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A History of the Thai Lèse-Majesté Law

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The Thai lèse-majesté law is known to be one of the harshest in the world. It states: “Whoever defames [*minpramat*], insults [*dumin*], or threatens [*sadeng khwam-akhathamat-rai*] the King, the Queen, the Heir to the Throne, or the Regent, will be punished with a jail sentence between three and fifteen years.”¹ The formulation and uses of the Thai law of lèse-majesté have fluctuated throughout the years in relation with the “sacredness” of the king, itself reflected in Article 8 of the Constitution, which states: “The King shall be enthroned in a position of revered worship and shall not be violated.”² However, a more accurate translation would be: “The person of the King is sacred [*sakkara*] and inviolable [*lameut mi day*].”³ The second paragraph resonates with the law of lèse-majesté: “No person shall expose the King to any sort of accusation or action.”

Its premodern antecedents, backed by a monarchy deified on the Hindu model, organized a space of absolute speech interdiction in the presence of and regarding the person of the king. From the nineteenth century onward, Siamese “modernizing monarchs” engaged in a process of de-Hinduization/Europeanization of kingship and reformed Siamese laws of lèse-majesté on the model of European authoritarian monarchies. The 1932 revolutionaries enacted a constitution providing for the trial of the king in case of high treason: the monarchy was desacralized and the king discredited. King Prajadhipok abdicated in 1935, followed by a ten-year-long regency. The law of lèse-majesté almost fell into oblivion.

The accession to the throne of Bhumibol Adulyadej in 1946 followed by the 1947 “royalist coup” revamped the lèse-majesté law while introducing the second paragraph to Article 8 of the Constitution.⁴ In the 1960s, the military redrafted Article 112 and used it to build the king’s charisma, a use of the lèse-majesté law that ultimately proved successful. By the mid-1970s, the monarch, Bhumibol Adulyadej, enjoyed an unprecedented popularity, backed by a reinvented “sacredness.” At the height of “hyperroyalism,”⁵ the 2005–2014 political crisis

¹ The same wording is used to protect the supreme patriarch, head of the Buddhist clergy: “Whoever defames [*minpramat*], insults [*dumin*], or threatens [*sadeng khwam-akhathamat-rai*] the Supreme Patriarch, will be punished with a jail sentence not exceeding a year, or a fine of 20,000 Thai baht, or both”; Article 44 of the 1962 Sangha Law, revised in 1992. The same wording also applies to foreign kings, queens, heads of state, and ambassadors (Articles 133 and 134 of the Penal Code).

² Article 8, translation by the Council of State.

³ Article 8, Constitution BE 2540 (1997).

⁴ The 1949 Constitution adds Article 6 “No person shall expose the King to any sort of accusation or action” to Article 5 “The person of the King is sacred [*sakkara*] and inviolable [*lameut mi day*].”

⁵ Thongchai Winnichakul, *Thailand’s Hyperroyalism, its Past Success and Present Predicament* (Singapore: ISEAS, 2016).

saw a surge in the number of lèse-majesté cases. Yet, since 2018, roughly one year after a new king, Vajiralongkorn, acceded the throne, the law is subject to a de facto moratorium.

In their contemporary interpretations, Article 112 of the Thai Penal Code and Article 8 of the Constitution build on ancient Siamese traditions.

6.1 THE BUILDING OF A DEVARĀJA (KING-GOD/KING OF GODS) ON THE HINDU MODEL

Hindu-Buddhist principles erected the king as a character whose figure was virtuous and divine (*dharmarāja* and *devarāja*).⁶ A specific vocabulary was built to speak of and to the king. This distinct language, formed using the language of Buddhism, Pāli, as well as Sanskrit and Khmer, gave the king special sanctity. Words thus created were prefixed with the word *phra*, a mark of religious respect used for monks. The Palace Law, dated from the fifteenth century codified the use of royal vocabulary in its Articles 204 to 211. For example, Article 210 stated: “To answer the King, use ‘khaphraphuttachao’; to address the King, use ‘kha phraphuttachao khothun’; in a conversation [in the third person], use ‘phraongchao tratsang tratchai’.”⁷

While *phraongchao* refers to “the Lord,” *khaphraphuttachao* means “slave of your Lord.” The king is also called *phrachaoyuhua* or “Lord above [our] heads.” The monosyllabic word *chao* contains the same semantic ambiguities as the English word “Lord” – it was used in the spoken language as early as the Ayutthaya period to make the king a “Lord of Life” (*chao chiwit*) and “Lord of Land” (*chao phaendin*). To refer to the king, the dedicated expression is *phrabatsomdetphrachaoyuhua* or “the sacred feet of the Lord above my head.” This expression finds its material application in the attitude of prostration that accompanies it. The head of the commoner, a sacred part of the body, is thus below the foot of the king, the body part considered the least sacred. The introductory formula to an address to the king is as follows: *khodecha falaong thuliphrabatbokklaobokkramom*, which means: “May the power of the dust under the dust of the soles of your sacred feet protect the top of my head.” The royal vocabulary (*ratchasap*) bears with it the idea that the king is a *devarāja*, but also a *bodhisattva*. The words that compose the royal vocabulary are mostly religious words from the Pāli and Sanskrit; royal vocabulary is thus linked to Buddhism.

