

Establishing the King as the Source of the Constitution

Shifting ‘Bricolaged’ Narratives of Buddhist Kingship from Siam to Thailand

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9.1 INTRODUCTION

Thailand’s constitutional order, as defined and redefined constantly by courts, scholars, and kings from the late nineteenth century until present, is a bricolage of constitutional monarchy and Buddhist kingship (Mérieau 2021b). In the mid-nineteenth century, doctrines of law and kingship still relied mostly on concepts derived from Hinduism and Buddhism. These doctrines were expressed in religious texts, treatises, and tales as well as in the *Phrathammasat* portion of the Three Seals Code, dating back from the Chakri Reformation of the early nineteenth century. From the late nineteenth century, in its quest to become “civilized” (*siwilai*) and to escape colonization, Siam engaged in a process of legal “modernisation” (Thongchai 2000). Thai modern legal categories, concepts, rules, and doctrines were creatively invented, based on borrowings from Western countries (from both common law and civil law traditions), then hybridised with “re-invented” indigenous categories, often rooted in Buddhism.

In particular, Thai scholars and jurists indigenised European legal categories by creating neologisms based on Pali, the sacred language of Theravāda Buddhist scriptures, and by fusing European doctrines with similar Buddhist narratives. Besides the well-known history of the *lèse-majesté* law (Streckfuss 2011, Mérieau 2021a), one of these foundational “mergers” includes the hybridisation of the European, monarchist, myth of the royal constitutional “octroy” (the king as the source of law, who benevolently grants the Constitution to his subjects) with the Thai Hindu-Buddhist myth of the *dhammarāja* king (the king is the upholder of the dharma/natural law, who turns the wheel of the law). As a result, the king became, in Thai doctrine, both the granter and “turner” of the country’s foundational law, the source of the Thai constitutional order. This ideal was enshrined in the preambles of the successive Thai constitutions from 1932 until this day, embodied in state institutions and reenacted in various state ceremonies, themselves “bricolaged” using Buddhist and Western symbolism, such as the ceremony of royal “constitution-granting.” The

narrative of the king as the source of the Constitution is one of the key aspects of Thailand's "Buddhist constitutionalism" (Mérieau 2018).

The current Constitution, the 2017 Constitution, was "granted" (de jure: promulgated) by King Vajiralongkorn on 6 April 2017 – the date of the anniversary of the Chakri dynasty's foundation. The ritual depicted the king, seated on a golden throne, signing the book of the Constitution in three copies to a kneeling then-leader of the military junta, General Prayuth Chan-ocha (now "elected" Prime Minister). The Constitution, in the form of a folded golden book called *samutthai*, was handed back and forth between the king and the leader of the military junta on a golden tray used to pass sacred objects and/or to pass objects from/to sacred people, called a *phanwenfa*. The ceremony presented the Constitution as rooted in an ancient tradition of Thai law drawing on Hindu and Buddhist ideas and images. Echoing the tripartite nature of the Buddhist canon (Pali: Tipiṭaka, literally three baskets), the *samutthai* was kept in three thrice-folded copies. The golden tray symbolised the royal gift of a sacred constitution: the king was here performing the ritual of "constitutional octroy" according to which the Constitution is a sacred grant of the king onto his people.

Yet, the imagery was a bricolage of the European idea of law as a gift from the king with the Hindu-Buddhist idea of the king as the upholder and turner of the sacred law, the dhamma. In this construction, the king is not only the source of the positive legal order, but also the upholder of the natural (cosmic) legal order. This doctrinal bricolage, as performed in the "constitution-granting" ritual, undoubtedly aims to consolidate the king's authority and legitimacy. Yet, it is not without its challenges, as a bitter competition for legal supremacy plays out between the king and the Constitution (or rather, between their respective defenders), a conflict which still remains at the heart of the current Thai political crisis. This chapter will trace this process of doctrinal bricolage from the nineteenth century until present and reflect on some of its implications.

9.2 THE KING-DHAMMARĀJA AS UPHOLDER OF THE 'ANCIENT CONSTITUTION' IN THE PHRATHAMMASAT OF THE THREE SEALS CODE (1805)

In the mid-nineteenth century, the laws governing the Siamese monarchy were part of a wider body of legal prescriptions assembled in a code called the "Three Seals Code" (*kotmai tra sam duang*). The Three Seals Code had been compiled on the order of Phraputtayotfachulalok (r. 1782–1809), later known as Rama I, the founder of the Chakri dynasty, by a commission of royal scribes, pundits, and *brāhmaṇas* (Lingat 1929; Wales 1934). It was named after the three seals of the north (mythological lion), south (mythological elephant), and centre (crystal lotus) corresponding respectively to the Ministry of the Interior, the Ministry of Defence, and the Ministry of Finance, a testimony to the territorial rather than functional organisation of the

ancient administration of Siam. Three official copies of the Code were kept: one was deposited at the Royal Library, another in the king's apartment, and a third in the Court of Justice.

