

THAILAND'S LÈSE-MAJESTÉ LAW: ON BLASPHEMY IN A BUDDHIST KINGDOM¹

EUGÉNIE MÉRIEAU

*University of Göttingen, Germany
eugenie.merieau@sciencespo.fr*

Abstract: Building on the emerging literature on blasphemy within the context of Buddhism, this paper argues that lèse-majesté in Thailand, understood as a verbal violation of the sacred character of the king, amounts to a crime of blasphemy through its judicial definition (a crime against a faith and its community of believers), its judicial procedure (procedures of exception aimed at either redemption or exclusion), and overall social effect (creating a space of absolute unsayability concerning the king). The paper is subdivided into three parts. It first sketches a brief overview of the historical evolution of the Thai lèse-majesté law including its premodern antecedents. It then turns to an analysis of the law of lèse-majesté as defined by judges and other members of the legal profession in Thailand. Finally, it examines key case studies from the early twenty-first century, documenting the derogatory judicial procedures implemented to punish lèse-majesté offenders.

Keywords: Lèse-majesté, Blasphemy, Buddhism, Sacred Kingship, Thai Monarchy, Thailand.

The lèse-majesté crime largely belongs to the past. Inherited from ancient Rome,² it became a weapon of choice for kings in the late Middle Ages, in

¹ I would like to thank the Chair of Comparative Constitutionalism, University of Göttingen, as well as the Thai Studies Department at the University of Hamburg and the Institute of Oriental Asia in Lyon for constructive feedback on this article. I am particularly grateful to Ran Hirschl, Kevin Hewison, Volker Grabowsky, Jérôme Bourgon, Béatrice Jaluzot, Jean-Louis Halpérin, Corinne Leveleux-Teixeira, Thanapol Eawsakul, and Piyabutr Saengkanokkul. My heartfelt thanks also go to iLaw and Thai Lawyers for Human Rights.

their struggles to consolidate power.³ The systematic attacks against lèse-majesté as a crime featured prominently in the works of Enlightenment thinkers. Montesquieu wrote, in *The Spirit of the Laws*:

If the crime of lèse-majesté be indeterminate, this alone is sufficient to make the government degenerate into arbitrary power.⁴

The French Revolution replaced lèse-majesté with lèse-nation.⁵ However, lèse-majesté returned in the nineteenth century, which marked, in authoritarian European monarchies, its golden age. In Napoleonic France and during the restoration of French monarchy, in Prussia, and in most of the German states, as well as in Austria-Hungary, the use of lèse-majesté laws witnessed a dramatic surge, linked to the development of the print media and satirical cartoons.⁶ During the early twentieth century, European countries progressively abolished lèse-majesté together with their monarchies. The monarchies that survived the First World War kept the law in their legal framework, but its use by the courts soon fell into

² Richard Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Johannesburg: Witwatersrand University Press, 1970); Yan Thomas, “L’institution de la majesté,” *Revue de Synthèse* 112 (1991): 331–86.

³ JACQUES CHIFFOLEAU, LE CRIME DE MAJESTE, LA POLITIQUE ET L’EXTRAORDINAIRE; NOTE SUR LES COLLECTIONS ERUDITES DE PROCES DE LESE-MAJESTE DU XVIIIE SIECLE ET LEURS EXEMPLES MEDIEVAUX (Rome: Ecole Française de Rome, 2007), 577–662.

⁴ Montesquieu (1748), Livre XII, Chap. VII, “Du crime de lèse-majesté.” Most English translations of the text inaccurately use the words “high treason” for the French “lèse-majesté.”

⁵ George Armstrong Kelly, “From Lèse-Majesté to Lèse-Nation: Treason in Eighteenth-Century France,” *Journal of the History of Ideas* 42 (1981): 269–86. The two crimes coexisted for some time. Jean-Christophe Gaven, *Le crime de lèse-nation: Histoire d’une invention juridique et politique (1789–1791)* (Paris: Presses Universitaires de Sciences-Po., 2016), 19.

⁶ See Mark Bryant, “The Art of Lese-Majeste,” *History Today* 56 (2006) available at <https://www.historytoday.com/mark-bryant/art-1%C3%A8se-majest%C3%A9> (accessed Feb. 6, 2019). On Prussia, see Andrea Hartmann, *Majestätsbeleidigung und Verunglimpfung des Staatsoberhauptes (§§ 94 ff. RStGB, 90 StGB). Reformdiskussion und Gesetzgebung seit dem 19. Jahrhundert* (Berlin: Berliner Wissenschafts-Verlag, 2006); on Austria-Hungary, see Philippe Czech, *Der Kaiser ist ein Lump und Spitzbube: Majestätsbeleidigung unter Kaiser Franz Joseph* (Vienna: Böhlau, 2010).

oblivion.⁷ In republics, here and there crimes of offence to the head of state subsisted, but they were increasingly challenged everywhere where they still existed. The European Court of Human Rights,⁸ the United Nations Committee on Human Rights,⁹ and the Special Rapporteurs on Freedom of Expression¹⁰ recommend abolishing all laws specifically dedicated to the protection of heads of state from defamation. Today, lèse-majesté laws remain in use in authoritarian monarchies such as Kuwait, Saudi Arabia, and Morocco.¹¹ Yet sentences are quite rare.¹²

Thailand is an exception to this trend. Following the country's democratization process in the early 2000s, the number of condemnations for lèse-majesté increased spectacularly by about 1,000 percent¹³ and the severity of the penalty pronounced followed an exponential line, with sentences up to sixty-year imprisonments for simple messages published on social networks.¹⁴

⁷ Norway, Sweden, the Netherlands, and Spain have kept the crime of lèse-majesté in their laws. Fewer than a dozen sentences have been handed down since the beginning of the twenty-first century in these four countries. In 2007, a Spanish cartoonist was sentenced to a slight fine; in Holland, two judgments were handed down in 2007 and 2016, with jail terms not exceeding a month.

⁸ See ECHR, *Eon c. France*, 2013; and ECHR, *Colombani c. France*, 2002.

⁹ See Human Rights Committee, General Comment 34, para. 38.

¹⁰ See, for instance, the position of the Special Rapporteur for the promotion and protection of the right to freedom of expression and opinion regarding laws of lèse-majesté in the Netherlands, available at http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_NLD_2016.pdf. (accessed Feb. 6, 2019).

¹¹ See David Streckfuss, "Lese-majeste and monarchies," *Prachatai*, Mar. 18, 2012, available at <https://prachatai.com/english/node/3112> (accessed Feb. 6, 2019).

¹² Morocco undertook a reform in 2015 with the objective of abolishing the lèse-majesté law. The most recent cases involve Walid Bahomane, young Moroccan student, and Abdessamad Haydour, both sentenced in 2012 to one and three years in jail, respectively, for posting caricatures of the king on Facebook.

¹³ From 1992 to 2004, there were fewer than 5 cases a year. From 2005 to 2007, more than 60 cases per year were prosecuted, with a maximum of 127 cases in 2007, what amounts to an increase of 1,576 percent. In cases of lèse-majesté, the accused were systematically sentenced, with a possibility of acquittal limited to 6 percent. David Streckfuss, "Lese Majeste: A Comparison of Modern Monarchies" (speech delivered at Chulalongkorn University, Bangkok, Mar. 9, 2012).

¹⁴ Pongsak Sribunpeng was sentenced by the Bangkok Military Tribunal on August 7, 2015 to sixty years in jail for six Facebook posts (ten years per post).

In the late 1990s, Thailand appeared as the best hope for democracy in the entire Southeast Asian region. In 1997, with the drafting of a new liberal constitution, it became a functioning parliamentary democracy, with a stable government and solid checks and balances mechanisms; the country had an independent judiciary and a particularly energetic civil society. The monarchy was built on the figure of the Buddhist King Bhumibol Adulyadej, who ascended to the throne in 1946. He soon became a figure of revered worship, in accordance with the authoritative translation of the provisions of the Constitution proclaiming: “The King shall be enthroned in a position of revered worship and shall not be violated.”¹⁵

However, a more accurate translation would be: “The person of the King is sacred [*sakara*] and inviolable [*lameut mi day*].”¹⁶ In 2012, the Thai Constitutional Court issued a decision according to which the *lèse-majesté* law protected the “sacred [*sakara*] and inviolable [*lameut mi day*]” character of the person of the king, and was therefore necessary and constitutional. The law, found under Article 112 of the Thai Penal Code, states:

Whoever defames [*minpramat*], insults [*dumin*], or threatens [*sadeng khwam-akhathamai-rai*] the King, the Queen, the Heir to the Throne, or the Regent, will be punished with a jail sentence between three and fifteen years.¹⁷

To address criticism by the United Nations, the Thai government has responded with English-language publications, invoking an analogy between *lèse-majesté* and violation of the sacred figure of the Buddha. This analogy corresponds to one of the traditional incarnations of the king: he is a bodhisattva, a Buddha to be.¹⁸ Thais call their king *phraputtachao*

¹⁵ Article 8, translation by the Council of State.

¹⁶ Article 8, Constitution B.E. 2540 (1997).

¹⁷ The same wording is used to protect the supreme patriarch, head of the Buddhist clergy: “Whoever defames [*minpramat*], insults [*dumin*], or threatens [*sadeng khwam-akhathamai-rai*] the Supreme Patriarch, will be punished with a jail sentence not exceeding a year, or a fine of 20,000 Thai baht, or both”; Article 44 of the 1962 Sangha Law, revised in 1992. The same wording also applies to foreign kings, queens, heads of state, and ambassadors (Articles 133 and 134 of the Penal Code).

¹⁸ Dhani Nivat, “The Old Siamese Conception of the Monarchy,” *Journal of the Siam Society* 36 (1947): 91–106. The first king considered as having embodied this duality is King Ashoka of India. See Robert Lingat, *Royautés bouddhiques: Asoka, La fonction*

(Buddha). Authoritative publications by Thai prominent lawyers have drawn a comparison between the lèse-majesté law and laws against the defamation of the Prophet Muhammad, namely blasphemy laws. “It [the lèse-majesté law] is not dissimilar to the limitation on freedom of expression as regards criticism of God in Muslim countries.”¹⁹

Yet blasphemy is usually defined as an “outrageous speech for God.”²⁰ How relevant is then, in a presumably Godless Buddhist society such as Thailand, blasphemy as a concept? In the authoritative *Encyclopedia of Religion*, there are only three entries for “Blasphemy”: “Blasphemy: Jewish Concept,” “Blasphemy: Christian Concept,” and “Blasphemy: Islamic Concept.”²¹ For long, the relationship between Buddhism and Blasphemy remained virtually unaddressed, on the premise that no relation was ever to be found—Buddha is not a God. Recently, articles have challenged this assumption, showing how the idea of blasphemy appears in the Pāli canon²² and operates in contemporary Burma, Mongolia and Thailand.²³ The present article builds on this new scholarship on blasphemy within the Buddhist context.

