

BOOK REVIEW

Thai Legal History: From Traditional to Modern Law

edited by Andrew Harding and Munin Pongsapan. Cambridge: Cambridge University Press, 2021. 350 pp.

Kevin Hewison

University of North Carolina at Chapel Hill

(First published online 24 March 2023)

At the beginning of the 21st century, scholars struggled to find English-language texts that discussed Thailand's judiciary and its legal traditions. There were a few monographs and occasional articles in specialist journals, many of them focused on pre-modern legal arrangements. Today, the situation is considerably changed as constitutions, law, and judiciary have moved to the centre of the country's divisive political conflicts. Articles, special issues, and books have begun to appear examining law and politics, justice, judicialisation, legal traditions, and more.

Thai Legal History is a welcome and important addition to this growing literature. It is the first English-language collection to cover Thai law and legal history from ancient times, through the reforms by absolute monarchs, to the changes following the 1932 revolution, and including 21st-century debates. While the editors state that their collection is not 'completely comprehensive' and does not 'provide a running narrative of events and issues' (p xi), it is an indispensable resource and establishes a benchmark for others in the field.

Between the front material – a Chronology of legal and historical development, tables of Cases and of Statutes, Constitutional Provisions, and Treaties – and end material of a Glossary and Index, there are 17 chapters. Following an Introduction by Andrew Harding and a brief chapter that reviews the existing literature on Thai legal studies by Harding, Rawin Leelapana, and Eugénie Mérieau, the book is in three parts: Part I examines aspects of traditional law and its modern resonances; Part II focuses on foreign influences and the reform era; and Part III considers constitutions and conflicts in the post-1932 period.

Most chapter authors look to the past for insights on contemporary political and legal conflict, while their concerns about the future are also obvious, if not always explicit. For example, in a fascinating account of royal authority (ch 3), Chris Baker and Pasuk Phongpaichit scrutinise assumptions about the nature of law in ancient Thailand. Their conclusion is that the widely accepted view that kings did not enact law is wrong. They argue: 'In old Siam, the king was a legislator, and royal legislation was a key institution of the Siamese state in the pre-modern era' (p 40). In coming to this conclusion, Pasuk and Baker show how earlier Orientalist positions were based on limited evidence or no evidence at all. They discuss how these opinions on the king's legal position became significant with post-1932 royalist efforts to redefine a modern righteous monarch or *thammaraja*. It 'endowed the [modern] monarch with an alternative and potentially rival source of authority' (p 27). This matters because this redefinition and the re-empowerment of the monarchy was the pre-eminent political task of King Bhumibol's reign. He and his modern 'supplicants' made the king a source of authority to compete with and overwhelm elected politicians. By 2019, and in a new reign, the evidence is of a (contested) return to a pre-modern situation where a Royal Announcement by King Vajiralongkorn is treated by the Constitutional Court as law. This is reinforced in Kongsatja Suwanapech's Chapter 4, which examines royal coronation commands and

concludes that, in the present, the royal command ‘is still used to justify the righteous status of the monarchy in the contemporary regime and the political system, and to supersede the significance of democracy, the rule of law and constitutionalism...’ (p 58). Khemthong Tonsakulrungruang’s Chapter 5 neatly adds some of the Buddhist philosophical underpinnings of modern law and of the moral principles that underpin notions of law and justice. In the minds of influential conservative legal scholars, it is the righteousness of kings that triumphs over written law.

Part I concludes with two chapters that are focused on the contemporary: Mérieau’s excellent assessment of the *lèse-majesté* law (ch 6) and David Engel’s account of the Red Shirt’s 2010 blood curse (ch 7). Each chapter examines cultural and historical meanings, but it is their contemporary use that will interest many readers. With the explosion of *lèse-majesté* cases since the 2014 military coup, Mérieau’s chapter is especially salient. Her account of the *lèse-majesté* law over several centuries provides a much-needed context for a law that is now being used more than ever. As she concludes, the *lèse-majesté* law is not just a piece of criminal legislation used to repress political opponents, but a conceptualisation of the king’s sacredness and righteousness.

Part II examines the ‘reform’ period. It begins with Surutchada and Adam Reekie’s discussion of the role and influence of four foreign legal advisers who sat on the Committee of the Supreme Court from 1910 to 1941 (ch 8), and is suggestive of the need for further work on the role of legal advisors, especially in the transition from an absolutist to constitutional regime. This is followed by useful discussions of the Civil and Commercial Code by Munin Pongsapan, criminal law by Kanaphon Chanhom, trust law by Surutchada and Narun Popattanachai, family law by Apinop Atipiboonsin, and administrative justice by Peter Leyland. Part II concludes with Chapter 14, by Krisdakorn Wongwuthikun and Naporn Popattanachai, which emphasises the impact of unequal treaties on the country’s legal development and Thailand’s effort to become ‘an internationally recognised modern state’ (p 202).

The five chapters of Part III, while meant to concentrate on the constitutional conflicts of the 1932–2017 period, are somewhat loosely organised around this focus. For example, Duncan McCargo’s Chapter 17, appears as a prolegomena to a 1997 constitutional change that took the Courts of Justice from the Ministry of Justice’s supervision, a separation that has been maintained (p 261). His account is more focused on the personalities associated with a judicial crisis in 1991–1992 than the constitutional change itself. Chapter 15 by Rawin Leelapatana and Chapter 16 by Henning Glaser concentrate the overlapping constructs of ‘Thai-style Democracy’ and ‘Democratic Regime with the King as Head’. These concepts are enshrined in constitutions as expressions of ideological culturalism that promote and maintain monarchism. In recounting the development of these constructs, Rawin and Glaser provide important background for those who seek to understand the rise of 21st-century anti-monarchism. In Chapter 18, Tyrell Haberkorn examines the retroactive legalisation of the military coups that have repeatedly trashed constitutions. She focuses on amnesty laws that not only grant coup leaders impunity for military intercessions but encourage the planning of coups. As she explains, ‘the repeated amnesties have institutionalise[d] ... the emptying of democracy and the removal of the role of the people in the Thai polity’ (p 265).

Thai Legal History includes some outstanding scholarship from a mix of contributors, several from Thailand and quite a few early career scholars, along with established academics. While readers will certainly learn much from this collection and the debates it details, the overall impression is of a bleak legal and political future. The impression is of a remarkably conservative legal bedrock to Thailand’s politics, where the judiciary has undermined electoral democracy while joining with the monarchy and military to maintain the *status quo*.