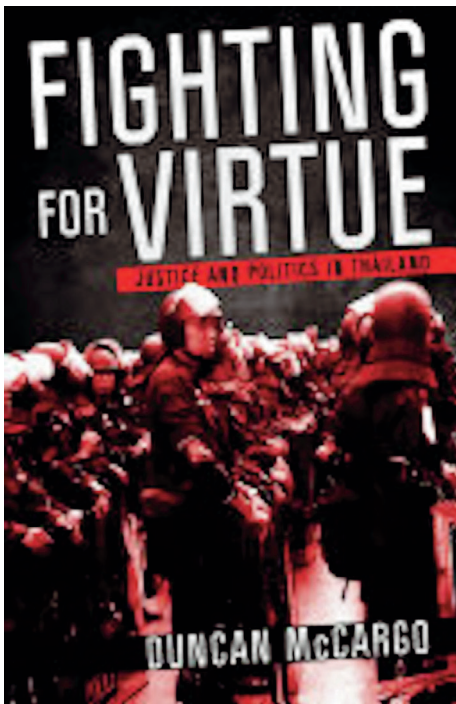


sketched a distinctive legal environment among many others in the colonial world at the turn of the 19th century, and has shown that the treaty port is the most useful lens through which to compare Siam with other parts of colonial Asia.

Craig J. Reynolds

Fighting for Virtue: Justice and Politics in Thailand by Duncan McCargo. Ithaca, NY and London: Cornell University Press, 2020. ISBN: 9780801449994 (hardcover). US\$42.95.



Duncan McCargo, one of the most respected, prolific and wide-ranging scholars of modern Thailand, has explored the world of the Thai judiciary in his latest book, *Fighting for Virtue: Justice and Politics in Thailand*. He has made another important contribution to our understanding of Thai politics and society.

In the first section (chapters 1-3), McCargo introduces us to Thai judges: who they are, how they are recruited, how they work, how they relate to the monarchy, and how they have been lured into politics.

The second section (chapters 4-6) brings us a ringside view of three political trials in 2012. Somyot Prueksakasemuk was jailed for ten years for *lèse-majesté* for two articles he did not write, but were published by a magazine with which he was associated (he served six years). Katha Pajariyapong was jailed for two years and eight months under

the Computer Crimes Act for two web-board postings, one of which said the king was close to death and the other implied that Princess Sirindhorn was politically biased (he served 18 months). Jon Ungpakorn and nine associates were sentenced to two years' imprisonment for sedition, illegal assembly and trespass because they had staged a peaceful, but disruptive, protest at the parliamentary building in 2007 (the sentences were never enforced).

The third section (chapters 7-8) covers various trials of former prime minister, Thaksin Shinawatra, and his associates, and considers the extent to which the courts, influenced by the monarchy, conspired in his political demise.

The greatest merit of *Fighting for Virtue* lies in the evidence that emerges from the hundreds of hours McCargo spent in Thai courts and his myriad formal interviews and informal conversations with “judges, prosecutors, police officers, defense lawyers,

defendants and their families, witnesses, academics, journalists, and campaigners” (p. xi). McCargo lets the judges, and everybody else, speak for themselves (and even incriminate themselves), so we are presented with a multifaceted view of the administration of justice in Thailand.

Many Thais, including judges, who have considered the judiciary a talented and even virtuous elite, will be disillusioned by, or perhaps disbelieving of, examples in this book of inflexibility, narrow-mindedness, indifference, detachment, patronage, influence-peddling, corruption, inefficiency and mediocrity. Similarly, those who view judges as a monolithic, conservative cabal, or acting as part of a ‘deep state’, will find these ideas given short shrift in McCargo’s analysis.

This reader formed an impression that, if subjected to an independent capability review, the Thai judiciary would be ranked below the average for Thailand’s public administration. Certainly, the judiciary that emerges from this book is less competent than the Ministry of Public Health, which has been steering Thailand through the Covid-19 pandemic, and not in the league of highly-regarded institutions like the Bank of Thailand and Ministry of Finance.

