

Constitutional Bricolage

Thailand's Sacred Monarchy vs. The Rule of Law

Eugénie Mérieau



Contents

Acı	know	ledgementsvii
1.	Intro I. II. III. IV. V.	The Purpose and General Argument of the Book: Why the Thai Constitution Matters
		PART I IMPORTING THE MODERN CONSTITUTION
2.		a's First Constitutions: The Rise and Fall of the ed Monarchy
3.		Al Positivism and Buddhist Kingship: Establishing the King the Source of the Constitution
4.	Fron I. II. III.	n the Sacred Monarchy to the Sacred Constitution

PART II IMPORTING THE STATE OF EMERGENCY

5.	Tha I.	iland's Cold War Constitutions: Constitutions for the Military 105 The 1947–1949 Constitutions: The Royalist Restoration and
	II.	the Rejection of the British Model
	11.	and the Gaullist Inspiration
	III.	The 1974–1991 Constitutions: The US Influence on Military
		Dictatorship under Royal Command?
6.	Rev	olutionary Legality and Buddhist Kingship: Theorising the King's
		ra-Constitutional Powers in Times of Crisis
	I.	From Kelsen's Revolutionary Legality to Thai-Style Democracy 130
	II.	From Bagehot's Three Conventional Powers of the Monarch
		to the Invention of Thai Constitutional Customs
	III.	Revolutionary Legality Revised: The Doctrine of Shared
		Sovereignty between the King, the Military and the People146
7.	Fron	n Military Dictatorship to Military Dictatorship
	und	er (Sacred) Royal Command152
	I.	The Monarchy against the Military: Practices of Royal
		Constitutional Veto
	II.	The Monarchy on Top of the Military: Royally Sanctioned
		Military Coups and Amnesty Laws for Coup-Makers161
	III.	The Monarchy above the Military: Direct Royal Interventions
		against Military Juntas
		PART III
		IMPORTING CONSTITUTIONAL JUSTICE
8.	Tha	iland's Post-Cold War Constitutions: Constitutions for
	the	Judiciary177
	I.	The 1997 Constitution: The Transformative
		'Global South' Constitution
	II.	The 2007 Constitution: Juristocracy under US Inspiration? 189
	III.	The 2017 Constitution: Juristocracy and Military Dictatorship
		under Royal Command

9.	The	Rule of Law and Buddhist Kingship: Turning the Constitutional		
	Cou	rt into a Substitute King201		
	I.	From the Rejection of the British Practice of the Royal		
		Prerogative to the Creation of a Constitutional Court Ruling		
		in the Name of the King201		
	II.	From US-Style Judicial Activism to 'Judicialisation':		
		Transferring the King's Extra-Constitutional		
		Powers to the Constitutional Court		
	III.	From Global Discourses on the Rule of Law and Good		
		Governance to the Doctrine of <i>Dharmaraja</i> Governance217		
10.	Fron	n Judicialisation at the King's Request to Juristocracy under		
	Roya	al Command224		
	I.	Judicialisation at the King's Request: Practices of		
		Direct and Indirect Royal Vetoes		
	II.	More Judicialisation at the King's Request: The Constitutional		
		Court Defines 'DKHS' and its Customs232		
	III.	Royal Constitutional Vetoes, Lèse-Majesté and 'DKHS':		
		The Affirmation of the Royal Prerogative240		
11.	Con	clusion: Democracy with the King as Head of State:		
	The	Bricolage of Thai Constitutional Identity247		
	I.	Summary of the Book's Contribution: Bricolage as a Process		
		and Method in Comparative Constitutional Law250		
	II.	Taking Textual Provisions Seriously: On the Royal Prerogative		
		and Constitutional Conventions		
	III.	Taking Local Doctrine Seriously: On the Power of Legal Ideas		
		and the Use of Religion to Localise Legal Transplants258		
	IV.	Taking Constitutional Practices Seriously: On Political		
		Precedents and the Performativity of Constitutional		
		Story-telling		
	V.	Epilogue: Thailand and the Possibility of Decentring		
		Comparative Constitutional Law		
Αp	pendi	x: Biographical Data of Major Thai and Foreign Jurists and their		
Contribution to Thai Constitutionalism				
		<i>uphy</i>		
	_	319		