

**THE 1991 CONSTITUTION
OF THAILAND**

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Occasional Paper #4

1993

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Acknowledgement

The author wishes to thank the staff of the library at Tilleke & Gibbins, Bangkok for their assistance in providing references to legislation in the Thai language. Any errors or omissions, however, are solely the responsibility of the author.

THE 1991 CONSTITUTION OF THAILAND

I. Introduction

Since the end of the absolute monarchy in 1932,¹ Thailand has been ruled in accordance with written constitutions. Including the current Constitution, promulgated in December 1991,² in the sixty years since 1932 there have been fifteen constitutions to which must be correlated thirteen successful military coups and eighteen elections.³ The relationship between constitutions, coups and elections has been described as the cycle of Thai politics; a military coup suspends the old constitution; a new constitution is enacted; elections are held; time passes until a perceived crisis leads to another military coup.⁴

In 1991-92 this cycle of Thai politics was again in action. In late February 1991, the Thai military seized power from the civilian government of Prime Minister Chatichai Choonhavan⁵ and suspended the 1978 Constitution.⁶ Although several pretexts were given by the military leaders for the coup, the alleged growing corruption of the Chatichai administration was paraded as the principal reason.⁷ The military take over met with little dismay in Thailand,⁸ particularly when the military leaders quickly promised a new constitution and elections,⁹ established an interim constitution,¹⁰ and selected Anand Panyarachun as Prime Minister.¹¹ The military coup did not follow the pattern of previous power usurpations, however, with there being no interference with political parties, the press, commerce or civil liberties.¹²

The new Constitution was brought into force in December 1991 and elections followed in March 1992.¹³ The Thai political cycle hit unexpected turbulence when the pro-military coalition which emerged as successful from the March elections turned to General Suchinda Kraprayoon, the principal coup leader, to become Prime Minister.¹⁴ Suchinda accepted the Prime Ministership, despite having unequivocally stated previously he would not do so, and proceeded to appoint a cabinet containing many of the same people he had earlier jettisoned from power.¹⁵ Demonstrations erupted in Bangkok and elsewhere in the country against Suchinda's ascent to the Prime Ministership and the clear intent of the military to retain political control, and in May 1992 the military moved to quell the protestors with force.¹⁶ The Thai reaction to the deaths and brutality was shock, embarrassment and outrage. The reverend monarch of Thailand, King Bhumibol Adulyadej, brought the violence to a dramatic end by simultaneously meeting with Suchinda and the main opposition figure, Chamlong Srimuang.¹⁷ Suchinda stepped down, and following another intervention by the Monarch, Anand again became Prime Minister until the elections of September 1992.¹⁸ The September election resulted in a different coalition gaining the most seats and Chuan Leekpai, leader of the coalition partner with the largest representation, became Prime Minister.¹⁹

Debate about the form and substance of a new constitution figured prominently in the 1991-92 political convulsions. During the drafting of the 1991 Constitution,²⁰ the central issue was the role that the military was going to play in the direct governing of the country.²¹ The debate centered on the authority of the appointed Senate vis-à-vis the elected House of Representatives,²² who would nominate the Prime Minister, and whether cabinet members would have to resign from government or military positions.²³ "(T)he military's attempt to dictate a constitution written in blatantly self-interested terms was thwarted by public opposition that threatened to spread out of control."²⁴ The final result, however, still largely favoured extensive military involvement in the governance of Thailand.²⁵ The principal constitutional debating point in the Spring of 1992 was whether the 1991 Constitution, which permitted a non-elected person to become prime minister,²⁶ should be amended to require the Prime Minister to come from the elected House of Representatives.²⁷ Such an amendment was approved following the bloodshed of May.²⁸

The intense, recent debate about the contents of the Constitution and the number of constitutions that litter the last six decades of Thai history are testaments to the importance given "documentary constitutionalism" in Thailand, by which is meant the acceptance that there should exist a single document expressing the formal law on the structures, principles and powers of government and the rights and duties of citizens.²⁹ Constitutions in Thailand, however, have not

normally provided neutral rules to regulate participation and competition among political groups, rather a constitution has been a major tool in maintaining the power of those who write the constitution.³⁰ Most political commentators have accepted that the role of a constitution in Thailand has been to legitimate the authority exercised by the then-dominant political forces.³¹ As political forces shift, constitutions have been revoked and rewritten to reflect the new political balance. As one commentator has observed:

(A) new one [constitution] has been written and issued each time a shift in political dominance has taken place and with the primary purpose of protecting the new regime coming into power. Each ruling group has striven to consolidate its position and in so doing has changed the rules of the game and published a new constitution.³²

Given the blatant, manipulative purpose of past Thai constitutions, it is not surprising that Thai constitutions have been referred to as having no "soul".³³ By this is meant that the key actors have little regard for the spirit of Western-understood constitutional rule.³⁴ One insightful analysis suggests that achieving a Western style of constitutional rule in Thailand is inconsistent with Thailand's social values.³⁵ In particular, that the historic locus of power in Thai society is in its elites and not in the people as in Western-style constitutional systems.³⁶ Thai constitutions have been designed to facilitate the rule of elites and not to act as a constraint on rulers.³⁷ It is this constraint on rulers that can be viewed as the essence of constitutionalism³⁸ and has been seen as missing in Thailand. Hence, the constitutions of Thailand have been seen as primarily law-in-books or nominal and not law-in-action or normative.³⁹

Is the 1991 Constitution of Thailand different than its predecessors? The inability of the military coup leaders to force acceptance of a constitution perpetuating their involvement in the political process⁴⁰ is a clear indication that the 1991 Constitution is different than its predecessors. The Supreme Court of Thailand's unprecedented decision declaring as unconstitutional a government order (an order of the coup leaders)⁴¹ suggests a new attitude to constitutionalism. The revocation by the elected House of Representatives of a government decree perceived as interfering with judicial independence⁴² is further evidence of a new view on constitutionalism. Constitutional change is being discussed in Thailand concerning several of the key institutions and mechanisms of governance,⁴³ suggesting that substantial constitutional reform may only be beginning. Capitalism-driven, economic success has made Thailand of the 1990s an economically, socially and politically different country than Thailand of the 1970s,⁴⁴ thus requiring a different approach to constitutional issues than previously. Taken together what has and is occurring evidences a break from the traditional approach to Thai constitutions and the creation of new constitutional traditions⁴⁵ and a more popularly acceptable constitutional framework. The purpose of this paper is to outline the principal contents of the 1991 Constitution focusing on the areas where recent controversy has existed, but it is first useful to comment briefly on the history of constitutions in Thailand and identify several key constitutional imperatives that exist irrespective of the written constitution.

II. A Brief Review of Thai Constitutional History

There is a rich constitutional history in Thailand encompassing the fifteen documents of the last sixty years and, prior to that, the words and actions of the forward-looking monarchs of the late 1800s and early 1900s. This history has been described by others.⁴⁶ From this rich history it is clear that power has only infrequently changed hands pursuant to the dictates of a written constitution. More frequently power has changed hands through extra-constitutional means, the coup d'etat⁴⁷ This cycle of Thai politics has already been noted.⁴⁸ The principal reason new constitutions were brought into existence was to legitimate the current power-holders, inevitably military authorities.⁴⁹ As has been observed, however: "It is debatable whether the military really needs a Constitution to provide it with legitimacy to rule",⁵⁰ and yet, new constitutions are regularly created.

The continual re-creation of written constitutions is in part a product of the 1932 overthrow of the absolute monarchy and its promised replacement with constitutional, democratic government.⁵¹ Having usurped power to establish constitutional rule, the military has usually seen it as necessary to create a constitution-based government.⁵² The number

of constitutions and the emphasis put on them, has created its own momentum for a new constitution when an old one is suspended. Moreover, a constitutional document which contains elements familiar to foreign interests can assist a new government in obtaining international, and even national acceptance. This aspect of constitution-making, not unique to Thailand,⁵³ is a familiar one in Thailand where much of the modern legal system is viewed by some as having been devised in order to appease, if not please, foreign interests.⁵⁴ For all the above reasons, written constitutions have been an integral part of Thai political and legal history.

Thailand's constitutional history took a dramatic turn in 1973 when for the first time there was a popularly-supported replacement of a military government by a civilian government.⁵⁵ Despite the reassertion of military power in 1976,⁵⁶ the consequence of 1973 has been that the military has no longer been able to make the Thai public accept a constitution nakedly designed to assure the military dominant power and to restrict participation of other social forces.⁵⁷ This is clear from the 1978 Constitution which deliberately set out to create power-sharing among competing forces⁵⁸ and the failure of the attempt made by the military in 1991 to create a constitution exclusively to their liking.⁵⁹ The political aspects of the written constitutions of Thailand are increasingly subject to pressures outside the control of the dominant political force. This is the major shift that has taken place in sixty years of Thai constitutional history.

Given the transitory nature of Thai constitutional documents, it is reasonable to suggest that there exists a number of constitutional imperatives explicitly or implicitly existing within Thailand that are as important, or even more important, than the written constitutions.⁶⁰ By their very nature, constitutional imperatives are breakable and not legally enforceable. Their authority is derived from the willingness of the population and power-holders to accept and abide by them.

The primary constitutional imperative in Thailand is the unquestioned position of the current Monarch, King Bhumibol, as the Head of State.⁶¹ This is regularly affirmed in the written constitutions.⁶² However, the King's authority goes beyond the ceremonial role of a constitutional monarch and the role assigned the Monarch by the formal constitution.

It has been overwhelmingly accepted, especially since 1973, that the king remains the final arbiter of a national crisis. The social stability of Thailand, despite its periodic coups d'état, can be explained by the existence and positive role of the monarchy.⁶³

The King's authority is evidenced by the fact that His approval was sought for the 1991 Interim Constitution⁶⁴ and the acceptance by the major protagonists of His intervention in the Spring of 1992.⁶⁵ The full extent of the King's authority is unclear, but His constitutional position of representing the interests of the general Thai population is increasingly accepted. King Bhumibol is clearly one of the pillars of the Thai constitution, irrespective of the content of the written constitution.⁶⁶

A second constitutional imperative concerns the relationship between the governing and the governed and directs that the dominant political force will not exercise its authority to unduly repress the freedoms of the Thai people. Historically, there is little experience in Thailand of wide-scale social, economic, religious or political repression⁶⁷ even in times of dictatorial, military rule.⁶⁸

It should be pointed out that Thai authoritarianism is not very repressive. Authoritarian regimes that attempted to be too repressive usually met with strong opposition from various sections of society.

The existence of countervailing forces such as an independent judiciary, a free press, and some favourable social conditions such as relatively little class antagonism or ethnic or religious cleavage, are necessary but not sufficient conditions for a viable democracy in Thailand. These conditions do serve as important factors in preventing an authoritarian regime from becoming extreme in its rule.⁶⁹

While Thais respect political power,⁷⁰ they do not value political power exercised indiscriminately as this would be both inconsistent with the patron-client heritage in Thai society and with socio-cultural norms regarding individualism in Thai society. The patron-client heritage directs that while clients will respect and obey a patron, the patron will not make unreasonable demands on the client and will assist the client materially or otherwise.⁷¹ The powerful (patron) will only

receive respect, status and obedience where the power exercised is not unreasonable or arbitrary. Moreover, one of the most prevalent socio-cultural norms in Thailand is individualism and the tolerance that exists for non-conforming behaviour.⁷² Tied to this is the desire to avoid conflict situations.⁷³ Together these socio-cultural norms reinforce a tolerance for a degree of non-conformity and an unwillingness to accept interference with the Thai population's freedoms. Reasonable dissent, freedom of the press,⁷⁴ freedom of religion,⁷⁵ economic freedom and social freedoms, many of which existed to some degree prior to formal constitutional government,⁷⁶ have generally been respected irrespective of a written constitution and appear to be widely-accepted despite occasional violations. Political and labour freedoms have been less in evidence than the others.⁷⁷

While not a constitutional imperative, mention must be made of a constitutional practice which has existed because of the extra-constitutional means by which power has so frequently changed hands in Thailand. Courts and subsequent governments have accepted that regardless of the illegality of the acquisition of authority, once in an unquestioned position of power, legislative action taken by the usurping authority is legally effective.⁷⁸ This practice prevents having to re-enact laws made prior to a new constitution coming into force and, moreover, is a pragmatic recognition of political reality unencumbered by legal formalism. The 1991⁷⁹ Constitution in sections 222 and 223 specifically directs that laws, notifications and orders issued under the Interim Constitution are valid under the 1991 Constitution. To a constitutional purist, however, such a practice is recognition of the legitimacy of the illegal means of acquiring power and acceptance of might being right.

This pragmatic practice has been shaken by the March 1993 ruling of the Thai Supreme Court that an order issued by the National Peace-Keeping Council (the coup leaders) in February 1991 was inconsistent with Thai constitutional practices.⁸⁰ The Supreme Court did not strike down the offending law because of the illegality of the seizure of power, rather they found the law to be inconsistent with the relevant provisions of the 1991 Interim Constitution.⁸¹ The Supreme Court rejected the argument that Section 32 of the Interim Constitution, which provided that all orders of the National Peace-Keeping Council were legally valid, insulated the order from constitutional attack.⁸² The narrow basis of the Court's findings of unconstitutionality combined with the particular facts which gave the Supreme Court jurisdiction to examine the relevant order⁸³ and the uncertainty over the legality of the Supreme Court's jurisdiction to pronounce on the constitutionality of laws,⁸⁴ raises doubts whether the case can either be used to challenge other orders issued by the coup-makers⁸⁵ or has wider implications in Thai constitutional practices. The decision is either a bold step to undermining the legitimacy conferred upon coup-makers by Thai practices or an anomaly that will be ignored as being inconsistent with the pragmatism necessary to maintain a coherent legal system faced with abrupt, illegal changes of government.

