Asian Journal of Comparative Law, Page 1 of 23
doi:10.1017/asjcl.2018.16

Buddhist Constitutionalism in Thailand: When Rājadhammā Supersedes the Constitution

Eugénie MÉRIEAU*
University of Goettingen, Germany
eugenie.merieau@uni-goettingen.de

Abstract

This article adds nuance to the classical account depicting Thailand as a secularized country by documenting how Buddhism informs constitutional thought and practices in contemporary Thailand. Throughout the twentieth century, Buddhist discourses have been used to bypass constitutional provisions in the name of 'dhamma' through the reliance on the rediscovery of the doctrine of the *dhammarāja* (the righteous King). In the early twenty-first century, a second rebirth of the discourse of the *dhammarāja* led to a further devaluation of the constitution as the supreme norm. The principles of a righteous King (*totsapitrājadhammā)* were reconceptualized as a functional equivalent to constitutionalism – as constraining the King's power. This article first examines how modern lawyers used Buddhism as the vehicle to import Western constitutional ideas into the Siamese polity while reconstructing them as part of a royal legacy through the doctrine of the Ten Royal Virtues. It then turns to an analysis of the ever-increasing enshrinement of Buddhism in successive Thai constitutions since 1932. It concludes with an account of the politicization of the righteous King doctrine and its impact on constitutional practices.

* Post-doctoral fellow at the Alexander Von Humboldt Chair of Comparative Constitutionalism, University of Goettingen, Germany, held by Professor Ran Hirschl. I wish to thank Ran Hirschl, Benjamin Schonthal, Dian AH Shah, Khemthong Tonsakulrungruang, Barend J Terwiel, Piyabutr Saengkanokkul, and the anonymous reviewers for comments on an earlier draft, as well as the Centre for Asian Legal Studies, National University of Singapore, for funding this project.
Note on transcription: this article adopts the Royal Thai General System of Transcription (RTGS), with a few exceptions, namely Thai names and the following words: rājadhammā (Duty of the Righteous King), dhammarāja (Righteous King) and totsapitrājadhammā (Ten Royal Virtues of the Righteous King). Thai names have been romanized based on their most widely used romanizations. Rājadhammā and totsapitrājadhammā are romanized from Pâli instead of Thai, for purposes of further cross-national comparisons on these concepts. According to the RTGS, they should be romanized as rachatham, thammaracha, and totsapithrachatham.
Note on translation: translations are mine, unless otherwise indicated.

I. BUDDHISM, LAW AND KINGSHIP: PROLEGOMENA

Thailand is a predominantly Buddhist country,[1] and one of the only few in the world to have the Buddhist calendar as the official calendar.[2] Thailand's twentieth constitution, entered into force in 2017, is officially named *The Constitution of Thailand, Buddhist Era 2560* (2017 Constitution). Its official visual representation, embodied in the Democracy Monument in Bangkok, consists of a 'thick accordion-style codex called "*Samutthai*" and placed on a two-tiered golden pedestal tray';[3] the *Samutthai* evokes the Buddhist scriptures, while the two-tiered golden pedestal tray is associated with the King.[4] Buddhist Kingship also informs Thailand's official motto – 'Nation, Religion, and King'[5] – and the white colour on the Thai flag represents the purity of the Buddhist faith.[6] National holidays correspond to Buddhist celebrations, and Buddhism is part of public life, in schools, government offices and state ceremonies. Thailand is also one of the few countries in the world where monks are denied the right to vote.[7] Thai men are traditionally expected to ordinate as monks (*buat*) as they reach adulthood. They are also expected to take the robe for 'purification', to apologize through merit-making, or to show their gratitude. For instance, in July 2018, the members of a junior football team who were trapped in a flooded cave – an incident which garnered worldwide attention – enrolled into a temple for nine days to pay homage to one of the cave divers who lost his life during the rescue operation.[8]

Thai politicians and public figures also routinely temporarily enter monkhood to 'disappear' after being enmeshed in highly contested politics such as military coups. Suthep Thaugsuban, the leader of protests leading to the 2014 military coup, entered a temple for more than a year after General Prayuth Chan-ocha seized power on 22 May 2014.[9] A few months before the 2006 military coup, Bowornsak Uwanno, then

1. According to the official 2015 census, over 90% of Thais are Buddhists. The next most-professed religions are Islam and Christianity, both yielding very low numbers of followers, with about 4% Muslims and 1% Christians. See National Statistical Office, 'Report on Population Characteristics: The 2015-2016 Survey of Population Change' (National Statistical Office 2016) <http://web.nso.go.th/en/survey/popchan/data/2015-2016-Full%20Report.pdf> accessed 27 July 2018. This official count however obscures the complex nature of practices identified as 'Buddhist', and these often include elements of Brahmanism, as well as spirit and ancestor-cults, either analyzed in terms of 'syncretism' or 'hybridity'. See Pattana Kitiarsa, 'Beyond Syncretism: Hybridization of Popular Religion in Contemporary Thailand' (2005) 36 (3) Journal of Southeast Asian Studies 461.
2. The Buddhist calendar was in fact introduced by King Rama VI or Vajiravudh or Wachirawut (r. 1910-1925) as part of his nationalist resistance against Westernization. Yoneo Ishii, 'Church and State in Thailand' (1968) 8(10) Asian Survey 864, 866.
3. Puli Fuwongcharoen, '"Long Live Ratthathammanūn!": Constitution worship in revolutionary Siam' (2018) 52(2) Modern Asian Studies 609, 624.
4. For a detailed explanation, see ibid.
5. King Rama VI (r 1910-1925), a fervent Buddhist, created the motto, drawing inspiration from the British.
6. See Walter F Vella, *Chaiyo! King Vajiravudh and the Development of Thai Nationalism* (1st edn, University of Hawai'i Press 1978) 140.
7. For a comparative perspective on the matter see Thomas Larsson, 'Monkish Politics in Southeast Asia: Religious disenfranchisement in comparative and theoretical perspective' (2015) 49(1) Modern Asian Studies 40.
8. See 'Thai cave boys ordained in Buddhist ceremony' (*BBC News*, 24 July 2018) <www.bbc.com/news/world-asia-44933744> accessed 31 July 2018.
9. Suthep Thaugsuban was ordained as a monk at the Thai Sai Temple in the Surat Thani Province on 15 July 2014 and left the monkhood on 28 July 2015.

Secretary-General of the Cabinet, resigned from his post to enter monkhood, only to resurface after the coup.[10] This practice is reminiscent of the early times of absolute monarchies, where – in order to 'escape' murder or injury in uncertain succession processes – potential heirs to the throne sought shelter in Buddhist temples. In the early nineteenth century, Prince Mongkut spent twenty-seven years of his life as a monk in various temples throughout the country while his half-brother Nangklao, later referred to as Rama III, was king. Mongkut left the monkhood only to ascend to the throne in 1851 upon the death of Nangklao. Later referred to as Rama IV, the 'modernizing monarch',[11] Mongkut initiated a reformist Buddhist movement, *Thammayut*, that remains very close to the monarchy until today.

A century later, in 1956, King Bhumibol, who reigned for seventy years as Rama IX, was ordained as a monk in Wat Bowornwiwet in the heart of the old Bangkok, followed in 1978 by his son, then Prince Vajiralongkorn. During the month of October 2017, the cremation of King Bhumibol heavily disrupted the life of Bangkokians in the name of sacred Hindu-Buddhist traditions. The Hindu-Buddhist coronation ceremony of King Vajiralongkorn is expected to follow thereafter.

Buddhism's influence on Thai law has fluctuated over the centuries. As far back as the fourteenth century, inscriptions showed references to a corpus of law called the *Thammasat*,[12] probably a Buddhist derivation of the Hindu Laws of Manu, themselves part of the wider dharmasastra literature, or treaties on *dhamma*.[13] According to the Hindu tradition, the *dhamma* – *thamma* in Thai – was a natural, eternal and immutable law revealed by Brahma to Manu.[14] To Buddhists, if *dhamma* is not

10. He resigned on 6 June 2006 to enter monkhood. The coup took place on 19 September 2006. He was appointed Secretary-General to the King Prajadhipok's Institute in December 2006. Also, in late 2017, Bowornsak took the robe once again, after being appointed head of the Law Reform Commission by the head of the military junta. From 30 November 2017 to 10 December 2017, he led a group of 99 people to be ordained as monks in a temple in Bihar, a state in the Northeast of India.

11. See for eg Siriporn Dabphet, 'State and Religious Ideology in Nineteenth-Century Thailand' in Haneda Masashi (ed), *Secularization, Religion and the State* (The University of Tokyo Center for Philosophy 2010) 53.

12. AB Griswold and Prasert na Nagara, 'A law promulgated by the King of Ayudhyā in 1397 AD' (1969) 57(1) Journal of the Siam Society 109. The 'stele 38' on thief (*silacharuek kotmai laksana chon*) was discovered in 1930 in the Sukhothai province. See also Robert Lingat, 'La conception du droit dans l'Indochine hînayâniste [The conception of Law in Hinayana Indochina]' (1951) 44(1) Bulletin de l'Ecole française d'Extrême-Orient 163, 182.

13. During the first century AD, the Mons adapted the Hindu Code of Manu and replaced its Hindu references with Buddhist references. The Mons were the first Buddhist people in the Indochina Peninsula. They created the Dvaravati civilization, on the territory of present-day Thailand. See Robert Lingat, 'Pour un droit comparé indochinois [For a Comparative Indochinese Law]' (1995) Études, Faculté de droit de Saigon 29, 32, in (2005) 15 Aséanie 149, 152. The scope of the influence of the Hindu Code was probably exaggerated by Robert Lingat, although a relative influence is undeniable. Andrew Huxley, 'Buddhism and Law – The View from Mandalay' (1995) 18 Journal of the International Association of Buddhist Studies 47.

