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Thailand's Constitution Development

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Abstract

Since 1932 Thailand has issued 20 charters and constitutions, many adopted following military coups; which reflects a high degree of political instability. After each successful coup the newly emergent military leaders abrogated existing constitutions and promulgated new ones. All of Thailand's charters and constitutions have recognized a unified kingdom with a constitutional monarchy, but with different balances of power between the various branches of government. Most Thai governments have stipulated parliamentary systems. Both unicameral and bicameral parliaments have been used, and members of parliament have in the past been both elected as well as appointed. The King of Thailand has little direct power under the constitution but he is nevertheless a strong symbol of national identity and unity.

Keywords: Constitution of the Kingdom of Thailand, Thailand's Constitution, Constitutional History of Thailand

Introduction

This article seeks to examine constitution development in Thailand. Prior to the 1932 Revolution the kingdom did not have a written constitution. The monarch was the originator of all laws and the head of the government. The transition from an absolute monarchy to a constitutional democracy was brought about by the bloodless coup of 1932; a potentially tense situation that was resolved when King Prajadhipok (Rama VII) agreed to a codified temporary charter. In 1932 when the first written temporary charter was promulgated, this document was expected to be the most important guideline for the kingdom. However, after political disputes arose, among the various elites, the first official charter was removed and replaced by a new constitution (Janreung, 2009) Under the constitution the king was designated as the head of state but he exercised his sovereign power through the National Assembly, the Council of Ministers, and the Courts. The structure of the Thai government, under the



constitution, consisted of 1) a Legislative Branch 2) an Executive Branch 3) a Judiciary and 4) Constitutional Organs (Preechasinlapakun, 2013)

Objectives

1 .To comprehensively illustrate each constitution’s characteristic, how they were promulgated and at times subsequently abrogated, how they were and are continuing to be used.

2.To analyze how the political situation in Thailand is often unstable which leads to frequent regime changes and constitutional amendments.

3.To provide guidelines for enhancing policies in order to improve national stability.

Methodology

This is a qualitative study which is mainly based on secondary data review. An important source of information was documents, especially relevant literature. It is necessary to review and examine previous studies carried out by scholars, experts, and academics. Other sources of information were government documents as well as documents from other non-governmental organizations with their own websites.

Establishment the Constitution of Thailand

In 1885 groups of noblemen and government official respectfully recommended that King Rama V of Thailand change the political regime from that of an absolute monarchy to a constitutional monarchy, but this suggestion to shift the Thai body politic was not successful. Nonetheless after World War I when the monarchies in both Russia and China were terminated, the changing times led to a stronger political movement from powerful Thai military leaders to reconsider this earlier recommendation to change the type of political regime in the Kingdom of Thailand. The concept of a constitution became much more popular throughout Southeast Asia following World War II as newly formed nations established their respective constitutions in order to protect themselves from their former colonial overlords. Thailand, by this time, had a great deal of valuable experience to share, having established its own constitution for more than 10 years (Chanrochanakit, 2015).



Regarding the first constitution of Thailand, which was promulgated in 1932, there was a dispute as to whether its creation was a bit too premature. In fact, it was King Rama VII who wished to launch the first Thai constitution in 1925 by writing the royal rescript entitled “Problems of Siam” (Siam was, at that time, the formal name of Thailand) to Dr. Francis B. Sayre (the American Ambassador to Thailand). The royal rescripts clearly stated that it was King Rama VII's intention to formally change the Thai political regime from an absolute monarchy to a constitutional monarchy. However, King Rama VII's novel idea was not accepted by members of the Supreme Council of State of Siam. As such the King proposed that Mr. Raymond Bartlett Stevens (the Counselor of the Ministry of Foreign Affairs, Thailand) and Colonel Praya Srivisarvaja (the Minister of the Ministry of Foreign Affairs, Thailand) draft the first Thai constitution which was to shape the development of a new pattern of government for Thailand. This constitution set out to establish a political body with four components that included, (1) a royal institution (2) a Supreme Council of State of Siam (3) a legislature, and (4) a prime minister and cabinet. This draft constitution also stated that the King would take the position as the head of executive branch of government (Khamphothong, 2021).