It is generally admitted that a Buddhist king is not of divine grace—as a bodhisattva, he acquires such attributes by the merits accumulated in his previous lives, not by divine grace. Nevertheless, this account overlooks the hybrid nature of Buddhist kingship which also builds on a Hinduist conception of kingship, tending toward the divinization of the king; and the king is considered a *sommuthithev*, a supposed angel.²⁴ Blasphemy can

royale à Ceylan (Paris: Éditions de l'École des Hautes Études en Sciences Sociales, 1989).

¹⁹ Bowornsak Uwanoo, *Lèse majesté: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement* (Nonthaburi: KPI Press, 2009), 24.

²⁰ Jacques Cheyronnaud and Gérard Lenclud, “Le blasphème: D’un mot,” *Ethnologie Française* 22 (1992): 263.

²¹ Lindsay Jones and Mircea Eliade eds., *Encyclopedia of Religion* (Farmington Hills: Thomson Gale, 2005).

²² Paul Fuller, “The Idea of Blasphemy in the Pali Canon and Modern Myanmar,” *Journal of Religion and Violence* 4 (2016): 159.

²³ Michael Jerryson, “Introduction: Buddhism, Blasphemy and Violence,” *Journal of Religion and Violence* 4 (2016): 119.

²⁴ For details, see H. G. Quaritch Wales, *Siamese State Ceremonies: Their History and Function* (London: Bernard Quaritch, 1931) and Stanley Tambiah, *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge: Cambridge University Press, 1977).

more broadly be defined as an “intolerable verbal violation of the sacred.”²⁵ This paper argues that lèse-majesté in Thailand, understood as a verbal violation of the sacred character of the king, amounts to a crime of blasphemy through its judicial definition (a crime against a faith and its community of believers), its judicial procedure (procedures of exception aimed at either redemption or exclusion), and overall social effect (creating a space of absolute unsayability concerning the king).

I will sketch out a brief overview of the historical evolution of the law in its relation to the sacred, including its premodern antecedents, then analyze the content of the lèse-majesté law as invoked by the criminal and constitutional courts as well as the Thai legal profession, and finally expose the judicial procedures of exception implemented to repress it.

I. A Brief History of the Thai Lèse-Majesté Law

The formulation and use of the law of Thai lèse-majesté has fluctuated through the centuries in accordance with the “sacredness” of the king. Its premodern antecedents, backed by a monarchy deified on the Hindu model, organized a space of absolute speech interdiction in the presence of and regarding the person of the king. From the nineteenth century onward, “modernizing monarchs” engaged in a process of de-Hinduization/ Europeanization of kingship and reformed Siamese laws of lèse-majesté on the model of European authoritarian monarchies. Following the 1932 revolution, the de-sacralization of the king was accompanied by the fall into oblivion of the law of lèse-majesté.

A. The Building of a Devarāja (King-God/King of Gods) on the Hindu Model

Hindu-Buddhist principles erected the king as a character whose figure was virtuous and divine (*devarāja* and *dharmarāja*).²⁶ A specific vocabu-

²⁵ Leonard Levy, “Blasphemy: Judeo-Christian Concept,” in *Encyclopedia of Religion* vol. 2, eds. Mircea Eliade and Lindsay Jones (London: Macmillan, 1987), 238.

²⁶ “Rāja” means “king” in Sanskrit. A *Dharmarāja* is one who reigns according to the dharma—the law, the truth, justice, thus a lawful king. As such, he is a bodhisattva, a future Buddha. A *Devarāja* is a divinized king.

lary was built to speak of and to the king. This distinct language, formed using the language of Buddhism, Pāli, as well as Sanskrit and Khmer, gave the king special sanctity. Words thus created were prefixed with the word *phra*, a mark of religious respect used for monks. The first handbook of royal language (*ratchasap*) appeared in the Palace Law, dated from the fifteenth century, which codified the use of royal vocabulary in its Articles 204 to 211. For example, Article 210 states:

To answer the King, use “khahraphuttachao”; to address the King, use “kha phraphuttachao khothun”; in a conversation [in the third person], use “phraongchao tratsang trachai.”²⁷

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

The Palace Law also provided for very severe sanctions toward whoever dared to disrespect the king. Article 87 states:

²⁷ Article 210, translation by Pasuk Phongpaichit and Chris Baker, *The Palace Law of Ayutthaya and the Thammasat: Law and Kingship in Siam* (Ithaca: Cornell University Press, 2016), 233.

Whoever meets the King's eye [...] will be sentenced to the punishment of the crime of sedition.²⁸

The crime of sedition was punished by the perpetrator being chained or put to death.²⁹ This clause seems to derive directly from Article 6 of Chapter VII of the Hindu Manu Code, which deified the king³⁰ and according to which, "Like the Sun, [the King] burns eyes and hearts, and nobody on earth can look him in the eyes."³¹ The Palace Law states that during royal audiences, any whispering was punished with a death sentence.³² The simple act of raising one's eye toward the king was punishable by death, the act of touching him and members of the royal family as well. When members of the royal family fell from royal barges into the water, they were not saved from drowning, owing to the prohibition against touching them, and could die. Article 25 of the Palace Law states:

If the [primary Queen's] royal barge sinks, the boat staff swims away; anyone who stays with the boat is condemned to death. If the royal barge sinks or capsizes; and [the Queen] is swimming and near death, the retainers and boat staff extend battering rams and throw coconuts for her to cling to, if possible; but if not possible, do not take hold of her, if they take hold and bring her up to survive, they are condemned to death; if they throw coconuts that enable her to

²⁸ Article 87, Palace Law, Pasuk and Baker translation, 99.

²⁹ Article 85, Palace Law, Pasuk and Baker translation, 98.

³⁰ Legal historians state that, as early as the thirteenth century, during the early Sukhothai period (1238–1347), the Kingdom of Siam did adopt laws inspired by the Hindu Manu Code. In 1767, these laws were destroyed in a fire set by the Burmese during the war that ended the Ayutthaya Kingdom. In the early nineteenth century, Rama I (r. 1782–1809) ordered the collection and compilation of the ancient laws of Ayutthaya.

³¹ "For, when these creatures, being without a king, through fear dispersed in all directions, the Lord created a king for the protection of this whole [creation], taking [for that purpose] eternal particles of Indra, of the Wind, of Yama, of the Sun, of Fire, of Varuna, of the Moon, and of the Lord of Wealth [Kubera]. Because a king has been formed of particles of those lords of the gods, he therefore surpasses all created beings in lustre; and, like the sun, he burns eyes and hearts; nor can anybody on earth even gaze on him; through his [supernatural] power he is Fire and Wind, he Sun and Moon, he the Lord of Justice [Yama], he Kubera, he Varuna, he great Indra"; trans. George Bühler, book 7, art. 3–7.

³² Article 57, Palace Law.

survive, reward of ten *tamlueng* of silver and one golden bowl; if the royal barge sinks and other people seem to throw coconuts, and bring her up to survive they are condemned to severe punishment of death for their whole clan.³³

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

There is no State in the Indies that is more monarchical than that of Siam. Kings which have governed it until now have had honours that seem to only belong to God [...] This freedom that everybody gives himself in Europe to speak about the Prince and His conduct, is to them a State crime; from there it comes that the name of the King is never known by the people during their lifetime; out of fear, as they say, that he would be profaned by the indifferent language of some impious subject.³⁴

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

The government of Siam is despotism in all the force of the term; the King is feared and respected almost like a god; nobody dares to look him in the eyes; courtiers, when they assist to the audience, stay prostrated on the knees and elbows; when His Majesty is passing somewhere, everybody jumps down to earth, and those who would not do it would risk to have their eyes slit by archmen who precede [the procession] and who so skillfully throw balls of dirt with the bow they always keep drawn.³⁵

During the nineteenth century, in order to avoid colonization, the monarchy engaged in a process of “conservative modernization” of its law.

B. The De-Hinduization and Europeanization of Kingship

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

³³ Article 25, para. 2, Palace Law, Pasuk and Baker translation, 87.

³⁴ Nicolas Gervaise, *Histoire politique et naturelle du royaume de Siam* (Paris: Claude Barbin, 1688).

³⁵ Jean-Baptiste Pallegoix, *Description du royaume thaï ou Siam* (Paris: Mission de Siam, 1854), 259.

recent laws. Article 7 of the section on crimes against the king (*phra ayakan luang*)³⁶ provided for sentences more severe than for lèse-majesté:

Whoever dares, without fear or embarrassment, speak (*thanong ong at*) about the King, his acts, edicts and ordinances, is guilty of violating royal laws and will be punished with [one or more of] the eight following means: beheading and seizure of the house, fission of the mouth, amputation of ears, hands and feet, 25 or 30 lashes, imprisonment for one month and forced labour, three fines and slavery, two fines, one fine, or pardon on the promise of good behaviour.³⁷

Article 72, on the crime of propagating rumors about the king, stated:

Whoever propagates diverse rumours (*titién nintha*) about the king, will be punished with [one or more of] the following means: first, beheading and confiscation of property, second, forced labour, and finally, 50 lashes.³⁸

The lèse-majesté law was not only alluded to in the abovementioned articles but also in more than one hundred articles concerning the misuse of royal language, the refusal to obey a royal officer, the commission of a disrespectful act toward royal symbols, and so on. Later, under the reigns of Rama III (r. 1824–1851) and Rama IV (r. 1851–1868), the diffusion of printing, and the intensification of commerce with European nations, favored the diffusion of new ideas, including criticisms of royal officials. Rama V (r. 1868–1910) revised the lèse-majesté law on the European model. In 1900, he promulgated a decree on “defamation by print” inspired by the lèse-majesté laws in force in Prussia.³⁹ Article 4 stated:

³⁶ DAVID STRECKFUSS, *TRUTH ON TRIAL IN THAILAND: DEFAMATION, TREASON, AND LÈSE-MAJESTÉ* (London: Routledge, 2010), 61.

³⁷ For Thai, see iLaw. “Wiwatanakan khong “kotmai min pramat phramahakasat” nai rop 200 pi tam boribot sangkhom kan muang,” [History of the Lèse-Majesté Law in the last 200 years according to the socio political context], Sept. 21, 2015, <https://freedom.ilaw.or.th/blog/Historyof112> (accessed Apr. 26, 2019).

³⁸ iLaw. *History of the Lèse-Majesté Law*.

³⁹ David Streckfuss, “The Intricacies of Lese Majesty: A Comparative Study of Imperial Germany and Modern Thailand,” in *Saying the Unsayable: Monarchy and Democracy in Thailand*, ed. Søren Ivarsson and Lotte Isager (Copenhagen: Nordic Institute of Asian Studies, 2010), 124. One could also adopt the hypothesis that the 1900 decree was a Japanese inspiration, owing to the admiration that the Siamese had for the Japanese modernization process, both Westernized and also unique to imperial Japan.

