

Ramification and Re-Sacralization of the Lèse Majesté Law in Thailand

Somchai Preechasilpakul,
Faculty of Law, Chiang Mai University
Chiang Mai 50200
somchaip@chiangmai.ac.th

David Streckfuss, Ph.D.
Department of History
University of Wisconsin-Madison
Madison, WI USA
dstreckfuss@yahoo.com

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In October 2007, the chairperson of the National Legislative Assembly (NLA), Meechai Ruchupan, with information from the report of a panel looking into lese majesty, announced "three separate groups" are in a bid "to topple the institution of the monarchy." The first group is:

using the public stage to debate whether the institution of the monarchy should continue to exist. The group was critical of the monarchy and spread its opinions through articles and research, and presented the idea of imposing checks on the monarchy.

The second group is "anonymous" and uses "websites registered abroad" to create "a campaign" that "aims to attack [royal] individuals" in "a campaign" to "criticises behaviour, publishes unsuitable pictures and distorts facts." The last group "seeks to abuse the institution for self-interest and political reasons."

The panel had been set up to investigate "ways to tackle national problems through legislation, particularly the four reasons cited by the coup makers for overthrowing the Thaksin Shinawatra government," including lese majesty. "Anti-monarchy activities," the panel advised, could be countered by "setting the issue as a national agenda and appointing a panel to be in charge of such offences, ensuring the National Police Commission strictly enforces the law, and promoting the image of the monarchy institution, especially by creating understanding with the international community." Beyond that, the panel recommended that those protected by the lese majesty law be extended to the king's children and members of the Privy Council. The law would also "allow police and judges to ban publicity or criticism or comment on lese majeste cases in any media."¹

Lese majesty as a criminal charge, as the most potent political charge in Thailand, has remained not only undiminished, but, as a few months ago indicate, shows signs of renewed vitality. While in many other ways Thailand seems to have become democratic, the lese majesty law exerts a kind of supra-natural hold on society. The frequency of the charge flares up in times of political upheaval. The law has a significant effect on the popular political movement for basic rights. This phenomenon deserves careful scrutiny, especially when it is claimed that Thailand is governed democratically.

In countries where the political role of monarchs changed with the transition to democracy, greater protection was given to rights. Protection of the monarchy was diminished and greater leeway was given to criticize or express opinions about the monarchical institution. But the tendency in Thai society has been in the opposite direction. It seems as if to whatever degree democracy has been established, the law of lese majesty has both intensified and expanded, continuously invoked, thus giving Thai society a peculiar quality in comparison with other countries that have retained the institution of the monarchy. A greater understanding of this law, then, can help us better recognize the democratic development of Thailand from a perspective different from that of other societies.

Four Versions of the Lese Majesty Law

The first two Thai lese majesty laws were enacted prior to the overthrow of the absolute monarchy in 1932. The oldest was the first modern Thai law on defamation in general, issued in 1900. It outlined as an offense defamation of not just the Thai monarch, but also of foreign monarchs and heads of state, sedition and treason against the monarchy or government, and defamation of private individuals. It read:

Whosoever defames the reigning king of Siam or the major concubine, or the princes or princesses...with intemperate words which may clearly be seen as truly defamatory, this person has acted illegally.

In this law, acts against the king were acts against the state, and vice versa. But state crimes were seen as part of a general law that set out to protect reputations, whether of the king, the government, or subjects (See Table 1, A).²

A clearer separation between the king and state was made in the first modern Thai criminal code of 1908. With a penalty more than double the 1899 edict, Section 98 of the 1908 code protected four persons from statements that "display malice" or are defamatory:

Whosoever displays malice toward or defames the King, the Queen Consort, the Heir-apparent, or Regent when he is carrying out his duties to the King, shall be liable to imprisonment not exceeding seven years or a fine of not more than five thousand baht, or both.³

With a penalty of up to three years in prison and a fine of up to 2,000 baht, Section 100 of the code provided protection from displays of malice or defamation of "the princes or princesses from whichever reign." This rather broad coverage that protects not just present monarchs, but the progeny of any monarch's reign is part and parcel of absolute monarchy under which the king, as holder of the highest power, is inviolable, as are all of those closely related to him.⁴

A related law under absolute monarchy, with a somewhat broader scope, was Section 104 which read:

Section 104.--Whoever appears before the people in whatever fashion, with intention for whatever results, according to this section to:

- (1) create disloyalty or to insult the king, the government, or the country;
- (2) cause unrest and dissatisfaction among the people in a fashion that cause disturbances in the country; or
- (3) cause the people to transgress the royal laws.⁵

Those convicted of the charge could be punished with up to three years imprisonment and a fine of up to 1,000 baht.⁶ As the spread of print media inevitably brought into conflict the right of free speech with the absolute monarchy, King Rama VII, with support of his legal advisors, strengthened Section 104 with the following amendment in 1927:

Whoever commits any act, or whoever by words or writings or printed documents or by any means whatever, advocates or teaches any political or economic doctrine or system, intended or calculated: (a) to bring into hatred or contempt the Sovereign, the Government or the administration of the State...

