



7 The legal–military alliance for illiberal constitutionalism in Thailand

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Introduction

Thailand is the only country in Southeast Asia that still regularly experiences *coups d'état* and direct military rule. Since the absolute monarchy ended in 1932, civilians have never fully achieved control of the army. Even during civilian-led governments, the army remained largely autonomous and insulated from government control (Chambers 2010, 2014b). Yet, notwithstanding its long tradition of military rule,¹ Thailand has never been governed by decree (without a constitution) for more than a few months at a time.² Military leaders seem to have always favored the adoption of constitutions: *coups d'état* followed by constitution-making are a common way to seize and consolidate power. Once in power, the new power-holders seek to entrench their preferences and interests in a new constitution.

Constitution-making under military rule has resulted in two types of constitution: fully authoritarian, with political parties and elections banned altogether,³ and semi-authoritarian, allowing some degree of political representation through elections, but balanced by giving wide-ranging powers to appointed military and civilian bureaucrats.⁴ After seizing power, the military leaders would usually enact a fully authoritarian temporary charter providing for the drafting of a “permanent” semi-authoritarian constitution. Thailand has had only three democratic constitutional experiments with non-elected individuals prohibited from becoming prime minister and providing for election of the legislature and limited government.⁵ Following the most recent coups in 2006 and 2014, the army enacted two temporary charters (2006 and 2014) and two permanent constitutions (2007 and draft 2015). Both provided for a return to civilian rule through direct elections but gave broad powers to a Senate wholly or partly appointed.⁶ They also gave courts and independent organizations much power over the government and the legislature.

In that, they resemble the 1997 constitution, which at the time was heralded as one of the most democratic in Asia. The 1997 constitution was the outcome of popular calls for political reform which had their roots in a massive uprising against military rule in May 1992.⁷ The process of drafting the 1997 constitution was truly inclusive and incorporated nationwide public hearings (see McCargo



1 1998). The resulting constitution adopted many of the features of democratic
2 “third-wave constitutionalism,” most notably a powerful Constitutional Court
3 tasked to guarantee the supremacy of the constitution. Ginsburg (2009: 83)
4 defined it as a “post-political constitution”:
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6 The post-political constitution involves enhanced efforts to structure and
7 channel democratic power and to limit the role of partisanship, encompass-
8 ing not only constitutional courts but myriad other institutions that effect a
9 highly refined separation of powers.

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11 Among those “other institutions” are such independent organizations as the Elec-
12 tion, National Anti-Corruption, and State Audit Commissions and the Ombuds-
13 man. The 1997 constitution opened the way for judicial empowerment: judges,
14 career and non-career, sitting in new independent bodies and courts were
15 entrusted with wide-ranging powers of control and sanction over the elected
16 branch of the state.⁸ The Senate, traditionally an anti-politician stronghold, was
17 placed in charge of appointing and removing the members of independent organ-
18 izations, including the Constitutional Court,⁹ which topped the whole post-
19 political framework. Thailand seemed to have embarked on a path of democratic
20 consolidation free from military influence.

21 The 2006 military coup leaders abolished the 1997 post-political constitution.
22 They supervised the drafting of an even more post-political constitution, which
23 reintroduced appointment for half of the Senate and sustained the powers of the
24 independent organizations and the Constitutional Court. The 2014 military coup
25 leaders in turn abolished the 2007 constitution; they oversaw the drafting of an
26 even more post-political constitution. As of April 2015, the draft constitution
27 had reintroduced a fully appointed Senate and created new, appointed, inde-
28 pendent organizations and merged others.¹⁰ What the 1997, 2007, and 2015
29 constitutions had in common, despite their quite different origins, was a mistrust
30 of elected politicians. The introduction of post-political institutions helped main-
31 tain bureaucratic control over Thai politicians, and consequently the entire Thai
32 political system.

33 Authoritarian constitutions are usually defined as having “the form of a
34 constitution, but without fully articulated institutions of limited government”
35 (Ginsburg and Simpser 2005). However, the 2007 post-coup constitution
36 installed a highly limited government. The 2015 draft adds even more limits.
37 Rather than empowering the executive, both post-coup semi-authoritarian consti-
38 tutions have disempowered to the widest extent possible the executive and the
39 legislature. Using modern constitutional techniques, they recreate a regime in
40 which elected representatives are hemmed in by appointed bureaucrats in the
41 well-known “bureaucratic polity” (Riggs 1966).

42 The Thai bureaucratic polity is composed of the civilian and military bureau-
43 cracies. Between them there is a necessary synergy: the military needs civilian
44 bureaucrats to administer the country following *coups d'état*. This chapter
45 therefore argues that after 1992, in order to preserve their status, which was

threatened by the rise of elected politicians, Thai bureaucratic elites, both civilian and military, chose to reinvent bureaucratic rule by relying on post-political constitutions. At least two factors converged to lead to the embrace of post-political institutions: the domestic discredit of the military after the 1992 bloodshed,¹¹ and international norm diffusion. Post-political constitutions that adopt mechanisms of constitutional review may thus give the courts the power to veto political decisions made by the elected branch – a process which Hirschl (2004) has called the “judicialization of politics.” The post-political constitutions of 2007 and 2015 may be understood as attempts at what Hirschl defined as “self-interested hegemonic preservation.”

[The creation of Constitutional Courts with wide-ranging powers] is best understood as a product of a strategic interplay between threatened political elites, who seek to preserve or enhance their political hegemony by insulating policy making in general and their policy preferences in particular from the vicissitudes of democratic politics while they profess support for democracy.... When their policy preferences have been, or are likely to be, increasingly challenged in majoritarian decision-making arenas, elites that possess disproportionate access to, and influence over, the legal arena may initiate a constitutional entrenchment of rights and judicial review in order to transfer power to supreme courts.

(Hirschl 2004: 12)

This chapter seeks to analyze how, in the post-1992 context, post-coup contestation has led constitutional drafters to adopt post-political constitutions under both civilian (1997) and military (2007, draft 2015) rule. Elite bureaucrats, civilian and military, have preferred this type of constitution because it gives them the means for advanced bureaucratic cooperation against elected politicians. It therefore makes it possible to retain an illiberal status quo despite a seemingly democratic constitution.

Legal experts have been at the center of cooperation between civilian and military elites. They have integrated the preferences of civilian and military bureaucrats at three levels: (1) as producers of legal doctrines to justify *coups d'état*; (2) as constitution-drafters entrenching coups in the very text of the constitution; and (3) as appointed or career judges in courts and independent watchdog institutions dismissing elected governments. The legal–military alliance was essential in staging the 2006 and 2014 coups, drafting the post-political and semi-authoritarian 2007 and 2015 constitutions, and legalizing post-coup order. This chapter sheds light on the role of jurists mobilized to draft post-coup constitutions that empower the judiciary. Even though it was often observed that this subject demanded detailed analysis (see Kasetsiri Charnvit (2007) and Kasien Tejapira (2012), among others), it does not appear that any such study has yet been published. In the late 1970s Thai studies scholars laid the foundations for research on military involvement in Thai politics (Elliott 1978; Chaloeontiarana 2007; Samudavaniija 1982). Critical studies of Thai constitutionalism emerged

1 at the end of the 1980s, especially with the drafting of the 1997 constitution
 2 (see, e.g., Saneh Chamarik 1986; McCargo 1998; Ginsburg 2009; Harding
 3 and Leyland 2011). Before that, Thai constitutions were considered either
 4 “nominal”¹² or “semantic”¹³: as a country that had “constitutions without consti-
 5 tutionalism”, Thailand was not worth studying.

