

*The 1932 Compromise Constitution:
Matrix of Thailand's Permanent
Constitutional Instability*

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ON 24 JUNE 1932, a group of revolutionaries known as the People's Committee overthrew the Siamese absolute monarchy and imposed a Constitution to King Prajadhipok. In its public announcement, the People's Committee stated:

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 he 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.¹

This 'democratic form of government' refers to a republican government. In the words of the People's Committee: 'A democratic form of government means that the Head of State will be a commoner elected by parliament for a limited term.'² Under the threat of republicanism, King Rama VII agreed to return to Bangkok as a constitutional monarch.

I have received the letter in which you invited me to return to Bangkok as a constitutional monarch. For the sake of peace, and to spare the country unnecessary blood spills, to avoid chaos and damages to the country, and, moreover, because I have

¹First announcement of the People's Committee, 24 June 1932.

²Ibid.

already considered making this change myself, I am ready to cooperate to put in place a Constitution, under the authority of which I am ready to serve.³

Three days after the Revolution, on 27 June, Siam adopted its first Constitution, unilaterally drafted by the revolutionaries, and most likely by Pridi Panomyong, a jurist educated in France. Yet six months later, the Parliament installed in accordance with Siam's first Constitution discussed and adopted an entirely new charter, the 10 December 1932 Constitution, that is now considered Siam's very first Constitution.

This chapter examines the genesis of Siam's June and December constitutional texts. I will argue that the December 1932 Constitution constituted an ambiguous compromise between two forces, which, being unresolved until today, still impacts Thai constitutional ideas and practices. It is in fact the cause of Thailand's permanent constitutional instability since then, with a new Constitution being drafted every four and a half years in average since 1932. Even though constitutional ideas were imported to Siam as the result of a consensus between revolutionary and royalist forces in a bid to 'civilize' the country through a written Constitution, the constitution-drafting process was marred by irreconcilable understandings of constituent power that led to an untenable and contradictory compromise between the revolutionaries and royalists.

I. CIVILISING SIAM THROUGH THE ADOPTION OF A WRITTEN CONSTITUTION

From the second half of the nineteenth century to the early twentieth century, constitutional ideas spread in elite circles, embraced by royalist forces for the purpose of conservative modernisation, and by revolutionary forces for the purpose of democratisation. Revolutionary forces imposed a first Constitution to Siam but the constitution-making process was finally re-appropriated by the royalists.

A. The Spread of Competing Constitutional Ideas During the Westernisation of Siamese Law

In 1855, Siam signed the Bowring treaty with Great Britain and lost its judicial sovereignty over British subjects on its soil.⁴ Many other similar treaties

³ Charnvit Kasetsiri, 2475 *Kan Patiawat Siam [1932, The Siamese Revolution]* (Bangkok: Foundation for the Promotion of Social Sciences and Humanities, 1999) at 144.

⁴ Siam signed extraterritoriality treaties with several countries, starting with Great Britain. In 1855, it signed the Bowring treaty and lost its judicial sovereignty over British subjects on its territory. The treaty stated: 'Any disputes arising between Siamese and British subjects shall be heard and determined by the [British] Consul in conjunction with the proper Siamese officers; and criminal

followed.⁵ To regain full judicial sovereignty over its territory, Siam was compelled to modernise its legal system. King Mongkut also known as King Rama IV ascended the throne in 1851 and initiated the Westernisation of Siam.⁶ His son, King Chulalongkorn (1853–1910), who succeeded him in 1868, accelerated and deepened it. Chulalongkorn's aim was to westernise law through a two-step process: first, hiring foreign advisors to write legal modern codes; and second, sending a young generation of Siamese royal elites to study law in Europe so that they could progressively replace these foreign advisors upon their graduation and return. Chulalongkorn himself travelled extensively in Europe in the second half of the nineteenth century and developed an interest in its laws, including constitutional law.

Like most modern political concepts, the word 'constitution' came to Siam through the English language. It appeared for the first time in 1865 in the *Bangkok Recorder*⁷ as a transliteration from English.⁸ In a Thai-language article, the American missionary Dan Beach Bradley explained that the constitution was a 'very short law', comparing the role of the American President to that of the Siamese King.⁹ In 1866, he translated into Thai the 1787 American Constitution.¹⁰ Later, the transliterated word spread – modestly – to the educated class; but the spelling was always changing, and there was still no Thai word for 'constitution'. Nonetheless, constitutional ideas started to spread in educated circles. Under the initiative of the King himself, foreign advisors, the younger foreign-educated royal elite, and the royal entourage in Siam started to think about a constitution on the Meiji model as a means to escape from the extraterritorial treaties. Meanwhile, the press voiced and echoed an emerging interest in constitutional ideas.

offenses will be punished, in the case of English offenders, by the Consul, according to English laws, and in the case of Siamese offenders by their own laws, through the Siamese authorities. But the Consul shall not interfere in any matters referring solely to Siamese, neither will the Siamese authorities interfere in questions which only concern the subjects of Her Britannic Majesty'. Francis Bower Sayre, 'The Passing of Extraterritoriality in Siam' (1928) 22 *American Journal of International Law* 71.

⁵Siam later signed 12 other treaties of extraterritoriality: with France and the United States (1856), Denmark (1858), Portugal (1859), Holland (1860) and Prussia (1862), Norway, Sweden, Belgium, and Italy (1868), Austria-Hungary (1869) and Spain (1870). Western powers argued that Siamese penal law was too cruel and uncivilised to apply to their own citizens, and affirmed that they would reconsider the treaties once the Siamese would modernise their penal system.

⁶Rama IV created a Royal Gazette to publish laws – in contrast to the former practice of secrecy. More than 400 'modernization laws' were issued during the reign of King Mongkut.

⁷The *Bangkok Recorder* was created by the American missionary Dr Dan Beach Bradley (1804–1873), who had been sent to Siam in 1835 and who lived there until his death. Bradley participated in the development of medicine in Siam, spreading Western ideas of equality, freedom and education.

⁸Bandit Charoenchanakit, *Rattathammanun sathaphana* [*The founding Constitution*] (Bangkok: Vipassa, 2006) 66 [hereinafter 'Charoenchanakit'].

⁹The article 'Kasat nai muang United States' [*The King in the United States*], was published in the *Bangkok Recorder*. See Thanet Aphornsuwan, 'Thammai thong mi rattathamanun-lae newkit rattathammanun chak kriksaharat matheung siam' [*Why we need a Constitution – and the concept of Constitution from Ancient Greece to Siam*] *Prachatai* (Bangkok, 21 May 2016).

¹⁰*Ibid.*

Twenty years later, in 1885, Prince Prisdang¹¹, then Ambassador in Paris, proposed to King Chulalongkorn that Siam adopt a European-style Constitution, following Japan's footsteps.¹² He argued that the adoption of a Constitution would protect the institution of the monarchy through codification, while still upholding Thai 'royal custom' (*rachaphrapheni*). According to Prisdang, it was urgent to 'civilize' the kingdom through the adoption of a constitution, to build up its resistance against the colonial threat:

We have to replace our ancient royal traditions by the constitutional tradition, following, as accurately as possible, the European example, like Japan, the only Eastern country to have followed the European way, did. We need to change our traditions, which give the King the power to decide everything, what the British call "absolute monarchy", and replace them by the tradition called "constitutional monarchy".¹³ ... We have to embrace change as Japan did following the European way like all civilized countries: it is the only way to preserve our country.¹⁴

Prisdang's project did not entail a limitation of the King's powers, nor the creation of a Parliament. Even so, the King rejected the proposal, and severely sanctioned its author.¹⁵ Four years later, Chulalongkorn disclosed his own constitutional project, called 'law on royal custom.'¹⁶ He drew his inspiration from the French Napoleonic Constitution, which he had ordered translated and summarised.¹⁷ According to the draft, the King was sovereign, as head of the legislative, executive and judicial powers. Article 2 of Chulalongkorn's draft read: 'The King has absolute and discretionary power, to which there is nothing above'. However, unlike Napoleon's Constitution, Chulalongkorn's draft did

¹¹ Prince Prisdang (1851–1935) was a grandson of Rama III. He was ambassador to several European capital cities before being appointed to Paris.