The severity of the penalty – up to ten years in jail and a fine of up to 5,000 baht – makes it more difficult to make the argument laid out by some historians that the king was well disposed toward granting a constitution that would allow more freedom.⁷

After the change to constitutional monarchy in 1932, the lese majesty law was not changed in any way. However, the sedition, or internal rebellion provision 104 of the criminal code, was amended to reflect the democratic nature of the new regime. Generally speaking, there was an understanding that there should be greater freedom in expressing opinions about the monarchy. That the penalty was reduced to a maximum of seven years imprisonment and a fine not exceeding 2,000 baht was mildly significant. More important, though, was the exclusion clause:

Provided that there shall be no offence under this section when the said words or writing or printed documents or means whatsoever will merely be an expression of good faith or amount to a critical and unbiased comment on governmental or administrative acts within the spirit of the Constitution or for the public interest.⁸

The inclusion of this particular condition in the law allowed citizens to act "within the spirit of the Constitution" as well as to speak or act "for the public interest" or even if only to make an "expression of good faith." This exemption from guilt may have even gone as far as to make what might be perceived as expressions deemed "insulting" to the monarchy as not any sort of violation of the law. Laws such as these were in line with the political change of the time, a time of transition from the absolute monarchy to constitutional monarchy. Protected was any action done within the spirit of the constitution or for the public good. In comparison, the laws in the criminal code of 1908 protected the king without any such exception. This change in the criminal code indicates

a shift in the position of the monarchy vis-à-vis the public sphere which allowed people to freely express their opinions.

To illustrate the change, a defendant was tried for rebellion under the revised criminal code of 1927. He had claimed that the king should be dismissed for ruling poorly, and that he, the defendant, should rule in his place. Amongst his crimes, he abolished taxes on the killing of livestock and the making of local rice wine, and the cutting of trees for personal use. He also said that children who did not want to go to school should not have to. The prosecution argued that the defendant and his co-conspirators were "very audacious and dangerous subjects, causing the people to look down upon the king and become rebellious toward the governance by inciting the people to ignore the laws." He was sentenced to seven years imprisonment.⁹

In contrast is a 1948 High Court decision on Section 104 under the revised criminal code of 1935. In this case, the defendant, while campaigning for political office in 1946, said:

that since getting the Constitution of 1932...the people had still not gotten a truly democratic system of governance. It has been anarchy and dictatorship...under the power of administrators who acted as they wished. They had silenced the people, forbidding them from speaking or criticizing. ...[The government] has erected a lie, a sham Democracy Monument. Let us revile these dishonest ones... The revolutionary coup group [of 1932] came in wearing only underwear. Now they each have buildings and cars...It's a fake democracy. Field Marshal Phibun is wicked for those around him resort to anything...The present prime minister [Pridi Phanomyong] is even more accursed..."¹⁰

The High Court judged that a person speaking publicly while campaigning for election, under democratic principles, the government may be criticized. Although the language of the defendant may have been intemperate, it nonetheless did not violate Section 104, citing the final paragraph of the provision which stipulated that if the action in question was done within the spirit of the Constitution or for public benefit, it shall not be held as in violation. This immunity did not extend only to what was said during parliamentary proceedings. The central principle of democratic governance is that sovereign power belongs to the people. Governments can thus be either criticized or praised, and so the defendant is found not guilty.

Even though in this case it was the government being criticized and not the monarchy directly, it can be seen as analogous because within Section 104 both the sovereign and the government are protected in the same way. Therefore, criticism of either the government or the monarchy is subordinate to that which falls within the spirit of the constitution or for the

public interest. Neither accordingly would be a violation according to the opinion of the High Court in the above case.

The lese majesty law went under two important changes under the revised criminal code of 1956 (and became law in 1957).¹¹ The first is the revision of Section 104 which had given the right to individuals to express opinions which might still be insulting to the monarchy if said within the spirit of the constitution. Under the revised version, now Provision 116, the reference to insulting the king was taken out. The government was made the focus of the provision, and the disquiet that might be fomented against the security of the state.¹²

The second change was in the lese majesty law which, now as Provision 112, was amended to say:

Whosoever defames, **insults** or threatens the King, the Queen, the Heir-apparent, or the Regent shall be punished with imprisonment not exceeding seven years.¹³ [emphasis added]

The original provision protected the king from threats or defamatory statements. In this amended version, "insult" to the king could be a violation. As the Thai legal scholar, Jitti Tingsaphat pointed out, this addition considerably expanded what might be judged as a violation of lese majesty.¹⁴

Legally speaking, there is an important difference between "defamation" and "insult."¹⁵ A defamatory statement is one which attests to the truth of an action or statement attributed to the one being defamed. It is within the realm of fact, and can, at least theoretically, be proved or disproved. If believed by others, it could bring the defamed person into disrepute. Insult, on the other hand, is to say or act in a way that is disparaging to the one insulted.¹⁶

For private individuals, Thai law recognizes the significant difference between defamation and insult. For almost 100 years, written defamation (libel) could lead to imprisonment up to one year. If the allegation is unproven, the sentence could be two years. For oral defamation (slander), the maximum jail sentence from 1908 to 1992 was six months, and up to one year after 1992. Insult, on the other hand, was merely a fine up until 1976; afterwards, it could carry a maximum prison sentence of one month. However, with the 1956 amendment to the lese majesty law, these two rather dissimilar transgressions were given equal weight.

