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).

Munin Pongsapan is Associate Professor and Dean of the Law Faculty, Thammasat University, where he teaches contract law, the law of obligations, civil law systems, and legal history. He received his LLB from Thammasat University, LLM from the University of Cambridge, and PhD in law from the University of Edinburgh. He is a contributor of Volumes I, III, IV, and V of the ‘Studies in the Contract Laws of Asia’ project.
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.
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Contributors

Apinop Atipiboonsin is a lecturer at the Faculty of Law, Thammasat University. His primary areas of research include comparative constitutional law, administrative law, and family law. He graduated with an LLM from Columbia Law School, New York, as a Harlan Fiske Stone Scholar in 2016, and is currently an SJD candidate at the University of Virginia School of Law.

Chris Baker and Pasuk Phongpaichit are leading scholars in Thai studies. They met at the University of Cambridge in the late 1970s and have been resident in Thailand since 1980. Pasuk is Professor of Economics at Chulalongkorn University. Together they have written on Thailand’s political economy, history, and literature including *A History of Ayutthaya: Siam in the Early Modern World* (Cambridge University Press, 2017), *The Palace Law of Ayutthaya and the Thammasat: Law and Kingship in Siam* (Cornell University, 2016), and *Unequal Thailand: Aspects of Income, Wealth and Power* (NUS Press, 2015). In 2017 they were jointly awarded the Fukuoka Grand Prize.

David Engel is SUNY Distinguished Service Professor Emeritus at the State University of New York, Buffalo. He is a leading scholar on Thai law and law and society studies, and is co-author with his Thai wife Jaruwan Engel of *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford University Press, 2010) (Recipient of Jacob Book Prize Honorable Mention); *Code and Custom in a Thai Provincial Court: The Interaction of Formal and Informal Systems of Justice* (University of Arizona Press, Association for Asian Studies Monograph Series, 1978); and *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (University of Michigan Center for South and Southeast Asian Studies, 1975).

Henning Glaser is the Founding Director of the German-Southeast Asian Center of Excellence for Public Policy and Good Governance, an academic institute and provider of training and consultancy services at Thammasat University’s Faculty of Law. There, he has taught public and comparative law since 2007. He also is the Executive Director of the Asian Governance Foundation and advises governmental and non-governmental institutions on various issues of constitutional politics. His research focus includes the historical foundations and deep structure of constitutional law and politics in Asia.

Tyrell Haberkorn is an associate professor of Southeast Asian Studies in the Department of Asian Languages and Cultures at the University of Wisconsin-Madison. Her work is primarily focused on state violence and dissident cultural politics in Thailand. She is the author of *Revolution Interrupted: Farmers, Students, Law and Violence in Northern Thailand* (University of Wisconsin Press, 2011), and *In Plain Sight: Impunity and Human Rights*
List of Contributors

Thailand (University of Wisconsin Press, 2018), a new history of post-absolutist Thailand written through the lens of impunity.

Andrew Harding is a leading scholar in Asian legal studies, who has worked extensively on Thai and South East Asian constitutional law. He is co-author of The Constitutional System of Thailand: A Contextual Analysis (Hart, 2011), and is co-founding editor of the series of which that book is part, ‘Constitutional Systems of the World’, with 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 (Cambridge University Press, 2018).

Kanaphon Chanhom is associate professor of law at Chulalongkorn University and an assistant to the University President. He earned his PhD degree from the University of Washington in 2010. His areas of interest are criminal law and legal history. He has written several books on criminal law and the history of criminal law in Thailand.

Khemthong tonsakulrungruang is an early career scholar at Chulalongkorn University’s Law Faculty, who recently completed his doctorate at Bristol University. He has published widely on constitutional law in Thailand, especially on the Constitutional Court. His doctoral thesis is on the influence of Buddhism on the Thai legal system.

Kongsatja Suwanapech is an early career scholar teaching at Thammasat University’s Faculty of Law. He has a LLM degree from Edinburgh University and has research interests in the history of the Ayutthaya Period and modern Thai law.

Krisdakorn Wongwuthikun is Assistant Professor, Graduate School of Law, National Institute of Development and Administration (NIDA); he has an LLB from Thammasat University; an LLM in Global Environmental and Climate Change from the University of Edinburgh; and a PhD in Law from the University of Dundee.