6 Recently, notable efforts have been made to link the study of constitutional-
 7 ism with military rule in Thailand (Chambers 2014), reflecting a broader trend in
 8 comparative constitutional studies of recent interest in the study of authoritarian
 9 constitutions (Ginsburg and Simpser 2005). This chapter is intended to con-
 10 tribute to this emerging field by bringing empirical evidence to the fore: the Thai
 11 case illustrates how bureaucracies can divert post-political constitutions from
 12 their liberal and democratic spirit in order to use them against representative
 13 governments. This phenomenon is particularly likely to occur when the civilian
 14 and military bureaucratic elites are coordinated, allied with renowned legal
 15 experts, and free from government control. This chapter first examines how the
 16 Thai state has historically encouraged the legal–military alliance. It then turns to
 17 an analysis of how military rule has been constitutionalized. Finally, it explores
 18 the legal doctrines and jurisprudence developed to legalize military *coups d’état*
 19 and military rule. It concludes with a few remarks on the state of the political
 20 crisis industry that sustains the legal–military alliance.

21 22 23 **The legal–military alliance**

24 The legal–military alliance is a network within the Thai bureaucracy which is
 25 both institutionalized as part of the bureaucratic polity and personalized at the
 26 highest levels of the state. Legal and military elites share common values and are
 27 highly interdependent – a situation shaped by a shared sense of community and
 28 destiny. The legal–military alliance is the most influential elite network within
 29 the bureaucracy because it combines normative with coercive power. Legal and
 30 military elites share many characteristics. Under Rama V (1868–1910), the
 31 emerging civilian and military bureaucracy was to function as a Westernization
 32 agent to avoid colonial occupation in the nineteenth century. The king wanted to
 33 modernize the state by Westernizing it in two stages. First, to hire foreign coun-
 34 cilmors while sending civilian bureaucrats and military officers abroad to study;
 35 second, to replace foreign councilors by the Thai bureaucrats who had been edu-
 36 cated abroad. Both military officers and jurists were sent to Western countries to
 37 learn about the latest techniques in defense and law.

38 Together, the two fields were indeed instrumental in maintaining and preserv-
 39 ing Thai independence. Weak military power on the one hand and archaism of
 40 the legal system on the other made Thailand very vulnerable to colonial powers
 41 and undermined its attempts to appear as a “civilized” country. Jurists had to
 42 find ways to reform Siam in order to make the legal system acceptable to
 43 Western countries which had been granted extraterritorial privileges.¹⁴ In 1897
 44 the military academy was created and the first law academy for high civil
 45 servants was established inside the Ministry of Justice. Both were to enroll

members of the royal family and the nobility to form a bureaucratic elite (see Kollada Kesboochoo 2004: 66–82). Thanks to scholarships, students studied part of their curriculum in Thailand and part abroad. When they returned to Thailand, they were expected to occupy high positions in the civilian and military bureaucracies. Most law students were sent to England; military students were sent to France and Germany.

In the mid-1920s, the association of Thai students in France launched a plot to overthrow the monarchy. Two of them became leaders of the 1932 revolution: Pridi Banomyong, who was studying law at the University of Paris, and Plaek Khittasangkha (later known as Luang Phibun Songkhram), a student at the Military School in Paris. In 1927, together with two other students from the Military School, a London-based Thai lawyer, a science student, and a member of the Thai embassy in Paris, they planned a revolution in Siam. They recruited about 100 men to stage a coup against the monarch Rama VII (1925–1935) and succeeded in imposing Thailand’s first written constitution. The People’s Party (*khana rassadon*) consisted of equal numbers of military officers and civilians. In the successful 1932 revolution the Pridi/Phibun alliance was instrumental in bringing together force (the military) and legitimacy (the constitution). This legal–military strategic alliance imprinted itself on the modern Thai state. It was replicated under the leadership of King Rama IX (1946 to the present) in its choice and handling of men in the Privy Council.¹⁵ The Privy Council is central to the “network monarchy” (McCargo 2005), comprising high-ranking members

Table 7.1 Members of the Privy Council (the organizing principle is the one used by the Privy Council)

Name	Background	Date of appointment	Date of birth
Prem Tinsulanond (President)	Army	8/23/1988	8/26/1920
Thanin Kraivichien	Judiciary	12/15/1977	4/5/1927
Surayud Chulanont	Army	11/24/2003 4/8/2007	8/28/1943
Chaovana Nasyylvanta	Engineer	12/19/1975	8/7/1948
Siddhi Savetsila	Army	12/24/1991	1/7/1919
Khamthon Sindhvananda	Army	8/1987	3/20/1926
Pichit Khullawanit	Army	7/13/1993	7/6/1932
Ampon Sennanarong	Agriculture	9/9/1994	10/30/1931
Chamrat Khemacharu	Judiciary	11/15/1994	8/11/1929
M.L. Asni Pramroj	Law degrees and army titles	3/3/1984	7/1/1934
M.R. Thepkamol Thevakul	Ambassador	8/7/1997	4/12/1936
Kasem Wattanachai	Doctor/health	7/18/2001	4/18/1941
Palakorn Suwannarat	Civil servant/governor	7/18/2001	7/14/1947
Chumphon Pacchusanon	Army	3/15/2005	6/30/1944
Antanithi Disatha-amnart	Judiciary	8/16/2007	8/24/1944
Supachai Phungam	Judiciary	4/8/2007	6/4/1945
Chanchai Likhitchitta	Judiciary	4/8/2007	4/25/1946
Chalit Phukphasuk	Army	11/18/2011	4/5/1948

1 of the palace, the military, and the bureaucracy. Members of the network monarchy
2 enjoy a degree of proximity with the monarch which allows them to wield
3 power within both the state and Thai society at large. The 2015 Privy Council is
4 mainly composed of legal and military elites.

5 Of the 18 current Privy Councilors, seven are army officers and five are
6 judges. The two most influential figures on the council are its current president
7 Prem Tinsulanond, retired general and former appointed prime minister
8 (1980–1988),¹⁶ and Thanin Kraivichien, former supreme court judge and
9 appointed prime minister (1976–1977).¹⁷ They both command great deference,
10 being presented as role models to law and military students and new recruits.
11 Because they have personal ties to high-ranking bureaucrats who owe them
12 loyalty, within the Privy Council they can act as coordinators between the
13 military and such legal bodies as the courts, independent constitutional organiza-
14 tions, the Council of State, state-appointed legal commissions, and to some
15 extent law faculties. In the past, other powerful figures have played similar
16 roles.¹⁸

17 Besides the Privy Council, other institutions create legal–military integration
18 and foster consensus between the two status groups. The National Defense
19 College is the most emblematic of these. Most Privy Councilors, whether judges
20 or career military, have studied at the College, which was created in 1955 by
21 Phibunsongkhram to establish a unitary *esprit de corps* among military and civil-
22 ian bureaucrats.