III. Drafting the 1991 Constitution

In exploring national experiences in constitution-making, one authority noted the following "options as to arenas for constitutional drafting and enactment": the expert commission; parliamentary enactment; executive diplomacy; constituent assembly; popular initiative; and the popular referendum to legitimate the new or revised constitution.⁸⁶ The experience of Thailand in 1991 arguably involved the employment of an expert commission, parliamentary (a non-elected one) enactment, assent of the executive and, to a limited extent, popular opinion. The involvement of the commission, parliament and executive (the King) were set out in the 1991 Interim Constitution.⁸⁷ The participation of the general public was not provided for in the constitutional drafting process but arose spontaneously as a reaction to the direction the constitution was going in the formal process.

One of the tasks of the appointed National Legislative Assembly (NLA), established pursuant to the 1991 Interim Constitution, was the drafting of a new constitution.⁸⁸ The NLA was to appoint a twenty person committee charged with the task of developing a constitution to be considered by the NLA.⁸⁹ The NLA was to consider the work of the Drafting Committee in three readings with the final reading requiring a roll call vote and a two-thirds vote in favour for the constitution to be adopted.⁹⁰ When the constitution received the necessary approval, it was to be presented to the King

for signature before its promulgation as the new Constitution.⁹¹ If the NLA was unable to approve the constitutional proposal in third reading, the NLA was to try and draft a new constitution that would obtain sufficient support.⁹² If the NLA was unable on its second try to get a two-thirds vote in favour of a constitution, the NLA was to be terminated and the cabinet and National Peace-Keeping Council⁹³ were to sit jointly to complete, revise or redraft the constitution and submit it to the King.⁹⁴ While the above process was followed, there were a few unexpected twists along the way.

A month after the February 1991 coup, 292 people were appointed to the NLA by the King following the advice of the National Peace-Keeping Council.⁹⁵ Over half were serving or former military personnel and of the civilians "there were few figures likely to stand in the way of the military".⁹⁶ The 20 person Drafting Committee started work in May and presented the product of its labours to the NLA in August.⁹⁷ The NLA overwhelmingly supported the proposed constitution at first reading in late August, however, they departed from the process set out in the Interim Constitution by establishing a twenty-five person Scrutiny Committee to review the proposed constitution.⁹⁸ The Scrutiny Committee, announcing completion of its work in Mid-November, recommended revisions of several key aspects of the proposed constitution.⁹⁹ In response to the work of the Scrutiny Committee and while the NLA passed the constitution through the second reading, the public became directly involved in the process, staging massive protests against the proposed constitution.¹⁰⁰ The key points were the ability of government and military officials to be in the cabinet and the authority of the appointed-Senate to have an equal voice with the elected House of Representatives in nominating the Prime Minister and voting to replace a sitting government.¹⁰¹ The Scrutiny Committee withdrew several of their amendments and the NLA hastily made further changes in the face of the criticism.¹⁰² In another unexpected move, King Bhumipol called for compromise stating that if the draft constitution proved unacceptable in practice it could be amended.¹⁰³ Following this intervention, the proposed constitution passed third and final reading by the NLA and the King approved it as the new Constitution of Thailand.

IV. The 1991 Thai Constitution

With Thailand's extensive experience with written constitutions, it is not surprising that the 1991 model has striking facial similarities to its predecessors. The Chair of the Constitutional Drafting Committee stated that they used the 1978 Constitution as the basis for deliberations.¹⁰⁴ The 1991 and 1978 constitutions are similarly structured with eleven chapters and a set of transitory provisions; the title and arrangements of the chapters are virtually the same; and a large percentage of the provisions of the 1978 document have been incorporated with minimal change into the 1991 Constitution.

One difference between the 1978 and 1991 documents is in chapter eleven, Amending the Constitution. Amending the 1978 Thai Constitution involved the passage of the revisions by a majority vote of the Senate and House of Representatives sitting in joint session.¹⁰⁵ This has been retained in the 1991 Constitution.¹⁰⁶ The new wrinkle in the amending process in the 1991 Constitution is that not only can the Council of Ministers or one-third of the members of the House of Representatives commence the process, as was the case in the 1978 Constitution,¹⁰⁷ but one-third of the full membership of the House of Representatives and Senate can start the process.¹⁰⁸ This gives the Senate a possible avenue for commencing constitutional change which did not previously exist.¹⁰⁹ Despite the apparent ease of operation of the amending process under the 1978 Constitution, only two amendments were made to the 1978 Constitution.¹¹⁰ Within a few months of completion of the 1991 Constitution, following the bloodshed and violence of May 1992, four constitutional amendments were quickly made in order to assist resolution of the unrest.¹¹¹

A. The Balance of Power: Ministers; Appointed Senate; Elected House

As between the American constitutional model of a strict division between the legislative and executive levels of government and the British model of the executive being drawn from and directly responsible to the legislature, the 1991 Thai Constitution follows its 1978 predecessor in siding with the British model, albeit with variations.¹¹² Pressure

had existed to adopt the full separation of powers approach, it being argued that if legislators could not be in the cabinet (Council of Ministers) that this would reduce vote-buying, a perceived prevalent practice in Thai elections.¹¹³ This view was considered but rejected¹¹⁴ in favour of the system now in the 1991 Constitution that ministers can be, but are not required to be, from the elected House of Representatives and that the ministers are responsible to the Parliament (House of Representatives and Senate).

The executive level of government in Thailand, the Council of Ministers set out in chapter seven of the 1991 Constitution, is the most powerful of the traditional three levels of government - executive, legislative, judicial. Contributing to the power of the executive vis-à-vis the legislative branch has been the discontinuity of parliaments over the last decades.¹¹⁵

Although not required by the 1991 Constitution, an amendment made in 1992 following the silent coup by General Suchinda and subsequent disturbances, requires that the Prime Minister be a member of the elected House of Representatives.¹¹⁶ Other Ministers need not be members of the House of Representatives but, as with the case of the Prime Minister, a Minister is not to be a government (or military) official.¹¹⁷

The 1991 Constitution calls for the appointment by the King of 270 Senators, three-quarters the number of elected members of the House Representatives, without the qualification they not be a government or military official.¹¹⁸ Although section 94 does not indicate who is to advise the King on Senate appointments, this is the Prime Minister's function.¹¹⁹ However, the first group of Senators to be appointed under the 1991 Constitution were appointed pursuant to section 217, part of the Transition chapter, which directs that the King is to be advised on these selections by the President of the National Peace-Keeping Council.¹²⁰ These Senators are to be in office for four years before the Senate-appointment provisions of the 1991 Constitution become operational.¹²¹ Pursuant to the Constitution, on the March 1992 election day, 270 Senators were appointed by the King.¹²² Of the 270 Senators, 154 were military or police officers and 116 civilians. The number of civilians in the Senate is greater than in the pre-coup Senate (116 to 105) and only 51 people retained their Senate positions. Of the civilians, Thailand's economic elite is well-represented.¹²³ Only seven women were appointed.

An indication of the extent of constitutional reform being contemplated in Thailand is the consideration being given the elimination of the Senate by the House Constitutional Amendments Committee.¹²⁴ At a minimum, the Committee is considering recommending a reduction in the size of the Senate and alteration of whom and how Senators are appointed.¹²⁵ The Senate could not directly block the adoption of such an amendment since a constitutional amendment requires a majority vote of the Senate (270 members) and House of Representatives (360 members) sitting together.¹²⁶

The 1991 Constitution directs that the elected House of Representatives is to have 360 members.¹²⁷ The creation of election areas or constituencies is to be by province with the total Thai population divided by 360 and the provinces assigned the number of representatives their population dictates,¹²⁸ with each province entitled to at least one representative.¹²⁹ Where the population of a province entitles it to more than three representatives, the province shall be divided so that an election area or constituency has a maximum of three representatives.¹³⁰ Thus, except in sparsely populated areas, there are no single member constituencies. A voter is to directly elect representatives by secret ballot.¹³¹ At one stage in the drafting of the 1991 Constitution, direct voting for candidates was to have been replaced with party slate voting, where the voter would choose parties rather than individuals. The party slate voting system, adopted by the Constitutional Scrutiny Committee, was quickly withdrawn following massive criticism.¹³²

Candidates for the House of Representatives must not be military or government officials and must be members of a political party which has at least 120 candidates in the election.¹³³ Hence there is no such thing as an independent candidate or small, regional parties. It has been noted that:

The idea that only a few large parties can finance their elections, thus automatically eliminating small parties which could become a destabilizing force in parliament, also has the unintended effect of making

money a very important factor in electoral and party politics, and of strengthening the position of businessmen - politicians who are the sponsors of leaders of the parties.¹³⁴

The key to the balance between the legislative and executive levels of government, as well as between the elected House of Representatives and the non-elected Senate is the ability to use and control non-confidence motions.¹³⁵ An individual minister or the entire Council of Ministers must step aside if a non-confidence motion is approved.¹³⁶ Following an amendment made to the 1991 Constitution in June 1992, the non-confidence apparatus is totally within the hands of the elected House of Representatives. What the June 1992 amendment did was repeal a provision in the Transition chapter which allowed the Senate, for the first four years following the adoption of the 1991 Constitution, to participate in and vote on non-confidence motions.¹³⁷ Thus, as between the House of Representatives and Senate, the House is clearly the dominant body and it is to the elected House that the Council of Ministers are directly responsible.

B. The Legislative Process

The pre-eminence of the executive branch of government vis-à-vis the elected House of Representatives and the appointed Senate is constitutionally entrenched by the process that has been established for enacting bills into law.¹³⁸ Three categories of bills have been created: regular bills,¹³⁹ finance bills; and, as a subset of finance bills, budget bills.¹⁴⁰ The Constitution is clear that it is the function of the Council of Ministers to prepare bills and submit them to the House of Representatives.¹⁴¹ Bills may only originate in the House of Representatives where the political party of the bill's proponent has agreed to support it and there are twenty members of that political party in the House to certify their support.¹⁴² Moreover, if the proposed bill is a finance bill, the bill must be ratified by the Prime Minister.¹⁴³

The House of Representatives is to consider finance and regular bills and, if there is approval, the bill is sent to the Senate.¹⁴⁴ The Senate has sixty days in the case of regular bills or thirty days in the case of finance bills for deliberation.¹⁴⁵ If the Senate makes no determination on the bill by the end of the time period, the bill is deemed to have been approved by the Senate¹⁴⁶ and will become law when presented by the Prime Minister to and signed by the King.¹⁴⁷ Similarly, if the bill is approved by the Senate. Where a bill is rejected by the Senate, the bill is considered withheld, and is returned to the House of Representatives for reconsideration following a 180 day period.¹⁴⁸ If a withheld bill is a finance bill, it can be reconsidered by the House immediately.¹⁴⁹ If, upon reconsideration of a withheld bill, the bill is reaffirmed by the House of Representatives, Senate approval is dispensed with, and the bill is to be forwarded to the King for signature.¹⁵⁰ During the period that a bill is withheld, no bill having the same or similar contents is to be proposed.¹⁵¹ Where a bill is amended by the Senate and the amendment is approved by the House, the bill shall proceed for the King's signature.¹⁵² Where an amendment is not accepted, a joint commission of the House and Senate shall consider the bill, and propose a single bill to the House and Senate.¹⁵³ Again the bill is considered a withheld bill and subject to the same rules as noted above, including the requirement that only the House need approve the bill proposed by the Joint Commission.¹⁵⁴

Regarding budget bills, the House of Representatives has 90 days to dispose of the bill or it is considered to have been approved¹⁵⁵ and the Senate has fifteen days.¹⁵⁶ The House of Representatives has no ability to amend a budget bill being restricted to using non-binding motions regarding minor amendments.¹⁵⁷ Although the Constitution is not explicit on this point, a vote by the House of Representatives to reject a budget bill could be taken as non-confidence in the executive and lead to the resignation of all or some of the Council of Ministers. A negative vote by the Senate on a budget bill simply returns the bill to the House of Representatives and would not amount to a direct non-confidence vote.¹⁵⁸ Clearly concerning budget bills, and finance bills more generally, the executive level of government is little hindered by the elected and non-elected members of the Parliament.

As noted, all bills approved by Parliament are to be presented by the Prime Minister to the King for signature.¹⁵⁹ Where a bill remains unsigned by the King, the House of Representatives and Senate sitting in joint session shall

reconsider the bill and if a two-thirds vote of the joint

sitting approves, the bill shall be resubmitted to the King. If the King still does not sign the bill, after thirty days the Prime Minister shall publish the bill as a law.¹⁶⁰

Emergency or Executive Decrees and Royal Proclamations, which are to be enforced as acts, can be issued by the King upon advice of the Council of Ministers regarding tax and monetary matters¹⁶¹ and where there is an emergency requiring action to maintain national security, public safety, national economic well-being or to avert public disasters.¹⁶² In the latter case, an Emergency or Executive Decree is only to be used when the Council of Ministers has considered the emergency situation unavoidable.¹⁶³ This paragraph is not found in the relevant provision in the 1978 Constitution, section 157. The inclusion of the direct reference to the Council of Ministers having to consider there to be an unavoidable emergency appears to raise the threshold of when an Emergency Decree can be issued and appears to be designed to confine use of the Decrees to true emergencies and not just for executive convenience.