9.2.1 *The King According to the Phrathammasat*

The Three Seals Code contained a reconstructed version of the old laws of Siam, dating back to the Ayutthaya, Thonburi, and early Bangkok periods. It had three components: the *Phrathammasat* exposing the various sources of disputes (*mula-khadi*) as derived, it claimed, from the Hindu Code of Manu; the *Phrarachasat* detailing the various “ramifications of disputes” – namely, laws/rulings claimed to be made by kings based on the principles of the *Phrathammasat*; and other pieces of royal legislation not claimed to be derived from the *Phrathammasat*, called the *Phrarachanitisat*, which were concerned mostly with administrative matters, such as key royal edicts on legal procedures and civil and military administration, but also to some extent with constitutional matters, such as the palace Law (*kot montien ban*) regulating the exercise of royal power.

The *Phrathammasat* opens with a mention of the Three Jewels: the Buddha, “discoverer of the Four Noble Truths,” the dhamma, or “nine transcendental practices, to which must be added knowledge,” and finally the sangha, “the noble community of the eight perfect disciples of the monk community.” The text glorifies the ideal of kingship as practiced by past kings as *dhammarāja* or Buddhist righteous rulers, who governed according to the Ten Virtues of a Righteous King (*totsapit-rajadharmā*) (Saichon 2003; Thianpanya 2008). In its normative components, the *Phrathammasat* also states that the king ought to subject his rule to the “Ten Virtues of a Righteous King” as well as the *thammasat* at all times. Therefore, according to the *Phrathammasat*, the Siamese king ought not to have legislative power, as the king was only to have adjudicating powers: namely, his role was to apply the *thammasat*, not to modify it (Lingat 1941, 26–31).¹ The *Phrathammasat* also established kings as bodhisattva, or Buddha-to-be, as *cakravartin*, or universal sovereign rulers, and finally as *mahāsammata* or great elected kings.

9.2.2 *The King-Mahāsammata Doctrine*

Besides being a *cakravartin* and a bodhisattva, the *dhammarāja* is also referred to in the *Phrathammasat* as a *mahāsammata*. The *Phrathammasat* opens with the following tale of origin: “A Lord bodhisattva was born as a great man at the start of this era. After a time, disputes arose, and nobody could be found to control them. Everyone came together in a meeting and appointed this great man to be the ruler

¹ On the actual practice of royal law-making during the Ayutthaya Kingdom and early Rattanakosin kingdoms, see Baker and Phongpaichit 2021.

with the name King Mahāsammata, equipped with the seven gem attributes [referring to the *cakravartin*]², and accepted by all four continents.” (translation in Baker and Pongpaichit 2016, 106). In the *Phrathammasat*, the *mahāsammata* king is elected by popular acclamation for his qualities, as the “most capable” person to end chaos through the implementation of the dhamma. The *mahāsammata* theory thus posits a contractual basis of kingship, but without discarding the religious origin of kingship.³ Indeed, the *Phrathammasat* states that the king was chosen by the people based on his previously accumulated merit, which allowed him to claim sovereignty and rule over the people:

All the branch matters described here [were created by] past kings [who] had miraculous wisdom and accumulated merit (*barami*) to be rulers over the populace, to have fought with enemies, and to be powerful under the splendid white umbrella, upholding moral truth, honesty, good conduct with wisdom, insight and reason, with the intention to make the city and territory within the realm prosper in happiness and joy. (Baker and Phongpaichit 2016, 100)

According to the *Phrathammasat*, kingship is acquired through the principle of karmic retribution: the king reigns “thanks to the power of his merits” and this is the basis of his “popular” election. As Stanley Tambiah puts it:

[The] elective theory of kingship is counterbalanced by asserting at the same time that Mahāsammata was a virtuous man, an embodiment of dharma and destined to become a Buddha; and that it was as his minister that the sage Manu discovered the perfect law. Thus we see how a contractual theory of government is yoked to the charismatic properties of kingship, thereby constantly compelling the pragmatics of politics to measure itself against an enduring standard. (1976, 13)

9.2.3 *Secularisation of the King-dhammarāja Doctrine*

The beliefs or religious-legal doctrines of kingship listed above, as written in the *Phrathammasat*, have their origins in the Pali Canon, most notably in the *Aggañña Sutta* and the *jātaka* or tales of the past lives of Buddha, as well as in various treatises and epics, most notably the *Three Worlds*, a book about heavens and hells that contains the first systematic description of the world according to the Buddhist cosmology, and the *Ramakien*, a Siamese version of the Ramayana. These were rewritten in the early nineteenth century, prior to the launch of the legal

² The seven gem attributes are those of a *cakravartin* or universal ruler, as described in the cosmogony of the Three Worlds: the gem wheel, the gem elephant, the gem horse, the gem woman, the gem treasurer, the gem son, and the gem jewel (Reynolds and Reynolds 1982, 125–72).