After the transition of the regime in Thailand, the first constitution of Thailand, enacted in 1932, included some of the following major points:

(1) sovereign power belonged to the Thai people and the monarch was declared the head of state. A People's Assembly was empowered to exercise power on behalf of the legislature, executive, and judiciary branches of government,

(2) the monarchy was designated as the direct power exerciser and the monarch was held to be inviolable and sacred. The monarch was also designated as the individual that had direct power to declare war, sign peace treaties, and other international treaties and agreements. The monarch had the prerogative to grant mercy and he could dissolve parliament, and

(3) the monarch appointed the Prime Minister with the advice of members of the House of Representatives (Merieau, 2019).

However, a conflict arose in the implementation of this constitution. In October 1933 the royalist faction, under the leadership of Prince Boworadej and Praya Sri Sitthi Songkhram, led a



rebellion against the government and proposed that the government consider the following points:

- (1) the government had to always remain as a constitutional monarchy,
- (2) the forming and dissolution of the government was to be exercised by the majority rather than through future military coups, and
- (3) government officials and high-ranking soldiers had to be isolated directly from becoming involved in politics unless those individuals directly assumed political positions. The "rebels", however, were defeated by the People's Party (i.e., those that comprised the Thai government at that time) and King Rama VII accordingly decided to abdicate (Khonsurin, 2010).

The 1932 Constitution was amended, for the first time, on 6 October 1939 by formally changing the name of the country from Siam to Thailand. This change came about under the leadership of the then Prime Minister Field Marshal Plaek Phibunsongkhram. The second modification to the original constitution concerned the expansion of using transitory provisions from a ten year to a twenty-year period. The second constitutional amendment concerned national security, due to the state of war that had reach Thailand [during the Second World War]. The third amendment, implemented in 1942, focused on term extensions for members of the House of Representatives. It should be noted that the 1932 Constitution was the first formal time that women were allowed to vote as well as stand for election (Merieau, 2019).

Development of Thai Constitutions Prior to the 1950s

During the period 1940-1950 Thailand promulgated two constitutions and one interim charter. The 1946 Constitution was initiated by Pridi Phanomyong who was an elder statesman. He consulted Khuang Aphaiwong, the Prime Minister of Thailand, but Pridi's main issue of contention was that the old constitution had been in effect for 14 years, but the situation within Thailand had greatly changed during that time period. The 1946 draft Constitution included new provisions, such as that the appointment of members of the House of Representatives previously undertaken by the monarch would no longer be valid, and the Elder Council who consisted of representatives of the Thai people should henceforth be elected from a general election. Eligible candidates, for office, had to be at least 40 years of age and also had to have bureaucratic experience (Kasetsiri, 2020)



However, during the following year another coup d'etat took place. The 1947 interim charter was drafted by the military junta and it was very similar to the previous constitution. It included certain additional principles aimed at promoting democracy, for example, the first Privy Council was established to assist with the implementation of royal duties as well as to provide advice to the King. Two years after the latest regime change had taken place the 1949 constitution was ratified by a constitutional convention which had been established under the previous interim charter. The 1949 Thai Constitution, drafted by the constitutional convention, was officially promulgated on 23 March 1949. This document is considered to be one of the most democratic constitutions ever drafted in Thailand. The drafting committee was led by Seni Pramoj and the committee was influenced by Prince Rangsit and Prince Dhani. Some of the constitution's main provisions were as follows:

(1) the monarch was to be the supreme commander and the Privy Council was designated as the king's counselors and

(2) members from the Upper House and Lower House were not allowed to become involved in any business or trade. Regardless of its more democratic provisions this constitution was abrogated around two and half years after it was enacted by the military junta led by Field Marshal Plaek Phibunsongkhram (Kasetsiri, 2020).