All Emergency or Executive Decrees and Royal Proclamations must be considered by Parliament at the first opportunity and either formally accepted as laws or rejected.¹⁶⁴ The Transition provisions of the 1991 Constitution indicated that during the first four years acceptance or rejection of Emergency or Executive Decrees was to be based on approval of the House of Representatives and Senate sitting together.¹⁶⁵ One of the June 1992 Constitutional Amendments removed this requirement.¹⁶⁶ In the case of an Emergency Decree rejected by the House of Representatives, the Decree ceases to have the force of law, although this does not affect the legality of any action taken while the Decree was in effect.¹⁶⁷ The operation of this provision came under scrutiny in the aftermath of the May 1992 crackdown. By Emergency Decree, an amnesty was granted to all those involved in the bloodshed including those who ordered the use of force.¹⁶⁸ Although the House of Representatives overwhelmingly rejected acceptance of the amnesty decree,¹⁶⁹ the amnesty granted by the decree is considered to still be valid.¹⁷⁰

As well as legislation that is enacted through the above processes, the 1991 Constitution reserves to the King the authority to issue Royal Decrees.¹⁷¹ These are not subject to parliamentary approval and have an equal standing to legislation passed by parliament. The only qualification imposed by the Constitution is that Royal Decrees are not to be contradictory to existing laws.¹⁷² Presumably, if such a contradiction exists, the Royal Decree would be inoperative to the extent of the contradiction. Royal Decrees are issued by the King upon the advice of the

Council of Ministers, although this is not explicit in the Constitution.¹⁷³ Again, the executive level of government clearly has the upper hand in its relationship with the Parliament.

C. Judiciary

The independence of the Thai judiciary can be considered as another constitutional imperative in Thailand, as well as being provided for in the 1991 Constitution. By tradition, the Thai King was the final arbitrator of disputes and the Courts inherited both the role of decision-maker and the prestige of being an agent of the Monarch.¹⁷⁴ In 1908 the court structure was established in its current form with the adoption of a professional judiciary and, more importantly, an independence from political and bureaucratic interference.¹⁷⁵ As one commentator has noted, despite political change in this Century, "the centralized judicial system emerged intact from the political mold in which it was formed, with a permanent shape and legitimacy of its own."¹⁷⁶ This legitimacy and independence of the judiciary has been credited by one commentator as being a factor in assuring that authoritarian leaders in Thailand have not exercised their power in an unduly repressive manner.¹⁷⁷ In the past, interference with the independence of the judiciary, even during periods of military rule, led to wide-scale protests and ultimate removal of the offending measure.¹⁷⁸

The principal mechanism for maintaining the arms-length relationship between the judiciary and executive levels of government has been the Judicial Service Commission. The Judicial Service Commission is constitutionally charged with the responsibility for appointing, promoting, penalizing, and dismissing judges.¹⁷⁹ The Judicial Service Commission has twelve members, four elected by senior judges, four elected by retired judges, and four ex-officio members including the President of the Supreme Court who assumes the Chair.¹⁸⁰ The 1991 Constitution further protects judicial independence by: preventing political officials from being judges;¹⁸¹ prohibiting the establishment of special courts to replace existing courts to hear specific cases;¹⁸² prohibiting the enactment of a law to deprive a court of its jurisdiction for any specific case;¹⁸³ and explicitly stating that judges shall be independent in deliberating on cases.¹⁸⁴

In a move designed to quell intense factional fighting within the Thai judiciary which had led to questionable actions against senior judges of one faction by the Judicial Services Commission dominated by the other faction,¹⁸⁵ the government of Prime Minister Anand issued an Executive Decree in September 1992 abolishing the 12-member Commission and replacing it with a 28-member panel which would include only six elected members.¹⁸⁶ The Executive Decree was criticized as an assault on the independence of the judiciary and questioned because it was issued by a caretaker government on the eve of the September 1992 election.¹⁸⁷ When the Executive Decree was presented to the House of Representatives as required by the Constitution,¹⁸⁸ the House voted against adoption with the result that a 12-member Judicial Services Commission was reconstituted.¹⁸⁹ While the internal squabbles were bringing discredit to the Thai judiciary, the manoeuvre by the executive level of government was seen as a possible assault on the independence of the Thai judiciary. Both the Justice Ministry and the Special House Committee on Judiciary Affairs are looking at possible changes to the Judicial Service Commission to make it more open and to lessen the capacity for factionalism.¹⁹⁰

While the 1991 Thai Constitution reaffirms the constitutional imperative of judicial independence, the 1991 Constitution also reaffirms the disability of the courts to pronounce on the constitutionality of government measures.¹⁹¹ In short, Thai courts do not have the authority to judicially review the constitutionality of government action. In the past it has been only on the rarest of occasions that a Thai court has used the law or the constitution to restrain actions taken by the government.¹⁹² However, in a potential landmark decision in March 1993, the Thai Supreme Court found as unconstitutional an order issued by the coup leaders.¹⁹³ The Supreme Court based their jurisdiction to constitutionally review the measure on "general legal principles under which the courts have the authority to decide if any particular laws are constitutional or not in relation to cases under deliberation."¹⁹⁴ The 1991 Constitution was determined not to be applicable to the decision.¹⁹⁵ Under the 1991 Constitution the avenue that exists for the review of the constitutionality of a government measure is the Constitutional Judicial Council, better known as the Constitutional Tribunal.¹⁹⁶

D. The Constitutional Tribunal

The Constitutional Tribunal, as established by the 1991 Constitution has ten members: the President of the Parliament (the Speaker of the House of Representatives);¹⁹⁷ President of the Senate; President of the Dika Court (the Supreme Court of Thailand); the Chief of the Department of Public Prosecutions;¹⁹⁸ and six appointed persons, three appointed by the House of Representatives and three appointed by the Senate.¹⁹⁹ The six appointees are to be qualified in jurisprudence or political science, are not to be members of Parliament or government (military) officials, and are to hold their position for four years.²⁰⁰ The composition of the Tribunal indicates its political, rather than legal, function.

Under the 1991 Constitution, when the constitutionality of a government measure is raised the court is to suspend the case and refer the constitutional issue to the Constitutional Tribunal for decision.²⁰¹ The Constitutional Tribunal can also be requested to review the constitutionality of a bill by the Prime Minister²⁰² or by the House of Representatives or Senate, if one-fifth of the members of the two houses request review of a bill.²⁰³ As well, the Constitutional Tribunal can be requested to interpret the Constitution by the Council of Ministers or pursuant to a resolution of either the House of Representatives or Senate.²⁰⁴ The final explicit constitutionality function that the Constitutional Tribunal can be asked to perform is to determine whether a regulation regarding the conducting of business in either the House of Representatives or Senate is consistent with the Constitution.²⁰⁵

The Constitutional Tribunal has other tasks assigned to it by the 1991 Constitution which do not, strictly speaking, involve determination of the constitutionality of a measure. For example, where a question arises regarding one court's jurisdiction to deal with a matter as against another court, the issue is to be referred to the Constitutional Tribunal.²⁰⁶ As previously noted, if there is uncertainty whether a newly-introduced bill is similar to a withheld bill, the question is to be referred to the Constitutional Tribunal.²⁰⁷ The Constitutional Tribunal can be requested to examine whether a member of either the Senate or House of Representatives is to be removed because the requirements for termination of the member's position have been met.²⁰⁸ This provision has been adopted from the 1978 Constitution²⁰⁹ with one interesting additional element. Membership in the House of Representatives can be terminated by the Constitutional Tribunal if there is reliable evidence that the member was elected through corruption.²¹⁰ The purpose of this new provision is to eliminate the perceived, widespread vote-buying at elections.²¹¹ Finally, the Constitutional Tribunal can be requested by the Prime Minister to determine whether a cabinet minister has fulfilled the conditions for termination, the most important being that a Minister is in a conflict of interest position regarding their portfolio.²¹² This is a new provision in the 1991 Constitution and is designed to deal with potential executive level conflict of interest situations.

Reference has already been made to Emergency or Executive Decrees that can be issued where there is an emergency requiring action to be taken to maintain national security, public safety, national economic well-being or to avert public disasters.²¹³ The 1991 Constitution, in a departure from its 1978 predecessor, provides an opportunity for the Constitutional Tribunal to examine whether a Decree issued as an Emergency Decree in fact complies with the relevant Constitutional provisions.²¹⁴ The purpose of this new procedure appears to be to ensure that decrees are used for true emergencies and not used in order to temporarily avoid the elected House of Representatives.²¹⁵

One-fifth of the members of either the House of Representatives or the Senate can request that the Constitutional Tribunal examine an alleged Emergency Decree prior to the Decree being approved or disapproved by Parliament.²¹⁶ As previously noted, disapproval on an Emergency Decree by the House of Representatives does not affect the legal validity of the Decree from the time of its issuance to the time of disapproval.²¹⁷ However, if the Constitutional Tribunal decides that a decree is invalid, the decree is invalid ab initio.²¹⁸ A narrow reading of the relevant provisions suggests that all the Constitutional Tribunal can examine is whether a decree was issued for the specific purposes listed in Section 172(1) of the Constitution.²¹⁹ A decision that a decree does not comply with constitutional requirements for an Emergency Decree must be made by two-thirds of the members of the Constitutional Tribunal.²²⁰

The Constitutional Tribunal was requested by the House of Representatives to examine the Executive Decree which provided amnesty for those involved in the May 1992 incidents.²²¹ The first challenge to the Decree was that it was

not in keeping with the requirement that the Council of Ministers can only issue an Emergency Decree in an emergency because no emergency existed.²²² The Tribunal rejected this challenge. The Chair of the Tribunal reportedly explained that it was not open for anyone to challenge a decision of the Council of Ministers whether or not an emergency existed.²²³ The Tribunal was then requested by the House of Representatives to examine if the Amnesty Decree was issued in accordance with the relevant Constitutional provision (Section 172, paragraph 1) with the argument being that there did not exist a situation requiring the Decree to maintain national security, public safety or avert public disasters. The Constitutional Tribunal also rejected this challenge. The Chair of the panel reportedly explained that the Decree was issued following loss of life and that the situation was volatile thus it was determined that the issuing of the Decree was justified.²²⁴ Following rejection of the Amnesty Decree by the House of Representatives,²²⁵ the Constitutional Tribunal was requested by the Council of Ministers to determine whether the Constitution provided that the amnesty granted by the discredited Decree was still legally effective.²²⁶ The Tribunal ruled that despite the disapproval of the Amnesty Decree by the House of Representatives, according to the Constitution, the Decree was legally effective. The Constitutional Tribunal squarely faced the issues presented rather than hiding behind legal technicalities, such as lack of jurisdiction.²²⁷ In this regard, the Tribunal showed a pragmatism that may encourage future recourse in cases where the government is considered to have strayed from the Constitution. The outcome of the Constitutional Tribunal decisions, however, can be criticized since the result is that the Amnesty Decree remains valid which is contrary to justice and arguably creates disrespect for the Constitutional Tribunal and the Constitution more generally. These issues and the political impartiality of the Tribunal were brought into question following the Supreme Court's willingness to find that one of the orders issued by the coup leaders was unconstitutional.²²⁸ The legitimacy of the Constitutional Tribunal has been further undermined by the government's proposals to amend the 1991 Constitution and eliminate the Constitutional Tribunal thus leaving constitutional issues to be decided by the courts or possibly a constitutional court independent of the political process.²²⁹

E. The Citizenry: Rights; Responsibilities; and State Policy

Three chapters of the 1991 Constitution directly or indirectly relate to the citizens of Thailand. These are: chapter three, Rights and Freedoms of the Thai People; chapter four, Responsibilities of the Thai People; and chapter five, State Policy. The latter only indirectly deals with the Thai citizenry as it sets out guidelines for state action, but much of the contents of this chapter relates to citizens and like the other two chapters is hortatory.

Amongst other things, chapter five of the 1991 Constitution sets out that the state is to:

- maintain, promote and develop equality between the sexes;²³⁰
- maintain the environment and protect against pollution;²³¹
- provide social welfare and assist and provide social welfare to the aged and disabled;²³²
- protect labourers, especially women and children, and provide for fair wages;²³³
- promote standard public health and provide health assistance to the poor free of charge;²³⁴
- let farmers have possession of lands through land reform, allocation or other means;²³⁵
- preserve and maintain the arts and culture of the nation;²³⁶
- promote understanding of and belief in the kingship democratic system;²³⁷ and
- support the private sector to play its role in the economy.²³⁸

This Constitutional chapter is careful to include that none of the objectives contained in it give rise to a right to sue the state.²³⁹

Some of the responsibilities placed on the Thai people by chapter four of the 1991 Constitution are, the duty to:

- exercise the right to vote;²⁴⁰
- comply with the law;²⁴¹
- pay tax as prescribed by law,²⁴² and

conserve natural resources and the environment as prescribed by law.²⁴³

The constitutional rights of the Thai people are set out in chapter three²⁴⁴ and include most of the universally recognized rights, for example:

equality under and equal protection of the law;²⁴⁵
 freedom of religion;²⁴⁶
 presumption of innocence in criminal cases;²⁴⁷
 freedom from arbitrary arrest, detention or search;²⁴⁸
 freedom of speech, including freedom of the press;²⁴⁹
 freedom of assembly;²⁵⁰
 freedom of association;²⁵¹
 freedom of movement within Thailand;²⁵²
 the right to sue government officials;²⁵³
 the right of criminally accused indigents to legal aid;²⁵⁴
 the right to property;²⁵⁵ and
 the right to conduct business or engage in the occupation of choice.²⁵⁶

Many of the provisions recognizing these rights also severely limit the rights by indicating that the rights exist except where laws otherwise exist.²⁵⁷ One commentator has noted that: "To grant a right yet immediately qualify that its exercise must be 'in accordance with the provisions of the law' is to create ambiguity, leaving that 'right' subject to interpretations of transient governmental majorities."²⁵⁸ Moreover, section 49 of the 1991 Constitution provides a broad limitation on the use of the rights provisions of the Constitution.

