

## BOOK REVIEWS

# Thailand's Monarchy and Constitutional History

*Constitutional Bricolage: Thailand's Sacred Monarchy vs. the Rule of Law.* By Eugenie Mérieau. London: Hart Publishing, 2021, 328 pp. Hardcover \$90.00  
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Thailand's recent political history is unsettling to observers of a vibrant developing Asian state on a path to democracy. At the beginning of the twenty-first century, Thailand's democracy spiralled into political chaos. Political interventions by king and military leading to two twenty-first-century military coups, political street violence, and repression of pro-democracy movements seemed, to many Thai and Western scholars, evidence of another failure by a developing state to establish rule-of-law constitutionalism. Eugenie Mérieau's carefully researched and persuasively argued *Constitutional Bricolage: Thailand's Sacred Monarchy vs. The Rule of Law* shows that this conclusion requires careful reassessment. Mérieau rejects the view that prerogatives exercised by Thailand's politically active kings and state institutions acting in the king's name have undermined constitutionalism. On the contrary, she maintains that preservation of the monarchy's prerogative powers has been central to Thai constitutional jurisprudence and in play during drafting of every Constitution from the first in 1932 to the latest adopted in 2017.

*Constitutional Bricolage* develops the author's thesis through detailed accounts of debates over constitutional language, examination of the intentions of actors who influenced constitutional thought through reinterpretation of constitutionalism's most important norms. Mérieau constructs, era by era, a "constitutional ethnography," a "layered narrative" of the collective, dialectical, and often chaotic process of purposeful misreading, and "reassignment" of ideas to serve new functions by "active and often strategic participants" who legitimize power, not only the constitution-drafters, but also scholars, judges, and other political actors. Constitutional norms that emerge from this process comprise an eclectic mix of reinterpreted elements from Thailand's remembered past and European constitutional practice. The resulting *constitutional bricolage*, or patchwork of repurposed borrowings, arose from successive political compromises between monarchical traditions and foreign ideals, each with legitimating force. In the debates over these ideas, the monarchy's prerogative powers were never far from the centre of debates.

In an earlier article, Mérieau put forward her thesis that Thailand's constitutional destiny has been determined by the origins and content of its first Constitution, adopted in 1932. The small revolutionary party that overthrew the absolute monarchy was quickly outmanoeuvred by a king with his own vision of constitutionalism and parliamentary government. He drew on support among conservative bureaucratic and political elites to draft a text that guaranteed his essential prerogatives and control of Parliament. Even after the king was forced into exile in 1935, the Constitution he left behind was Thailand's longest-lasting and, according to Mérieau, became a baseline for political forces aligned with the power of the monarchy.

The king's Constitution had not only elite political support but roots in the Buddhism of ordinary Thai. As Mérieau explains, words for law have a cultural history. The Thai word *dhama*, referring to Buddhism's ordering of the universe, gave rise to a multiplicity of modern terms for law with different implications, some explicitly rejecting association

with sacred authority, but all inevitably evoking a long history of rule by the Buddhist monarchy. Further, in 1932, the king insisted that while sovereignty might “emanate” from the people, sovereignty must be exercised by the king, and he alone could grant a Constitution. Identifying constitutionalism with the authority of the king made sense even to leading members of the revolutionary party because ordinary Thai had little understanding of a Constitution as an independent foundation for governance.

The status of monarchical prerogatives became increasingly important during Thailand’s globalization and the rise of popular involvement in politics from the mid-twentieth century to the present. When the young king, Rama IX, was crowned in 1946 after a long period of regency, he was active in expanding the role of the monarchy as the symbolic centre of the nation. In 1973, with the king’s tacit support, a student-led uprising overthrew an unpopular military dictator and demanded a Constitution. Increasingly assertive from the late 1960s on, he influenced politics behind the scenes while engaging in popular public activities above politics. Influential jurists who supported the monarchy laid a foundation for expansion of the king’s prerogative authority by deploying the Buddhist king’s sacred virtues and status above politics to legitimate constitutionalism and to guide constitutional interpretation.