Thailand's Constitution Development between 1950 and 1970

During this period two additional constitutions and one charter were enacted in Thailand. The 1952 Constitution was brought into effect due to a change in the ruling regime (they called themselves the interim state executive); and the junta respectfully informed the king that he should resume using the 1932 Constitution (Achirasena, 2022). The military also explained its reasons for overthrowing the elected government. The first reason was that communist ideology had begun to infiltrate into the Thai cabinet and parliament. This development threatened national stability and the former government was unable to solve this problem. The second reason why the coup makers decided to act was the expansion of corruption which the former government could not successfully eliminate which had led to a deteriorating situation within the country. The military junta furthermore indicated that it wished to resort to the 1932 Constitution of Thailand as the more recent 1949 Constitution was too democratic and the legislature had gained too much power and was now in a position to



control the executive branch of government. In summary the elected government attempted to gain support from the House of Representatives by bribing its members. Since government support came from several different groups, this situation increased government instability.

After various disputes arose concerning abrogating the 1949 Constitution and reusing the 1932 Constitution the latter was eventually put back in place to serve as the nation's constitution in 1952 (Iampriwan, 2004).

However, in September 1957 General Sarit Dhanarajata seized power from the government of Marshal Plaek. Sarit not only abrogated the 1952 Constitution on 20 October 1958 but he also abolished the House of Representatives and the Council of Ministers. He instead ruled the country via a Revolutionary Council after declaring martial law. The legislative, executive, and judiciary branches of government were no longer divided among themselves. The Revolutionary Council enacted laws by declaration and used absolute dictatorial power to control the government and its people (Iampriwan, 2004). Thailand was ruled without any constitution for 101 days between 20 October 1958 and 28 January 1959, when the 1959 Charter was formally promulgated. It was to be the shortest constitution/charter, in Thailand's history, as it consisted of only 20 articles. This charter has been frequently referred to as "the charter of dictatorship" (Preechasinlapakun, 2013)

Nine years later a new constitution was promulgated on 20 June 1968. This document was drafted by a legislature consisting of 240 members who were appointed by the king with guidance from the Prime Minister. This constitution reconvened a bicameral parliamentary system with the reestablishment of the Upper House. Members of the House of Representatives were to be elected by the public for a 4 - year term, while senators were to be appointed by the king and served a 6 - year terms. The Prime Minister would now countersign the Royal Command. The power of senators was greatly enhanced as they could propose acts/legislation, start a no-confidence debate for any single minister or for the entire cabinet. This constitution illustrated that Thai politics and the bureaucracy did not need to be separated from each other (Freedom Thing, 2011).

The 1968 Constitution was, however, only used for 3 years and 4 months before another military coup occurred on 14 November 1971. This coup, led by a Revolutionary Council headed by General Thanom Kittikachorn and his deputy Praphas Charusathien, overthrew their



own government. With the approval of the new military junta the previous constitution was abrogated and martial law was declared. The entire cabinet and the parliament consisting of the Upper and Lower Houses were dissolved, while the Privy Council was still allowed to exist. General Thanom appointed himself as Supreme Commander as well as Minister of Defense and of Foreign Affairs. At the same time his deputy Praphas declared himself to be deputy Premier, Military Commander, Chief of Police, Minister of Interior, and the Head of the Communist Suppression Operations Command (Khongbenjapush, 2018).