The Palace Law also provided for very severe sanctions toward whoever dared to disrespect the king. Article 87 states: “Whoever meets the King’s eye … will be sentenced to the punishment of the crime of sedition.”⁸ The crime of sedition was punished by having the perpetrator chained or put to death.⁹ This clause bears resonance to Article 6 of Chapter VII of the Hindu Manu Code, which deified the king¹⁰ and according to which, “Like the Sun, [the King] burns eyes and hearts, and nobody on earth can look him in the eyes.”¹¹ The Palace

⁶ “Rāja” means “king” in Sanskrit. A *Dharmarāja* is one who reigns according to the dharma – the law, the truth, justice, thus a lawful king. As such, he is a *bodhisattva*, a future Buddha. A *Devarāja* is a divinized king.

⁷ Article 210, translation by Pasuk Phongpaichit and Chris Baker, *The Palace Law of Ayutthaya and the Thammasat: Law and Kingship in Siam* (Ithaca: Cornell University Press, 2016), 233.

⁸ Article 87, Palace Law, Pasuk and Baker translation, 99.

⁹ Article 85, Palace Law, Pasuk and Baker translation, 98.

¹⁰ Legal historians state that, as early as the thirteenth century, during the early Sukhothai period (1238–1347), the Kingdom of Siam did adopt laws inspired by the Hindu Manu Code. In 1767, these laws were destroyed in a fire set by the Burmese during the war that ended the Ayutthaya Kingdom. In the early nineteenth century, Rama I (r. 1782–1809) ordered the collection and compilation of the ancient laws of Ayutthaya.

¹¹ “For, when these creatures, being without a king, through fear dispersed in all directions, the Lord created a king for the protection of this whole [creation], taking [for that purpose] eternal particles of Indra, of the Wind, of Yama, of the Sun, of Fire, of Varuna, of the Moon, and of the Lord of Wealth [Kubera]. Because a king has been

Law stated that during royal audiences, any whispering was punished with a death sentence.¹² The simple act of raising one's eye toward the king was punishable by death, the act of touching him and members of the royal family as well. When members of the royal family fell from royal barges into the water, they were not saved from drowning, owing to the prohibition against touching them, and could die. According to Article 25 of the Palace Law

If the [primary Queen's] royal barge sinks, the boat staff swims away; anyone who stays with the boat is condemned to death. If the royal barge sinks or capsizes; and [the Queen] is swimming and near death, the retainers and boat staff extend battering rams and throw coconuts for her to cling to, if possible; but if not possible, do not take hold of her, if they take hold and bring her up to survive, they are condemned to death; if they throw coconuts that enable her to survive, reward of ten *tamluang* of silver and one golden bowl; if the royal barge sinks and other people seem to throw coconuts, and bring her up to survive they are condemned to severe punishment of death for their whole clan.¹³

In his description of Siam at the end of the seventeenth century, the Jesuit missionary Nicolas Gervaise wrote:

There is no State in the Indies that is more monarchical than that of Siam. Kings which have governed it until now have had honours that seem to only belong to God . . . This freedom that everybody gives himself in Europe to speak about the Prince and His conduct, is to them a State crime; from there it comes that the name of the King is never known by the people during their lifetime; out of fear, as they say, that he would be profaned by the indifferent language of some impious subject.¹⁴

Describing his impressions of the Kingdom of Siam under the reign of Mongkut in the middle of the nineteenth century, the missionary Jean-Baptiste Pallegoix spoke about a “despotism in all the force of the term,” notably regarding the prohibition to look at the king.

The government of Siam is despotism in all the force of the term; the King is feared and respected almost like a god; nobody dares to look him in the eyes; courtiers, when they assist to the audience, stay prostrated on the knees and elbows; when His Majesty is passing somewhere, everybody jumps down to earth, and those who would not do it would risk to have their eyes slit by archmen who precede [the procession] and who so skillfully throw balls of dirt with the bow they always keep drawn.¹⁵

During the nineteenth century, in order to avoid colonization, the monarchy engaged in a process of “conservative modernization” of its law, including the introduction of lèse-majesté on the European model.

6.2 THE DE-HINDUIZATION AND EUROPEANIZATION OF KINGSHIP

In 1805, the ancient laws of Siam that had accumulated over the centuries were compiled in a code called the Three Seals Code. This code recycled in its entirety the Palace Law of the

formed of particles of those lords of the gods, he therefore surpasses all created beings in lustre; and, like the sun, he burns eyes and hearts; nor can anybody on earth even gaze on him; through his [supernatural] power he is Fire and Wind, he Sun and Moon, he the Lord of Justice [Yama], he Kubera, he Varuna, he great Indra”; trans. George Bühler, book 7, art. 3–7.

¹² Article 57, Palace Law.

¹³ Article 25, para. 2, Palace Law, Pasuk and Baker translation, 87.

¹⁴ Nicolas Gervaise, *Histoire politique et naturelle du royaume de Siam* (Paris: Claude Barbin, 1688).

