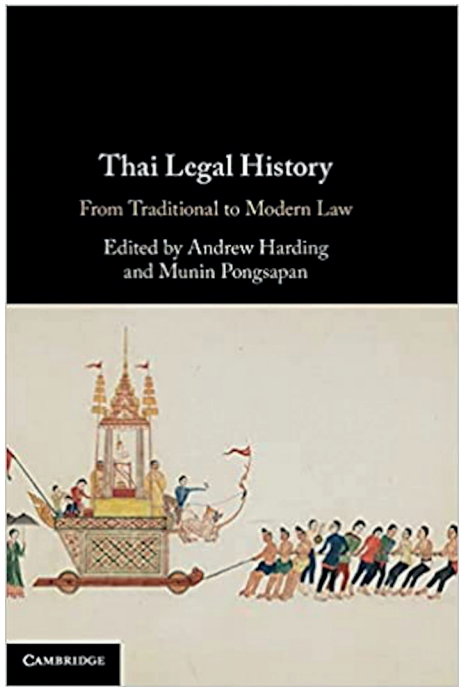
Reviews

Thai Legal History: From Traditional to Modern Law, edited by Andrew Harding and Munin Pongsapan (Cambridge: Cambridge University Press, 2021). ISBN 9781108830874 (hardcover). £85.00.



Thai Legal History is an ambitious edited volume that brings together sixteen chapters of original research on a range of topics related to Thai law by twenty authors from diverse disciplinary backgrounds. The book is organized in three parts: the first contains chapters about traditional law, the second covers civil law, and the third comprises chapters about public, or constitutional, law. These chapters are roughly chronological in that they begin with premodern law codes and practices and end with discussions about more recent legal-political events. There is a useful overview of scholarship on Thai legal history in Chapter 2 and an introduction in Chapter 1 that concisely lays out the background and organization of the book.

The articles are generally well-researched and informative. They cover topics from the origins of the Thammasat tradition to the politics of the judiciary. Some of the articles, particularly those in the second part of the book, may read as rather technical in that they look at specific law codes. This reflects the disciplinary backgrounds of the authors as legal scholars. Other chapters might be seen as less directly related to legal history in that they discuss recent politics. As Andrew Harding notes in his introduction, the book might be "as much about law and society as it is about legal history" (p. 3). As a result of the breadth of topics and approaches, the book is likely to find a wider readership than a more narrowly conceived work.

As a whole, the volume provides a timely new text on Thai legal history, a topic on which there has been surprisingly little published in English. (Perhaps the most notable recent contribution is *The Palace Law of Ayutthaya and The Thammasat: Law and*

Kingship in Siam by Chris Baker and Pasuk Phongpaichit (2016).) *Thai Legal History* also provides a venue for newer scholars working in the areas of legal history, law and society, and political science to present their work. As such, the book is a welcome contribution to Thailand studies.

The diversity of disciplines and range of conceptual approaches the book adopts is one of its strengths. There is something in the volume for everyone. More than this, though, the mix of theory and methods create several potentially constructive tensions when the reader brings the separate chapters into dialogue. These tensions are particularly salient if the volume is meant to serve as the foundation for future projects, such as a transdisciplinary journal on Thai legal history or law and society in Thailand.

The first tension is related to the historical continuity of the law. On the side of continuity, some authors posit the existence of unchanging concepts that connect centuries of Thai legal history. Khemthong Tonsakulrungruang argues, for example, that the notion of *dhamma* "represents a common understanding of fairness and natural justice that is shared by traditional and modern legal thinking" (p. 65). He shows this by noting that the *dhammasastra* (or *Thammasat*), the section of the law that appears at the beginning of the Three Seals Code of 1805, has been in existence for "over a millennium" (p. 69) and continues to animate legal practice today. The notion that the *Thammasat* has been a constant over time and across geographic locations stems from arguments first proposed by scholars like Robert Lingat and Prince Dhani Nivat, who argue that the *Thammasat* is the source of premodern Thai law.

In reading the different articles together, one begins to wonder if perhaps *dhamma*, which can refer to an abstract sense of justice, has been as consistent as Lingat and Dhani believe. The contribution by Baker and Pasuk, for example, looks at the historical record and finds that the *Thammasat* was likely inserted into the Three Seals Code during its compilation in 1805. There is no real evidence of the *Thammasat* being a key part of law in the central region before then. They also find that the king during the Ayutthaya period was a legislator, who made law rather than merely an upholder of a timeless code. One might counter this thesis by stating that, despite the recency of the Thammasat in central Thai law, "what matters is the idea of *dhamma* as law" (p. 75) is constant.