Persons may not exercise the rights and freedoms as prescribed under this Chapter against the country, religion, the King, and the Constitution.

Finally, there is no direct avenue for judicial review on constitutionality questions except through the Constitutional Tribunal. Thus, it can be argued that there is no effective means for the enforcement of rights or, since the Constitutional Tribunal can only determine constitutionality of legislation, of obtaining a remedy.²⁵⁹ All of the above has been summarized by one authority as follows:

While, theoretically, the constitution is the highest law of the land, the constitution limits its own power by stating that citizens have political and civil liberties "except where laws otherwise so stipulate". Thus laws, executive decrees, etc. have precedence over constitutional rights and liberties. Such laws limiting rights and freedoms are framed in terms of national security, public order, public morality. Seldom, if ever, is a law challenged on the basis of unconstitutionality. Even if a constitutional issue were to be raised, it would not be decided by an independent judiciary but by a Constitutional Tribunal...²⁶⁰

V. Conclusion

Of the numerous questions that can be raised regarding the 1991 Thai Constitution, two seem to be of most importance: Does the Constitution matter in Thailand? and Will the 1991 Constitution survive?

The Constitution does matter in Thailand. Questions about the content and workings of the Constitution were prominent during the political crisis of 1991-1992. The Constitution was one means of defusing the tensions created by shifting power balances. Large demonstrations and vociferous criticism existed concerning certain aspects of the Constitution. All of this indicates that the Constitution does matter, but one is required to ask to whom it matters. In the past the military has shown a disregard for existing constitutions, although an intense interest in the next constitution. The functional level of government, the bureaucracy,²⁶¹ appears little constrained by any of the constitutions that have existed

in Thailand and the 1991 model continues this situation. Elected representatives must rely on the constitution for authority, but it is not unreasonable to question their commitment to any particular constitutional framework.²⁶² The educated elite and growing middle-class of Bangkok, supported by much of the Bangkok print media, appear increasingly committed to Thailand having bona fide constitutional government. However, outside Bangkok and amongst the vast majority of the population the constitution is foreign and of little concern.²⁶³ The courts in some countries view themselves as the protectors of the constitution; in Thailand, irrespective of the prestige and independence of the judiciary, in the past as now, it is only indirectly involved with the constitution. While the evidence indicates the constitution does matter in Thailand, it is not easy to identify precisely to whom it matters sufficiently for there to develop a strong sense that the written constitution should constrain or direct their actions.

This leads to the question whether the 1991 Constitution will survive. Most problematic is that transitions of power pursuant to a constitution have been rare. In 1988, Chatichai smoothly assumed power pursuant to elections and the 1978 Constitution. The 1991 coup has been described as "a shocking assault on the notion that Thailand had successfully institutionalized democratic and civilian government."²⁶⁴ It simply is too difficult to assess whether the 1991 Constitution could survive political turmoil, weak leadership, indecision, economic malaise, a reassertion of military bravado and prestige, a new monarch, or any of the other events that could transpire in the next decade.

Yet, it is difficult not to be optimistic about the 1991 Constitution and the attention being given constitutional reform. Thailand of the 1990s is not Thailand of the 1970s or earlier periods. There is unquestionable interest in constitutional government and in making operational written constitutional practices. One authority asserts that "constitutionalism is where national history, custom, religion, social values and assumptions about government meet positive law, economic force, and power politics."²⁶⁵ It is, therefore, not surprising that the future of the 1991 Constitution and constitutionalism in Thailand is less than clear.

Footnotes

1. Described in detail in BENJAMIN A. BATSON, *THE END OF THE ABSOLUTE MONARCHY IN SIAM* (1984).
2. CONSTITUTION OF THE KINGDOM OF THAILAND, 9 December 1991, ROYAL THAI GOVERNMENT GAZETTE, Vol. 108, Part 216 (in Thai), translated version by International Translations Office, Bangkok, hereinafter referred to as 1991 Constitution.
3. These numbers are drawn from Clark D. Neher, Political Succession in Thailand, 32 ASIAN SURVEY 585, at 586 (1992).
4. See, for example, Chai-anan Samudavanija, Thailand: A Stable Semi-democracy, in DEMOCRACY IN DEVELOPING COUNTRIES: ASIA 336 (L. Diamond, J.J. Linz and S.M. Lipset, eds. 1989, vol. III) and LIKHIT DHIRAVEGIN, DEMI-DEMOCRACY: THE EVOLUTION OF THE THAI POLITICAL SYSTEM 147 (1992).
5. The coup is described in Suchit Bunbongkarn, Thailand in 1991: Coping with Military Guardianship, 32 ASIAN SURVEY 131, at 131-133 (1992); Ananya Bhuchongkul, Thailand 1991: The Return of the Military, SOUTHEAST ASIAN AFFAIRS 1992 313, at 313-318; Neher, supra note 3, at 596-598; and see Rodney Tasker, Popular putsch, FAR E. ECON. REV., March 7, 1991, at 17-19 and Seventeenth Time Unlucky, THE ECONOMIST, March 2, 1991, at 33-34.
6. Constitution of the Kingdom of Thailand, 22 December 1978, ROYAL THAI GOVERNMENT GAZETTE, Vol. 95, Part 146 (in Thai), hereinafter referred to as the 1978 Constitution. The following had been said about the 1978 Constitution:

The longevity of this Constitution is quite remarkable, when considered against the background of turbulent Thai politics, and optimistic political observers believe it could succeed in laying a strong foundation for the establishment of a secure democratic leadership that might become institutionalized eventually.

Sombat Chantornvong and Montri Chenvidyakarn, Constitutional Rule and the Institutionalization of Leadership and Security in Thailand, in LEADERSHIP AND SECURITY IN SOUTHEAST ASIA 142 (Stephen Chee, ed. 1991).
7. The real concern of the military had to do with possible loss of power and authority to a civilian administration. See generally Bunbongkarn, supra note 5, at 132-133 and Neher, supra note 3, at 596-598 and 605.
8. One Thai observed that the coup "was viewed with ambivalence and at best it received a lukewarm response from the public". He goes on to note that the Chatichai administration was viewed as corrupt which was compounded by high-handed behaviour. DHIRAVEGIN, supra note 4, at 232. Another observer commented: "For the general public, the coup seemed acceptable". Bunbongkarn, supra note 5, at 132.
9. Bunbongkarn, supra note 5, at 133.
10. The 33 section, 1991 Interim Constitution became Thailand's fourteenth constitutional document since 1932. Constitution for the Kingdom of Thailand, BE 2534, 1 March 1991, ROYAL THAI GOVERNMENT GAZETTE, vol. 108, Parts 29, 37 and 40 (in Thai), translated version by International Translations Office, ROYAL THAI GOVERNMENT GAZETTE, Vol. 45, Nos. 1-3, hereinafter 1991 Interim Constitution. In this document, the National Peace-Keeping Council (the leaders of the military coup) could appoint and dismiss the prime minister and a National Legislative Assembly (NLA). The appointed NLA was to perform the legislative function and draft a new constitution. Section 6, para. 1 of the 1991 Interim Constitution.
11. Anand Panyarachun was known as a person of high integrity and not a tool of the military. His administration was very efficient, non-corrupt and on some issues successfully curtailed the will of the military. See Bunbongkarn, supra note 5, at 133-135; Neher, supra note 3, at 599; Rodney Tasker, Under licence, FAR E. ECON. REV., March 21, 1991, at 13-14; Vithoon Amorn, Military-installed Govt outperforms expectations, BANGKOK POST WEEKLY REV., September 20, 1991, at 19; and Paul Handley, Clearing the decks, FAR E. ECON. REV., December 19, 1991, at 20-21. A less flattering review of Anand and his period as Prime Minister is provided by David Peters, Paving the Way, MANAGER: THAILAND'S BUSINESS MONTHLY, June 1993, at 16-26.

12. Bhuchongkul, supra note 5, at 315.
13. Concerning the election, see Neher, supra note 3, at 566-601; SURIN MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS IN 1992 4-25 (1992); Surin Maisrikrod, Thailand 1992: Repression and Return of Democracy, SOUTHEAST ASIAN AFFAIRS 1992, at 327-329; and Picking Thailand's New Leaders, ASIAWEEK, April 3, 1992, at 25.
14. The first choice of the pro-military coalition for Prime Minister, Narong Wongwan, the leader of the party which obtained the most seats in the March 1992 election, proved to be an embarrassment because of suspected links to drug trafficking. It was following this that Suchinda was nominated for Prime Minister. See Neher, supra note 3, at 601; Maisrikrod, Thailand 1992, supra note 13, at 329-330; The Man who would be PM, ASIAWEEK, April 10, 1992, at 32; and Rodney Tasker, Premier of last resort, FAR E. ECON. REV., April 16, 1992, at 10-11.
15. Neher, supra note 3, at 601-602 and MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 24-25.
16. MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 26-39 and Maisrikrod, Thailand 1992, supra note 13, at 330-334 provides a compact review and analysis of the May events. See also Paul Handley, People's wrath, FAR E. ECON. REV., May 28, 1992, at 10-11; Paul Handley, An uneasy calm, FAR E. ECON. REV., May 21, 1992, at 10-11; Thailand, the generals and the king, THE ECONOMIST, May 23, 1992, at 35-36; Uneasy calm after King intervenes, BANGKOK POST WEEKLY REV., May 29, 1992, at 1-2; Thailand licks its wounds, THE ECONOMIST, May 30, 1992, at 33-34; Paul Handley, Counting the cost, FAR E. ECON. REV., June 4, 1992, at 10-11; and Paul Handley, Rainbow coalition, FAR E. ECON. REV., June 4, 1992, at 11-12. The death toll from the violence is uncertain. Fifty-two bodies were recovered but there is a discrepancy between 47 and 163 regarding the number of missing. Paul Handley, Still Missing, FAR E. ECON. REV., May 27, 1993, at 16. An analysis of Suchinda and the military's miscalculation regarding the use of force is provided by Neher, supra note 3, at 603-604.
17. MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 33; Neher, supra note 3, at 604; Maisrikrod, Thailand 1992, supra note 13, at 331 and 334; King gives advice to help end crisis, BANGKOK POST WEEKLY REV., May 29, 1992, at 20; and Cynthia Owens, Deliberate Actions of Thai Royal Family Follow Precedent Set During 1973 Crisis, ASIAN WALL STREET JOURNAL (Weekly), May 25, 1992, at 3.
18. Neher, supra note 3, at 604; Rodney Tasker, The ringmaster returns, FAR E. ECON. REV., June 25, 1992, at 8-9; and Anand appointed Premier, BANGKOK POST WEEKLY REV., June 19, 1992, at 1.
19. MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 40-49; Maisrikrod, Thailand 1992, supra note 13, at 336; Rodney Tasker, Services rendered, FAR E. ECON. REV., October 1, 1992, at 10-11 and see Rodney Tasker, Ascent of angels, FAR E. ECON. REV., September 24, 1992, at 12-13 and Rodney Tasker, Polishing the cabinet, FAR E. ECON. REV., October 8, 1992, at 16 and 18. Respecting the early months of the Chuan regime, see Maisrikrod, Thailand 1992, supra note 13, at 338-342.
20. Regarding the drafting of the 1991 Constitution, see the section below "Drafting the 1991 Constitution".
21. The struggle between military and civilian authority in Thailand is the theme of Chai-anan Samudavanija and Suchit Bunbongkarn, Thailand, in MILITARY-CIVILIAN RELATIONS IN SOUTH-EAST ASIA 78-117 (Zakaria Haji Ahmad and Harold Crouch, eds. 1985). They conclude at 114 that:

(T)he political supremacy of the military has been an outstanding feature in the modern Thai political system since 1932. An absence of strong participatory political institutions and a lack of legitimacy on the part of civilian regimes enable the politicized military to seize power and establish an authoritarian regime without much difficulty. Its organizational complexity and adaptability, prestige, wealth, and control of the mass media are important political resources for control over all other political institutions, including the cabinet, the National Assembly and, to a lesser extent, political parties.
22. It has been observed that: "The most important aspect of a Thai constitution is not the provision and protection of civil and political liberties, but the extent to which it allows the elected House of Representatives to participate in the political process". Samudavanija, supra note 4, at 321.
23. A review of the contentious constitutional issues that arose during the drafting of the 1991 Constitution is provided by Neher, supra note 3, at 598-599; Bunbongkarn, supra note 5, at 136-137; and Bhuchongkul, supra note 5, at 319-321.
24. Neher, supra note 3, at 599. See generally: Rodney Tasker, Tactical compromise, FAR E. ECON. REV., December

