

*Thai Legal History: From Traditional to Modern Law* BY ANDREW **HARDING** AND MUNIN **PONGSAPAN**, eds [Cambridge: Cambridge University Press, 2021. Liv + 350 pp. Hardcover: SGD179.76]

*Thai Legal History: From Traditional to Modern Law* (the “Book”) serves as an excellent academic tool for a reader desiring to gain a deeper understanding of the constitutional status and roles of the King of Thailand, impacts of coups d’état on the Thai legal system, influence of foreign laws on moderation of the legal system, Buddhism, and legal consciousness in a modernised Thai legal system. As a law lecturer and legal researcher, I found that this Book, as highlighted by Andrew Harding in Chapter 1, meticulously reveals the origin and evolution of laws and concepts beyond written law in the pre-modern time—the old Siam—and later.



It also contributes to the contemplation of contemporary legal questions, especially those relating to constitutional matters.

Reading this Book through the lens of a legal scholar, I found useful inputs for scrutinising a controversial judgment of the Constitutional Court of Thailand concerning the ‘special’ status and roles of the King of Thailand. On the 10th of November 2021, the Constitutional Court of Thailand ruled that actions of activists calling for reformation of the monarchy were deemed to be exercising of the rights or liberties to overthrow the democratic regime of government with the King as Head of State. The court emphasised the inviolable status of the King of Thailand (“...the King and the Thai nation have been seamlessly coexisted to each other and will continue to coexist in the future. Even though the country’s political regime was already changed to democracy, Thai people have a consensus that the King is the head of state, being symbolic of Thai nation, and shall be respected. No one shall violate the King. This is to maintain the Thai nation...”). The reasoning of the Constitutional Court of Thailand stimulates us to travel back in time and examine the coexistence of the King and the history the Thai nation since the pre-modern era. This Book, especially in Part I, is a comprehensive source of reliable information. In Chapter 3, Chris Baker and Pasuk Phongpaichit argue, as opposed to Robert Lingat’s position, that the King was a legislator in the old Siam. The inviolable status of the King of Thailand and constitutionality of the *lèse-majesté* provision, Article 112 of the Penal Code, are examined by Eugénie Mériéau in Chapter 6.

However, going beyond a historical foundation of the monarchy in the pre-modern era, this Book allows a reader to continue scrutinising potential clashes and harmony between democracy and existence of the monarchy after the end of absolute monarchy on 24th of June 1932. According to Chapter 4 written by Kongsatja Suwanapech, the monarchy’s position under the absolute monarchy was abolished and must be developed to fit with the constitutional monarchy concept. More details on the principle of the “Democratic Regime of Government with the King as Head” since 1997 is addressed by Henning Glaser in Chapter 16. Glaser’s chapter makes a reference to the influence of the monarchy steadily increasing during the second half of the 20th Century.

In addition to the role of the monarchy, this Book makes it clear that coups led by the military have been inextricably intertwined with the history of Thailand, especially after the end of the absolute monarchy. Mériéau describes the coup against the Pridi faction in 1947 as a “royalist coup” in Chapter 6. Chapter 15, written by Rawin Leelapatana, describes the so-called Thai-style democracy and as well as justification of the military to carry out a coup—to *protect the three pillars of Nation-Religion-Monarchy*. Tyrell Hakerkon discusses twelve successful coups in Thailand in Chapter 18.

This Book inspires a reader to ask critical questions arising from the repeated occurrence of coups in Thailand. In Chapter 4, Kongsatja Suwanapech stimulates a reader to think whether the King, after 24th of June 1932, should swear an oath to protect the Constitution. In addition to the relationship between the monarchy and coups, this Book discusses how successful coups have continuously affected the way in which Thai courts exercised their judicial power.



Duncan McCargo, in Chapter 17, found that appointment of a judge in Thailand can be politicised. Referring to Hans Kelsen's theory of revolutionary legality, Hakerkon, in Chapter 18, discusses how the Thai Supreme Court accepted the power of the coup government. Moreover, this chapter chronologically explains how amnesty laws and constitutional provisions can support coups and legalise actions of those conducting coups. A reader will learn that an amnesty provision in the Interim Constitution of 2014 is not newly-invented, but is substantially similar to older amnesty law promulgated by the coup military.

