Speaking the Unspeakable:
Lèse-Majesté and the Monarchy in Thailand
(11,808 words/text, 3,510 words/footnotes)

By David Streckfuss, University of Wisconsin-Madison and
Thanapol Eawsakul, Editor of Fah Diew Kan / SameSky

Two Thai legal provisions, inheritances from the age of absolute monarchy, represent a serious, perhaps irreconcilable, conflict with the aspirations of the democratic form of government established in Siam in 1932. Section 8 of the 2007 Thai Constitution reads: “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.” The law that ensures observance of such revered worship, Thailand’s “lèse-majesté” law, is Section 112 of the 1958 Thai criminal code, as amended in 1976, which reads “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.”

In direct conflict to these authoritarian provisions are a number of provisions from the Constitution of the Kingdom of Thailand of 2007, Sections 4, 5, and 30 uphold the principle of equality of “all persons” who shall not suffer “unjust discrimination” for “difference in…constitutionally political view.” Section 45 guarantees that “A person shall enjoy the liberty to express his opinion, make speech, write, print, publicise, and make expression by other means,” and Section 50 ensures academic freedom “provided that it is not contrary to his civic duties or good morals.” Sections 28 and 29 forbid to the State to “affect the essential substances” of the “rights and liberties” that every person may exercise as long as it is not “contrary to this Constitution or good morals.” Finally, Section 6 upholds the principle that “The Constitution is the supreme law of State” and that laws contrary to the Constitution “shall be unenforceable.”

Is Thailand primarily a democracy protected by a constitution that guarantees rights, or is it primarily a monarchy with authoritarian structures that prevent democratization? The discourse over the lèse-majesté law in Thai society is a microcosm of the serious conflict between the sacredness and privilege of absolute monarchy, on the one hand, and basic democratic rights and freedoms, on the other. This discourse has largely gone unexamined by Thai academicians and virtually never directly challenged in
court by human rights advocates. Foreign scholars of Thailand have also avoided addressing the subject too closely or critically. Beyond the palace and the Privy Council, the portrayal of the royal family’s image is overseen by santiban, the political police of Thailand. These meticulously produced appearances of the royal family are matched by the marvelously staged performances of loyalty to the institution, always portrayed as a natural outcome of the Thai love and respect for their king. At the same time, the lèse-majesté law ensures that such “love and respect” is strictly observed, appropriately a subject of outrage when questioned, and punished. It becomes literally “unspeakable” to publicly voice concern over something the king said, to question his near-enlightened state of his moral and intellectual being, or to express that the monarchy, like all institutions in a democracy, be open to scrutiny and criticism. And all of this is in stark contrast to Thai and foreign pretensions as to the degree of openness and freedom of modern Thailand.

When in public places, discussions of the monarchy are always accompanied with a looking over one’s shoulder, lowering the voice, and pulling in more closely to the other conversing. All academics know how to call a conference “academic” in order to lend greater legitimacy to what may be said in reference to the monarchy. All writers know publishing in English makes navigating around lèse-majesté charges less dangerous. All Thai social commentators know that they cannot actually speak publicly about the most obvious reality of Thai political discourse—the utter black hole that is the monarchy and the lèse-majesté that mans its gates. If the monarchy is referred to, even in confidential exchanges, it is often with a system of euphemisms such as “from above” to refer to the palace. Rather than shrinking from this embarrassingly archaic law, Thai officialdom is instead emboldened and proclaims the authenticity of the love Thais have for their monarch and monarchy, and to prove it, indicate the reasonableness of an active and armed lèse-majesté law.

In this article, we examine the history of the lèse-majesté law and its use, in the late nineteenth century to the present, with special reference to the extraordinary cluster of lèse-majesté cases in the last decades prior to the end of the German Empire, and the most recent and enduring cluster of lèse-majesté cases in Thailand a century later. The Thai law of lèse-majesté and its application many of the most conservative and suppressive tendencies of the law, as adopted by authoritarian constitutional monarchies in the past, marked by: 1) protections under lèse-majesté tend toward conflation and expansion, 2) lèse-majesté serves as self-protecting mechanism within a defamation regime, 3) cultural and political conditions of authoritarian
structures partially determined by the lèse-majesté law, and 4) legal permutations make the lèse-majesté both prone to abuse and seemingly impossible to change.

**A Short History of Lèse-majesté**

Lèse-majesté has had a relatively short lifespan. Although the term and its precedents emerged under Roman law, it did not really become a clearly defined discursive topic until the age of absolutism in Europe. The few scholars that have examined lèse-majesté have mostly focused on France, where a rather sophisticated philosophical and political justification for the importance and use of the law was developed by Archbishop Le Bret (?) in the seventeenth century, and the use (and abuse) of the law in the eighteenth century represented the first real lèse-majesté cluster. With the shift to constitutional monarchies in the aftermath of the French Revolution, the central tension between freedom and the inviolability of the person of the monarch became more focused and problematic. A typical rendering of this tension, between two conflicting and ultimately irreconcilable modes—the public, secular, and democratic sphere versus a sacred sphere protected by a type of anti-blasphemy law—is Horsley’s of 1793: “Our Constitution... unites the most perfect security of the Subject's Liberty, with the most absolute inviolability of the sacred person of the Sovereign.”

Lèse-majesté, as a vestige of the absolutist state within a growing number of constitutional monarchies, was increasingly separated from its automatic coupling with treason, and became a form of essentially petty treason that focused on actions or words that represented a personal affront to the monarch. In the mid- to late eighteenth century and through the entirety of the nineteenth century, the emerging bourgeoisie, depending primarily on the press, wrestled with monarchical states for power, forcing monarchs to establish representative legislative bodies and constitutions. As the public sphere widened (a la Habermas), or civil society strengthened (a la Gramsci), the repressive mechanism of lèse-majesté became a focal point of struggle between the sacred and privilege, on the one hand, and democracy and equality, on the other.

Lèse-majesté experienced an ignoble and rather messy demise, culminating prominently in a second key cluster under the German Empire in the late nineteenth and early twentieth centuries. It was on its way out of current history when suddenly in Thailand lèse-majesté flared into fluorescence quite unknown anywhere else. Never has such an archaic law
held such sway over a “modern” society. The question here is how such an anachronistic feat was accomplished.

Lèse-majesté under the German Empire

A cursory examination of lèse-majesté under the German Empire, where discourse about it would nowhere become as pointed (and absurd) will help in understanding the Thai case of a century later. The case of the German Empire is largely accentuated by broadly speaking two main poles: the utter persistence exercised by the German state in using the lèse-majesté law, and the remarkable tenacity of the German press in challenging it. It is truly history’s finest example of the increasingly desperate attempts by a “sacred” regime to preserve its prestige through the lèse-majesté law.

Between 1882 and 1888, an annual average of 439 persons were put in jail for lèse-majesté. During the first seven years of the reign of the last German Emperor, William II, the average annual number of persons sentenced for lèse-majesté increased to 551, reaching a total of 4,965 of sentences for lèse-majesté handed down by German courts by the mid-1890s.

Arithmetically, prosecution of lèse-majesté cases seemed to be overwhelming. One newspaper wrote, “The offense of lèse-majesté is of almost daily occurrence, and that if all were to be prosecuted who expressed discontent with the acts of the Emperor and the Government, it would be necessary to turn all the barracks into prisons in order to find room for them.”

Even after repeated calls for repeal of the law in the Reichstag, the number of lèse-majesté cases increased at a dizzying pace. It was reported that there were 48 lèse-majesté trials in January 1899 alone. One observer even estimated that the number up to 1898 may have even quadrupled since Emperor William II came to the throne. Astounded, the New York Times correspondent in Germany remarked: “Reading a single evening edition of a Berlin newspaper is enough to make one rub one’s eyes and ask whether the beginning of the twentieth century is only two years distant.”

The law allowed a maximum period of imprisonment of five years, but sentences typically ranged from a month or two to three years. The average sentence up to 1895 was almost six months. Although the sentences seem relatively modest, the sheer quantity of those sentenced equaled a lot of jail time for Germans. One newspaper calculated in the past decade, “as the price of the very limited amount of freedom of speech which exists in the German Empire,” German courts had, as a whole, condemned
those found guilty of lèse-majesté to 2,600 years of imprisonment. In a six year period, a total of 248 persons under 21 years of age had been incarcerated for lèse-majesté, seven of them under 15 years of age.