The difference can be seen by comparing two cases—one from 1939, prior to the revision of the lese majesty law, and one after, from 1988. In the 1939 case, the defendant advertised himself as a sorcerer or magician. In his right hand, he held the pocket knife, claiming it to be a jeweled sword of state. He said no one in the world could challenge him. He claimed he could call upon the king and constitution to come and prostrate themselves before him. He was charged with Section 98 of the

1908 code. In court, the defendant said that his words were merely ones of boast. He had no intention of showing vindictiveness or insult to the king. He agreed that it was foolish of him to think that he could call upon the Constitution to come and prostrate itself before him. The High Court felt that his words would not cause people to look down upon or hate anyone [presumably referring to the king].¹⁷

In contrast is the 1988 case of Wira Musikapong. During a campaign speech, he uttered:

If I could choose, I'd choose to be born in the middle of the palace, and I would come out as Prince Wira... I wouldn't have to come out here and stand in the hot sun and speak to you all. When noon comes, I'd go into a cool room, eat a bit, and lie down and go to sleep and then I'd get up at three. Once evening came, I'd drink some royal intoxicating liquor and feel right nice.

The court judged Wira's words to be an unfavorable comparison that made it appear that the king, queen, and heir-apparent enjoyed comfortable lives, unlike Wira who was a farmer's son who had to work hard. It was untrue what Wira implied about the royal family, although no one would believe it. He was found guilty of lese majesty.¹⁸

In this case, it is important to note that the court found Wira guilty of insulting the royal family, not of defaming it. If the distinctive quality of defamation is that it brings the one so defamed to be looked down upon or subject to hatred, then acts like spray painting a portrait of the king or showing disrespect to royal symbols might be judged as merely insulting and not of the same serious nature as threatening or defaming the monarchy. What before 1956 might have been deemed as insulting to the king, it may also have been seen as being within the spirit of the constitution and received protection. But there are no stipulated exceptions to Sections 112 or 116 in the 1956 criminal code. The problematic nature of the law was merely compounded when the penalty for lese majesty was increased, with imprisonment from three to 15 years.¹⁹

Lese Majesty and the Shriveling of "Debate" in Thai Political Society

Other than the brief period after the 1932 overthrow of the absolute monarchy, has Thai society ever had a chance to debate the question of the role of the monarchy? Given the prodigious number of constitutions in Thailand, a sort of "serial constitutionalism," in fact, it would seem reasonable to expect that the question was debated by the impressive number of Thai constitution drafters. It would seem that the role of the monarchy could have been debated in Thai society, as well as other concomitant components of constitutional monarchy, such as the "inviolability" of the king, the exact powers of the king, and with whom sovereign power resides.

For instance, "inviolability" in the context of other constitutional monarchies has merely meant that the king could not be charged with a crime. In Thailand, though, it is usually understood as no comment or criticism can be made about the king. It is common to hear that one should not refer to the king, a peculiar thought given that the king is by far the most referred to person in the realm.

Another concept has to do with sovereignty. Who holds the ultimate power in the land? It has never been clear exactly where sovereign power "resides with" or "comes from" or "emanates from" or "belongs to" the Thai people. Part of the problem comes from what is understood as "equality" within Thai constitutions or law. The criminal code revision committee, for instance, affirmed that "the constitution extends from the king." As such, a certain inequality must be maintained. A committee member concluded that although Thailand was "no longer under absolute monarchy, we still must recognize differences in origins."²⁰

Sixty years later, it was not hard to find other examples. Thailand's second-most recent Constitution Drafting Assembly was warned in May 1997 by a leading senator, Meechai Ruchuphan (mentioned at the beginning of this article), that certain proposed articles in the constitution "might offend Thai society and the monarchy." Specifically, he was opposed to an article stating "that discrimination due to difference in the origins and social status of people should not be allowed." On the contrary, he argued, such discrimination is necessary in the case of the monarchy. He said:

In a royal palace, the practice of crouching or crawling is normal because there is a specific rule for the palace. What if one day a man talked to the King with arms akimbo (showing disrespect) and he used [this article] to defend himself in court against discrimination. What would happen if the court ruled in his favour?²¹

Six months later, the government's opposition and some senators joined to oppose what was termed as the draft's "most sensitive issue"—Article 3 which stated that "sovereign power belongs to the people." Arguing that such a phrasing would "compromise the monarch's power" and turn Thailand into a republic, they insisted that the wording be changed to "sovereign power comes from the people." The Democrat Party's Sukhumbhand Paribatra explained that "belongs to" and "comes from" were "very close in meaning and intention": "Something has to belong to someone before it can come from that someone," he argued. An opposition member countered: "If you use the words, 'belongs to' describe something, anyone wishing to use that thing will have to seek permission from the owner first."²²

Are these actual points of debate, or are they addressing the fundamental question of inequality within Thai law, and protected from further debate by the lese majesty law?

"Debate" under Constitutional Monarchy, 1932–1956

It was argued in the first part of this paper that from 1935 to 1956 there should have been space to debate the key questions of constitutional monarchy. Under a constitutional monarchy, it is reasonable to assume that the very question of the form of government could have been debated. In other constitutional monarchies, the very existence of the institution, to varying degrees, is a matter of debate. The question of whether or not to retain the monarchy or to become a republic is an opportunity for advocates and opponents to take their case to the public forum. It is a common poll question or referendum topic for countries like Australia and the United Kingdom. In other words, in constitutional monarchies, in which there is a natural tension between democracy and equality, on the one hand, and more authoritarian and privileged impulses, on the other, the best way to resolve it is to let the people decide.