Since 1974, Constitutions describe Thailand as a “democracy with the King as head of state”—a unique “Thai-style” democracy that permits the king to exercise power according to the conventions of the traditional monarchy as well as expressly granted powers. The celebrated “Peoples’ Constitution” of 1997 contains numerous references to “democracy with the King as head of state,” and most importantly makes that the standard by which the text itself must be interpreted by the Constitutional Court. After Thailand’s experiment with popular democracy from 1997 to 2006, two military coups have removed governments deemed corrupt, but which were also inimical to the expansion of royalist power. Similarly, the Constitutional Court has repeatedly disabled opposition parties and their leaders.

Mérieau’s analysis of Thai constitutional history shows that far from gravitating toward a secular state, modern Thai constitutionalism does the opposite—sacralizing constitutionalism. “Democracy with the King as head of state” assigns a sacred figure, the Buddhist king, two important functions. As the figure at the centre of Thai national identity, the king symbolizes Thai constitutionalism, much like the British monarch. However, unlike the British constitutional monarch, Thai “democracy with the King as head of state” assigns the king real power through constitutional text and constitutional “conventions” based on practices of the traditional monarchy. Jurists advising the recent constitutional drafting committees also argue that the Buddhist monarch’s sacred virtues serve a constitutional function analogous to natural law in Europe. The implication is that under the king’s oversight, even an illiberal Constitution will be just.

*Constitutional Bricolage* concludes with an invitation to other scholars to take a fresh look at the history of Thai constitutionalism. And Mérieau leaves much for scholars to reconsider, including the value of her own arguments. As she observes, the field of “constitutional ethnography” is rapidly expanding. Her historiography is limited to groups influencing dominant constitutional norms, and her claim that this normative order “must be understood within the Thai constitutional order’s own dogmatic rationality as defined by the Thai legal profession” raises questions about others who played a role but held different views—those who did not prevail at each stage in constitutional evolution, including liberal constitution-drafters, opposing elites, dissenting judges or jurists, and opposition politicians.

Support for the monarchy depends on more than theories constructed by loyal jurists. The king’s authority depends not only on popular reverence for the institution but more concretely on a shifting network of powerful elites with different interests, leading to a widely accepted characterization, the “network monarchy.” Recent coups suggest that the

network monarchy has lost some of its control of the military, raising further questions about Thai constitutionalism. Dissenters and losing parties leave legacies of their own, some of which resonate with current constitutional critiques in Thailand—for example, a well-known group of younger scholars who call themselves *Nitirat*, a name evoking the 1932 revolutionary People’s Party. Many of that group’s members characterize Thailand’s mix of rule-ordered and prerogative government as a “failure” of constitutionalism. That characterization is not wrong viewed through the wider lens of Thailand’s growing political diversity and unsettled, sometimes violent street politics and repression of the public sector.

“Constitutional ethnography” by other contemporary scholars often examines the “living Constitution” in everyday interactions in courtrooms, bureaucratic encounters, policing, and other sites of encounters between officials and citizens. A system of administrative courts with significant power to review the actions of government officials was established in 1997 and retained under later Constitutions. These courts introduced ordinary Thai to the power of rule of law and procedural justice through successful litigations against numerous powerholders. As this relatively new system works a change both among bureaucrats and within popular culture and is reinforced by globalization of Thai society, the future of constitutionalism and rule of law seem particularly unpredictable.

It is hardly surprising that a constitutional history of this scope leaves much unsaid. Incompleteness does not detract from Mérieau’s clear and well-documented account of the origins of a constitutionalism and its “own dogmatic logic.” *Constitutional Bricolage* is timely because alternative conceptions of “rule of law” are not an anomaly. At the end of the Cold War, the remaining world powers declared the world on a path to liberal democracy, making liberal constitutional theory the *lingua franca* and benchmark for international discourse about rule of law. Constitutional ethnography is revealing (as constitutional historians have long known) that behind the modern constitutional ideal lie unique histories of political struggle and compromise. The ideal is seldom an accurate description of what works or what is to come. As democracy erodes in places where liberal institutions seemed most secure, Thailand’s and Asia’s greater comfort with authoritarian government no longer seems an echo of a pre-rule-of-law past but a source of relevant lessons and possible paths for constitutionalism in the future that must be taken seriously elsewhere.

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## History and Meaning of Establishing the Constitutions of North-East Asian States

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*Constitutional Foundings in Northeast Asia* is one of the “Constitutionalism in Asia” series published by Hart Publishing as well as the third volume edited by Kevin Y. L. Tan, along with Michael Ng. Tan is one of Singapore’s leading constitutional law scholars and has