Whoever defames (*minpramat*) the King or a royal person, whether provincial prince or the son of the King, by words uttered or written under any form in public or in reunion, shall be imprisoned for no more than three years or pay a fine of 1,500 Thai Baht or both.⁴⁰

Penalties were thus “modernized” with the suppression of physical punishments and their replacement with prison sentences and fines delimited by the law, breaking with the system still in force at the time of the Three Seals Code. New lèse-majesté sentences were comparable to the system then in force in Prussia (two months to five years in prison).⁴¹ Initiating this trend of modernization of the royal institution, under the previous reign of Rama IV (King Mongkut), the prohibition against watching royal processions was abolished,⁴² as well as the prohibition against referring to the king by his name.⁴³ Rama V (Chulalongkorn) then abolished prostration, following the example of Japan, China, Vietnam, and India.⁴⁴

Meanwhile, the Law of the Three Seals was replaced by new codes drafted with the help of European and Japanese legal advisers. In 1908, a new Penal Code, drafted under the supervision of a French adviser, doubled the maximum penalty for lèse-majesté, up to seven years.⁴⁵ The

⁴⁰ iLaw. *History of the Lèse-Majesté Law*.

⁴¹ Article 75 of the Prussian Penal Code of 1851 provides for penalties of two months to five years in jail: “§75 [Majestätsbeleidigung] Wer durch Wort, Schrift, Druck, Zeichen, bildliche oder andere Darstellung die Ehrfurcht gegen den König verletzt, wird mit Gefängniß von zwei Monaten bis zu fünf Jahren bestraft.“ Preußisches Strafgesetzbuch von 1851. Article 95 of the Penal Code of the German Empire of 1871 provided for the same penalties: “95. (1) Wer den Kaiser, seinen Landesherrn oder während seines Aufenthalts in einem Bundesstaate dessen Landesherrn beleidigt, wird mit Gefängnis nicht unter zwei Monaten oder mit Festungshaft bis zu fünf Jahren bestraft.”

⁴² Wales, *State ceremonies*, 35–39; Tambiah, *World Conqueror*, 226.

⁴³ Wales, *State ceremonies*, 35–39. See also Kullada Kesboonchoo-Mead, *The Rise and Decline of Thai Absolutism* (London: Routledge, 2004), 44.

⁴⁴ Decree on new practices, 12th Moon of the 12th month, 1873.

⁴⁵ According to Jitti Chingsapathi, article 98 had been ‘copied’ from the British Seditious Libel Act. See Jaran Kosananan, “Khwaamrungseng heng thot thi mai pen tham le kanpitkan khwamching nai matra 112 heng pramuon kotmai aya” [The violence of an unjust sentence and the covering of the truth according to article 112 of the Penal Code] *Fa Diao Kan* 7 (2009): 81. However the commentary provided by Georges Padoux, key drafter of the 1908 Penal Code, does note the influence of the British Libel Act as modified in its version for the Indian colony, but on another

1900 decree was transposed into two articles of the Penal Code, Articles 98 and 100, which provided for the differentiation between the king, the queen, the heir to the throne, and the regent and also the princes and princesses of royal blood.

Whoever defames (*thanong ong at*) or threatens (*sadeng khwam-akhatamat-rai*) the King, the Queen, the Heir to the Throne, or the Regent while performing duties toward the King, will be punished by imprisonment not exceeding seven years or a fine not exceeding 5,000 baht, or both.

In an authoritative commentary on the Code published the same year, a Thai jurist referred for the first time to the Roman term *lese-majeste*.⁴⁶ The dispositions of the new Code expanded the field of its protection over the preceding versions. Besides these crimes, Title 2 of the Penal Code concerning crimes of treason addressed disloyalty to the monarchy. Article 104 stated that:

Whoever, by any means, [acts] with the intention to induce the following effects: weaken loyalty toward the king, [or] defame (*khwamdumin*) the king, the government, or the administration, will be punished with imprisonment not exceeding three years and a fine not exceeding 1,000 THB.

“Whispering” in presence of the king and improperly using the royal vocabulary were no longer listed as crimes. Toward the end of the reign of Rama VI (r. 1910–1925), in 1922, a decree on books, documents, and journals was promulgated. Article 5 introduced criminal liability for *lèse-majesté* for owners, editors, or writers of journals, imposing “a jail sentence not exceeding five years or a fine not exceeding 5,000 THB or both.” During the reign of Rama VII (r. 1925–1935), Article 104 was modified to respond to elite fears concerning the rise of republicanism and communism:⁴⁷

disposition, not on article 98-100. Georges Padoux, *Le Code Pénal du Royaume de Siam, Version française avec une introduction et des notes*, (Paris: Imprimerie nationale, 1909), 24.

⁴⁶ Ammatho Phrainthra-Pricha, *Kham athibai laksana aya* [Handbook of Criminal Law] (Bangkok: Sophanaphiphatanakan, 1908), 525. He cites “*crimen laesae majestatis omnia alia criminal excedit quoad poenam.*”

⁴⁷ Within a few years, monarchies in Portugal (1910), China (1912), Russia (1917), and Germany (1918) had been overthrown. Siamese elites in the 1920s were well aware of the revolutionary danger.

The teaching of political and economic theories aiming to create a resentment and defamation toward the king or social classes, is a crime subject to imprisonment not exceeding 10 years, or a fine not exceeding 5,000 THB, or both.

In 1927, Rama VII promulgated a new decree characterizing those who commit the crime of lèse-majesté as enemies of the nation. Article 6(5) defined the enemy of the nation as such:

Whoever aims, through direct or indirect, induction or suggestion, through direct words or comparisons, implicitly or through other means, to create a resentment and defamation toward the king, the government, or the administration.

Five years later, the absolute monarchy was overthrown.

C. Revolution and the De-Sacralization of the King

The June 1932 revolution took place without blood being spilled. Once the revolutionaries were in possession of places of power, they reached a compromise with the king; the revolutionaries would abolish privileges based on titles of nobility and kinship with the royal family, but preserved the king as a figure of national unity. According to the constitution of December 10, 1932,⁴⁸ “the King is sacred and inviolable.”⁴⁹ This new proclamation of the king’s sacred and inviolable character was paradoxically accompanied by a progressive dismantlement of the regime of lèse-majesté.

First, at the beginning of the revolutionary period, there were, just like at the time of the French Revolution, attempts to substitute the crime of “lèse-nation” or “lèse-constitution” for that of “lèse-majesté.”⁵⁰ Revolu-

⁴⁸ The first interim constitution was promulgated by the People’s Committee three days after the revolution, on June 27, 1932. The king agreed to sign it but added the word “interim” to the constitution and requested the drafting of another constitution, in which he would be personally involved. As a result, the Constitution of December 10, 1932, was drafted in close cooperation with the king.

⁴⁹ The word “sacred” was translated from Japanese, in which it applied to “Heaven’s Son.”

⁵⁰ Kelly, *From Lèse-Majesté*, 269–86. Nonetheless, the revolutionaries did not abolish the lèse-majesté law, and nowhere have historians found an intention or even a willingness to do so, demonstrating that revolutionaries thought that the law would fall

tionaries passed a law of “defence of the constitution,” which punished all conspiracy against the constitution as high treason. Then, the first constitutional draft allowed the king to be impeached by the National Assembly and judged. The project of the revolutionaries who had brought down the constitutional monarchy had republican accents, unveiled the day after they seized power in 1932:

Fellow citizens, be aware that this country belongs to the people and not to the king as he has always wanted you to believe.⁵¹

In 1933, King Prajadhipok was the object of a defamation lawsuit by Thawatt Ridet, the general secretary of the Workers’ Association of the Tramway Society of Bangkok. Thawatt claimed that a document signed by Prajadhipok wrongly accused him of organizing a strike movement, not to further workers’ interests but for personal gain (to create a trade union, appoint himself secretary general, and thus obtain a salary).⁵² The government presented this case to the Assembly of Representatives, which decided that neither the tribunals nor the Assembly itself were competent to deal with a trial launched against the person of the king. Consequently, without further debate, the lawsuit was never considered. But it was fully agreed that Thawatt had exercised his rights, not that he had committed an act of lèse-majesté. The next year, Article 104(1) of the Penal Code was revised in the following terms:

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

into oblivion by itself, following what had happened to similar laws in European constitutional monarchies.

⁵¹ First announcement of the People’s Committee, June 24, 1932.

⁵² Somsak Jiemteerasakul, “Koroni Thawat Ridet Fong Phrapokklao” [The Case of Thawat Ridet’s Lawsuit against Prajadhipok], *Silapawattanatham* (2004) 26: 101–120. The document dealt with the economic plan of Pridi Phanomyong, then prime minister, suspected of communist leanings.

The formulation replicated the order of enumeration of Prussian law, abrogated in Germany, but placed the common good above the reputation of the king. The appreciation of “good faith” came to moderate the character of the lèse-majesté law. This situation did not last long. The Second World War broke out, and the 1932 revolutionaries were marginalized. A committee to revise the Penal Code was nominated. It concluded in its final report that the 1946 dispositions relative to the crimes violating the safety of the state had to be “entirely re-modelled to be both more exhaustive and more in conformity with modern ideas.”⁵³ A famous jurist was accused of lèse-majesté for having explained on radio the legal status of the king, most notably the signification of inviolability mentioned in the constitution. Ultimately, he was never judged.⁵⁴

The new Penal Code was promulgated in 1956. The former Article 98, which had become Article 112 of the new Penal Code, appeared then in the section on crimes against the safety of the state. The article suppressed the exoneration clauses and substantially modified the content of the law as follows:

Article 112: Whoever defames (*minpramat*), insults (*dumin*), or threatens (*sadeng khwamakamatrat*) the King, the Queen, the Heir to the Throne, or the Regent will be punished by imprisonment not exceeding seven years.

Thus, the term “insult” (*dumin*) was added to “defamation” and “threat.” The addition of this term enabled the application of the law to expand to acts that would not have been punished under the 1908 version, such as acts against royal symbols. The 1946 committee, however, stated in its report that this law protected only people, not the royal institution.⁵⁵

Yet, the following year, the scope of application of the law underwent a transformation as brutal as it was dramatic, through Decree 17 of the “revolutionary committee” that had just seized power in a coup.⁵⁶ The decree stated that the revolutionary committee had the power to prohibit, seize, or destroy any written article and to order the revocation of the license of the printer, the editor, or the owner of any articles discussing the king, or articles that were defamatory toward the queen, the heir, or the

⁵³ Quoted in Streckfuss, *Truth on Trial*, 103.

⁵⁴ The Siamese jurist Yut Saeng-Uthai; see Streckfuss, *Truth on Trial*, 181.

⁵⁵ Streckfuss, *Truth on Trial*, 103.

⁵⁶ The coup was led by General Phin Choonhavan, overthrowing the government of Thawan Namrong Nawasawat and installing the civilian Khuang Aphaiwong in power.

regent. It was abrogated in 1975. A year later, the authors of the 1976 coup promulgated the same text under the name “Order 42.”⁵⁷ The same year, Article 112 of the Penal Code was amended, although acts qualified as “insults,” “defamations,” and “threats” were not legally defined.

