

BOONSARIRATANA SOMBOON : THE APPLICATION OF CUSTOMARY LAW
IN CRIMINAL LAW. THESIS ADVISOR : ASSO. PROF. APIRAT
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This research finds that "customary law" is the legal principles which emanated and have been evolved from the process of societal development. Even though customary law has never been emerged from conventional legislative process, it is still considered, in both Civil and Common laws traditions, as one of the "sources of law." Customary law, therefore, is of no less important than written statute.

Even though most criminal law is considered written statute by nature and contains special characters other than those of ordinary written statutes --i.e. it defines crime and punishment, it demands the general principle of nullum crimen, nulla poena, sine lege and no punishment without written prohibition, it does not allow the determination of crime definition by customary law, but customary law, according to this thesis, can be applied to criminal law without any conflicting differences to the criminal law's general principles aforementioned.

Moreover, the theory that customary law must be accepted and must be applied in criminal law is supported by 5 major justifications, i.e., the role and characters of customary law must be considered, as they have been done in the past, important source of law; customary law has been proven valid through rightful legal method; customary law shall apply only in the case that it shall benefit the defendant; customary law shall be apply to support the societal will; additionally, customary law's special character renders better justice without having resorted to written instruments.

The application of customary law in criminal law may be limited in 2 possible ways. It shall be applied directly in the case that it is used as a general principle or theory of criminal law, e.g. causes of justification and excuse, and indirectly through the use of customary law as a tool for interpretation of written statute of jus acquum character.