- 5, 1991, at 13; Rodney Tasker, General's charter, FAR E. ECON. REV., December 19, 1991, at 15-16; and Banyat Tasaneeeyavej, Powerful given lesson by charter protest, BANGKOK POST WEEKLY REV., December 20, 1991, at 8.
25. MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 20-21.
 26. Hence, Suchinda's ascent to the Prime Ministership was constitutionally proper.
 27. See Paul Handley, An uneasy calm, FAR E. ECON. REV., May 21, 1992, at 10-11; Party perfidy threatens uneasy protest truce, BANGKOK POST WEEKLY REV., May 22, 1992, at 1-2; and MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 30-31 and 34.
 28. Amendment of the Constitution of the Kingdom of Thailand No. 4, 10 September 1992, ROYAL THAI GOVERNMENT GAZETTE, Vol. 109, Part 95 (in Thai). See: Neher, supra note 3, at 604 and Amendments sail through 2 readings, BANGKOK POST WEEKLY REV., June 5, 1992, at 3. However, the amendment only came into force following the September 1992 election.
 29. Lawrence W. Beer, Introduction: Constitutionalism in Asia and the United States, in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 10-11 (Lawrence W. Beer, ed., 1992).
 30. Samudavanija, supra note 4, at 320.
 31. Samudavanija, supra note 4, at 321.
 32. MYA SA W SHIN, THE CONSTITUTIONS OF THAILAND 59 (1981).
 33. Chantornvong and Chenvidyakarn, supra note 6, at 144.
 34. Chantornvong and Chenvidyakarn, supra note 6, at 144. See also Kramol Tongdhamazhart, The Influence of the U.S. Constitution on the Thai Constitution, in THE U.S. CONSTITUTION AND THE CONSTITUTIONS OF ASIA (Kenneth W. Thompson, ed., 1988) where Thai and American constitutional attitudes are compared.
 35. Kanok Wongtrangan, Executive Power and Constitutionalism in Thailand, in CONSTITUTIONAL AND LEGAL SYSTEMS OF ASEAN COUNTRIES (Carmelo V. Sison, ed., 1990), at 309.
 36. Wongtrangan, supra note 35, at 290, 304, and 309-310. The primary Thai social value this author refers to is the existence within Thailand of a social structure reliant upon patron-client relationships. Id., at 289-290. See generally text below at notes 71-72. At 290 the author concludes:

History shows that the Thai monarchy existed uninterrupted for almost seven hundred years. Logically, values underlying the system of an absolute monarchy have been deep-rooted in the political and psycho-social thinking of the people. Present-day Thais, therefore, are inclined to accept ruling from above and expect the ruler to protect and assist them. This kind of thinking evidently indicates that the ruling power does not belong to the people (the inferior or the subordinate) but rather to the King or the elite (the superior).

Wongtrangan at 291-294 further suggests "that there exists a conflict between Thai constitutional content and its social context". Here he makes reference to the constitutional function assigned elected members of parliament to protect the public interest versus their social role as intervenor in the bureaucracy on behalf of constituents. The conflict is between the general role and the specific interests.

Finally, Wongtrangan postulates that there exists "the traditional belief that power cannot be divided". Id., at 290. He suggests that Thais are familiar with strong rulers and do not understand or accept the idea of division of power and consequent checks and balances of authority. Id., at 295 and 297. Reliance is placed on the personal qualities of the rulers in order to avoid abuse of power. See id., at 310 and also 293 where the author states: "(A)ccording to the patron-client value, they (Thais) tend to think that is the duty of a good ruler to perform services for the people of his own volition and the people have no right to demand such services."
 37. Samudavanija, supra note 4, at 321. Wongtrangan, supra note 35, at 296-301 indicates that little constraint is placed on the executive in the exercise of authority. See below sections 4.1 and 4.2.
 38. Beer, supra note 29, at 13-15.
 39. The distinction is drawn in EDWARD McWHINNEY, CONSTITUTION-MAKING: PRINCIPLES, PROCESS, PRACTICE 8-9 (1981).

40. See the section below entitled "Drafting the 1991 Constitution", particularly the text accompanying notes 95-103.
41. See Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4 and below the text accompanying notes 79-85.
42. See below the text accompanying notes 185-190.
43. Panel wants control on use of executive decrees, BANGKOK POST WEEKLY REV., November 27, 1992, at 1; New look at axing Senate, BANGKOK POST WEEKLY REV., February 12, 1993, at 4; and Battle shapes up over key Charter changes, BANGKOK POST WEEKLY REV., April 23, 1993, at 4.
44. See generally, for example, Kevin Hewison, Of Regimes, State and Pluralities: Thai Politics Enters the 1990s, in SOUTHEAST ASIA IN THE 1990s, 159-189 (Kevin Hewison, Richard Robison, and Gary Rodan, eds., 1993) and CLARK D. NEHER, SOUTHEAST ASIA IN THE NEW INTERNATIONAL ERA 23-54 (1991).
45. Beer, supra note 29, at 7 makes the point that it is only in the last few decades that autonomous development of constitutional systems has taken place in Asia with the result that "Modern constitutional traditions in Asia have just begun."
46. See, in particular, SHIN, supra note 32 and Preben A.F. Aakesson, Marut Bunnag and Rujira Bunnag, The Development of Constitutionalism in Thailand: Some Historical Considerations in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 656-706 (Lawrence W. Beer, ed., 1992). See also Samudavanija, supra note 4, at 305-317 and Chantornvong and Chenvidyakarn, supra note 6, at 144-156. Regarding the existence and content of constitutionalism during the period of the absolute monarchy, see Wongtrangan, supra note 35, at 287-289.
47. Commenting on the popularity and acceptance of coup d'etats in Thailand, DHIRAVEGIN, supra note 4, at 150, suggests that coups are a continuation of the traditional Thai political process where conflict over transfers of power were common. At 195 he suggests that coups are "sanctioned by Thai socio-religious values".
48. See text accompanying note 4.
49. Note above text accompanying notes 30-32.
50. Chantornvong and Chenvidyakarn, supra note 6, at 153. Traditional government legitimacy in Thailand arose from the ability of the government to perform state ceremonies; to maintain law and order; and to provide security from external threats. While to this may now be added support by the electorate, one commentator has indicated that "the legitimacy of government is still measured by its capacity to perform basic functions." DHIRAVEGIN, supra note 4, at 194-196.

Concerning the military generally in Thailand, Samudavanija and Bunbongkarn, supra note 21, at 111 have written:

The role of the military as the guardian of national institutions, traditions and virtue has elevated the military profession into a position of high prestige in Thai society.

See generally concerning the strength and acceptance of the military in Thailand, pp. 111-114.

51. Samudavanija and Bunbongkarn, supra note 21, at 79. This promise was never met. Samudavanija, supra note 4, at 307 notes: "it is ironical that soon after the success of the Westernized elites in their seizure of power from the monarchy [in 1932], constitutional idealism gradually eroded into formalistic constitutionalism".
52. Chantornvong and Chenvidyakarn, supra note 6, at 143.
53. McWHINNEY, supra note 39, at 22 comments that constitution-making in some countries may be "in the nature of a public relations exercise, designed in considerable measure to impress governments and public opinion in foreign countries".
54. Concerning the "modernization" of Thai law in the 1900's and the influence of non-Thais on this process, see: THAILAND OFFICIAL YEARBOOK - 1968, 254-258; M.B. HOOKER, A CONCISE LEGAL HISTORY OF SOUTH-EAST ASIA 183-185 (1978); Preedee Kasemsup, Reception of Law in Thailand - A Buddhist Society, in ASIAN INDIGENOUS LAW 267-299 (Masaji Chiba, ed. 1986); and generally APIRAT PETCHSIRI, EASTERN IMPORTATION OF WESTERN CRIMINAL LAW: THAILAND AS A CASE STUDY (1987). Petchsiri comments at 10:

Although no conclusive evidence is available to show why Thailand embraced the Western system, two major reasons emerge as apparent basic causes of this change. First, voluntary adoption preserved national autonomy and evaded colonial powers and their claims of extraterritorial jurisdiction. Second, Westernization would help Thailand reach developmental goals such as industrialization, national unification, and social welfare.

The former reason is inevitably given more weight than the latter reason.

55. See JOSEPH J. WRIGHT, Jr., *THE BALANCING ACT: A HISTORY OF MODERN THAILAND 197-211* (1991) and more generally on the 1973 revolution and the 1976 coup DAVID MORELL AND CHAI-ANAN SAMUDAVANIJA, *POLITICAL CONFLICT IN THAILAND: REFORM, REACTION AND REVOLUTION* and DHIRAVEGIN, supra note 4, at 173-208. All political and social histories of Thailand contain an extensive commentary on the events of 1973. See, for example, JOHN L.S. GIRLING, *THAILAND: SOCIETY AND POLITICS* (1981) and CHARLES F. KEYES, *THAILAND: BUDDHIST KINGDOM AS MODERN NATION-STATE* (1989).
56. See WRIGHT, supra note 55, at 243-261 and more generally the references in supra note 55.
57. Chantornvong and Chenvidyakarn, supra note 6, at 153 and Neher, supra note 3, at 592.
58. Note Chantornvong and Chenvidyakarn, supra note 6, at 156. DHIRAVEGIN, supra note 4, at 209 refers to the 1978 Constitution as having created "halfway democracy" as the Constitution sought to blend the newly emerged social forces with the entrenched civil and military bureaucrats. Commenting on the objectives of the 1978 Constitution, one of the participants in the drafting stated that there were two objectives: legitimizing military participation in the political process and regulating political structures to support democratic development. Tongdhamazhart, supra note 34, at 56.
59. See below the section "Drafting the 1991 Constitution".
60. While not referring to constitutional imperatives as such, SHIN, supra note 32, at 61 has commented:

[W]hile written constitutions may not be venerated in Thailand in themselves, this constitutional instability is in certain respects more apparent than real. Thailand, in addition to the written constitution which is in force at any given time, may be said also to have substantial structure of law and custom as the basis upon which the government rests.

Section 30, para. 1 of the 1991 Interim Constitution makes explicit reference to "constitutional practices of Thailand". Section 30, para. 1 reads: "Whenever no provision of this Constitution is applicable to any case, it shall be decided in accordance with the constitutional practices of Thailand under the democratic form of government".

These constitutional imperatives are not unlike constitutional conventions which exist in countries which derive their constitutional heritage from the United Kingdom. Concerning constitutional conventions, see generally GEOFFREY MARSHALL, *CONSTITUTIONAL CONVENTIONS: THE RULES AND FORMS OF POLITICAL ACCOUNTABILITY* (1986) and ANDREW HEARD, *CANADIAN CONSTITUTIONAL CONVENTIONS* (1991).
61. Not surprisingly following the 1932 overthrow of the absolute monarchy, the significance of the Royalty was minimized. During the regime of military strong-man Sarit Thanarat, the Kingship was revitalized as a way of establishing legitimacy for the military government. See Chantornvong and Chenvidyakarn, supra note 6, at 151 who conclude: "In the end the monarchy has come to exercise a much more important role in Thai politics than the military leaders originally had planned for." The espousal by the military of their close connection with the Monarch has given King Bhumibol a degree of leverage over the military.
62. See section 3 of the 1991 Constitution and more generally sections 6-23 (Chapter 2). The historic position of the Monarch vis-à-vis the Thai people and in the written constitutions is summarized in SHIN, supra note 32, at 16-30.
63. Samudavanija, supra note 4, at 337-338.
64. Note Rodney Tasker, *Post-coup worries*, FAR E. ECON. REV., March 14, 1991, at 13.
65. King Bhumibol's intervention in the Spring 1992 crisis has been referred to above at note 17.

