

Researches into indigenous Law of Siam as a
study of Comparative Jurisprudence.

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From the point of view of Comparative Jurisprudence it may be said that there are five original systems of Law from which the Laws of the different countries of the world are derived. These are (1) the Roman Law system, (2) the English Law system, (3) the Hindu Law system, (4) the Mohammedan Law system, and (5) the Chinese Law system. The Laws of the continental countries of Europe are examples of the Roman Law system, those of the German countries being Roman Law in purer forms and those of the Latin countries being Roman Law in less pure forms, or in other words, the former being the Pandect System and the later being the Institute or Code Napoleon System. The Laws of England, and of the different States of the United States of America with the exception of Louisiana, are examples of Laws belonging to the English Law system. India with its multitudes of what once were independent kingdoms and principalities, some of one religious profession, some of another but now all under the British administration, at the present day presents a unique example of a country in which the British Courts administer the Brahman, the Buddhist, and the Mohammedan Laws according to the religious profession of the litigant. The Laws of China and Corea are examples of the Chinese Law system. The ancient Laws of Japan belonged to the Chinese Law system, but the present Laws may, on the whole, be said to belong to that branch of the Roman Law system which may be called the German or Pandect System though they have taken a great deal from the English Law system also. Considering the geographical proximity of Siam to India and the fact that in ancient times Siam was so much under the influence of Indian civilization, one naturally expects that the ancient Laws of Siam should belong to the Hindu Law system. But it is curious to note that although everybody seems to be under the impression that the ancient Laws of Siam belong to the Hindu Law system no one has ever taken the trouble to prove it. I venture to think that this is not because the subject is uninteresting but because the point to be proved is generally admitted and taken for granted. My object this evening is to bring forth such texts from the ancient Laws of Siam as will show you that these ancient Laws belong to the Hindu Law system. If I

were a philologist or archaeologist like some of my co-workers of this Siam Society, I am quite sure I could also bring forth interesting philological and archaeological facts in support of my argument, but as I am nothing more than a practical lawyer I can only present you with such texts of Laws as have come under my notice in the course of my studies in the ancient Laws of Siam.

The very first thing which struck me, when I commenced my study of Siamese Law nearly eight years ago, was the very striking similarity of Siamese Law to Hindu Law in the manner of dividing the subjects or titles of Law. In the Code of Manu, the typical Hindu Law book, the whole body of Civil and Criminal Law is divided into 18 principal titles. According to Prof. Bühler's translation these 18 titles or causes of law suits are as follow :— (1) debt, (2) deposit and pledge, (3) sale without ownership, (4) concerns among partners, (5) resumption of gifts, (6) hiring of persons, (7) non-performance of agreements, (8) rescission of sale and purchase, (9) disputes between the owner of cattle and his servants, (10) disputes regarding boundaries, (11) assault, (12) defamation, (13) theft, (14) robbery and violence, (15) adultery, (16) duties of man and wife, (17) partition of inheritance, (18) gambling and betting (Mann VIII, 4-8). On this same subject the Siamese Phra Tamasart says ; “The causes which give rise to law suits are as follows, etc.” and enumerates all these 18 titles in almost the identical words and adds 11 more such as kidnapping, rebellion, war, the King's property and taxes, etc.

The same similarity is observable in the manner of classifying slaves. In the Code of Manu slaves are classified as follows ;— (1) those who have been made captives of war, (2) those who have become slaves for the sake of being fed, (3) those who have been born of female slaves in the house of their master, (4) those who have been bought, (5) those who have been given, (6) those who have been inherited from ancestors, and (7) those who have become slaves on account of their inability to pay large fines (Manu VIII, 4-15). On this subject the Siamese Laxana Tat begins by saying that there are seven kinds of slaves and enumerates them as follows :— (1) slaves whom you have redeemed from other money masters, (2) slaves who have been born of slaves in your house (3) slaves whom you have got from your father and mother, (4) slaves whom you have got from others by way of gift, (5) slaves whom you have helped out of punishment,

(6) those who have become your slaves by your having fed them when rice was dear, and (7) those whom you have brought back as captives when you went to war. You will observe at once that the 7 kinds of slaves mentioned in the Code of Manu and the Siamese Laxana Tat are exactly the same.