In fact, there is a belief that runs through Thai political thought that avers that the king is somehow elected or is the choice of the Thai people. For instance, in the deliberations of the criminal code revision committee in the early 1940s, this view was voiced a number of times. Without specifying the exact mechanism, one member stated, "The democratic system of governance places the highest power in the citizenry. If the king is no good, the citizens can have him removed." To which another committee member responded, "If it's done constitutionally, then it's not against the law."²³

Was the expression of republicanism possible under Thailand's constitutional monarchy prior to 1956? The answer is debatable. Take, for instance, a particular session of the Constituent Assembly drafting the 1948 Thai constitution. The question on the agenda for one day's session was, "Shall the Assembly confirm or not confirm that the regime of Thailand is a limited (constitutional) Monarchy?" Newspapers reported, many members preferred to leave off discussion of this topic because "to confirm a constitutional Monarchy was above doubt, or because no other solution than Constitutional Monarchy was possible." While "it was certainly exaggerated," as some suggested that day, that discussion about the role of the monarchy was "an offence to the monarch" and many confirmed that it was "more in the Parliamentary tradition...that an Assembly had to give their opinion upon every question," there was in fact no debate on the question. This peculiar sort of affirmation of the freedom to debate the issue and then choosing not to, is shown in the next passage:

It was proposed several times to close the discussion because the opinion of the assembly was not doubtful. However, the closure was disfavoured, not in order to question the Constitutional Monarchy, but in order to show and explain its advantages....In effect, that longer discussion has given to several members the occasion to show that some republican tendencies were contrary to the real feelings of the people...²⁴

A newspaper article of the meeting reported under the headline "Loyalty to Throne" that the session showed "an impressive demonstration

of loyalty to the Crown" as "members greeted with resounding applause and passed unanimously a call for a vote on the perpetuation of constitutional monarchy in Siam." The President of the Assembly, *Chao Phya Sritharmi Tibes* "smilingly added to the unanimity of feeling when, after asking anyone who opposed the principle to stand, he quickly took his own seat." Another member, while feeling that "there was an overwhelming majority in favour of the monarchy," added, with an ominous tone, that he "would welcome any expression of republican sentiments. They would then know who were the republicans." One member spoke warningly of "reports of a republican movement in the country," while another stated that Thailand could "never be a republic or a Communist state. The King is our rallying point." Seni Pramote dismissed any republicans as mere "self-seekers."²⁵

All Thai constitutions have guaranteed freedom of expression in one form or another. Section 45 of the 2007 Constitution, for instance, states that "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means." However, it is also important to add that no Thai constitution has ever guaranteed freedom of thought. This is no small point, as shown in the discussion of the Juridical Council's committee on the anti-communist law of the early 1950s.

It began with the cabinet of ministers wanting to know whether communism was against the constitution or not. If it was, because communism "maintains no king or religion," the government wanted to proceed with "further suppression" of communists.²⁶ Legal advisor Rene Guyon claimed that the constitution gave the government "strong powers" in dealing with 1) "persons who do not accept that Thailand is necessarily a Kingdom [sic] with a King" and 2) "persons who decline to accept a religion." As for the first point, Guyon argued, Thai citizens must accept that Thailand is a kingdom because it is "proclaimed by the Constitution" and because "the Thai subject has the duty to preserve the form of Government as determined by the Constitution." The constitution permits political parties, but it was "obvious" that this right was extended only to parties that "accept the Constitutional form of Government" and "refused to parties the politics of which is to propose another form of Government (a Republican Party for instance)." As a consequence, he says, "Republican propaganda or party, for instance, cannot be formed by Thai subjects." Guyon points out that "the Constitution has omitted to proclaim also those freedom[s] of thought and conscience." The "omission" of such "fundamental principles of the Declaration of Human Rights" was a "dangerous" one:

because it may induce the commentators to contend that it is purposely that the freedoms of thought and conscience are not granted to the Thai (the right to be an atheist, for instance). In fact the Government itself seems inclined to favor that interpretation, since it submits that the Communists may be contrary to the Constitution because they maintain no religion.

The Declaration of Human Rights "proclaims the right to freedom of thought, conscience and religion." However, the Thai constitution omits the first two of these rights and grants only the third.

The first two freedoms (thought, conscience) allow a person to have Republican belief in a Kingdom, or a Royalist to have Royalist belief in a Republic, or to have atheistic conviction outside any kind of religious creed. It is not unreasonable to state that those freedoms, which have cost mankind centuries of fights and tortures to obtain, are amongst those which have determined the United Nations to issue their careful Declaration of Human Rights.

With only religion guaranteed—and not thought or conscience—Guyon concluded that the government may, without being charged for "unreasonableness or tendentious interpretation of the Constitution," outlaw a political party that does not support the king and religion. The UN Declaration proclaims that everyone has "the right to freedom of opinion and expression," and the Thai constitution granted "full liberty of speech, writing, printing, and publication." However, he admitted, since "the freedoms of thought and conscience do not exist" in the constitution as well, this "full liberty is in fact restricted."²⁷

Even though it has been argued that there seemed to be some freedom to criticize the monarchy before the new revised criminal code went into effect in 1957, this right was already being trumped by a different understanding of the monarchy, one in which no criticism, comment, or insult could be laid.