Lèse-majesté seemed to be everywhere: in Hamburg, “a man scoffed” at a song the Emperor composed; a 19-year-old girl was given two months “for merely criticising a picture of the Emperor” in a store window; a seventeen-year-old girl given six months “because, in the presence of another girl, she tore down a portrait of the Emperor from the wall of her own room”; a drunk German-American was accused of calling the Emperor a “sheep’s head” and deported; little 13-year-old John Brodowski was given a week in jail; a “popular music hall comedian” was ordered to stop making jokes about the Emperor while an actor’s bad Emperor jokes earned him nine months; in Dusseldorf, a deaf man was given four months; a street porter in Marburg was given six months for insulting the Empress; a worker of Beuthen was given one year; a farmer who questioned the piety of the Emperor and court landed him two months in jail; two newspaper editors were found guilty of lèse-majesté for publishing an article from an Austrian newspaper that reported a tramp who died in Austria was really a son of a past German Emperor.

Understanding the German Experience with Lèse-majesté

The incredible cluster of lèse-majesté charges in Germany between the 1894 and 1906—a 13-year stretch—reveals much about German politics and the lèse-majesté law. Analyzing the ways that contemporary commentators, both in the German Empire and outside it, understood and criticized the lèse-majesté law, provides insight into the power dynamics underlying German politics and culture of the time. Broadly speaking, the issues surrounding the law can be clustered into the law and its use, the problematic role of the emperor in politics, the debilitating effects the law had on the state of German democracy, and the role the law played in helping to form a certain political and cultural form of German-ness. Despite these conditions strengthening the lèse-majesté law, appearing on the German political scene was a new “band” of Germans “who are determined to speak what they think, no matter the consequences may be,” and who showed a remarkable boldness in demanding greater democracy vis-à-vis the imperial state.

The German Lèse-majesté Law and its Use
Given the wide variety of political forms existing under the fractured German Empire, it was unclear to contemporary observers exactly who was covered by the law.\textsuperscript{25} “Representatives of the Emperor” could include government ministers to petty officials carrying out the work of Empire.\textsuperscript{26} Outside of the realm, other monarchs were protected by the German lèse-majesté law, as in an 1897 case involving a German newspaper editor charged with insulting the King of Belgium.\textsuperscript{27} It appeared that Germans (and some foreigners in Germany) from all walks of life could be targets of lèse-majesté charges, and it was not uncommon for state officials to be charged and jailed for the crime.\textsuperscript{28} The interpretation of words spoken or written was “very elastic, and can be made to apply to almost any words spoken which may be offensive to the Emperor” and was prone to accusations of “more or less imaginary offences.”\textsuperscript{29}

The law’s loose variables—the uncertainty of who was covered, the indiscriminate targeting, the ambiguous interpretation—made abuse a common occurrence. Anyone could make the charge, with little review from prosecutors and no consent needed from the emperor to file charges. The result was that casual conversationalists had to be wary, and the empire became a literal state of informers.\textsuperscript{30}

Although it was recognized that the law was subject to massive abuse, the nature of the law’s position in relation to the emperor made even public discussion hazardous. An attempt by a few Reichstag members to reform the law by merely requiring state prosecutors or the emperor to review accusations before charges were made failed in 1897.\textsuperscript{31}

The Problematic Role of the Emperor and Effects

King William II played a quite active role in laying out state policy and commenting on various political matters in his speeches. When the Emperor showed favor to proposed laws or policies, it was difficult for ordinary citizens or politicians to make any critical comment for fear of the lèse-majesté law.\textsuperscript{32} As the Emperor, whose role as sovereign made him automatically a public figure, there was no clear separation between the Emperor’s “personal opinions” and his “official pronouncements.” To clear up the matter, a decision by the German Imperial Court confirmed that “a speech from the throne is a Government act, and not a personal expression of opinion on the part of the Emperor.”\textsuperscript{33} With reason, critics blamed the Emperor himself for allowing the matter of lèse-majesté to remain unclear.\textsuperscript{34} Others (outside Germany), argued that lacking any mechanism to hold the emperor accountable skewed political debate. When attack state policy,
critics had to direct their criticisms at others, rather than the Emperor himself.\textsuperscript{35}

The nature of the emperor’s role and the use of the lèse-majesté law made debate on basic political rights or on the position of the citizenry in relation to the state impossible. As such, without open and free debate, the law negated the usefulness of the main democratic body of the empire, the Reichstag. “The rule,” wrote one observer, was that “is absolutely necessary to the existence of a constitutional Government” is that “representatives of the people shall not be questioned elsewhere for words spoken in debate.” Instead, Reichstag members could not “express themselves freely about measures which personally affect their ‘dread sovereign,’” and were forced to use a “very gingerly manner” when “expressing themselves.” Limits on debate in greater society were deemed just as bad: “The debates upon the subject are deprived of the illuminating power which they would have if the discussions were free.”\textsuperscript{36}

### The Law’s Role in Creating “German-ness”

The law began to affect the way German history was to be understood. In the case of the probable suppression of a Berlin University historian, a commentator argued that academics should have “the right to speak critically of historical events,” further expressing a worry that:

…it would appear that any citizen, at the close of the nineteenth century, (excepting in Russia and in uncivilized countries,) should have the right to criticise the policy of the Government, and still more so a professor of history, unless he consents, against all the glorious traditions of the German universities, to teach with a gag in his mouth.\textsuperscript{37}

Moreover, the use of the lèse-majesté law invigorated the “enemy function” and became indispensable to the construction of “culture” of the German Empire. With the daily accusations of lèse-majesté, the state could define an enemy as those opposed to the monarchy—and emphasize the importance of defending the Emperor.\textsuperscript{38} Academics of the time well served the empire by providing a rationale for using the lèse-majesté law. Ernest Schuster, a law professor in Munich, for instance, defended two key aspects of the German law in 1901.

First, he affirmed the view that it was “not only the right, but also the duty, of the Sovereign to take an active part in the government of his
Accordingly, Schuster argued, the Emperor “becomes much more prominent in politics and more exposed to attack.” Second, Schuster stressed the need for a vigorous application of the law and heavy punishments for attacks on the Emperor “tend to degrade the position of the Sovereign in the public estimation” which in turn could “create a danger to the institutions of the country.” Third, Schuster contended that Germans were unique in that “personal insult” is a crime in Germany, and all Germans deserve protection from it. The German legal conception of insult was “unknown to English Criminal Law” for “German law protects, attempts to protect, every individual, whatever his station may be, against personal insult, and that the special provisions relating to insults, directed against German sovereigns [sic] are only of a supplemental nature and are based on the same principles as those relating to the punishment of ordinary insults.”

These three key principles—the Emperor should play an active political role, use of the lèse-majesté law created an enemy of the state, and “insult” as the basis not only of the German lèse-majesté law but as a unique German cultural conception—provide the legal justification for the prodigious use of the lèse-majesté law in the German Empire. If lèse-majesté was the suppressive side of a state ideology, then the other side was the state-sponsored representations of the monarchy, the person of the Emperor, and his actions as the national source of all that was good, all progress, all hope.

In 1902, Wolf von Schierbrand published his book on the “German character.” In what a reviewer claims to be “a very careful analysis of the character of Wilhelm II,” von Schierbrand depicts the emperor as

...a curious combination of the thoroughly modern man as far as ends are concerned, and a pronounced reactionist as regards the means by which those ends shall be attained. With one foot he stands in the eighteenth century, in the century of Louis XV and absolutism; and with the other he touches the twentieth century, the century of electricity and of an untrammeled press. ...He is an autocrat by belief, by training, by temperament, and not a constitutional monarch. ...he profoundly believes in the divine right of Kings and in the providential character of his own mission. He believes, with Charles I, that a monarch can do no wrong. ...He believes in paternalism and enlightened despotism, and not in parliamentary rule nor in constitutional barriers to his own will.
The German character ("German-ness") was centered on the person of the Emperor, as a contemporary observer noted: "there can be no doubt of the tremendous personal influence of Wilhelm II in almost every department of politics, society, and culture...." A triad forming German culture—monarchy, lèse-majesté, and his subjects—came to define "German culture."

Viewed from inside, in a peculiar twist of logic, the existence of lèse-majesté law itself seemed to prove the German love for the emperor. Violators of the law could be imprisoned for up to five years (according to most accounts) or up to 15 years, or even for life in serious cases (according to Schuster). Surely this showed the seriousness of the German love for the emperor! Legislating piddling sentences for lèse-majesté would indicate that Germans did not place value on their king. At the same time, though, there was a veritable explosion of lèse-majesté cases. The numbers fulfilled the enemy function, it is true; yet the sheer number of cases seemed to show there was in fact growing opposition to the emperor. As a result, the sentences for those found guilty of lèse-majesté were relatively short—averaging six months—probably similar to the maximum sentence for "insult" of private citizens.

The contradictions evoked by the definition and use of the lèse-majesté law in Germany perhaps made a certain sense to Germans at the time. But a keen observer of the time expressed what no doubt was a more global view of Germany at the time was that German laws like lèse-majesté, "seem archaic and useless." 