¹² Chanrochanakit (n 8) at 68.

¹³ Saneh Chamarik, *Kanmuang Thai kap Pattanakan Rattathammanun [Thai Politics and constitutional development]* (Bangkok: Foundation for the Promotion of Social Sciences and Humanities, 2006 [1 ed 1986]) 28.

¹⁴ Chanrochanakit (n 8), at 67.

¹⁵ He was called back to Bangkok, and lost his civil servant status. He became a monk in Sri Lanka before returning to Siam where he died in poverty.

¹⁶ Literally, 'first law on royal custom of Siam', 'phrarachakritsadika 1 waduey kanrachaphrapheni krung siam'.

¹⁷ Chris Baker & Pasuk Pongpaichit, *A History of Thailand* (Cambridge: Cambridge University Press 2005) 70; Attachak Sattayanurak, *Kanphlienphleng lokkathat khong chonchan phunam thai tangtae rachakan thi 4 – 2475 [Change of worldviews among the Elite class from the Fourth reign to 1932]* (Bangkok: Chulalongkorn University Press, 1994) 150; Kullada Kesboonchoo-Mead, *The Rise and Decline of Thai Absolutism* (London: Routledge, 2004), at 48, 52 & 193. Kesboonchoo-Mead summarises the absolutism of the Napoleonic Constitution (at 193) as follows: 'The Emperor is an absolute monarch. He is above all the French people and is the ruler of the Kingdom. He does not need to justify his action to anyone. He is respected and must not be slandered. He appoints ministers to various ministries as he wishes. He has the power to grant pardons to convicts. He is the supreme commander of the army and the navy has authority to declare war and to sign treaties of commerce and friendship with other countries. He appoints members of the nobility to administrative positions throughout the kingdom. He has legislative power, and in the absence of his presidency, no law can be passed. Law courts throughout the empire exercise their power in his name. He is the source of righteousness, and without his consent to every clause of a law, that law is null and void.'

not provide for a Parliament. King Chulalongkorn clearly wished to establish an authoritarian Constitution, without a legislature. This Constitution did no more than codify the pre-existing 'royal custom' – a royal government that he wanted to turn into an absolute monarchy. Chulalongkorn's constitutional project was never realised.

Constitutional ideas however continued to spread in educated royal circles. In 1912, a palace coup sought to end the absolute monarchy of King Vajiravudh and enact a Constitution, but failed.¹⁸ His successor, King Prajadhipok, twice ordered to his American advisors to send him constitutional proposals. The first proposal resulted from the King's letter to his advisor Harvard Professor Francis Bowes Sayre Sr (1885–1972) on 23 July 1926¹⁹ in which he asked a series of nine questions. The two first questions dealt with the modes of royal succession; the third, fourth and fifth with the possible importation of the British parliamentary system into Siam.²⁰ King Prajadhipok was personally against the importation of a parliamentary system, as he specifically disliked the idea of a Parliament:²¹

Must this country have a parliamentary system one day, and is really the Anglo-Saxon type of Parliamentary Government suitable to an Eastern people? Is this country ready to have some sort of representative government? I personally have my doubts as to the 3rd question. As to the 4th question [an elected prime minister], my personal opinion is an emphatic NO.²²

Sayre submitted a constitutional draft in English comprising 12 articles, which enshrined royal absolutism. Article 1 provided that 'sovereignty belong[ed] to the King'. The King concentrated all legislative and executive powers in his hands,²³ and appointed judges (Article 10).²⁴ Sayre's draft also favoured an extremely rigid Constitution.²⁵

¹⁸In 1912, the government uncovered a royal conspiracy to overthrow King Rama VI. Young army officers planned to assassinate the King, disliked for his taste of caning and bohemian lifestyle. Prince Chakraphong learnt about the coup preparation, and immediately proceeded to a series of arrests. The coup plot was conducted by several groups with different objectives. One particularly influential group meant to impose a Republic in Siam under the presidency of Prince Ratburi.

¹⁹Vishnu Khruangam, *Khotmay Rattathammanun*, [Constitutional Law], 3 ed (Bangkok: Nittibanakarn 1987) at 187.

²⁰King Prajadhipok, *Problems of Siam, Memorandum to Dr Sayre*, 23 Jul 1926, quoted in Benjamin A Batson, *Siam's Political Future* (Ithaca: Cornell University Press, 1976) at 14–20 [hereinafter 'Sayre's Memo'].

²¹Ibid, at 15.

²²Ibid.

²³Art 11 stated: 'legislative power is vested in the King', Art 3: 'the prime minister is responsible for the implementation of the general policies of the government according to the Royal will'. The King appointed the Prime Minister who was responsible before Him (Art 2); ministers were high-ranking officials from each ministry (Arts 4 and 5).

²⁴Sayre's Memo (n 20), at 23–24. The constitutional draft provided for the establishment of a consultative organ (*aphiratmontri*) appointed by the King, and composed of five members (Art 7).

²⁵The draft provided that constitutional revision had to be approved by three quarters of the King's advisor body (*khonmontrisapha*) (Art 12).

The second constitutional draft, written by Raymond Bartlett Stevens (1872–1942) – who had been appointed the King’s Foreign Affairs Advisor in 1926 – and his secretary Phraya Sriwisanvaja in March 1932,²⁶ was called ‘An outline of changes in the form of government’. It was no more liberal than its predecessor. It proposed the creation of a consultative organ, (*aphirattamontrisapha*) appointed by the King (Article 1), and a Prime Minister also appointed by the King (Article 2), a legislative Assembly elected or appointed by the King (Articles 6 & 7). The constitutional draft was very short, and did not specify the rules of monarchical succession nor the modes of constitutional revision.²⁷ Its authors thought that it was too early to grant a Constitution to the Thai people.²⁸

Finally, it seems that the King had planned to grant a Constitution to its subjects on 6 April 1932, the anniversary of the foundation of the Chakri dynasty,²⁹ but he cancelled his plans due to his advisers’ opposition.³⁰ Details are unknown, but it is likely that Prajadhipok’s project aimed to institutionalise rather than limit the King’s powers and did not provide for a Parliament.³¹ Thus, in the early twentieth century, Siam was an absolute monarchy³² and, as such, an anomaly, especially since it had joined the League of Nations.

Meanwhile, Siamese elites were conscious of the danger represented by the spread of revolutions in continental Europe and China.³³ This awareness partly explains why Siamese students were sent mostly to England, where revolutionary ideas were less radical than on the continent. However, as the needs of the expanding bureaucracy expanded, royal elites progressively sent students to further their education in ‘revolutionary’ countries, such as France and the US. The young Siamese educated class, returning from abroad, started to demand the enactment of a Constitution.³⁴

In his autobiography, King Prajadhipok’s advisor Francis B. Sayre wrote:

Students returning from England or France or America often were unhappy and disturbed, with half-baked ideas about democracy and human liberty; they wanted Siam to adopt Western forms almost overnight, as if these were but outward garments.

²⁶ Vishnu Khruangam (n 19), at 187.

²⁷ Ibid, at 191.

²⁸ Ibid, at 192.

²⁹ The Chakri dynasty had been founded in Siam in 1782. This would thus have been the 150th anniversary of the Dynasty.

³⁰ His advisors in the *aphirattamontrisapha* opposed the move. See Vishnu Khruangam (n 19), at 191.

³¹ Nattapol Chaiching, *Kho Fanfai nai Fan an leuacheua* [I would like to dream the impossible dream] (Bangkok: Fa Diaw Kan, 2013) at 10. Baker and Phongpaichit (n 17) at 111.