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24 By the process of subjecting bureaucrats to a common institution of learning
25 government propaganda, and personal contacts in a congenial setting, the
26 Sarit regime was able to achieve a high level of elite bureaucratic solid-
27 arity.... Their experience at the prestigious National Defense College raised
28 the morale and sense of efficacy of the participants, as well as allowing them
29 to establish personal contacts which could be used later to facilitate intra-
30 bureaucratic cooperation and efficiency. Through socialization at the
31 Defense College, Sarit was able to persuade most top echelons civilian bur-
32 eaucrats of the urgency of national development and the linked problem of
33 national security, which had to be handled primarily by the armed forces,
34 supported by a loyal civil service. In the final analysis, it is clear that a
35 major purpose of the socialization programme was to try to convince civil-
36 ian bureaucrats of the legitimacy of military supremacy in government.

37 (Tak Chaloeontiarana 2007: 188)

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39 The elite socialization process is the root of the alliance between jurists and the
40 military. Recruitment into military schools and legal studies is highly com-
41 petitive and strives to build both a feeling of gratitude toward the bureaucratic
42 regime and a strong sense of comradeship and solidarity among graduates. Both
43 the military and the judiciary have fostered the development of systems of
44 recruitment, training, evaluation, promotion, and discipline that encourage con-
45 formity with the expectations of the bureaucratic regime.

Constitution-drafting and constitutional practice

Legal–military integration has also been fostered by the pattern of coup constitution-making that has long characterized Thai politics. Since the end of the absolute monarchy in 1932, Thailand has had 20 constitutions and 13 successful coups: thus a Thai constitution lasts on average 4.5 years and there is a coup every 6.8 years. Samudavanija (1982) called this the “vicious cycle of Thai politics”: there is a coup, a new constitution, elections, political crisis, and another coup. Within this cycle, there is another cycle in which the previous constitution is abolished, a temporary constitution is drafted that sets conditions for the drafting of a permanent constitution, and the permanent constitution is drafted. A prominent Thai studies scholar (McCargo 1998) has called this frenetic constitution-making “the disease of permanent constitutionalism.”

In this coup–constitution sequence, drafters of the temporary constitution are likely to be associated with those who made the coup because they must provide a constitution within a few days or weeks after they take over (except following the 1958 and 1971 coups). By contrast, the drafting of the permanent constitution tends to be a more inclusive process that involves constitution-drafting committees and assemblies.¹⁹ Before 1992, legal experts, usually from the courts and the Council of State,²⁰ were asked to draft the temporary document; constitution-drafting assemblies were mostly composed of military men and legal experts, usually from the courts, the Council of State, and law faculties.²¹ As might be expected, the permanent document was usually more liberal than the temporary one, but in both cases the processes were supervised by the faction of the army that had staged the coup. This process resulted mainly in two types of constitution: authoritarian – giving the military unlimited power; and semi-authoritarian – providing for institutional power-sharing, which often featured an elected Lower House and an appointed Upper House (mainly filled with senior civilian and military bureaucrats). Both types were “preservative”: they sought to embed the traditional pillars of the Thai state (“monarchy, religion, and nation”) into constitutional practice in order to preserve the military-bureaucratic regime.

After 1992, demands for democratization were to some extent successful: for the first time in Thai constitutional history, the 1997 constitution specified a fully elected Senate and there was an absolute ban on having an unelected prime minister. Thus, the military, which had relied on an appointed Senate and the possibility of one of its members becoming the appointed prime minister, faded from the political scene. Most aspects of the 1997 constitution were transformative, especially in terms of individual and collective rights and liberties, and the building of a strong civilian government. As the military influence ebbed, the civilian bureaucracy, in particular legal elites comprising the top layers of the judiciary, rose to prominence.

A thorough examination of the minutes of the 1997 and 2007 constitution-drafting process shows that for both, the drafters envisioned judicial empowerment

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1 as a strategy to keep the bureaucracy in control of the political system by giving
2 the judiciary a special role in times of crisis. For the 1997 drafting committee,
3 the following article, dealing with crisis, gave unlimited powers to the Constitu-
4 tional Court:

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6 Whenever no provision under this Constitution is applicable to any case, the
7 Constitutional Court shall decide in accordance with the constitutional prac-
8 tice in the democratic regime of government with the King as Head of the
9 State.²²

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11 It was later decided to incorporate this into Article 7 of the constitution and to
12 drop any reference to the Constitutional Court.²³ It became:

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14 Whenever no provision under this Constitution is applicable to any case, it
15 shall be decided in accordance with the constitutional practice in the demo-
16 cratic regime of government with the King as Head of the State.

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18 Such wording is a traditional feature of post-coup constitutions. It first appeared
19 in the constitution in 1959 following Sarit Thanarat's *coup d'état* to allow
20 authorities discretionary powers as to how to interpret what was at the time a
21 short constitution. In the 1972, 1976, 1977, and 1991a constitutions, it referred
22 only to "the constitutional practice in the democratic regime of government,"
23 but, starting with the 1997 constitution, the expression "with the King as Head
24 of State" was added. In 2007, Article 7, which had been used to call for the royal
25 appointment of the prime minister in the lead-up to the 2006 coup, was left
26 untouched.

27 In 2007, constitution drafters once again attempted to make judges actors of
28 crisis resolution. According to the first draft of Article 68, judges were to meet
29 and appoint a caretaker government if the office of prime minister became
30 vacant. In March 2007, the constitution-drafting subcommittee on political insti-
31 tutions adopted the following principle, applicable in situations where the office
32 of prime minister became vacant:

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34 The Constitutional Court President, the President of the Supreme Court and
35 the Supreme Administrative Court choose the interim cabinet, which should
36 be comprised of people with experience in administration.²⁴

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38 The committee also proposed to add the commanders of the three branches of
39 the army,²⁵ but this proposal was discarded and the fourth paragraph of Article
40 68 softened: it no longer gave judges the authority to select a prime minister but
41 instead mandated that they meet to "consider ways to solve the problem." By
42 March 2007, this had become:

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44 If there is a national crisis or a political situation where it is necessary,
45 there shall be a meeting of the following, the PM, President of House of



Representatives, President of the Senate, Leader of the Opposition, President of the Constitution Court, President of the Supreme Court, President of the Supreme Administrative Court, and President(s) of Independent Agencies under the Constitution, to consider ways to solve the problem.

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When this chapter was included in the draft constitution published for public hearings in April 2007, it met with strong opposition and was finally removed under popular pressure. Notwithstanding the failed attempts at constitutionalizing the crisis resolution role of the highest justices, judges did become involved in times of crisis. This began to unfold from 2006 onward, following the king’s speech to the judges on April 25, 2006 in which he urged the justices to step in to solve the political crisis related to the legitimacy of Prime Minister Thaksin Shinawatra.²⁶ A few days after the royal speech, the Constitutional Court ruled that the elections were unconstitutional, which meant that Parliament could not reconvene to elect a new prime minister. The situation thus created was ripe for a *coup d’état*. The elections scheduled for October never took place because the army staged a coup on September 19, 2006.

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The 2007 constitution was in force when the younger sister of Thaksin, Yingluck Shinawatra, was elected in July 2011. Facing mass protests, she dissolved the House in December 2013. The opposition boycotted the elections in February 2014 and the Election Commission refused to certify the results. A few months later, on May 7, 2014, the Constitutional Court dismissed Yingluck for the transfer of an official to an inactive post. The resultant political vacuum again created conditions for a coup, which was staged on May 22, 2014.²⁷ In both cases, coordinated court decisions paved the way for the military *coup d’état*.²⁸ After seizing power, the first move by the military was to appoint assemblies and constitution-drafting committees to distribute the spoils and thus build support.

