

Book Review

From Extraterritoriality to Equality: Thailand's Foreign Relations 1855–1939

Owart Suthiwartnarueput
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Reviewed by *Papawadee Tanodomdej* *

For them, English law stood near “the summit of perfection.” . . . “Laws which are fit for a free country,” they reasoned, were “for that very reason, incompetent for a country where the government is arbitrary and despotical”—a description that matched a growing share of British’s empire.¹

The quote invites us to examine the epistemology of extraterritoriality and its deep connection to Siam’s unique escape from colonialism in Southeast Asia. Scholars of Thai legal history largely consider extraterritoriality as binary: As argued by Boonchalerm-viphas, on the one hand, extraterritoriality was thought of as a threatening calamity for Siam’s independence.² Siam lost its territorial jurisdiction over legal disputes involving foreign subjects, and its fiscal autonomy. On the other hand, it propelled Siam to adopt a modern and well-developed legal system for the modernisation of Siam.³ The paradoxical narrative corresponds to the imperial influence of British law that led to Siam’s disputed status as either survivor of colonialism or semi-colonised polity.

From Extraterritoriality to Equality: Thailand's Foreign Relations 1855–1939 by Owart Suthiwartnarueput tells us the history of international relations between Siam and Britain, France, the United States, Japan and other states, using

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¹ Jeremy Bentham, “Place and Time” [1782], Stephen G. Engelmann (ed), *Selected Writings* (Yale University Press 2011), 153–54, 179–80 as cited by Chistian R. Burset, *An Empire of Laws: Legal Pluralism in British Colonial Policy* (Yale University Press 2023) 1 <<https://doi.org/10.12987/yale/9780300253238.001.0001>>.

² Sawang Boonchalerm-viphas, *The Thai Legal History* (19th edn, Winyuchon 2020) 168–72.

³ *ibid*.

extraterritoriality as a backdrop. The book originates from Ambassador Owart's doctoral thesis that he submitted to The Fletcher School of Law and Diplomacy of Tufts University in 1956. With his permission, the International Studies Center (ISC), a knowledge management unit of the Thai Ministry of Foreign Affairs, published the digital book with few editorial changes in 2021.

Written more than 65 years ago, the thesis predated contemporary discussions about the complex intertwinements between extraterritoriality and the debatable status of Siam as an independent nation. Extraterritoriality limited the territorial jurisdiction of Siam, yet Siam's territory had not been defined when the first full-scale extraterritoriality treaty, the Bowring Treaty of 1855, was concluded between Great Britain and Siam. This intricate situation reflects the different paradigms of statehood and jurisdiction entertained by Siam and European imperialists. As European states considered Siam an uncivilised or semi-civilised country,⁴ imposing extraterritoriality on it through treaty clauses was not believed to be an encroachment on Siamese independence: Equality of sovereignty applied only among civilised nations.

Ambassador Owart submits that extraterritoriality originated from divergence in laws, customs and social habits between nations of European civilisation and the rest of the world (p. 92). While the book leaves the civilising mission of European powers largely unquestioned, any retrospect criticism in this respect would certainly be misguided when taking into account that, only in the meantime, critical studies of Thai history began to apply the theory of modernity to reconsider the making of Siamese nationhood.⁵ The emergence of critical Thai historical studies has indeed only been possible based on historical records, such as those referenced in this book that open new opportunities for critical approaches. *From Extraterritoriality to Equality* therefore serves as a cornerstone for scholars of later generations to explore the imperialist encounters of Siam and appraise the relevance of such encounter for Thailand today.

The book begins with historical sketches of Siam since the Sukhothai period, allowing general audiences to familiarise themselves with the history of Siam. It then draws attention to the transient extraterritoriality of the 17th century, exemplified by a limited form of extraterritoriality during the Ayutthaya period (pp. 21–41). The Siamese first encounter with Western powers was caused by European urgency to expand international trade and religion into non-European soil. Ambassador Owart uses the term “transient” to characterise the limited and temporary forms of extraterritorial privileges stipulated by the Treaty and Alliance of Peace concluded with the Dutch East India Company in 1664, as well as the Religious Treaty of 1685 and the Commercial Treaty of 1687 with France. While the Treaty with the Dutch East

⁴ Jeshuran Chandran, “British Foreign Policy and the Extraterritorial Question in Siam 1891–1900” (1965) 38(2) *Journal of the Malaysian Branch of the Royal Asiatic Society* 290, 308.

⁵ See Thongchai Winichakul, “The Quest for ‘Siwiliat’: A Geographical Discourse of Civilisational Thinking in the Late Nineteenth and Early Twentieth-Century Siam” (2000) 59(3) *Journal of Asian Studies* 528 <<https://doi.org/10.1017/S0021911800014327>>; Hong Lysa, “‘Stranger Within the Gates’: Knowing Semi-Colonial Siam as Extraterritorials” (2004) 38(2) *Modern Asian Studies* 327 <<https://doi.org/10.1017/S0026749X0400109X>>.

India Company provided that grave crimes (such as murder) committed by the Company's Dutch employees were to be settled by the Company chief under Dutch law, the Commercial Treaty with France amplified the scope of extraterritorial privileges also to employees of the French Company who were not of French nationality (p. 37). The death of King Narai and the revolution of the late Ayutthaya period interrupted the extraterritorial privileges enjoyed by the respective Company employees. Despite the temporary and confined nature of extraterritoriality in Ayutthaya, it provides a glimpse of the injustices faced by Siamese subjects in disputes with foreign subjects at consular courts, which is further elaborated in Chapter 3.