Constitutional History of Thailand from 1970 to 1990

The 1974 constitution was drafted after a bloody incident that took place on 14 October 1973. Before the incident occurred, there were several groups (e.g. university students and their leaders as well as academics) who were dissatisfied that General Thanom had suspended the drafting of a new constitution for such a long time, and the latter began to request that the government issue a new constitution as soon as possible. As a result, 13 university students and academics were arrested with the government claiming that the protestors threatened national peace and security and furthermore that these protestors were communists. Then the government began to use Article 17 of the 1972 Interim Charter to interrogate and arrest protestors without providing any notice when they would be released. These actions galvanized a new political movement as many university students tried to pressure the government to unconditionally release the arrested students and academics (Law to know, 2009). This new political movements, led by university students, also demanded that the government issue a new constitution within 1 year. Not unexpectedly the government refused to consider these requests, and as a result more than 100,000 students, supported by people from all walks of life, marched to the Thammasat University for a rally until the break of dawn on 14 October 1973 (Kasetsiri, 2021). In the end General Thanom resigned and fled abroad with his other tyrannical cronies. King Bhumibol appointed Sanya Dhammasakdi, Dean of the Faculty of Law and Chancellor of Thammasat University, as Prime Minister via a Royal Command. Sanya appointed a constitutional drafting commission which consisted of 18 committees, and this commission decided to use the 1949 Constitution as a guide for drafting a new constitution. This constitution drafting process also included public participation. The new constitution was promulgated on 7 October 1974. Certain extremely important articles were included in this



constitution such a provision stating that the king's daughter could become his successor in case the reigning king did not have any sons. Thai people were given additional rights and freedoms, and regional politicians were promoted within the Thai government bureaucracy and government. In addition, all ministers and members of parliament had to disclose their financial assets to the president of parliament (Kasetsiri, 2021).

Nevertheless, as political instability in Thailand continued on a frequent basis another military coup, under the leadership of Admiral Sangad Chaloryu, abrogated the 1974 democratic constitution, while the new Revolutionary Council appointed 13 people, who worked in legal field, to draft the new constitution. The Chief Justice served as the president of this constitutional drafting council. The constitution was officially enacted on 22 October 1976. The Revolutionary Council appointed Tanin Kraivixien as Premier, while the Revolutionary Council served as the Premier's Advisory Council. This constitution was very similar to the 1959 Charter and the 1972 Temporary Charter, but contained several additional principles, such as that regular government officials did not have to resign in order to also assume political positions. The king was also allowed to directly introduce his own legislation into the assembly. However, the Tanin government lasted a relatively short period of time as it was overthrown by another military coup and thus the 1976 Constitution was abrogated with the promulgation of the 1977 Charter (Preechasinlapakun, 2013).

During the next year the 1978 Constitution was enacted which followed the principles laid out by the previous charter. This constitution consisted of 206 articles and it was very similar to the 1968 and 1974 Constitutions. It reemphasized that the Senators were empowered to enact laws and control the bureaucratic administration as the members of the House of Representatives could accomplish. The Premier was designated to countersign the Royal Command in order to appoint senators. However, this constitution allowed government officials to assume political positions. For this reason, this constitution was considered to be only a "half democratic" constitution. At the same time the 1978 Constitution became the law of the land for a considerably long period of time [i.e., almost 12 years]. It was eventually abrogated by a military coup that called itself the National Peace Keeping Council [NPKC] (Iampriwan, 2004).