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Building the constitutionality of *coups d’état*

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Two related measures are emblematic of the entrenchment of military interests in Thai constitutions: amnesties for coup-makers and constitutionalization of the legality of *coups d’état*.

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First, in 1932, following their revolution/coup, the People’s Party, led by jurist Pridi Panomyong and military officer Plaek Phibunsongkhram, proposed simultaneously a constitution and an amnesty bill, which were sent to the king for endorsement. Later, coup-makers always used amnesties, sometimes as a separate bill, sometimes as an article in the constitution. Since 1972, post-coup (temporary) constitutions have included an amnesty for coup-makers and an article legalizing the coup.²⁹ Finally, starting in 2007, permanent constitutions have included a clause legitimizing temporary post-coup constitutions – thus giving constitutional status to the coup.

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In 2006, the amnesty for coup-makers was written into Article 37 of the 2006 interim constitution:

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1 **Article 37 (2006).** All acts done by the Chairman of the Council for Demo-
2 cratic Reform which related to the seizure and control of the State adminis-
3 trative power on 19th September B.E. 2549 as well as any act done by
4 persons involved in such seizure or of persons being assigned by the Chair-
5 man of the Council for Democratic Reform or of persons being commanded
6 by the Chairman of the Council for Democratic Reform ... done for such
7 above act. All these acts, whether done for the enforcement in legislative,
8 executive or judicial force as well as the punishment and other acts on
9 administration of the State affairs whether done as principals, supporters,
10 instigators or persons being commanded to do so and whether done on such
11 date or prior to such date or after such date which if such acts may be
12 unlawful, the actors shall be absolutely exempted from any wrongdoing,
13 responsibility and liabilities.
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15 In 2014 the amnesty clause for coup-makers was written into Article 48 of the
16 constitution.
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18 **Article 48 (2014).** All acts which have been done in relation to the seizure
19 and control of the administration of State affairs on the 22nd Day of May
20 B.E. 2557 (2014) of the Head of the National Council for Peace and Order
21 and the National Council for Peace and Order, including all acts which have
22 been done by any person in connection with the aforesaid acts, or by the
23 person who has been entrusted or ordered by the Head of the National
24 Council for Peace and Order or the National Council for Peace and Order,
25 for the fulfilment of such purposes, regardless of their legislative, executive
26 or judicial force, as well as any punishment and other acts performed in rela-
27 tion to the administration of State affairs and whether the actors of those act
28 are principals, accessories, persons who employ another to commit those acts
29 or the employed persons and whether those acts done before or after the date
30 mentioned above, if the aforesaid acts were illegal, all related person shall be
31 exempted from being offenders and shall be exempted from all liabilities.
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33 In constitutionalizing the legality of coups, drafters used Article 36 of the 2006
34 constitution and Article 47 of the 2014 constitution.
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36 **Article 36 (2006).** All announcements or orders of the Council for Demo-
37 cratic Reform or the orders of the Chairman of the Council for Democratic
38 Reform which announced or ordered during 19th September B.E. 2549 until
39 the promulgated date of this Constitution whether done in any form and any
40 announcement or commanded for the enforcement in legislative, executive
41 or judicial force shall continue to be enforced and shall consider that
42 announcements or orders as well as acts done upon such announcements or
43 orders whether the acts of such announcements or orders were done prior to
44 or after the promulgated date of this Constitution shall be announcements or
45 orders which are considered lawful and constitutional.

Article 47 (2014). All notifications and orders of the National Council for Peace and Order as well as orders of the Head of the National Council for Peace and Order which were notified or made between the 22nd Day of May B.E. 2557 (2014) until the date the Council of Ministers takes office under this Constitution, regardless of their legislative, executive or judicial force, as well as all acts performed in compliance therewith before or after this Constitution comes into force shall be deemed to be legal, constitutional and conclusive. Any Notification or Order that is still in force prior to the date this Constitution comes into force shall be in force until it is amended or repealed by law, rule, regulation, resolution of the Council of Ministers or order, as the case may be. In the case where the National Council for Peace and Order has ordered any person to hold or vacate any official position as prescribed by section 24 prior to the date this Constitution comes into force, the Prime Minister shall present the order to the King for appointment or removal.

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Articles 36 and 37 of the temporary 2006 constitution were endorsed by the 2007 permanent constitution in Article 309. As of April 2015, Articles 47 and 48 of the temporary 2014 constitution are endorsed in Article 315 of the 2015 draft of the permanent constitution.

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Article 309 (2007). All acts recognised in the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 (2006) as lawful and constitutional, including acts incidental thereto whether performed prior to or subsequent to the date of the promulgation of this Constitution, shall be deemed constitutional under this Constitution.

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With these constitutional dispositions, coup-makers and their allies are protected from prosecution for past and future actions. Examining jurisprudence, these extensive protections against prosecution may be largely superfluous, given the traditional pro-military stance of Thai courts. Indeed, despite the fact that abolishing the constitution is a criminal offense punishable by the death penalty (Article 113 of the Thai Criminal Code), the Supreme Court has created a jurisprudential rule making *coups d'état* legally valid in Thailand once they are successful. According to Supreme Court Decision 45/2496 (1953), “The military coup council has the power to govern the country by changing, revising, abolishing or enacting laws because of their successful coup in 1947.”³⁰ Similarly, in Supreme Court Decision 1167/2505 (1962), the court ruled that:

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In 1958 the Revolutionary Party successfully seized the power to administer Thailand and the Revolutionary Party can therefore exercise the powers to administer the country by such power. Any text that the Revolutionary Party enforces on the public is therefore deemed to be a law, even though the King may not have promulgated it with the advice and consent of the members of the National Assembly or the Legislative Assembly.³¹

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1 Court decisions also strictly enforced amnesty for coup-makers. In May 1997,
2 the Criminal Court dismissed assault charges brought by a victim of Black May
3 1992 against the coup leaders, arguing that they were covered by the amnesty
4 decree validated by the Constitutional Tribunal.³²

5 Now let us examine the construction of legal doctrines governing the drafting
6 of the post-1992 constitutions – those of 1997, 2006, 2007, 2014, and 2015. Aca-
7 demic Bowornsak Uwanno – a role model for many law students and future
8 legal elites – led the drafting of the 1997 and 2015 constitutions.³³ Interestingly,
9 as a legal expert he also formulated the doctrines justifying military rule. He
10 notably produced the doctrine of “shared sovereignty” whereby sovereignty
11 reverts to the monarch whenever there is a *coup d’état*.

12
13 In the Thai system of democracy, sovereignty resides in the monarchy and
14 the people. It differs from other countries in which the people are the sole
15 bearer of sovereignty. There are two reasons for this. The first one is related
16 to customs. The Thai monarchy has been one with the people and this has
17 become tradition. The second one is related to law. From time immemorial,
18 sovereignty belonged to the monarchy. When the People’s Party changed
19 the system of government, the monarchy who had sovereignty, bestowed it
20 onto the people by giving them the Constitution. It accepted to be put under
21 the Constitution but still held sovereign power on behalf of the people. That
22 is why whenever there is a *coup d’état* that abolishes the Constitution, we
23 should consider that the power that was given with the Constitution comes
24 back to the monarchy, the sovereign before 24 June 1932.