Peter Leyland is Professor of Public Law at SOAS, University of London, and Emeritus Professor of London Metropolitan University. His research interests focus on UK and Thai public law and comparative public law, with a particular focus on devolution. Publications include: volumes on the Constitution of the United Kingdom (3rd ed., 2016) and the Constitutional System of Thailand (with Andrew Harding, 2011). Professor Leyland is joint founding editor of Hart series ‘Constitutional Systems of the World’.

Duncan McCargo is a leading scholar in Thai studies. Currently he is Director of the Nordic Institute for Asian Studies and Professor of political science at the University of Copenhagen as well as Visiting Professor of political science at Columbia University. He has published widely on the politics of Thailand, including on the Thai judiciary and legal profession. McCargo’s book, Fighting for Virtue: Justice and Politics in Thailand, was published by Cornell University Press in 2019. His latest book (with Anyarat Chattharakul) is Future Forward: The Rise and Fall of a Thai Political Party (NIAS Press 2020).

Eugénie Mérieau studied Law, Political Science, and Oriental Languages and Civilizations at the Universities of Sorbonne, Sciences Po, and the National Institute for Oriental Languages and Civilizations in Paris. In 2017, she completed her PhD on ‘Thai Constitutionalism and Legal Transplants: a study of Kingship’. She has held various teaching and research positions, including researcher for the King Prajadhipok’s Institute under the
Thai Parliament, and consultant for the Asia-Pacific Office of the International Commission of Jurists. She is currently a postdoctoral fellow in Law at the National University of Singapore.

**Munin Pongsapan** is Associate Professor and Dean of the Law Faculty, Thammasat University, where he teaches contract law, the law of obligations, civil law systems, and legal history. He received his LLB from Thammasat University, LLM from the University of Cambridge, and PhD in law from the University of Edinburgh. He is a contributor of Volumes I, III, IV, and V of the ‘Studies in the Contract Laws of Asia’ project published by Oxford University Press.

**Naporn Popattanachai** is Assistant Professor, Faculty of Law, Thammasat University. He has an LLB from Thammasat University; an LLM in European Legal Studies from the University of Bristol; an LLM in Environmental Law and Policy from University College London; and a PhD in Law, Nottingham Law School, Nottingham Trent University.

**Narun Popattanachai** is a lawyer at the Office of the Council of State, Thailand. His research interests span capital market regulation, securities regulation, and corporate governance. He holds a doctorate in law from Columbia University. He obtained his LLB and LLM degrees from University College London and a second LLM from Columbia. Since 2013 he has been a member of the New York Bar Association.

**Rawin Leelapatana** recently completed his doctorate at Bristol University on the history of Thai constitutionalism, and teaches at Chulalongkorn University, Faculty of Law. He has published a number of articles on constitutional law, including a co-authored article with Andrew Harding, published in the *Chinese Journal of Comparative Law*.

**Adam Reekie** obtained an MA from Queen’s College, Oxford and is a solicitor (England & Wales, non-practising); he obtained an LLM from Thammasat University, where he now lectures in law.

**Surutchada Reekie** obtained her LLB, LLM, and PhD from University College London, and is Lecturer in the Faculty of Law, Chulalongkorn University. Her research is mainly on comparative private law, but she has worked on Thai tort law as well as legal history.
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
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