14. According to Vedic literature, the dhamma is a form of natural law revealed by Brahma to Manu, the first King of humanity. It is 'a body of immutable rules, which are operating exactly as physical laws of a cosmic world, acting their part mechanically, punishing transgressors automatically, rewarding those obeying them by the same mechanical process. It is the collection of these eternal, transcending rules, that is called Dhamma, and it was revealed by Brahma, the Self-Existent Being, to Manu, a semi divine being, and from Manu to ancient Sages, who in their turn made it known to mankind through abridged versions, called dharmasāstras, or treatises on Dharma'. See Robert Lingat, 'Evolution of the Conception of Law in Burma and Siam' (1950) 38(1) Journal of Siam Society 9, 10.

directly, as in Hinduism,[15] a 'divine given', it still is a transcendental law acting as the source of all law, as exhibited by the tale of the flying Manu[16] told in the later Siamese *Phrathammasat*. According to the *Phrathammasat*, the law of *dhamma* is revealed on the walls of the universe to a flying Manu, advisor to the King. The *Phrathammasat*, which featured as the first book of the *Three Seals Code*, an early nineteenth century compilation of edicts and laws promulgated throughout the Ayuthayan and early Bangkokian eras (fourteenth to eighteenth century, and late eighteenth to early nineteenth century, respectively),[17] opened with an invocation of the three Jewels (Buddha, *Dhamma*, *Sangha*). The eleven articles of the *Phrathammasat* served as an index for the whole *Three Seals Code* and a 'source of authority' for all its laws.[18]

Westernization of Thai law, initiated during the second half of the nineteenth century, led to a progressive abandonment of references to *dhamma* as a source of law. The *Three Seals Code* was replaced with Western secular codes drafted with the help of foreign advisors. The first *Constitution of Siam* (Interim 1932 Constitution), enacted on 27 June 1932 following a revolutionary overthrow of the absolute monarchy under the leadership of young officers educated in secular France, did not mention Buddhism. Yet subsequent constitutions progressively added direct or indirect references to Buddhist principles, Buddhist Kingship, or Buddhism as a religion. As this de-secularization process appeared to remain minor – Buddhism is still not recognized as the state religion – most scholars of comparative constitutionalism have considered Thailand as a secularized country.[19] This article gives nuance to this classical account by showing how Buddhism has informed and continues to inform constitutional thought and practices through the doctrine of Buddhist Kingship.

According to classical understandings of Buddhist Kingship, the primary duty of ancient Siamese Kings was to teach and uphold the Buddhist teachings on *dhamma*. An early written reference to such function can be found in the Ramkhamhaeng

15. Buddhism rejects the principles of Hinduism and most notably the Vedas, but is still imbued with them. On the relation between Buddhism and Hinduism, see Santosh N Desai, 'Ramayana - An Instrument of Historical Contact and Cultural Transmission Between India and Asia' (1970) 30(1) Journal of Asian Studies 5, 5–6. 'Historians tend generally to place the Hindus and Buddhists of ancient India in totally separate categories. The tendency has been to emphasize the spiritual and doctrinal difference between them, without a proper realization of the fact that the Buddhists of ancient India also were a part and product of Hindu culture.' Desai further notes that '[t]he Buddhists of ancient India rejected untouchability, Brāhmaṇa claims to pre-eminence and ritual pollution. But this applied only to the monks and monasteries. A lay Buddhist continued to live in the Hindu cultural milieu as do the Jains of present India. Moreover, some of the most well-known Buddhist scholars like Aśvaghoṣa, Nāgārjuna, Asaṅga, and Vasubandhu were Brāhmanas. Although they adopted and interpreted the teachings of Buddha, culturally they subscribed to the Hindu tradition' (Desai, fn 2), and that '[t]hey had drawn considerably upon Hindu myths, legends, and traditions. Most tales of Buddha's past lives, known as the Jātaka stories, are in fact rooted in ancient Hindu folklore. The Rāma story was, therefore, as much a favorite of the Buddhists as of the Hindus'.

16. See Lingat, 'La conception du droit' (n 12) 167. See also Andrew Huxley, 'When Manu met Mahāsammata' (1996) 24 Journal of Indian Philosophy 593.

17. See the excellent translation provided by Chris Baker and Pasuk Phongpaichit. Chris Baker and Pasuk Phongpaichit (trs), *The Palace Law of Ayutthaya and the Thammasat: Law and Kingship in Siam* (Cornell University Press 2016).

18. Baker and Phongpaichit (n 17) 13.

19. Ran Hirschl, 'Comparative Constitutional Law and Religion in Asia' in Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law in Asia* (EE Publishing 2014) 315.

inscription of Sukhothai, presumably dating from the end of the thirteenth century[20]. It is often thought that Siamese Kings were no legislators, but merely strict authorized interpreters of *dhamma*; their law-making power was tightly constrained by the need to conform to the *Thammasat*.[21] They could only issue rulings on particular cases in their capacity as judges and arbitrators, but these did not have the permanent and general character of law.[22] In an authoritative lecture attended by King Bhumibol in 1946, Prince Dhani Nivat once stated:

> As has been said by scholars of legal history, the function of the king was not to legislate but to protect the people and preserve the sacred law. It might have been true in many cases that by promulgating ordinances the king could bend and entirely contravert the *Thammasat* to suit his end; and yet he could not hope to give his decisions the lasting form and authority of the latter; imposed as it was by a superior agency.[23]

Likewise, powers of ancient Siamese Kings were understood as constrained by the doctrine of the *dhammarāja* (the righteous King).[24]

This article aims to show how the Buddhist doctrine has been used to bypass constitutional provisions in the name of a superior '*dhamma*' through the reliance on the rediscovery of the doctrine of the *dhammarāja* (the righteous King) from the second half of the twentieth century onwards. It first examines how modern lawyers used Buddhism as the vehicle to import Western constitutional ideas into the Siamese polity while reconstructing them as part of a royal legacy through the doctrine of the Ten Royal Virtues.

II. BUDDHIST KINGSHIP AND CONSTITUTIONAL THOUGHT

During the Westernization of Thai Law, Buddhist terminology served as a root for neologisms related to the 'import' of modernity, and most notably *tham* (*dhamma*). The word *dhamma* is a Pâli word. It comes from the Sanskrit root 'dhr', ie, 'holding things together' – 'dharma is the way in which one maintains everything'.[25] *Dhamma* is not just a reference to the idea of truth, but also to law, or to social, political, religious, family or cosmological norms.[26] In modern Thai, *tham* is now used for abstract terms

20. According to the translation provided by Barend Jan Terwiel, 'Lord Ram Khamhaeng was master and overlord over all the Tai. He was the teacher who taught all the Tai to understand merit and the dhamma rightly.' The veracity of the stone inscription, which was discovered by then Prince Mongkut in 1833, is discussed. For a translation and discussion see Barend Jan Terwiel, *The Ram Khamhaeng Inscription, The fake that did not come true* (Ostasien Verlag 2010).

21. This common view held most notably by Robert Lingat is disputed by authors such as Andrew Huxley, Chris Baker, and Pasuk Phongpaichit. See Baker and Phongpaichit (n 17) 31 and Andrew Huxley (ed), *Thai Law: Buddhist Law, Essays on the legal history of Thailand, Laos and Burma* (White Orchid Press 1996).

22. Lingat, 'Evolution' (n 14) 9.

23. Prince Dhani Nivat, 'The Old Siamese Conception of the Monarchy' (1947) 36(2) Journal of Siam Society 91, 99.

24. ibid 94.

25. Ludo Rocher, 'Hindu Conceptions of Law' (1978) 29 Hastings Law Journal 1283, 1285.

26. '[T]here is nothing higher than dharma ... Verily, that which is dharma is truth [satya].' Brhad Aranyaka Upanisad 1.4, 11-14, fn1 in Stanley J Tambiah, *World Conqueror and World Renouncer, A study of*

related to politics, law, and knowledge in general, as well as founding binary oppositions, such as the difference between nature and culture, or between the abstract and concrete. The following neologisms were built on the root *tham*: *khwamchoptham* (legitimacy), *khwamyuttitham* (justice), or *khwampentham* (equity, justice), and most notably, *ratthathammanun* (constitution).

In 1932, the People's Party had named the *Interim 1932 Constitution* the 'law of procedure for the administration of Siam' (*phrarachabanyat thammanun kan pokkhrong phaendin*).[27] This terminology relied on the word *thammanun,* 'rule of procedure', used in Siam during the Ayuthaya period. Following the advice of Prince Wan Waithayakon who referred to the sacred character of the document,[28] the word *ratthathammanun,* which in Sanskrit means 'the *dhamma* of the Land', replaced the word *thammanun* in the *Permanent 1932 Constitution*.[29] The name change was also accompanied by a complete shift of focus in the preamble, from being people-centered to being King-and-Buddhism-centered. The new preamble stated:

> Kings of the Chakri dynasty who have successively held the throne according to the system of absolute monarchy under the [Buddhist] principles of the Ten Royal Virtues of the righteous King (*totsapitrājadhammā*), have developed [the country] and made [it] prosper for the last 150 years.[30]

The Ten Royal Virtues (*totsapitrājadhammā*) are an omnipresent theme of Buddhist texts. Applying to the righteous Buddhist King *dhammarāja*, it is said to derive from the Buddhist Jataka[31] and to have been embodied by King Ashoka of India.[32] The mythical origin of Siamese ancient law, as accounted for in the *Phrathammasat*, is linked to the need of upholding *totsapitrājadhammā*. Indeed, Manu (Manosara), the very composer of the legal treatise, was counselor for the great elected King (*Mahasammata*). In that capacity, he worked towards the full realization of the Ten Royal Virtues. According to the translation provided by Chris Baker and Pasuk Phongpaichit:

> Manosara the rishi was concerned to make the King follow the Ten Royal virtues, so he flew to the Wall of the universe and saw the Pali treatise of the Thammasat inscribed on the

---

Buddhism and Polity in Thailand against a Historical Background (CUP 1977) 22. See notably Don R Davis, 'Hinduism as a Legal Tradition' (2007) 75(2) Journal of the American Academy of Religion 241.