(Bowornsak Uwanno 2007)

25
26
27 Thus, according to Bowornsak Uwanno, when the monarch signs the interim
28 constitution following a *coup d’état*, the act is deemed legal and sovereignty
29 reverts to being “shared” with the people. Other legal experts who participated
30 in drafting constitutions after 1992, such as Vishnu Khruangam and Meechai
31 Reechupan, have become the proponents of theories legalizing *coups d’état*,
32 usually by reference to the continuity of the Thai state as embodied by the king.

33 However, the legality of coups has not gone without challenge. The Nittirat
34 group – seven law lecturers from Thammasat University³⁴ – have become known
35 for their critical attitude toward the legal–military alliance. On the fifth anniver-
36 sary of the September 2006 coup, they issued a set of proposals contesting the
37 legality of the coup. They notably recommended annulment of its legal con-
38 sequences and cancellation of acts and laws based on its legality and of amnes-
39 ties for coup-makers, which would have paved the way for their prosecution.
40 They referred to similar processes in Germany after the fall of the Third Reich,
41 in France after the Vichy Regime, in Turkey, and in Greece (Nittirat 2010). They
42 insisted that the process of automatically legalizing successful *coups d’état* was
43 the very cause of the vicious cycle of Thai politics. Outlawing such coups would
44 put an end to that vicious cycle (Nittirat 2010: 15). Earlier, they had criticized
45 the closing down of the Thai Rak Thai Party and several other controversial

Constitutional Court rulings. In 2011, the Nittirat group also launched a campaign against the *lèse-majesté* law.³⁵ This launched a wave of hatred against the informal leader of the group, Vorajet Pakeerat. Because he had formerly received the Ananda Mahidol scholarship,³⁶ he was criticized for being “ungrateful” to the monarchy which had given him the opportunity to study abroad. Among jurists, his behavior was considered deviant. In his case, however, cooptation by the military-bureaucratic regime had clearly failed. On September 30, 2012, Nittirat organized a seminar on the role of Thai jurists in sustaining military rule. Prominent intellectual Kasien Tejapira was invited to talk about “Jurists and *Coups d’État*.” Comparing the relationship between jurists and coups to a rotten coffin and a rotten ghost, he pointed to the responsibility of jurists in making coups a “natural” feature of Thai politics by endorsing them.³⁷

Conclusion

Military rulers resort to constitutions for several reasons but mainly because constitutions act as operating manuals for subordinates and because they serve as window-dressing for both citizens and the international community. Constitutions allow leaders to reinforce their power by legitimizing their rule. As authoritarian constitutions, they ensure regime survival by neutralizing possible threats.

The Thai 1997, 2007, and draft 2015 constitutions embrace constitutionalism to the extent that they create the conditions for limited government, separation of powers, and some protection of individual rights. However, this constitutionalism is illiberal in that it does not rest on the idea of a neutral state, which is necessary to support liberal constitutionalism. The idea of the national good, enshrined in the country’s “Nation, Religion, King” ideology, calls for actively militant citizens and state institutions. The military in the 1950s assumed this militant role of promoting the country’s ideology through a form of despotic paternalism (*Tak Chaloemtiarana*); supported by legal elites, it lasted for almost half a century. Since 1992, when the military became discredited, the leading role has passed to jurists sitting in post-political institutions, with the military now the junior partner in the alliance.

The use of academics to lay the legal foundations for Thai authoritarianism is not a new phenomenon, but in the past decade it has taken on new, more sophisticated, forms. The word *nettiborikorn*, initially crafted in the 2000s to refer to legal experts advising politicians, now seems to refer specifically to Meechai Reechupan, Vishnu Khruangam, and Bowornsak Uwanno – academics involved in drafting pro-military constitutions following the 2006 and 2014 coups. Elite socialization processes in Thailand make legal–military cooperation easy. There is no doubt that the Thai state has planned for such connections between legal elites and military officers, from the formal education system (the National Defense College) through to the highest level (the Privy Council). As members of the bureaucratic elite, the two groups share preferences and values derived from the nationalist-royalist ideology (Thongchai Winnichakul 2001).

1 Occurring in times of crisis, constitution-making is driven by the passions and
 2 interests of those doing the drafting (Elster 1995). One passion which legal and
 3 military elites share is distrust of elected politicians and fear that “parliamentary
 4 dictactorship” would endanger the status quo. Both elites need a constitution that
 5 entrenches the status quo behind a democratic façade which will make it accept-
 6 able to the public and to the international community.

7 Because law is an applied science it is subject to conflict of interests, espe-
 8 cially, when boundaries between the academic and professional fields are perme-
 9 able. Law is being taught in an absolutely pro-regime manner because professors
 10 live off the jobs offered by a regime sustained by the theories the academics
 11 have built. There are now chains of legitimization between producers of norm-
 12 ative legal discourse (legal academics) and practitioners (justices, high-level
 13 civil servants, members of independent organizations, appointed senators).
 14 Jurists are core agents of the interplay, involved as they are in both norms pro-
 15 duction and application. Their shared interests and preferences have created a
 16 fluid system for developing norms and their use. As a result, there is now
 17 considerable coordination between legal norms producers and practitioners in
 18 independent organizations. Legal committees for political reform, constitution-
 19 drafting committees, and assemblies have “bought” academics into the Thai
 20 system for sustained crisis.

21 Similarly, frequent constitutional change has fostered high levels of legal–
 22 military integration cemented in a common “business of political crisis.” The
 23 business of staging *coups d’état* has produced a division of labor between jurists
 24 and military officers. Indeed, those staging coups need legal services to be suc-
 25 cessful both at the stage of constitution-making and in later constitutional prac-
 26 tice. In exchange, military coups bypass the judiciary – rare attempts to affect
 27 the courts were unsuccessful – and inversely, judges do not rule against military
 28 coups. Thus is the status quo preserved and the resilience of the military-
 29 bureaucratic regime reinforced. As the history of Thailand demonstrates, military
 30 rulers can succeed in entrenching their interests through “real” constitutionalism,
 31 namely by constitutionalizing limited government.

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 36 invaluable comments, and Bjoern Dressel and Marco Bunte for their review of
 37 earlier drafts.
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40 **Notes**

- 41 1 The following is a list of military prime ministers and how they came to power.
 42 1933–1937: Colonel Phraya Pahon Phonpayuhasena, appointed; 1938–1944: Marshal
 43 Plaek Phibulsongkhram, appointed; 1946–1947: Admiral Tawan Thamrongnawasa-
 44 wat, elected; 1948–1957: Marshal Plaek Phibulsongkhram; 1958: Genral Thanom
 45