Whoever defames (*minpramat*), insults (*dumin*), or threatens (*sadeng khwam-akamat-rai*) the King, the Queen, the Heir to the Throne, or the Regent will be punished with imprisonment of between three and fifteen years.

This formulation remained unchanged until the twenty-first century. It was complemented by a law on cybercrime passed in 2008, aiming to fight *lèse-majesté* on the Internet. The new law’s implementation fluctuated over time. The extension of the scope of application of the law was the result of developments in both case law and doctrine, in the context of a re-sacralization of the monarchy at the turn of the twenty-first century.

II. *Lèse-Majesté* as Blasphemy: A Lawyer’s Interpretation

Penal judges have been the core active agents of the progressive assimilation of *lèse-majesté* with blasphemy. They invoked in their legal reasoning the effects of outrageous speech about the king on the “faith” of the community, a usual motive of the contemporary repression of blasphemy. Constitutional judges consider *lèse-majesté* as a necessary protection of the sacred character of the king. Contemporary jurists have participated in the elaboration of legal doctrines making the same argument.

A. The Interpretation of the Lèse-Majesté Law by the Criminal Court

The use of the *lèse-majesté* law has fluctuated according to the shifting definition of what constitutes “threats” to the king: communism in the 1960–1970 period,⁵⁸ republicanism during 1980–1990 and onward. After

⁵⁷ It was repelled in 1991.

⁵⁸ In the 1960s, under the government of General Sarit Thanarat, the *lèse-majesté* law was associated with the “crime” of communism, which had been spreading to Southeast Asia. In order to counter a possible “domino effect” of communism in the region, the United States developed close cooperation with the Thai military and

the Penal Code was revised in 1956, the lèse-majesté law targeted public speculation about the processes of royal succession (most notably accusations formulated in the 1960s according to which King Ananda were to have been killed, either accidentally or intentionally, by his younger brother⁵⁹ and possible commentary in 1976 regarding the succession of Bhumibol by Vajiralongkorn⁶⁰). In the first case, judges established the precedent according to which exemptions of guilt applicable to “regular” defamation cases (such as good faith of the offender, truth or public interest of the statement) were not applicable to cases of lèse-majesté.⁶¹

Between 1956 and 1976, there had been an average of five arrests and prosecutions each year. Between 1977 and 1992, the average number of cases per year jumped to about ten.⁶² From the 2000s onward, several dozen cases per year were recorded, then in the 2010s, hundreds. This explosion has coincided with a re-sacralization of the monarchy. The motives invoked by the judges are not those of national security—lèse-

monarchy, mobilizing substantial resources to fund military assistance for Thailand—in the process funding successive military governments from 1958 to 1973. These funds were used to reinforce the role of the army, as well as the monarchy, considered an efficient bulwark against communism.

⁵⁹ In 1960, Kosai Mungjaroen was found guilty of lèse-majesté for having said that the death of King Ananda in 1946 involved his younger brother, Bhumibol. The tribunal of first instance judged that, owing to the fact that Kosai's words were intentional, he was guilty. Kosai argued that he was being sincere and acting in good faith, and he appealed to the Supreme Court. He was sentenced to a three-year jail term, reduced to two years due to his confession. Thus, in this case, judges interpreted the law leniently by imposing a sentence substantially less than the maximum possible sentence, which was seven years. Streckfuss, *Truth on Trial*, 191.

⁶⁰ The book *The Nine Reigns of the Chakri Dynasty* postulated the extinction of the dynasty after the ninth reign. It was banned. Then, in 1976, allegations of lèse-majesté provoked a massacre in Bangkok. Ultra-royalist militias took offense at a theatre play staged by students at Thammasat University in which a man bearing a resemblance to Prince Vajiralongkorn was hanged; the militias assaulted the students, who had been protesting government instability. Following this event, the military seized power to “preserve monarchy from the communist threat”: “A group of people has defamed the prince, what amounts to an offence to the heart of the entire Thai nation, an intention to harm the monarchy.”

⁶¹ Supreme Court, Decision 51/2502. For a criticism of the reliance on this precedent to exclude exoneration clauses from 112 cases, see Kosananan, *The violence*, 81.

⁶² Streckfuss, *Truth on Trial*, 107. In the 1980s and 1990s, there were fewer than a dozen cases per year.

majesté can be understood as the first act of regicide, or abolition of the monarchy—but of respect of the “faith” (*sattha*) of the Thai people as a “community of believers” (*khon mi sattha*).

In the 1988 case of Veera Musikapong, the defendant was accused of making speeches that constituted a violation of such faith. Veera, an elected politician, had declared: “If I could have chosen, I would certainly have preferred be born in the Royal Palace ... I would then be Prince Veera, and I would not have to come here under the sun to speak to you.” He also said: “If I were a prince now, I would not be here standing in front of you and talking to you, making my throat sore. At 6:30 [the time he was delivering the speech], I would be drinking liquor, in comfort, with happiness. You don’t really believe, do you, that it is better to stand here before you, and fatigue my royal legs [royal vocabulary]?”⁶³ According to the accusation:

The remarks concerning the fact of being born a prince constitute a mockery of the King with harmful effects, [the effect being] the erosion of faith [toward the King].⁶⁴

While the court of first instance acquitted Veera, the appeals court sentenced him to six years in jail.⁶⁵ Likewise, in 2013, a major and emblematic decision was reached by the court. The Supreme Court found a radio presenter guilty of lèse-majesté based on the grounds that he had insulted Rama IV (r. 1851–1868) by saying, on the air, “Hopefully, we are no longer at the time of Rama IV.” The plaintiff had sued the radio presenter for lèse-majesté based on the following arguments:

The contents of the considered remarks are defamatory toward Rama IV, former King of Thailand. The radio presenter says that the time of Rama IV was that of slavery, deprivation of liberty, bad administration. These remarks have eroded the faith of the people toward [the King], and harmed his honour and reputation. They are an invitation to insult and hatred. The intention [of these

⁶³ For an excellent summary, see David Streckfuss, “Kings in the Age of Nations: The Paradox of Lèse-Majesté as Political Crime in Thailand,” *Comparative Studies in Society and History* 37 (1995): 449–51.

⁶⁴ Supreme Court, Decision 2354/2531, June 16, 1988.

⁶⁵ The Supreme Court reduced the sentence to four years; cf. *infra*.

remarks] was to lead Thais to lose the faith and veneration they have toward their King.⁶⁶

He was sentenced to four years in jail; he appealed to the Supreme Court, which issued the following decision:

The people are very dearly attached to the monarchy and to its revered status, what translates in the constitution in the disposition according to which the King is above any other individual and cannot be prosecuted. For this reason, because the law does not state that the King [the victim of lèse-majesté] is necessarily in exercise, the actions of the accused are prohibited under Article 112 of the Penal Code. Even if the King in question is already deceased, it is still a crime of lèse-majesté.

So judging, the judges expanded the scope of the lèse-majesté law to dead kings and kings from the preceding reigns, in the name of the “faith” and the revered worship of the people for the current king.

Thai people has always been very dearly attached to their kings, even dead. They still revere them, organize commemorative events, and state officials lay wreaths in their honour. Thus, in cases of defamation toward dead kings, there are consequences on the feelings of Thais.

Here, the offense was unknown to the person who committed it. The same dynamic is at play in cases of blasphemy: “The blasphemer knows the principle of the interdiction but seems to have ignored the spectrum of the means to transgress it. He often learns afterward, to his detriment, having committed [such transgression].”⁶⁷ The scope of actions prohibited by the lèse-majesté law was not delimited. Also, mitigating circumstances did not include, as in cases of defamation, the truthfulness of the statement, or good faith, but a demonstration of the love and faith of the accused toward the monarchy. In the case of Veera, the Supreme Court reduced the sentence for the following reason:

The Supreme Court considers that the accused was a member of parliament for several terms, has been minister of several ministries, has made beautiful things for the country, to the point that he was even awarded a decoration by the King. His participation was especially significant in the search for the financing of Rama IX Park, to the point that the King has declared that he was someone good; besides, after the [incriminating] facts, the accused presented his excuses before a picture of the King displayed in the parliament, and made a written

⁶⁶ Supreme Court, Decision 6378/2556, 2013.

⁶⁷ Cheyronnaud and Lenclud, *Blasphemy*, 262.

request of royal pardon with the private secretary of the King. He thus showed his remorse, and tried to repair his crime. These reasons justify a reduced sentence.⁶⁸

In the end, the Supreme Court sentenced him to four years in jail.⁶⁹ Thus, the judges reasoned principally by invoking a system of belief, a “faith” (*sattha*) that the incriminating speech was troubling, regardless of considerations of truth or falsehood. Lèse-majesté is criminal inasmuch as its effect is to trouble people’s faith in the institution of the monarchy. Such an interpretation was confirmed by the Constitutional Court in a decision issued in 2012.

B. The Interpretation of Lèse-Majesté by the Constitutional Court

In 2012, the Constitutional Court had to rule on the constitutionality of the lèse-majesté law based on two petitions submitted by the criminal court⁷⁰ in the course of the trials of Somyot Phreuksakasemsuk and Ekkachai Hongkaiwan.⁷¹ In its decision rendered on October 10, 2012, the court confirmed the constitutionality of the lèse-majesté law, arguing that it could “give effectivity” to Article 8 of the constitution according to which “the King is sacred (*sakara*) and inviolable (*lameut mi day*). Nobody can expose the King to any accusation or action of any sort.” The Constitutional Court solved an ambiguity posed by the 1997 Constitution: did the second paragraph of Article 8 refer only to an action or accusation before tribunals, or to any sort of accusation, substantiated or unsubstantiated, concerning the

⁶⁸ Supreme Court, Decision 2354/2531, June 16, 1988.

⁶⁹ The Appeals Court had handed down a six-year jail term.

⁷⁰ The court was asked to verify the constitutionality of Article 112 with regard to Articles 3 (the sovereignty of the people), 8 (the king’s inviolability), 29 (limits to rights and liberties to be only imposed based on strict necessity), and 45 (freedom of expression).