27. Interim Constitution of Siam BE 2475 (adopted on 27 June 1932) (Interim 1932 Constitution).

28. Radio speech by Prince Wan Waithayakorn, 3 October 1932. Quoted in Vishnu Khruangnam, *Kotmai ratthathammanun* [*Constitutional Law*] (Nitibanyakan 1987) 20. See also Wan Waithayakorn, 'Coining Thai Words' in Wan Waithayakorn Foundation, *Withayathat Phra-ong Wan* [*Prince Wan's Vision*] (Wan Waithayakorn Foundation 2001).

29. Constitution of Siam BE 2475 (adopted on 10 December 1932) (Permanent1932 Constitution).

30. Permanent 1932 Constitution, preamble.

31. Patrick Jory, 'The Vessantara Jataka, Barami, and the Boddhisatta-Kings: The Origin and Spread of a Thai Concept of Power' (2002) 16(2) Crossroads: An Interdisciplinary Journal of Southeast Asian Studies 36.

32. Stanley J Tambiah, *World Conqueror and World Renouncer, A Study of Buddhism and Polity in Thailand against a Historical Background* (CUP 1977); Mark McClish, 'King rājadharmā' in Patrick Olivelle and Donald R Davis (eds), *The Oxford History of Hinduism: Hindu Law: A New History of Dharmaśāstra* (OUP 2018) 257. See also Donald K Swearer (ed), *The Buddhist World of Southeast Asia* (SUNY Press 2010) 72; Benjamin Schonthal, 'Formations of Buddhist constitutionalism in South and Southeast Asia' (2017) 15(3) International Journal of Constitutional Law 709.

> wall of the universe in letters as large as elephants. Manosara the rishi committed the Pali firmly to memory, returned, and composed the treatise of the Thammasat.[33]

In the Siamese literature, the Ten Royal Virtues were posited as guiding principles for kings as early as the fourteenth century in the *Book of Three Worlds* written by King Lithai.[34] According to the *Book of Three Worlds*, the King must not desire wealth or propriety but make his people benefit from it;[35] he must not destroy life, cheat, lie, steal, exploit, commit adultery, or drink alcohol;[36] he must be prepared to sacrifice his own personal comfort, his name and glory, and even his life, in the interest of his people;[37] he must be sincere in his intentions, and not deceive his public;[38] he must be mild-tempered;[39] have a simple life, control his impulses, do not indulge in luxury;[40] do not succumb to revenge;[41] promote peace and prevent war;[42] be able to support difficulties and insults without being angered;[43] and never be an obstacle to the fulfillment of his people's interests.[44]

The *Book of Three Worlds* also presented additional twelve virtues (*chakravativat*) to which a King-*chakravatin* (Universal Ruler) must conform.[45] On top of these twenty-two virtues, four commandments (*rachasangkahawatthu*) were added.[46] Together, the practice of the twenty-six virtues allows the King to be considered as a *bodhisatva* or coming Buddha (last incarnation of the Buddha before the

33. Baker and Phongpaichit (n 17) 38.

34. King Lithai reigned over the Sukhothai Kingdom from 1347 to 1368. He wrote the *Book of Three Worlds* (*Thaiphumi Phraruang*), the founding religious-political text describing Buddhist cosmology and the King's duties. For an English translation, see Frank E Reynolds and Mani B Reynolds, *Three Worlds According to King Ruang: A Thai Buddhist Cosmology* (Asian Humanities Press 1982). An earlier translation had been published in French in 1973. Georges Cœdès and Charles Archaimbault, *Les Trois Mondes* [*The Three Worlds*] (Presses de l'Ecole Française d'Extrême-Orient 1973).

35. Dana (generosity, charity).

36. Sila (high morality).

37. Parcage (sacrifice).

38. Ajjava (honesty and integrity).

39. Maddava (kindness).

40. Tapa (austerity).

41. Akkodha (the absence of envy, of revenge).

42. Avihimsa (non-violence).

43. Khanti (patience, tolerance, understanding).

44. Avirodha (non-obstruction).

45. The King must love and feel compassion for his subjects equally; adhere to and maintain dhamma, judge affairs with justice and equity, and rapidity; listen to the advice of philosophers and act according to the advice; abstain from committing five types of sin (bap), ie, do not kill, do not steal, do not commit adultery, do not lie, and do not drink alcohol; feel compassion and no envy for the wealth and work of the people; collect taxes but never increase them; give to those in need so that they can do some commerce without interests; distribute wealth to civil servants; rule in judicial cases with great care and attention to detail; honour Brahmins and philosophers; distribute prizes and honours to those who helped them. See Sawaeng Boonchalermwiphat, *Prawatisat kotmai thai* [*The Thai Legal History*] (10th edn, Winyuchon 2007) 90–96.

46. The four commandments are as follows: (1) The king should care about the development of production; (2) The King should look after the needs of the people; (3) The King should strive to be loved; and (4) The King should use gentle language to be loved. Sern Sirikasibhandra, 'Le pouvoir royal à la Thaïlande [Royal Power in Thailand]' (PhD dissertation, University of Caen 1940) 27.

Awakening).[47] According to Buddhist doctrine, society's order depends on the very Buddhist virtue of his King. In the words of Buddha:

> But monks, when rajahs are righteous, the ministers of rajahs also are righteous. When ministers are righteous, Brahmins and householders also are righteous. Thus townsfolk and villagers are righteous. This being so, moon and sun go right in their courses. This being so, constellations and stars do likewise; days and nights, months and fortnights, seasons and years go on their courses regularly; winds blow regularly and in due season. Thus the devas are not annoyed and the sky-deva bestows sufficient rain.[48]

The *totsapitrājadhammā* was also referred to in the preamble of the Palace Law, dated second half of the fifteenth century,[49] which opened with a mention of the Ten Royal Virtues.[50] Thus, adding a reference to *totsapitrājadhammā* in the 1932 Constitution's preamble aimed to anchor Thai constitutionalism in the legal tradition of the absolute monarchy. Furthermore, the 'system of absolute monarchy under the [Buddhist] principles of the ten royal virtues of the righteous King (*totsapitrājadhammā*)' referred to in the preamble borrows its formulation from the formulations of 'constitutional monarchy' used at that time by the drafters of the *Interim 1932 Constitution*. Pridi Panomyong referred indeed to the 'system of monarchy under the Constitution' (*kasat tai ratthathammanun*).[51] The seemingly anecdotal drafting of the *Permanent 1932 Constitution* in fact reflected a wider reconceptualization of the principles of a righteous King (*totsapitrājadhammā)* as a functional equivalent to constitutionalism.

Indeed, the Ten Royal Virtues of the righteous King (*totsapitrājadhammā*) were to be retrospectively considered by post-1932 constitutional lawyers as principles constraining the King's exercise of power under the absolute monarchy equated with a specific form of democracy. From the 1940s onwards, royalist historians and lawyers started to build a royalist doctrine associating the Ten Royal Virtues with ancient constitutionalism. The first core text was a lecture by Prince Dhani Nivat published in 1947. It explained how Siam had always been ruled by a *dhammarāja* – a righteous King, limited in his exercise of powers by the adherence to Buddhist principles – the *Thammasat* being then equated with an ancient constitution. 'The Thammasat, the Inspired Lore, which was the work supposedly of a superior agency, a Constitution in fact which was not to be tempered with even by the highest in the Land.'[52]

47. Cœdès and Archaimbault (n 34) 94.
48. FL Woodward, Caroline AF Rhys Davids and EM Hare (trs), *The Book of Gradual Sayings (Anguttara-Nikaya), or More-Numbered Sutras* (OUP for the Pali Text Society 1932) 85; also quoted in Christine Gray, 'The Soteriological State in the 1970s' (PhD thesis, University of Chicago 1986) 30.
49. It is generally agreed that the Palace Law was composed under the reign of King Trailokanat (r. 1448-1488). See the discussion in Baker and Phongpaichit (n 17) 77.
50. See translation provided by Baker and Phongpaichit (n 17) 77.
51. Pridi Panomyong, 'Kanpokkhrong thi mi kasat yu tai kotmai [The administrative system with the Monarchy under the Law]' in *Bang rueang kiaokap kan kotang khana rasadon lae rabop phrachatipatai* [Some elements about the establishment of the People's Committee and the Democratic System] (Nitiwet 1972). I am grateful to Kasidit Ananthanathorn for this reference.
52. Prince Dhani Nivat (n 23) 98.

The doctrine spread in Thai history handbooks as well as academic works. The *dhammarāja* doctrine became part of dominant constitutional thought proper during the 1960s and 1970s. In the 1960s, prominent lawyer Seni Pramot made the claim that the thirteenth century Ramkhamhaeng inscription[53] was Siam's first constitution; as a result, Siam Kings had never exercised arbitrary power.[54] In 1976, highly respected Supreme Court judge Thanin Kraivichien published *The Thai Monarchy according to the Democratic System of Government*.[55] In this book, Thanin argued that in thirteenth century Sukhothai, fourteenth to eighteenth century Ayuthaya, and current Bangkok periods, the power of kings was limited by two constraints, akin to constitutional limits: *totsapitrājadhammā* or the Ten Royal Virtues and the *anekchonnikon samosonsommut* or the King's election – the King being elected by his subjects. Furthermore, according to Seni and Thanin's handbooks, the King is endowed with 'residual powers' inherited from customs pre-existing the introduction of constitutionalism. These customs have been conceptualized in the works of the most prominent constitutional lawyers of the 1990s as royal customary law (*nittirachaphrapheni*) comprising the Ten Royal Virtues (*totsapitrājadhammā*).

