THAI LEGAL HISTORY

This is the first book to provide a broad coverage of Thai legal history in the English language. It deals with pre-modern law, the civil law reforms of the late nineteenth and early twentieth centuries, and the constitutional developments post-1932. It reveals outstanding scholarship by both Thai and international scholars, and will be of interest to anyone interested in Thailand and its history, providing an indispensable introduction to Thai law and the legal system. The civil law reforms are a notable focus of the book, which provides material of interest to comparative lawyers, especially those interested in the diffusion of the civil law.

Andrew Harding is a leading scholar in Asian legal studies, who has worked extensively on Thai and Southeast Asian constitutional law. He is co-author of *The Constitutional System of Thailand*: A *Contextual Analysis* (2011), and is co-founding-editor of the series of 'Constitutional Systems of the World' (Hart/Bloomsbury). He is a former Head of the Law School, SOAS, University of London, former Director of the Centre for Asian Legal Studies at the National University of Singapore, former Director of the Asian Law Institute, and former Chief Editor of the Asian Journal of Comparative Law. His latest book is *Constitutional Courts in Asia* (2018).

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This painted manuscript shows a procession in an annual festival called 'Chak Pra' held in the Southern part of Thailand. At first glance, the painting literally shows a chariot carrying the statue of Buddha with several groups of participants. In particular, the Chariot is pulled by indigenous peoples, while very few of them were actually near the Buddha on the chariot. Women and a child followed behind the chariot. A Khaek (literally means guest but commonly refers to Muslim, Indian subcontinent, and Indo-Malayan) and a Chinese hawker join as an observer within the procession. Also, this could be interpreted as the metaphors of hierarchy and other within Siamese/ Thai society under the realm of Hindu-Buddhist cosmological order.

Thai Legal History

FROM TRADITIONAL TO MODERN LAW

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Preface

The main motivating factor in developing this book project was a realisation that there was little material in English on Thai legal history as such, but that, on the other hand, there was amongst Thai scholars a discernible enthusiasm for the subject as well as considerable achievement in terms of published work in the Thai language. A brief review of the literature in the English, Thai, and French languages appears before Chapter 1. Unlike the situation in most other jurisdictions, law schools in Thailand generally offer a compulsory course on legal history, and Thai lawyers and legal scholars seem to be generally very well versed in the subject, as well as very keen to talk and write about it. In most cases it seemed as though a concern with contemporary issues had led these scholars, including those contributing to this book, in an historical direction. This is hardly surprising when these issues would usually require an understanding of the reception of civil law in Siam, and/or an understanding of the underlying legal culture as the background on which the civil law was painted, so to speak. These matters are indeed extensively discussed in every chapter of this book.

The editors were aware that a number of younger scholars had completed a doctoral thesis in some aspect of Thai legal history: our youngest contributor was at the time of writing twenty-seven years old, and some others had recently completed a doctorate or were in the course of doing so. In addition, although Thai legal history has not attracted a great deal of legal scholarship amongst international scholars, a fair number of such scholars from other disciplines such as history, anthropology, and political science, as well as law, have written very insightfully on topics that form part of this subject or have distinct bearing upon it.

Accordingly, we were both surprised and pleased that our proposal for this book encountered more or less instant and enthusiastic commitment from so many scholars of both varieties, almost indeed from everyone who was invited; so much so that our viability benchmark of twelve chapters was rapidly outstripped by both responses and excellent suggestions as to other possible contributors. We are able to offer as a result no less than seventeen chapters in this book, covering most periods of Thai legal history and most legal topics. The book does not seek to be a textbook on the subject. Nor does it seek to be completely comprehensive in coverage or to provide a running narrative of events and issues. Rather it presents a set of reflective chapters that also, as it happens, between them set out most of the relevant historical/legal facts. We consider that taken together these chapters offer, in spite of our disavowal of comprehensiveness, a fairly full picture of Thai legal history.

This means that this book is the first in English (as is mentioned above, there are several in Thai) to offer a reasonably comprehensive overview and coverage of the topic. This is not to take away anything from previous publications that have contributed signally to our

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Preface

understanding of the subject. The literature is discussed further in outline in a Note following Chapter 1.

The truly fascinating story of legal development in Siam/Thailand from pre-modern times through modernisation and its many consequences up to the present day, well developed and widely understood in the Thai imagination, has therefore only been partially told in English or to an international audience. Accordingly, the present collection of essays attempts to draw on the considerable expertise and current research of both Thai and international scholars to provide both an overview and some in-depth studies of Thai legal history, both pre-modern and modern, from the Ayutthaya period through the Bangkok encounters with the West and the nineteenth to twentieth century reforms, up to the present century. The story also covers many, indeed almost all, major areas of both private and public law, and addresses a very wide range of both themes and perspectives.

Most of the chapters were discussed in draft form at a symposium at Thammasat University's Faculty of Law on 27 and 28 September 2019. This event provided an opportunity to discuss the drafts and suggest improvements as well as fuller integration of the content and opening to different perspectives and issues raised in the discussion. There is nonetheless, we feel, plenty of room for further research on the topics dealt with as well as the topics that are not dealt with, or not dealt with exhaustively, in this volume. There is no doubt, as we discussed at the symposium, much more work to be done, but we hope that this book will be a natural starting point for those who carry this work forward in the future.

In setting out and discussing this history in both length and depth, we hope that this book will add to understanding not just of legal history but of the legal present. It is striking that many chapters in the book take the legal history more or less up to date, and view legal history through the lens of current issues in Thai law. Accordingly, the division of the chapters into three groups should be taken in the light of this fact. We believe therefore that this book will add considerable depth not just to the understanding of Thai legal history, but to contemporary debates and discourses around legality and law reform in Thailand.