Thai Constitution Development in the 1990s



Regarding this time period the different Thai governments issued one charter and two constitutions. The NPKC proclaimed the 1991 Charter whose characteristics were quite similar to the 1977 Charter, but which contained several additional points that specifically indicated that the National Peace Keeping Council had the right to designate national administration policies, as well as that the cabinet and the president of the National Peace Keeping Council, and/or a Prime Minister, were given the privilege of exercising their powers (Chanrochanakit, 2015). During the drafting process, however, a conflict arose between the constitutional drafting commission and the public, particularly in relation to Article 159 which allowed an outsider, who did not need to be a member of the House of Representatives, to become the Premier. The army wished to exercise power by allowing senior army leaders to become Prime Minister. As a result of this move the elected government invited Army Commander Suchinda Kraprayoon to become the Prime Minister. This action mobilized public anger and people protested the drafting of the new constitution in November 1991. This was the largest protest in Thailand since the massive demonstrations of 1976. The events that led up to the Bloody May Uprising, caused by the military's plans to draft of a new constitution, reached a climax in May 1992; and this led to the disgraceful resignation of the military government (Khongbenjapush, 2018). Thailand's 'Popular Constitution', frequently referred to as "the People's Constitution" was successfully promulgated in 1997 five years after the 1992 Bloody May incident. The 1997 Constitution involved public participation during the drafting process, and was noted for the democratic nature of its articles. The new constitution stipulated a bicameral legislature, in which members of both houses were to be elected. Many civil rights were explicitly included in this document, including rights of children, the elderly, and the handicapped. It also contained provisions dealing with the right to freedom of information, the right to public health, and the right to free education, consumer rights, etc. Certain measures were established to increase the stability of elected governments, while new organs supervising the administrative power were created for the first time. This included, for example, the Constitutional Court, the Administrative Court, and the Ombudsman. In addition to these measures members of parliament were required to have at least a Bachelor's degree to become eligible for office (McCargo, 2002).



(Aphornsuvan, 2001) stated that the 1997 constitution was praised for involving public participation during its drafting process, as well as for promoting human rights and political reform.

(Albritton & Bureekul, 2004) similarly claimed that the 1997 Constitution served as a hope for the future of democracy in Thailand. This constitution represented a movement toward full democratic governance, as it not only established new democratic authorities, but it also involved public participation at every level of government.

Notwithstanding its achievements there was some criticism that this constitution's reforms were perhaps too successful. (Jory, 2012), for example, indicated that this constitution was drafted to promote power and efficiency of the executive branch which in effect hindered government efficiency and it also led to a parliamentary dictatorship. The power of the Senators was dramatically enhanced which allowed them to examine all draft legislation as well as the right to accuse members of any independent agencies who intervened in the government's work (People's Daily, 2006).

Thailand's Constitution Development Process in the 2000s

After another military coup took place on 19 September 2006, the new government abrogated the 1997 Constitution. The military junta, or so-called Council for National Security (CNS), ruled the country by martial law and executive decree for weeks, until it promulgated an interim constitution on 1 October 2006. The Interim Constitution allowed the CNS to appoint a Prime Minister, legislature, and drafting committee for a permanent constitution. The junta appointed the Council Democratic Reform (CDR) to draft this interim constitution. The draft interim constitution contained 39 articles, and its structure was very similar to the 1959 Charter as well as to the 1976 and 1991 Constitutions. This interim constitution gave the executive branch the authority to appoint the entire legislature. In addition, the 2006 Interim Constitution emphasized promoting public participation. Thai people, for example, had the right to access government information but individuals were nevertheless restricted from disclosing information that could affect national stability and the people's security (Chanrochanakit, 2015).

During the following year the 2007 Constitution was prepared by members of the Constitution Drafting Assembly, who were members of the National Assembly selected by the



CNS. Nevertheless, the draft constitution was approved by a public referendum. Prior to the referendum the CNS asked the public to scrutinize and criticize the draft document. The draft referendum was passed by a majority of Thai citizens (Hays, 2014). Under the 2007 Constitution only half of the Senate was to be popularly elected while the other half would be appointed. The executive branch was weakened, and the judiciary was strengthened as high-ranking judges were members of the committees appointing those to serve in the Senate, the Election Commission, and other independent agencies. The 2007 constitution is, in many respects, similar to the 1997 Constitution, but contained several additional improvements. For example, important economic matters, such as Free Trade Agreements (FTAs), must be approved by parliament and there were also restrictions made with respect to privatization of state entities. This current constitution also attempts to promote ethical behavior on the part of politicians, as well as it contains specific measures to prevent conflict of interests. The 2007 Constitution similarly focused attention on community rights to assist local people to protect their natural resources and environment from government projects that could potentially create negative impacts on their communities. (International Labour Organization, 2007).