Other chapters show that even when a concept, specific term, or institution are present over different time periods, the ideas behind them and the society of which they are a part change. For example, Eugenie Merieau shows that lese-majesty laws, while playing a part in political life across several decades, take on distinctive forms and levels of importance in different eras. The current iteration of the concept, she argues, became prominent in the Ninth Reign, and now expresses itself primarily as law in Article 112 of new Penal Code (p. 83). Legal institutions might also remain unchanged in form while change takes place within them. Duncan McCargo's description of Praman Chansue "polarising the judiciary from within" (p. 264) is an example of this, even if the change in Praman's case might be viewed in a negative light.

Another example of the tension between continuity and change can be found in David Engel's fascinating chapter about the ritual blood curse that was deployed in 2010 by Red Shirt protestors at Government House in Bangkok. Engel suggests that the ritual is part of a long tradition of curses common in Lanna. Interestingly, Scott

Stonington writes in his recently published monograph, *Spirit Ambulance*, about end-of-life practices in northern Thailand, that informants told him there was "no equivalent in Northern Thailand" for this ritual even though the "principles made sense".[1] What might the recognition of "principles" over concrete action say about the nature of continuity and change in legal history?

A second productive tension relates to how one should conceptualize the relationship between law and society. The introduction notes that the collected chapters evidence a "Savigny-like assumption" that there is an "organic connection of law with the essence and character of a people" (p. 1). While this may be true, one might also find in juxtaposing some of the arguments of the book that the connection may not be straightforward. Munin Pongsapan notes that the drafting of the civil and commercial code based on German and Japanese codes was "easy", a term proposed by Alan Watson to think about legal transplants, in that the drafters did not require a systematic knowledge of law (p. 125). Instead, they focused on "linguistic" aspects of the German and Japanese source codes, editing passages that they felt were too long and choosing to adopt codes that were seen as more articulate than others (p. 129). This seems to imply that modern law is in some ways a formalistic overlay over a society rather than something that emerges from it.

The law might also, in some instances, be more instrumental than reflective of a society's essence. Lese-majesty laws are obvious examples, though there are other aspects of legal culture that work similarly to advantage one group of people over others. Rawin Leelapatana argues, for example, that the concept of Thainess has informed the drafting of law codes since 1932. This concept, rather than being some neutral set of cultural traits with a long history is instead an ideological weapon meant to help consolidate the power of the military and the aristocracy (p. 219).

The third tension stems from the idea that questions about Thai law today can be answered through historical analysis. Harding writes that for "any given legal issue the present cannot be properly understood without reference to the past, and both cannot be understood without references to society, culture and to other factors" (p. 3). Furthermore, the "contemporary condition of law in Thailand is incomprehensible without an understanding of the legal history" (p. 12). This is true, for example, when Munin points out that the focus copying and language by drafters of the civil and commercial code deprived them of the chance to discuss the theoretical basis of legal provisions (p. 131). If the draftsmen had not blindly copied foreign codes or knew that the Japanese civil code was not a direct copy of the German code, they might have prevented a number of the theoretical issues that legal practitioners grapple with today (p. 137). In this case, the connection between present-day legal issues with the past is clear.

Tyrell Haberkorn's piece, in which she analyses specific clauses that grant amnesty after coups, is another example of how history can benefit the study of contemporary legal issues. She illustrates how successive military regimes expanded the groups of

[1] Scott Stonington, *The Spirit Ambulance: Choreographing the End of Life in Thailand* (Oakland: University of California Press, 2020), p. 33.

people and activities covered. Her fine-grained analysis allows the reader to see legal change in concrete terms and she can develop an analytical concept, "impunity" (p. 265), from archival material rather than having to impose one arbitrarily. Similarly, Kanaphon Chanhom, in her chapter on the drafting of the criminal code, cites a letter from Prince Ratburi about the difficulty of codification. Prince Ratburi thought the drafting of the criminal code should not go forward because "codification was very difficult and the process spent a lot of time and budget" (p. 143). This contrasts with Alan Watson's idea about "easy" transplants, as presented by Munin in his discussion of the civil and commercial codes. The power of the historical method is thus its empirical rigour, which allows for both theory building and the evaluation of general social scientific concepts.

When the historical approach simply means including an abbreviated summary of events from the past derived from secondary sources, however, there is a danger that the past will be treated as static or that existing narratives about the past will be repeated, even when wrong. In these cases, history becomes a prefabricated 'context' rather than a subject for enquiry. Analytical styles of some social scientists that tend towards generalisations can also be problematic in that in historical specificity is lost in efforts to create elegant models or new analytical labels when they might not be necessary to reveal insight into legal phenomena.

The tensions outlined here are not meant to be negative critiques of the book or of individual chapters. They are raised to indicate how the trans-disciplinarity of the project can be productive in forcing a discussion between different disciplines about their methods, concepts and assumptions for analysing the relationship between law and society. In this sense, the book can help advance the study of Thai legal history and is thus a noteworthy contribution to the field of Thai studies.

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