³² In 1927, the King set up a commission tasked to examine the possibility of creating a representative organ. But he rejected the idea of a Parliament and chose to create a committee of advisors (*khammakan ongamontri*) composed of four members. Vishnu Khruangam (n 19), at 254.

³³ During the first two decades of the twentieth century, a worldwide wave of revolutions had overthrown so-called enlightened monarchies: China (1911), Russia (1917), Austria (1917), Germany (1918), Turkey (1921), and Greece (1922).

³⁴ Vishnu Khruangam (n 19), at 193.

Many felt that Siamese culture was outdated, and their minds seethed with modern, Western ideas, often superficial and misunderstood. One of their outspoken demands was for a Parliament and a modern Constitution.³⁵

Among the first generation of students sent to France were Pridi Banomyong (1900–1983), who studied law at the University of Paris and Plaek Phibun Songkhram (1897–1964), student at the military academy of Fontainebleau.³⁶ In 1927, together with five other friends, they planned, from a Parisian hotel room, the overthrow of the absolute monarchy in Siam.³⁷ They returned to Siam to become civil servants: Pridi a judge and Phibun as a military officer. Pridi became the first Siamese to start teaching administrative law at the law school of the Ministry of Justice. Although the teaching of constitutional law was forbidden, he managed to insert a few notions of constitutional law into his course.³⁸

In 1931, he published the first administrative law handbook,³⁹ in which he established a link between democracy and administrative law. The influence of French constitutional thought on Pridi's thinking was obvious. To him, democracy relied on the existence of human rights whose core pillars were freedom, equality and fraternity⁴⁰, while resistance to oppression was an inalienable right, inherent in the very idea of a constitution.⁴¹ Pridi's classes educated young elites in the revolutionary ideas of constitutional law and democracy, much to the King's disapproval. As Pridi recalls:

The Ministry of Justice appointed me to teach administrative law, a new teaching subject that was recently added to the curriculum of the Law School. I took this opportunity to grow my students' interest in the concept of democracy and economic questions, the very basis of society. As for the Constitution as supreme framework of society and the nature of my teachings, King Prajadhipok heard that I was indoctrinating the law students. King Prajadhipok ordered to the Ministry of Justice Chief to inquire about the nature of my teachings. The head of the Ministry came to interrogate me and warned me to be careful.⁴²

Less than a year after the Ministry of Justice Chief warned him, Pridi participated in the overthrow of the absolute monarchy. He was helped by his comrade from France, Phibun, as well as about a hundred civil and military officers. They had all been educated abroad, and felt frustrated by their slow

³⁵ Francis B. Sayre, quoted in Batson (n 20), at 10.

³⁶ Nakharin Mekrairat, *Kan Patiwat Siam 2475 [The Siamese Revolution of 1932]* (Bangkok: Fa Diaw Kan, 2010) at 208.

³⁷ They included two other students at French military academies, a science student, a diplomat at the Siamese Embassy in Paris, and a London barrister.

³⁸ Nakharin Mekrairat (n 36), at 209.

³⁹ Noranit Settabut, *Rattathammanun kap kanmuang thai [The Constitution and Thai Politics]* (Bangkok: Thammasat University Press, 2007) at 38.

⁴⁰ *Ibid.*, at 37.

⁴¹ Baker & Phongpaichit (n 17), at xiii.

⁴² Noranit Settabut (n 39), at 36.

career advancement compared to members of the royal family. Within a few hours, they seized power, took key members of the royal family and royal guard hostage. Two days later, the King signed an amnesty law for the members of the People's Committee, and stated:

We recognize that the People's Committee wished to bring, in order to prevent damages, a few changes in the current government and the Thai nation, and to develop the country so that it can be in the future equal to the other countries. The People's Committee seized power in order to establish a Constitution; and asked us to accept to reign on Siam according to the Constitution; ... in reality, to reign according to the Constitution was something we already had in mind; the Action of the People's Committee was fair and is in line with our own preferences⁴³.

The next day, on 27 June 1932, the King promulgated a new Constitution, as drafted by Pridi. However, he added the word 'temporary' on top of the imposed charter to give himself time to re-negotiate a new text.⁴⁴ The People's Committee agreed and decided to ease tensions with the King by choosing a Prime Minister from the royal entourage,⁴⁵ while inviting senior officials to form the first government. The fully appointed 70-member Assembly also comprised 25 members from the old bureaucracy.

B. The Royalist Re-appropriation of the Constitution Drafting Process

According to the wishes of the King, a new Constitution would be drafted to reflect the King's own constitutional ideas. At the opening session of the appointed Parliament on 28 June 1932, Pridi discarded his Constitution as being a 'temporary document drafted in emergency',⁴⁶ and encouraged the drafting of a new text. The appointed Parliament nominated a seven-member drafting committee, composed mostly of judges and presided by Prime Minister Manopakorn.⁴⁷ Pridi, who acted as secretary-general, was the only member of

⁴³ 'Phrarachakamnot nirathotsakam nai khraw phlienphleng kanpokkrongphaendin 2475', 26 Jun 1932. Charnvit Kasetsiri (n 3), at 150.

⁴⁴ He had written, next to the title, the word 'chuakhraw' (temporary). See Bandit Chanrochanakit, *Chiuprawat rattathammanun haeng rachaanyachakthai 2475 [A Constitutional Biography of the 1932 Thai Kingdom]* (Bangkok, Research Development Fund, 2007) 1.

⁴⁵ Phraya Manopakorn Nithithada was born in 1884. He was educated in England and was trained as a lawyer. Later, he worked as a judge and was a former member of the King's Privy Council. His wife was lady-in-waiting to the Queen.

⁴⁶ On 28 June 1932, Pridi stated: 'This Constitution is temporary because it has been an emergency drafting. It may contain weaknesses; therefore one must appoint people with knowledge and expertise to scrutinize and revise the [interim] Constitution', Noranit Settabut (ed.), *Ekkasan kanphicharana rang rattathammanun 2475 (doi saphaphutben rassadorn chut rek)* [Documents for the Drafting of the 1932 Constitution (First Legislature of the House of Representatives)] (Nonthaburi: King Prajadhipok's Institute, 2009). 4.

⁴⁷ Members included Phraya Thepwithun, Phraya Manwarachasewi, Phraya Nitisatpaisan, Phraya Pridanribet and Luang Sinadyotharak. See Chanrochanakit (n 8) at 1; and House of Representatives, *Documents for the Drafting of the 1932 Constitution*, *ibid*, at 4.

the People's Committee. He was also its youngest member and the only person to have been educated in France, the other members had studied in England.⁴⁸ Two new members of the Committee, close aides of King Prajadhipok, were later added.⁴⁹ King Prajadhipok wished to 'advise' the drafting of the new text as shown in the minutes of his audience on 30 June 1932:

You can ask for my advice. I have extensively studied foreign constitutions recently. I even have the text of the Chinese Constitution.⁵⁰

Finally, the King not only influenced but dominated the drafting process, as Manopakorn noted at the disclosure of the draft in November 1932:

During the constitutional drafting process, the committee was in permanent contact with the King, to such an extent that one can say that the King has participated in the drafting of the constitution submitted to him, and he has approved all points. When I mention that he has approved, it is not only that he approved the content submitted to him, but even more, it is the expression of His royal will.⁵¹

The Assembly, the majority of whose members were from the People's Committee, examined the draft article by article within only four days,⁵² and made almost no amendments. On 29 November, following its adoption by the Assembly in a unanimous vote, Manopakorn restated how important the King's influence was on the final wording of the text.

During the drafting and discussion of the constitution, I have had the opportunity to be in contact with the King and to benefit from his observations and teachings regarding several aspects of the constitution... consequently, the success of this constitution was peaceful and [this success] owes to royal grace... this we will certainly not forget.⁵³

Parliamentarians stood up and shouted, 'Long live the King, hurrah'.⁵⁴ The second Constitution of the kingdom entered into force on 10 December 1932 and thus erased the memory of the first charter.