In 1956, the year that the Thai government banned the movie, "The King and I" as it was "insulting" to the institution, the top legal official of the country was nearly charged with lese majesty. Yut Saeng-uthai, secretary-general of the Juridical Council and assistant chairperson for the committee responsible for issuing the country's official news through the Department of Publicity, was accused of insulting the king for remarks Yut had made on radio concerning a speech the king had given a few weeks prior. As both the country's leading legal authority and responsible for providing information to the public, Yut had apparently said the following in trying to clarify the political role of the king to the public:

The king ought not comment on anything that is a problem or matter concerning the country's economy, politics, or society without going through a cabinet minister in the government.

Yut was accused for intending to "cause the people who respect and love the king to increasingly come to criticize [the institution]." One newspaper interpreted Yut's words to mean that "the king in a democracy is only a puppet which the government can manipulate as it wishes."²⁸ Another newspaper even went so far as to suggest that lese majesty was necessary in Thailand for the purposes

of democracy as it could restrain the government's power. Somehow speaking about a limited role for the king was becoming to be understood as undemocratic.²⁹ Although a short investigation stopped the matter, it is nonetheless almost unbelievable that this leading legal expert, in trying to explain the legal status of the king politically, himself was nearly charged with lese majesty.³⁰

The Lese Majesty Law and Official Re-Sacralization

We might view the period after 1959, and especially after 1976, as one of an increasing intensification and sacralization of the monarchy. Authoritarian laws protect authoritarian structures. The more sacralized the regime, the more untouchable those laws become, always at the cost of popular sovereignty. And what makes the power structure "sacral" is the lese majesty law itself.

This law has come to consume the core of Thai political debate. A single interpretation of "constitutional monarchy" remains: the institution is sacred and cannot be criticized or referred to. Nothing connected to the monarchy can be criticized or held up to public scrutiny. The dark realm of the unspeakable has infused Thai political society. In this darkness, development of democratic structures, attitudes, and alternatives have attenuated and shriveled.

How has the interpretation and prosecution of this law become so insensible, as it appeared to the great legal scholar Jitti Tingsapat in the 1980s? Why did a personal secretary of the King himself predict about the same time that use of the lese majesty law would decrease until it was finally abolished? But rather than receding in the face of greater freedom and notions of equality, the lese majesty law has become more prominent, as shown in Table 3 of the appendix.

Unlike other such laws, this remnant of dictatorship and absolute monarchy has become untouchable. Who dares even suggest that it be revised or abolished without fear of being charged with lese majesty? What politician dare enter the legal morass of voting for such a measure? Rather than protecting the prestige of the monarchy, the invoking of the lese majesty law has become a tawdry and naked attempt to use the institution to suppress views that one side or another does not like. Various parties can accuse others of lese majesty with impunity. There seem to be no real guidelines in place to help guide the police, prosecutors, or courts in determining a possible violation or how to adjudicate a case. Meanwhile, everyone seems to understand that the law tends to be used as a political tool in silencing various groups or individuals in society.

The accusation of the lese majesty laws sets in motion an inexorable mechanism that compels the police to make charges, prosecutors to prosecute, and courts to hand down decisions. These parties failing to act can lead to the lese majesty charge being leveled at them. Because of the complex role the monarchy plays in society, and because many Thais have become trigger-happy in making the charge, what constitutes normal debate in other constitutional monarchies has become virtually impossible in Thai society.

Somehow Thai society has dead-ended itself, unable to go forward or back, unable to even address the extremely problematic nature of this law. Even the King has weighed in on the matter. Most observers interpreted the King's December 2005 speech to mean that the use of the lese majesty law was troubling to him. The King said that people saying that "the King can do no wrong is very much an insult to the King, because why can the King do no wrong, why can not the King do wrong, because this shows that they regard that the King is not human." The King further reasoned: "Suppose if I speak wrongly, because I am not aware, that is another case, but do wrong without realizing, and realizing that it is wrong. It is not good to do wrong with full awareness but sometimes you do not realize, you must apologize. If you speak without awareness, lack of awareness is not careful, afterwards you will regret."

The King pointed out that the accusation of lese majesty impacts the monarchy directly. Talking to Thai society as a whole, the King says, "If you rule out all criticism as a violation, the damage is done to the King." The King goes on to indicate that when people are jailed for lese majesty, he is "in trouble" and has to pardon them. The King's position seems clear. Use of the lese majesty law hurts the person of the King and the monarchy as an institution. Reasonable discussion and normal criticism should be allowed. Lese majesty, as it manifests itself in Thai political society, represents a serious threat to the freedom of expression as guaranteed in Section 45 of the constitution. It inevitably becomes a political tool aimed at suppression of criticism. As the King suggests, it also tarnishes the reputation of the monarchy when unscrupulous parties—or maybe even anyone—decide to level the charge.