In the 1980s, prominent jurist Bowornsak Uwanno, co-author of Thanin's 1976 book, stated in his public law handbook that there never was arbitrary power nor absolute monarchy in Siam, because of the limits imposed on the King by the Ten Royal Virtues.[56] In 1986, another prominent jurist, Thongthong Chantarasu, published a handbook on the King's constitutional powers, building on the doctrine of *totsapitrājadhammā* and residual powers of the *nittirachaphrapheni*.[57]

In the 1990s, in the context of the movement to 'reform Thai politics', coupled with the Asian financial crisis and the renewed interest in the doctrine of *totsapitrājadhammā*, a new constitution was adopted. It focused on the fight against corruption and created a myriad of independent watchdog agencies and constitutional organs with powers to act against politicians.[58] It was also Thailand's most democratic constitution to date, as both chambers of parliament were elected, and the prime minister had to be an elected member of the lower house. It incorporated the notion of 'good governance'.[59]

When the term 'good governance' entered Thailand in the 1990s, it had first been transliterated before being translated into Thai. Several translations coexisted for a short time, until the word *thamma-phiban,* formed on the root *dhamma*, was finally

53. Barend Jan Terwiel (n 20).

54. Seni Pramot, *Kotmai Samai Ayuthaya* [*The Laws of Ayutthaya*] (2nd edn, Winyuchon 2016) 144.

55. Thanin Kraivichien, *Phramahakasat thai nai rabop phrachatipatai* [*The Thai Monarchy according to the Democratic System of Government*] (1st edn, Ministry of Education 1976).

56. Bowornsak Uwanno, *Kotmai mahachon Lem 2* [*Public Law Volume 2*] (5th edn, Chulalongkorn 2007) 145.

57. Tongthong Chandransu, 'Phraracha-amnat khong phramahakasat nai thang kotmai ratthathammanun [A Constitutional Legal Aspect of the King's Perogatives]' (LLM thesis, Chulalongkorn University 1986).

58. See Tom Ginsburg, 'Constitutional afterlife, The continuing impact of Thailand's postpolitical constitution' (2009) 7(1) International Journal of Constitutional Law 83.

59. Michael K Connors, 'Article of Faith: The Failure of Royal Liberalism in Thailand' (2008) 38(1) Journal of Contemporary Asia 143.

established as the official translation.[60] In accordance with the neologism that made it enter Thailand, good governance was associated with *dhamma*:

> The dhamma principles of administration born over 2,500 years ago therefore remain contemporary in their essence and are nicely compatible with democracy, new concepts of administration and globalized society. Such demonstrates that these dhamma principles are universal, long-lasting and never outmoded. His Majesty the King has proved this fact through His action, and actions do speak much louder than words and freedom of speech.[61]

The '*thamma-phiban*' version of 'good governance', defined in moralistic terms, as a tool to fight corruption,[62] advocated against *the political*, therefore making it perfectly suited to the postpolitical institutions of the new constitutionalism.[63] Its usefulness was considered inferior to the concept of *totsapitrājadhammā*: 'It is also an opportune moment to make it known worldwide the profundity of *dasarājadhammā* and its superiority over the western concept of good governance.'[64]

Likewise, the concept of 'Rule of Law' became a major topic in Thai constitutional discourse during the 1990s. Its importation gave birth to two competing neologisms: '*nititham*', formed on '*niti*' (law, rules) and '*dhamma*' (law) and '*nitirat*', formed on '*niti*' (law, rules) and '*rat*' (state). The word '*nitirat*' has a positivist connotation, when '*nititham*' is linked to the idea of *dhamma*. During the debate on the *2007 Constitution of Thailand*[65] the term *nititham* was chosen over *nitirat* specifically for its Buddhist connotation.[66] Following the enactment of the 2007 Constitution, the words *nititham* and *thamma-phiban* spread, notably among state organs. The Office of the Constitutional Court published with abundance on this theme.[67] In the 2017 Constitution, *thamma-phiban* is extensively referred to, as well as *nititham*, while the word *nitirat* is omitted.[68] Over the course of the 1990-2010s, both Rule of Law *(nititham)* and good governance (*thamma-phiban*) had become associated with the reign of *dhamma*.

60. Bidhya Bowornwathana, 'Importing governance into the Thai polity: competing hybrids and reform consequences' (2007) 8(2) International Public Management Review 1 <http://journals.sfu.ca/ipmr/index.php/ipmr/article/view/30/30> accessed 2 July 2018.
61. Bowornsak Uwanno, *Ten Principles of a Righteous King and the King of Thailand* (Chulalongkorn 2006) 47, 75.
62. ibid 47.
63. See Eugénie Mérieau, 'Thailand's Deep State, Royal Power and the Constitutional Court 1997-2015' (2016) 46(3) Journal of Contemporary Asia 445; see also Ginsburg (n 58).
64. Uwanno, *Ten Principles* (n 61) 47.
65. Constitution of Thailand BE 2550 (adopted on 24 August 2007) [2007 Constitution].
66. Khemthong Tonsakulrungruang, 'Buddhist politics and Thailand's dangerous path' (*New Mandala*, 15 January 2016) <www.newmandala.org/buddhist-politics-and-thailands-dangerous-path> accessed 18 May 2018.
67. Office of the Constitutional Court, *San ratthathammanun phaitai lak nititham nai kanpokkhrong rabop phrachatipatai an mi phramahakasat pen pramuk* [*The Constitutional Court under the Rule of Law in the System of Democracy with the King as Head of State*] (Bangkok Constitutional Court 2013) 571.
68. *Thamma-phiban* is quoted twice in the preamble, once in the title on 'State policies', while *Nititham* is referred to in the general provisions and the title on 'Rights and liberties'.

Meanwhile, the secularist overtones of the competing word *nitirat* had been accentuated through its appropriation by a group of constitutional lawyers calling for reforms of the relationship between the Monarchy and the Constitution. In the 2010s, seven prominent law professors from the Thammasat University in Bangkok, calling themselves *Nitirat*, had become active on the doctrinal front, opposing the Buddhicization of constitutional thought through the *dhammarāja* doctrinal discourse and advocating for a rehabilitation of the initial constitutional ideas of the People's Committee (*Khana Rasadon*), to whom their name referred.[69] In their two most controversial moves, the *Nitirat* jurists called for the reform of the lèse-majesté law and proposed that the King be required to swear an oath of loyalty before the Constitution, not before the *dhamma*. Although they gained wide support among Thaksin supporters in the Northeast and the educated youth in Bangkok, their proposals were officially rejected by all politicians from the majority and the opposition.[70]

III. BUDDHISM IN CONSTITUTIONS: THE KING AS UPHOLDER OF RELIGION(S)

The Interim 1932 Constitution, by the People's Committee, did not make any reference to Buddhism at all. Although its drafter, Pridi Panomyong, was Buddhist, he was also a Socialist revolutionary educated in militant secularist France,[71] which might explain its exclusion of references to Buddhism in the first draft. The People's Committee seemed to have adopted a stance of indifference towards Buddhism,[72] although at some point it considered plans to 'democratize' the Buddhist Sangha.[73] On 10 December 1932, the Permanent 1932 Constitution, drafted in close collaboration with the monarch, King Prajadhipok,[74] introduced Buddhism in the constitutional text for the first time, in the provision related to the King: 'The King must be a Buddhist, and the upholder of religion(s) (*sasanuphathamphok*).'[75]

In Thai, it is difficult to know whether religion here is singular or plural. 'Religion' in this context is presently translated as being plural, but this interpretation can be disputed. In Thai, the singular is distinguished from the plural only based on context. Many

69. They named itself 'Nitirat – Nitisat pheua Rasadon' (Juridical Science for the People) as a playful reference to both 'Khana Rasadon' (the People's Committee who overthrew the absolute monarchy in 1932), nicknamed 'Nitirat' and 'Nitirat' (*Rechtsstaat* or *Etat de droit*). It must be brought to the attention of non-Thai readers that the spelling of Nitirat as *Rechtsstaat* differs from the spelling of Nitirat - the chosen Thai name of the jurists' group. Their English-language name, 'Enlightened Jurists', does not echo the play on words conveyed in Thai. See also Duncan McCargo and Peeradej Tanruangporn, 'Branding Dissent: Nitirat, Thailand's Enlightened Jurists' (2015) 45(3) Journal of Contemporary Asia 419.

70. Eugénie Mérieau, *Les Chemises Rouges de Thaïlande* [*The Red-Shirts of Thailand*] (IRASEC 2013) 121–127.

71. Pridi Panomyong, the intellectual leader of the 1932 overthrow and drafter of the Interim 1932 Constitution, was a fervent Buddhist, but also a fervent socialist.

72. Yoneo Ishii (n 2) 866.

73. McCargo and Tanruangporn (n 69) 637. These efforts materialized in the 1941 Sangha Act.

74. Eugénie Mérieau, 'The 1932 Constitutions of Siam, matrix of constitutional instability' in Kevin Tan and Bui Ngoc Son, *Constitutional Foundings in Southeast Asia* (Hart Publishing 2019, forthcoming).