- Kittikachorn, coup; 1959–1963: Marshal Sarit Thanarat, coup; 1963–1973: Marshal Thanom Kittikachorn, coup; 1976: Admiral Sangat Chaloryu, coup; 1977–1980: General Kriangsak Chomanan, coup; 1980–1988: General Prem Tinsulanond, elected; 1988–1991: General Chatichai Choonhavan, elected; 1991: General Sunthorn Kongsompong, coup; 1992: General Suchinda Kraprayoon, coup; 1996–1997: General Chavalit Yongchaiyuth, elected; 2006: General Sonthi Boonyaratglin, coup; 2006–2008: General Surayud Chulanont, appointed; 2014 to present: General Prayuth Chan-ocha, coup.
- 2 The longest period between a coup and promulgation of a constitution occurred in 1971. The coup by Thanom Kittikachorn was staged on November 17, 1971 and the 1972 constitution was promulgated on December 15, 1972. In addition, in 1958 Thailand lived without any constitution for three months. The coup by Sarit Thanarat was staged on October 20, 1958 and the temporary charter was promulgated on January 28, 1959. In 2006, the coup by Sonthi Boonyaratglin was staged on September 19 and the 2006 constitution was promulgated on October 1, 2006. Lastly, in 2014, Prayuth Chan-Ocha seized power on May 22, 2014, and the interim constitution was promulgated on July 22, 2014.
 - 3 The following constitutions provide for neither elections nor political parties: 1947, 1959, 1972, 1976, 1977, 1991a, 2006, 2014.
 - 4 The following constitutions allowed limited popular representation: 1932a, 1932b, 1949, 1968, 1978, 1991b, 2007, draft 2015.
 - 5 The following constitutions were fully democratic: 1946, 1974, 1997.
 - 6 Under the 2007 constitution, 74 members of the 150-member Senate were appointed by a seven-member committee consisting of the President of the Constitutional Court, the Chairman of the Election Commission, the Chairman of the Ombudsmen, the President of the National Counter Corruption Commission, the Chairman of the State Audit Commission, one judge from the Administrative Court, and one judge from the Supreme Administrative Court (Article 113 of the constitution). As of April 2015, the draft 2015 constitution provides for a fully appointed Senate.
 - 7 In May 1992, a mass protest against the government of General Suchinda Kraprayoon took place in central Bangkok. Repression left more than 50 dead and hundreds injured. Thousands were arrested. Following a royal intervention, Sunchinda issued an amnesty for protesters and resigned as prime minister.
 - 8 Independent organizations were given quasi-judicial powers over politicians and bureaucrats. The 1997 constitution also created a system of administrative courts (Klein 1998).
 - 9 See Article 257 of the 1997 constitution.
 - 10 The 2015 draft constitution notably proposes the creation of a National Ethics Committee and the merging of the Ombudsman and the National Human Rights Commission.
 - 11 See note 8.
 - 12 According to Karl Loewenstein, there are three types of constitution: nominal, semantic, and normative. The nominal constitution does not correspond to reality: it is nothing more than a window-dressing attempt. The semantic constitution is used to legalize dictatorial power. The normative constitution is the only “real” constitution: it is enforced and severely limits government power.
 - 13 See note 15.
 - 14 Extraterritoriality is the state of being exempted from the jurisdiction of local law. In 1855, Siam conceded extraterritoriality rights to British subjects as part of the Bowring Treaty. Nationals of other countries were progressively granted similar rights in bilateral treaties with Siam. For most of the second half of the nineteenth century up until World War I, Siam conceded extraterritoriality rights to colonial powers and Japan on its soil.

- 1 15 Appointment as Privy Councilor can be revoked at the discretion of the monarch. In
 2 practice, they serve for life. Privy Councilor is the most secure, prestigious position in
 3 the Thai system. The Privy Council and its members stay when the regime changes
 4 and constitutions are overthrown. That is why the Privy Council has become the
 5 horizon for bureaucrats, whether they are military or civilian.
- 6 16 Born in Songkhla in the South of Thailand, he entered the Royal Thai Military
 7 Academy in 1941. He became a member of the constitution-drafting committee in
 8 1959. He served as appointed prime minister in 1980 to 1988 and was later appointed
 9 to the Privy Council. He became its president in 1998, a post he still held in 2015. His
 10 progression through the military, constitution-drafting, premiership, and the Privy
 11 Council enabled him to build connections not only within the military but also with
 12 legal elites.
- 13 17 Thanin Kraivichien studied law at Thammasat University and graduated in 1948. He
 14 continued his legal studies at the London School of Economics before returning to
 15 Thailand to become a judge. While he was a judge on the Supreme Court, he taught
 16 law at Chulalongkorn and Thammasat Universities in Bangkok. Following the
 17 October 1976 massacre at Thammasat University, the king appointed him prime
 18 minister (1976–1977). In 1977, he was toppled by a coup staged by Sangad Chaloryu.
 19 The same year, the king appointed him to the Privy Council. As a Privy Councilor, he
 20 held a concurrent position in the Office of the Judiciary, responsible for supervising
 21 the careers of judges, for seven years (1978–1985). Thus, throughout his life, he
 22 simultaneously held multiple positions that made him a keystone of judicial elite–
 23 legal academic integration on the one hand and legal–military integration on the
 24 other.
- 25 18 One could mention one of the fathers of legal theory in Thailand, Sanya Thammasak,
 26 who was also appointed to the Privy Council. Sanya served as president of the
 27 Supreme Court (1968–1973). He was also dean of the Faculty of Law and chancellor
 28 of Thammasat University (1971–1973). After the October 1973 democracy movement
 29 at Thammasat, the king appointed Sanya prime minister. In 1974 he served as vice-
 30 president of the Constitutional Drafting Committee. In 1975 the king appointed him
 31 president of the Privy Council; he was replaced as president by Prem Tinsulanond in
 32 1998. He died in 2002 as a very respected legal scholar elite and Privy Councilor
 33 whose law manuals have been used by thousands of law students. Sanya Thammasak
 34 was a role model whose career through legal academia, the judiciary, prime minister-
 35 ship, up until the Privy Council was emulated by others, especially young law stu-
 36 dents – among them the future Thai legal elite.
- 37 19 As in the permanent constitutions of 1932, 1948, 1959, 1997, and 2007.
- 38 20 Prior to 1992, among prominent post-coup constitution-drafters were Sompop Hot-
 39 rakit from the Council of State and Phraya Attakareeniphon from the Courts of
 40 Justice.
- 41 21 For a list of drafters by constitution until 1977, see Bandit Chantarochanakit,
 42 **ชีวประวัติธรรมนุญการปกครอง และรัฐธรรมนูญแห่?missing character?งราชอาณาจักรไทย พ.ศ. 2475–2520** [Constitutional and Charter History, 1932–77], 2007.
 43 Academic paper 607, Thailand Research Fund.
- 44 22 It was initially a paragraph of Article 264/265. See **รายงานการประชุมคณะกรรมการ
 45 การพิจารณาร่างรัฐธรรมนูญ วันอังคารที่ 24 มิถุนายน 2540** [Report on the [2nd]
 CDC meeting on Tuesday, June 24, 1997].
- 23 This paragraph was opposed by many CDC members, notably CDC Secretary-
 General Bowornsak Uwanno, who feared it would give too much power to the Con-
 stitutional Court. For more details see Mérieau (2014).
- 24 **รายงานการดำเนินงานของคณะกรรมการร่างรัฐธรรมนูญ สภาร่างรัฐธรรมนูญ,
 สำนักกรรมธิการ 3** [Report on the Proceedings of the Constitution-drafting Commit-
 tee of the Constitution-drafting Assembly, Third Committee], March 9, 2007.