Those of you who have read Sir John Bowring's treatise on Siam will remember his remark that "legal reasons for excluding witnesses are so many in Siam that they would appear seriously to interfere with the collection of evidence." Here again I have another illustration of the close analogy between the Hindu Law and the ancient Siamese Law. The Code of Manu says as follows:—"Those must not be made witnesses who have an interest in the suit, nor familiar friends, companions, and enemies of the parties, nor men formerly convicted of perjury, nor persons suffering under severe illness, nor those tainted by mortal sin. The King cannot be made a witness, nor mechanics and actors, nor a Srotriya, nor a student of the Veda, nor an ascetic who has given up all connection with the world, nor one wholly dependent, nor one of bad fame, nor a Dasyu, nor one who follows cruel occupations, nor an aged man, nor an infant, nor one man alone, nor a man of the lowest castes, nor one deficient in organs of sense, nor one extremely grieved, nor one intoxicated, nor a mad man, nor one tormented by hunger or thirst, nor one oppressed by fatigue, nor one tormented by desire, nor a wrathful man, nor a thief" (Manu VIII, 64-68). On this subject the Siamese Laxana Payan says that the following 33 kinds of persons are excluded from being witnesses, namely, (1) those who do not observe the 5 and 8 precepts, (2) those who are debtors of litigants or have borrowed anything from them, (3) slaves of litigants, (4) relations of litigants, (5) friends of litigants, (6) companions of litigants who eat and sleep with them, (7) those who have quarrelled with litigants, (8) those who are covetous, (9) enemies of litigants, (10) those who are suffering under severe illness, (11) children under 7 years of age, (12) Aged people over 70 years of age, (13) those who go about defaming one person to another (14) those who beg for food by dancing, (15) those who beg for food by singing and playing, (16) those who have no homes and wander about, (17) those who hold cocoa-nut shells and go about begging, (18) those who are deaf, (19) those who are blind, (20) prostitutes, (21) lewd women, (22) pregnant women, (23) those who are neither male nor female, (24) those

who are both male and female, (25) sorcerers and sorceresses, (26) those who are mad, (27) physicians who have not studied medical books, (28) shoe makers, (29) fisher men, (30) those who are confirmed gamblers, (31) thieves and robbers, (32) those who are wrathful, (33) executioners. You will observe if there is any difference between the text of the Hindu Manu and that of the Siamese Laxana Payan it is that whilst the Hindu text is more general in some instances the Siamese text is more specific. For instance, while the Code of Manu says in a general way that infants and aged men cannot be made witnesses, the Laxana Payan is more specific by limiting the exact ages under and above which they cannot be made witnesses. Again, while the Code of Manu excluded in a general way those who follow cruel occupations, those who are deficient in organs of sense, those who are of the lowest castes, etc., the Laxana Payan goes into details and specifies what they are. But on the whole it cannot be denied that both the Hindu and Siamese texts are hinting at one and the same thing.

It is a principle of Hindu Law that interest ought never to exceed the capital (Manu VIII, 151,153). The Siamese Laxana Ku-Ni expresses this same principle as follows :— “Where a person contracts a debt and pays interest for one, two or three months, but afterwards fails to do so ; and when the creditor presses him, he defers and evades payment, so that the creditor having received neither capital nor interest for a long time, summons him before the judge, the interest which the debtor has paid for the first, second or third month is profit due to the creditor ; the creditor may also claim the amount of interest which remains unpaid, but if the debt be a long standing one, let the interest not exceed the capital, according to law” (Archer’s translation of the Siamese Laws on Debts page 6). I may here observe for the sake of accuracy that Mr. Archer’s expression “let the interest not exceed the capital, according to law” is in the original “hai bangkap teh to na doi phra racha krisdika ให้บังคับ แต่ ต่อ นำโดย พระราชกฤษฎีกา” which literally means “let be paid to the face only, according to law” and that H. R. H. Prince Rajburi expresses a doubt in his notes to his edition of Siamese Laws whether those who interpret that expression to mean that interest shall not exceed the capital are right or not. However, with all due respects for his Royal Highness’s scholarship and without at all meaning to be dogmatic as to how the expression “only to the face teh to na แต่ ต่อ นำ” should

be interpreted, I may tell you that the principle of Hindu Law that interest shall not exceed the capital is one that is applied by the Siamese Courts even at the present day, which is not the case with most of the texts of the ancient Laws of Siam which I am submitting for your consideration this evening.

It is a principle of Hindu Law that if a defendant falsely denies a debt he is to be fined double the amount of the debt (Manu VIII, 59). The Siamese Laxana Ku-Ni expresses this same principle as follows:— “Where a debtor summoned before the judge does not acknowledge the debt; if it be ascertained that he is really so in-debted, let him be fined double the amount of the debt” (Archer’s translation of Siamese Laws on Debts page 9).

The foregoing texts which I have quoted at random from the Hindu Code of Manu and the ancient Laws of Siam will, I trust, have been sufficient to convince you that the ancient Laws of Siam are of Hindu origin and belong to that group of Laws which I have called the Hindu Law system,—a proposition which is admitted and taken for granted by every one but which curiously enough no one has ever undertaken to prove before me. If I shall ever be fortunate enough to have your indulgent audience once more I shall on another occasion submit for your consideration such characteristics of the ancient Laws of Siam as contradistinguish them from Hindu Law in spite of their Hindu origin.