³ On the idea of contract, see Huxley 1996 and Collins 1996.

codification process, on the order of Rama I as part of his project of the restoration of royal authority relying on Buddhism (Wenk 1968; Wyatt 1982).

Among the *jātaka* tales, Rama I placed particular emphasis on the tale of the very last incarnation of the Buddha as Prince Vessantara (Wales 1931, 31; Jory 2016). In the tale, the prince gives away everything he possesses, including his wife and children, to attain enlightenment, and this is precisely how he succeeds in becoming the Buddha. In his version of the *Three Worlds*, Rama I placed particular emphasis on the story of the King-*dhammarāja* (*cakravartin*-*bodhisattva*), which he put at the very centre of the story.⁴ Lastly, his version of the *Ramakien* tells the story of a prince, Phra Ram, said to exhibit the practice of the “Ten Virtues of a Righteous King.” He is also of divine nature as an avatar of the god Vishnu (Phra Narai in Thai). Thanks to his royal virtues, his fights with demons to save his abducted wife Sita are ultimately victorious. These three stories, as rewritten in the early nineteenth century on the order of Rama I, included powerful allegories of the Siamese concept of royalty, which underscored the ideals of Buddhist royal virtue mentioned above. In the end, both the *Three Worlds* and the *Tipiṭaka* were referred to in the preface to the *Phrathammasat* (Baker and Pasuk 2016, 104), but the *Ramakien* was not.

From the mid-nineteenth century, the tale of Vessantara, the *Three Worlds*, and the *Ramakien* began to be progressively reduced to the status of non-historical, non-scientific “tales,” while the Hindu gods were downgraded to make way for the worship owed to the Buddha. The Siamese kings were nonetheless considered *sommuthitsep* or “supposed gods,” avatars of Vishnu or Shiva, an idea that was reenacted in state ceremonies (Riggs 1966, 99). Yet, the entire scientific and historical character of Buddhist literature was discarded. The *jātakas* and stories of

⁴ Chapter 1 deals with the realm of hell beings, Chapter 2 with the realm of animals, Chapter 3 with the realm of the suffering ghosts, Chapter 4 with the realm of the Asura, Chapter 5 with the realm of men, Chapter 6 with the realm of the *devata*, Chapter 7 with the world with only a remnant of material factors, Chapter 8 with the world without material form, Chapter 9 with the Cakkavaka and the Jambu continent, Chapter 10 with the destruction and renewal of the Mahakappa, and Chapter 11 with *nibbana* and the path. Originally written in the times of Ayuthaya and rewritten at the time of the Chakri Reformation, it describes a world composed of thirty-one levels of birth and rebirth governed by the laws of karma and *dharma*. According to the *Three Worlds* cosmogony, the highest levels of the cosmos are the realm of the *brahma* (*phrom*), whereas *thevada* or *thep* inhabit inferior levels. Dusit, the fourth level of paradise, is the house of the *bodhisattva* before he returns as Buddha. The *sommuthitsep* Buddhist King finds himself at the summit of the terrestrial hierarchy, acting as an interface between hell and paradise. In the fourteenth-century version, the character of the Universal Monarch, called *chakravatin*, appears halfway through the book, between hell and paradise. He is described as resting in his Palace when the Wheel of the Law, the Dharmachak, rises out of the Ocean to reward his practice of the ten Buddhist Virtues. Then, turning the Wheel of the Law, the Universal Monarch conquers the four continents of the Universe, before returning to the Palace. His triumphant return is welcomed by the apparition of celestial attributes: woman, elephant, horse etc. See Reynolds and Reynolds 1982. In the Rama I version of the *Three Worlds*, the Book opens on the very figure of the Dhammaraja.

the life of the Buddhas, which until then had been considered historical facts, as well as the *Three Worlds*, which until then had been considered somewhat of a treatise on geography (Thongchai 1994) were reassessed and rebranded as “folk tales”: they became part of the Western category of literature. The theories of the bodhisattva and *cakravartin* as well as the *mahāsammata* were likewise dismissed as old superstitions (Jory 2016, 21).

The general movement towards rationalisation and secularisation that had been born out of the encounter with the West was bringing about new challenges to the monarchy. The monarch could no longer derive his authority simply from a supposed lineage linking him to the Buddha, nor from his status as Buddha-to-be or universal sovereign. Instead, the monarchy would have to base its legitimacy on the dynastic principle pertaining to a specific territory and population. The *mahāsammata* doctrine of the elected king would have to be secularised and “legalised” to make it acceptable by Western standards. At the same time, based on European understandings of law and kingship, new tools and doctrines of sovereignty could be devised to enable Siamese kings to acquire effective legislative power and then use the law to consolidate their authority. Among these tools, the principle of a modern constitution soon appealed to Siamese kings.