75. Permanent 1932 Constitution, art 4.

elements point toward a singular interpretation of this article as it appeared in December 1932. First, the word *sasanuphathamphok* was used in singular in the 1889 aborted constitutional project of King Chulalongkorn, the father of King Prajadhipok, as part of article 3(5) 'The King is the upholder of Buddhism' *(penphutthasasanuphathamphok)*.[76] By contrast, a plural interpretation might refer not only to Buddhism, but other religions professed in Thailand, most prominently at the time Islam, and Christianity. Understood either way, this provision makes nonetheless the King a *dhammarāja as upholder of religion(s)*. Since then, the wording of this article never changed, unlike both provisions guaranteeing non-discrimination based on religion on the one hand, and religious freedom of all Thais on the other hand. In the Permanent 1932 Constitution, it stated that '[a]ll Siamese people, regardless of social status or religion, are under the protection of this Constitution'[77] and that '[a] person shall enjoy full liberty to profess a religion (*sāsana*) or cult (*lathi*), and shall enjoy liberty to perform rites according to his own belief, provided that it is not against the duty of Thai citizen and contrary to public order or good morals of the people'.[78]

Both dispositions survived in the following constitutional texts, with minor changes. In the 1949 Constitution,[79] the word 'creed' or 'sect' (*nikai*) appeared along religion (*sāsana*) and cult (*lathi*) in the article on religious freedom. Meanwhile, a second paragraph was added, as follows:

> In exercising the liberty referred to in paragraph one, a person shall be protected from any act of the State, which is derogatory to his rights or detrimental to his due benefits on the grounds of professing a religion (*sāsana*), a religious creed (*nikai*), observing a religious cult (*lathi*) or exercising a form of worship in accordance with his beliefs, different from that of others.[80]

The Permanent 1932 Constitution and 1949 Constitution abided by standard freedom of religion norms[81] while giving special recognition to Buddhism through the article on the King. These features became the basis of Thailand's subsequent constitutional developments.

In the late 1960s, Thai Buddhism was becoming more aggressive as a reaction to the spread of secular and anti-royalist communist ideas. From the 1968 Constitution[82] onwards, 'actions against the nation, religion, and King' were expressly prohibited;[83]

76. *Phrarachakritsadika chabap 1 wa duai rachaphrapheni krung siam* BE 2432 [1889 First Royal Decree on Royal Customs], art 3(5).
77. Permanent 1932 Constitution, art 1.
78. Permanent 1932 Constitution, art 13. This article bears close resemblance to the disposition on religious freedom enshrined in the 1889 Japanese Constitution.
79. Constitution of Thailand BE 2492 (adopted on 13 March 1949) (1949 Constitution).
80. 1949 Constitution, art 28.
81. Besides the influence of the Meiji Constitution on the Permanent 1932 Constitution, the article on rights and liberties also drew on 'foreign constitutions', whose assessment was probably also informed by Siam's membership of the League of Nations. See 'Assembly minutes, 34/2475, 16 November 1932, House of Representatives' in Noranit Settabutr (ed), *Ekasan kanphicharana rang ratthathammanun 10 thanwakhom 2475* [*Documents pertaining to the examination of the draft 10 December 2475 (1932) Constitution*] (Thammasat 1999) 18.
82. Constitution of Thailand BE 2511 (adopted on 20 June 1968) (1968 Constitution).
83. 1968 Constitution, art 44.

while, from the 1974 Constitution[84] onwards, it also became a citizen duty to 'preserve the nation, religion, and King'.[85] Constitutional preambles stated that constitutions were aimed at the 'protection' of religion and the King. For instance, the preamble of the 1974 Constitution read: 'The intention of this Constitution is to provide for the unity of the Thai people, the preservation of national independence, the protection of all religions and the worship of the King as Head of State and soul of the nation'. Although it mentioned 'all religions', Buddhism was the only religion understood as needing protection from communism at that time. Buddhist monks became increasingly politicized, with one famous monk stating in June 1976 that killing communists was just 'a minor sin', comparable to the killing of an animal to make an offering to a monk.[86] In October of the same year, student activists who were labelled as communists were massacred inside and in the vicinity of Thammasat University in Bangkok.[87]

Following the defeat of communism by the successive military dictatorships, demands for democratization emerged, while Buddhist sentiments continued to mobilize the population. In 1991, in the context of the drafting of a new constitution, the idea that Buddhism should become the official religion of Thailand surfaced in the public debate. Most intellectuals rejected the demand as being too divisive.[88] A first petition was submitted to the 1997-installed Constitution Drafting Committee (CDC) asking for official recognition of Buddhism as the state religion as well as the state's promotion of observance and practice of religious principles.[89] The petition sparked some enthusiasm among the public.[90] The CDC reflected some of these demands, but did not establish Buddhism as the state religion. The resulting article, included in the title on 'State policies', provided:

84. Constitution of Thailand BE 2517 (adopted on 7 October 1974) (1974 Constitution).

85. 1974 Constitution, art 54.

86. The words of Phra Kittiwuttho from the Mahatat Royal Temple in Bangkok were: '[Killing a communist] is like when you kill a fish to offer to a monk. There is certainly demerit in killing the fish, but then it is erased when the fish is placed in the monk alms' bowl'. See Arnaud Dubus, *Buddhism and Politics in Thailand* (IRASEC 2017) 19. See also Charles Keyes, 'Political Crisis and Militant Buddhism in Contemporary Thailand' in Bardwell Smith (ed), *Religion and Legitimation of Power in Thailand, Burma and Laos* (Anima Books 1978) 159.

87. See Somsak Jiemteerasakul, *Phrawathisat thi pheung sang* [The history that was just invented] (6 Tula Press 2001); Thongchai Winnichakul, *6 tula leum mai dai cham mai long* [the 6th of October cannot be forgotten nor remembered] (Fa Diao Kan 2016); Tyrell Haberkorn, 'The Hidden Transcript of Amnesty: The 6 October 1976 Massacre and Coup in Thailand' (2015) 47(1) Critical Asian Studies 44.

88. For instance, conservative intellectual Kukrit Pramot published an op-ed against the move in *Matichon* on 7 May 1991 in response to a column in Siam Rath published the preceding day urging Thai constitution-drafters to adopt Buddhism as the official religion.

89. Such as Monk Phra Mahanarin from the Sam Phraya Temple in Bangkok, later abbot at a Temple in Las Vegas.

90. Constitution Drafting Assembly minutes featured lengthy discussions on the question of making Buddhism the State religion. Members of the Constitution Drafting Assembly often referred to this demand being voiced prominently in public hearings held throughout the country, and the Constitution Drafting Committee considered an amendment making Buddhism the national religion. See 'Raigan kanprachum khanakhammathikan phicharana rang ratthathammanun haeng racha-anyachak thai [Constitution Drafting Committee minutes]' (9 June 1997) <http://library2.parliament.go.th/giventake/content_cons40-50/cons2540/pi400609.pdf> accessed 2 July 2018.

> The state shall provide patronage and protection to Buddhism and other religions, and shall promote good understanding and harmony amongst followers of all religions, and encourage the application of religious precepts for the purpose of improvement of ethics and quality of life.[91]

In 2007, Buddhist groups again called for the establishment of Buddhism as the state religion. The coalition, under the name 'Buddhism Protection Centre of Thailand' (*sun phitak phraphuttasasana haeng prathet thai*) submitted a petition signed by 300,000 people to the CDC.[92] The Buddhist coalition argued that Buddhism was the national religion of the majority of Thais, and that the new constitution should be written so as to reflect the political reality. They did not aim for the title on state policy, but for the title on the King as upholder of religion(s). They proposed the following addition: 'Thailand adopts Buddhism as its national religion. The King is a Buddhist and the upholder of religion(s).'[93] Once again, the 2007 CDC resisted such demands. Yet, it agreed to reword the 1997 'State Policies' constitutional disposition to add that Buddhism was a religion that the majority of Thais had professed for a long time. The provision read: 'The State shall patronize and protect Buddhism, which is the religion long practiced by the majority of the Thai people.'

However, they rejected the proposed revision of the article regarding the King as upholder of religion(s). Ten years later, the article was modified in the 2017 Constitution as follows:

> The State should support and protect Buddhism and other religions. In supporting and protecting Buddhism, which is the religion observed by the majority of Thai people for a long period of time, the State should promote and support education and dissemination of dharmic principles of Theravada Buddhism for the development of mind and wisdom development, and shall have measures and mechanisms to prevent Buddhism from being undermined in any form. The State should also encourage Buddhists to participate in implementing such measures or mechanisms.

The article was controversial, but could not spark open controversy as discussion about the constitutional draft, especially critical comments, were criminalized by the *2016 Referendum Act*.[94] It angered the three majoritarian Muslim provinces of the deep south of Thailand, who overwhelmingly rejected the draft,[95] although a large

91. 1997 Constitution, art 73.

92. 'Monks, supporters urge charter drafters to name Buddhism national religion' *The Nation* (Bangkok, 14 February 2007). It was led by the Secretary General of the Buddhism Protection Centre.

93. Phasaphong Renumas, 'Kho kithen bang prakan nai kanbanchu phuttasasana nai rang ratthathammanun 2550 [A few thoughts about the enshrinement of Buddhism in the Constitution]' (*Public Law Net*, 28 May 2007) <www.public-law.net/publaw/view.aspx?id=1103> accessed 2 July 2018.

94. Phrarachabanyat wa duai kan oksieng prachamati rang ratthathammanun 2559 [Act on the Referendum for the Draft Constitution BE 2559] 2016 (2016 Referendum Act). Art 61 refers to '[a]nyone who disseminates text, pictures or sounds in newspapers, radio, television, electronic media or through any other means distorting the facts or being violent, aggressive, rude, inciting (sic) or threatening and aimed at preventing a voter from casting a ballot or enticing him to vote in a certain way or to abstain.' Violators face heavy prison terms (up to ten years).