Lèse-majesté and the German Political Situation in 1900

The discourse on the law of lèse-majesté is not merely a legal one, for a good deal of its force and direction are defined by the social and political milieu in which it operates. Much of the scholarly and popular literature at the time in Germany bordered on the delusional. For instance, Schuster argued that Germany was quite unlike Great Britain, for in the latter, he wrote, was where "a numerous and powerful political party openly proclaim their preference for Republican institutions." This was simply untrue. Partially through the marvelously high number of lèse-majesté charges, the German socialist party represented up to a quarter of the voters and was the largest party in the Reichstag. Another instance was the inability for some segments of the German press to honestly assess its own level of freedom. When challenged by newspapers in other European countries, some German newspapers defensively affirmed (unconvincingly for anyone else in the rest
of the world) the healthy state of press freedom in the Empire, despite the
greatest use of the lèse-majesté law ever seen in the modern world.44

A second feature of the political situation in Germany at the time was
that the state found it increasingly difficult to control the flow of
information. With an expanding and vociferous print media, the state simply
could no longer control the flow of views and information.45

A third aspect was the boldness of the German press and some
politicians, especially the socialists, who made no secret of their desire to
end the monarchy. But this aspiration was expressed in imminently
reasonable and polite terms. Witness, for instance, the reasoned response in
the Reichstag of the leader of the German Social Democratic Party, August
Bebel, to the Emperor’s characterization of his party as “a mob of men, not
worthy to bear the name of Germans.” Bebel took the opportunity to lay out
the Socialists’ position on monarchy:

…we are against the monarchy, but not opponents of rulers. It
is with them as with our position to the bourgeois society, for
which we do not hold every single member responsible. A
Prince is born as a Prince. Is it his fault? By chance he has
become a ruler, and if a Prince is human, is not personal toward
us in his opposition, we shall never personally oppose him.
Monarchy is an institution, not a question of person.”

One observer wrote of Bebel’s speech: “Never in the history of
Germany has a monarch been addressed in words of such brutal
frankness.”46 There were many examples showing a remarkable sense of
sacrifice some Germans were willing to go in the name of freedom.47 There
was even a case where parties who felt slighted by the words of the Emperor
considered charging the Emperor for “insult.”48

Of course, as history shows, application of the lese majesty law
ultimately proved counterproductive. One newspaper argued in 1897: “The
law has been vigorously enforced, but it has been not only powerless to
prevent offenses of this nature—it has, to a large extent, created a condition
of affairs it was designed to guard against.”49 In a way, the “enemy function”
of the law had worked in identifying those coming to oppose the monarchy
and what it had come to represent. But it had also unified that opposition and
eventually made it the primary force in German politics. A 1902 article
opined that the intransigence of the Emperor had pushed the German public
further and further to the side of the Socialists, which this writer directly
attributes to the lèse-majesté law: “Paradoxical as it may seem, the
Kaiser...has undoubtedly added much strength” to the Socialists and “the party has gained enthusiastic adherents through the punishments inflicted upon those who have transgressed the law of lèse-majesté.”

It is curious to note that it was the Emperor himself who ended the lèse-majesté regime. It was reported in late 1904 that the Emperor “directed the Ministry of Justice to deal liberally with all persons convicted of insulting him who petition for pardon and show penitence.” Then in August 1906, he apparently pardoned all those in jail for lèse-majesté. At least in the international press, reports of German cases of lèse-majesté virtually disappear.

**Lèse-majesté after 1906**

Hence ended perhaps the richest concentration of lèse-majesté cases in world history. Before ending, though, lèse majesty had become the most fashionable tool for absolute and constitutional monarchies. The Sultan of Turkey was quick to pick up on the technique, suing a French newspaper for implying that the Turks had massacred the Armenians.

King Chulalongkorn of Siam, too, apparently took a liking to the use of lèse-majesté in the less democratic countries in Europe. He had just happened to visit Emperor William II in 1898 during his first trip to Europe, just as the number of lèse-majesté in Germany reached its apogee. While some argue that the first Siamese lèse-majesté was based on the Japanese version, it would seem reasonable to say that Germany provided the inspiration. Indeed, within a year or so of King Chulalongkorn’s return to Siam, the first “modern” Thai lèse-majesté was issued.

A case illustrating the exquisite tension between suppression and freedom in terms of lèse-majesté was that of Edward James, an editor of an English-language journal published in France, whose expressed purpose was “influencing monarchies to change into republics.” James’ nephew had been jailed one year on charges of lèse-majesté in England for allegations made in the publication about King Edward. James claimed that his nephew, if anything, was guilty of simply “a newspaper crime” and not “moral turpitude.” James took the opportunity of his nephew’s return to America to espouse a critique that goes to the core differences between a sacred-driven and democratic-driven political philosophy: 1) *Equality:* “In America a commoner has the same rights as a King… no man’s personal position is sufficient to put another in prison in defiance of law”; 2) *Accountability:* “[My case] could not be a case between one citizen and another because the King is above the law”; 3) *Supreme importance of truth:* “Any accusation
made against the King could not be tried with any regard for the truth in an English court. …Kings can destroy the proof, but they cannot destroy the truth.”

The overwhelming global trend was for lèse-majesté to be replaced with something more akin to sedition, or, in more liberal regimes, with decriminalized libel. As monarchies in Europe were either weakened or ended during World War I, lèse-majesté seemed largely spent as a law, erupting desultorily for a few decades, and appearing more and more absurd. It remained the preferred weapon of militaristic, fascist regimes (of the monarchical type), where it survived in final, minor concentrations in Spain during the 1920s and early 1930s, and in Japan during the 1930s. Lèse-majesté by most indications was relegated to the dustbin of history, with hardly a flicker by the 1950s when even in Thailand there were but a handful of lèse-majesté cases. Not counting Thailand, the past half century has seen a mere spattering of cases here and there, although the law remains on the books for most, if not all, constitutional monarchies. Penalties for lèse-majesté vary in each country. The penalty in Spain is from six months to 12 months for a less serious violation and up to two years for a serious one, up to three years in Jordan and in near-past Nepal, up to five years in Netherlands, Norway, and pre-war Japan; and up to six year in Sweden.

The story of lèse-majesté would otherwise be a quaint and occasional footnote in history were it not for the fact that this peculiar law, and all of its bizarre dynamics, has enjoyed a remarkable resurgence in Thailand, creating the richest concentration of the charge in recent history, with a punishment almost twice as draconian as any seen in centuries anywhere.

The Thai Lèse-majesté Law and its Use

A comparison between the similarities and dissimilarities between lèse-majesté in the German Empire, and lèse-majesté in Thailand a century later, sheds considerable light on the changing dynamics of this largely unique and certainly problematic law. There is a modest but growing critical literature on the origins and use of the lèse-majesté law in Thailand. Although lèse-majesté is closely related to defamation laws, there are key differences. The penalty is much greater, there are no exclusions available to defendants as there is in common defamation (eg. an expression of an honest opinion, the truth of the allegation, the latitude given to reportage on public figures), and the law resides within the national security laws of the criminal code.
The cousin to lèse-majesté is defamation, or libel, and it is no coincidence that they are both prominent in countries like Thailand. When lèse-majesté can’t be applied, competing parties will use defamation to silence their adversaries. It is both a criminal and civil offence in Thailand, which allows plaintiffs to depend on the state to carry out their cases. Somchai Krusuansombat, former president of the Thai Journalists Association, said, “At this time there are no more civilized countries in the world where defamation can lead to imprisonment. All such laws have been abolished but there are still fines, sometimes of large amounts. That’s how it is in the modern world. Putting someone in jail is old-fashioned. If [those countries] have abolished [criminal libel], why do we still need it?” But while press groups have called for a revision of the defamation law, no one has proposed revising the lèse-majesté law. It is unfortunate to note that even in the case of Sondhi Limthongkul and the Manager Group initiating lèse-majesté charges against then-Prime Minister Thaksin Shinawatra, the media did not protest. But when Thaksin charged Sondhi in turn, it was interpreted as “threatening the press” although both parties were using the lèse-majesté law as a political weapon.

The military-appointed legislative body of 2006-2007 shepherded through a number of laws that have affected the media. A proposal by Bowornsak Uwanno would give the chief of police, under the 2007 Press Act, the power to forbid the importation of any materials deemed offensive to, amongst other things, the royal family. Bowornsak, then secretary-general of the Cabinet under Thaksin, had experience in forbidding the importation of The King Never Smiles in January 2006. Panyat Thatsaneeyawech, a legislator and the first president of the Thai Journalists Association, said, “We’re not bothered by it because it doesn’t affect our rights or freedoms in presenting the news.”