Insofar as the military has continued to play influential roles in the contemporary of Thai politics, the judicial branch of Thailand, including the court of justice and the Constitutional Court, will continue to face challenges in determining the legality of an amnesty provision dismissing leaders of a coup from any legal liability. This Book can help contribute to overcoming this challenge.

Part II of the Book clearly demonstrates how foreign influence has driven legal reform in the 20th Century in Thailand especially as a step towards modernisation of the legal system. As regards international law, Krisdakorn Wongwuthikun and Naporn Popattanchai discuss how uncivilised Siam was pushed to enter into 'unequal treaties' with civilised Western countries in Chapter 14. Kanaphon Chanhom clearly demonstrates how the Penal Code of Thailand was drafted and influenced by foreign drafters in Chapter 10.

As a legal researcher, I found that Part II of this Book is particularly useful for a person conducting legal research and planning to apply a comparative methodology. A key message I found is that comparative methodology is not only a mere translate-copy-paste activity, but deeper understanding on origin, aims, and functions of foreign laws must be gained. Munin Pongsapan discusses how foreign civil and commercial code of Germany, France, and Japan served as models for the Civil and Commercial Code Thailand in Chapter 9. Importantly, he further argues that adoption of foreign laws requires a proper use of comparative law beyond merely copying the wording of the rules.

Similar observations can be found in other chapters in Part II of the Book. A researcher desiring to determine influence and impacts of foreign laws on the Thai legal system can empirically review judgments like the approach of Surutchada Reekie and Adam Reekie in their Chapter 8. In Chapter 11, Surutchada Reekie and Narun Popattanchai explain English common law trusts and evolution of trust law in Thailand through the lens of legal pragmatism. The analytical framework applied in Chapter 11 offers a way forward for a researcher who is attempting to critically examine the entire history of the other fields of laws.

However, Part II of this Book fairly exposes how local context can be an impediment to adoption of foreign laws. History of Thai family as addressed by Apinop Atipiboonsin, in Chapter 12, reveals how the Thai tradition could run contradictory to foreign laws. The polygamy concept was formalised by the King Rama VII, the last monarchy under absolute monarchy in 1931 as opposed to the monogamy concept introduced by Western countries. Peter Leyland, in Chapter 13, finds that the Thai legal system can enhance administrative justice, as influenced by the French law, by establishing administrative courts. However, the absence of legal aid and the limited role of grass-roots activism could undermine functions of administrative



courts in Thailand. Therefore, this Book can help remind a researcher to incorporate relevant local context into the research.

This Book makes a clear reference to legal secularism. Despite acknowledging foreign influence of foreign laws over the Thai legal system, this Book clearly addresses and analyses inescapable linkages between Buddhism and the Thai legal system. In Chapter 5, Khemthong Tonsakulrungraung argues that Buddhism still has roles to play in the modern legal system. He explained that ‘dhamma’ or ‘tham’—teaching of Buddha, truth, nature, and law—is the core of Buddhism. This chapter is very useful for interpreting a legal provision that directly refers to the word “tham” for example, the word ‘nititham’ (translated from the expression ‘rule of law’ in English). As suggested by Tonsakulrungraung, the word ‘tham’ used in Thailand confers a norm higher than a normal man-made rule. Hence, a reader is provided with critical explanation of dhamma, its interaction with the positive law and, importantly, the people’s perception. I found this finding very useful for contemplating contemporary meaning and applicable of ‘rule of law’ under the 2017 Constitution.

In line with an observation of Tonsakulrungraung, David M Engel emphasises historical connections between law and Buddhism for Thai people in Chapter 7. Engel discusses how the blood-curse ritual conducted by the red-shirt demonstrators in 2010 could be deemed an expression of a belief in basic constitutional rights of equality and democratic participation. Importantly, it reveals how the rule-of-law framework currently coexists, at least from a perspective of some Thai people, with an entirely different type of discourse about justice.

In summary, the Book reveals several dimensions of legal modernisation in Thailand which are academically useful for a person seeking to gain profound understanding on the Thai legal system, both in the old Siam and modern Thailand. A reader seeking to have more understanding on the special status of the King of Thailand, whether before or after the 24th of June 1932, can find systematic inputs in Part I of this Book. A legal researcher can avoid mythological errors and learn how to perform a better comparative analysis, while comparing laws from different countries in Part II of the Book. Part III of the Book strongly encourages a reader to think about local context and unique characteristics of the Thai society, especially those relating to the so-called Thai-style democracy, Buddhism and legal consciousness.

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