9.3 THE KING-DHAMMARĀJA IN THE 1932 “GRANTED” CONSTITUTION

From the end of the nineteenth century to the first decades of the twentieth century, successive Thai kings Chulalongkorn (r. 1868–1910), Vajiravudh (r. 1910–25) and Prajadhipok (r. 1925–35) engaged in various constitution-drafting projects. In order to establish absolutism, King Chulalongkorn had a Bonapartist Constitution (but without a parliament) drafted by an advisor in 1889.⁵ His successors, King Vajiravudh and King Prajadhipok, likewise engaged in constitution-drafting experiments, in 1918,⁶ 1926,⁷ and 1932,⁸ drawing from various models derived from the unwritten British Constitution, but all nonetheless articulated around the project of securing royal sovereignty.

These constitutional drafts all attempted to consolidate royal authority by establishing the king as the source of the Constitution and increasing his legislative powers, drawing on the nineteenth-century European model of so-called limited monarchy, especially in its Bonapartist version, as well as on the newly imported tenets of legal positivism, which vested legal authority in the dicta of sovereigns

⁵ พระราชกฤษฎีกาฉบับ ๑ ว่าด้วยราชประเพณีกรุงสยาม [1889 First Law on Royal Custom in Siam].

⁶ ธรรมนูญ อุตสาหกรรม ลักษณะปกครองคณะนาคาภิบาล [1918 Constitution of the Administration of the Municipality], 7 November 1918.

⁷ ‘An Outline of Preliminary Draft’ [Francis B. Sayre’s draft Constitution], 27 July 1926.

⁸ ‘An Outline of Changes in the Form of Government’ [Phraya Sriwisanwacha – Raymond B. Stevens draft Constitution], March 1932.

rather than cosmic principles. In particular, kings and their legal advisors looked to the doctrine of “granted constitutionalism,” which established the king as the sovereign source of the Constitution, a modern construct from continental European monarchies, which could easily be hybridised with traditional theories of Buddhist kingship.

9.3.1 *The Bricolage of the Word “Constitution” (“Rattathammanun”)*

These endeavours, however, were hijacked by the 1932 Revolution, which abolished the absolute monarchy in Siam. In June 1932, the People’s Party, under the leadership of French-educated jurist Pridi Banomyong, imposed a constitution on King Prajadhipok. As the concept of “constitution” was imported, Pridi and his group needed to create a Thai term for it. To translate the foreign word “constitution,” they could either build a secularised term, or a term rooted in the Buddhist idea of law, dhamma, *thamma* in Thai. The People’s Party chose to rely on terms found in the Three Seals Code and called its first constitution the “Fundamental Rule of Procedure for the Administration of Siam” (*phrarachabanyat thammanun kan pokkroong phaendin*). *Phrarachabanyat* referred at the time to royal legislation, while *thammanun* referred to dhamma: in the Three Seals Code, the title containing the cosmic law discovered by Manu was called *laksana phrathammanun*. Finally, *phaendin* was the traditional term for territory, which was strongly associated with traditional conceptions of kingship. The term was thus entirely rooted in Thai traditional concepts of law and kingship.

The term however did not survive long. An influential prince who was sympathetic to the revolution, Oxford-educated Wan Waithayakon, proposed a new word: *rattathammanun*, based on a new, secularist, Western-oriented word *rat* for state and on the traditional, Buddhist-derived word *thammanun*. To him, a constitution was “sacred” (*saksith*) and the word used to refer to it should denote this sacredness. At the same time, a constitution was also a modern construct based on Western political concepts, such as the idea of a nation-state. In accordance with Prince Wan’s proposal, the following Constitution, adopted in December of the same year, was called *rattathammanun*, mixing Buddhist and Western conceptions of law and kingship.

9.3.2 *Merging the King-dhammarāja Doctrine and Doctrine of “Granted Constitutionalism”*

The preamble of the December 1932 Constitution enshrined Hindu-Buddhist doctrines of kingship. It stated that the Constitution, on the one hand, had been “granted” (*phrarachathan*) by the king and, on the other hand, bestowed *upon* the king the duty “to preserve the country eternally”. The preamble delved into the “150 years of absolute monarchy under the principle of the Ten Virtues of a Righteous

King.” The king’s full name with titles, added to the preamble of the Constitution, occupied the whole of the first page of the Constitution in thirteen lines. He bore the titles of bodhisattva, *mahāsammata*, Great Elect, *cakravartin*, divine angel, reincarnation of Vishnu, and, last but not least, *dhammarāja*. In the first title of the Constitution, dealing with kingship, the traditional conceptions of kingship and the law were twisted and secularised: as the supreme commander of the army, the king was associated with the traditional function of *cakravartin*, as the patron of Buddhism, with that of bodhisattva, and as the sovereign exercising legislative, executive, and judicial power in the name of the people, with the *dhammarāja–mahāsammata*.