The Thai media is not very concerned with the issue of lèse-majesté and has had long practice censoring themselves when reporting on the royalty. When self censorship fails, newspapers are not hesitant to dismiss reporters. The most recent case was that of the Thai Post newspaper who dismissed one of its reporters in early 2007 for publishing “Newspapers should not just investigate the stock transactions of ShinCorp more than the corruption of Thaksin Shinawatra, but also go deeply into how the Crown Prince may be involved.” The Thai media has good reason to feel pride for its investigative reporting into political corruption, but it assiduously avoids critically commenting on the monarchy, in what one scholar has called the media’s “reconciliation with the monarchy.”
There is fair understanding about the lèse-majesté law’s effects in practice. The law and its use do not lend themselves to the administering of justice. Somchai Preechasilpakul has argued that the law, so easily and often used as a political weapon, deviates from accepted legal principles. First, lèse-majesté cases can be initiated by anyone, unlike regular defamation cases which can be initiated only by the damaged party. Second, the police and the prosecutors are part of an apparatus that is biased toward the interests of the state. Third, the courts have tended to interpret lèse-majesté quite broadly and out of context, making convictions almost certain. In the last 20 years, there have been only four acquittals and an impressive conviction rate of more than 95 per cent for lèse-majesté cases in Thailand.

Lèse-majesté cases in Thailand since 1960 number more than 300. This 45-year total barely compares with the German Empire, where there were more than 500 cases in a single year. In the 1950s, there was an average of about one charge per year, and only half of those actually going to trial. In the 1960s, there were five cases a year, with three going to trial. In the 1970s, the number of charges peaked at 11 per year, but only an average of 2.5 per year leading to prosecution. The average number of lèse-majesté charges per year fluctuated since then, going from 2.5 in the 1980s, to 5.2 in the 1990s, and dipping slightly from 2000 to 2005 to 4.8. Although the number of charges dropped, there has been a steady increase in the average number of lèse-majesté cases going to trial, rising from 3.3 in the 1980s to 4.6 in the 1990s, to a potential five from 2000 to 2005, which would be the highest number of cases prosecuted in modern Thai history. The relatively low number of lèse-majesté cases in Thailand is somewhat made up with an average sentence of at least six times than that of Imperial Germany, with many sentences of six years and even a few resulting in the maximum 15 years.

The wording of the Thai law on lèse-majesté has changed a bit over time, although its construction is comparable to what is found in other constitutional monarchies. Upon returning from Europe, and in response to foreign journalists in Siam at the time, King Chulalongkorn issued the first “modern” lèse-majesté law in 1900. In this first version, lèse-majesté was merely a serious kind of defamation. Lèse-majesté was words that could injure the reputation of the royalty and the king’s officials (roughly, but not entirely, “the state”), and then there was simple defamation to protect the reputation of private citizens. Injuring the reputation of the king could bring three years’ imprisonment, while doing the same with a private individual could bring a maximum of two years. That these various forms of
The wording of the law has not changed since, but the valorization of the king vis-à-vis private citizens has. In 1900, the difference between maximum jail time for lèse-majesté and defamation was just 50 percent. In 1908, that percentage difference increased to 350 per cent. After 1976, the difference became 750 per cent. In other words, the “value” of a private citizen’s reputation has remained the same for over a century, while the “value” of the monarch’s reputation was greater by a factor of five.

But actually the comparison is impossible. For while truth can be at least a partial if not absolute defense in defamation cases, cutting down a prison term to one year if not bringing absolute acquittal, truth cannot reduce the sentence of one found guilty of lèse-majesté, and may even make it worse.

The number of those protected by the law has been winnowed down from what must have been hundreds of Siamese who had royal blood in 1900, to only four since 1908. A strict reading of the law would focus only on the persons protected. But in Thailand, those protected can extend by the relationship of who is covered to the one being impugned, such as lèse-majesté charges being suggested for someone questioning the wisdom of the great-great grandfather of the present queen, a daughter of the king (but not heir-apparent), the institution of the monarchy itself, and to symbols or symbolic references that can be equated with the king.

Just as in Germany, anyone in present-day Thailand, from the lowest in society to the highest government ministers, can be charged with lèse-majesté. Because “insult” lies in the eyes of the beholder, almost any word
or action can be construed as insulting. As a result, offhand private comments made in what is perceived as a public place can land a Thai in jail. The comparison with Germany’s “empire of informers” is not entirely unreasonable. Public comment on the monarchy can only be one of praise; anything less might be interpreted as lèse-majesté. So, in the eyes of Thais and outsiders, the only conclusion is that the monarchy is revered and respected.

But every Thai also knows that there exists a robust underground rumor mill churning out stories of scandal, sending out shocking videos and photos through the internet, and whispered commentary on the monarchy and politics. In fact, attention to this hidden world might be called a favorite Thai pastime.

The Problematic Role of the Thai King and Its Effects

Through the constitution and popular understanding, there are three aspects through which the Thai monarchy’s role is defined: 1) the constitutional stipulations invoking “inviolability”; 2) the narrow Thai cultural understanding of “politics/political” and “power”; and 3) the specific legal conditions under which the lèse-majesté law operates in Thailand.

The king of Thailand has always been protected constitutionally from “any sort of accusation or action.” Presumably this means that the King could not be charged with a crime nor sued in court. The other part of the construction, at least in the 1997 and 2006 constitutions, is less clear. What does it mean legally to say that the king is “enthroned in a position of revered worship”? It is not unreasonable to suggest that “revered worship” makes the subject of the monarchy is more like a religion which compels Thai “worshippers” to see the king as a sacred being. With such archaic language that harkens back to blasphemy, wouldn’t the constitutional provision ensuring the right to “exercise a form of worship in accordance with his belief; provided that it is not contrary to his civic duties, public order or good morals.” What if holding a person in a democracy believed that “worshipping” a king was not “accordance with his belief”? Could a person in Thailand invoke this constitutional provision?

In English, the historical definition of the word “inviolable” has included “not…allowed to suffer violence; to be kept sacredly free from profanation, infraction, or assault” and “does not yield to force or violence; incapable of being broken, forced, or injured.” In Thai, the word most often
used, *phat phing* (พาดพิง), means “to be connected with” or “to refer to.”

There is a wide divide between doing violence to something or cursing something, on the one hand, and making reference to something, on the other. Thai cultural-legal practices have bridged this yawning gap, seeming to make any reference to the king (except glowingly positive ones), unconstitutional.

The Thai popular (mis)understanding of the monarchy is “above politics.” Thongchai Winichakul writes that this view has skewed the study of Thai politics and history. Because scholars “have been penalised” or work “under self-censorship in order to avoid trouble due to the serious nature of the *lèse majesté* charge,…the monarchy…has been able to escape the attention, let alone scrutiny, by most observers and scholars.” The result is that “when we study and talk about politics,” the monarchy—“a most crucial piece”—is omitted.

To comprehend what this might mean, it is necessary to examine how “politics” and “political” are defined in Thailand. They are popularly defined as being within a realm of selfishness and narrow party politics, leading to chaos. It is understood as relating particularly to parliamentary democracy, with competing political parties. Unrecognized are other definitions of politics that would more accurately portray how power works in Thai society, such as the science of “guiding or influencing governmental policy,” or “the total complex of relations between people living in society,” or a set of “assumptions or principles…underlying any activity, activity, or theory,” particularly in relation to “power and status in society.” Instead, there is a mere single way of viewing of politics—more like the following: “Belonging to or taking a side with the party system of government; partisan, factious,…serving the ends of (party) politics.”

It is within this context that the idea of the king as “above politics” makes sense. The king is not elected, and therefore well positioned to guide Thai society selflessly. And it is this same “selflessness” that the military makes claims to after staging coups, and bureaucrats in the service to the crown. These “neutral” institutions are the ones that shore up the ever-messy business of parliamentary politics. Thailand, at least recently, has been in a perpetual crisis, perhaps created by the very parties entrusted to maintain stability. As Suchit Bunbongkarn has written, “Our political system has been unstable all the time. So whenever there is a political crisis people expect the King to solve the problem.” But of course the military, the bureaucracy, and the monarchy have immense political power—as power is commonly understood elsewhere in the world—as in “Actions concerned with the
acquisition or exercise of power, status, or authority.” The result of this narrow understanding of power and politics is that there is really very little “debate” in Thailand.