⁷¹ Somyot Phreuksakasemsuk, a human rights defender, was arrested in 2011 for lèse-majesté, as the owner of a magazine entitled *Voice of Taksin* in which two articles had been signalled for lèse-majesté. In 2012, in first instance, then in 2013, in appeal, Somyot was sentenced to ten years in jail, five years per article. Meanwhile, the author of these articles remained unidentified. Ekkachai Hongkaiwan was arrested in 2011 for selling copies of a TV documentary on the royal family. He was convicted in 2013.

king? The lèse-majesté law, as interpreted by the criminal judges, corresponded to the sanction of the constitutional disposition in Article 8. During the drafting of the 1997 Constitution, the issue was raised several times, but the drafters decided to leave it unanswered, with the hope that the Constitutional Court would eventually solve the question.⁷²

In its reasoning, the court refers to *the faith* of the Thai people in their king and the royal institution:

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

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

Article 8 of the Constitution belongs to Title 2 concerning royalty. In the first paragraph, it states that the King is sacred and inviolable, and in paragraph 2, it states that nobody can accuse or sue him. These dispositions recognize the status of the King as someone sacred. The King is the Head of State and a fundamental institution for the country, and consequently the State must

⁷² Members of the constitution-drafting committee discussed this topic in 1997. *Suchit Boonbongkan*: I would like to ask Professor Bowornsak [Uwanno] if the word “inviolable” also includes lèse-majesté. If it is the case, then there is no need to add it. *Secretary General*: I don’t know. The second paragraph refers to any action, whether accusations or lawsuits; in the case of lèse-majesté or defamation, it is a violation [of the person of the King] [...] *Pravit Chaenwiranan*: Mister President [...] I would like to ask if criticism is a violation of inviolability or not; because criticism sometimes is not only animated of an intention to violate inviolability. I am asking this question because I think that this already happened in Thailand. In the future, will criticism be considered as a violation of the person of the King or not? I am asking experts, thank you. *Thongthong Chantarasu*: I think that the word “violate” here has a very broad definition. It is not only the legal signification of the civil code or the usual definition of the dictionary but also a definition complementing the word “inviolable” of the first sentence. Constitution-Drafting Committee Minutes, June 9, 1997.

guarantee that nobody can violate, accuse, or sue the King in any possible manner. Article 112 states that whoever defames, insults, or threatens the King, the Queen, the Heir, or the Regent is punishable by three to fifteen years of imprisonment; this article is in conformity with the Constitution, giving Article 8 its true legal force. Thus, there is no reason to say that Article 112 violates Article 8 of the Constitution.⁷³

Further down, the court adopts similar reasoning: the king being the heart of national unity and the object of adoration among his subjects, a criminal law punishing any insult toward him is appropriate, in order not to hurt the feelings of the other “believers.”

The King as Head of State is the main institution in the country; defamation, insults, or threats toward the King are actions affecting the heart of Thais, who respect and revere the King and the institution of royalty; [these acts] give birth to anger among the people.⁷⁴

The court also includes in its decision the idea that the implementation of the *lèse-majesté* law preserves a moral society,⁷⁵ while discarding the question of proportionality (*satsuon*), which was actually the argument of the plaintiffs, based on global standards of constitutional jurisprudence.⁷⁶ Instead, the court stated that the sentence was “appropriate” (*mosom*):

Besides this, the determination of the penalty contained in Article 112 is strictly necessary and appropriate to the characteristics of action in defamation, insults or threats to the King, the Queen, or the Regent.⁷⁷

By voting unanimously for the constitutionality of Article 112, judges conformed to the doctrinal interpretation of *lèse-majesté* as blasphemy, part of a wider trend of Royalist-Buddhist readings of Thai Constitutionalism.⁷⁸

⁷³ Decision 28-29/2555, Oct. 10, 2012, 9–10.

⁷⁴ Decision 28-29/2555, Oct. 10, 2012, 11.

⁷⁵ Decision 28-29/2555, Oct. 10, 2012, 13.

⁷⁶ Anne Peters, “Proportionality as a Global Constitutional Principle,” in *Handbook on Global Constitutionalism*, eds. Anthony F. Lang Jr. and Antje Wiener (Cheltenham: Edward Elgar, 2017), 248–64.

⁷⁷ Decision 28-29/2555, Oct. 10, 2012, 13.

⁷⁸ For an account of Buddhist readings of the Constitution, see Eugénie Méricau, “Buddhist Constitutionalism in Thailand: When Rājadharmā Supersedes the Constitution,” *Asian Journal of Comparative Law* 10 (2018): 1–23 [10 Asian J. Comp. L. 1]. For an account of royalist readings of the Constitution, see Eugénie Méricau, “Thai-

C. Legal Doctrines of Lèse-Majesté as Blasphemy

Royalist jurists have associated the constitutionally-entrenched sacred character of the king with the Buddhist religion and Article 112 of the Penal Code. Bowornsak Uwanno, a renowned jurist, wrote:

In Thai society, the lèse-majesté offence has its basis not only in the principles of international law or constitutional law but also in Thai ethics, culture, and Buddhist principles, which are unique to Thai society.⁷⁹

With undertones of Thai exceptionalism, he also stated:

The bond between the Thai monarchy and the Thai people is unique. It is not one between the Head of State as a political institution and the people as holders of sovereign power. It is a special relationship with certain characteristics that may be difficult for foreigners to appreciate. [...] This is the basis of a provision which appears in every Thai constitution—that “the person of the King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action” (Section 8 of the present Thai Constitution). This provision is the “effect” of Thai culture and ethics, not the “cause” which coerces Thai people to respect the King as alleged by some.⁸⁰

Thus, Article 8, although inspired by foreign constitutions,⁸¹ is an “effect” of Thai culture. The constitution is only the loyal mirror of the preferences of Thai people—this relates to law as mirror of cultures, dear to Montesquieu. Bowornsak explains that the king cannot be considered a “semi-God” in accordance with the Hindu tradition, but mostly as a “father.” However, his advocacy in favor of the lèse-majesté law still relies on a comparison with the crime of blasphemy:

This culture of paternalistic governance also explains a phenomenon which may not take place anywhere else. When the Thai King is unfairly criticized, most Thais feel like their own parent is being attacked and cannot accept it—

land's Deep State, Royal Power and the Constitutional Court,” *Journal of Contemporary Asia* 46 (2016): 445–66.

⁷⁹ Bowornsak Uwanno, *Lèse majesté: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement* (Nonthaburi: KPI Press, 2009), 33.

⁸⁰ Bowornsak Uwanno, *Lèse majesté*, 33.

⁸¹ Most notably the Imperial Constitution of Japan, which states that the emperor is inviolable and sacred.

much in the same way that Thais do not accept anyone demeaning the Buddha or even statues that represent him.⁸²

In his book on *lèse-majesté*, Bowornsak also compared notions of the king and the father of the nation to justify the severity of the law of *lèse-majesté*. He argues that the severity of the law is compatible with the legal tradition according to which crimes against parents are more severely punished than against other persons because of “the ingratitude” that they show. “In Thai society, parricide is, based on its religious and ethical norms, an unforgivable sin and the gravest act of ingratitude.”⁸³ This tradition bears some resonance with the Buddhist principles of Anantarika-Karma, which places parricide and matricide as two of the five grave offences with immediate karmic retribution.⁸⁴ Bowornsak goes on:

[The restrictions posed to freedom of expression by the *lèse-majesté* law] are not dissimilar to the limitation on freedom of expression as regards criticism of God and the Prophet in Muslim countries, which is not understood by some Westerners, who ridicule the Muslim prophet revered by all Muslims, thereby creating a controversy that almost leads to worldwide violence.⁸⁵

In its report submitted to the framework of the UN Human Rights Council Universal Periodic Review in February 2016, the Thai government utilized the following argument, which associates *lèse-majesté* with blasphemy to justify its use of the law:

Thailand fully respects freedom of opinion and expression and freedom of assembly as they form the basic foundation of a democratic society. However, freedom of expression shall be exercised in a constructive manner that does not insult any faith or belief system, be they religions or main institutions.⁸⁶

Lèse-majesté can thus be considered as a crime of blasphemy, which, in its contemporary meaning, is also justified as a violation of the beliefs of the community of believers. Thai diplomats also use another argument. The king cannot defend himself against defamation and bring a lawsuit—

⁸² Bowornsak, *Lèse-majesté*, 34. See also Peter Skilling, “Ideology and Law: The Three Seals Code on Crimes Related to Relics, Images and Bodhi-trees,” *Buddhism, Law & Society* (2015–16), 69–104 [1 Buddhism L. & Soc’y 69].

⁸³ Bowornsak, *Lèse-majesté*, 24.

⁸⁴ I am grateful to the anonymous reviewers for pointing out this relation to me.

⁸⁵ Bowornsak, *Lèse-majesté*, 24.

⁸⁶ National Report, Universal Periodic Review, Feb. 2016, para. 116.

although this prohibition is not based on the law—and consequently the prosecution of acts of lèse-majesté is the responsibility of the entire community. As Corinne Leveleux-Teixeira writes, blasphemy's:

quality of 'crime without victim' leaves open both the question of the meaning of the offence and the initiative to either prosecute or not. In the classical hypothesis of an offence to a person, the offended is indeed the first judge of the severity and the violation of his honour. With blasphemy, this evaluation can only be mediated, by the social body first, by the authority guaranteeing the respect of public and religious order, then.⁸⁷

This necessary mediation of the social body in the qualification of a "victimless crime" associates lèse-majesté with blasphemy.

III. The Implementation of Lèse-Majesté: Judicial Procedures of Exception

Lèse-majesté, in its current implementation, responds to the system of the exception. Whether it is the centrality of confession, the intervention of royal pardon or the implementation of a regime of persecutions and banishing, the judicial procedure is designed to "convert" or eliminate non-believers.

A. Preventive Detention and Closed Trial: Judicial Procedures of Exception

First, it must be noted that a charge of lèse-majesté can be initiated by the public prosecutor or by any individual. It is the responsibility of the public ministry to either send a case to the court or not, but once the complaint has been processed, it cannot be withdrawn. The rules of procedure are those which apply to the most serious crimes, namely mandatory preventive detention before and during the whole trial, without possible exception—this is the first criterion of the exception.

To be considered lèse-majesté, a speech act does not require publication or utterance in public. The system thus creates an economy of denunciation. This is particularly efficient to the extent that preventive detention is automatic, and not lifted until a final judgment is reached. Preventive

⁸⁷ Corinne Leveleux-Teixeira, "Entre droit et religion: Le blasphème, du péché de la langue au crime sans victime," *Revue de l'Histoire des Religions* 4 (2011): 588.

detention can last many years. In case of acquittal, no compensation is awarded for unjustified detention. Article 112 of the Penal Code can thus be used as a way of revenge—the burden of the proof resting on the accused. For instance, on September 19, 2012, Yutapoom Martnok was jailed for lèse-majesté following a lawsuit filed by his older brother accusing him of having said, in private, within the four walls of their private home, defamatory comments concerning the king. The brothers were in conflict over control of a firm that sold car accessories. Even though the Criminal Court eventually acquitted Yutapoom on September 13, 2013, he nonetheless had spent a year in preventive detention.

The second criterion of the exception concerns the terms of limitation of the crime of lèse-majesté, which is fifteen years.⁸⁸ Lawsuits for lèse-majesté can be initiated at any time, for offences long alleged. Almost every person who is politically active has a “dormant” complaint for lèse-majesté at the police station only waiting to be activated by the police.⁸⁹ Also, public prosecutors who decide to abandon lawsuits can be criminally sanctioned for dereliction of duty, on the basis of a precedent from 2006.⁹⁰

The third criterion of exception is the closed trial. Much like in cases of blasphemy, the utterance of the incriminating forbidden speech during the trial is a cause for concern. Indeed, if the forbidden words are repeated, are we not in the presence of a new violation? The case of police officer Sawasdi Amornvivat illustrates well this dilemma. In August 1993, Sawasdi banned an issue of the *Honolulu Advertiser* in which an article was deemed to be an offense to the queen. The order of prohibition was published, as well as parts of the article considered insulting, in the *Royal Gazette*. Some lawyers then argued that the reprinting of the words was constitutive of lèse-majesté, because it contributed to “spreading words harmful to the reputation of the monarchy.” The king granted a pardon to

⁸⁸ Article 95(2) of the Thai Penal Code.