¹⁵ Jean-Baptiste Pallegoix, *Description du royaume thai ou Siam* (Paris: Mission de Siam, 1854), 259.

fifteenth century, along with more recent laws. Article 7 of the section on crimes against the king (*phra ayakan luang*)¹⁶ provided for sentences more severe than for lèse-majesté:

Whoever dares, without fear or embarrassment, speak (*thanong ong at*) about the King, his acts, edicts and ordinances, is guilty of violating royal laws and will be punished with [one or more of] the eight following means: beheading and seizure of the house, fission of the mouth, amputation of ears, hands and feet, 25 or 30 lashes, imprisonment for one month and forced labour, three fines and slavery, two fines, one fine, or pardon on the promise of good behaviour.

Article 72, on the crime of propagating rumors about the king, stated: “Whoever propagates diverse rumours (*titien nintha*) about the king, will be punished with [one or more of] the following means: first, beheading and confiscation of property, second, forced labour, and finally, 50 lashes.” Later, under the reigns of Rama III (r. 1824–1851) and Rama IV (r. 1851–1868), in the context of the diffusion of printing, and the intensification of commerce with European nations, Rama V (r. 1868–1910) revised the lèse-majesté law on the European model. In 1900, he promulgated a decree on “defamation by print” inspired by the lèse-majesté laws in force in Prussia.¹⁷ Article 4 stated: “Whoever defames (*minpramat*) the King or a royal person, whether provincial prince or the son of the King, by words uttered or written under any form in public or in reunion, shall be imprisoned for no more than three years or pay a fine of 1,500 Thai Baht or both.”

Penalties were thus “modernized” with the suppression of physical punishments and their replacement with prison sentences and fines delimitated by the law, breaking with the system still in force at the time of the Three Seals Code. New lèse-majesté sentences were comparable to the system then in force in Prussia (two months to five years in prison).¹⁸ Initiating this trend of modernization of the royal institution, under the previous reign of Rama IV (King Mongkut), the prohibition against watching royal processions was abolished,¹⁹ as well as the prohibition against referring to the king by his name.²⁰ Rama V (Chulalongkorn) then abolished prostration, following the example of Japan, China, Vietnam, and India.²¹

Meanwhile, the Three Seals Code was replaced by new codes drafted with the help of European and Japanese legal advisers. In 1908, the new Penal Code, doubled the maximum

¹⁶ David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté* (London: Routledge, 2010), 61.

¹⁷ David Streckfuss, “The Intricacies of Lese Majesty: A Comparative Study of Imperial Germany and Modern Thailand,” in *Saying the Unsayable: Monarchy and Democracy in Thailand*, ed. Søren Ivarsson and Lotte Isager (Copenhagen: Nordic Institute of Asian Studies, 2010), 124. One could also adopt the hypothesis that the 1900 decree was a Japanese inspiration, owing to the admiration that the Siamese had for the Japanese modernization process, both Westernized and also unique to imperial Japan.

¹⁸ Article 75 of the Prussian Penal Code of 1851 provides for penalties of two months to five years in jail: “§75 [Majestätsbeleidigung] Wer durch Wort, Schrift, Druck, Zeichen, bildliche oder andere Darstellung die Ehrfurcht gegen den König verletzt, wird mit Gefängniß von zwei Monaten bis zu fünf Jahren bestraft,” Preußisches Strafgesetzbuch von 1851. Article 95 of the Penal Code of the German Empire of 1871 provided for the same penalties: “95. (1) Wer den Kaiser, seinen Landesherrn oder während seines Aufenthalts in einem Bundesstaate dessen Landesherrn beleidigt, wird mit Gefängnis nicht unter zwei Monaten oder mit Festungshaft bis zu fünf Jahren bestraft.”

¹⁹ Wales H. G. Quaritch, *Siamese State Ceremonies: Their History and Function* (London: Bernard Quaritch Ltd, 1931) 35–39; Tambiah J. Stanley, *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge: Cambridge University Press, 1976) 226.

²⁰ Wales, *State ceremonies*, 35–39. See also Kullada Kesboonchoo-Mead, *The Rise and Decline of Thai Absolutism* (London: Routledge, 2004), 44.

²¹ Decree on new practices, 12th Moon of the 12th month, 1873.

penalty for lèse-majesté, up to seven years.²² Article 98 and 100 created separate regimes of defamation for the king, the queen, the heir to the throne, and the regent on the one hand, and princes and princesses of royal blood on the other hand. “Whoever defames (*thanong ong at*) or threatens (*sadeng khwam-akhatamat-rai*) the King, the Queen, the Heir to the Throne, or the Regent while performing duties toward the King, will be punished by imprisonment not exceeding seven years or a fine not exceeding 5,000 baht, or both.”