The lèse-majesté law largely veils the operation of power in Thailand. For instance, the mere observation, not under debated elsewhere in the world, that the palace and the king’s advisors were behind the 2006 coup cannot be said publicly. The vagueness of the language used in the law, the lack of guidelines on arrests and prosecutions of lèse-majesté cases, and the ability of any citizen to make the charge allow the persistence of the present power system in Thailand. First, as the law does not specify to what level “insult” can go, off-limits for political debate include the wealth and practices of the immensely wealthy Crown Bureau, pet projects of the king such as dams or his “new theory” in agriculture or “sufficiency economy,” his children (although some are not covered in any way by the law), his ancestors (at least back to four generations), and all the instances when the king intervened in Thai politics, directly or indirectly, and affected the fortunes of democracy in Thailand.

Second, police, prosecutors, and judges are given no guidelines in interpreting lèse-majesté. As a result, police, perhaps fearful of being charged themselves for not acting on the accusation, must make the arrest, the prosecutors must prosecute, and the judges must hand down their decisions.

Third, given the impressive number of officials who meticulously orchestrate the images of the royal family, there can be little doubt that any policy affecting or not affecting the monarchy is deliberative. Although Handley does not address the operations of the lèse-majesté law in detail, the overall import of the book is clear. It is probable that the palace (and whatever groups it represents, such as the Privy Council) allow private citizens, most often in the form of politicians or other public figures, to do the hatchet work in accusing others with lèse-majesté. The palace can then later appear to be beneficent in quietly having charges dropped, or pardoning those convicted of lèse-majesté. The palace does not dirty its hands, and yet is continually defended and affirmed.

The king, in his 2005 address to the nation, did seem to indicate that the lèse-majesté law should not be invoked any longer. However, charges flew in the very next month, with no comment from the palace. Indeed, it might be argued that it is only the king who is perceived as enjoying enough prestige in Thai society to make the intervention into politics necessary to bring an end to the law. One must also assume that calls to require charges of lèse-majesté be made only with the consent of the king or his councillors,
as is the case in other constitutional monarchies like Norway, show the importance of the law in maintaining existing relations of power. Lèse-majesté cases would be directly attributable to the palace, making too clear what the palace feels are threats.

In Thailand, as in the German Empire, the lèse-majesté has always served the primary “enemy function.” The monarchy serves as the final linchpin in the construction of official “Thai-ness.” As there are no principles in particular to hold Thai society together, the sense of societal cohesion is based, by this time in history, on the perpetuation of the monarchy. At least since the 1960s, there are literally no definitions of Thai-ness in which the monarchy is not its central focal point. It is nearly impossible to imagine Thailand without the monarchy, or its accomplice, the lèse-majesté law. In Germany, the emperor had to be distinguished in all areas—government, art, music, religion, and culture. The same, of course, is true for Thailand.

Accordingly, as in Germany, one of the most important roles of Thai academicians has been to define Thai culture, and the key role of the monarchy in it. Rather than admitting the failure of democracy and the victory of authoritarianism, many academicians studying Thailand, both Thai and foreign, continue to claim Thailand’s uniqueness in constructing models like “Thai-Style Democracy.” Although academic freedom has been guaranteed by the last few constitutions, relatively few academicians condemned the investigations against Thai professor Boonsong, and virtually no academic institutions did.83

Finally, the inclusion of the word “insult” into the lèse-majesté law in 1958 is significant as it confirms a profoundly authoritarian basis for society, creating an entire logic, rationale of the state, based on the defamation principle which in turn skews a society’s ability to perceive and act upon the truth, whether social, political, cultural, or historical.

The result is a dynamic between construction of Thai culture, the monarchy, and the lèse-majesté law that supports the peculiar logic that affirms the need for the lèse-majesté law, a cultural dynamic that celebrates suppression in the name of love. It is true that the number of lèse-majesté cases in 2000 Thailand pale in comparison to the huge numbers of cases in 1900 Germany. But it might be argued that perhaps due to the threat of such a long sentence, the relatively few arrests and prosecutions, the lèse-majesté law in Thailand has a much more profound effect. It was not a matter of whether to “speak the unspeakable” in Germany, for it is clear that many Germans, knowing they would be charged, nonetheless spoke. Such is not the case in Thailand.
Lèse-majesté and the Thai Political Situation

The letter of the lèse-majesté law and its use in Thailand is not unique to world history. As we have seen, it was rather common in many constitutional monarchies, at least until 1945. What makes the Thai case different are the political and social milieu in which lèse-majesté has risen as a central feature, the seemingly inexplicable rise in the number of lèse-majesté cases in the face of apparent democratization, and the utter anachronism of there being a lèse-majesté law anywhere in the twenty-first century.

The German Emperor was clearly a public figure in his central role in policy-making and a newly constructed “German” culture. Even then, it was difficult for the public (and courts) to distinguish between the Emperor’s official statements and his personal opinion, until the Imperial Court made the rather absurd determination that there was no difference. The dynamic in Thailand is similar, but not the same. With an incomparable influence that media plays in modern life, and the state’s domination of it in the case of semi-authoritarian states like Thailand, the “public” role of the Thai king can penetrate every level of society. If by the 1940s, the extent of patriotism was defined by every home displaying a portrait of the king, one can hardly find the words to describe the utter royal saturation of Thai society today through television, radio, magazines, books, song, and so on.

But the key difference between the political situations in Thailand and the German Empire is surely the boldness of Germans committed to freedom. With what must have seemed complete certainty, German newspaper editors, academicians, and politicians gave voice to the unspeakable, and then waited for the police to show up with charges of lèse-majesté. Application of the law created perhaps close to 10,000 cases from 1888 to 1906. Not unexpectedly, the question of the role of the emperor and abuse of the lèse-majesté law was a common topic in the Reichstag, with calls for the law to be reformed or abolished.

In comparison, quite the opposite has happened in Thailand. We might chalk it up to the innate temerity of Thai proponents of freedom of speech or the daunting sentence waiting the few unlucky ones to be found guilty of the charge, but I would propose something in fact much more pessimistic. Reasoned discussion of the monarchy in Thailand, making a call for repeal of the lèse-majesté law, even the entertaining of republican sentiments, are all apparently not just “unspeakable” but virtually unimaginable.
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. It is normal because constitutional monarchies are mostly democracies where constitutional has precedence over monarchy in the phrase constitutional monarchy. In Thailand, monarchy trumps constitutional. Thailand could probably get an award for “Regime with the Most Constitutions” but this serial constitutionalism has excelled only in quantity and not a quality of democratic thinking.

There is a question of whether there has ever been republican sentiments or any sort of movement for a republic within the collective Thai historical psyche. It may be that there was a brave soul amongst the Thai “Young Turks” who did not renounce his desire for a Thai republic all the way to his execution. There may have been discussions among the 1932 coup group about whether to abolish the monarchy, but it led to no republican movement or political party. In the 1947 Constitutional Assembly, one newspaper reported that the body had shown “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 would “welcome any expression of republican sentiments.” One member spoke warningly of “reports of a republican movement in the country.” Seni Pramote dismissed any republicans as mere “self-seekers.”

The Communist Party of Thailand seemed determined to end the monarchy had it won political power, but was not a legal party after 1952. There was no clearly defined, public republican sentiment left over from the October Generation or those returning from the jungle.

In fact, it is interesting to note that not only is calling for a republic apparently illegal in Thailand, even thinking of a republic is. In the early 1950s, the cabinet of ministers and the state’s primary legal body, the Council of State, both understood that the Thai government was consciously contravening the UN Declaration of Human Rights. Legal advisor Rene Guyon claimed that the constitution gave the government “strong powers” in dealing with “persons who do not accept that Thailand is necessarily a Kingdom.” Guyon argued that 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.” Moreover, Guyon points out that the Thai constitution
does not even guarantee freedom of “thought and conscience” which would “allow a person to have Republican belief in a Kingdom, or a Royalist to have Royalist belief in a Republic.” In other words, it might even be illegal for a Thai to think of republicanism in the privacy of their own homes!

**Observations**

A history of lèse-majesté is a chronicle of silence: the things never said, the articles never written, the thoughts never imagined. How can history ever account for this inaccessible, seemingly prominent silence that pervades Thai studies in general, and democratization? It does bring up the question of whether it has been a matter of “speaking the unspeakable” at last, or whether anything was ever said or imagined. Or it is possible that there is no history of the unspeakable to write for Thailand? Perhaps the state’s project to re-sacrilize the monarchy was so utterly successful, the state’s hegemony so complete, that discourse on the monarchy simply never emerged at all. Or perhaps opposition and criticism of the monarchy was redirected through the subterranean world of rumor and hushed conversations that never surfaced into the public sphere. Or maybe the king is massively and universally loved by all Thais.

But it is more likely that some sort of discourse on republicanism or a more democratic constitutional monarchy has trickled throughout modern Thai history in one form or another. If the state’s hegemony has so succeeded in creating a type of “monoculture” in which no diversity of view is detectable, then it has been at the expense of democracy. The lack of any public discussion of republicanism in a sense proves the profound authoritarian nature of “Thai-style democracy.” If the king were so universally loved, then there would be no need for a lèse-majesté law at all. In any of the scenarios, the conclusion is the same: the active, dominant value of Thai constitutional monarchy is “monarchy” rather than “constitutional.”