⁴⁸ Chanrochanakit, *ibid.*

⁴⁹ The two members are Phraya Siriwanvaja and Phraya Rachawangsan. See Nattapol Chaiching (n 31), at 12, and House of Representatives (n 46) at 4.

⁵⁰ Chao Phraya Mahitorn, quoted in Vishnu Varunyou, *Les sources nationales et étrangères du constitutionnalisme thaïlandais depuis 1932: recherche sur l'instabilité constitutionnelle en Thaïlande [National and Foreign Sources of Thai Constitutionalism since 1932: a research on constitutional instability in Thailand]*, PhD dissertation, Public Law, Paris II, 1987, at 124.

⁵¹ House of Representatives (n 46), at 17. See Chanrochanakit (n 8) at 2.

⁵² It took place between 25–29 November 1932. On 29 November, members of the Assembly unanimously adopted the text. The whole process was very short, because the promulgation of the Constitution was scheduled to take place on 10 December. The date had been chosen by astrologers. On 25 November 1932, the president of the constitution-drafting committee asked parliamentarians to respect time constraints '[There is one that I would like to highlight before this Assembly; this Constitution has to be ready as soon as possible; because the ceremony is planned for 10 December. The royal astrologer considered that this day was auspicious; after the King was informed, he asked that [this constitution] be promulgated on this very day]'. House of Representatives (n 45), at 16.

⁵³ 29 November 1932, Assembly minutes 42/2475, House of Representatives (n 46) at 191.

⁵⁴ *Ibid.*

The two texts of 1932 were fundamentally different. The June 1932 Constitution had 39 articles drafted by Pridi. Devoid of a preamble, it proclaimed the people's sovereignty in Article 1. It created a regime of assembly, in which the executive was an emanation of the legislative power, in other terms, a parliamentary system. The executive could not dissolve the unique chamber, and the system put in place enshrined the supremacy of Parliament. It provided for a transitory period: during the first phase, Parliament was to be fully appointed by the People's Committee, then, during the second phase, half the assembly would be replaced by elections, and finally, whenever the Thai population would have reached sufficient levels of primary schooling, the entire assembly would be elected (Article 10).⁵⁵ The text proclaimed constitutional supremacy (Article 31) without specifying any specific mode of constitutional revision or organ dedicated to the interpretation of the Constitution. Meanwhile, the King's powers were severely curtailed, and there would be an organ dedicated to the interpretation of the Constitution. Meanwhile, the King was neither sacred nor inviolable and could be 'tried' by the Assembly (Article 6).

The December 1932 Constitution was much longer, and resembled in large parts the text of June: it proclaimed the people's sovereignty, provided for a unicameral assembly composed of both elected and appointed members according to similar transitory provisions. However, it changed the system from a regime of assembly to that of a parliamentary system. The King acquired the ability to dissolve Parliament (subject to countersignature by the Prime Minister) and the Assembly could dismiss the Prime Minister following a no-confidence vote. It clearly established constitutional supremacy (Article 61), and the Assembly was granted exclusive powers of interpretation over constitutional dispositions (Article 62). Finally, it laid down specific modes of constitutional revision (Article 63). Some of the King's powers were restored, although the countersignature requirement persisted. Significantly, it made the King both sacred and inviolable; the Assembly no longer had power to put him on trial (Article 3).

In the interim June Constitution, the power of the People's Committee was reinforced at the expense of the King in fields traditionally reserved to the monarch such as the right to pardon (Article 30) or the conduct of international relations (Article 36). The King regained both symbolic powers in the permanent December Constitution: right to pardon (Article 55), to declare war and sign treaties (Article 54) as well as others, such as being the Upholder of Buddhism (Article 4) and the Commander of the Army (Article 5).

In both Constitutions, royal veto was suspensive, but only for seven days in June (Article 8) while it became 45 days in December (Article 39). Also, the

⁵⁵ The Constitution put in place a gradual process leading to the implementation of general elections within 10 years. During a first period, the 70 parliamentarians had to be appointed by the People's Committee. After six months, each province would vote for a representative, and the elected representative would become a member of Parliament, so that there are as many parliamentarians appointed as elected. When half the population would have reached a sufficient level of education, namely the completion of primary schooling, or within ten years, if the afore-mentioned condition was not achieved, then all parliamentarians would be elected (Art 10).

December text granted the King the right to declare martial law (Article 53), as well as special powers in times of emergency:

Article 52

When a situation of emergency does not allow the convening of parliament, the King can promulgate decrees having legislative value (*phrarachakammot*). These decrees will be submitted for approval to the next session of parliament; if decrees are approved they will become laws; if they are not, they will be void, but without retroactive effect.

Finally, there were notable differences between both texts concerning the regency. The interim Constitution gave the People's Committee the prerogative to act directly as regent in case of the King's incapacity (Article 5), while the permanent Constitution returned this power to the King (Article 10).

Thus, the permanent Constitution dramatically increased the King's power at the expense of the People's Committee. Even so, members of the permanent constitution-drafting committee denied that their draft was much different from the June version:

A first glance at the Constitution could give the impression that it is considerably different from the interim constitution. I would like, however, to affirm that there is no difference regarding fundamental principles. Like the interim text, the new project adopts the system of constitutional monarchy. We chose, nevertheless, a different form, and we have made a couple of modifications. In order to make these changes, the committee has studied with the greatest care the constitutions of other countries and adapted some of their dispositions to the needs of our country.⁵⁶

The royalist drafters of the December 1932 text emphasised continuity over change, as they needed the support of the mostly revolutionary Assembly to pass the draft. But a closer examination of constitution-drafting minutes indicates that both texts drew on very different sources and inspirations and were informed by competing constitutional ideas.

II. COMPETING UNDERSTANDINGS OF THE CONSTITUTION

Pridi's June text belongs to the tradition of revolutionary constitutions, marked by the revolutionary models of France, China and Russia, while the December 1932 text, drafted under the supervision of the King and his entourage, subscribed to the tradition of a granted constitution inspired by Imperial Japan under the disguise of a borrowing of Westminster-style parliamentary democracy. The textual compromise of 1932 proclaimed both popular and royal sovereignty, a contradiction that led to constitutional crises and eventually to the abdication of the King.

⁵⁶ 16 November 1932; House of Representatives (n 46) at 17.

A. Antagonistic Foreign Models: Socialist Revolutionary versus Conservative Modernisation Constitutions

The drafters of the 1932 Constitutions drew their inspiration from constitutions in force at the time of drafting, in particular those which had acquired a certain level of international prestige. The revolutionaries of June 1932 had taken their inspiration from the Soviet, French and Chinese models.⁵⁷ Unicameralism was a particularly salient feature of socialist revolutionary constitutions, such as the 1793 French Constitution, the 1912 Chinese Constitution and the 1918 Russian Constitution. The Soviet inspiration was obvious in the choice of terms used: in Pridi's text, the government was called the 'people's committee' (*khanakamakan rassadorn*), the ministers 'people's commissars' (*kamakan rassadorn*), the lower house the 'assembly of people's representatives' (*sapha phuthen rassadorn*). The word for 'people', *rassadorn*, was also indicative of an intention to break with the past. Its use was associated with early twentieth century radical intellectuals,⁵⁸ and referred to commoners, *phrai*, while excluding noblemen and members of the royalty. It had been specifically chosen by the 24 June revolutionaries for their group, the People's Committee (*khana rassadorn*).