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>12th century</td>
<td>emergence of the Tai Kingdom</td>
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<td>13th century</td>
<td>appearance of the first copy of <em>Dhammasastra</em></td>
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<td>1238</td>
<td>Sukhothai Kingdom</td>
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<tr>
<td>1351 to 1767</td>
<td>Ayutthaya Kingdom</td>
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<tr>
<td>c.1400</td>
<td>idea of <em>Thammasat</em> was known in Siam</td>
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<tr>
<td>1651</td>
<td>creation of the <em>Manusara dhammasattha</em></td>
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<td>1687</td>
<td>Treaty of Commerce between France and Siam</td>
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<td>1767</td>
<td>fall of Ayutthaya</td>
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<tr>
<td>1767 to 1782</td>
<td>Thonburi Kingdom</td>
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<tr>
<td>1782 to present</td>
<td>Bangkok (<em>Rattanakosin</em>) Kingdom</td>
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<tr>
<td>1789</td>
<td>completion of conquest of four Muslim provinces by the Siamese</td>
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<tr>
<td>1805</td>
<td>promulgation of the Three Seals Code by King Rama I</td>
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<tr>
<td>1826</td>
<td>Burney Treaty of Friendship and Commerce between Siam and Great Britain</td>
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<tr>
<td>1851 to 1868</td>
<td>King Mongkut (King Rama IV)</td>
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<tr>
<td>1855</td>
<td>Bowring (Anglo-Siamese) Treaty</td>
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<tr>
<td>1868 to 1910</td>
<td>King Chulalongkorn (King Rama V)</td>
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<tr>
<td>1874 and 1883</td>
<td>Treaties regarding jurisdiction over British subjects</td>
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<tr>
<td>1892</td>
<td>Gustave Rolin-Jaquemyns recruited by the Siamese government to reform the Thai legal system</td>
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<tr>
<td>1894</td>
<td>judicial function assigned to the Court of Justice under the Ministry of Justice</td>
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<td>1896</td>
<td>establishment of the Judicial Reform Committee</td>
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<td>1897</td>
<td>establishment of the Law School, Ministry of Justice</td>
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<td>1898</td>
<td>conclusion of the Japanese-Siamese Protocol</td>
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<tr>
<td>1901</td>
<td>commencement of individual land ownership</td>
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<td>1907</td>
<td>Treaty with France concerning jurisdiction over French-Asiatic subjects</td>
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<tr>
<td>1908</td>
<td>enactment of the first Penal Code</td>
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<td>1909</td>
<td>beginning of function of the Supreme Court</td>
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<tr>
<td>1910 to 1923</td>
<td>King Vajiravudh (King Rama VI)</td>
</tr>
<tr>
<td>1912</td>
<td>Palace Revolt – Thai-ness made state ideology</td>
</tr>
</tbody>
</table>
1925 to 1935 – King Prajadhipok (King Rama VII)
1925 – promulgation of the Civil and Commercial Code
1932 – Revolution on 24 June establishing constitutional monarchy
1932 – promulgation of first Interim Constitution on 27 June
1932 – promulgation of first Permanent Constitution on 10 December
1933 – Robert Lingat’s first edition of *History of Thai Law* published
1933 – Law School of the Ministry of Justice transferred to Chulalongkorn University
1934 – Law School of the Ministry of Justice was transferred to Thammasat University
1935 to 1946 – King Ananda (King Rama VIII)
1935 – completion of the Civil and Commercial Code (Book V) and the enactment of the Civil and Criminal Procedure Codes
1935 – abdication of King Prajadhipok
1939 – final termination of unequal treaties – Siam becomes Thailand
1946 – King Ananda mysteriously found dead on 9 June
1946 to 2016 – King Bhumibol (King Rama IX)
1947 – coup restoring Thai-ness; promulgation of the 1947 Constitution aimed at restoring royal hegemony
1956 – promulgation of the current Criminal Code
1957 – coup staged by Field Marshal Sarit Thanarat, overthrowing Field Marshal Plaek Phibunsongkhram, in September
1958 – further coup staged by Field Marshal Sarit Thanarat, restoring royal hegemony, in October
1959 – promulgation of Constitutional Charter of 1959
1973 – ‘14th October uprising’, popular uprising overthrowing the government led by Field Marshal Thanom Kittikachorn
1976 – ‘6th October massacre’ at Thammasat University, and coup on 6 October
1978 – promulgation of 1978 Constitution establishing semi-liberal democracy on 22 December
1991 – coup overthrowing General Chatchai Choonhavan in February
1997 – promulgation of the 1997 Constitution on 11 October
1997 – establishment of the Constitutional Court on 11 October
2001 – Thaksin Shinawatra becomes Prime Minister on 9 February
2006 – Administrative Court begins to function on 9 March
2007 – promulgation of the 2007 Constitution on 24 August
Chronology

2008
– PAD protest
– Samak Sundaravej and Somchai Wongsawat ousted as Prime Ministers by Constitutional Court – Abhisit Vejjajiva becomes Prime Minister

2009
– ‘Bloody Songkran’ incident, UDD protest

2010
– ‘Savage May’ incident, UDD protest

2013
– proposal for Amnesty Bill; protest by the PDRC

2014
– coup staged by General Prayuth Chan-ocha ousting Prime Minister 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)

2017
– coming into force of 2017 Constitution on Chakri day (6 April)
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Article 956

ENGLAND

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Article 4
Seditious Libel Act

FRANCE

Civil Code (Code Civil) of 1804
Draft Penal Code of 1934
Penal Code of 1810
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Article 2
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Article 5
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Commercial Agreement, Supplementary to the Treaty between Great Britain and Siam (1855)
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Article 19
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Rio Declaration on Environment and Development 1992
Principle 15
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Treaty between King of Siam and Great Britain 1826 (Burney Treaty)
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