66. The constitutional imperative associated with the Thai Monarch is related to King Bhumibol and not the institution of the Monarchy. Hence, a successor may not have anywhere near the same importance in Thai constitutional activity.
67. To this bold statement exist a number of exceptions with the most obvious being the position of women in Thai society. See generally Darunee Tantiwiranond and Shashi Pandey, The Status and Role of Thai Women in the Pre-Modern Period: A Historical and Cultural Perspective, 2 SOJOUR: SOCIAL ISSUES IN SOUTHEAST ASIA 125-149 (1987); VITIT MUNTARBHORN, WOMEN'S DEVELOPMENT IN THAILAND 43-61 (1985); and KOBKUN RA YANAKORN, WOMEN AND THE LAW IN THAILAND AND CANADA (1990).
68. The Sarit regime, from 1958-1963, was unquestionably one of absolute rule with little tolerance for political dissent. Yet, the regime did not exercise its authority totally arbitrarily and did seem to have as a goal the enhancing of the economic lives of the citizenry. Sarit was viewed as a benevolent patriarchal ruler and "was accepted by the general population". See DHIRAVEGIN, supra note 4, at 159-165.
69. Samudavanija, supra note 4, at 337.
70. DHIRAVEGIN, supra note 4, at 151 comments: "The exercise of power is seen as being more effective than going through a long process of bargaining." He goes on to note that: "Power is not used as an ultima ratio but as part of the process of getting things done." See also the commentary from Wongtrangan, supra note 35.
71. Concerning the patron-client explanation and experience in Thai society, see Akin Rabibhadana, Clientship and Class Structure in the Early Bangkok Period, 93-124 and Lucien Hanks, The Thai Social Order as Entourage and Circle, 197-228, in CHANGE AND PERSISTENCE IN THAI SOCIETY (G. William Skinner and A. Thomas Kirsch, eds. 1975); and Barend J. Terwiel, Formal Structure and Informal Rules: An Historical Perspective on Hierarchy, Bondage and the Patron-Client Relationship, in STRATEGIES AND STRUCTURES IN THAI SOCIETY 19-38 (Han ten Brummelhuis and Jeremy H. Kemp, eds., 1984). The patron-client or entourage explanation of Thai society is concisely presented in DAVID M. ENGEL, CODE AND CUSTOM IN A THAI PROVINCIAL COURT 69-73 (1978).
72. See John F. Embree, Thailand - A Loosely Structured Social System, 52 AMER. ANTHROPOLOGIST 3-15 (1950). ENGEL, supra note 71, at 69 comments:
- Most observers of traditional Thai society have been impressed with the relative weakness of organizational units that are prominent in other societies: caste, community groups, and even kinship. Individualism is mentioned again and again as an outstanding trait among Thai people...
- See also Han ten Brummelhuis, Abundance and Avoidance: An Interpretation of Thai Individualism, in Brummelhuis and Kemp, supra note 71, at 39-54.
73. One insightful observer has commented:
- The Thai cultural bias is to avoid conflict and social confrontation. Thus, conflict resolution often takes the form of arbitration and compromise and voluntary restitution of wrongs based on the wise counsel of elders, be they monks, headmen, spirit doctors, or respected family and clan heads.
- William J. Klausner, Law and Society, 3 CHULALONGKORN LAW REVIEW 1, at 7 (1984). Concerning mediation in legal disputes, see ENGEL, supra note 71, at 75-99.
74. It is generally acknowledged that Thailand has the freest print media in Southeast Asia. See generally Pira Chirasopone, Thailand in PRESS SYSTEMS IN ASEAN STATES 91-100 (Achal Mehra, ed. 1989). While the print media has been beyond direct government control for some time, the broadcast media has been directly government controlled. This is now in the process of being changed. See New television licences herald era of access, BANGKOK POST WEEKLY REV., August 7, 1992, at 3 and Cabinet agrees to overhaul broadcasting control body, BANGKOK POST WEEKLY REV., September 4, 1992, at 20.
- The attempt by the military to censor the print media in the Spring of 1992 was largely unsuccessful. MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 53-54 and 29 and Paul Handley, Press and pirates, FAR E. ECON. REV., June 11, 1992, at 10-11.
75. The state religion in Thailand is Buddhism with the government involved in the Sangha. See PETER A. JACKSON, BUDDHISM, LEGITIMATION, AND CONFLICT 63-93 (1989). For an interesting and provocative assessment of the relationship between the Thai state and Buddhism, see Jim Taylor, Buddhist Revitalization, Modernization,

and Social Change in Contemporary Thailand, 8 SOJOURN: SOCIAL ISSUES IN SOUTHEAST ASIA 62-91 (1993). However, acceptance of other religions has deep roots in Thailand and there exists a substantial Muslim population in Southern Thailand. See KEYES, supra note 55, at 126-135.

Within the state-supported Sangha, there have been issues of defrocking and ex-communication. See Cholthira Satyawadhna, The Defrocking of Phra Bodhiraksa: A Case Study of Human Rights Violations in Thailand, in HUMAN RIGHTS IN THE ASIA-PACIFIC REGION 75-91 (John Girling, ed. 1991). See also JACKSON, id., at 159-198. Generally concerning religious freedom in Thailand in its legal context, see Aakesson, Bunnag and Bunnag, supra note 46, at 674-675.

76. Concerning the abolition of slavery, right to a fair and speedy trial, right to legal aid, right to free speech, right to education, and the right of protection from the acts of corrupt officials, see Aakesson, Bunnag and Bunnag, supra note 46, at 670-679.
77. Labour unions have been a frequent target of military repression. Following the February 1991 coup, the military junta announced its intent to remove the legal recognition of state enterprise unions. Rodney Tasker, Ready and waiting, FAR E. ECON. REV., March 28, 1991, at 9. Reportedly, this move by the military junta was viewed with favour in Thailand. Despite promises by the civilian government to restore the union rights of state enterprise employees, there has been reticence and delay on this issue. See Gordon Fairclough, Back to work, FAR E. ECON. REV., November 5, 1992, at 21-22. See generally Kelly A. Doelman, Thailand's State Enterprise Labor Relations Act: Denying Public Employees the Right of Association and the Right to Organize and Bargain Collectively, 2 PACIFIC RIM LAW & POLICY JOURNAL 63-96 (1993).
78. Contemporary Thai jurisprudence has now recognized the legitimacy of the military mechanisms which have toppled previous lawful governments. According to the precedent established by the present Supreme Court of Thailand, the (military) leader of any coup d'état who successfully takes over power from the lawful government is deemed the supreme ruler of the government. Therefore, any decrees or commands issued by him during his rule are now regarded as of equal status to the lawful actions of the Parliament. In the past 50 years in Thailand there have been numerous successful coups and revolutions, yet all legislation enacted by means of revolutionary decrees are considered valid laws. There is no doubt that almost all of these decrees, etc. were enacted in contradiction to the ideology of human rights; none the less, in the context of the current Thai Constitution, all are regarded as valid, as integral parts of 'the provisions of the law's'.

Viboon Engkagul, Recognition of Human Rights Under Thai Laws, in ACCESS TO JUSTICE: THE STRUGGLE FOR HUMAN RIGHTS IN SOUTHEAST ASIA 99 (Harry M. Scoble and Laurie S. Wiseberg, eds., 1985).

79. Announcement of the National Peace-Keeping Council No. 26, re: Attachment and Freezing of Property, 25 February 1991, ROYAL THAI GOVERNMENT GAZETTE, Vol. 108, Part 34, Special Issue (in Thai) translated version by Bangkok Business and Secretarial Office Limited. The effect of this order was to freeze the assets of members of the civilian government whom it was felt had become unusually rich through corrupt practices. A seven member Property Examination Committee was established to evaluate whether property had been improperly acquired. See generally Bhuchongkul, supra note 5, at 321-322.
80. The details of the decision are discussed by Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4.
81. The Supreme Court determined that the Property Examination Committee established by NPKC Order No. 26, supra note 79, exercised a judicial function that was reserved by sections 3 and 29 of the Interim Constitution for the Courts and hence that the establishment and actions of the Property Examination Committee were unconstitutional. Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4.
82. About this aspect of the decision Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4 comment:

In fact, the Supreme Court in the past had upheld the legality of all orders issued by coupmakers and until last week, this line of traditional interpretation on constitutionality of such orders [section 32 of the Interim Constitution] had been prevailing.

83. NPKC Order No. 26, supra note 79, was amended in late 1991 to allow for a review of a finding of the Property Examination Committee by the entire Supreme Court of Thailand, thus by-passing the lower courts. The curious political circumstances of this amendment is noted by Bhuchongkul, supra note 5, at 322. In late 1991 and early

1992, the Property Examination Committee found that ten individuals had acquired assets in an improper manner. These individuals appealed to the Supreme Court to review and reverse the findings.

84. Article 206, para. 1 of the 1991 Constitution reserves to a Constitutional Tribunal the exclusive jurisdiction to pronounce on the constitutionality of government action. See below text accompanying footnotes 191-196 and the section "The Constitutional Tribunal". However, the 1991 Interim Constitution did not establish a Constitutional Tribunal. Article 31 left the question of constitutionality of law or action to be decided by the appointed National Legislative Assembly. The Thai Supreme Court decided that NPKC Order No. 26 had to be assessed pursuant to the 1991 Interim Constitution and that since by 1992 the appointed National Legislative Assembly no longer existed, the issue of constitutionality fell to be determined by the Supreme Court. Moreover,

(T)he Supreme Court judges referred to general legal principles under which the courts have the authority to decide if any particular laws are constitutional or not in relation to cases under deliberation.

Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4.

85. See Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4.
86. MCWHINNEY, supra note 39, at 27-41.
87. Sections 10 and 11 of the 1991 Interim Constitution.
88. Section 6, para. 1 of the 1991 Interim Constitution.
89. Section 19, para. 1 of the 1991 Interim Constitution. Members of the committee were not required to be members of the NLA. Section 10, para. 2 of the 1991 Interim Constitution.
90. Section 11, paras. 1 and 2 of the 1991 Interim Constitution.
91. Section 11, para. 3 of the 1991 Interim Constitution.
92. Section 12 of the 1991 Interim Constitution.
93. The National Peace-Keeping Council (NPKC), the February 1991 coup leaders, was established by section 18 of the 1991 Interim Constitution.
94. Section 13, para. 1 of the 1991 Interim Constitution.
95. This was pursuant to section 7, para. 1 of the 1991 Interim Constitution.
96. Rodney Tasker, Ready and waiting, FAR E. ECON. REV., March 28, 1991, at 8. The composition of the NLA met with criticism from political analysts, the media, and numerous politicians. Tasker, ibid., at 8 and Military dominates legislative assembly, BANGKOK POST WEEKLY REV., March 29, 1991, at 1.
97. For a review of the contents of the constitutional document completed by the Drafting Committee and some of the criticisms made of the document, see Banyat Tasaneeyavej, Charter draft attacked as political 'time bomb', BANGKOK POST WEEKLY REV., August 9, 1991, at 8. In the opinion of one observer, the Committee had "enjoyed an unexpected freedom in drafting as the NPKC refrained from imposing definite guidelines". Bunbongkarn, supra note 5, at 136.
98. Draft Constitution wins easy approval, BANGKOK POST WEEKLY REV., September 6, 1991, at 3.

The Scrutiny Committee was composed of eight senior military officers and other members known to have close connections with the National Peace-Keeping Council (NPKC). Sermasuk Kasitpradit, Power play on the charter chessboard, BANGKOK POST WEEKLY REV., September 13, 1991, at 8 and Rodney Tasker, The power game, FAR E. ECON. REV., September 19, 1991, at 12. Asked about the allegation of closeness of most of the members of the Scrutiny Committee and the NPKC, the chair is reported to have responded that he did not know what the NPKC was an abbreviation for! Constitutional review likely to take 3-6 months, BANGKOK POST WEEKLY REV., September 13, 1991, at 4.

99. The recommended revisions are noted in Bhuchongkul, supra note 5, at 319-320 and Panel unveils controversial draft charter, BANGKOK POST WEEKLY REV., November 22, 1991, at 1.

- Commenting on the revisions made by the Scrutiny Committee, an editorial, Democracy put back to a distant future, in the BANGKOK POST WEEKLY REV., November 22, 1991, at 8, stated: "(T)he revised draft charter has made the original draft drawn up by the NPKC-appointed Constitution Drafting Committee and criticized for containing some undemocratic provisions ... look like a liberal and democratic one".
100. Massive protest against draft charter, at 1 and Anti-charter rally attracts 50,000, at 20, BANGKOK POST WEEKLY REV., November 29, 1991, and Rodney Tasker, Tactical compromise, FAR E. ECON. REV., December 5, 1991, at 13. It was during these protests that General Suchinda announced that he would not accept the Prime Ministership under the new constitution.
 101. Massive protest against draft charter, BANGKOK POST WEEKLY REV., November 29, 1991, at 1; Bunbongkarn, supra note 5, at 137; and Bhuchongkul, supra note 5, at 320-321.
 102. Rodney Tasker, Tactical compromise, FAR E. ECON. REV., December 5, 1991, at 13; Charter crisis defused, BANGKOK POST WEEKLY REV., December 6, 1991, at 1; and see also Massive protest against draft charter, BANGKOK POST WEEKLY REV., November 29, 1991, at 1; Panel unveils controversial draft charter, BANGKOK POST WEEKLY REV., November 22, 1991, at 1; Bunbongkarn, supra note 5, at 136-137; and Bhuchongkul, supra note 5, at 320-321.
 103. The King calls for compromise on charter, BANGKOK POST WEEKLY REV., December 13, 1991, at 1; Rodney Tasker, General's charter, FAR E. ECON. REV., December 19, 1991, at 16 and Banyat Tasaneeyavej, Powerful given lesson by charter protest, BANGKOK POST WEEKLY REV., December 20, 1991, at 8.
 104. Charter not written with bias: Minister, BANGKOK POST WEEKLY REV., May 10, 1991, at 4.
 105. See section 194(2) - (6) of the 1978 Constitution. See also Tongdhamazhart, supra note 34, at 60.
 106. Section 211(2) - (6) of the 1991 Constitution.
 107. Section 194(1) of the 1978 Constitution.
 108. Section 211(1) of the 1991 Constitution.
 109. Assuming that the appointed Senate is military-dominated, the new proactive role in constitutional amendments can be criticized as being undemocratic and permitting the possibility of further constitutional manipulation. It can also be argued that the ability to institute constitutional change may work to allow adaption of the existing constitutional framework to new political realities without the necessity to suspend or revoke the 1991 Constitution.
 110. Amendment of the Constitution, 14 August 1985, ROYAL THAI GOVERNMENT GAZETTE, Vol. 102, Part 105 (in Thai) and Amendment of the Constitution (No. 2), 24 August 1989, ROYAL THAI GOVERNMENT GAZETTE, Vol. 106, Part 142 (in Thai). Noted in Banyat Tasaneeyavej, Charter draft attacked as political time bomb, BANGKOK POST WEEKLY REV., August 9, 1991, at 8. Several proposed amendments did not receive sufficient support. Chantornvong and Chenvidyakarn, supra note 6, at 162. The most spectacular failed constitutional amendment was the one proposed by the military in 1983 designed to continue the provision in the transition section of the 1978 Constitution, section 205, which allowed a person to simultaneously be a Minister and a government or military official. Noted in Chantornvong and Chenvidyakarn, supra note 6, at 161-162 and described in detail by Pisan Suriyamongkol, INSTITUTIONALIZATION OF DEMOCRATIC POLITICAL PROCESSES IN THAILAND 46-56 (1988).
 111. Amendment of the Constitution of the Kingdom of Thailand, Nos. 1-3, 29 June 1992, ROYAL THAI GOVERNMENT GAZETTE, Vol. 109, Part 72 (in Thai), translated version by International Translations Office, Bangkok and Amendment of the Constitution of the Kingdom of Thailand No. 4, supra note 28. See generally Neher, supra note 3, at 604; MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 34; and Amendments sail through 2 readings, BANGKOK POST WEEKLY REV., June 5, 1992, at 3.
 112. A brief discussion of the American model and the British model as viewed in Thailand can be found in Tongdhamazhart, supra note 34, at 56-58.
 113. NPKC insists on full separation of powers, BANGKOK POST WEEKLY REV., March 22, 1991, at 3 and MAISRIKROD, THAILAND'S TWO GENERAL ELECTIONS, supra note 13, at 22. The existence and prevalence of vote-buying and the attempts made in the 1992 elections to "clean-up" the election process is discussed in MAISRIKROD, id., at 50-53.
 114. See in particular the comments of former Parliamentary President Ukrit Mongkolnavin noted in Meechai: Power separation deserves widespread debate, BANGKOK POST WEEKLY REV., March 29, 1991, at 3. Numerous