The dispositions of the new Code expanded the field of its protection over the preceding versions. Besides these crimes, Title 2 of the Penal Code concerning crimes of treason addressed disloyalty to the monarchy. Article 104 stated that: “Whoever, by any means, [acts] with the intention to induce the following effects: weaken loyalty toward the king, [or] defame (*khwamduin*) the king, the government, or the administration, will be punished with imprisonment not exceeding three years and a fine not exceeding 1,000 THB.” In an authoritative commentary on the Code published the same year, a Thai jurist referred for the first time to the Roman word *lèse-majesté*.²³

Meanwhile, “whispering” in presence of the king and improperly using the royal vocabulary were no longer listed as crimes. Toward the end of his reign, in 1922, Rama VI promulgated (r. 1910–1925), in 1922, a decree on books, documents, and journals. In its Article 5, it introduced criminal liability for lèse-majesté for owners, editors, or writers of journals, and imposed “a jail sentence not exceeding five years, a fine not exceeding 5,000 THB or both.”²⁴ “The teaching of political and economic theories aiming to create a resentment and defamation toward the king or social classes, is a crime subject to imprisonment not exceeding 10 years, or a fine not exceeding 5,000 THB, or both.”

In 1927, Rama VII promulgated a new decree characterizing those who commit the crime of lèse-majesté as enemies of the nation. Article 6(5) defined the enemy of the nation as such: “Whoever aims, through direct or indirect, induction or suggestion, through direct words or comparisons, implicitly or through other means, to create a resentment and defamation toward the king, the government, or the administration.” Five years later, the absolute monarchy was overthrown.

6.3 REVOLUTION AND THE DESACRALIZATION OF THE MONARCHY

The June 1932 revolution took place without blood being spilled. Once the revolutionaries were in possession of places of power, they reached a compromise with the king; provided the king accepted to become a constitutional monarch, they would preserve him as a figure of

²² According to Chitti Tingsabdh, article 98 had been “copied” from the British Seditious Libel Act. See Jaran Kosananan, “Khwamrungeng heng thot thi mai pen tham le kanpitkan khwamching nai matra 112 heng pramuon kotmai aya” [The violence of an unjust sentence and the covering of the truth according to article 112 of the Penal Code] *Fa Diao Kan* 7 (2009): 81. However the commentary provided by Georges Padoux, key drafter of the 1908 Penal Code, does note the influence of the British Libel Act as modified in its version for the Indian colony, but on another disposition, not on article 98–100. Georges Padoux, *Le Code Pénal du Royaume de Siam, Version française avec une introduction et des notes* (Paris: Imprimerie nationale, 1909), 24.

²³ Ammatho Phrainthra-Pricha, *Kham athibai laksana aya* [Handbook of Criminal Law] (Bangkok : Sophanaphiphatanakan, 1908), 525. He cites “crimen laesae majestatis omnia alia criminal excedit quoad poenam.”

²⁴ His younger brother, Rama VII modified Article 104 to preempt the perceived threat of republicanism and communism - within a few years, monarchies in Portugal (1910), China (1912), Russia (1917), and Germany (1918) had been overthrown. Siamese elites in the 1920s were well aware of the revolutionary danger.

national unity. Yet the Constitution of 27 June 1932, drafted by the leader of People's Committee, Pridi Banomyong, did not include any article proclaiming the sacred character of the king. Instead, the first constitutional draft allowed the monarch to be impeached by the National Assembly and judged. The People's Committee also attempted, just like at the time of the French Revolution, to substitute the crime of "lèse-constitution" for that of "lèse-majesté."²⁵ Revolutionaries passed a law of "defence of the constitution," which punished all conspiracy against the constitution as high treason. The initial project of the revolutionaries who had brought down the constitutional monarchy had republican accents, unveiled the day after they seized power in 1932.²⁶

The king was displeased with the Constitution and obtained that a new Constitution-drafting assembly be appointed under his supervision to write a new charter.²⁷ During the drafting process, assembly members proposed to add an article on the sacred character of the king. They chose the word *sakkara* ("to revere"), instead of *saksit* ("sacred"). The president of the Constitution-drafting committee stated:

In Article 3 one reads that "the person of the king is sacred and inviolable." This means that the king is the chief of the nation and the entire people and that he occupies a position that makes him out of reach to any criticism whatsoever. That is why all countries where the regime is monarchical and which have adopted a constitution have adopted similar clauses.²⁸

According to him, Article 3 was a translation from Japanese itself perhaps translated from German. It established the king as a sacred figure.²⁹

Yet in 1933, King Prajadhipok was the object of a defamation lawsuit filed by Thawatt Ridet, the general secretary of the Workers' Association of the Tramway Society of Bangkok. Thawatt claimed that a document signed by Prajadhipok wrongly accused him of organizing a strike movement, not to further workers' interests but for personal gain (to create a trade

²⁵ George Armstrong Kelly, "From Lèse-Majesté to Lèse-Nation: Treason in Eighteenth-Century France," *Journal of the History of Ideas* 42 (1981), 269–286. The two crimes coexisted for some time. Jean-Christophe Gaven, *Le crime de lèse-nation: Histoire d'une invention juridique et politique (1789–1791)* (Paris: Presses Universitaires de Sciences-Po, 2016), 19. Nonetheless, they did not abolish the lèse-majesté law, and nowhere have historians found an intention or even a willingness to do so, demonstrating that they thought that the law would fall into oblivion by itself, following what had happened to similar laws in European constitutional monarchies.