It is difficult to fathom, then, exactly how anyone could make the charge of lese majesty after the King made his position this clear. And yet the accusations flew throughout 2006, and partly justified, at least in the minds of the military, the coup on 19 September. Even more worrisome, throughout 2007 the military-installed National Legislative Assembly introduced a series of legislative measures that as a whole must be held as one of the most impressive attempts at official re-sacralization in the modern world. One bill would have sacralized the Privy Council and the children of the king, taking us at least back to 1900, if not earlier. A group of those frustrated that the new constitution did not make Buddhism the official religion instead gave heresy as a crime a surprising comeback from medieval times with the possible imprisonment of up to 25 years. Aspects of the lese majesty law have crept into the Cinema Act, the Computer Act, and the Internal Security Act.

Is there any way out?

One point to make is that the Thai constitution(s) are not very different from those in other constitutional monarchies. The Norwegian constitution, promulgated in the early nineteenth century, holds that the "King's person is sacred; he cannot be censured or accused." The 2007 Thai Constitution says that the "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." Defaming the King of Norway is a criminal offense, like in Thailand, with a maximum of five year's imprisonment. Norway also has a "lese majesty" provision. Sections 101 and 102 of the Norwegian law code stipulate the standard lese majesty formula (minus the Thai inclusion of "insult"): "Any person who defames the King or the Regent shall be liable to detention or imprisonment for a term not exceeding five years." But Section 103 adds the intriguing clause: "Prosecution of any defamation pursuant to sections 101 and 102 shall be initiated only by order of the King or with his consent."

If abolition of the lese majesty law in Thailand seems unimaginable; if the police and prosecutors feel compelled to pursue charges; if Thai society itself cannot show restraint in making the charge despite the apparent displeasure of the King, then maybe the addition of this single clause may set things right.

As a concluding remark, this paper suggests three solutions to the problematic features of the present Thai lese majesty law:

- 1) To bring the law more in line with the Thai constitutional monarchy system as established in 1932, Section 112 of the 1956 criminal law code should be revised by removing the word "insult," and/or,
- 2) Add an exemption to the law which allows "the expression of an opinion made in good faith or for the public interest," or,
- 3) To bring the law more in line with other constitutional monarchies of the modern world, the condition, "Prosecution of any defamation pursuant to Section 112 shall be initiated only by order of the King or with his consent" should be added.

The point is that Thai society, at all levels, should have the freedom to discuss and debate of these options, or other options, without fear of the lese majesty law. With none of these options pursued, the lese majesty law in Thailand will ever be ready at hand to serve as a weapon in the political arena, and always to a detriment to the institution the law intends to protect.

Table 1. Four Versions of the Thai lese majesty law

[A] (1900) "Defaming the King, the Major Concubine, Royal Progeny, ... Section 4.--Whosoever defames the reigning king of Siam or the major concubine, or the princes or princesses...with intemperate words which may clearly be seen as truly defamatory, this person has acted illegally." [Imprisonment up to three years / Fine of up to 1,500 baht.]

[B 1] (1908) "Section 98.--Whosoever displays malice toward or defames the King, the Queen Consort, the Heir-apparent, or Regent when he is carrying out his duties to the King, shall be liable to imprisonment not exceeding seven years or a fine of not more than five thousand baht, or both."

[B 2] (1908) "Section 100.--Whosoever displays malice toward or defames the princes or princesses from whichever reign, the punishment shall not exceed three years or a fine of not more than two thousand baht, or both."

[C] (1956) "Section 112.--Whosoever defames, **insults** or threatens the King, the Queen, the Heir-apparent, or the Regent shall be punished with imprisonment not exceeding seven years."

(1976) "Order of the National Administrative Reform Council No. 41 Whereas the National Administration Reform Council considers that the penalties for **insult** or libel upon the King, the queen, the Crown Prince, the Regent,...are not proper for the present situation. These penalties should be aggravated. Therefore, the chief of the National Administration Reform Council has given the following orders: The provisions of Section 112 of the Penal Code [the Criminal Law Code] shall be repealed and replaced by the following: "Section 112. Whoever defames, **insults** or threatens the King, the Queen, the Heir apparent or the Regent shall be punished with imprisonment of three years to fifteen years."¹

[D] (2007) (Proposed)

"Section 112/1.--Whosoever defames, **insults** or threatens any Royal Prince or Princess shall be punished with imprisonment of one to seven years, or fined from 20,000 to 140,000 baht, or both."

"Section 112/2.--Whosoever defames, **insults** or threatens the President of the Privy Council, members of the Privy Council, or any Royal Representative appointed by the King shall be punished with imprisonment of six months to five years, or fined from 10,000 to 100,000 baht, or both."

[Those who defy court orders and report on current lese majesty cases shall be punished with imprisonment not exceeding three years, or fined up to 60,000 baht, or both.]

Table 2. Five Versions of the Thai Law on Sedition

[A] (1899) *Inciting the Subjects to be Rebellious and Oppose the Power of the Land Section 5.*—"Whosoever speaks [publicly]...: 1) in order to incite or encourage the people to forsake their loyalty to the present King, the King's ministers, or the government, or the royal customs of governance which have been established by law, or Ministers of the Royal Council, or the considerations and legal judgments of the courts and laws of Siam overall to be defamed and looked down upon by the people in general..."

[B] (1908) *Section 104.*—"Whoever publicly commits any act expressly intended:(1) to bring into hatred or contempt the Sovereign, the Government or the administration of the State;...shall be punished with imprisonment not exceeding three years and fine not exceeding one thousand baht."