- division of powers proposals were considered. See Nattaya Chetchotiros and Banyat Tasaneeeyavej, Constitution drafters aim to satisfy all sides, BANGKOK POST WEEKLY REV., May 31, 1991, at 8.
115. Samudavanija, supra note 4, at 325.
 116. Amendment of the Constitution of the Kingdom of Thailand No. 4, supra note 28.
 117. Section 162 of the 1991 Constitution. The restriction on a Minister from simultaneously being a military or government official was one of the significant tension points in the drafting of the Constitution. Pursuant to this provision, when General Suchinda became Prime Minister in April 1992 he resigned from the military. Rodney Tasker, Premier of last resort, FAR E. ECON. REV., April 16, 1992, at 10-11 and Gen Suchinda becomes PM, BANGKOK POST WEEKLY REV., April 17, 1992, at 1.
 118. Sections 94 and 97 of the Constitution.
 119. The issue of who would advise the King on Senate appointments was, not surprisingly, a controversial issue in the drafting of the 1991 Constitution. The Drafting Committee's original text created a nine-person Constitutional Committee charged with the task of nominating 1,350 senatorial candidates who would amongst themselves select the 270 senators. Banyat Tasaneeeyavej, Charter draft attacked as political 'time bomb', BANGKOK POST WEEKLY REV., August 9, 1991, at 8. The Scrutiny Committee scrapped the Constitutional Committee's proposal following heavy criticism. The Scrutiny Committee accepted that regarding Senate appointments the King was to be advised by the Prime Minister. Panel unveils controversial draft charter, BANGKOK POST WEEKLY REV., Nov. 22, 1991, at 1 and see Charter panel still undecided on many key issues, BANGKOK POST WEEKLY REV., November 8, 1991, at 3.
 120. The National Peace-Keeping Council is not explicitly recognized by the 1991 Constitution except in the Transition Provisions. Presumably its existence as a constitutionally-recognized entity, so recognized in Section 18 of the Interim Constitution, expired with the Interim Constitution. The Interim Constitution ceased to have effect when the new Council of Ministers took office following the March 1992 election. See section 216 of the 1991 Constitution.
 121. Section 217, para. 3 of the 1991 Constitution.
 122. Economic giants get some clout in 'traditional' Senate, BANGKOK POST WEEKLY REV., April 3, 1992, at 3.
 123. Economic giants get some clout in 'traditional' Senate, BANGKOK POST WEEKLY REV., April 3, 1992, at 3.
 124. New look at axing Senate, BANGKOK POST WEEKLY REV., February 12, 1993, at 4.
 125. New look at axing Senate, BANGKOK POST WEEKLY REV., February 12, 1993, at 4.
 126. Section 211 of the 1991 Constitution. See text accompanying notes 106-109.
 127. Section 99, para. 1 of the 1991 Constitution.
 128. Section 100, para. 1 of the 1991 Constitution.
 129. Section 100, para. 1 of the 1991 Constitution.
 130. Section 101, para. 1 of the 1991 Constitution.
 131. Section 102, para. 1 of the 1991 Constitution.
 132. The party slate voting system was strongly favoured by certain political parties and some vocal members of the military establishment since it was seen as favouring well-financed and high profile candidates. See Sermsuk Kasitipradit, Power play on the charter chessboard, BANGKOK POST WEEKLY REV., September 13, 1991, at 8 and Rodney Tasker, The power game, FAR E. ECON. REV., September 19, 1991, at 12.

The party slate voting system was rejected by the Drafting Committee because of the possible undue influence of big money. See Banyat Tasaneeeyavej, Senators to have more clout in new charter, BANGKOK POST WEEKLY REV., July 5, 1991, at 3 and Nattaya Chetchotiros and Banyat Tasaneeeyavej, Constitution drafters aim to satisfy all sides, BANGKOK POST WEEKLY REV., May 31, 1991, at 8. The Scrutiny Committee sought to incorporate the party slate voting system into the Constitution but almost immediately reversed itself. Panel unveils controversial draft charter, BANGKOK

POST WEEKLY REV., November 22, 1991, at 1.

The party slate voting system was initially in the 1978 Constitution but was removed and replaced by a direct voting system by Constitutional Amendment in 1985. Note Samudavanija, supra note 4, at 326.

133. See sections 105(3), 106 and 107(9) of the 1991 Constitution.
134. Chantornvong and Chenvidyakarn, supra note 6, at 158.
135. The term non-confidence is not specifically used in the translation of section 150 of the 1991 Constitution, although it is used in section 137 of the 1978 Constitution, the model for the 1991 provision.
136. Sections 168(1) and 169(5) of the 1991 Constitution.
137. Section 221 of the 1991 Constitution repealed by Amendment of the Constitution of the Kingdom of Thailand (No. 3), 29 June 1992, supra note 111.
138. In large measure, the relevant provisions of the 1991 Constitution, sections 87-89 and 137-146 follow the process established in the 1978 Constitution, sections 76-78 and 125-133.
139. Finance bills are bills not covered by section 146 of the 1991 Constitution (see infra notes 155-158) but which involve: establishing or changing taxes or duties; expenditure of state funds; establishment of an agency which results in increased government expenditure; borrowing; or the currency. Section 137, para. 3 of the 1991 Constitution. The determination of whether a bill is a finance bill is to be made by the Speaker of the House of Representatives. Section 137, para. 4 of the 1991 Constitution.
140. What have been labelled as budget bills are those listed in section 146 of the 1991 Constitution: the Annual Expenditure Budget Bill; the Bill on Additional Budget, and the Bill on Transfer of Expenditures.
141. Section 137, para. 1 of the 1991 Constitution.
142. Section 137, paras. 1 and 2 of the 1991 Constitution.
143. Section 137, para. 1 of the 1991 Constitution.
144. Section 140, para. 1 of the 1991 Constitution.
145. Section 140, para. 1 of the 1991 Constitution.
146. Section 140, para. 3 of the 1991 Constitution.
147. Section 88 of the 1991 Constitution.
148. Sections 141, para. 1 and 142, para. 1 of the 1991 Constitution.
149. Section 142, para. 2 of the 1991 Constitution.
150. Section 142, paras. 1 and 2 of the 1991 Constitution.
151. Section 143, para. 1 of the 1991 Constitution. If doubt arises whether a submitted bill is the same as or similar to a withheld bill, the President of the Senate or Speaker of the House of Representatives is to submit the bills to the Constitutional Judicial Council (Constitutional Tribunal) for a ruling. Section 143, para. 2 of the 1991 Constitution. The Constitutional Tribunal is described below in the section "The Constitutional Tribunal".
152. Section 141, para. 1(3) of the 1991 Constitution.
153. The size and composition of the Joint Commission is not set out in the 1991 Constitution. There is, however, no requirement for its members to be members of the House or Senate. Clearly, the task of the Joint Commission is to reconcile the versions of a bill supported by the House and Senate. Section 141(3) of the 1991 Constitution.
154. See sections 142 and 143 of the 1991 Constitution.
155. Section 146, para. 2 of the 1991 Constitution.
156. Section 146, para. 3 of the 1991 Constitution.

157. Section 146, para. 5 of the 1991 Constitution.
158. Section 146, para. 4 of the 1991 Constitution.
159. Section 88 of the 1991 Constitution.
160. Section 89 of the 1991 Constitution.
161. Section 174, para. 1 of the 1991 Constitution.
162. Section 172, para. 1 of the 1991 Constitution. Although described as Emergency Decrees in the Constitution, they are commonly referred to as Executive Decrees.
163. Section 172, para. 2 of the 1991 Constitution.
164. See section 172, paras. 3, 5, 6 and 7 of the 1991 Constitution.
165. Sections 219, para. 1(2) and 221 of the 1991 Constitution.
166. Amendment of the Constitution of the Kingdom of Thailand (No. 3), 29 June 1992 which repealed section 221 of the 1991 Constitution, supra note 111.
167. Section 172, para. 3 of the 1991 Constitution. Section 172, para. 4 indicates that in the case of a rejected executive decree the pre-existing law comes back into effect.
168. Emergency Decree on Amnesty For Offenders in the 17-20 May 1992 Incident, 23 May 1992, ROYAL THAI GOVERNMENT GAZETTE, Vol. 109, Part 63 (in Thai). Details of this Decree are noted in Tribunal discusses amnesty decree, BANGKOK POST WEEKLY REV., June 5, 1992, at 3.
169. Amnesty fears, FAR E. ECON. REV., October 22, 1992, at 14.
170. This was the finding of the Constitutional Judicial Council (Constitutional Tribunal) which was examining the constitutionality and legal effect of the Amnesty Decree. Tribunal rules in support of May amnesty, BANGKOK POST WEEKLY REV., November 20, 1992, at 3 and Paul Handley, Amnesty upheld, FAR E. ECON. REV., November 26, 1992, at 18. The work of the Constitutional Tribunal on this case and more generally is discussed below in the section "The Constitutional Tribunal".
171. Section 175 of the 1991 Constitution.
172. Section 175 of the 1991 Constitution.
173. Regarding Royal Decrees and the types and hierarchy of laws in Thailand, see MONTRI HONGSKRAILERS, COMMERCIAL, BUSINESS AND TRADE LAWS - THAILAND 8-11 (loose-leaf, booklet A.2, 1984).
174. A brief history of the judiciary in Thailand can be found in THAILAND OFFICIAL YEARBOOK - 1968, supra note 54, at 262-267. See also ENGEL, supra note 71, at 18-24 and DAVID M. ENGEL, LAW AND KINGSHIP IN THAILAND DURING THE REIGN OF KING CHULALONGKORN 59-93 (1975).
175. Note THAILAND OFFICIAL YEARBOOK - 1968, supra note 54, at 265-266.
176. ENGEL, supra note 71, at 25.
177. Samudavanija, supra note 4, at 337.

An independent and long-standing judiciary is another institution that has always been safeguarding the encroachment of civil liberties. It is an autonomous body not subjected to the control of the military and the bureaucracy, but has its own independent recruitment and appointment procedures.
178. For example, in late 1972, the military-led National Executive Council under Field Marshall Thanom Kittikachorn, decreed that the Minister of Justice would become more involved in the administration of the judiciary. This was seen as an attack on the independence of the judiciary and, following wide-scale protests, the decree was withdrawn. See R.H. Hickling, Recent Constitutional and Legal Developments in Thailand, 3 HONG KONG L.J. 215, at 219-222 (1973). It should also be noted that the 1991 Interim Thai Constitution explicitly protected the independence

of the judiciary. See section 29 of the 1991 Interim Constitution.

179. Section 193 of the 1991 Constitution.
180. Concerning the Judicial Service Commission, see Marut Bunnag and Preben A.F. Aakesson, The Legal System of Thailand, in MODERN LEGAL SYSTEMS CYCLOPEDIA 340.18-340.19 (K.R. Redden, general ed., loose-leaf, 1987) and THAILAND OFFICIAL YEARBOOK-1968, supra note 54, at 271-272.
181. Section 191 of the 1991 Constitution.
182. Section 188 of the 1991 Constitution.
183. Section 189 of the 1991 Constitution.
184. Section 190 of the 1991 Constitution.
185. A summary of the feuding within the Thai judiciary in 1991-92 is provided in Judgment Days, MANAGER: THAILAND'S BUSINESS MONTHLY, November 1992, 40-41.
186. Royal Proclamation Amending the Act On Judicial Officer Regulation Act B.E. 2521, 11 September 1992, ROYAL THAI GOVERNMENT GAZETTE, Vol. 109, Part 94 (in Thai). Regarding the contents of the Decree and the justification for its issuance, see Govt agrees to postpone reshuffle of senior judges, and Premier defends executive decree on Judicial Commission, BANGKOK POST WEEKLY REV., September 25, 1992, at 5.
187. Vitit Muntarbhorn, Independence very important in judiciary, THE NATION (daily), September 22, 1992. While public protest of the Decree was limited, within the legal community the reaction was much stronger. Petitions from judges, lawyers and students were presented to the government. See Govt agrees to postpone reshuffle of senior judges, BANGKOK POST WEEKLY REV., September 25, 1992, at 5 and Judicial panel reshuffles top judges, BANGKOK POST WEEKLY REV., October 2, 1992, at 5.
188. Section 172, paras. 3, 5, 6 and 7 of the 1991 Constitution.
189. Pursuant to the September 1992 Executive Decree, the sitting Judicial Services Commission was disbanded and the enlarged Commission began operation. Despite clear indications that the Executive Decree establishing the new Commission would be rescinded by the House, that the Justice Minister felt any action by the Commission was unwarranted, and that there existed widespread disapproval within the legal community, the enlarged Commission appointed a new President of the Supreme Court and promoted numerous other judges. These new appointments were not acted upon by either the Minister of Justice or the King.