⁸⁹ According to David Streckfuss: “A source claims that police have only investigated about 1,300 out of 20,000 standing lèse-majesté complaints. It will take decades for the police to investigate, extending the reign of the state of exception indefinitely.” David Streckfuss, “The End of the Endless Exception? Time Catches Up with Dictatorship in Thailand,” *Hot Spots: Cultural Anthropology*, Sept. 23, 2014.

⁹⁰ Case no. 3509/2549. The public prosecutor was found guilty by the Supreme Court of violation of Article 157 of the Penal Code for failing to prosecute in a case of defamation.

the police chief, who had been dismissed from his position by Minister of the Interior Chavalit Yongchaiyudh. Yet the minister nonetheless decided to bypass the pardon of the king, which could not, in the current state of the law, be granted without a final judgment from the tribunal. Later, another police officer, Police Lieutenant General Supas Chiraphan, accused the interior minister of lèse-majesté because “not to apply a royal pardon is an act of lèse-majesté.” Arrest warrants were issued against Sawasdi and five other police officers. But in the end, all prosecutions were dismissed for procedural defect.⁹¹

The fact that the trial itself constitutes an act of “lèse-majesté” justifies that trials for lèse-majesté are ordered closed trials. More recently, on February 10, 2017, the public prosecutor pronounced the indictment of Jatuphat Boonpattaraksa, known as Pai Daodin, a student and pro-democracy activist.⁹² He was subject to a lawsuit for lèse-majesté and violation of the Act on Cybercrime for having shared on his Facebook profile a biography of the new king, Vajiralongkorn, compiled by the BBC; the biography was shared more than three thousand times on Thai social networks. On December 2, 2016, Pai was arrested and immediately placed under preventive detention. On August 15, 2017, for the reading of the verdict, the courtroom was closed. The reading had not been read by the judges. Only the sentence had been communicated to the accused, but the arguments of the public prosecutor—the accusation—were missing, as well as the reasoning of the judge in the evaluation of the sentence. The condemned himself, as well as his lawyers, could only access the act of judgment drafted by the judge in November 2017, three months after the verdict and one year after the arrest and detention of the suspect. The final verdict re-uses the words deemed lèse-majesté; therefore, it could not have been read before the audience, even in a closed trial.

⁹¹ Streckfuss, *Kings in the Age of Nations*, 461.

⁹² Pai, twenty-five years old, a law student, is a member of the New Movement for Democracy (NDM), a group of young activists well known for their satirical videos of Prayuth Chan-ocha and his denunciation of the corruption involved in the construction of Rajabhakti Park in Hua Hin. The indictment proved very useful and timely for the junta, who saw its most active opponent jailed. The plaintiff was a Pithakpol Chusri, a military officer who had arrested Pai several times in Khon Kaen and Bangkok without managing to get the court to order a pre-trial detention.

B. From Confession to Royal Pardon: The Path to Redemption

The architecture of the court strikes the observer as being part of a ritual of redemption. The judge is seated below the golden-framed picture of the king, to whom he or she pays homage. Below the judge's bench, the accused is placed under the authority of the judge, who is himself the representative of the king, and swears an oath. He is in a prison uniform, and his ankles are chained.⁹³ The judgments are issued "in the name of the King"—a formulation that is particularly interpreted by judges as a sign of their role as intermediary between the king and the people.⁹⁴

The confession lies at the heart of the *lèse-majesté* trial. It enables an alleviation of the penalties, sometimes by half. The confession entails the accused admitting that he has "committed wrong" by speaking about the king, or queen, in a disrespectful way. Prison sentences for *lèse-majesté* are extremely long, and the most effective way to reduce the time is for prisoners to ask for a royal pardon. The pardon petition must be addressed to the king, asking him to exercise his *Misericordia*. In filing such a petition, the prisoner must draft a pardon petition restating his loyalty to the king. This procedure allows the king to offer redemption and allows him to exercise his *Misericordia*'s office.

Those accused of *lèse-majesté* usually submit to the process of confession during the trial. Some, however, refuse to violate their own beliefs—why legitimate the criminalization of an act that, to them, is not an offence? For instance, free speech advocate Somyot Preuksakasemsuk constantly refused to submit to the pressure and confess—although he could have had his sentence reduced by half. Beyond confession, the accused in matters of *lèse-majesté* are better advised not to appeal the decision of first instance—they stand to come out more favorably by accepting the "redemptive" sentence. Indeed, chances are almost non-existent that their innocence will be established in a second or last instance. To accept the verdict of first instance is the necessary condition

⁹³ In Thailand, for all criminal cases, in case of pre-trial detention, the accused appears before the court in prison uniform and chained at the ankles, despite being officially innocent until proven guilty. Several lawyers have challenged this practice as unconstitutional, but it continues.

⁹⁴ Piyabutr Saengkanokkul, *Nai Phraboromaphithai: phrachatipatai lae tulakan* [In the Name of the King: Democracy and the Judge], Bangkok: Openbooks, 2009.

for the closing of the case in order to pave the way for a sentence reduction, a royal pardon granted by the king himself, but if and only if no appeal had been filed in the meantime.

In a consistent manner, Somyot has, despite the various pressures, repeatedly rejected such a path—he has appealed right up to the Supreme Court, a strategy that has lengthened his detention. He also has categorically refused to file a royal pardon petition, to ask a favor of the institution of the monarchy. He refuses to confess to a crime that he considers his right (to discuss or criticize the monarchy), or to ask to benefit from a right that he considers a violation of democracy (a royal pardon). While Somyot chooses not to submit, however, most of those accused of lèse-majesté eventually do. Pai Daodin confessed to his “crime” after eight months of preventive detention. His sentence of five years in jail was then reduced by half—and he did not appeal. He was pardoned by King Vajiralongkorn in early May 2019.

Those who choose to fight their case on the merits, in particular those who do not deny having expressed the alleged defamatory statement but deny the charge of lèse-majesté, are given the heaviest sentences. Somyot Phreuksakasemsuk and Da Torpedo were convicted to eleven and eighteen years in jail, respectively. Based on these examples, it is understandable that those convicted in first instance choose to confess, refuse to appeal, and resort to petitioning for a royal pardon instead.

Petitions for royal pardon, kept secret, are, to those accused of lèse-majesté, acts of redemption built on the total acceptance of their crime and the love that their king has inspired in them. There is a legal convention according to which petitions of royal pardon are only acceptable if the accused has confessed during the trial.⁹⁵ Petitions always start with the highest deferential formula: “May the power of the dust under the dust of the soles of your sacred feet protect the top of my head” (“Khodecha taifalaong thuli phrabat pokklao pokkramon”) and end with the promise to love the king until death. For instance, in one petition, the prisoner wrote:

I, Your Majesty's Servant, would like to request your Grace to Graciously grant me a Pardon. I have never done wrong in my entire life, never been convicted of any criminal sentence, have always done good, been working with

⁹⁵ iLaw, “Khophrachathan aphayathot: Chong wang bon senthang su issaraphap” [Begging for Royal Pardon: The Gap in the Path toward Freedom], Oct. 9, 2013, <https://freedom.ilaw.or.th/RoyalPardon2013>.

integrity. If I, your Majesty's Servant, am Graciously given Royal Mercy, I will do good deeds for society, the country, and the Throne, trying to follow in Your Gracious footsteps. I take the oath that I will always be loyal to the monarchy, the dynasty, and all its Kings, forever, until my death.⁹⁶

In the middle paragraphs, some prisoners plead that they committed *lèse-majesté* under a state of "temporary dementia." One prisoner wrote: "I have confessed [in court] that I have participated in the act leading to my prosecution. Not only do I feel utterly sorry about the thing I have done, but also at the time it happened, in 2010, I was in a state of mental distress, amounting to dementia, which made me hear voices. Inner voices ordered me to do things I could not control. This disturbed state made me adopt distorted views and understandings of the institution of the monarchy."⁹⁷

Foreigners also have to show loyalty and love for the king. For instance, Harry Nicolaidis, an Australian sentenced in 2009 to six years in prison, reduced by half after confession, for a paragraph he wrote in a work of fiction that sold only seven copies, wrote the following words from his cell: "On the King's eighty-first birthday I saw fireworks in the distance. Some prisoners had tears in their eyes, praising a man they regard not just as their king but their father. I may not be Thai, but I am a son, and I know what it means to love a father. I am applying for a royal pardon. I pray the king learns of my plight so I might enjoy His grace."⁹⁸ He was granted a pardon by the king and freed after serving about six months in custody—and was deported back to Australia.⁹⁹ Two years earlier, another foreigner confessed to his crime of spray-painting, while drunk, billboards showing the king's image; he was granted a pardon and deported back to

⁹⁶ Petition of Thanet Nonthakhot, filed on January 28, 2016. He was sentenced on June 25, 2015, to a five-year sentence reduced to three years and four months after confession, for having sent content to a website doing advocacy against the *lèse-majesté* law. The same wording is used in the petition of Nat Sattayaphonphisut, filed on March 22, 2015.

⁹⁷ Petition of Thanet Nonthakhot, filed on January 28, 2016.

⁹⁸ Quoted in the *Sydney Morning Herald*, "The Medieval Price an Author Pays for Insulting Thailand's Monarchy," Feb. 7, 2009.

⁹⁹ He was jailed from August 31, 2008, to February 19, 2009. See iLaw, *Begging for Royal Pardon*.

Switzerland after spending three months in prison.¹⁰⁰ In these two cases, foreigners were granted expedited pardons and deported straightaway.

The cases of Thais offer a stark contrast. Surachai Saeh Dan, for instance, spent about three years in jail before his pardon was granted.¹⁰¹ In another case, Amporn Tangnoppakhun (Akong), aged sixty-one, was arrested on August 3, 2010, for having sent an SMS deemed defamatory to the queen. He first denied having sent the SMS, arguing that he had no cell phone nor knew how to send text messages—no proof had been given that he had actually sent the message. Yet he decided to confess in order to get a lighter sentence, but he was nevertheless given a twenty-year jail term. He first decided to appeal, but then withdrew his appeal to file for a royal pardon. The merits of Akong's case were never examined. He died in custody a year later, without having heard about his petition.