- 25 The proposal was made on June 18, 2006 by Sewot Thinkul. See รายงานการประชุมสภาฯ?missing character?างรัฐธรรมนูญ ครั้งที่ 27/2550 [Constitution-drafting Assembly Minutes, 27th Session], June 18, 2007. 1
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- 26 For details on the 2006 crisis, see Nelson (2006, 2007); see also Dressel (2010). 4
- 27 The army first declared martial law on May 20, 2014. On May 22, 2014, it announced on national television that it was a military *coup d'état*. On the 2014 coup, see International Crisis Group (2014). 5
6
- 28 See Mérieau (2014). 7
- 29 According to Vishnu Khruangam and Bowornsak Uwanno, this was prompted by the fact that politicians had sought to sue the coup-makers for treason (*kabot*). See Bowornsak Uwanno and Vishnu Khruangam (1977). 8
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- 30 Quoted in Preechasinlapakun (2013). 10
- 31 Quoted in Varayudej (2014). 11
- 32 Ibid. 12
- 33 Bowornsak Uwanno, law professor at Chulalongkorn University, was the Secretary-General of the 1997 Constitution-Drafting Committee. He was, with Meechai Reechuphan and Vishnu Khruangam, one of the drafters of the 2006 temporary charter. In 2014 he was appointed president of the 2015 Constitution-Drafting Commission. 13
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- 34 Nittirat (“enlightened jurists”) is composed of Vorajet Pakeerat, Piyabutr Saengkanokkul, Sawatree Suki, Jantajira Iammyura, Teera Suthiwarangkun, Thapanan Nipithakul, and Poonthep Sirinupong. Nittirat critics would say they are still prisoners of a culture of “hyperlegalism” (McCargo 1998) that prevails in Thai society, since they advocate for constitution-making as a cure to Thailand’s problems. On Nittirat, see McCargo and Tanruangporn (2015). 16
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- 35 The *lèse-majesté* law punishes insults to the monarchy. According to Article 112 of the Thai Penal Code: “Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.” 21
22
23
- 36 One of the institutions building gratitude toward the bureaucratic regime is the state scholarship system in Thailand. The best students in all fields can take examinations to win a scholarship to study abroad. Once their studies are completed, they must come back to Thailand and work for the state. One of the scholarships is provided by the Ananda Mahidol Foundation, created in 1955 by King Rama IX. It sends numerous students to further their studies in Europe and the United States. Through the system of scholarships, socialization, and training, legal-military elites are coopted by the regime. As a result, the legal-military elites share a high degree of regime support that in turn reinforces their integration and degree of consensus. 24
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- 37 See a summary of the speech on the Prachatai website, “Summarizing Kasien Tejapira’s Keynote Speech on Thai Lawyers and Coups d’Etat”, สรุปปาฐกถาเกษียร เตชะพีระ: นักกฎหมายไทยกับการรัฐประหาร available at: www.prachatai.com/journal/2012/09/42903 (accessed April 15, 2015). 32
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35
36

Bibliography

- Boonmee Thirayuth (2006). ตุลาการภิวัตน์ [Judicial Review]. Bangkok, Winyuchon. 37
38
- Chaloemtiarana, T. (2007). *Thailand: The Politics of Despotic Paternalism*. Chiang Mai, Silkworm. First published Bangkok, Thammasat University, 1979. 39
40
- Chamarik Saneh (1986). การเมืองไทยกับการพัฒนาการรัฐธรรมนูญ [Thai Politics and Constitutional Development]. Bangkok, Textbook Project. 41
42
- Chambers, P. (2010). “U Turn to the Past? The Resurgence of the Military in Contemporary Thai Politics.” In *Democracy under Stress, Civil–Military Relations in South and Southeast Asia*, eds P. Chambers and A. Croissant. Bangkok, ISIS, pp. 63–101. 43
44
45

- 1 Chambers, P. (2014a). “Constitutional Changes and Security Forces in Southeast Asia:
2 Lessons from Thailand and Myanmar.” *Contemporary Southeast Asia*, 36(1): 101–128.
- 3 Chambers, P. (2014b). “Obstacles to Civilian Control of the Security Sector in Thailand.”
4 *Middle East Institute*, online, March 18, 2014, available at: [www.mei.edu/content/
5 obstacles-civilian-control-security-sector-thailand](http://www.mei.edu/content/obstacles-civilian-control-security-sector-thailand) (accessed April 15, 2015).
- 6 Chantarochanakit Bandit (2007). **ชีวประวัติรัฐธรรมนูญการปกครอง และรัฐธรรมนูญแห
7 ?missing character?งราชอาณาจักรไทย พ.ศ. 2475–2520** [Constitutional and
8 Charter History, 1932–1977]. Academic paper 607, Thailand Research Fund.
- 9 Connors, M.K. (2008). “Article of Faith: The Failure of Royal Liberalism in Thailand.”
10 *Journal of Contemporary Asia*, 38(1): 143–165.
- 11 Dressel, B. (2010). “Judicialization of Politics or Politicization of the Judiciary? Con-
12 siderations from Recent Events in Thailand.” *The Pacific Review*, 23(5): 671–691.
- 13 Dressel, B. and Bünthe, M. (2014). “Constitutional Politics in Southeast Asia: From Con-
14 testation to Constitutionalism?” *Contemporary Southeast Asia*, 36(1): 1–23.
- 15 Elliott, D. (1978). *Thailand: Origins of Military Rule*. London, Zed Books.
- 16 Elster, J. (1995). “Forces and Mechanisms in the Constitution-Making Process.” *Duke
17 Law Journal*, 45: 364–396.
- 18 Ginsburg, T. (2003). *Judicial Review in New Democracies, Constitutional Courts in
19 Asian Cases*. Cambridge, Cambridge University Press.
- 20 Ginsburg, T. (2009). “Constitutional Afterlife, The Continuing Impact of Thailand’s Post-
21 political Constitution.” *International Journal of Constitutional Law*, January, Univer-
22 sity of Chicago, Public Law Working Paper No. 252, Center on Law and Globalization
23 Research Paper No. 09–04.
- 24 Ginsburg, T. and Moustafa, T. (2008). *Rule by Law. The Politics of Courts in Authorit-
25 arian Regimes*. Cambridge, Cambridge University Press.
- 26 Harding, A. and Bureekul, T. (2008). *Constitution Reform, Comparative Perspectives*.
27 Nonthaburi, KPI.
- 28 Harding, A. and Leyland, P. (2011). *The Constitutional System of Thailand*. New York,
29 Hart Publishing.
- 30 Harding, A. and Nicholas, P. (2010). *New Courts in Asia*. London, Routledge.
- 31 Hewison, K. (2010). “Thailand’s Conservative Democratization.” In *East Asia’s New
32 Democracies, Deepening, Reversal, Non-Liberal Alternatives*, eds Chu Yin-Wah and
33 Wong Siu-lun. New York, Routledge.
- 34 Hirschl, R. (2004). *Towards Juristocracy, The Origins and Consequences of the New
35 Constitutionalism*. Cambridge, MA, Harvard University Press.
- 36 Hirschl, R. (2008). “The Judicialization of Mega-Politics and the Rise of Political
37 Courts.” *Annual Review of Political Science*, 11: 93–118.
- 38 Huntington, S. (1957). *The Soldier and the State: The Theory and Politics of Civil–Mili-
39 tary Relations*. Cambridge, Cambridge University Press.
- 40 Huntington, S. (1968). *Political Order in Changing Societies*. New Haven, CT: Yale Uni-
41 versity Press.
- 42 International Crisis Group (2014). “A Coup Ordained, Thailand’s Prospects for Stability.”
43 Asia Report no. 63, December 3, 2014, available at: [www.crisisgroup.org/~/
44 media/
45 Files/asia/south-east-asia/thailand/263-a-coup-ordained-thailand-s-prospects-for-
stability.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/thailand/263-a-coup-ordained-thailand-s-prospects-for-stability.pdf) (accessed April 15, 2015).
- Ivarsson, S. and Isager, L. (2010). *Saying the Unsayable, Monarchy and Democracy in
Thailand*. Copenhagen, NIAS.