The December 1932 Constitution stated that sovereignty did not *belong to* Siamese subjects but “*emanate[d] from the people*,” being “exercised by the king in accordance with the dispositions of this Constitution” (Article 2). Sovereignty was referred to by a new term, *amnatipatai*, formed from a Pali suffix. According to Phraya Sriwisanwacha, one of the key drafters of the December Constitution:

When we say that sovereignty comes from the people, it means that the king ascends the throne upon *invitation by* the people, what is in conformity with our old precept which stated in the name of the king that he had been elected. (Nattapol 2013, 16)

Likewise, Prime Minister Phraya Manopakorn Nithithada explained that this article on sovereignty and the doctrine it relied on in fact derived from the *mahāsammata* doctrine:

In reality, the first part of the article [on sovereignty] is simply a reaffirmation of our ancient traditions (*phrapheni boran*). Indeed, if we open ancient books, it is said in the very name of the king that he has been elected; in the coronation ceremony, there are brahmins and high civil servants who give the crown jewels, representing the fact that the king ascends the throne at the invitation of the people and not by Heaven’s Will, what some foreign countries cannot understand. (Noranit 2009, 19)

In the parliamentary debates of 1932, Phraya Manopakorn Nithithada also explained that the Constitution was “granted” by the king, therefore the king always retained sovereignty, as he pre-existed the Constitution. But, because he was “elected,” he did so “in the name of the people.” This rationale justified why the Constitution did not mandate that the king swear an oath of allegiance to uphold it. As a member of the Constitution-drafting committee explained: “We know well that the king must swear an oath before the representatives of the Theravāda gods, as well as Buddha, etc. Consequently, [the text] can remain silent [on the issue of the royal oath to the Constitution]” (Noranit 2009, 48).

The result is that, in the Siamese constitutional imaginary of that time, the king was accountable to Theravāda gods and dhamma, but not to the Constitution he “gave”; he must uphold dhamma but does not need to submit himself to “his own”

Constitution. Therefore, the 1932 Constitution, which by all accounts resembled a Western parliamentary monarchy constitution, was nevertheless very much influenced by the king-*dhammarāja* doctrine. The king remained, albeit in a modernised and more symbolic form, the law-giver or, rather, the constitution-giver.

9.3.3 *The Cult of the Sacred Constitution (as a Royal Gift)*

It must be noted that during this time, religious discourse increasingly permeated the way the Constitution was understood: members of the People's Party framed the Constitution as "sacred" (*rattathammanun saksith*) (Nattapol 2013, 18–19; Suthachai 2008, 33–34; Bandit 2007, 13) precisely because it had been a "king's octroy" (*rattathammanun phrarachathan*). In 1933, as a royalist counterrevolution was looming large, revolutionaries including Pridi Banomyong used the idea of the "royally granted constitution" to mobilise people throughout the country in its defence, despite the fact that they had fought for the recognition of parliamentary sovereignty at the expense of royal sovereignty. Symbolically, constitutional supremacy was replacing royal supremacy, even while drawing its legitimacy from the monarchy and borrowing its modes of legitimation, many of which had their roots in Buddhism. Eventually, the royalist counterrevolution was defeated, and its leaders went into exile.

From 1934, as a way to consolidate the revolution, the government, led by Pridi as minister of the interior, continued to work hard to shift the locus of sacredness from the monarchy to the Constitution. The Constitution became the object of a truly official cult. An "Association for the Constitution" (*samakhom khana rattathammanoon*), with branches all over the country, organised celebrations and marches in the honour of the Constitution, mimicking past ceremonies for the king (Puli 2018). The Constitution was worshipped as a "royal gift," angering then-King Prajadhipok. In his last words before abdication, as he hopelessly pleaded with the government to get back some of his old, customary royal prerogatives, he wrote to the members of the People's Party: "The Constitution should not be sacred, it should be revisable. It is not right to venerate it with scented candles as you do, venerating the Constitution is a joke!" (Mérieau 2021, 99). Following Prajadhipok's abdication in March 1935, the People's Party aimed to fill the void left by the disappearance of the figure of the king by relying even more on the cult of the Constitution. Firmly in power, and without a king, the People's Party commissioned two monuments to honour the new cult of the Constitution.

The first edifice, called "Safeguarding the Constitution" was built in 1936 to commemorate the victory of the People's Party over the attempted royalist counterrevolution led by Prince Boworadet in 1933. It is the burial site of the remains of those who "fought and died for the Constitution" (Thanavi 2018, 235). A second monument, the "Democracy Monument," was commissioned in 1939 to commemorate the 1932 abolition of the absolute monarchy. It portrays Thai democracy as

being composed of five elements: the four branches of the Thai security forces (Army, Navy, Air Force, and Thai police) at the periphery, and the Constitution, at its core. The Constitution is represented in a Buddhist-scripture-like longitudinal book made of golden palm leaves, the *samutthai*, placed on top of two royal golden trays used for sacred objects – the *phanwenfa* – in effect, displaying the Constitution as a sacred object. The security forces are represented by three erect, obelisk-like, 24-metre-high wings surrounding and overlooking the Constitution. The monument embodies the following narrative: that democracy takes the form of a sacred “granted” Constitution, whose guardian is the military (Nidhi 2004, 106). In both these monuments, it is the Constitution, rather than the king, that becomes the sacred centre of the nation: the Democracy Monument also marks Thailand’s “kilometre zero” – the central location from which all distances are measured (Thanavi 2016). As such, it is the Constitution that becomes the rallying symbol of the nation.