The interim Constitution proclaims that sovereignty is exercised through four organs: (a) the King; (b) the People's Assembly; (c) the People's Committee; and (d) the courts (Article 2). This peculiar wording reproduces the terms of the revolutionary 1912 Chinese Constitution, especially its Articles 2 and 4.⁵⁹ The existence of a transitory period, during which members of the Assembly were to be appointed before being progressively replaced by elected members owes to the constitutional practice of Imperial China from 1908 onwards⁶⁰ and that of the Republic of China from 1912 onwards.⁶¹

The December 1932 Constitution had other sources of inspiration, namely the 1889 Meiji Constitution and a misunderstood 'British Constitution'. The first

⁵⁷ The French, Soviet and Chinese revolutions were radical revolutions, held in high esteem by socialist-leaning Pridi Panomyong in the early 20th century, as can be drawn from his biography *Ma vie mouvementée et mes 21 ans d'exil en Chine populaire* [My turbulent life and my 21 years of exile in China] (Paris: UNESCO & Bangkok Post, 1972). See also Theda Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia, and China* (New York: Cambridge University Press 1979).

⁵⁸ Nakharin Mekrairat (n 36), at 222.

⁵⁹ Art 2 'The sovereignty of the Chinese Republic is vested in the people' and Art 4 'The sovereignty of the Chinese Republic is exercised by the Advisory Council, the Provisional President, the Cabinet and the Judiciary'.

⁶⁰ During the summer of 1908, the Chinese Empire initiated the creation of a constitutional monarchy and adopted a nine-year plan to prepare the adoption of a Constitution. The plan entailed the progressive set up of representative institutions at several levels: local, provincial and national. The national Parliament, the 'Guohui', would also be in charge of drafting a constitution. On 27 August 1908, an imperial edict, 'Xianfa Dagan', 'General Principles of Constitutional Government' was issued. It enshrined imperial sovereignty, on the Meiji's model. In 1911, the 'nineteen articles' came to detail the 'Xianfa Dagan'.

⁶¹ The 1912 Constitution is called 'interim Constitution'. It plans the election of an assembly in charge of drafting the new 'Constitution of the Chinese Republic' (Arts 53 and 54).

handbook of comparative constitutional law ever written in Siam was published straight after the June Revolution, and before the drafting of the December text.⁶² Authored by a member of the extended royal family,⁶³ it analysed and compared the following Constitutions: Russian (1918), Chinese (1928), Turkish (1924), Italian (1848), French (1875), American (1787), Japanese (1889), and British. The author decided to focus more specifically on two case studies: the Meiji Constitution, entirely translated,⁶⁴ and the British ‘constitution’, analysed at greater length.⁶⁵

At first glance, the 10 December Constitution created a Westminster-style parliamentary regime, with a flexible separation of powers, a Prime Minister responsible to the lower house, and appointed members of Parliament. However, the December text was a copy-and-paste version of the Japanese imperial Constitution. Indeed, with the exception of the last title, the structure of the Siamese Constitution reproduces exactly the Meiji text.⁶⁶ Also, the same legitimising discourse was used in the Japanese and Siamese texts: the granting of the Constitution was a royal decision taken in consideration of the necessity to modernise (‘to civilise’) the country.⁶⁷ Third, the word chosen for ‘the King’s sacredness’⁶⁸ was a direct Thai translation of the Meiji text.⁶⁹ The exact same wording was also used to refer to the ‘exercise’ of sovereignty, distinguished from the ‘ownership’ of sovereignty: ‘sovereignty is exerted by the King according to the provisions of the Constitution.’⁷⁰ Laws, acts and rulings are rendered in the name of the King, and laws and acts are countersigned by ministers.⁷¹ More peculiarly, the Siamese King, like the Japanese Emperor, retained special powers in times of crisis (Articles 52 and 8 respectively). The complicated wording of the

⁶² Chakpanisrisilvisuth, known as Visuth Krairik, *Khamathibai thammanun pokkroong phaendin siam priethiep kap prathet thangthang* [Handbook of the Constitution of the Land Compared with various countries] (Bangkok: Siam Bangkit, 1932).

⁶³ Chakpanisrisilvisuth (1903–1958) was a son of Prince Mahithon, known as Lo Krairik, one of Rama VII’s Privy Councillors. An Oxford graduate, he was a judge at the Ministry of Justice.

⁶⁴ *Ibid.*, at 112–126.

⁶⁵ The references section is filled with books about British constitutional law, most notably Walter Bagehot’s *The English Constitution*; and AV Dicey’s *Law of the Constitution*.

⁶⁶ In the Meiji Constitution, comprising 76 articles, sections are as follows: the Emperor (s 1), rights and duties (s 2), imperial diet (s 3), ministers and Privy Council (s 4), judicial institutions (s 5), finances (s 6), additional rules concerning constitutional revision (s 7). In the 10 December Constitution, composed of 68 articles, sections are ordered as follows: the monarchy (s 1), rights and duties (s 2), the House of Representatives (s 3), the government (s 4), the courts (s 5), constitutional revision (s 6) and the promulgation of the Constitution (s 7).

⁶⁷ The Meiji’s Constitution reads: ‘In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law’.

⁶⁸ Art 3, Meiji’s Constitution.

⁶⁹ Assembly minutes 35/2475, 25 November 1932, quoted in House of Representatives, *Documents...*31.

⁷⁰ Art 4, Meiji’s Constitution.

⁷¹ Art 55, Meiji’s Constitution, Art 57, 10 December 1932 Constitution.

Siamese article matches perfectly the Meiji text.⁷² Fifth, the catalogue of rights, liberties and duties of the Siamese people drew heavily on the Meiji version. For instance, the same terms are used for freedom of religion, which was to be exerted ‘within the limits of respect of peace and order and in a manner non incompatible with the duties of citizens /subjects’.⁷³

There were nevertheless a couple of formal differences between the Meiji text and the December 1932 Constitution. First, unlike the Meiji model, Siam did choose unicameralism. However, this was more formal than substantial since the unicameral structure of the Siamese Parliament hid a hybrid bicameralism: the Parliament was made up of both elected and appointed parliamentarians, according to the transitory provisions.⁷⁴ Second, if the Siamese text read ‘the King exerts legislative power with the advice and consent of the Assembly’, the Japanese corresponding article only stated ‘the Emperor exerts legislative power with the consent of the Assembly’. However, an examination of parliamentary debates show that this article was drafted with the erroneous belief that it reproduced the wording of the Japanese Constitution.⁷⁵

The royalists also made semantic changes to the interim Constitution. They replaced the radical word *rassadorn* (‘Committee’) with the more conservative *prachachon* (‘party’). All positions were then renamed: Cabinet, from *kamakan rassadorn* to *rattamontri*, and Prime Minister from *prathan khan kamakan rassadorn* to *nayok rattamontri*. The changes were an express order from the King.⁷⁶ As Pridi stated, the Socialist influence had to be expunged entirely:

The president of the subcommittee says that the King is against the use of this word [rassadorn], as it would make people believe that I am trying to import and spread principles from foreign countries.⁷⁷

Another important significant change was the use of royal vocabulary to refer to the King and King’s actions, even though the interim Constitution was written

⁷² Art 8, Meiji’s Constitution: ‘The emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not Sitting, imperial ordinances in the place of law. Such imperial ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said ordinances, the government shall declare them invalid for the future’.

⁷³ Art 13, 10 December 1932 Constitution, reads: ‘Everyone has the right to freedom of religion or belief and to practice their cult in accordance with their beliefs when such practices are not incompatible with their duty as citizen and do not hamper order, peace or public morals’. Art 28, Meiji’s Constitution, reads: ‘Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief’.

⁷⁴ The mode of election was indirect suffrage, as provided for in Revolutionary France, according to the 1791 Constitution.

⁷⁵ Phraya Manwarachasewi, member of the Constitution-drafting assembly, declared ‘In Japan’s Constitution, Article 5 related to legislative power states that the King exerts his legislative power by the advice and with the consent of parliament’. The word ‘parliament’ was a transliteration of the English word ‘parliament’, what seems to show some confusion between the British and Japanese constitutional models. Assembly minutes 35/2475, 25 November 1932, House of Representatives (n 46), at 41.