95. The provinces of Yala, Pattani and Narathiwat have rejected the draft with majorities of 60 to 65%.

majority had always supported the army and endorsed the 2007 Constitution.[96] A few days after the referendum, major terror attacks took place in the South, probably in retaliation against the adoption of the constitution. To ease tensions, a few weeks later, the National Council for Peace and Order (NCPO) issued a religious harmony order.[97] It affirmed the state's duty to protect and patronize not only Buddhism, but also Islam, Christianity, Hinduism-Brahmanism, and Sikhism, as well as Chinese Buddhism.

Now, what does 'patronizing' mean in constitutional terms? To answer this question, one must look at the history of the *Sangha Act*, which provides for the modes of regulation of the Buddhist Church. It must be noted in that regard that if the constitutional provisions seemed to provide for a stable relation between the King and the Buddhist Church, the regulation of King-Sangha witnessed significant variations as per the *Sangha Act*. The first *Sangha Act* was established by King Chulalongkorn in 1902, who sought to centralize Buddhism.[98] It mandated that all monks be officially registered with the state. The second *Sangha Act* was promulgated by Phibun Songkhram in 1941 as a response to the demands of democratization of the Sangha made by monks.[99] It created an organization based on the idea of the separation of powers, with an assembly, a cabinet and courts, on top of which sat the Supreme Patriarch (*Somdet Phrasangkarat*).[100] The act was repealed in 1962. Sarit Thanarat removed the three organs and replaced them with a council of elders, from which the Supreme Patriarch had to be chosen. In the *1962 Sangha Act*, article 7 gave the King discretionary power to appoint and revoke the Supreme Patriarch.[101] In 1992, the *Sangha Act* was once more revised. Article 7 removed the discretionary power of the King and replaced it with an appointment procedure that involved the Prime Minister submitting a name to the King for approval. However, the Prime Minister could only submit the name of the most senior member of the Council of Elders.[102] The Sangha thus gained more autonomy vis-à-vis the state, the King, and the Prime Minister. In practice, a convention emerged according to which power should be alternately held between representatives of the two Thai *nikai* or schools of Theravada Buddhism, Thammayut and Mahanikai. In practice, Thammayut monks close to the institution of the monarchy[103] have dominated the history of the Supreme Patriarch office.[104]

96. In 2007, the three provinces had approved the military-backed draft constitution with the following results: 76% in Pattani, 74% in Yala, 77% in Narathiwat.

97. National Council for Peace and Order (NCPO)'s Head Order 49/2016, 22 August 2016.

98. Phrarachabanyat laksana pokkhrong khana song BE 2445 [Act on the Administration of the Sangha BE 2445] 1902 (1902 Sangha Act).

99. Yoneo Ishii (n 2) p 867. See also Peter Jackson, *Buddhism, Legitimation and Conflict, The Political Functions of Urban Thai Buddhism in the 19th and 20th Centuries* (ISEAS 1989).

100. Phrarachabanyat khana song BE 2484 (1941 Sangha Act).

101. Phrarachabanyat khana song BE 2505 (1962 Sangha Act), art 7.

102. Phrarachabanyat khana song BE 2535 (1992 Sangha Act), art 7.

103. Thammayut was created in 1833 by King Mongkut. It is a minority sect, but it enjoys greater prestige as Mahanikai.

104. Duncan McCargo notes that 'for seventy of the past eighty years, Thammayut monks have held the office of supreme patriarch', with the last appointment of a Mahanikai monk dating back to the Sarit regime. Duncan McCargo, 'The Changing Politics of Thailand's Buddhist order' (2012) 44(4) Critical Asian Studies 627, 638.

In 2005, when Prime Minister Thaksin Shinawatra appointed Somdet Kiaw from Mahanikai as interim Supreme Patriarch in replacement of Somdet Phra Nyanasamvara from Thammayut, it was denounced as an usurpation of royal powers.[105] Prominent monks, most notably Luangta Maha Bua[106] joined the protest against Thaksin that ultimately led to his overthrow by military coup in 2006. Likewise, in 2013, Luangpu Buddha Issara[107] was an instrumental figure in the protests directed against Yingluck Shinawatra, ultimately dismissed by the Constitutional Court and a military coup in 2014. By promoting a model of governance seen as antagonistic to Buddhist Kingship, Thaksin (and Yingluck as being Thaksin's 'clone') had been accused of disloyalty to the King and Buddhism. The increasingly aggressive Buddhist demands over the 1990s-2010s period can be explained by growing fears surrounding the perceived erosion of Buddhist Kingship[108] linked to the rise of electoral politics, which in turn triggered a surge in hyper-royalism.[109]

IV. CONSTITUTIONAL PRACTICES: *RĀJADHAMMĀ* > CONSTITUTION

Buddhism most notably informs the Thai understandings of its constitutional identity based on Buddhist Kingship revealed in the idiom 'Thailand is a democracy with the King as Head of State', according to which the King is not bound by the constitution but by *dhamma*. Consequently, the King can override the provisions of the constitution in the name of justice (*khwamyuttitham*), a word also built on the Pâli root *dhamma*.

First, the King does not swear an oath to the constitution, but to *dhamma*, when he accedes to the throne. This question was one of the most controversial during discussions on the Permanent 1932 Constitution's draft. One of the members of the People's Committee asked the president of the CDC if the King should swear an oath to the new constitution as parliamentarians ought to do, and the president responded by invoking traditional custom according to which the King swears a Buddhist oath when acceding to the throne – and that it shall be sufficient.[110] Another member of the

105. Sonthi Limthongkul made such accusations. See McCargo (n 104) 636.

106. Ukrist Pathmanand, 'Nation, Religion and Monarchy in the fight against Thaksin' (*New Mandala*, 13 August 2008) <www.newmandala.org/nation-religion-and-monarchy-in-the-fight-against-thaksin> accessed 18 May 2018.

107. Suluck Lamubol, 'Understanding Thai-style Buddhism' (*Prachatai*, 28 February 2014) <https://prachatai.com/english/node/3883> accessed 18 May 2018.

108. Among the 'threats' to Buddhist Kingship are the growth of an ultraconsumerist society, the pervasiveness of 'money politics', including in the monkhood, fears of republicanism and secularism, and the rise of militant Islam. Violence against Buddhists has escalated in the three Muslim southernmost provinces since 2004.

109. I borrow the term of 'hyper-royalism' from Thongchai Winnichakul. See Thongchai Winnichakul, 'Trends in Southeast Asia: Thailand's Hyper-Royalism: its past success and present predicament' (Trends in Southeast Asia No 7, ISEAS 2016) <www.iseas.edu.sg/images/pdf/TRS7_16%20(002).pdf> accessed 2 July 2018.

110. 'Assembly minutes, 36/2475, 25 November 1932, House of Representatives' in Noranit Settabutr (ed), *Ekasan kanphicharana rang ratthathammanun 10 thanwakhom 2475* [*Documents pertaining to the examination of the draft 10 December 2475 (1932) Constitution*](Thammasat 1999) 48.

committee explained that 'the King swears an oath to representations of Buddhist divinities, etc. Therefore, the text remains silent [on the issue of the oath to the Constitution]'.[111]

On his coronation ceremony, the new King Bhumibol Adulyadej did not swear an oath to the constitution. Instead, he promised to rule according to *dhamma*. He declared: 'I shall reign by *dhamma* for the benefit and happiness of the Siamese people.'[112] According to the King, Natural Law or Justice, embodied in *dhamma*, was a principle superior to the written constitution. To lawyers, he declared, on 7 August 1972, that '[t]he law is just a tool at the service of justice; therefore, one cannot consider it to be more important than justice; justice preexists to law and is superior to law.'[113]

The next year, the King directly intervened in politics to force a discredited government to resignation and nominated a prime minister of his own choice. In 1973, massive demonstrations erupted to call for the resignation of Thanom Kittikachorn and his vice-prime minister Praphas Charusathien as well as a new constitution.[114] On 14 October, security forces shot protesters, killing hundreds of people and injuring thousands.[115] Students then sought shelter in the Royal Dusit Palace.[116] That night, King Bhumibol made the following announcement:

> Today is a day of great sorrow in the history of our Thai nation. During the last 6-7 days, there have been claims and negotiations, until the students and the government have managed to come to an agreement. But explosions and teargas led to confrontations and many people were injured. Violence unfolded throughout the city and triggered revolts, and it is not yet over. Hundreds of Thai people like you and I have lost their lives. I ask all sides to refrain from using violence so that the nation can get back to a normal state. Thus, to end violence, Thanom Kittikachorn submitted his resignation as prime minister tonight. I have appointed Sanya Thammasak as prime minister. I ask people on all sides to give their support to the new government so that it can govern the country with full efficiency and reestablish order as quickly as possible for the sake of peace, order and for the country and the people as a whole.[117]

111. ibid.

112. 'On 5 May 1950, the Coronation Day, His Majesty King Bhumibol Adulyadej affirmed in His Accession Speech in front of the Grand Audience of venerable monks and Brahmins, members of the royal family, cabinet ministers, members of parliament, judges, military officers and civil servants that: I shall reign by Dhamma, for the benefit and happiness of all the Thai people.' See Uwanno, *Ten Principles* (n 61).

113. Royal Speech to lawyers, 7 August 1972. This speech is regularly quoted in conferences, seminars, and courts. It was notably used on the 23 January 2017 by Bowornsak Uwanno in his seminar on 'Legal State, King's State', which was held at Chulalongkorn University.

114. Thanom and Praphas had promised a new constitution since 1966. In 1973, Bangkok students started to write their own constitution. Following their arrest, a student contestation spread to several universities. On October 13, about 400 000 students protested in the streets of Bangkok. It remains the largest protest in Thai history.

115. See Prajak Kongkiratti, *Lae laeo khwankhleuanwai ko prakot* [*And then the movement appeared*] (Thammasat University Press 2005).