Our account of lèse-majesté’s history and the comparison with Imperial Germany underscores the most salient features of Thailand’s lèse-majesté law. First, there has been extension from the four legally stipulated persons protected under the law, to a widening number of associations, whether it is other members of the royal family, Thai history, the institution of the monarchy, development strategies the king supports, implying that the king has (or does not have) power, the royal anthem, the status of the Royal Crown Bureau, to name just a few. There has also been a conflation of the person of the king and the institution of the monarchy. The institution is not
protected by the lèse-majesté law, but any criticism of the institution is automatically viewed as an insult to the king himself.

Second, lèse-majesté is a part and parcel of a complex set of relations defined by national security assessments and based on defamation laws, where the vagueness of the law, compounded by the inclusion of the word *insult*, has further complicated the problem of interpretation. What emerges from these conditions is the construction of the principal enemy of the state as defined as those espousing “republican sentiments,” criticizing the monarchy or even calling into question the use and abuse of the lèse-majesté law.

Third, the lèse-majesté law plays perhaps the key mechanism that secures an image of the monarch and protects the monarchy-centered construction of a Thai culture and identity that is fundamentally undemocratic and unequal. This construction is strengthened by the particularly narrow Thai interpretations of concepts such as “inviolability” and “politics/political” that are met with general societal acceptance of these narrow interpretations and the subject of the monarchy as “taboo” that have gone almost completely unchallenged. But lèse-majesté is merely the most sophisticated form of defamation in Thailand, and it is the entirety of the defamation regime that holds power and culture captives of the elite.

Fourth, Thai law allows anyone to make the charge, and provides no guidelines for police, prosecutors, or judges on conditions under which charges can be made or cases be tried and adjudicated. Neither is there any direct, legal role of the king or Privy Council in granting consent for lèse-majesté cases to be tried. In addition, a lèse-majesté, like the lasting sting of an insult, has no clear end. Unlike with other laws when a case is closed, lèse-majesté cases stay alive apparently forever. Debate over the lèse-majesté law becomes a primary nexus in the general, larger discourse on democracy that defines the basic values of society and the relationship between citizens and the state. Without that debate, these fundamental issues can never be resolved.

**Advances on the citadel of lèse-majesté?**

To speak the unspeakable is an attempt to give voice to the dread silence that has long pervaded Thai studies. In the past few years there has been a modest but growing discourse in Thailand on the question of lèse-majesté, one that would have seemed unimaginable a decade ago. During the political chaos of 2006, there were a seminar on the lèse-majesté law sponsored by Midnight University, and then a panel on the issue held at
Thammasat University, both in April. Later that year, Grant Evans published a piece on lèse-majesté law in Thailand in the *International Herald Tribune*. A year later, an opinion piece on the problems of the lèse-majesté law was published in the Bangkok Post, and one of the first in the Thai newspaper *Matichon*. At the same time, the military-appointed assembly rushed to push through a strengthening of the lèse-majesté law that would have extended coverage to the children of the king, beyond the heir-apparent, provided lèse-majesté protection to the Privy Council members, and empowered officials to ban any news reports on current lèse-majesté cases. These changes would have placed the law back into the nineteenth century! Fortunately, there was something of a public outcry, as a number of key Thai intellectuals voiced their opposition to the proposed law.

In November of 2007, perhaps the first academic symposium specifically on the Thai monarchy was held in Denmark, although the organizers were hesitant to make the proceedings public. And then in January of 2008 at the International Conference on Thai Studies held at Thammasat University, three panels were held, dedicated to discussion of the monarchy opened the issues of the financial status of the crown bureau, the effects of the lèse-majesté law on freedom of expression, and the impact of Handley’s book *The King Never Smiles*. In one such panel was one of the first public calls for the lèse-majesté law to be reformed or abolished.

Concerns that the lèse-majesté law might limit frank discussion of the monarchy, the decision of the conference’s organizing committee to allow the panels helped somewhat to muffle calls by some academics to boycott the conference altogether. “The key message of the panels,” writes Andrew Walker, “was that the persistent self-censorship imposed by the international academic community can now be cast aside. The sky will not fall in if we talk freely and frankly about the king’s role in contemporary Thai politics. Let’s make sure this is a starting point for ongoing frank and public discussion.”

**Lèse-Majesté Resurgent?**

In Germany, the Emperor stepped in and ended the lèse-majesté regime, as other political forces were largely unable to propose a serious reconsideration of the law. In Thailand, King Bhumibol did seem to indicate his displeasure with the law, but his wishes went unheard. Within a few months, in fact, one of the richest concentrations of lèse-majesté accusations emerged from within the political chaos. That the king’s message was not clear enough, or was not acted upon, especially in a time of the king’s
greatest popularity, will no doubt be historically remembered as one of the chief failures of his reign in reestablishing his legacy as a supporter of democracy and a defender of freedom.

If our poor German librarian in 1894 felt it impossible to keep up with the hundreds of newspapers coming into Germany, a huge and sophisticated state apparatus is dedicated to preserving a particular image of the Thai monarchy these days, with experts in law, technology, public relations, marketing, and crime suppression. Even then, keeping the Thai public safely away from technologies like the internet and whatever anti-monarchical views might be there, has become difficult if not impossible. The repressive power of lèse-majesté has been transferred from the criminal code law into other legal acts designed to control criticism, such as the Computer Crime Act and the Movie Act, under which inappropriate or insulting representations of the monarchy are prohibited.

The idea of abolishing the monarchy, or even criticized it, is unimaginable for political imagination, except the most maudlin versions, is forbidden. As a result, there has never been a public expression by any Thai of republican sentiments, or at least until recently. But this did not stop the head of the military-appointed legislative body from warning in October 2007 that there were groups trying “to topple the institution of the monarchy,” one of which was “using the public stage to debate whether the institution of the monarchy should continue to exist.” A panel was monitoring “Anti-monarchy activities” which could be countered by seeing to it that the police department “strictly enforces the law” and by the government “promoting the image of the monarchy institution, especially by creating understanding with the international community.”

But all of this obfuscates a central question: Should Thais be able, under a democratic form of government, be able to criticize the monarchy, or even call for its abolition? The question might be answered sooner rather than later. State authorities, blindly following the irrepressible logic of the lèse-majesté law, are increasingly creating a situation where the contradictions of the law and its use will become impossible to maintain, through their wrestling with two kinds of activists—the irrepressible Sulak Sivaraksa, who enjoys considerable international recognition, and an activist whose simple refusal to stand up to respect the monarch prior to a movie. What each represents could in fact place the lèse-majesté law into a critical, if not fatal position.

Sulak, who has been tried for lèse-majesté three times, and accused of it many, many more times, has for long been the most vociferous critic of the monarchy and wants to make it accountable and open to public scrutiny. He
is also actively testing the resilience of the law. Police must arrest, but they and prosecutors are reluctant to send the case to trial, probably because of the unpredictability of what Sulak would make part of the public record. Sulak is prone to speaking his mind regardless of the setting, and says things in public what many Thais say in privacy. As a result, the authorities have been using other tactics, such as seizing and banning his books.

The case of Chotisak Onsoong seems at first glance trifling, given that it involves his refusal to stand in respect while the royal anthem was played prior to a movie showing. But standing in theaters for the royal anthem is so familiar to most Thais who have performed this ritual time and time again that a Thai refusing to do so seems in a quirky way to challenge the century-long reign of lèse-majesté in Thailand. Chotisak, an activist and opponent of the 2006 coup, denied committing lèse-majesté, and said it was Thailand’s “most politicized charge.” He has said his action was an exercising his right to the freedom of expression as guaranteed by the constitution. “Laws which violate human rights,” he contended, “should be abolished.” His plans to pursue the matter with the National Human Rights Commission of Thailand might represent the first time the law has been challenged as a human rights violation. In addition, Chotisak launched “a campaign for the right not to stand while the royal anthem is played,” under the rallying call, “Not standing is no crime. Different thinking is no crime.”