²⁶ The republicanism of the 1932 revolution is contested. However, it is clearly spelled out in the First announcement of the People's Committee: "When this King succeeded his elder brother, the people first hoped that he would be governing with moderation, but its hopes were disavowed. The King still reigns above the law as it has done in the past. . . . Dear people, it is time to understand that our country belongs to the people, not to the King, as we have always been told . . . As for the Head of State, the People's Committee has no desire to steal the throne. Consequently, we are inviting the King to keep his title. However, he must govern the country under the Constitution, and will not do anything without the consent of the People's Representatives Assembly. The People's Committee already informed the King and is now waiting for an answer. If the King refuses, or if he does not reply within the said timeframe, for the selfish reason that he would see his power diminished, we will consider this act as an act of treason, and it will be necessary for the country to adopt a democratic form of government." The afore-mentioned "democratic form of government" refers to parliamentary republic. Indeed, the People's Committee explained further: "A democratic form of government means that the Head of State will be a commoner elected by parliament for a limited term." First announcement of the People's Committee, 24 June 1932.

²⁷ See Eugénie Mérieau, "The 1932 Compromise Constitution, Matrix of Thailand's Constitutional Instability," in *Constitutional Foundings in Southeast Asia*, edited by Kevin Tan and Bui Ngoc Son (Singapore: Hart Publishing, 2019), 297–317.

²⁸ Assembly of Representatives, 35/2475, 25 November 1932, *Documents*, p. 30.

²⁹ Ibid.

union, appoint himself secretary general, and thus obtain a salary).³⁰ The government presented the case to the Assembly of Representatives, which decided that neither the tribunals nor the Assembly itself were competent to deal with a trial launched against the person of the king. Consequently, without further debate, the lawsuit was dropped. But it was fully agreed that Thawatt had exercised his rights, not that he had committed an act of lèse-majesté. The next year, Article 104(1) of the Penal Code was revised in the following terms:

Whoever commits the following actions as words, uttered, written, or printed or any other means (1) defamation against the King or the government or the administration ... This person shall be liable to imprisonment not exceeding seven years and a fine not exceeding 2,000 THB. But if this speech, writings, or printed documents are in conformity with the constitution, are made for public good, or are the expression of opinions expressed in good faith or harmless remarks, they will not be considered as a violation of the law.

The new formulation of the lèse-majesté law placed the common good above the reputation of the king.³¹ The appreciation of “good faith” came to moderate the broadness of the law. This situation did not last long. The Second World War broke out, and the 1932 revolutionaries were progressively marginalized. A committee to revise the Penal Code was nominated. It concluded in its final report that the 1946 dispositions relative to the crimes violating the safety of the state had to be “entirely re-modelled to be both more exhaustive and more in conformity with modern ideas.”³² Yu Saeng-Uthai, a prominent jurist, was accused of lèse-majesté for having explained on radio the legal status of the king, most notably the signification of inviolability mentioned in the constitution. Ultimately, he was never judged.³³ In 1946, the young king Ananda Mahidol was found dead in his bedchamber, and his younger brother, Bhumibol Adulyadej, was proclaimed king the same day.

6.4 THE MILITARY AND THE RESACRALIZATION OF MONARCHY

In 1947, the military seized power in a “royalist” coup against the Pridi faction.³⁴ The 1948–1949 Constitution-drafting committee designed a royalist constitution, providing for a King’s Privy Council and a Senate appointed by the king. Committee members also engaged in intense debates on the issue of the inviolability of the king. They sought to expand the scope of then-Article 5 on the king’s inviolability. They added another article, which read: “the King cannot be subjected to any accusation or action of any sort.” The 1949 version of the Article was never modified.

Ten years later, a new Penal Code was promulgated. The former Article 98, which had become Article 112 of the new Penal Code, appeared in the section on crimes against the

³⁰ Somsak Jiemteerasakul, “Koroni Thawat Ridet Fong Phrapokkla” [The Case of Thawat Ridet’s Lawsuit against Prajadhipok], *Silapawattanatham* (2004) 26: 101–120. The document dealt with the economic plan of Pridi Phanomyong, then prime minister, suspected of communist leanings.

³¹ See footnote 17.

³² Quoted in Streckfuss, *Truth on Trial*, 103.

³³ see Streckfuss, *Truth on Trial*, 181. Yut had a reading of the Monarchy close to the practice of European monarchies. Besides voicing doubts about Article 8, he was critical of the institution of the Privy Council. His thoughts on the Monarchy are compiled in Yut Saeng Uthai, *Khamatibai rattathamanun khong rachaanachak 2511 lae thamanun khanpokkrong 2515 wa duei phramahakasat* [Handbook of 1968 and 1972 Constitutions concerning the Monarchy], (Bangkok: Winyuchon, 2008 (1972)).