McCargo pivots his analysis on King Bhumibol’s call in 2006 for judges to solve Thailand’s political problems, which had come to a head because Parliament could not reconvene after the 2006 elections. Key opposition parties, hostile to the electorally popular Thaksin, had boycotted the election, leaving some seats unfilled. The king rebuffed calls that he should exercise his formal constitutional power to replace an incumbent prime minister in extreme circumstances. Instead, he publicly asked Thai judges to find a solution. Ultimately, when the courts were unable to resolve the impasse, army generals, not judges, broke the deadlock (with a coup), but thereafter the judiciary was given greater responsibility to deal with political issues.

The judges, McCargo argues, “failed on all counts: their political interventions were inept and inflammatory, while their punitive treatment of supposed dissidents was unconscionable.” (p. x).

McCargo’s judgment of the judges’ performance is stark. But it was a judgment easily reached. The fates of Somyot Prueksakasemuk, Katha Pajariyapong, and Jon Ungpakorn and his associates in 2012, tell only part of the story. For example, a year earlier, a 64-year old retired driver, Amphon Tangnoppakhun (also known as Akong, or Uncle Kong), was jailed for twenty years for *lèse-majesté* for sending four SMS messages about the queen, even though some evidence against him was unconvincing. Denied bail, and refused permission to seek medical advice outside jail, he died in mid-2012 of stomach cancer, which had been neither diagnosed nor treated in the prison hospital.

Yet, at the same time, McCargo de-demonises the judges. By observing them at work and letting them speak for themselves, McCargo gives the judges personality and variability, which is natural in any large group of people and is easily overlooked in studies that focus narrowly on the institution of the judiciary and not the people who populate it. One emotional and overstretched judge “regularly walked out of the courtroom in mid-testimony and could often then be seen smoking furiously in the judges’ private lobby, apparently trying to calm his nerves” (p. 163).

For historical and cultural reasons, which McCargo explains, Thai judges are

expected (and expect themselves) to uphold morality and virtue, not just the law. In their oath of loyalty, “[j]udges first swear to be loyal to the king, then to create justice for the people and uphold peace in the kingdom.... Justice is not the first objective of the courts: creating justice is sandwiched between serving the monarchy and maintaining order” (p. 60). McCargo shows that judges “are trying to perform extremely difficult roles to the best of their abilities and understandings, which are often unduly limited and narrow” (p. 30).

The limits and narrowness are grounded in a highly competitive entrance examination, which most would-be judges take when they are 25 years old. They carry their numerical ranking from this examination with them for the rest of their career (roughly forty-five years, because the retirement age for judges, unlike other public employees, is 70, not 60). Success in this examination relies largely on memorisation of former decisions of the Supreme Court.

So Thai judges, who are increasingly drawn from the urban middle class, have rarely studied anything other than the law, and their life experience, given their age at recruitment and social origins, is necessarily limited. Their career paths are predictable, even mechanistic, because the system does not offer opportunities or incentives that would typify a meritocracy or foster institutional reform.

In this environment, it is hardly surprising that judges did not welcome the exhortations of the king in 2006 that they should take on the heavy responsibility of trying and judging politicians. “Thai judges have taken on this more overt political role only reluctantly, and often with grave misgivings. With good reason, they fear that any perceived judicialization of politics will lead to greater politicization of the judiciary, and to a loss of public esteem and legitimacy” (p. 104).

In addition to showing that the judges are not demons, McCargo shows that defence lawyers are not angels. Their altruism (they often work pro bono), idealism and thirst for reform are clear. But these advocates for justice and human rights rarely had a plan, or an ability, to draw on either their idealism or their knowledge of the Thai legal system to defend their hapless clients, who faced spurious charges and the prospect of years in jail. Frequently, defence lawyers sermonised on the inadequacies of the constitution and punitive laws to judges, who had neither the power nor inclination to change them. Motivated more by politics (and, sometimes, personal ambition) than the interests of their clients, defence lawyers provoked witnesses and infuriated judges. Some defendants and their families ultimately lamented their choice of lawyer. As a former defendant told McCargo: “Human rights lawyers in Thailand are not very good lawyers: they believe their job is to teach judges about the constitution and people’s rights, rather than to win cases” (p. 160).