⁷⁶ Session 34/2475 and 41/2475. 28 members voted in favour of a name change, seven opposed it and 24 abstained. Noranit Settabutr (n 39), at 97.

⁷⁷ Noranit Settabutr, *ibid.*, at 96.

in plain language. The King was no longer referred to as *kasat* (King) but as *phramahakasat* (His Excellency the King). The permanent Constitution also opened with the King's full name, over 13 lines of text. The most effective change was, however, not in the constitutional framework laid out by the Constitution, or in the language used, but in its underlying principle of legitimacy, its 'myth of origin' as told in the Preamble.

B. Royal Sovereignty versus Popular Sovereignty

The December 1932 preamble, written by Palace officials,⁷⁸ adopted the form of a granted Constitution, a mode of constitutional founding commonly used by resilient absolute monarchies. The 1889 Meiji Constitution, the 1906 Russian Constitution, the 1908 Chinese Constitution, and Meiji's model, the 1848 Prussian Constitution, were all 'granted' Constitutions. These authoritarian texts aimed to anticipate revolutionary movements by setting up assemblies while maintaining the power of the monarch, with the monarch becoming the source of the Constitution – as such, the original constituent.⁷⁹ The Siamese preamble subscribed to this tradition and read:

The King, having considered the moment to graciously give to His civil servants and to the people of His Majesty the possibility to [participate] in the development of the country, has granted (*phrarachathan*) a constitution to Siam according to His will on 27 June 1932.⁸⁰

It is notable that civil servants are distinguished from the rest of the people, a practice inherited from the absolute monarchy and in clear breach with the spirit of the June Constitution. This restoration of the constitutionally enshrined classification of class was also reflected in the disposition that princes were banned from politics to preserve the dignity of members of the royal family – princes being 'above' politics (Article 11).⁸¹ The 27 June 1932 introductory lines told a rather different story:

By order of King Prajadhipok, following the People's Committee request that the King be placed under the authority of the Constitution for the good of the country,

⁷⁸Statement by Constitution-drafting Committee Manopakorn, 29 Nov 1932. Suphot Dantranakul, *Prawat Rattthammanun [Constitutional history]* (Nonthaburi: Foundation for the Promotion of Social Sciences and Humanities, 2007) at 23.

⁷⁹Legal theory pertaining to 'granted constitutions' has been developed in 19th and early 20th century France (*charte octroyée*) and Germany, but does not, to the author's knowledge, have been the subject of extensive English-language studies. See works by Paul Bastid for France and Carl Schmitt for Germany.

⁸⁰*Ibid.*

⁸¹The rationale was that princes had to be 'above politics'. Pridi had proposed the abolition of nobility ranks to the Constitution-drafting Committee, which rejected it. However, Art 12 states that ranks of nobility do not yield any privileges. See Chanrochanakit (n 8) at 7; and Constitution-drafting Committee President, Assembly minutes, 36/2475, 25 November 1932, House of Representatives (n 45), at 53.

and following the acceptance by the King of demands formulated by the People's Committee, the Constitution is promulgated.⁸²

The permanent Constitution preamble highlighted at length the role of the King in granting the Constitution, in line with the '150 years of absolute monarchy under the principles of the ten virtues of a righteous King'.⁸³ It erased the 1932 revolution by emphasising continuity between the absolute and constitutional monarchy, a continuity embodied in the person of King Prajadhipok. In a granted constitution, constituent power and sovereignty lay with the King as the source of the Constitution. However, the permanent constitution does not enshrine royal sovereignty as clearly as the Meiji Constitution which reads:

The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.⁸⁴

Instead, the permanent Constitution stated that 'sovereignty *emanates* from the people and the King exerts it according the provision of the constitution' *through* the Parliament, government and courts. This is in marked contrast to the wording of the interim charter which stipulates that 'sovereignty belongs to the people and is exercised *by* the King, the People's Assembly, the People's Committee and the Courts'.⁸⁵ Both texts distinguished between the *ownership* of sovereignty and the *exercise* of sovereignty. While the interim Constitution gave both, entirely or partly, to the people, the permanent Constitution gave only part of the ownership of sovereignty to the people, as an 'emanation'. Manopakorn, president of the drafting committee, explained before the Assembly:

In reality, the first part of this article [on sovereignty] is a reaffirmation of our ancient traditions. Indeed, if we open old books, we will notice that the name of the King says he is an elected King; the King ascends the throne upon being invited by the people.⁸⁶

The doctrinal construction is as follows: the King is 'elected' by the people; therefore, people's sovereignty is embodied in the King's sovereignty.⁸⁷ The invocation of royal tradition once again justified the theory of the granted constitution. Likewise, royal traditions were invoked to dismiss calls for a constitutional requirement to have the King swear a royal oath to uphold the Constitution. Such requirement would have contradicted the theory of the granted constitution, as it would imply that the King was not the source of the constitution. This question was one of the most controversial during discussions on the

⁸² Preamble of the 27 June 1932 Constitution.

⁸³ Preamble of the 10 December 1932 Constitution.

⁸⁴ Art 4, Meiji Constitution.

⁸⁵ Words for 'sovereignty' have fluctuated. The interim constitution referred to 'supreme power' (*amnat sung sut*) while the permanent one to 'sovereignty' (*amnatipatai*).

⁸⁶ *Ibid*, at 362, quoted in Nattapol Chaiching (n 31), at 15.

⁸⁷ Nattapol Chaiching, *ibid*, at 11–17.

constitutional draft. When a member of the People's Committee raised the issue, Manopakorn responded by invoking traditional custom according to which the King swears a royal oath when ascending the throne – and that this suffices to ensure that the King reigns with virtue, which in turn, ensures that the King upholds constitutional principles.⁸⁸ Another member of the Committee explained:

The King swears an oath to representations of Buddhist divinities. Therefore, the [constitutional] text remains silent [on the issue of the oath to the Constitution].⁸⁹

Parliamentarians voted 48–7 against enshrining a royal oath in the Constitution in the constitutional draft, arguing that such an oath was part of customary law.⁹⁰ Pridi himself thought that it was unnecessary to write the royal oath into the Constitution, as it was a constitutional convention.⁹¹

The issue of granted constitution/sovereignty is important because it lays the foundational principles within which the ambiguities of the constitutional text are to be interpreted. The interim Constitution had clearly established the pre-eminence of the People's Committee at the expense of the King in line with the proclamation of popular sovereignty. The power structure created by the 10 December 1932 text was more difficult to decipher, especially since the King had, according to Article 2, exclusive exercise of sovereignty. Royal powers could then be subject to either a royalist or a revolutionary interpretation: a suspensive veto could be read as either absolute (royalist) or non-existent (People's Committee), and emergency powers as empowering either the King (royalist) or the government (People's Committee) at the expense of the Assembly.

Textual ambiguity clouded all discussions of the permanent constitutional draft. On emergency powers, members of the drafting committee referred to the need to have emergency laws promulgated by 'the King' *and* 'the People's Committee'.

[We have] drafted [this article] to facilitate the work of the administration; so that it becomes possible to pass laws. The word *phrarachakamnot* in this article refers to the law promulgated by the People's Committee and the King without prior vote of the assembly (...) and these dispositions exist in constitutions of foreign countries.⁹²

Yet, the *phrarachakamnot* of Article 52 can be understood in different ways, depending on which foreign model is taken as reference. If it was interpreted

⁸⁸ Committee President, Assembly minutes, 36/2475, 25 November 1932, House of Representatives (n 46), at 48.

⁸⁹ Phraya Rachawangsan, Assembly minutes, *ibid.*

⁹⁰ *Ibid* at 50.

⁹¹ Chanrochanakit (n 8) at 5.

