

## ABSTRACT

Thesis title : An Analysis of Thai Political Reform from a Legal Perspective

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A well-known Roman maxim, "UBI SOCIETAS IBI JUS" is rendered into English as "Where the State exists, there is the Law." In accordance with this maxim, there is another general legal principle of political sociology, i.e., social change is legal change. This principle is far-reaching, and even applies to the basic law of any nation, the constitutional law, which must conform itself to changes in society.

A major concern in the philosophy of law is how best to assure flexibility in legal systems, in order to allow such systems to accommodate social changes, particularly with regard to constitutional law, the supreme law of the land.

The principle of constitutionalism is a product of the latter period of Europe's Age of Enlightenment, during which the rule of law began to displace the rule of men, which rule was characterized by absolute power. The Age of Enlightenment followed the Renaissance, the flowering of Western intellectualism after the Dark and Middle Ages.

There are two basic principles of any free constitutional democracy :

- 1) The Rule of Law and the Principle of the Legal State
- 2) The Democratic Principle.

Accordingly such a state has two objectives, which are :

1) to devolve sufficient power to the state to protect the public interest efficiently, with order and stability ; and

2) simultaneously, to preserve civil liberties, assure freedom, and protect individual rights, without arbitrary interference from the government, and guaranteeing equal justice under the law.

Social and political change in Thailand is not new. Such change has occurred from the time of the Sukhothai, Ayuddhya, and Thonburi kingdoms, to the Rattanakosin period, and since the inauguration of the constitutional period to the present.

The phrase "political reform" has been widely used in Thailand since the reign of Great King Chulalongkorn, Rama V, whose restructuring of the government system was continued by his sons Rama VI and Rama VII. During these three reigns, power was gradually devolved to the people, while at the same time attention was given to the requisite education and training necessary to prepare the people for the responsibilities and duties that come along with power. It is noteworthy that this process was initiated by the absolute monarchy and not imposed externally.

Unfortunately, this far-sighted process was truncated, perhaps prematurely, by the B.E.2475 (1932 AD) revolution which established the constitutional monarchy.

Regardless of the period of reform, it is clear that the law is the primary instrumentality of change. The establishment or disestablishment of political institutions, their preservation and protection, must be done by law. This is especially evident in the area of public law, the highest of which is the basic law, constitutional law.

Since the B.E.2475 transition we have seen no fewer than fifteen distinct constitutions promulgated in Thailand in 65 years, along with numerous amendments made to these documents. Also, many other organic laws have been promulgated, revised, reversed, and amended. Still, all of this has so far failed to address fundamental political problems. This is particularly true regarding the problem of the improper use of money in politics and the role of "dark influences". Political power is still being monopolized by provincial "godfathers".

Another problem is the lack of independent government branches to check the power of the elected executive branch and the permanent bureaucracy.

A further concern is the lack of widespread public participation in democratic process.

The eight long-standing problems in Thai politics may be summarized as follows :

1. Vote-buying and the "politics of money".
2. Monopolization of political power by self-perpetuating, sometimes hereditary cliques.
3. Barriers to the entry into politics of independent, capable professionals.
4. Corruption in the bureaucracy.
5. Dictatorial practices by the executive branch and bureaucracy.
6. Perpetual partisan infighting between rival parties, which hobbles any elected administration's ability to govern effectively.
7. A general lack of professionalism within the executive branch.
8. A vacuum of leadership.

Therefore, real political reform must be viewed as an ongoing process, so that it might address problems within the entire system. Radical changes are required to redress the problems listed above, to ensure honesty among elected officials, and ease the entry of talented, public-spirited independents into politics.

In keeping with the rule of law, conforming with due process, and as required by legal methodologies and policy, the basic law must originate with the legislative branch. Obviously, in order to accomplish this, the legislative branch must possess a clear vision of what is required.

Some essential points about Thai political reform are:

1) Political reform must be holistic, not piecemeal. The entire system needs to be considered. Economic reform, educational reform, the re-engineering and revitalization of society, and moral and ethical reform must be incorporated.

2) A main goal of political reform is the honesty and integrity of officials.

3) Accordingly, the new constitutional law must be undertaken as a collective effort, and in light of the two points noted above. With this in mind we have adopted Article 211, and established the Constitutional Drafting Assembly.

4) While the reform process may be as radical as is required to achieve the desired effects, we must always remain within the essential framework of the constitutional monarchy, with the King as Head of State. However, the somewhat antiquated parliamentary system needs to be modernized, streamlined, and made more effective.

The entire process of political reform as described above should be initiated by the Constitutional Drafting Assembly, by their drafting an entire new basic law, and not limit themselves merely to the present scope of the constitutional draft. This should be carried out without interference from the upper or lower houses of Parliament. After all, radical change is required for these bodies as well.

It is earnestly hoped that the resulting constitution will be far superior to the previous fifteen, as we expect that the ninety-nine drafters, comprised of twenty-three academic experts and seventy-six others, from every corner of the Kingdom, will rise to the task.

In the course of this thesis the present writer has made extensive study of these problems, and has applied his own experience of Thai politics. By examining these problems and experiences in the light of philosophy of law, the principles of public law, constitutionalism, the rule of law, and the principle of the legal state, some conclusions may be summarized as follows:

Basic terms are being misused by the media and certain special interest group in an attempt to mislead the public. For example, "democracy" means many things to many people. Even communist states call themselves "democratic", and even rather undemocratic forces sometimes are labelled as "democracy movements".

Consider the word "constitution" which is on everyone's lips at present. Despite widespread use to the contrary, "constitution" and "constitutional law" are not synonymous. "Constitutional law" is far broader, incorporating as it does the customary and unwritten law and conventions, while "constitution" refers solely to the written provisions of the basic law.

Therefore in any discussion of political reform in Thailand, due weight must be given to constitutional law, so that we can rightfully incorporate our traditional basic Thai legal and social concepts which have been hallowed by centuries of national history. We may take the best of what foreign systems have to offer and then adapt them to the special needs and conditions that exist in Thailand.

Similarly, the phrase "political institutions" has been misapplied and used to misinform. Institutions arise over time from within a society. The structure of a foreign institution may not be simply grafted onto the body politic just as foreign organs may not simply be grafted into the human body without the risk of rejection. This is particularly true in the sphere of public law, where undue experimentation with structural changes in national institutions might have unforeseen consequences for Thailand's international relations; and such changes would be difficult to undo once laws have been promulgated.

The abstract theorizings of political scientists may be played out as intellectual exercises without harm, but if they are to be rendered into reality as the basic or organic law of a nation, they might have unforeseen and possibly negative consequences and implications, and thus need to be undertaken only after grave deliberation and with utmost caution.

Another phrase being deliberately misconstrued is "political system", often being used as a synonym for "political regime". "Political system" includes the entire national relations and connections, including international ones, whereas "political regime" simply means the administrative structure at any given time.

The process of political reform is a delicate one and must not be entered into lightly. The heritage and prestige of the Thai nation is of an order similar to that of the British people, and must not be altered or tampered with to fit one's whim or theory. Accordingly the first step in the political reform process should be to look inward rather than outward, to study our own history and culture, rather than facile attempts to ape the political processes of the French, the Scandinavians, or others.

Political reform must not be used as a partisan device or as a weapon to attack a political party, or parliament.

The reform process needs to be evaluated first and foremost from the vantage of national interest.

Along with the above-described thesis the writer proposes a framework for political reform in the concluding chapter.