116. The king and the royal family came down to meet them. Students prostrated in the Palace gardens.

117. Phrarachadamrat 14 tulakhom 2517 [Royal Speech, 14 October 1973]. Excerpt in Thai available at <www.khaosod.co.th/hot-topics/news_85981> accessed 7 July 2018.

By this public announcement, the King had appointed as new prime minister one of his close aides, Sanya Thammasak, a King's privy councilor and Thammasat University president, and a renowned lawyer.[118] In his law handbook, Thanin explained that this nomination was in fact the exercise of the King's crisis powers: when the situation is critical, the King can use customary powers in violation of positive constitutional law. 'When the country is in crisis, the King can put aside constitutional dispositions and act according to his own intuition.'[119]

Following the King's action, the 'three tyrants' – Thanom Kittikachorn, Narong Kittikachorn, and Praphas Charusathien – resigned and left the country. All members of parliament also resigned and a Constitution-Drafting Assembly was appointed to draft a new constitution.[120] Members raised the question of the King's crisis powers: was it desirable to constitutionalize such practice? Finally, constitution drafters decided to keep the King's crisis powers in their uncodified state of constitutional custom in order to give maximum discretion to the King.[121] The constitution was promulgated in 1974.[122] Yet, in 1976, following the 'Bangkok massacre', the King once again appointed a prime minister of his own choice: Thanin Kraivichien, a Supreme Court judge and the very author of the theory of the King's customary powers.[123]

Finally, in 1992, the King exerted once again his exceptional 'power' of direct nomination of a prime minister in times of crisis. It followed mass protests calling for the resignation of the military government of Suchinda Kraprayoon.[124] The King granted an audience to both the leader of the protests, Chamlong Srimuang, and the prime minister Suchinda Krapayoon. Over the next few days, protesters dispersed, and Suchinda announced his resignation. The King then named Anand Panyarachun as prime minister. In his book, Thanin argued that this forced resignation was once again the King's legitimate exercise of his crisis powers.[125]

Likewise, in the 1990s and 2000s, prominent Thai jurists analyzed royal interventions as the exercise of royal virtue mandated by the doctrine of *dhammarāja*. However, it is especially from 2006 onwards that the *dhammarāja* doctrine started to infuse dominant

118. Sanya Thammasak (1907-2002) was the President of the Supreme Court from 1968 to 1975; He was also the Dean of Thammasat University during the events of 14 October 1973.

119. Kraivichien (n 55) 58.

120. Nicholas Grossman and Dominic Faulder (eds), *King Bhumibol Adulyadej: A life's work* (Millet 2012) 131.

121. Kraivichien (n 55) 29.

122. The Constitution-Drafting Assembly was composed of about 2,500 members.

123. In August 1976, one of the 'three tyrants', Thanom Kittikachorn, returned to Thailand. His return sparked massive student protests. Security forces and far-right anticommunist paramilitaries (the Red Gaurs) attacked the protesters gathered in Thammasat University in the early morning, on 6 October. Cruelty unfolded, against student accused of being communists. On the night of 6 October, a military coup overthrew the civilian government of Seni Pramoj.

124. Following the coup by the 'Committee for Maintaining Peace', civilian Anand Panyarachun was nominated as prime minister. Elections were organized, but the new parliamentary coalition could not agree on a new prime minister. Suchinda Kraprayoon, one of the 1991 coup leaders, became Prime Minister. This move prompted massive protests in Bangkok. Chamlong Srimuang, former mayor of Bangkok, led the protesters from Sanam Luang to the Government House. Outbursts of violence erupted between security forces and protesters. Chamlong was finally arrested by police. On 20 May, while violence was still occurring in the capital city, the King appeared on television.

125. Kraivichien (n 55) 54; Walter Bagehot, *The English Constitution* Paul Smith ed, 1st edn, CUP 2001).

constitutionalist discourses with renewed intensity. It linked with another military-and-royally-sponsored discourse on '*khon di*' or morally superior people, according to which 'good people' should have the right to dismiss and replace elected politicians considered as morally inferior.[126] The successive overthrow of Thaksin and Yingluck, in September 2006 and May 2014 respectively, coincided with an intensification of the public use of the *rājadhammā* discourse, which 'peaked' a few months before the actual coups took place.

In late 2005, as Thaksin was facing mass protests, he dissolved the House and called for fresh elections, to be held in February 2006, which he believed would confirm him into power. Meanwhile, royalists had called for the appointment of a prime minister to replace Thaksin, arguing that the King's political interventions in times of crisis were a customary practice in line with *rājadhammā*. They cited Article 7 of the Constitution: '[w]henever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional practice in the democratic regime of government with the King as Head of the State.'[127]

After the election – which was boycotted by the opposition – the King dismissed the request, and asked the courts to step in instead on 25 April 2006.[128] A few days later, the Constitutional Court annulled Thaksin's reelection, and he was ousted in a coup in September of that year. A few months earlier, in June 2006, the Faculty of Law of the Chulalongkorn University had published a bilingual book, entitled *Ten Principles of a Righteous King and the King of Thailand*, under the supervision of Bowornsak Uwanno, on the sixtieth anniversary of his accession to the throne. It re-explored the theory of *dhammarāja*:

> Because all of the King's Royal discourses and speeches are consistent with the principle of righteousness (avirodhana) in the dasarajadhamma, when the country meets with crises and the constitutional organs as efficient parts cannot resolve the problems, the people will look for guidance from the King's Royal remarks. Once the King speaks, all sides will wholeheartedly act accordingly, thereby miraculously calming down heated political problems, as evident in the cases of the incident on 14 October 1973, the Black May incident in 1992 and the Royal remarks of 25 April 2006.[129]

The underlying theory of the Ten Royal Virtues was that the constitution was not necessary as the King's power was, since ancient times, already limited by the Buddhist principles of *totsapitrājadhammā*.[130] In this authoritative text, the Ten Royal Virtues

126. Michael H Nelson, 'Political Turmoil in Thailand: Thaksin, Protests, Elections, and the King.' (2006) 5(1) Eastasia 1; Michael Nelson, 'Thaksin Overthrown: Thailand's "Well-intentioned" Coup of September 19, 2006' (2007) 6(1) Eastasia 1.

127. 1997 Constitution, art 7 and 2007 Constitution, art 7.

128. Mérieau (n 63) 454.

129. Uwanno, *Ten Principles* (n 61) 98.

130. Here is how the author describes the Ten Royal Virtues: (1) Dana which means giving in a beneficial way, that is, providing things such as the basic necessities, or amisa-dana; giving knowledge and useful advice, or dhamma-dana; and forgiving those who deserve forgiveness, or apaya-dhamma; (2) Sila which means maintaining good conduct so as not to breach religious morals, laws and all ethical norms. This dasarājadhammā encompasses respect for religious principles, morals, rule of law and ethics as restraint for the King not to break any norms; (3) Pariccaga which means making selfless sacrifice for the greater good; (4) Ajjava which means loyalty, truthfulness and honesty as the Venerable Somdech Phra Vachirayanavongse explained: to have qualities of being truthful, free from deceit, honest to royal allies

even became 'conventions of the Constitution' (*thamniem patibat thang ratthathammanun*), a neologism that once again formed on the root '*dhamma*':

> [D]asarajadhamma or the ten principles of a righteous king are Theravada Buddhism based principles. (…) However, the aim of this article is to demonstrate that ever since His Majesty the King uttered His Accession Oath, He has lived this Oath throughout the 60 years period of His reign and, by so doing, has transformed the ten principles of dasarajadhamma from religious and moral principles into constitutional principles and practice, or Convention of the Constitution, of a modern-day democracy, compatible with the principle of constitutional monarchy.[131]

It followed the publication of another influential book on *Royal Powers*, which, although not relying directly on the *dhammarāja* doctrine, also advocated that royal powers should not be bound by the constitution.[132] A few months before the overthrow of Yingluck, the *rājadhammā* discourse was mobilized yet again. In November 2013, the agenda-setting research institute under the Thai Parliament, the King Prajadhipok's Institute, organized his annual Congress on the theme of the *dhammarāja*. Three days of plenary sessions and parallel panels were devoted to the discussion of the contemporary relevance of the doctrine for Thai public law and politics. The foreword to the edited volume published after the Congress opens with the following words:

> The *Dhammārāja* is a King who gives happiness to his people thanks to his virtue, and reigns through *dhamma*: the King acts according to *dhammā*, most notably through the exercise of the Ten Royal Virtues (…) The Thai Monarchy has always adhered to this principle, at the roots of our modes of governance since the Sukhothai era until today.[133]

Papers dealt with the Indian King Ashoka and the Siamese King Chulalongkorn,[134] the *dhammarāja* doctrine during the Sukhothai era,[135] and the *dhammarāja* in the Thai

---

and kin as well as to all subjects without thinking of deceiving or hurting them unjustifiably; (5) Maddava which means being gentle and open-minded to reasonable advice and not being arrogant; (6) Tapa which means diligence in consistently performing the royal duties, leading a simple life, and restraining His mind from indulgence of sensual pleasure; (7) Akkodha which means not showing anger, not dwelling in hatred or vindictiveness against others, or in other words, being compassionate. Anger is a cause of misjudgment. If a King is not in anger, He can make judgments in a fair and unbiased manner; (8) Avihimsa which means not afflicting harm on others including animals and all living things, adhering to peace and tranquility for all, and not indulging Himself in His power; (9) Khanti which means being patient and persevering against all emotions, be they greed, anger, ignorance or may kind of suffering, and against abrasive words against Him, and maintaining calmness in His mind, composure, body and words; and (10) Avirodhana which means being steadfast in righteousness, not allowing any misdeeds, being just, rectifying those who do wrong and rewarding those who do right with justice.