[C] (1927) *Section 104.*—" (1) Whoever commits any act, or whoever by words or writings or printed documents or by any means whatever, advocates or teaches any political or economic doctrine or system, intended or calculated: (a) to bring into hatred or contempt the Sovereign, the Government or the administration of the State;...shall be punished with imprisonment not exceeding ten years and fine not exceeding five thousand baht."

[D] (1935) *Section 104.*—" (1) Whoever commits any act, or whoever by words or writings or printed documents or by any means whatever, advocates or teaches any political or economic doctrine or system, intended or calculated: (a) to bring into hatred or contempt the Sovereign, the Government or the administration of the State, **by the people**;...shall be punished with imprisonment not exceeding seven years and fine not exceeding two thousand baht."

""
"Provided that there shall be no offence under this section when the said words or writing or printed documents or means whatsoever will merely be an expression of good faith or amount to a critical and unbiased comment on governmental or administrative acts within the spirit of the Constitution or for the public interest."

[E] (1956) *Section 116.*—"Whoever makes an appearance to the public by word, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order: (1) to bring about a change in the Laws of the Country or the Government by the use of force or violence;...shall be punished with imprisonment not exceeding seven years."

Table 3. Offenses against the King in Thailand, 1947–2005

Statistics from the Attorney General's Office, 1984–2005

Statistics from the Police Department Annual Reports, 1947–1989

Year	Total New Cases	Total Cases Prosecuted	Convictions	Acquitted	Conviction Rate
2005	17	8	7	1	88
2004	5	3	3	0	100
2003	5	2	2	0	100
2002	0	0	0	0	--
2001	1	1	1	0	100
2000	1	2	2	0	100
1999	3	3	3	0	100
1998	11	8	7	1	88
1997	7	4	4	0	100
1995	11	8	7	1	88
1994	9	6	6	0	100
1993	0	2	2	0	100
1992	4	3	3	0	100
1991	6	4	4	0	100
1990	7	4	3	1	75
1989	5	3	3	0	100
1988	6	4	2	2	50
1987	3	1	0	1	0
1986	5	2	2	0	100
1985	1	2	1	1	50
1984	10	7	7	0	100

Year	# of incidents	# of arrests	# of cases sent to court	# of cases prosecuted
1989	6	5	-	-
1988	3	3	-	-
1987	0	0	-	-
1986	6	5	-	-
1985	0	0	-	-
1984	2	2	-	-
1983	8	4	-	-
1982	3	3	-	-
1981	3	3	-	-
1980	5	5	-	-
1979	12	11	-	-
1978	9	7	-	-
1977	42	36		7
1976	21	19	3	3
1975	10	10	10/7	4
1974	4	3	2	2
1973	2	2	1	1
1972	6	5	2	1
1971	3	3	2	2
1970	2	2	1	1
1969	10	9	5	4
1968	1	1	0	0

Year	# of incidents	# of arrests	# of cases sent to court	# of cases prosecuted
1967	2	2	1	1
1966	2	2	-	1
1965	6	6	-	4
1964	6	6	5	4
1963	4	3	3	3
1962	4	4	3	3
1961	7	7	-	4
1960	10	8	5	5
1959	0	0	0	0
1958	0	0	0	0
1957	0	-	1	-
1956	1	1	1	1
1955	2	-	-	-
1954	1	1	1	1
1953	1	-	-	-
1952	3	3	3	2
1951	-	-	2	-
1950	1	1	1	1
1949	0	0	0	0
1948	4	4	4	4
1947	-	-	2	-

¹ *The Nation*, 8 October 2007.

² Explaining his reasons for the edict, King Chulalongkorn pointed out that "progress" had brought the subjects of the kingdom more "freedom" to "express their own ideas through the compiling and composition of critical commentary" about how civil servants are running the country. Such commentary, then published in leaflets or in the newspapers, "become known far and wide without any fear of making errors [on the part of the composer]." Positive in this new situation, the king continued, was that those with "good and sincere intentions" could "express their own views," but it also allowed people to "express themselves insincerely, steeped in love and anger," without "any benefit to the country or the people in general." Therefore, the king issued this edict to serve as a "measure" to determine to what degree those who say untrue things were wrong, and how severely they should be punished. Such a proto-saving clause was not included in the 1908 criminal code, except for in the case of the personal defamation law, Section 282. *Prachum kotmai prajam sok (PKPS)*, vol. 17, r.s. 117-118, pp. 20-21.

³ Ammattho Phra-inthaprichaa (Yian Lekhawanit), *Kham athibai kotmai laksana aayaa phaak 2 taun 1* [Explanation of the Criminal Law, Part Two, Section 1] (Krungthep: Rongphim sokkanaphattanaakorn, 2469 [1926]), pp. 510-40.

⁴ Ammattho, *Kham athibai kotmai laksana aayaa*, pp. 510-40.

⁵ Ammattho, *Kham athibai kotmai laksana aayaa*, pp. 552.

⁶ Ammattho, *Kham athibai kotmai laksana aayaa*, pp. 1397, 1409

⁷ "Penal Code Amendment Act B.E. 2470," in, Thailand, Juridical Council, *Ru'ang set* [Finished Matters], Vol. 19.