Like judges, defence lawyers also failed on all counts: their courtroom interventions were inept and inflammatory, while their indifference to, and even neglect of, their client’s interests was unconscionable.

Among all this human frailty, what happens to justice? And what happens to politics when fallible humans in the judiciary are asked to settle political disputes? In brief, as McCargo shows, a mess happens.

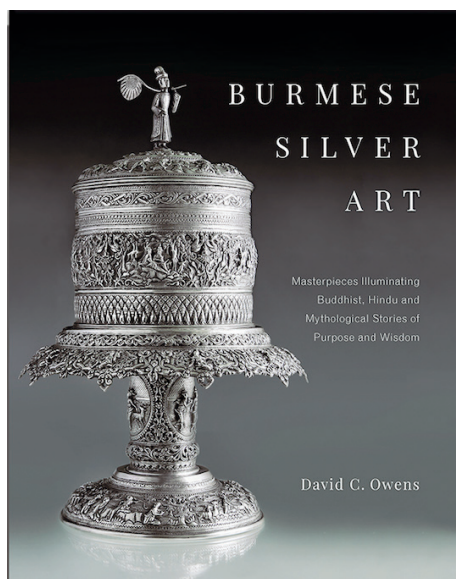
At one level, it is hard to argue with McCargo’s remedy. Countries, including

Thailand, he concludes, “should be run by elected politicians and not by courts. Politicians who perform badly should be removed at the ballot box” (p. 218). Yet, it is equally hard to imagine this remedy appealing soon to Thai power brokers who, depending on one’s perspective, believe or delude themselves that they run the country more ably than elected politicians. They will want to continue to hold a metaphorical, if not a physical, key to any ballot box. Nor would McCargo’s remedy appeal to a decisive proportion of the Thai electorate. The take it or leave it referendum in 2016 on the latest constitution and the unfair election in 2019, for all their flaws, showed that many Thais accepted the idea of a semi-appointed prime minister and military-aligned political parties. Presumably, this part of the electorate would also have welcomed the Constitutional Court’s ban of the progressive Future Forward Party in 2020, the most recent major intervention of the judiciary in politics.

In his preface, McCargo wrote that *Fighting for Virtue* was a difficult book to write (p. x). It is also a difficult book to read, but not because its information and analysis are insufficient or obtuse. The information and ideas are clearly presented. It is a difficult book to read because the treasure trove of material McCargo has assembled suggests that a transition in Thailand from ‘rule by law’ to ‘rule of law’—to use old-fashioned but layman-friendly parlance—is still such a remote prospect. Also, this remoteness seems to owe as much to the shortcomings of advocates of justice and human rights as it does to the protectors of the status quo.

James Wise

Burmese Silver Art: Masterpieces Illuminating Buddhist, Hindu and Mythological Stories of Purpose and Wisdom by David C. Owens. Singapore: Marshall Cavendish Editions, 2020. ISBN: 978-981-4868-88-4 (hardcover). £40.00, US\$50.



How often have you examined an artwork without understanding its real meaning or being able to decipher the pictorial narrative? Silverware in Southeast Asia was typically produced to fulfil an utilitarian function although the decorative patterns and iconography silversmiths inscribed on these works had religious, mythical or royal connotations. Focusing on silverwork created during a “Burmese Silver Age”, as he terms the period 1850-1930, David Owens successfully guides the reader through this maze in his masterful and superbly illustrated study of Burmese silverware, *Burmese Silver Art: Masterpieces Illuminating Buddhist, Hindu and Mythological Stories of Purpose and Wisdom*.

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