For the sake of clarity and authenticity, we refer to pre-1939 Thailand and Thai as 'Siam' and 'Siamese', but otherwise as Thailand from 1939 onwards. Thai terms are set out in a Glossary and have been standardised spelling-wise across the various chapters.

Finally, we wish to thank the contributors for their support, hard work, suggestions, and enthusiasm for the project; Joe Ng and Cambridge University Press for their support and their legendary professionalism in publishing the book; the staff of Thammasat University for their assistance with the symposium; William Roth, Adam Reekie, and Lasse Schuldt of Thammasat University for their sterling help with the work of subediting and formatting, and in one or two cases rewriting; Rawin Leelapatana of Chulalongkorn University for his help with the Chronology and the Glossary; and the Faculty of Law, Thammasat University, for funding the symposium and providing student assistance. We also thank the *Asian Journal of Law and Society* for granting permission to reproduce, with some changes, David Engel's article on the Blood Curse Ritual.

Chronology

12th century	– emergence of the Tai Kingdom
13th century	– appearance of the first copy of <i>Dhammasastra</i>
1238	– Sukhothai Kingdom
1351 to 1767	– Ayutthaya Kingdom
<i>c</i> .1400	– idea of <i>Thammasat</i> was known in Siam
1651	- creation of the Manusara dhammasattha
1687	- Treaty of Commerce between France and Siam
1767	– fall of Ayutthaya
1767 to 1782	– Thonburi Kingdom
1782 to present	– Bangkok (<i>Rattanakosin</i>) Kingdom
1789	- completion of conquest of four Muslim provinces by the Siamese
1805	– promulgation of the Three Seals Code by King Rama I
1826	– Burney Treaty of Friendship and Commerce between Siam and Great
	Britain
1851 to 1868	– King Mongkut (King Rama IV)
1855	– Bowring (Anglo-Siamese) Treaty
1868 to 1910	– King Chulalongkorn (King Rama V)
1874 and 1883	- Treaties regarding jurisdiction over British subjects
1892	- Gustave Rolin-Jaequemyns recruited by the Siamese government to
	reform the Thai legal system
1894	- judicial function assigned to the Court of Justice under the Ministry of
	Justice
1896	 – establishment of the Judicial Reform Committee
1897	 – establishment of the Law School, Ministry of Justice
1898	 – conclusion of the Japanese-Siamese Protocol
1901	- commencement of individual land ownership
1907	- Treaty with France concerning jurisdiction over French-Asiatic subjects
1908	- enactment of the first Penal Code
	 beginning of function of the Supreme Court
1909	- extension of International Court's jurisdiction to the whole country
1910 to 1923	– King Vajiravudh (King Rama VI)
1912	 Palace Revolt – Thai-ness made state ideology

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> Chronology xiv - King Prajadhipok (King Rama VII) 1925 to 1935 - promulgation of the Civil and Commercial Code 1925 - Revolution on 24 June establishing constitutional monarchy 1932 - promulgation of first Interim Constitution on 27 June - promulgation of first Permanent Constitution on 10 December - Robert Lingat's first edition of History of Thai Law published - Law School of the Ministry of Justice transferred to Chulalongkorn 1933 University - promulgation of the Council of State Act 1933 - Law School of the Ministry of Justice was transferred to Thammasat 1934 University - King Ananda (King Rama VIII) 1935 to 1946 - completion of the Civil and Commercial Code (Book V) and the 1935 enactment of the Civil and Criminal Procedure Codes - abdication of King Prajadhipok - final termination of unequal treaties - Siam becomes Thailand 1939 - King Ananda mysteriously found dead on 9 June 1946 1946 to 2016 - King Bhumibol (King Rama IX) - coup restoring Thai-ness; promulgation of the 1947 Constitution aimed 1947 at restoring royal hegemony - promulgation of the current Criminal Code 1956 - coup staged by Field Marshal Sarit Thanarat, overthrowing Field 1957 Marshal Plaek Phibunsongkhram, in September - further coup staged by Field Marshal Sarit Thanarat, restoring royal 1958 hegemony, in October - promulgation of Constitutional Charter of 1959 1959 - '14th October uprising', popular uprising overthrowing the government 1973 led by Field Marshal Thanom Kittikachorn 1976 - '6th October massacre' at Thammasat University, and coup on 6 October - promulgation of 1978 Constitution establishing semi-liberal democracy 1978 on 22 December - establishment of the Judicial Service of the Courts of Justice - coup overthrowing General Chatchai Choonhavan in February 1991 - August 1991 to September 1992: judicial crisis - promulgation of the Act amending the First book of the Civil and 1992 Commercial Code on 31 March - 'Black May' incident - promulgation of the 1997 Constitution on 11 October 1997 - establishment of the Constitutional Court on 11 October - Thaksin Shinawatra becomes Prime Minister on 9 February 2001 - Administrative Court begins to function on 9 March - rally of PAD and coup overthrowing Thaksin Shinwatra on 2006 19 September - promulgation of the 2007 Constitution on 24 August 2007

Chronology

- PAD protest 2008 - Samak Sundaravej and Somchai Wongsawat ousted as Prime Ministers by Constitutional Court - Abhisit Vejjajiva becomes Prime Minister - 'Bloody Songkran' incident, UDD protest 2009 - 'Savage May' incident', UDD protest 2010 - proposal for Amnesty Bill; protest by the PDRC 2013 - coup staged by General Prayuth Chan-ocha ousting Prime Minister 2014 Yingluck Shinawatra - promulgation of 2014 Interim Constitution, allowing the Prime Minister to wield emergency powers under Section 44, on 22 July 2016 to present – King Vajiralongkorn (King Rama X) - coming into force of 2017 Constitution on Chakri day (6 April) 2017

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