⁸ Thailand, Government, "Phraraatchabanyat kaekhai phoemtoem kotmai laksana aayaa ph.s. 2478 (chabap thii 3)" [Amendment to the Criminal Law Code of 1935], in, *PKPS*, Vol. 49, 2479 [1936] (20 August 2478 [1935]), pp. 46-76. For some reason it does not seem to appear in the Royal Gazette until later. See, *Raatchakitjaanubeksaa* [Royal Gazette], Vol. 61, Part 6 (19 April 2479 [1936]).

⁹ Kham Phiphaksa San Dika [High Court Decision] 612/2475[1932].

¹⁰ Kham Phiphaksa San Dika [High Court Decision] 631/2491[1948].

¹¹ According to the *Criminal Code Revision Act of 1956*, the new code was to come into effect on 1 January 1957.

¹² *Pramuan kotmai aya ph.s. 2499*, matra 116.

¹³ *Pramuan kotmai aya ph.s. 2499*, matra 112.

¹⁴ Jitti Tingsaphat, *Kham athibai pramuan kotmai aya phak 2 taun 1, phim khrang thi 6* (Krungthep: Samnak Obrom Suksa kotmai haeng netibandittayasapha, 2536 [1993], p. 1115.

¹⁵ See, for instance, Section 326 of the 1956 criminal code which does not include a reference to "insult": "Whoever imputes anything to another person in a manner which might cause such person to lose his reputation, or cause people to look down upon or hate such person...is said to commit defamation of others and is liable to...imprisonment not exceeding six months; or...a fine not exceeding one thousand baht,

or...both imprisonment and a fine as stipulated above." *Pramuan kotmai aya ph.s.* 2499, matra 326.

¹⁶ Yut Saeng-uthai, *Kham athibai kotmai laksana aya r.s.* 127, phim khrang thi 6 (Krungthep: Samnakphim Winyachon, 2548 [2005], p. 402.

¹⁷ Kham Phipaksa San Dika [High Court Decision] 1081/2482 [1939].

¹⁸ Kham Phipaksa San Dika [High Court Decision] 2354/2531 [1988].

¹⁹ *Khamsang khana patirup pokkhrong phaendin chabap thi 41 long want thi 21 tulakhom ph.s.* 2519 [1976] kho 1.

²⁰ JCC, "Report of Meeting No. 22," 29 July 1939, Vol. 2, p. ?? (pp. 23-25 of my text).

²¹ *Bangkok Post*, 10 May 1997.

²² *Nation*, 5 September 1997.

²³ Juridical Council, "Report of Meeting No. 151," 10 January 1941, Vol. 11, p. 4. Even the queen expressed this curious thought. During a tour of the United States in 1982, the queen reported "publicly criticized" the crown prince, saying he did not spend enough time with the people, but was, nonetheless, "very popular." She added that "the royal family belongs to the people of Thailand" and that "if the people did not approve of her son's behavior, he would either have to change or resign his title." The queen can say such because she herself is covered under the lese majesty law. But it is interesting to note that when the queen's quoted words appeared in the *Bangkok Post*, the newspaper was warned that if it published another such article then it would be charged with lese majesty. "Thais Ban Asian Wall Street Journal for Story Critical of Monarch," *Washington Post*, 23 January 1982.

²⁴ Pichan Bulayong [Rene Guyon], "5th Meeting of the Assembly for drafting the Constitution," 21 July 2491 [1948]," in, Juridical Council Library, Volume 218, "Constitutions," "Part IV Rapports (personnels) of the Legislative Adviser as Observer on Behalf of the Government," pp. 1-2.

²⁵ "Loyalty to the Throne," in, Juridical Council Library, Volume 218, "Constitutions," n.d.

²⁶ Letter No. 684 Received on the 16th. September 2493 [1950], No. 19933/2493, from the Dept. of Secretary-General of the Council of Ministers, Re: Request for a consideration on Communism, To: The Secretary-General of the Juridical Council, and Confidential--Very Urgent Letter No. 160, Received on the 9th. March 2494 [1951], No. 2361/2494, in, Thailand, Juridical Council, "Kotmai paungkan khaummiewnit (raang phau.rau.bau. paungkan kaankratham an pen phai tau chaat)" [Communist Prevention Law (draft of act preventing acts which are a danger to the nation)], in, *Ru'ang set* [Finished Matters], Vol. 452.

²⁷ It should be added that the committee found it difficult to find no particular reference in the 1928 "Programme of the Communist Party" to kings or religion. It found that the Programme seemed "indifferent" and was "silent" on the question of "form of Government." It only claimed that "the highest form of democracy is the Soviet form of democracy." But the committee pointed out, a "democratic State may have a King as the Head of State." It concluded that it was "the wrong

position of the question" to ask if "Communism is against the King" or not. The final draft of the anti-communist law in 1952 outlaws attempts to overthrow the democratic form of government with the king as head of state. See Thailand, Government, "Phraraatchabanyat paungkan kaankratham an pen khaummiewnit ph.s. 2495" [Act on Prevention of Communist Activities of 1952], 13 November 2495 [1952], which appeared in *Ratchakitjanubeksa* [Royal Gazette] on 11 November 2495 [1952], in, *PKPS*, Vol. 65, pp. 365-67.

²⁸ *Chao*, 11 February 2499 [1956]; *Sayaam Nikorn*, 11 February 2499 [1956]; *Sayaam Rat*, 12 February 2499 [1956].

²⁹ *Prachaathipatai*, 12 February 2499 [1956].

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