131. Uwanno, *Ten Principles* (n 61) 7.

132. Pramuon Rutnoseri, *Phraracha-amnat* [Royal Power] (Sumeth Rutnoseri 2005).

133. King Prajadhipok's Institute (ed), *Dhammaraja, 15th Annual Congress*, (King Prajadhipok's Institute 2013), 5 <www.kpi.ac.th/media_kpiacth/pdf/M10_367.pdf> accessed 2 July 2018.

134. Mahinda Deegalle, 'Visions of the Dharmaraja: Conceptualizations of "Just Ruler" in Theravada Buddhist Societies in South and Southeast Asia' in King Prajadhipok's Institute (n 133) 49.

135. Phruttisan Chumpon, 'Khunatham pracham phracharuthai sukhothai thammaracha [Morality at the heart of Sukhothai Dhammaraja]' in King Prajadhipok's Institute (n 133) 79.

system and its comparison with Plato's Philosopher-King.[136] Many papers argued that King Bhumibol Adulyadej embodied a modern *dhammarāja*.[137] Two years before, the Constitutional Court had made the same argument. In its decision on the constitutionality of the lèse-majesté law, it had argued:

> The Thai Monarchy is like the heart and inviolable soul of Thai people. The King has reigned in accordance with the 10 principles of Buddhist virtue (*totsapitrājadhammā*) and accomplished his several royal duties for the happiness of his people - in particular, the King Bhumibol Adulyadej, the current head of State, upholder of the nation and model of compassion towards his subjects.[138]

The Constitutional Court ruled that the lèse-majesté law, carrying jail terms of three to fifteen years for 'whoever insults, defames or threatens the King, the Queen, the Heir-apparent or the Regent', was appropriate and constitutional. Moreover, the Court argued that lèse-majesté was a necessary complementary article to the constitutional provision according to which Thailand's King is sacred, inviolable and that no accusation can be made against him. Lèse-majesté was then made an integral part of sacred Buddhist Kingship.

The history of the revival of lèse-majesté in two waves from the 1960s and 1990s onwards mirrors the revival of the doctrine of the *dhammarāja*. As introduced by Chulalongkorn's 1908 Penal Code, the maximum penalty for lèse-majesté was a seven-year imprisonment. In 1976, the maximum penalty was increased to fifteen years, while a threshold of three years was added. Together with the surge in hyper-royalism, the number of lèse-majesté cases soared in the 2000s, reaching unprecedented heights after the 2014 military coup. Since then, constitutional lawyers and Thai diplomats have increasingly started to defend the Thai lèse-majesté law by referring to its link with Buddhism.[139] In 2016, Bowornsak equated defamation of the King to 'blasphemy' of the Buddha: 'When the Thai King is unfairly criticized, most Thais feel like their own parent is being attacked and cannot accept it – much in the same way that Thais do not accept anyone demeaning the Buddha or even statues that represent him.'[140]

136. Kritsada Kaewklieng, 'Thammaracha nai khanpokkrong rabop phrachatipatai khong thai lae rachaphrachaya khong Plato, Khwammuan lae khwamtaektang [Dhammaraja in Thai's Democracy and Plato's Philosopher King: Similarity and Differences]' in King Prajadhipok's Institute (n 133) 77.

137. ibid.

138. Constitutional Court of Thailand, Decision 28-29/2555 (10 October 2012), 11.

139. In 2016, the Thai official report submitted to the Human Rights Council of the UN in the framework of the Universal Periodic Review, argued that lèse-majesté existed to protect a specific faith 'Thailand fully respects freedom of opinion and expression and freedom of assembly as they form basic foundation of a democratic society. However, freedom of expression shall be exercised in a constructive manner and does not insult any faith or belief system, be they religions or main institutions', National Report, *Universal Periodic Review* (A/HRC/WG.6/25/THA/1, 12 February 2016), para 116.

140. Bowornsak Uwanno, *Lèse-majesté: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement* (KPI 2009) 34.

V. EPILOGUE

When King Bhumibol passed away on 13 October 2016, a major concern among Thai elites and commentators was Vajiralongkorn's lack of personal capacity to embody the *dhammarāja* like his father, due to his personal behaviour. Since he ascended the throne in December 2016, King Vajiralongkorn made only a few direct uses of his power. In his two very first moves, in January 2017, he ordered the constitution and the *Sangha Act* to be revised.[141] The latter was amended to give full discretion to the King to appoint whomever he pleased as the Supreme Patriarch – it no longer required the most senior member of the Council to automatically become the Supreme Patriarch nor did it allow the Prime Minister to have a say in the appointment.[142] In July 2018, he revised the *Sangha Act* again.[143] According to the new Act, the King has the right to nominate and dismiss all members of the Council of Elders (up to twenty monks). The rationale for the revision was to modify the *Sangha Act* procedures to bring it into conformity with the constitutional provision regarding the King as upholder of religion(s):

> The reason for the promulgation of this act is that, according to the Thai Constitution, the King is a Buddhist and the upholder of religion(s); moreover, according to long-lasting royal traditions maintained until today, the king gives his patronage and protection to the Buddhist religion, what includes the protection of the community of monks ; this way, the Buddhist religion will flourish in a sustainable fashion, and the faith will be respected within the community of believers; what will translate into good and beautiful practices, sources of peace and happiness for the people and the nation; that is why it is so important to maintain these traditions and give them force of law; the royal power that is exerted according to ancient traditions, must be made into law.[144]

This example suggests that the current meaning attached to the constitutional disposition of 'the King as upholder of religion' is, at least for the current military government and the King, strictly singular, and refers indeed to Buddhism. Under the new reign, the King's role as upholder of Buddhism is to be understood increasingly in terms of royal control and direct oversight.

The two revisions of the *Sangha Act*, in 2017 and 2018, accompanied, more than they preceded, the royal exercise of the prerogative to nominate and dismiss key monks. In February 2017, the King appointed as Supreme Patriarch Somdet Phra Maha Muniwong, eighty-nine years old, from the Thammayut order, over the candidate proposed by the Council of Elders according to seniority, Somdet Phra Maha Rachamangalacharn, also known as Somdet Chuang, from the Mahanikai order.[145] In May 2018, Vajiralongkorn revoked the titles of several members of the

141. Constitution of Thailand BE 2560 (adopted on 6 April 2017) (2017 Constitution); Phrarachabanyat khana song BE 2560 [Act on the Sangha BE 2560] 2017 (2017 Sangha Act).

142. Art 7 of the 2017 Sangha Act nevertheless provides for the countersignature by the Prime Minister, but without power to 'advise' the King on a suitable candidate as stated in the earlier version of the law.

143. Phrarachabanyat khana song BE 2561 [Act on the Sangha BE 2561] 2018 (2018 Sangha Act).

144. ibid. The rationale is provided in an addendum to the 2018 Sangha Act.

145. On top of being from the Nikai order, Somdet Chuang is also considered to have ties to the Dhammakaya movement, which is allegedly associated with Thaksin. On the nomination of the new Supreme Patriarch, the Prime Minister Prayuth Chan-ocha explained that he had advised the King to do so, denying that the

Council of Elders, following their arrest by the police for corruption. These developments prove that the administration of Buddhism remains a key concern of the Thai monarchy under the new reign. Vajiralongkorn seeks, like his father, to embody for his people the figure of the *dhammarāja*: a virtuous Buddhist King whose powers do not primarily derive from the constitution.

Vajiralongkorn had chosen to promulgate the Twentieth Constitution on 6 April 2017, the day of the founding of the Chakri dynasty by King Rama I in 1782. The ceremony emphasized the idea that the new 2017 Constitution was a sacred royal 'gift': the Tipitaka-like *Samutthai* was placed on a two-tiered golden pedestal tray for the King to sign into law. A few days after the ceremony, it was discovered that a historical plaque commemorating the 1932 revolution and constitution was replaced by a same-size plaque glorifying the monarchy and Buddhism instead. In front of Ananda Samakhom Hall, the secular and revolutionary plaque that read '[h]ere, on 24 June 1932, at dawn, the People's Party instituted the first constitution of the country, for the betterment of the nation' was replaced by the Buddhist-royalist plaque that read: '[L]oyalty and love for the Triple Gems [Buddha, Dhamma, and the Sangha] – everybody's heart must be pure because the King is kind; that is how the State prospers'.

VI. CONCLUSION

This article has shown that Buddhist constitutionalism operates mainly through Buddhist doctrines of Kingship, especially, in the case of Thailand, the doctrine of *dhammarāja*. Buddhist words have served as references to translate Western constitutional ideas into the Siamese polity in a process one could call a Buddhicization of legal thought. Relatively paradoxically, the increasing trend to 'devaluate' the constitution in relation to *dhammā* coincided with an increased endorsement of Buddhism in constitutional documents. The de-secularization of Thai constitutionalism since the 1950s has not only attained the language of constitutional law, but most significantly its interpretation, which is particularly visible if one looks at 'Buddhist jurisprudence' in Thailand and the interpretations of constitutionalism by Thai legal professionals, especially since the second half of the 1990s. The doctrine of *totsapitrājadhammā* has provided guiding principles of Thai constitutional interpretation – notably used by the Constitutional Court in 2012. As a result, it established the preeminence of *dhammā* over *niti*, of natural '*dhammic*' law over positive law. As one scholar of Hindu studies noted, 'Rājadharma appears as a fundamentally theological category whose primary value is to subordinate nīti to dharma'.[146]

King had exercised discretion in the matter. See Khemthong Tonsakulrungruang, 'Restoring Thailand's spiritual realm' (*New Mandala*, 20 February 2017) <www.newmandala.org/restoring-thailands-spiritual-realm> accessed 18 May 2018.

146. McClish (n 32).