHADANA

People often say that Thailand is homogeneous. It is not. It is made up of lots of ethnic peoples. The Thai state became a state just within the past 50 years and through the accumulation by Bangkok of semiautonomous independent communities. What are the problems caused by this historical development? For one, the central government is expanding its power into different areas by passing laws. By trying to use that legal power, the state is imposing laws that are in conflict with the customs of the different communities.

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SATJIPTO RAHARDJO

This morning I think we received a partial answer to yesterday's question of what westernization is about. After hearing Dr. Anan's paper, I see that Asian countries, especially Southeast Asian countries, are developing into capitalistic societies and market economies. The increase in commercial crop production that began about 30 years ago has led to an increase in boundary disputes, which are only one of the many disputes arising from the introduction of the modern economic system.

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ANAN GANJANAPAN

Thai farmers are greatly in debt today because government policies favor industry. Industry has all those tax privileges, but the agricultural sector has to absorb all kinds of tax burdens. The government is issuing land title deeds to poor, indebted farmers at a time when agricultural production is a suicidal enterprise and when land values are increasing because the land can be used for other things, such as golf courses, factories, or other types of business. So from the farmers' point of view, it is not a bad idea at all for them to sell their land instead of working it.

ROBERT KIDDER

We need to keep the international situation in mind. The problem of taxing agriculture to produce capital has emerged in many different societies at different times. You could ask, "Where are you going to get capital if you don't tax agriculture?" This question takes on a different meaning, however, if you are taxing agriculture to produce capital that is flowing out of the country—that is not being used within Thailand or within Malaysia.

AKIN RABIBHADANA

The conflict in Thailand is in effect between national and individual interests. The national interest in favoring industry over agriculture is always there. Officials right down to the district chief are all appointed from Bangkok. In Thailand we do not have local government in the Western sense. But there is one lucky thing. Thanks to the inefficiency of the government, the local people do not suffer as much as they might.

ANAN GANJANAPAN

Akin Rabibhadana sees government inefficiency because he is looking from the center. If you look from a local vantage point, you see the complexity of local powers that protect the people. In local areas you don't have just one power but many kinds, in the hands of patrons, godfathers, or whatever you call them. Every city has its own legal system and its own legal power. The law in Thailand is effective only within the court in Bangkok and surrounding areas.

SCOTT CHRISTENSEN

Because formal laws in Thailand often cannot be enforced, the law is open to manipulation by the powerful, by the governing elite, or by the well-connected at the local level.

FRANZ VON BENDA-BECKMANN

I would like to challenge the assumption implicit in many earlier comments that in European and North American countries there is legal certainty. If you look at the agricultural situation in the European Community today, you will find legal uncertainty, administrative arbitrariness, and officials who selectively use and apply the laws. The common Dutch farmer is probably as frustrated, and has as little confidence in European industrial state law, as the normal Thai farmer has in Thai law.

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MEHRUN SIRAJ

The methods of development create problems for local people. A recent problem in Malaysia concerns government efforts to reclaim land from settlers who were given temporary occupation licenses 30 years ago to clear the jungle and plant the land in crops. The government used national land laws to force villagers who belonged to the opposition party to join the ruling party. When the villagers refused to move out, the government brought in bulldozers and destroyed their crops. The land was then distributed to supporters of the ruling party for development purposes. Although advocates for the settlers went to court on this issue, the court took the view that under the law all land belongs to the state. Therefore, it is entirely up to the state to decide who to alienate the land to.

SUVIT RUNGVISAI

Wealthy moneylenders in Thailand use mortgages to confiscate the land of poor people. One prime minister, fearing that in 10 or 20 years most of the land would be in the hands of the rich, passed a law in 1954 saying that a person could not possess more than 50 *rai* of farmland—about 8 hectares. But when the next prime minister came to power, he abolished the law, and from that time until now, many farmers regularly lose their land. People say that Thailand is going to modernize, but I say that we have modernization without development.

## Land Titles and Security of Tenure

Implicit in the economic development models preferred by Western-educated economists and policy planners is the idea that farmers (like any rational people) will not invest capital and labor in production or make capital improvements to property unless they expect to reap the resulting benefits. Consequently, economists and planners often advise the governments of developing countries to undertake land-titling schemes, arguing that farmers who hold secure title to their lands will not only invest their own capital and labor in production but will also use their title deeds as collateral to borrow money from banks to improve the productivity of their properties with purchased fertilizers, pesticides, and agricultural machinery. Scott Christensen draws on this line of reasoning when he suggests that the failure of the Thai state to enforce property rights explains why Thai farmers allowed many *rai* of good rice land to go unplanted.

Anan Ganjanapan, in contrast, focuses on the unintended consequences of the Thai government's land-titling schemes. Earlier, he suggested that issuing title deeds when land prices were rising and prices for agricultural products were falling had the effect of encouraging indebted farmers to sell their lands to capitalist speculators for golf courses, housing developments, etc. In the excerpt here, he argues that land-titling schemes often lead to increasing conflicts over land and to small farmers losing their lands, because Western-educated development planners do not understand local practices.