Kasetsiri Charnvit (2007). 1 ศตวรรษทหารกับการเมืองไทย [One Century of the Military and Thai Politics]. In ทหารกับการเมืองในอุษาคเนย์ [The Military and Politics in Southeast Asia]. Bangkok, Textbooks Project, pp. 31–42.	1
	2
	3
King Prajadhipok’s Institute (2006). <i>Anniversary of 60th Year of Accession to the Throne Years of Thai Politics</i> . Nonthaburi, KPI.	4
	5
Klein, J. (1998). “The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy.” The Asia Foundation Working Paper Series, available at: http://aceproject.org/ero-en/regions/asia/TH/AsiaFoundationThailand.pdf (accessed April 15, 2015).	6
	7
	8
	9
Klein, J. and Raksasataya, A. (2003). <i>The Constitutional Court of Thailand, The Provisions and the Working of the Court</i> . Bangkok.	10
	11
Kullada Kesboochoo Mead (2004). <i>The Rise and Decline of Thai Absolutism</i> . New York, Routledge.	12
	13
McCargo, D. (1998). “Alternative Meanings of Political Reform in Contemporary Thailand.” <i>Copenhagen Journal of Asian Studies</i> , 13: 5–30.	14
	15
McCargo, D. (2005). “Network Monarchy and Legitimacy Crisis in Thailand.” <i>The Pacific Review</i> , 18(4): 499–518.	16
	17
McCargo, D. (2008). “State of Anxiety.” <i>Southeast Asian Affairs</i> , 2008: 333–356.	18
McCargo, D. and Tanruangporn, P. (2015). “Branding Dissent: Nittirat, Thailand’s Enlightened Jurists.” <i>Journal of Contemporary Asia</i> , 45(2): 419–442.	19
	20
Mérieau, E. (2014a). “Thai Juristocracy.” <i>New Mandala</i> , May.	21
Mérieau E. (2014b). “Hegemonic Self-Preservation Attempt by the Thai Military, the Agony of the Thai Deep State.” <i>Perspectives Internationales</i> , available at: http://perspectivesinternationales.com/?p=1131 (accessed April 15, 2015).	22
	23
Nelson, M. (2006). “Political Turmoil in Thailand: Thaksin, Protests, Elections, and the King.” <i>eastasia.at</i> , 5(1): 1–22.	24
	25
Nelson, M. (2007). “Thaksin Overthrown: Thailand’s ‘Well-intentioned’ Coup of September 19, 2006.” <i>eastasia.at</i> , 6(1): 1–16.	26
	27
Nittirat (2010). <i>คู่มือประชาชนล้มระหาร</i> [Popular Guide for the Annulment of the Coup d’Etat].	28
	29
Office of the Ombudsmen (2007). <i>บทบาทขององค์กรตามรัฐธรรมนูญในการพัฒนาประเทศ</i> [The Role of Constitutional Organizations in Developing the Country]. Bangkok, Office of the Ombudsmen.	30
	31
Preechasinlapakun, S. (2013). “Dynamics and Institutionalization of Coups in the Thai Constitution.” VRF Series, no. 483, July.	32
	33
Rathamart, N. (2006). <i>Eyes on Thai Democracy, KPI Yearbook 3</i> . Nonthaburi, KPI.	34
	35
Riggs, F. (1966). <i>Thailand: The Modernization of a Bureaucratic Polity</i> . Honolulu, East-West Center Press.	36
	37
Saengkanokkul, P. (2007). <i>พระราชอำนาจ องคมนตรีและผู้มีบรมิณอกรัฐธรรมนูญ</i> [Royal Power, Privy Council, and “Charismatic Persons Outside the Constitution]. Bangkok, Openbooks.	38
	39
Saengkanokkul, P. (2009). <i>ในพระปรมาภิไธย ประชาธิปไตยและตุลาการ</i> [In the Name of the King, Democracy and the Judiciary]. Bangkok, Openbooks.	40
	41
Samudavanija, C-A. (1982). <i>The Thai Young Turks</i> . Singapore, Institute of Southeast Asian Studies.	42
	43
Tanchai, W. (2007). <i>Exploring the 2007 Constitution, KPI Yearbook 4</i> . Nonthaburi, KPI.	44
	45
Tate, N.C. and Vallinder, T. (2005). <i>The Global Expansion of Judicial Power</i> . New York, New York University Press.	45



- 1 Uwanno, B. (2006). *Principles of a Righteous King and the King of Thailand*. Bangkok,
2 Chulalongkorn University.
- 3 Uwanno, B. (2007). *กฎหมายมหาชน* [Public Law], vol. 2. Bangkok, Chulalongkorn
4 University.
- 5 Uwanno, B. (2009). *Economic Crisis and Political Crisis in Thailand: Past and Present*.
6 Nonthaburi, KPI.
- 7 Uwanno, B. and Vishnu, K. (1977). *ธรรมนูญการปกครองราชอาณาจักร 2520* [The 1977
8 Charter]. Bangkok.
- 9 Varayudej, S. (2014). “The Quest for Constitutionalism, the Rule of Law and Democracy
10 in Thailand.” In *Comparative Constitutionalism, 82 Years of Constitutional Reform
11 and Democratic Developments in Thailand*, ed. S. Varyudej and J. Brohmer. Bangkok,
12 P. Press.
- 13 Winnichakul, T. (2001). *ประวัติศาสตร์ไทยแบบราชาชาตินิยม* [Thai Nationalist-
14 Royalist History]. *Arts and Culture*, 23, no. 1, November.

15 Primary sources

- 16
- 17 • รายงานการประชุมคณะกรรมการยกร่างรัฐธรรมนูญ วันอังคารที่ 11 กุมภาพันธ์
18 2540 [Report on the CDC Meeting on Tuesday, February 11, 1997].
 - 19 • รายงานการประชุมคณะกรรมการพิจารณาร่างรัฐธรรมนูญ วันอังคารที่ 24
20 มิถุนายน 2540 [Report on the [2nd] CDC Meeting on Tuesday, June 24, 1997].
 - 21 • รายงานการดำเนินงานของคณะกรรมการยกร่างรัฐธรรมนูญ สภาร่างรัฐธรรมนูญ,
22 สำนักกรรมธิการ 3 [Report on the Proceedings of the Constitution-Drafting Committee
23 of the Constitution-Drafting Assembly, Third Committee].
 - 24 • รายงานการประชุมสภาร่างรัฐธรรมนูญ ครั้งที่ 15/2550 (เป็นพิเศษ) วันพฤหัสบดีที่
25 30 เมษายน 2550 [Report on the Meeting of the Constitution-Drafting Assembly, 16th
26 Session (Special Session) on Thursday, April 30, 2007].
 - 27 • รายงานการประชุมสภา?missing character?่างรัฐธรรมนูญ ครั้งที่ 27/2550 [Report
28 on the Meeting of the Constitution-Drafting Assembly, 27th Session on June 18, 2007].

29 Speeches

- 30 Kasien Tejapira, *นักกฎหมายไทยกับการรัฐประหาร* [Thai Jurists and *Coups d’Etat*].
31 Faculty of Law, Thammasat University, Bangkok, September 30, 2012.
- 32 Piyabutr Saengkanokkul, “The Rise of Royalist Jurists in Thailand.” Paper presented at
33 the GRIPS Conference held in Tokyo on November 26, 2014.
- 34
- 35
- 36
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- 38
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