³⁴ The royalist coup was led by General Phin Choonhavan, overthrowing the government of Thawan Thamrong Nawasawat and installing the civilian Khuang Aphaiwong in power. Thawan Thamrong Nawasawat was an ally of Pridi Panomyong, the leader of the 1932 revolution.

safety of the state. The article suppressed the exoneration clauses and substantially modified the content of the law as follows: “Article 112: Whoever defames (*minpramat*), insults (*dumin*), or threatens (*sadeng khwamakatamatrai*) the King, the Queen, the Heir to the Throne, or the Regent will be punished by imprisonment not exceeding seven years.” Thus, the term “insult” (*dumin*) was added to “defamation” and “threat.” The addition of this term enabled the application of the law to expand to acts that would not have been punished under the previous versions.³⁵ The *lèse-majesté* law targeted accusations according to which King Ananda were to have been killed, either accidentally or intentionally, by his younger brother.³⁶

In 1957, the military once again seized power in a coup. It expanded the scope of application of the *lèse-majesté* law through “Decree 17.” The decree stated that the revolutionary committee had the power to prohibit, seize, or destroy any written article and to order the revocation of the license of the printer, the editor, or the owner of any articles discussing the king, or articles that were defamatory toward the queen, the heir, or the regent.³⁷ Books on the monarchy were banned due to *lèse-majesté*.³⁸ Public speculation about the processes of royal succession could also have been specifically targeted.³⁹

In 1976, allegations of *lèse-majesté* provoked both a massacre and a coup in Bangkok. Ultra-royalist militias took offense at a theatre play staged by students at Thammasat University in which a man bearing a resemblance to Prince Vajiralongkorn was hanged; the militias assaulted the students, who had been protesting government instability. Following the massacre, the military seized power to “preserve monarchy from the communist threat”: “A group of people has defamed the prince, what amounts to an offence to the heart of the entire Thai nation, an intention to harm the monarchy.”⁴⁰ Following the 1976 coup, the military ordered *lèse-majesté* cases to be transferred to the martial courts.⁴¹ A year later, the authors of the 1976 coup enacted the “Order 42,”⁴² and amended the Penal Code, although acts qualified as “insults,” “defamations,” and “threats” were not legally defined. “Whoever defames (*minpramat*), insults (*dumin*), or threatens (*sadeng khwamakatamatrai*) the King, the Queen, the Heir to the Throne, or the Regent will be punished with imprisonment of between three and fifteen years.” This formulation remains unchanged until today. More books were banned due to *lèse-majesté*.⁴³

Meanwhile, Article 8 of the Constitution on the inviolability of the king also remained unchanged. During the drafting of the 1997 Constitution, the second paragraph of Article 8 however raised many questions. Did it refer only to an action or accusation before tribunals,

³⁵ Streckfuss, *Truth on Trial*, 103.

³⁶ In 1960, Kosai Mungjaroen was found guilty of *lèse-majesté* for having said that the death of King Ananda in 1946 involved his younger brother, Bhumibol. The tribunal of first instance judged that, owing to the fact that Kosai’s words were intentional, he was guilty. Kosai argued that he was being sincere and acting in good faith, and he appealed to the Supreme Court. He was sentenced to a three-year jail term, reduced to two years due to his confession. Thus, in this case, judges interpreted the law leniently by imposing a sentence substantially less than the maximum possible sentence, which was seven years. Streckfuss, *Truth on Trial*, 191.

³⁷ Streckfuss, *Truth on Trial*, 104.

³⁸ The book *The Devil’s Discuss* by Rayne Kruger discussing the investigation into the death of Ananda Mahidol was banned in 1964.

³⁹ In 1972, King Bhumibol appointed his son Vajiralongkorn, then twenty years of age, Crown Prince.

⁴⁰ Announcement of the National Reform Council, 6 October 1976, Royal Gazette, vol. 93, issue 120, at 1.

⁴¹ According to Article 7 of the Martial Law, the military can order the transfer of specific cases from the civilian court to the martial court: “Those who have the power to declare a state of Martial Law also have the authority to declare that the military court consider and pass judgments on criminal cases occurring where Martial Law has been declared and which have occurred during the time when a state of Martial Law has been declared.”

⁴² It was repealed in 1991.

⁴³ The anonymous *The Nine Reigns of the Chakri Dynasty* was banned in the early 1980s. It postulated the extinction of the dynasty after the ninth reign was banned. Raktham Rakthai, *Rachakan haeng Rachawong* [The nine reigns of the Chakri dynasty] (Raktham Rakthai: Bangkok, 1983).

or to any sort of accusation, substantiated or unsubstantiated, concerning the king? During the drafting, members of the Constituent Assembly proposed to clarify the matter by adding an explicit mention of lèse-majesté in Article 8. The draft article read as follows: “The person of the King is inviolable and sacred. He cannot be exposed to any accusation, lèse-majesté [du min] or criminal proceedings.”⁴⁴ The proposal was rejected, on the grounds that lèse-majesté was already implicit in Article 8. The drafters decided to leave Article 8 as it was, saying that the Constitutional Court would eventually solve the question if it was raised.⁴⁵

6.5 THE 2012 INTERPRETATION OF LÈSE-MAJESTÉ BY THE CONSTITUTIONAL COURT

In 2012, the Constitutional Court was petitioned to interpret Article 8 of the Constitution in relation to Article 112 of the Penal Code.⁴⁶ It was asked to rule on the constitutionality of the lèse-majesté law based on two petitions submitted by the criminal court in the course of the trials of democracy activists Somyot Phreukasakemsuk and Ekkachai Hongkaiwan.⁴⁷ In its decision rendered on October 10, 2012, the court confirmed the constitutionality of the lèse-majesté law, arguing that it “gave effectivity” to Article 8 of the constitution according to which “the King is sacred (*sakkara*) and inviolable (*lameut mi day*). Nobody can expose the King to any accusation or action of any sort.” In doing so, it clarified the meaning of Article 8. First, the court referred to *the faith* of the Thai people in their king and the royal institution:

Concerning the point to know whether Article 112 of the Penal Code violates the dispositions of Article 8 of the Constitution . . . The Thai Monarchy is the heart and the inviolable soul of Thai people. The King has reigned according to the ten royal virtues and accomplished his royal duties for the happiness of his people; in particular, King Bhumibol Adulyadej, the current Head of State, upholder of the entire nation and father of compassion toward his subjects, whom he visits and to whom he has given development projects, projects he himself conceived to alleviate their suffering and solve their problems; . . . [The people] have faith (*sattha*) and are loyal (*chongrakphakdi*) toward the King and the institution of the monarchy, and this in a constant manner. Thai people have respected and admired the monarchy for very long; this is a particularity of Thailand that no other country knows.

⁴⁴ Proposal by Kanchana Siwiroy, 1997 *Constitution drafting assembly*, 9 June 1997.

⁴⁵ Members of the constitution-drafting committee discussed this topic in 1997. *Suchit Boonbongkan*: I would like to ask Professor Bowornsak [Uwanno] if the word “inviolable” also includes lèse-majesté. If it is the case, then there is no need to add it. *Secretary General*: I don’t know. The second paragraph refers to any action, whether accusations or lawsuits; in the case of lèse-majesté or defamation, it is a violation [of the person of the King] . . . *Pravit Chaenwiranon*: Mister President . . . I would like to ask if criticism is a violation of inviolability or not; because criticism sometimes is not only animated of an intention to violate inviolability. I am asking this question because I think that this already happened in Thailand. In the future, will criticism be considered as a violation of the person of the King or not? I am asking experts, thank you. *Thongthong Chantarasu*: I think that the word “violate” here has a very broad definition. It is not only the legal signification of the civil code or the usual definition of the dictionary but also a definition complementing the word “inviolable” of the first sentence. Constitution-Drafting Committee Minutes, June 9, 1997.

⁴⁶ The court was asked to verify the constitutionality of Article 112 with regard to Articles 3 (the sovereignty of the people), 8 (the king’s inviolability), 29 (limits to rights and liberties to be only imposed based on strict necessity), and 45 (freedom of expression).

⁴⁷ Somyot Phreukasakemsuk, a human rights defender, was arrested in 2011 for lèse-majesté, as the owner of a magazine entitled *Voice of Taksin* in which two articles had been signaled for lèse-majesté. In 2012, in first instance, then in 2013, in appeal, Somyot was sentenced to ten years in jail, five years per article. Meanwhile, the author of these articles remained unidentified. Ekkachai Hongkaiwan was arrested in 2011 for selling copies of a TV documentary on the royal family. He was convicted in 2013.

The court, then, argued further: lèse-majesté is constitutional because the constitution enshrines the sacred character of the monarch.

Article 8 of the Constitution belongs to Title 2 concerning royalty. In the first paragraph, it states that the King is sacred and inviolable, and in paragraph 2, it states that nobody can accuse or sue him. These dispositions recognise the status of the King as someone sacred. The King is the Head of State and a fundamental institution for the country, and consequently the State must guarantee that nobody can violate, accuse, or sue the King in any possible manner. Article 112 states that whoever defames, insults, or threatens the King, the Queen, the Heir, or the Regent is punishable by three to fifteen years of imprisonment; this article is in conformity with the Constitution, giving Article 8 its true legal force. Thus, there is no reason to say that Article 112 violates Article 8 of the Constitution.⁴⁸

Further down, the court adopted similar reasoning: the king being the heart of national unity and the object of adoration among his subjects, a criminal law punishing any insult toward him is appropriate, in order not to hurt the feelings of the other “believers.” “The King as Head of State is the main institution in the country; defamation, insults, or threats toward the King are actions affecting the heart of Thais, who respect and revere the King and the institution of royalty; [these acts] give birth to anger among the people.”⁴⁹

The court also alluded to the idea that the implementation of the lèse-majesté law preserved the morality of society,⁵⁰ while discarding the question of proportionality (*satsuon*), which was actually the argument of the plaintiffs, based on global standards of constitutional jurisprudence.⁵¹ Instead, the court stated that the sentence was “appropriate” (*mosom*): “Besides this, the determination of the penalty contained in Article 112 is strictly necessary and appropriate to the characteristics of action in defamation, insults or threats to the King, the Queen, or the Regent.”⁵² By voting unanimously for the constitutionality of Article 112, judges conformed to the doctrinal interpretation of lèse-majesté as part of a wider trend of Royalist-Buddhist readings of Thai Constitutionalism.⁵³ Architects of such readings have associated the constitutionally entrenched sacred character of the king with both the Buddhist religion and Article 112 of the Penal Code. Bowornsak Uwanno, a renowned jurist, wrote: “In Thai society, the lèse-majesté offence has its basis not only in the principles of international law or constitutional law but also in Thai ethics, culture, and Buddhist principles, which are unique to Thai society.”⁵⁴ He also stated:

The bond between the Thai monarchy and the Thai people is unique. It is not one between the Head of State as a political institution and the people as holders of sovereign power. It is a special relationship with certain characteristics that may be difficult for foreigners to

⁴⁸ Decision 28–29/2555, October 10, 2012, 9–10.