In 2014 another regime change came about via a military coup that removed Prime Minister Yingluck Shinawatra from power and replaced her with the coup leader General Prayuth Chan-Ocha. The military government proclaimed the 2014 interim constitution in order to deal with the political conflicts which had repeatedly occurred in the Bangkok Metropolitan Area and surrounding regions and eventually spread across much of the nation. One of the main principles, of this constitution, included a provision that allowed the military junta to use its authority to restrain violence emanating from public demonstrations. This action was geared to reduce the current political, economic, and social crises facing the nation. The 2014 interim constitution also included provisions for the eventual resumption of a national legislative assembly through general elections in order to solve the national crisis; as well as to enhance public participation (Prachathai, 2014) However, several critics pointed out that this interim constitution lacked public consultation as well as provided the military junta with absolute authority to govern the country according to its will (Human Rights Watch, 2014).

Although there have been several constitutions and charter amendments, aimed at solving national instability, Thailand has nevertheless encountered a series of on-going conflicts.



These struggles have occurred due to several factors, such as people in authority ignoring or disobeying governance rules, promoting corruption, abusing power, and being irresponsible towards the country; as well as weak enforcement of laws. In order to enhance democratic government as well as to solve the issues that have led to national crises, the 2017 Constitution proclaimed that its aim would be to establish matters of merits and ethics, and to reform educational and law enforcement systems (UNESCO, 2019). Nevertheless, critics contend that this constitution was not transparent since one of its goals was to increase the royal power with respect to influencing the appointment of a regent. This new constitution also clearly benefitted politicians and their parties rather than clearing up political conflicts and corruption (Head, 2017).

Conclusion and discussion

To analytically conclude this study there appears to be three major causes that have affected stability of Thailand's constitutions, this includes,

(1) The conflict between constitutional governance and authoritarianism. Looking back upon into Thailand's recent past there were several government leaders who arbitrarily ruled the country. If any constitution, for example, benefited the Thai people but was against the interests of certain authoritarian political leaders the latter would claim that the current constitution was not appropriate for Thailand and thus a legitimate reason to abrogate the existing constitution,

(2) A lack in appreciating the concept of constitutional governance, as certain political leaders tend to view their position as having the right to act in an arbitrary or authoritarian manner. They never consider the concept of decentralization or the delegation of authority to others or other institutions. In the event that people demand to express or use their constitutional rights, these actions are looked upon as causing chaos in the society. Therefore, certain political leaders accuse the constitution as the main culprit, rather than the situation or their actions which led to people to protest or demand certain actions.

(3) Some politicians do not fully understand (or even respect) the need for establishing a constitution. Certain members of the House of Representatives have taken advantage of loopholes in the constitution to obtain personal benefits for themselves, their family members,



and/or associates. At the same time people who are faithful to a constitutional government have begun to lose their trust or faith in this process with the frequent abrogation of constitutions. In summary a relatively large number of constitutions, in Thailand, have been abrogated due to the wishes of specific individuals and/or their political perspectives rather than because the actual constitution as a document was inappropriate or lacking in merit.

As previously mentioned, the Kingdom of Thailand has been a constitutional monarchy since 1932, but at the same time it has promulgated 20 charters and constitutions. This development demonstrates political and national instability. The King is the recognized as the head of state and exercises his power through the courts, national assembly, and the cabinet. With the abrogation and amendments of constitutions, occurring through both peaceful and violent means, could come to the conclusion that the principles or ideas put forth by each of these constitutions was not appropriate and did not lead to real democracy in Thailand. Furthermore many government leaders have had completely different notions as to how they should rule the country, and this results in the constitution documents being inconsistent with one other; leading to the promulgation and subsequent abrogation of Thailand's many constitutions. However if government leaders would perhaps have been more concerned with democratic development, national stability, and public participation, many of the above-mentioned problems could be eliminated or greatly reduced.

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