Within a week, more than 500 persons had signed a petition whose thrust goes to the absolute center of the lèse-majesté issue, claiming its utter incompatibility with democracy. The petition’s complaint focuses on “the use of lèse-majesté law to prohibit the individual’s freedom of expression,” and “the use of violence and harassment on those with different thoughts/political ideologies.” The petitioners have quite a new vision for democracy in Thailand where its “beauty” ought to be “that people can have the rights to think differently.” Hundreds of comments about the Chotisak case hit the web boards on the websites of Prachatai and Fah Diew Kan over the next few days, many of them in support of Chotisak. Comments included comparisons between those who stand for the anthem with feudalists, Thai wives instructing their foreign husbands not to stand at the cinema, and a general sentiment that the monarchy should be abolished. Though a bit indirect, these web boards represent perhaps the first public expression of republicanism. Exclaiming “I can’t stand this,” Khon Kaen’s Sunimit Jirasuk marched to the police to level charges of rebellion and unrest against the website owners. Sunimit worried (and rightly so, perhaps) that “by allowing open discussion on the internet, both websites demonstrated their intent to be focal points of those who wanted to eliminate the monarchy.”
The moderator of the rightist Manager online affirmed that Thailand’s democracy is “unique,” a political form called, “Democracy with the King as Head of State.” Over the past few years, fomenting against this form are “some academics, Thai Rak Thai cohorts and members of anti-coup groups” who “promote just plain “Democracy,” or “People’s Democracy.” “Thie new idea” is evident on the websites in question, where there appear comments that are “many times precariously offensive” as they “insinuate the highest institution” in what Kamnoon calls “unspeakable” ways.94

It almost seems like “Check Mate.” On the one hand, the authorities must do something to stop the issue from spiraling out of control. But their options for charges are ridiculously incongruous: as a violation of a 1940s national culture act, not standing at a cinema could bring a 100-baht fine and a maximum of one month in jail, as compared with 15 years for lèse-majesté—a difference by a factor of 180!95 On the other hand, if the authorities do continue to pursue charges into an expanding circle in Thai society, the absurdity of the charge against Chotisak will become even more apparent, creating in turn even more vehement opposition to the law, and perhaps the monarchy itself. A ultimate nightmare scenario for the state emerges: Sulak testifying in court on behalf of Chotisak.

Even if the authorities quickly drop the charges, is the republican genie already out of the bottle?

Lèse-majesté played a key role in the political chaos of 2006, and was in fact one of the principal reasons cited by the military in staging the coup on 19 September 2006. The most serious charge had to do with an alleged plan by Thaksin Shinawatra and his Thai Rak Thai Party to overthrow the monarchy under the “Finland Plan,” which was “exposed” earlier in May that year. A variety of versions of the plan “emerged,” but the most politically devastating allegation was that the TRT planned either to reduce the power of the monarchy and make the king a figurehead, or to abolish the monarchy completely. It is not important here whether the allegations were true or not. What is interesting to note is the reaction of “the left” to this news. Although many had themselves advocated (privately) for a monarchy with a more symbolic role, they expressed absolute dismay and outrage at the suggestion that Thaksin wanted to. Similarly, in late April of 2008, the government opposition accused the present government of wanting to abolish the monarchy. The prime minister denied the accusation, but even if it were true, so what? So what if there are groups, movements, or even political parties that want either to reduce the role of the monarchy or end it? Legally, such a change could only happen through the process of the proposal going through the parliament and then probably up for a national
referendum vote (as the last constitution did), and then, the drafting of yet another constitution.

It is a dubious distinction that Thailand has what may well be the most repressive law restricting freedom of speech in the world. Despite the incessant affirmation of the government and many Thais themselves that the monarchy is loved by all Thais, the existence and active use of the draconian lèse-majesté law makes hollow such claims.

In return, Thailand could dispose of the unconvincing and absurd claims to “Thai-style” democracy, and simply be democratic. It is true that the mono-cultural, nationalist ideology constructed over a century might tremble and come tumbling down. But surely it must be time for the meaningless cycle of “coup-new constitution-crisis-coup” to come to an end, for the unspeakable to be heard, for a democracy of equality and diversity to be forged.

The lèse-majesté law in Thailand has supported a failing and corrupt edifice of a nationalist identity that is antithetical to democracy. Why not a Thai identity truly “free,” based on a respect for human rights and the truth? What was said of Germany in 1902 can equally apply to Thailand of 2008: “Many of the things which are believed by the German at home to be necessary to the Teutonic edifice, when viewed with the same eyes from afar, seem archaic and useless.”

1 Raatchakitjaanubeksaa [Royal Gazette] Special Issue, Vol. 93, Part 134, (21 October 1976), p. 46. Beyond Section 8, there are a number of other constitutional provisions that refer to the monarchy, such as Section 77: “The State shall protect and uphold the institution of kingship and...shall arrange for the maintenance of...armed forces...for the protection and upholding of its...institution of kingship...and the democratic regime of government with the King as Head of State...”

2 Office of the Council of State (Thailand), Constitution of Kingdom of Thailand 2007, http://www.asianlii.org/th/legis/const/2007/1.html. The restrictions on the liberty described in Section 45 are rather extensive, allowing the state to restrict the freedom of expression when there is “law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.”

3 There are a few notable exceptions. In 1988, the journal Pajariyasaan invited legal scholars and royal hanuphaap kak kaan pokkhruang rabaup prachaathipati thii mii phra mahaa kasat pen pramuk” [councilors of the Privy Council to comment on the law. See “Khwaamphit thaana min phraboromdetchanuphap” [The Crime of lèse-majesté and the Constitutional Monarchy], Pajariyasaan Vol. 14:6 (November-December 1988), pp. 39-42. It is 18 years later when the next significant contribution appeared in print in Thailand. Fah Diew Kan (April-June 2006) devoted much of this issue to the question of lèse-majesté, with a fair number of Thai academicians and human rights activists weighing in. Thai defendants in lèse-majesté cases have generally
One commentator pointed out it was “a very complicated affair.” Those “directly” covered by the law were: “the Emperor, the Regents of all German States, all the members of their families, and the monarchy of a State not belonging to the German Empire.” New York Times, April 24, 1898.

A contemporary scholar explained: “In a monarchical state all officials, whether high or low, whether administrative or judicial, whether civil or military, are simply the assistants of the monarch, in the eyes of the public law a part of the monarch as the source of all power in the state; this principle finds formal expression in the appointment of the officials by the ruler.” See Philip Zorn, “The Constitutional Position of the German Emperor,” Annals of the American Academy of Political and Social Science, Vol. 14 (Jul., 1899), p. 83.

When King Leopold was attacked by the Hamburg Echo, its editor was sentenced to eight months for lèse-majesté, New York Times, Nov. 27, 1897. A Socialist ridiculed the policy by inviting monarchs to king-friendly Germany: “All the rulers of the earth joyfully recognize the fact that in Germany the monarchic principle is carefully shielded against wicked critics, and the fame of the German Penal Code will penetrate even to the rulers of the African tribes. Wherever a ruler is unpopular, let him come to Germany. Here, where under the shelter of lèse-majesté, every criticism is forbidden, he may spend the rest of his days in peace.” New York Times, Jan. 23, 1898.

Crowed one newspaper, “Denunciation was ever the faithful ally of tyrannies, and it is in full swing in the German Empire.” New York Times, Jan. 8, 1899. New York Times, May 14, 1897. It made free and open debate in the Reichstag impossible. New York Times, March 13, 1897. Commentators at the time recognized that it was not the law itself that was the problem, but rather the political and legal context under which it was used. After all, they reasoned, similar lèse-majesté laws were in the penal codes throughout the continent. New York Times, May 14, 1897.

One Frankfurt newspaper opined: “We have reached a stage where it becomes impossible to freely comment upon political affairs, for, with the prominent part the Emperor has taken in politics, it is impossible to separate him from criticism, and it thus becomes a difficult trick to avoid prosecution upon the part of a crazy State Attorney.” New York Times, Nov. 13, 1898. It made free and open debate in the Reichstag impossible. New York Times, March 13, 1897.

At the same time, seemingly contradictorily, the court also voiced the opinion that the “the Emperor may proclaim his personal opinion” in speeches. New York Times, July 31, 1899.

New York Times, May 14, 1897. If only the law could be applied with “some discretion” and the “potentates,” said one critic, who put it into motion were restrained. The Emperor could have voice his opposition to “petty inquisition” and “petty persecution” involved with lèse-majesté, and cases would end at once. Then, “The police would concern themselves with the doings of real enemies to the State, and not of the law-abiding Germans who may be occasionally exasperated by the doings of their ruler to the point of mentioning, in the freedom of social intercourse, that the Kaiser is an ass.” New York Times, Feb. 8, 1903.