⁴⁹ Decision 28–29/2555, October 10, 2012, 11.

⁵⁰ Decision 28–29/2555, October 10, 2012, 13.

⁵¹ Anne Peters, “Proportionality as a Global Constitutional Principle” in *Handbook on Global Constitutionalism*, eds. Anthony F. Lang Jr., Antje Wiener (Cheltenham: Edward Elgar, 2017) 248–264.

⁵² Decision 28–29/2555, October 10, 2012, 13.

⁵³ For an account of Buddhist readings of the Constitution, see Eugénie Mérieau, “Buddhist Constitutionalism in Thailand: When Rājadhammā Supersedes the Constitution”, *Asian Journal of Comparative Law* 10 (2018), 1–23. For an account of royalist readings of the Constitution, see Eugénie Mérieau, ‘Thailand’s Deep State, Royal Power and the Constitutional Court’, *Journal of Contemporary Asia* 46 (2016): 445–466.

⁵⁴ Bowornsak Uwanno, *Lèse majesté: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement* (Nonthaburi: KPI Press, 2009) 33.

appreciate. . . . This is the basis of a provision which appears in every Thai constitution – that “the person of the King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action” (Section 8 of the present Thai Constitution). This provision is the “effect” of Thai culture and ethics, not the “cause” which coerces Thai people to respect the King as alleged by some.⁵⁵

Thus, Article 8, although inspired by the imperial Constitution of Japan, was deemed to be an “effect” of Thai culture. Bowornsak explained that the king cannot be considered a “semi-God” in accordance with the Hindu tradition, but mostly as a “father.” However, his advocacy in favor of the lèse-majesté law still relies on a comparison with the crime of blasphemy:

This culture of paternalistic governance also explains a phenomenon which may not take place anywhere else. 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.⁵⁶

Bowornsak also compared notions of the king and the father of the nation to justify the severity of the law as being compatible with the legal tradition according to which crimes against parents are more severely punished than against other persons. “In Thai society, parricide is, based on its religious and ethical norms, an unforgivable sin and the gravest act of ingratitude.”⁵⁷ This tradition bears some resonance with the Buddhist principles of Anantarika-Karma, which places parricide and matricide as two of the five grave offences with immediate karmic retribution. Bowornsak goes on:

[The restrictions posed to freedom of expression by the lèse-majesté law] are not dissimilar to the limitation on freedom of expression as regards criticism of God and the Prophet in Muslim countries, which is not understood by some Westerners, who ridicule the Muslim prophet revered by all Muslims, thereby creating a controversy that almost leads to worldwide violence.⁵⁸

In its report submitted to the framework of the UN Human Rights Council Universal Periodic Review in February 2016, the Thai government utilized the following argument, which associates lèse-majesté with blasphemy to justify its use of the law: “Thailand fully respects freedom of opinion and expression and freedom of assembly as they form the basic foundation of a democratic society. However, freedom of expression shall be exercised in a constructive manner that does not insult any faith or belief system, be they religions or main institutions.”⁵⁹

Since the 2000s, a derogatory system of law applied to lèse-majesté offenders, who were denied the presumption of innocence, the right to bail pending trial, and the acceptance of truth as a mitigating circumstance.⁶⁰ Sentences were always heavy under the civilian government of Yingluck Shinawatra, beyond “reason”: a twenty-year

⁵⁵ Bowornsak Uwanno, *Lèse majesté*, 33.

⁵⁶ Bowornsak, *Lèse-majesté*, 34. See also Peter Skilling, “Ideology and Law. The Three Seals Code on Crimes Related to Relics, Images and Bodhi-trees”, *Buddhism, Law & Society* (2015–16), 69–104.

⁵⁷ Bowornsak, *Lèse-majesté*, 24.

⁵⁸ Ibid.

⁵⁹ National Report, Universal Periodic Review, February 2016, para. 116.

⁶⁰ Eugénie Mérieau, On Blasphemy in a Buddhist Kingdom, *Buddhism, Law & Society* (2019), 53–92.

sentence was handed down to a man for sending private text messages mocking the queen in 2011.⁶¹ After the 2014 coup, the military junta led by Prayuth Chan-Ocha ordered the transfer of all cases of lese-majeste law to the jurisdiction of the military courts. Since then, in a prominent case, a young activist, Pai Daodin, was prosecuted in 2016 for having shared a BBC biography of King Vajiralongkorn on his Facebook profile and sentenced to a two-and-a-half year jail sentence, but was released early after being granted a royal pardon. Since the promulgation of the 2017 Constitution, there has been a de facto moratorium on the use of the *lèse-majesté* law.⁶²

The *lèse-majesté* law is not to be understood as a stand-alone piece of criminal legislation, but is considered in Thailand to be the very implementation of the constitutional status of the head of state, namely, his sacredness.

⁶¹ Amporn Tangnoppakhun or Akong, also known as “Uncle SMS,” died in prison on May 8, 2012.

⁶² Eugénie Mérieau, Military Dictatorship under Royal Command, Southeast Asian Affairs (2019).