Other participants suggest that land-titling schemes harm small farmers who lack legal titles, allowing them no recourse when the state decides to evict them to make way for development projects. Scott Christensen comments on the irony that issuing legal land titles appears simultaneously to harm small farmers by disrupting local practices and to benefit them by protecting them from summary eviction. His observation prompts others to suggest that political clout, rather than legal rights, provides the best protection for rural people.

SCOTT CHRISTENSEN

In Thailand about 34 million rai of farmland went unplanted in 1990. This land was not lying fallow as part of the farmers' planting cycle. Farmers found it unproductive to cultivate that land. In economic terms, this inefficiency is the direct result of the failure of the Thai state to apply and enforce property rights to land in a consistent or rational fashion.

ANAN GANJANAPAN

During the past few years the Thai government has had a policy of reinforcing the security of land tenure. The aim is to improve the productivity of the land by trying to accelerate the acquisition of land titles in local communities. But I think the objective is mainly economic. The government expects farmers to use the title deeds as collateral in borrowing money from the bank to use for agricultural production. The land is not owned by individuals, however, but by the extended family. Nevertheless, people do use the land for their own purposes. For example, if I am a father with five sons, I may allow one son to use the land but allow the other sons to use my title deed to borrow money to buy their own trucks. Such family use is very clever. But the government did not foresee this kind of local practice. The problem is that graduates from schools in Western countries have only recently come back and tried to write all those laws. And even experts in agriculture—economists, social scientists, whatever—don't understand what is in fact happening in the rural areas. So the Thai government promotes a one-sided unilinear type of program without considering other measures. The government thus leads the people into more debt, so that they lose their land.

ERMAN RAJAGUKGUK

It seems to me from our discussion this morning that Indonesia, Malaysia, and the Philippines share similar problems with Thailand concerning conflicts between what we call customary or local law and state law. In the Indonesian case, agrarian law supports customary law as long as it is not

contrary to the public interest or the national interest. The problem is who decides the national interest or public interest. So we have a similar problem in Indonesia with respect to land deed development. Outside of Java, the problem is that not all of the land is owned by individuals but the land is mostly owned by the local community. So when the government introduces a land deed program, it creates a problem among the local people—among the families who own the land. So I think that we face a similar problem in these countries.

FRANZ VON BENDA-BECKMANN

I would like to draw your attention to a point that was not mentioned explicitly in Erman Rajagukguk's interesting and sad case history of the eviction of Javanese peasants for the construction of a hydroelectric dam. The land that was expropriated and declared state land had not been registered under the basic agrarian law of Indonesia, even though for generations the land had probably been managed by individuals. Traditional adat community control had long since been taken over by state-appointed village heads, but land rights were not expressed in the categories of a bureaucratic Western type of ownership.

MEHRUN SIRAJ

There was a project in Malaysia to clear land for a housing development. The land was going to be given to a developer, and the families who had been staying on that plot were evicted in order to let the developers come in and start building houses. When the residents resisted, the courts said, "If you are on the land without the right to be on the land, even though you may have been there for years, you are a trespasser once you have been issued an eviction order, and force can be used to evict you." The police were brought in, and one of the farmers was killed in the course of events. In this case the law was against everyone, in the sense that the land code is quite clear: Unless you are registered as the owner, you can be evicted.

SCOTT CHRISTENSEN

While land titling brings with it private ownership—which can disrupt traditional community practices in Southeast Asian countries, unless the state or some other third party can guarantee individual rights to property as the capitalist economy progresses—individuals will increasingly find that they have insecure rights to the land that they claim as their own. So while we are talking about the difficulties and the often pernicious consequences of applying formal property rights laws, we are, at the same time, referring back to some basis of rights as a way of protecting and defending the claims to land of these so-called communities. I don't have an answer regarding what ought to be done. But I find a bit of irony in this reasoning.

ANAN GANJANAPAN

I think that the law alone cannot be a sufficient means of guaranteeing peoples' security of tenure. In Thailand, 10 years ago the participants in a people's movement worked very hard to push for land rent control. But once a rent control law passed, nobody used it. There is no guarantee that a good law will be used. I think that what is needed is a kind of social movement to go along with work on the issue of law or the legal system.

**SUVIT RUNGVISAI**

Anan Ganjanapan said that the land rent control law was not enforced in Thailand, that nobody obeyed it. In fact, the farmers helped by the law were poor but very active. When the landowners wanted to split the crop half and half, instead of claiming only a third as required by law, the farmers told them the split was against the law. The farmers brought the case to court, but during the legal procedures, two or three farmers were killed. The other farmers did not want to be killed, so they followed the old law. The new law was not enforced, and two or three years later, in 1981, Parliament passed a new law requiring that land rents be set by a committee of owners and renters. The landowners and the high officials in the Ministry of the Interior said that the 1974 law was a leftist law: "It came from student unrest; it is not our law."