9.4 THE KING-DHAMMARĀJA IN CONTEMPORARY CONSTITUTIONAL DOCTRINE

Following King Prajadhipok’s abdication in 1935, his nephew, Ananda Mahidol, was proclaimed king by the Assembly. As he was then a young student in Switzerland, a council of regents was appointed, giving the People’s Party free rein to design Thai political institutions and eradicate any traces of royal sovereignty. From Ananda’s return to the kingdom in 1946 onwards, the monarchy started to reclaim Buddhism at the expense of the People’s Party and reaffirm its role as *dhammarāja*-source of the Constitution.

9.4.1 *Duties of a King: Performing Constitution-Granting Ceremonies*

In 1946, King Ananda Mahidol agreed to return to the kingdom at the request of then-prime minister Pridi Banomyong in order to promulgate the 1946 Constitution: for Pridi, it was important to have the king ritually re-enact the myth of the “royal octroy” in order to make the 1946 Constitution as “sacred” as its predecessor, the December 1932 Constitution. The ceremony was grandiose and seemed to mark the reconciliation between the monarchy and the People’s Party. However, a few days later, King Ananda died from a bullet wound in the head in his palace bedchamber. Amidst the state of general shock and confusion, his younger brother, Bhumibol Adulyadej was named king as Rama IX. He was crowned in May 1950 in a traditional Hindu-Buddhist ceremony in which he made clear that he was mobilising Buddhist narratives on kingship to establish his authority as a *dhammarāja*. He pronounced the following, very short Accession Speech: “I shall reign by dharma, for the benefit and happiness of all the Thai people.”

The return of Bhumibol to the kingdom coincided with the rise of military dictatorship. In 1957, US-backed General Sarit Thanarat seized power in a coup, with the support of the king. General Sarit had nothing but contempt for the constitutional project, which he considered alien to Thai culture. Yet he appointed a constitution-drafting assembly, which doubled as acting legislative assembly, and whose work continued until after his death in 1963. In 1968, the Assembly had finally a complete text: it was promulgated in great pomp by King Bhumibol in a ceremony of “royal octroy” (Darling 1977, 117). The king, seated on his throne, signed the three copies of the Constitution on a *phanwenfa* tray, given to his people. The ceremony was televised and photographed, with copies distributed all over the kingdom for people to worship. Bhumibol had presided over his first “constitution-granting ceremony,” just as Prajadhipok had done in 1932 and Ananda in 1946. Even though the 1968 Constitution did not last long – it would be abolished by a coup in 1971 – this ceremony marked a turning point: from this moment, King Bhumibol would increasingly act as a modern *dhammarāja*, or at least his actions would increasingly be interpreted as such by the legal profession. The concept of *dhammarāja* would invite itself back into law handbooks, articles, and essays.

Bhumibol had a first occasion to project an image of true *dhammarāja* in 1973. That year, students demanded that the military, which had come to power in the 1971 coup, resign and let them draft a new, democratic constitution. On 14 October 1973, they organised mass protests all over Bangkok. The king offered shelter and protection in his palace to the students who were fleeing the police. These moments were photographed, and the photographs distributed throughout the kingdom. Thanks to the king’s intervention, the protests were successful: the military government resigned, and Bhumibol “granted” the students a prime minister of his own choice but to their liking, Sanya Dharmasakti, the rector of Thammasat University. Rama IX also proposed the convening of a “National Convention” of nearly 2,500 members who would be tasked with the selection of new members of the parliament. He then dissolved the Assembly and directly appointed the members of the National Convention through a Royal Command. The National Convention was headed by Prince Wan Waithayakorn, the author of the Buddhist-inspired Thai neologism for “Constitution.” The National Convention selected the members of the new parliament in December 1973. Finally, a new constitution-drafting committee was appointed. The drafting started in early 1974 and the Constitution was first presented to the cabinet in February, before sailing through the Assembly.