Following rejection of the Executive Decree, a new 12-member Judicial Services Commission was established under the pre-decree legislation. This Commission recommended a different President of the Supreme Court who, although initially vetoed by the Justice Minister, was reaffirmed by the Commission and received the assent of the King.

The above is drawn from: Govt agrees to postpone reshuffle of senior judges, BANGKOK POST WEEKLY REV., September 25, 1992, at 5; Judicial panel reshuffles top judges, BANGKOK POST WEEKLY REV., October 2, 1992, at 5; Pramarn faction wins judicial panel election, BANGKOK POST WEEKLY REV., October 30, 1992, at 5; Judicial joyride for Pramarn, BANGKOK POST WEEKLY REV., November 13, 1992, at 9; and Judicial panel insists on Pramarn for top post, BANGKOK POST WEEKLY REV., November 20, 1992, at 4.
190. Minister Suvit calls meeting of judges over judicial reform plan, BANGKOK POST WEEKLY REV., November 6, 1992, at 20 and Battle shapes up over key Charter changes, BANGKOK POST WEEKLY REV., April 23, 1993, at 4.
191. Section 206, para. 1 of the 1991 Constitution which replicates section 191, para. 1 of the 1978 Constitution.
192. One clear example was in 1952 when a court ruled that a government official had gone beyond the limits of the law in imposing censorship on a newspaper. Noted in DHIRAVEGIN, supra note 4, at 139.
193. Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily), April 2, 1993, at 4 and see text accompanying notes 79-85.
194. Nattaya Chetchotiros and Disathat Rojanalak, Assets seizure ruling opens Pandora's box, BANGKOK POST (daily),

April 2, 1993, at 4.

195. See commentary in supra note 84.
196. The body is called the Constitution Judicial Council in the translated 1991 Constitution, see Chapter 10 of the 1991 Constitution and the Constitution Judiciary Commission in Amendment of the Constitution of the Kingdom of Thailand (No. 1), 29 June 1992, supra note 111, but in the 1978 Constitution and in the press it is called the Constitutional Tribunal.
197. One of the June 1992 amendments to the 1991 Constitution made the Speaker of the House of Representatives, rather than the President of the Senate, the President of Parliament. See Amendment of the Constitution of the Kingdom of Thailand (No. 1), 29 June 1992, supra note 111. This amendment repealed sections 86 and 200 of the 1991 Constitution and replaced them with new provisions.
198. The June 1992 amended version of section 200 of the 1991 Constitution refers to this person as the Attorney General, while the unamended version uses the term Chief Public Prosecutor.
199. Section 200, para. 1 of the 1991 Constitution, as amended by Amendment of the Constitution of the Kingdom of Thailand (No. 1), 29 June 1992, supra note 110.
200. See section 200, para. 1 of the 1991 Constitution, as amended by Amendment of the Constitution of the Kingdom of Thailand (No. 1), 29 June 1992, supra note 111, and sections 201 and 202, para. 1 of the 1991 Constitution. The four year term for the appointees is a change from the 1978 Constitution. Note New charter likely by October, BANGKOK POST WEEKLY REV., July 26, 1991, at 1.
201. Section 206, para. 1 of the 1991 Constitution.
202. Section 205, para. 1(2) of the 1991 Constitution.
203. Section 205, para. 1(1) of the 1991 Constitution.
204. Section 207 of the 1991 Constitution.
205. Section 155 of the 1991 Constitution.
206. Section 195 of the 1991 Constitution.
207. Section 143, para. 2 of the 1991 Constitution and see above at note 151.
208. Section 91, para. 1 of the 1991 Constitution. The Constitutional Tribunal only gets involved if the request is supported by one-third of the members of the House of Representatives or Senate, as the case may be. Membership in the Senate is to be terminated if any of the event listed in Section 97 occur. For membership in the House of Representatives, the list is in Section 114.

It should be noted that section 92 of the 1991 Constitution allows for termination of membership in the House of Representatives or Senate if three-quarters of the members in the relevant body votes to terminate membership. To trigger section 92 the act of a member must be detrimental to the dignity of the Parliament or one of its members. This provision does not require recourse to the Constitutional Tribunal.
209. Section 81 of the 1978 Constitution.
210. See sections 107(12), 114, para. 1(5) and 91, para. 1(1) of the 1991 Constitution and MPs who bribe face ouster from House, BANGKOK POST WEEKLY REV., June 28, 1991, at 4.
211. MPs who bribe face ouster from House, BANGKOK POST WEEKLY REV., June 28, 1991, at 4.
212. Sections 170, 169, para. 1(6) and 163 of the 1991 Constitution.
213. Section 172, para. 1 of the 1991 Constitution and see above at notes 161-170.
214. Section 173, para. 1 of the 1991 Constitution.
215. Emergency or Executive Decrees must be brought before the House of Representatives for approval at the first opportunity. Section 172, para. 3 of the 1991 Constitution and see above at notes 164-167.
216. Section 173, para. 1 of the 1991 Constitution.

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217. Section 172, para. 3 of the 1991 Constitution and see above at notes 167-170.
218. Section 173, para. 2 of the 1991 Constitution.
219. These purposes have already been noted - maintenance of national security, public safety, national economic well-being or to avert public disasters.
- The narrow reading is based upon section 173, para. 1 of the 1991 Constitution which explicitly directs that the Constitutional Tribunal is to examine whether a decree has been issued in accordance with section 172, paragraph one. Specific reference to section 172, paragraph one is reiterated in section 173, paras. 3 and 4. The effect of this is that the Constitutional Tribunal may not be able to examine the surrounding circumstances of the issuance of the decree and whether the Council of Ministers, as required in section 172, para. 2, considered there to be an unavoidable emergency.
220. Section 173, para. 4 of the 1991 Constitution.
221. Emergency Decree on Amnesty for Offenders in the 17-20 May 1992 Incident, supra note 168. Details of the Decree are noted in Tribunal discusses amnesty decree, BANGKOK POST WEEKLY REV., June 5, 1992, at 3.
222. The thrust of the first challenge is noted in Amnesty accepted as constitutional, BANGKOK POST WEEKLY REV., June 12, 1992, at 20. The provision being challenged was section 172, paragraph 2 of the 1991 Constitution. It apparently was not suggested that the Constitutional Tribunal was barred by the Constitution from examining the validity of an Emergency Decree by looking at section 172, para. 2. See above note 219.
223. Amnesty accepted as constitutional, BANGKOK POST WEEKLY REV., June 12, 1992, at 20.
224. Tribunal upholds controversial amnesty decree, BANGKOK POST WEEKLY REV., July 31, 1992, at 1.
225. Amnesty fears, FAR E. ECON. REV., October 22, 1992, at 14.
226. Tribunal rules in support of May amnesty, BANGKOK POST WEEKLY REV., November 20, 1992, at 3 and Paul Handley, Amnesty upheld, FAR E. ECON. REV., November 29, 1992, at 18. The Constitutional provision in question was section 172, para. 3 of the 1991 Constitution.
227. See above note 222.
228. This decision is commented upon above at notes 79-85.
229. Battle shapes up over key Charter changes, BANGKOK POST WEEKLY REV., April 23, 1993, at 4.
230. Section 68 of the 1991 Constitution.
231. Section 74 of the 1991 Constitution.
232. Section 80 and 81 of the 1991 Constitution.
233. Section 82 of the 1991 Constitution.
234. Section 83 of the 1991 Constitution.
235. Section 76, para. 1 of the 1991 Constitution.
236. Section 72 of the 1991 Constitution.
237. Section 70 of the 1991 Constitution.
238. Section 77, para. 1 of the 1991 Constitution.
239. Section 59 of the 1991 Constitution.
240. Section 51 of the 1991 Constitution.
241. Section 54 of the 1991 Constitution.
242. Section 55 of the 1991 Constitution.

243. Section 58 of the 1991 Constitution.
244. A brief history of the rights of Thai people in the various constitutions is provided in SHIN, supra note 32, at 40-51. Aakesson, Bunnag and Bunnag, supra note 46, at 670 comment that:
- (A) number of rights and privileges enjoyed by the Thai people now ... are guaranteed by the Constitution. However, many such rights have their roots and beginnings in the days of the early absolute monarchs.
- They go on, at 670-680, to discuss many of those rights.
245. Section 25 of the 1991 Constitution. Section 4 affirms that all Thai people are equally protected under the Constitution. Concerning the position of women in Thailand, see the materials cited in supra note 67.
246. Section 27, para. 1 of the 1991 Constitution. The right is qualified by the requirement that religious beliefs are not to be in conflict with one's duty as a citizen or be against the peace, order or morals of the people. See also the text and materials noted in supra note 75.
247. Section 29 of the 1991 Constitution.
248. Section 30 of the 1991 Constitution. Arrest, detention or searches may be conducted in accordance with the law.
249. Section 37, para. 1 of the 1991 Constitution. Restrictions on freedom of speech may be employed under provisions of national security law, to maintain peace, order and public morality, and to protect the freedom, honour and good name of individuals. Section 37, para. 2 of the 1991 Constitution. Regarding freedom of the press, see the materials noted in supra note 74.
250. Section 39, para. 1 of the 1991 Constitution. Limitations on this freedom may exist under special laws regarding public meetings, to protect use of public places, or during times of emergency or martial law. Section 39, para. 2 of the 1991 Constitution.
251. Section 40, para. 1 of the 1991 Constitution. Paragraph 2, however, indicates that the establishment, operation or dissolution of associations, unions, federations, and cooperatives shall be in accordance with the law.
252. Section 43, para. 1 of the 1991 Constitution. Limitations on this freedom may be imposed by laws for public security, laws for peace, order or public welfare, or laws of town planning. Section 43, para. 2 of the 1991 Constitution.
253. Section 46 of the 1991 Constitution. Concerning the history of this right, see Aakesson, Bunnag and Bunnag, supra note 46, at 678-679.
254. Section 31 of the 1991 Constitution. See generally Kittipong Kittayarak, Toward Equal Justice: The Right To Counsel In Thailand, 6 CHULALONGKORN LAW REVIEW 98-125 (1989-1990).
255. Section 35, para. 1 of the 1991 Constitution. This paragraph also indicates that the limitation of property rights shall be in accordance with law. Section 36 deals specifically with expropriation.
256. Section 48, para. 1 of the 1991 Constitution. This is a new provision not found in previous Thai constitutions. See New charter to protect rights, BANGKOK POST WEEKLY REV., June 21, 1991, at 1. The numerous limitations on the new rights are noted in Section 48, para. 2 of the 1991 Constitution.
257. See the limitations noted above in notes 246, 248-252, and 255-256.
258. Engkagul, supra note 78, at 99.
259. Engkagul, supra note 78, at 100.
260. Samudavanija, supra note 4, at 321.
261. The overwhelming dominance of the government bureaucracy in Thai politics and policy-making has led one authority to refer to Thailand as a "bureaucratic polity". See FRED RIGGS, THAILAND: THE MODERNIZATION OF A BUREAUCRATIC POLITY (1966). A summary of the meaning of the term bureaucratic polity is provided by ANEK LAOTHAMATAS, BUSINESS ASSOCIATIONS AND THE NEW POLITICAL ECONOMY OF THAILAND 1-4 (1992) who goes on at 4-15 and 149-163 to argue that there has been

a decline of the bureaucratic polity and the emergence of "liberal corporatism", i.e. private sector business. Also, on the importance of bureaucracy in Thailand, see GIRLING, supra note 55, at 135-139 and 147-153. More generally on the history and operation of the Thai bureaucracy, see Chai-anan Samudavanija, The Bureaucracy, in GOVERNMENT AND POLITICS OF THAILAND 75-109 (Somsakdi Xuto, ed., 1987).

262. The basis of this questioning is the fickle nature of many Thai politicians. The elected leaders overthrown by military coup in 1991 supported the military following the post-1992 elections. A principal opposition leader against the coup leaders, himself a former military supreme commander, was the mentor of the coup leader General Suchinda. See Neher, supra note 3, at 600. Pragmatic politics might be said to be taken to extremes in Thailand. A recent outburst in the House of Representatives by an opposition member who commented "it might be better to ask the military to take it [democracy] back", is an indication of the view of civilian, democratic rule even within the elected chamber. Rodney Tasker, Sounds of Silence, FAR E. ECON. REV., March 18, 1993, at 13.
263. Tongdhamazhart, supra note 34, at 63 gives three reasons for the lack of interest by the general Thai population in the constitution: the constitution was not written by the people and has no importance in their daily life; there is little understanding of the constitution or what it is; and the people have not grown up with the constitution, they "believe that the monarchy, and not the constitution, is the fountain of justice and law".
264. Neher, supra note 3, at 595.
265. Beer, supra note 29, at 2.

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