An Austrian newspaper (which could write more freely) suggested that the lèse-majesté law forced political players it into a game of subterfuge, where criticism of the Emperor was hidden, although he was the target: “…an open and honest war against the erroneous views of the sovereign would be preferable to the present custom in Germany of ‘arbitrarily’ interpreting his utterances and with ‘veiled’ insinuations attacking the Emperor under cover of the Chancellor. This manner of slipping like an eel through the meshes of the law of lèse-majesté is more damaging to the monarchical sentiment than the most violent stroke of crushing criticism.” New York Times, Sept. 29, 1902.
Perhaps the most widespread effect of the lèse-majesté law was to support the “enemy function” that certain states need to legitimize rule. The German Emperor, in 13 years on the throne, had by 1903 defined what he called the “inner enemy”—the Socialists—who, primarily represented a force that would replace citizens as the nexus of political power, rather than the monarch. New York Times, Feb. 8, 1903. The Emperor was rather clear on this, saying, “For me a Social Democrat is the equivalent of an enemy of the empire and the Fatherland.”

Ernest J. Schuster, “‘Lèse-majesté’ in Germany,” pp. 41-45.


When, for instance, a public library director in the empire was arrested for lèse-majesté because an American newspaper with an article critical of the Emperor was available in its reading room, the director helplessly replied that it was impossible to read the contents of all the 351 newspapers that arrived at the library daily. New York Times, April 2, 1892.

In mid-1897, for instance, a mere seven years after the ban against the Socialist Party had been raised, 8 of its 48 Reichstag members were simultaneously in jail on lèse-majesté convictions. New York Times, July 18, 1897. One Socialist member of the Reichstag even gave up his immunity in order to share a three-year sentence for lèse-majesté with the editor that had published his fairy tale that had been adjudged as lèse-majesté. New York Times, Sept. 30, 1899.

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In late 1904, the Emperor took “a radical departure from the previous practice” by announcing that “he will hereafter use the pardoning power liberally in cases of lèse-majesté” and “intends to pardon almost without exception when the offender is shown to belong to the uneducated classes or to be incapable of weighing the consequences of a hasty word.” In August of 1906, the Emperor, to mark the baptism of his grandson, announced that all persons convicted of lèse-majesté would be pardoned. New York Times, Nov. 11, 1904, Aug. 26, 1906.

In France, the actual form of the suit was not lèse-majesté as such, but rather libel, and leading to a payment of damages—in this case, 500,000 francs—rather than a prison sentence. New York Times, Dec. 1, 1907.

Piyabutr Saengkanokkul has made the case that the Thai law was based on the Japanese constitution. However, there might be reason to look at the German law as the model, given the king’s trip in 1898. See his “Min phraboromdechanuphap,” *Avut song phalang nai moo* “luk
There’s the peculiar case of the Hungarian man who is found guilty of lèse-majesté for saying he was a Republican. The court reasoned that “while the country has no King,” it is nonetheless “a kingdom.” New York Times, July 30, 1926.

The Spanish novelist, Vicente Blasco Ibanez, was indicted for a pamphlet he wrote, “A Nation Seized: The Militaristic Terror in Spain.” When asked if he would leave France and report before the military court in Spain, Ibanez “laughed heartily,” and said, “I would just as soon take refuge on a cannibal island or throw myself into waters inhabited by crocodiles or famished sharks as to confide myself to the government of bandits now ruling Spain.” New York Times, Dec. 18, 1924.

Europe has seen a few lèse-majesté cases over the past decade, but convictions have usually been acts that would have been crimes against private citizens. There have been two recent cases in the Netherlands. In one case, a Dutch man was charged with lèse-majesté for drunkenly screaming insults about the queen, and saying he “wanted to put a bullet through her head.”

http://www.thecheers.org/news/Europe/news_17756_A-man-has-been-jailed-for-four-months-for-insulting-Queen-Beatrix.html; In 2007, a Dutch court fined a man 400 euros for calling Queen Beatrix a “whore” and “described several sexual acts he would like to perform on her.”

http://en.wikipedia.org/wiki/Lese_majeste#cite_note-9. Strangely, the “lèse-majesté” wording persists, strangely, in a number of republics, such as in Poland, where in 1938 a conviction could bring up to three years’ hard labor. New York Times, Feb. 20, 1938.

http://www.unifr.ch/ddp1/derechopenal/legislacion/es/cpesp22.html

Art. 111 of The Netherlands Penal Code: “Calculated insult of the King is punished with an imprisonment up to five years or a fine of the fourth category.”


Chapter 18, Section 2 of the Swedish law code,
http://www.legislationline.org/upload/legislations/59/94/4c405aed10fb48cc256dd3732d76.pdf

While it is reported that a serious case of lèse-majesté in the German Empire could lead to significant time or life “in a fortress” (why a fortress was specified is unclear; it might have sounded more frightening?), most observers report that it appears that the maximum punishment was five year. At the time of its repeal, the maximum punishment for lèse-majesté in Japan was 15 years (New York Times, Oct 8, 1947); in Russia in 1910 it could bring “eight years in the galleys” (Dec. 18, 1910); in Spain in 1906 it could bring at least up to eight years’ imprisonment (New York Times, March 6, 1906).

Interview with Somchai Krusuansombat, Thai Post, 20 tulakhom 2545 [2002].


Somsak Chiamthirasakul, “Chaiya chana khaung panyachon 17 tula (taunt hi 2: kanplian plaeng praden khrang yai),” Ratthaprahan 19 kanya (*Fah diew kan* 2550), na 401.

See, for instance, Streckfuss (1995) and Somchai and Streckfuss, *op cit.*


Somchai and Streckfuss, *op cit.*

Because many cases cannot be resolved in the calendar year, there is question, according to the latest figures available, how many of the cases initiated in 2005 will eventually go to trial. It could range from at least 3.6 to as many as five cases on average going to trial. See the tables in, Somchai Preechasilpakul and David Streckfuss, “Ramification and Re-Sacralization of the Lese Majesty Law in Thailand,” Paper presented at the 10th International Conference on Thai Studies (Bangkok: The Thai Khadi Research Institute/Thammasat University), January 9-11, 2008.

Somchai and Streckfuss, “Ramification and Re-Sacralization,” *op cit.*

Somchai and Streckfuss, “Ramification and Re-Sacralization,” *op cit.*

*Prachum kotmai prajam sok* vol. 22. Somsak Jiamthirasakol argues that this first formulation of the Thai lèse-majesté law within the modern, codified criminal law code, was modeled on the Japanese constitution of the same period. Somsak Jiamthirasakol, “Khwan khat yaeng thi ying yai lae yaonan—min phraboromdechanuphap nai sangkhom thai,” *Fah Diew Kan* 4:2 (mesayon-mithunayon 2549), na 80-81) [“A Serious and Long-Lasting Conflict—Lèse-majesté in Thai Society,” *Same Sky* 4:2 (April-June 2006, pp. 80-81].


*Constitution of Kingdom of Thailand 2007, op cit.* This in fact is an argument being made by Chotichai in an example below.


*Oxford English Dictionary,* “politics, n.” / ”political, adj. and n.”

Quoted in a piece by the BBC’s Jonathan Head (himself charged with lèse-majesté in April 2008), “Why Thailand's king is so revered,” http://news.bbc.co.uk/1/hi/world/asia-pacific/7128935.stm


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 khaumniewnit (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.

For instance, both in the latest lèse-majesté case of Sulak Sivaraksa and Thanapol Eawsakul, editor of Fah Diew Kan magazine and joint author of this paper, the police have assured each that the case is closed, but have never received documentary evidence to confirm. As such, anywhere down the road the case can be revived.


Nidhi Eowsiwong has pointed out the difficulty of even proposing a change to the this “abused law.” Abolishing the law, he says, would make the institution come in line with democratic principles as it could be made accountable. But he feels that outright abolishment of the law is unlikely as there are a “host of other conditions relating to the monarchy.” Nidhi Eowsiwong, “Min phraboromdechanuphap” Matichon sutsapda 13 Mesayon 2550, na 33. Also see David Streckfuss, “Is it time to reconsider the lèse-majesté law?” Bangkok Post 10 April 2007.

Somchai and Streckfuss, “Ramification and Re-Sacralization,” op. cit. It has been suggested by Midnight University that the Ministry of Justice take steps to restrict lèse-majesté cases to only those in which there is clear evidence, and not used so broadly, like in the case of someone not standing p in respect when the royal anthem is played before movies. See “Thalaengkan pokpaung rabop kotmai nai khadee minphraboromdechanuphap,” Mahawitthayalai thiengkhun 22 mesayon 2549. http://www.midnightuniv.org/midnightuniv/index300449.html.


The Nation, 8 October 2007. The exception might be Sulak Sivaraksa who has taken an increasingly aggressive demand for fuller democracy and a critical stance against the monarchy.

April 23, 2008. To indicate the particular sensitivity this case touches upon, it should be said that this account, written by Pravit Rojanaphruk, was deemed unfit for print by the Nation as “a higher authority” at the paper felt that publication “carries certain risks.” http://www.prachatai.com/english/news.php?id=610