9.4.2 *The Concept of Rachaprachasamai Constitution* (King-People “Joint” Constitution)

The 1974 Constitution had literally been granted by the king through direct royal appointment of both the prime minister, called “the royally-granted prime minister” (*nyok phrarachathan*) and the legislature, called the “royally-granted house”

(*sapha phrarachathan*). Its preamble reaffirmed the myth of Prajadhipok's initial royal octroy:

King Prajadhipok granted the constitution of Siam to the Siamese people on December 10, 1932 – which established democracy in Siam, in accordance with the royal wish to grant royal power to the Siamese people in its entirety, not to a person or a group in particular; [a democracy] in which the Head of State exercises sovereignty of the people in accordance with the provisions of the Constitution.⁹

In line with the principle of royal sovereignty inherent in the doctrine of royal octroy, the king could veto, as well as order, the holding of a referendum on any proposition of constitutional revision (Article 220). This Constitution, which was highly royalist – as the Senate was initially fully and directly appointed by the king (Article 107) – was referred to as the “King-People Joint Constitution” (*rattathamanun chabap rachaphrachasamasai*), owing to the role played by the king in its engineering, together with the amount of public participation involved (Kobkua 1981, 58). *Rachaphrachasamasai* (joint King-people) was actually a transformation of the old doctrine of *anekchonnikon samosonsammut* according to which the king and the people are one united body, a complementarity between “Heaven” and “Earth,” itself echoing the *mahāsammata* doctrine:

According to the mode of governance of *rachaphrachasamasai*, the Monarchy and the people govern together. The Monarchy has more prerogative to govern than in a democracy and the people also have more power to govern than in the past experience of Thai Democracy. The Monarchy and the People in such a system are not dangers to one another. They love each other and help each other always. If the Monarchy and the People unite to govern the country together, and help each other out, as has always been the case, I have the hope that our land will turn into the land of peace and development in all dimensions according to the wishes of the people. (Kukrit 1971)

In the same period, a new doctrinal theory, named “Democracy with the King as Head of State” (*prachatiṭṭatai seung mi phramahakasat pen pramuk*), emerged, building on the idea of *rachaphrachasamasai* and mixing elements of constitutional monarchy, notably Walter Bagehot's tripartite convention (the king has “the right to be consulted, to warn and to encourage”) and elements of Buddhist kingship. This theory referred to kingship as being defined by the Ten Virtues of a Righteous King, and by the king's election – in other words, the modern king was still both a *dhammarāja* and a *mahāsammata*. In “the Democratic System with the King as Head of State,” there were two sources of law. The positive law (*khotmai*) gave the king the power to exercise sovereignty in the executive, legislative, and judicial domains through the cabinet, the parliament and the judiciary, as well as grant royal pardons and receive petitions from the people, following Bagehot's tripartite

⁹ 1974 Constitution of the Kingdom of Thailand, preamble. Translation by the author.

convention. The royal customary law (*rachaphrapheni*) was composed of the 26 Royal Virtues. These were the Ten Virtues of a Righteous King (generosity, morals, sacrifice, honesty, gentleness, diligence, compassion, non-violence and non-harm, patience, and righteousness); the Twelve Virtues of the *cakravartin* (*chakravativat*) (to love and be compassionate to his subjects, to adhere and maintain dhamma, to judge cases with justice, equity and rapidity, to listen to the advice of philosophers and act accordingly, to abstain from committing the five major sins – killing, stealing, committing adultery, lying, and drinking alcohol – to feel compassion and not envy the wealth or the work of the people, to collect taxes but not to increase them, to give to the poor, to distribute wealth to civil servants, to judge cases meticulously, to honour and look after *brāhmaṇas* and philosophers, and to distribute rewards and honours to those who are deserving); and the additional Four Virtues of a bodhisattva (*sangkhahawatu*) (a sense of sacrifice, carefulness in speech, social usefulness in action, consistency and appropriateness of action) (Thanin 1976, 32–33).

The aim of a *dhammarāja* king is to attain the status of *cakravartin* and bodhisattva by demonstrating the perfect practice of these twenty-six cumulative virtues (Sawaeng 2000, 90–93). As presented in this formula, then, modern Buddhist kingship still relied on the ideals of bodhisattva, *cakravartin*, *mahāsammata*, and *dhammarāja*, and royal customary law still pre-existed positive law. In his authoritative handbook on the subject, Thanin Kraivichien gives, as an example of a key kingly duty, that of giving (*than*) a constitution to his subjects (1976, 33).

9.4.3 *The Concept of “Shared Sovereignty” between the King and the People*

In developing the theory of “Democracy with the King as Head of State,” Thanin suggested that “Thai-Style Democracy” did not require a constitution nor elections held periodically. Since the king was, in a mythical sense, elected, and thereby represented the people, there was democracy, even in times of military dictatorship. In addition, the king always retained his sovereignty: being the army chief, the king was, during coups or when there was no constitution under military dictatorship, still fully sovereign (Thanin 1976, 26–29). Regarding the king’s role in times of crisis, Thanin stated: “when the country enters into a crisis, one can no longer rely on the constitution at all. One must rely on the wisdom (*phrapricha*) of the king” (1976, 58). Thanin’s legal theory established the king as commander of the army and source of political legitimacy. He linked it with the legality of military coups through the royal prerogative of declaring and revoking martial law:

In military terms, the monarchy (*phramahakasat*) means “great warrior.” This is because in ancient times, the king was the one leading in the battlefield, fighting courageously against the enemy . . . The legacy has continued until today, and that is why the king is the army chief according to the constitution . . . The title of general (*chomphon*) is the highest in the military hierarchy, it is true, but the king has an even higher status, which is army chief. It is not a military rank, but it is a title for

the monarchy specially, which is based on royal constitutional customs (*nittira-chaphrapheni*) since ancient times . . . That is why this constitution gives the king the title of army chief and the power to declare and revoke Martial Law. (1976, 26)

Finally, building on both the theory of *rachaprachasamasai* and the theory of “Democracy with the King as Head of State,” prominent Thai jurists later developed the “doctrine of King-people’s shared sovereignty,” according to which the king and the people hold joint or shared sovereignty, something which bears practical consequences in times of military coups:

In the Thai democratic system, sovereignty is held by the king and the people. It thus differs from other countries in which the people are the only bearer of sovereignty. There are two reasons for this. The first reason relates to traditions (*phrapheni*). The Thai Monarchy is identified with the Thai people, and this has become a tradition. The second reason relates to law. Sovereignty has at all times belonged to the king. When the People’s Party changed the system of government, the royalty, holder of sovereignty, granted it to the people by giving a constitution. The king accepted to be placed under the authority of the constitution but would still have the sovereign power in the name of the people. Whenever a coup abolishes the constitution, one must consider that the power given with the constitution goes back to the monarch, being the sovereign before June 24, 1932. (Bowornsak 2007, 143)

According to this doctrine – which was never explicitly accepted by the court (Mérieau 2021, 241) – whenever the king signs the interim constitution after a coup, the act is considered legal, and sovereignty becomes “shared” with the people. The coup then is legalised whenever it bears the king’s signature. This all derived from the fact that the king is the source of the Constitution. In *The Monarchy in the System of Democracy*, a book commissioned by the National Legislative Assembly appointed by the military in 2007, prominent Thai jurist Meechai Reechupan explained how Thailand’s luck, “a luck unique in comparison to other countries,” was that all Thai kings, whether absolute or constitutional monarchs, had always ruled according to doctrines of Buddhist kingship, and because – since Prajadhipok had unilaterally granted the 1932 Constitution to the people (the Interim Constitution bearing the sole signature of the king) – the monarchy remains to date the source (*thi ma*) of the Constitution and constitutionalism in the country (Meechai 2007, 5). Even though this doctrine was never explicitly recognised by the courts, implicit references and traces of the doctrine can be found in several landmark rulings of the Constitutional Court.

9.5 CONCLUSION

The *dhammarāja* (*cakravartin*/bodhisattva) and *mahāsammata* theories of royal power – what can be called “the four images of Buddhist kingship” – were

progressively secularised throughout the late nineteenth and early twentieth centuries, then Westernised and articulated with legal and constitutional theories in the 1930s. The Siamese term for dhamma, based on the Pali word, was used to Buddhicise the Western borrowings so as to “indigenise” them. The nineteenth-century European model of limited monarchy, relying on the idea of the royally granted constitution, was imported and hybridised with the doctrine of the elected king and the Hindu-Buddhist conceptions of kingship and the law. By the 1930s, all references to the dhamma, the *thammasat* or the *rajasat* had seemingly been removed from the law and the doctrines of kingship, but in fact, they had been re-invested in a new sacred object: the Constitution. The fiction of the Constitution as a royal octroy was enshrined in the preamble to the 1932 Constitution and since then, a reference to the royal octroy appeared in almost all permanent constitutions. In law handbooks, various doctrines on royal sovereignty (such as *rachaprachamasai*) married the doctrine of “granted constitutionalism” with that of the *dhammarāja* doctrine. Altogether, the doctrine of royal constitutional octroy, according to which the Constitution is a royal gift, established the king as the source of the Thai constitutional order, therefore endowed with powers to grant, suspend, and abolish the Constitution.

These various theories, derived from the bricolage of Western and Buddhist concepts of the Constitution as the king’s gift to his people, still have much salience today. The 2017 Constitution states in its preamble that it has been graciously “granted” by King Vajiralongkorn, following the initial “royal octroy” of a constitution by King Prajadhipok in 1932. Additionally, the document refers to the Buddhist-kingship-infused narrative of “Democracy with the King as Head of State” almost fifteen times in the body of its text: “Democracy with the King as Head of State” is defined as Thailand’s constitutional identity, protected by the Constitutional Court from both amendment (through an eternity clause prohibiting amendment) and from “threats” by political parties and individuals (by a clause allowing the court to order the cessation of such “threat” including the dissolution of the political party in question). Like former Thai constitutions, the 2017 Constitution gives the king a constitutional veto over all constitutional, legislative, and executive matters – in fact, the title on the monarchy in successive Thai constitutions has been the most stable of all titles since 1932. In the words of Thanin, “the reason why the status of the monarchy was never changed in any epoch, no matter how many times the constitution was abrogated, is because this institution has ultimate stability and has inherent perfection so that there has never been any need to alter it” (1976, 30).

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