C. Exceptions to the Exception: Death, Torture, and Exile

When a state of exception is declared in a time of crisis, lèse-majesté becomes a “super exception.” In 1957, the interim constitution of Marshal Sarit Thanarat granted him full powers; he used them to order multiple executions for lèse-majesté.¹⁰² He transferred, after his second military coup on October 20, 1958, all cases of lèse-majesté to the military tribunals. Likewise, following the 2014 coup, lèse-majesté cases were taken away from the competence of the civilian jurisdictions and transferred to martial courts, which did not have an appeals mechanism. This decision resulted in speedy trials and more severe judgments than those handed down by civil courts, as well as a significant increase in the length of jail sentences.¹⁰³ Following this transfer of jurisdiction, other crimes were also transferred to martial courts by order of the army.¹⁰⁴ When defendants

¹⁰⁰ Oliver Jufer was jailed from December 5, 2006, to April 11, 2007. iLaw, *Begging for Royal Pardon*.

¹⁰¹ Surachai was jailed from February 22, 2011, to October 4, 2013. iLaw, *Begging for Royal Pardon*.

¹⁰² Most notably the execution of Khrong Chanthadawong.

¹⁰³ See, as a matter of comparison, iLaw, Compare civilian and military courts when dealing with lese majeste cases, Dec. 3, 2014, <https://freedom.ilaw.or.th/node/144>. Statistically, military courts hand down heavier sanctions than civilian courts.

¹⁰⁴ NCPO Orders no. 37/2557, 38/2557, and 50/2557 stated that beginning May 25, 2014, four types of crimes should be judged in the military courts: crimes against the

challenged the jurisdiction of the martial court before the civilian courts, the latter confirmed the competence of martial courts.¹⁰⁵ According to Thai Lawyers for Human Rights, “The military-led judicial process has been able to proceed because it receives support from the civilian court system.”¹⁰⁶

Torture is not easily documented, but the evidence of several deaths in custody seem to indicate the use of torture on specific *lèse-majesté* detainees. In 2012, Akong died in custody following denial by prison authorities to allow him access to treatment for his health condition. He had been sentenced to a twenty-year jail sentence for *lèse-majesté*.¹⁰⁷ In 2015, Suriyan Sucharitpolwong (Mor Yong) and Prakrom Warunprapa, two *lèse-majesté* detainees, also died in custody a few weeks apart.¹⁰⁸ These last two deaths in custody were barely reported in the media—revealing the extent of censorship, including self-censorship, surrounding the implementation of the *lèse-majesté* law. No one was held accountable for these deaths in custody; no investigation was launched. In other cases of deaths in custody, most notably following torture in Thailand’s Deep South under martial law, investigations have occasionally led to prosecutions against prison officials or military personnel. In *lèse-majesté* cases, this has not happened. It must, however, be stated that torture, given the number of *lèse-majesté* detainees, is rare. More often, *lèse-majesté* detain-

monarchy, crimes against the security of the state, crimes mentioned in the orders of the junta, and crimes concerning the ownership of firearms.

¹⁰⁵ According to Thai Lawyers for Human Rights, at least fifteen accused have challenged the jurisdiction of martial courts. Civilian courts have agreed to examine the petitions but have always issued judgments recognizing the jurisdiction of the martial courts.

¹⁰⁶ Thai Lawyers for Human Rights, “The Miracle of ‘Law’: The Judiciary and the 22 May 2014 Coup Three Years of the Coup Regime of the National Council for Peace and Order,” Aug. 1, 2017.

¹⁰⁷ Akong’s case was one of the first to attract media coverage. Akong was suspected of having sent four text messages insulting the queen to a member of the Democrat Party. He was judged and sentenced to twenty years in prison, five years per SMS. In this case, the principle of probability used in civil cases and not the principle of certainty used in penal law was applied: Akong’s guilt was never formally established. He died in his cell on May 8, 2012.

¹⁰⁸ *The Nation*, “Thai Fortune Teller Held under Royal Defamation Law Found Dead,” Nov. 9, 2015.

ees are subject to a more “benign” form of violence: degrading treatment. For instance, Pai Daodin complained about degrading and humiliating treatment when he had to undergo regular searches of his anus.

Other exceptional procedures include incommunicado detention. For instance, on May 3, 2017, six people were arrested for lèse-majesté for having shared a Facebook post on a disappeared plaque in Bangkok. The plaque, which commemorated the June 24, 1932 Revolution that brought an end to the absolute monarchy, was replaced by another one glorifying the monarchy.¹⁰⁹ They were detained incommunicado and interrogated for five days at an army camp in Bangkok before being put in pre-trial detention at the Bangkok Remand Prison.¹¹⁰ The court ordered a closed trial.¹¹¹

Also, the state seems to be rather indulgent toward “private avengers” of lèse-majesté: punishment of private individuals who commit violence against lèse-majesté offenders is quite lenient. When in 2012 law professor Vorajet Pakeerat was assaulted in the parking of his university, and in 2014 history professor Somsak Jeemteerasakul was the target of an assassination attempt at his house, their cases were not handled with the most zealous care by the police.¹¹² The men are considered two intellectual pillars of the critique against the lèse-majesté law.

This unwillingness of the Thai state to offer a fair trial to those accused of lèse-majesté, or to protect them from violence exerted by private individuals, has been used as an argument by many of them to claim and be granted political asylum in other countries.¹¹³ One of the priorities of the ruling military junta is now to search for those accused of lèse-majesté who have fled Thailand and to extradite them.¹¹⁴ The junta has

¹⁰⁹ For an analysis of the removal of the plaque see Eugénie Mérieau, “The 1932 Compromise Constitution: Matrix of Thailand’s Permanent Constitutional Instability,” in *Constitutional Foundings in Southeast Asia*, Kevin Tan and Ngoc Son Bui eds. (Singapore: Hart Publishing, forthcoming).

¹¹⁰ The detainees were Prawet Prapanukul, Danai Tipsuya, Paneet Jitnukulsiri, Saran Samantararat, Wannachai Kaewsanenai, and Chatchawan Nimnuan.

¹¹¹ Prawet was finally sentenced to a sixteen-month jail term on June 27, 2018. The lèse-majesté charges were dropped by the court without explanation.

¹¹² A six-month jail term was imposed on Vorajet Pakeerat’s assailant; the attempted assassination of Somsak Jeemteerasakul was not prosecuted.

¹¹³ Aum Neko, Jaran Ditapichai, Somsak Jeemteerasakul, and Nopporn Suppipat are political refugees in France; Ekapop Luara is in New Zealand; among others.

¹¹⁴ Reuters, “Thai Junta Seeks Extradition of Royal Insult Suspects,” Oct. 25, 2016.

even promulgated an order prohibiting people expressly from subscribing to the Facebook feeds of three Thais accused of *lèse-majesté* who are living abroad.¹¹⁵ In Thailand, their families are subjected to harassment by the police and the army—the aim being to silence speech considered disrespectful to the king.¹¹⁶

Thus, the *lèse-majesté* law always takes the accused to a legality of exception, whether at the stage of the accusation (the burden of proof being very low), the arrest, automatic preventive detention (absence of bail), the trial (closed hearing), the sentence (exceptionally heavy), or the implementation of the sentence (royal pardons being more difficult to obtain). Yet the most emblematic is the method of the law's interpretation. It is not strict, but very broad, even creative, most notably with regard to the scope of acts and people to which it applies. The law has thus been interpreted, since the year 2000,¹¹⁷ to apply to former kings of the Chakri dynasty, to the king's dead dog Thongdaeng,¹¹⁸ to the president of the Privy Council Prem Tinsulanonda—even if the law itself only mentions four people: the king, the queen, the heir to the throne, and the regent.¹¹⁹

Today, the implementation of the *lèse-majesté* law has several lingering implications. First, the prohibition of the wrongful use of royal language

¹¹⁵ Pavin Chachavalpongpun, "Lese Majeste Losing Its Magic," *East Asia Forum*, June 28, 2017.

¹¹⁶ Pavin Chachavalpongpun, "How Thailand Is Using a Draconian Law to Try to Silence Critics, Including Me," *Washington Post*, Mar. 9, 2016.

¹¹⁷ For a summary of the most extravagant cases of *lèse-majesté*, see Jonathan Head, "Defaming a Dog: The Ways to Get Arrested for Lese-Majeste in Thailand," *BBC*, Dec. 16, 2015.

¹¹⁸ Thanakorn Siripaiboon was arrested in December 2015 for posting sarcastic comments about the king's dog, Thongdaeng, on Facebook. Released on bail after international pressure, he will be judged by a martial court in 2018 or 2019. King Bhumibol was particularly attached to Thongdaeng, about whom he wrote a best-selling book. See Christine Gray, "Dog v Dog: Theatrics of the Thai Interregnum," *New Mandala*, Dec. 22, 2015.

¹¹⁹ In 2007, the junta leaders made a proposal to include members of the Privy Council under the protection given by article 112, but members of the Privy Council replied that such proposal made them feel discomfort. See Somchai Prichasilapakul, "Min Phraboromdechaphap" [*Lèse-Majesté*] *Fa Diao Kan* 6 (2008): 147.

and the failure to prostrate are still enforced at the beginning of the twenty-first century despite their formal de-criminalization during the nineteenth century. Former King Bhumibol is still referred to as *nai luang*, never by his name. Second, the system as implemented renders it impossible to speak about the king and necessitates the use of euphemisms, notably: the invisible hand (*mue thi mong mai hen*), the power outside the constitution (*amnat nok rattathammanun*), the powerful man (*phu mi barami*), the power outside the system (*amnat nok rabop*), and the obscure power (*amnat muet*). The words denoting “above” (*khang bon*) are sometimes replaced by a simple gesture: the king belongs to the domain of the “unsayable.”¹²⁰ Such “unsayability” resonates with blasphemy; even more so as it allows the following exception: incantations such as “long live the king” (*song phra charoen*), copied and pasted identically by the hundreds of thousands under pictures of the king posted on Facebook. Meanwhile, exceptional judicial procedures, implemented to suppress lèse-majesté, efficiently “purify” the social body of its critical elements.

The lèse-majesté law is not an isolated, autonomous, criminal law but the very implementation of the constitutional status of the head of state. Then, an advocacy in favor of the abolition of lèse-majesté must necessarily rely on an advocacy for constitutional reform. Yet, to propose in Thailand a constitutional reform of the status of the king or a reform of the lèse-majesté law is itself punishable by the lèse-majesté law. Thus, the law benefits from the same “self-fulfilling metaprotection” as blasphemy.

BIBLIOGRAPHY

AFP [Agence France Presse]. “Thai Fortune Teller Held under Royal Defamation Law Found Dead,” *The Guardian*, Nov. 9, 2015, <https://www.theguardian.com/world/2015/nov/09/thai-fortune-teller-mor-yong-held-under-royal-defamation-law-found-dead>.

Ammatho Phra-inthra-Pricha, *Kham athibai laksana aya* [Handbook of Criminal Law]. Bangkok: Sophanaphiphatanakan, 1908.

¹²⁰ See the excellent book edited by Søren Ivarsson and Lotte Isager, *Saying the Unsayable: Monarchy and Democracy in Thailand*, Copenhagen: Nordic Institute of Asian Studies, 2010.