Chapter 1 provides a historical description of extraterritoriality in Siam in chronological order. It begins with the Burney Treaty that Great Britain and Siam concluded in 1826, allowing readers to grasp the circumstances that led to the conclusion of the 1855 Bowring Treaty. The historical records of Captain Henry Burney's role in the negotiation with Siam demonstrate Britain's motivation to assure the security of its trade in the Malay states without aggravating Siamese concerns of a colonial threat (pp. 47–52). The chapter positions the Bowring Treaty as a model treaty for the establishment of extraterritoriality in Siam, followed by the United States, Japan and other imperialist powers. The common scope of extraterritoriality included the partial surrender of Siam's judicial autonomy over disputes between treaty party subjects and Siamese subjects, as well as restrictions on Siam's tariff autonomy.

Chapter 2 takes a step back and sheds light on the broader history of extraterritoriality. It discusses the origins of extraterritoriality in host states that waived the exercise of local jurisdiction over accredited diplomatic representatives. Such extraterritorial arrangements were granted by host states to foreign subjects through treaties for the purpose of friendly relations between the parties. They could be revoked under the sole discretion of the host state, as illustrated by the Treaty of Peace, Amity and Commerce between Suleiman of the Ottoman Empire and King Francis of France in 1535 (p. 93). Ambassador Owart characterises them as personal rather than territorial privileges, and distinguishes them from the type of extraterritoriality that was imposed on Siam in a hegemonic fashion.

While the first two chapters highlight the expansion of international trade as a key driver of extraterritorial privileges, Chapter 3 examines economic and social effects in Siam. Limitations in statistical records apparently prevented a full analysis of how extraterritoriality contributed economically. In addition, Ambassador Owart seemingly followed the logic of improvement and refrained from contesting the ostensibly imperative legal reforms driven by extraterritorial treaties (pp. 113–24). Such position, as observed by Tzouvala, forms a paradigmatic pattern of lawyers of the semi-periphery who regard European-oriented legal reform as a necessary goal for the survival of Siam.⁶ Historical records presented by Ambassador Owart also exhibit the Siamese ruling class's awareness that legal reform would prepare Siam for a capitalist-oriented economy like in European states. Although the need to abolish

⁶ Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020) 81 <<https://doi.org/10.1017/9781108684415>>.

extraterritoriality is often explained with reference to the problematic multiplicity of foreign law enforcement within Siamese jurisdiction, Ambassador Owart still apparently viewed European capitalist infrastructure as a panacea to attain Siamese sovereignty vis-à-vis the imperialists. This view encourages readers to critically examine the “equal” inclusion of non-Western Siam in the international community, in particular if such inclusion strongly depends on Siam conforming to the necessities of Western capitalist modernity.

Chapter 4 and 5 detail the process from gradual limitation to complete revocation of extraterritoriality. The establishment of a Siamese police force in Chiang Mai by the 1874 Treaty of Chiang Mai between the Siamese government and the government of British India, discussed in Chapter 4, could have raised the questionable legitimacy of Siam’s jurisdictional assertion. The status of Chiang Mai as a tributary in the Siamese Mandala system did not permit the exercise of Siamese jurisdiction without the explicit or implicit consent of the prince of Chiang Mai.⁷ Without clear justification on this point, the reader could conclude that Siam colluded with the British empire to assert extraterritoriality in Chiang Mai.⁸ This possible plot twist invites readers to investigate both the relationship between Siam and its tributaries and the extent to which extraterritoriality imposed by imperialists had shaped such relationship. *From Extraterritoriality to Equality* unfolds the struggle of Siam during the period of extraterritoriality until its end in 1939, but it leaves tributaries off the international scene. If international law had applied equally to all international persons, however, the substance and structure of international law would have allowed non-Western communities, whether colonised, semi-colonised or unidentified ones, to accomplish international legal personality regardless of a standard of civilisation.

In conclusion, the book demands from Thai legal scholars that they liberate themselves from the Eurocentric paradigm and question the enduring legacy of European international law in shaping Thailand’s sovereignty. Thai legal scholars of this generation must be cautious not to reproduce the interface of extraterritoriality and the standard of civilisation without realising how such argumentation perpetuates the peripheral status of Thailand.⁹ The question of extraterritoriality is a starting point

⁷ Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation* (Silkworm Books 1995) 74, 107–108.

⁸ See Ntina Tzouvala, “And the Laws Are Rude . . . Crude and Uncertain: Extraterritoriality and the Emergence of Territorialised Statehood in Siam” in Daniel Margolies, Umut Özsu, Maia Pal, and Ntina Tzouvala (eds), *The Extraterritoriality of Law: History, Theory, Politics* (Routledge 2019) 134–50 <<https://doi.org/10.4324/9781351231992-9>>.

⁹ See Krisdakorn Wongwuthikun and Naporn Popattanachai, “Siam and the Standard of Civilisation in the Nineteenth Century” in Andrew Harding and Munin Pongsapan (eds), *Thai Legal History* (Cambridge University Press 2021) 202–13 <<https://doi.org/10.1017/9781108914369.015>>. The authors’ argument centers on Siam’s effort to revoke unequal treaties and end extraterritorial privileges by fulfilling imperative elements of a standard of civilisation. However, it misses to examine the language of the “standard of civilisation” which, as Koskenniemi argued in Martti Koskenniemi, *The Gentle Civiliser of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University

for critical inquiries into the structural biases of international law and their impact on Thailand, toward a more inclusive and equitable system of international law.

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Press 2001) 134–35 <<https://doi.org/10.1017/CBO9780511494222>>, did not exist as a legal principle or natural rule in the late 19th century.

* **Indexing Thai names.** "Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies." The Chicago Manual of Style (17th edn, University of Chicago Press 2017) §16.85.