⁹² Committee President, Assembly minutes, 39/2475, 27 November 1932, House of Representatives (n 45), at 145.

along the lines of the Meiji Constitution, then Article 52 gives the King the means to exert legislative and executive power,⁹³ as in early twentieth-century Siam and Japan, the parliamentary session lasted only a few months. The *phrarachakamnot* can also be understood as a French-type of decree known as *ordonnance*.⁹⁴ In this case, the government, not the King, is empowered to pass laws instead of the Parliament.

This ambiguity translated into a very chaotic implementation of the text⁹⁵ – the King adopted a monarchical interpretation of the Constitution, determined to exercise his royal veto and emergency powers. The King also considered that he had the right to ‘appoint members of parliament on the advice of the government’, and had a personal discretion in the appointment of parliamentarians. Prime Minister Manopakorn had apparently accepted such an interpretation.⁹⁶ The King also interpreted his suspensive veto as being absolute. He used it several times, requesting vetoed drafts to be entirely withdrawn.⁹⁷ He also meant to use Article 52 on emergency powers, or rather, its spirit, with discretion.

In April 1933, he pronounced the adjournment *sine die* of Parliament, the appointment of a new government and the suspension of parts of the Constitution. The act of parliamentary dissolution⁹⁸ stated that the decision was the King’s own, in light of the emergency caused by the ‘calamity’ of the economic plan of Pridi.⁹⁹ As the country had no Parliament, the King continued to promulgate laws countersigned by the Prime Minister, such as the anti-communist law in 1933. On 20 June 1933, Manopakorn then faced a counter-coup led by Pahonyothin, a member of the People’s Committee.

⁹³ Art 8. ‘The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial ordinances in the place of law. (2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.’

⁹⁴ The *ordonnance* of the French Fifth Republic or the *décret-loi* of the French Third Republic is an authorisation, given by Parliament to the government for a limited period, to take measures by Ordinance that are normally the preserve of statute law.

⁹⁵ Nattapol Chaiching (n 30), at 18–19; Suttachai Yimprasert, *Prawatisat phrachatipatai thai* [A History of Thai Democracy] (Bangkok: P. Press, 2008) 33–34; and Chanrochanakit (n 8), at 13.

⁹⁶ Nattapol Chaiching (n 31), at 35 & 143.

⁹⁷ He used his veto against a law giving the courts the power to hand down the death penalty, as he was the only person in the Kingdom to possess this power of death over his subjects. He was to remain the ‘Lord of Life and Death [of his subjects]’ (*chao chiwit*). Walter Vella, *The Impact of the West on Government in Thailand* (Los Angeles: University of California Press 1955) at 370. He also opposed a law on succession tax. See also, Nattapol Chaiching, *ibid*, at 34–35.

⁹⁸ It is not the Article 52 *phrarachakamnot* but rather the *phrarachakrisdika* (decree).

⁹⁹ In 1933, Pridi proposed a socialist economic plan. The members of the Assembly, including members of the People’s Committee, split on Pridi’s economic plan. King Prajadhipok and the Prime Minister, Phraya Manopakorn, were fiercely hostile to the plan, and adjourned the Assembly *sine die*; government members in favour of Pridi were dismissed and Pridi went into exile. A new government was appointed. See Nattapol Chaiching (n 31) at 19. The act on the dissolution of Parliament and appointment of a new government passed on 1 April 1933 starts with the following words: ‘*doy thi song phrarachadamri hen wa*’, ‘According to Royal Will’. This unusual formula hints at a royal decision.

After he was discredited for supporting a failed counter-revolution,¹⁰⁰ King Prajadhipok travelled to Great Britain for eye surgery. In 1935, he requested, in a telegram sent to the government, that several changes be made to the Constitution, especially concerning the royal veto. The text of 10 December had restored many royal prerogatives, yet it had not fully satisfied King Prajadhipok. He demanded that a majority of three-quarters replace the simple majority needed by Parliament to overrule a royal veto (Article 39),¹⁰¹ and that the Parliament be automatically self-dissolved following the use of a royal veto.¹⁰² The People's Committee rejected these demands, and King Prajadhipok abdicated. His abdication telegram read:

I am disposed to give the powers I have formally exerted to the people in its entirety, but I am not ready to give them back to an individual or group of individuals so that they can be used in an autocratic manner without preoccupation for the voice of the people.¹⁰³

The Royalists and their royalist interpretation of the 1932 text were thus marginalised by the following decade of regency.¹⁰⁴ Prajadhipok's successor, Ananda Mahidol, was a young and unknown man living in Switzerland, who did not show any interest in the Crown let alone power intrigues.

III. EPILOGUE: A CULT OF THE 1932 CONSTITUTION AS SACRED ROYAL OCTROY

The 10 December 1932 Constitution remains to date the most durable Constitution of Siamese-Thai constitutional history. It provided for a parliamentary

¹⁰⁰In October 1933, a pro-royalist rebellion broke out. Prince Boworadet led a fraction of the army to the capital city and several government members were captured. However, after a few days of skirmishes, the pro-government forces, under the leadership of Phibun Songkhrum, managed to defeat the rebels. The role of King Prajadhipok during this rebellion was controversial. He learnt about the rebellion while he was in his Hua Hin Palace. He then fled with the Queen to the Malay frontier after sending a telegram expressing sorrow for the outburst of violence. He would also have planned to execute members of the People's Committee on 24 June 1933. See Nattapol Chaiching (n 31), at 21–22.

¹⁰¹In the same document, the King requested the government to pardon political prisoners, pay compensation to civil servants dismissed because of their political allegiances, cancel trials against civil servants, and to commit not to decrease the army's budget. He also asked to choose appointed parliamentarians himself. Vishnu Khruangam (n 19), at 198.

¹⁰²The Prime Minister Pahonyothin, rejected this disposition: 'The automatic dissolution of parliament following a royal veto is not compatible with a democratic constitutional system' quoted in Suphot Dantranakul, *Prawat Rattathammanun*. 36.

¹⁰³Noranit Settabut (n 39), at 130; and David Wyatt, *A Short History of Thailand* (New Haven: Yale University Press, 2003) at 238.

¹⁰⁴Prajadhipok had abdicated without a successor. His nephew, Prince Ananda Mahidol, grandson of Chulalongkorn, who was ten years old at the time and lived in Switzerland, was unanimously chosen by the House of Representatives. This choice offered many advantages: the People's Committee could have a free hand over government, given both the young age and the absence of the new King. Noranit Settabut (n 38), at 130. The government also chose the members of the regency

monarchy that offered many channels for the King to exercise legislative power, either negatively through the royal veto, or positively with emergency powers. Legislative power is, according to Jean Bodin's seminal definition, 'sovereignty'. The myth of a 'granted constitution', as presented in the preamble, gave royal sovereignty a legitimising force. Yet, there was, from late 1933 onwards, no King to exercise it.

The void left by the disappearance of the figure of the King was filled by the cult of the Constitution, popularly framed as sacred, being a 'king's octroy' (*khong phrarachathan*). Revolutionaries including Pridi Panomyong, who had fought for the recognition of parliamentary sovereignty at the expense of royal sovereignty, nevertheless used the idea of the 'royally granted constitution' to mobilise people throughout the country in its defence. A 'Constitution Association' (*samakhom khana rattathammanun*) presided over by Pridi, and with branches all over the country, organised celebrations and rallies akin to royal ceremonies.¹⁰⁵ Symbolically, constitutional supremacy was replacing royal supremacy, even while drawing its legitimacy from it. A law of 'protection of the constitution' was promulgated in 1933,¹⁰⁶ and another against 'defamation of the constitution' came close to being adopted as well,¹⁰⁷ while the *lèse-majesté* law protecting the King fell temporarily into oblivion.¹⁰⁸ In 1934, the 10 December became a national holiday and soon supplanted the King's birthday in popularity. Young people could go on romantic dates at Constitution festivals, and admire 'statues' of the Constitution in their provincial halls – a golden 'samutthai', folded book used for Buddhist scriptures, on a two-tier golden tray, used for royal items.¹⁰⁹

According to some accounts, the regency years were 'undoubtedly the most hopeful years in the Thai constitutional experiment'.¹¹⁰ Indeed, what is now widely acknowledged as a failed experiment with constitutional democracy contrasts with an assessment of Thailand's constitutional developments in the late 1930s and 1940s, during times of regency. The 1946 Constitution, which

council (Art 10, 10 December 1932 Constitution). Yet two of the three members appointed by the government in 1932 were of princely rank. The regency period lasted more than 10 years. Ananda Mahidol returned to Siam in 1946.