- Bauman, Richard. *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. Johannesburg: Witwatersrand University Press, 1970.
- Bowornsak Uwanno. *Lèse majesté: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement*. Nonthaburi: KPI Press, 2009.
- Bryant, Mark. "The Art of Lese-Majeste." *History Today* 56 (2006): <https://www.historytoday.com/mark-bryant/art-l%C3%A8se-majest%C3%A9> (accessed Feb. 6, 2019).
- Cheyronnaud, Jacques, and Gérard Lenclud. "Le blasphème: D'un mot." *Ethnologie Française* 22 (1992): 263.
- Chiffolleau, Jacques. "Le crime de majesté, la politique et l'extraordinaire; note sur les collections érudites de procès de lèse-majesté du XVII^e siècle et leurs exemples médiévaux." *Ecole Française de Rome, Actes du Colloque de Rome* (20–22 Jan. 2003), Place, 2007, 577–662.
- Czech, Philippe. *Der Kaiser ist ein Lump und Spitzbube: Majestätsbeleidigung unter Kaiser Franz Joseph*. Vienna: Böhlau, 2010.
- Fuller, Paul. "The Idea of Blasphemy in the Pali Canon and Modern Myanmar." *Journal of Religion and Violence* 4 (2016): 159–81.
- Gaven, Jean-Christophe. *Le crime de lèse-nation: Histoire d'une invention juridique et politique (1789–1791)*. Paris: Presses Universitaires de Sciences-Po, 2016.
- Gervaise, Nicolas. *Histoire politique et naturelle du royaume de Siam*. Paris: Claude Barbin, 1688.
- Gray, Christine. "Dog v Dog: Theatrics of the Thai Interregnum." *New Mandala*, Dec. 22, 2015, <https://www.newmandala.org/dog-v-dog-theatrics-of-the-thai-interregnum/> (accessed Apr. 26, 2019).
- Hartmann, Andrea. *Majestätsbeleidigung und Verunglimpfung des Staatsoberhauptes (§§ 94 ff. RStGB, 90 StGB): Reformdiskussion und Gesetzgebung seit dem 19. Jahrhundert*. Juristische Zeitgeschichte, Abt. 3, 24. Berlin: Berliner Wissenschafts-Verlag, 2006.
- Head, Jonathan. "Defaming a Dog: The Ways to Get Arrested for Lese-Majeste in Thailand." BBC, Dec. 16, 2015, <https://www.bbc.com/news/world-asia-35099322> (accessed Apr. 26, 2019).

- iLaw. “Khophrarachathan aphayathot: Chong wang bon senthang su issaraphap” [Begging for Royal Pardon: The Gap in the Path toward Freedom], Oct. 9, 2013, <https://freedom.ilaw.or.th/RoyalPardon2013> (accessed Apr. 26, 2019).
- iLaw, Compare civilian and military courts when dealing with lese majeste cases, December 3, 2014, <https://freedom.ilaw.or.th/node/144> (accessed Apr. 26, 2019).
- iLaw. “Wiwatanakan khong “kotmai min pramat phramahakasat” nai rop 200 pi tam boribot sangkhom kan muang,” [History of the Lèse-Majesté Law in the last 200 years according to the socio-political context], Sept. 21, 2015, <https://freedom.ilaw.or.th/blog/Historyof112> (accessed Apr. 26, 2019).
- Ivarsson Søren and Lotte Isager, eds. *Saying the Unsayable: Monarchy and Democracy in Thailand*. Copenhagen: Nordic Institute of Asian Studies, 2010.
- Jaran Kosananan. “*Khwanrungreng heng thot thi mai pen tham le kanpitkan khwanching nai matra 112 heng pramuon kotmai aya*” [The violence of an unjust sentence and the covering of the truth according to article 112 of the Penal Code] 7(2) *Fa Diao Kan* (2009): 81–109.
- Jerryson, Michael. “Introduction: Buddhism, Blasphemy and Violence.” *Journal of Religion and Violence* 4 (2016): 119–27.
- Jones, Lindsay and Mircea Eliade, eds. *Encyclopedia of Religion*, 2nd ed., Farmington Hills, MI: Thomson Gale, 2005.
- Kelly, George Armstrong. “From Lèse-Majesté to Lèse-Nation: Treason in Eighteenth-Century France.” *Journal of the History of Ideas* 42 (1981): 269–86.
- Kullada Kesboonchoo-Mead. *The Rise and Decline of Thai Absolutism*. London: Routledge, 2004.
- Leveux-Teixeira, Corinne. “Entre droit et religion: Le blasphème, du péché de la langue au crime sans victime.” *Revue de l'Histoire des Religions* 4 (2011): 587–602.
- Levy, Leonard. “Blasphemy: Judeo-Christian Concept.” In *Encyclopedia of Religion*, eds. Mircea Eliade and Lindsay Jones, 238–42. London: Macmillan, 1987.
- Lingat, Robert. *Royautés bouddhiques: Asoka, La fonction royale à Ceylan*. Paris: Éditions de l'École des Hautes Études en Sciences Sociales, 1989.

- Mérieau, Eugénie. "Thailand's Deep State, Royal Power and the Constitutional Court." *Journal of Contemporary Asia* 46 (2016): 445–66.
- Mérieau, Eugénie. "Buddhist Constitutionalism in Thailand: When Rājadharmā Supersedes the Constitution." *Asian Journal of Comparative Law* 10 (2018): 1–23 [20 Asian J. Comp. L. 1].
- Mérieau, Eugénie. "The 1932 Compromise Constitution: Matrix of Thailand's Permanent Constitutional Instability." In *Constitutional Foundations in Southeast Asia*, edited by Kevin Tan and Ngoc Son Bui, Singapore: Hart Publishing, forthcoming.
- Montesquieu, Baron de. *L'Esprit des Lois*. Geneva: Barrillot & Fils, 1748.
- Nivat, Dhani. "The Old Siamese Conception of the Monarchy." *Journal of the Siam Society* 36 (1947): 91–106.
- Padoux, Georges. *Le Code Pénal du Royaume de Siam, Version française avec une introduction et des notes*. Paris: Imprimerie nationale, 1909.
- Pallegoix, Jean-Baptiste. *Description du royaume thaï ou Siam*. Paris: Mission de Siam, 1854.
- Pasuk Phongpaichit and Chris Baker. *The Palace Law of Ayutthaya and the Thammasat: Law and Kingship in Siam*. Ithaca: Cornell University Press, 2016.
- Pavin Chachavalpongpun. "How Thailand Is Using a Draconian Law to Try to Silence Critics, Including Me." *Washington Post*, Mar. 9, 2016.
- Pavin Chachavalpongpun. "Lese Majeste Losing Its Magic." *East Asia Forum*, June 28, 2017.
- Peters, Anne. "Proportionality as a Global Constitutional Principle" In *Handbook on Global Constitutionalism*, edited by Anthony F. Lang Jr. and Antje Wiener, 248–64. Cheltenham: Edward Elgar, 2017.
- Piyabutr Saengkanokkul. *Nai Phraboromaphithai: phrachatipatai lae tulakan* [In the Name of the King: Democracy and the Judge]. Bangkok: Openbooks, 2009.
- Reuters. "Thai Junta Seeks Extradition of Royal Insult Suspects." Oct. 25, 2016.
- Skilling, Peter. "Ideology and Law: The Three Seals Code on Crimes Related to Relics, Images and Bodhi-trees." *Buddhism, Law & Society* (2015–16), 69–104 [1 Buddhism L. Soc'y 69].

- Somsak Jiemteerasakul. "Koroni Thawat Ridet Fong Phrapokklao" [The Case of Thawat Ridet's Lawsuit against Prajadhipok], *Silapawattanatham* 26 (2004), 101–120.
- Somchai Prichasilapakul. "Min Phraboromdechaphap" [Lèse-Majesté]. *Fa Diai Kan* 6.1 (2008), 148–57.
- Streckfuss, David. "Kings in the Age of Nations: The Paradox of Lèse-Majesté as Political Crime in Thailand." *Comparative Studies in Society and History* 37 (1995), 445–75.
- Streckfuss, David. *Modern Thai Monarchy and Cultural Politics: The Acquittal of Sulak Sivaraksa on the Charge of Lèse-Majesté in Siam 1995 and its consequences*. Bangkok: Santi Pracha Dhamma Institute, 1996.
- Streckfuss, David. "The Intricacies of Lese Majesty: A Comparative Study of Imperial Germany and Modern Thailand." In *Saying the Unsayable: Monarchy and Democracy in Thailand*, edited by Søren Ivarsson and Lotte Isager, 105–45. Copenhagen: Nordic Institute of Asian Studies, 2010a.
- Streckfuss, David. *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté*. London: Routledge, 2010b.
- Streckfuss, David. "Lese-majeste and monarchies," *Prachatai*, Mar. 18, 2012.
- Streckfuss, David. "The End of the Endless Exception? Time Catches Up with Dictatorship in Thailand." *Hot Spots: Cultural Anthropology*, Sept. 23, 2014.
- Andrew Marshall, "The Medieval Price an Author Pays for Insulting Thailand's Monarchy." *Sydney Morning Herald*, Feb. 7, 2009.
- Tambiah, Stanley. *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background*. Cambridge: Cambridge University Press, 1977.
- Thai Lawyers for Human Rights. "The Miracle of 'Law': The Judiciary and the 22 May 2014 Coup Three Years of the Coup Regime of the National Council for Peace and Order." Aug. 1, 2017, <http://www.tlhr2014.com/th/?p=4774>.
- Thomas, Yan. "L'institution de la majesté." *Revue de Synthèse* 112 (1991): 331–86.

Wales, H. G. Quaritch. *Siamese State Ceremonies: Their History and Function*. London: Bernard Quaritch, 1931.

LIST OF CASES

Constitutional Court

Decision 28-29/2552 (2012)

Supreme Court

Decision 51/2503 (1960) [Kosai Muncharoen]
Decision 1641/2503 (1960) [Prachuop Saraphat]
Decision 1294/2521 (1978) [Anuchit Thanakornsombat]
Decision 861/2521 (1978) [Lek Laksanaphon, Seni Sunnarot]
Decision 2354/2531 (1988) [Veera Musikaphong]
Decision 6378/2556 (2013) [Nachakrit Cheungrungrit]
Decision 7316/2558 (2015) [Ekkachai Hongkaiwan]

Lower Courts

Case no. 3509/2549 (2006) [Public Prosecutor]
Case no. 3959/2551 (2008) [Darunee Torpedo]
Case no. 1986/2553 (2010) [Thanthawut Thawirotmakul]
Case no. 3328/2554 (2011) [Joe Gordon]
Case no. 2962/2554 (2011) [Somyot Phruksakasemsuk]
Case no. 1572/2555 (2012) [Ibrahim Fahad A. Alsubai]
Case no. 6378/2556 (2013) [Nachakrit Cheungrungrit]
Case no. 820/2556 (2013) [Sonthi Limthongkul]
Case no. 2529/2557 (2014) [Yutthasak Khanwaluangsakun]
Case no. 137/2558 (2015) [Krit Butdichin]
Case no. 11/2558 (2015) [Opas Chansuksai]