¹⁰⁵ Puli Fuwongcharoen, 'Long live the Rattathammanun', (2018) 52(2) *Modern Asian Studies* 609–644, at 619.

¹⁰⁶ 'Phrarachabanyat chatkan pongkan raksa rattathammanun 2476' The law created a special committee to try people having committed 'acts directed against the constitution or aiming to erode the trust of the people in the constitutional system, including agreements, conspiracies and preparations [aiming toward their realisation]' (Art 3). The offences carried a jail term of 3 to 20 years. It was abrogated by Phibun Songkhram in 1938.

¹⁰⁷ Puli Fuwongcharoen (n 106), at 630.

¹⁰⁸ A trade union leader even sued the King for defamation in 1933. See Somsak Jeemteerasakul on Thawat Ridet's case, available at http://somsakwork.blogspot.com/2006/10/blog-post_26.html [in Thai].

¹⁰⁹ The use of the *samutthai* aimed to 'make the Constitution look mystical' (*khlang*). It was an idea of King Prajadhipok. Meanwhile, Pridi supervised the overall design of the replicas. Another influential figure in the process of making the Constitution an object of worship was Luang Wichit Watakan. See Puli Fuwongcharoen (n 106), at 625 and following.

¹¹⁰ Walter Vella (n 97), at 366.

succeeded the December 1932 text, was not the result of a coup, but of a constitutional revision process undertaken in accordance with the provisions of the 1932 Constitution. As such, it is unique in Thai constitutional history. Drafted under the supervision of Pridi Banomyong, it finally gave Siam its fully elected Parliament. But in 1947, following a royalist-backed military coup, the 1946 Constitution was abrogated and was followed by the drafting of two new charters in 1947 and 1949 respectively. Since then, constitutional texts have followed one after another relentlessly, and political and constitutional instability became the norm.

Eighteen Constitutions have been promulgated since December 1932, but the 10 December remains the only national 'Constitution Day', while the Democracy Monument, in the heart of Bangkok, still represents a 'statue of the 1932 Constitution', an accordion-type golden book on a golden tray, to symbolise both the sacredness of the text and the royal octroy from which it emanated. Today, the genesis of Thai constitutionalism lies at the heart of the historiographical conflict opposing royalist and revolutionaries. To royalists, the events of 24 June 1932 were not a revolution but a 'coup'. In their eyes, the attempt to transplant Western institutions of parliamentary democracy was premature and ill-conceived, and created a path dependency of coups, interim constitutions with amnesties for the coup-makers, and permanent constitutions. To royalists, Thailand's chronic constitutional instability results from the actions of Pridi who would have forcibly railroaded Siam on the path to constitutional democracy even when the Siamese people were not yet ready. Pridi acknowledges, *a posteriori*, his unpreparedness for the consequences:

In 1925, when we began to organize the nucleus of a revolutionary party in Paris I was only 25 years old. Very young. Too young. Inexperienced. Without experience, I applied theory sometimes dogmatically. I did not take into account the realities in our country. I did not have enough contact with the people. All my knowledge was book knowledge. I did not take into account human elements as much as I should have. In 1932, I was 32 years old. We had a revolution but I was inexperienced. When I had power, I had no experience, but when I had more experience, I had no power.¹¹¹

Pridi's 'original sin' in the aftermath of the 1932 Revolution led to the vicious cycles of coups and constitutions that has plagued Thai constitutional history till today. Yet to revolutionaries, the first coup and the origin of the vicious cycle of Thai politics was the April 1933 dissolution of Parliament by the King and Manopakorn. Royalists argue that there is a fundamental 'impossibility of legal transplants'¹¹² from the West to Siam. However, the first constitutional text was less inspired by Siam than by China or Russia; while the second owed less to the West than to imperial Japan. During the parliamentary discussion of the 10 December 1932 Constitution, members of the People's Committee were

¹¹¹ 'Pridi through a looking glass', interview by Anthony Paul, *Asiaweek*, 4 Jan 1980.

¹¹² Pierre Legrand, 'The Impossibility of Legal Transplants' (1997) *Maastricht Journal of European and Comparative Law* 111–127.

presented with the British model, while drafters had in reality copied the Meiji model. This confusion allowed royalist and revolutionary forces to reach an agreement.

However, in practice, both forces had different interpretations of each disposition, especially with regards to royal power. Likewise, the political principle on which the Constitution was built – that is, the question of the constituent power – was ambiguous: revolutionary forces considered the people, represented by themselves, to be sovereign and exert constituent power, while royalist forces believed in the theory of the granted constitution, making the King the constituent power and the ultimate sovereign. Consequently, two opposing conceptions of sovereignty coexisted simultaneously – royal sovereignty and parliamentary or popular sovereignty – leading to opposing interpretations of key provisions of the constitution, such as the use and meaning of royal veto.

The founding compromise of Thai constitutionalism can thus be analysed as a dilatory compromise in the Schmittian sense – establishing an unworkable constitution based on contradictory principles of monarchic and popular sovereignty.¹¹³ Until today, Thailand's constitutional politics remains entangled in the questions arising from this unsolved conflict of legitimating principles. The issue of 'granted constitution' versus 'people's revolution' still continues to haunt historiographic and political debates in Thailand.

The promulgation ceremony of the 2017 Constitution of Siam re-enacted the myth of a granted constitution, still referred to in the preamble on the 1932 Constitution's model. The new King, Vajiralongkorn, chose the date of the anniversary of the Chakri dynasty's foundation – the 6 April – to 'octroy' to civil servants and Thai people their twentieth Constitution. He formally 'granted' the *samutthai* Constitution on its golden tray to the civil servants and people. The same month, the bronze plaque commemorating the 24 June 1932 revolution disappeared, to be replaced by a plaque glorifying the Chakri dynasty. Discussion of the plaque incident was criminalised and people were arrested and charged.¹¹⁴ Indeed, the 24 June 1932 events and its 'interim' constitution remain a very controversial issue in Thai politics, whose academic discussion is now subject to harsh prison sentences under the Thai *lese-majeste* law.¹¹⁵

¹¹³ Carl Schmitt argues in his *Constitutional Theory* that if a constitution is unilaterally granted by a prince, it rests on the constituent power of the prince. If, for political reasons, it does not adopt the form of octroy and makes it an agreement between the King and the people, then it is a 'dilatory compromise' as long as the prince does not renounce his constituent power. See Carl Schmitt, *Constitutional Theory*, Jeffrey Seitzer (trans) (North Carolina: Duke University Press 2008) at 85–86 & 105.

¹¹⁴ In April 2017, academic Somsak Jeemterasakul wrote a post on his Facebook page about the 1932 plaque commemorating the Revolution and the 27 June Constitution. Six people who had shared his post were arrested and charged with *lese-majeste*.

¹¹⁵ The Thai *Lese-Majeste* Law is the harshest in the world. It punishes by a prison term of 3 to 15 years any person who insults, defames or threatens the King, the Queen, the Heir or the Regent. In practice, cases of *lese-majeste* involve prison sentences of up to 60 years. The courts systematically deny bail pending trial, citing security reasons and the gravity of the offence.