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**Dynamics and Institutionalization of Coups
in the Thai Constitution**

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1. Introduction

The current Thai Constitution (The Constitution of the Kingdom of Thailand 2007) was enacted on 24 August 2007, replacing an interim constitution promulgated in 2006. This Constitution is the eighteenth constitution since the revolution in 1932 which changed the system of government in Siam (today known as 'Thailand') from absolute monarchy to constitutional monarchy.

Under the new system, a constitution was granted for the first time and was expected to be the supreme law in Thailand. However, during the 80 years of the constitutional monarchy, Thailand has promulgated 18 constitutions and charters. Each Thai Constitution or Charter lasted a little over four years on the average. This is comparable to a four-year executive or legislative term.

The Thai Constitution has been periodically altered, so its role is different from the constitutions in many western democratic countries. The act of revoking and drafting a new constitution, especially following a coup, is not unusual in Thai society. It is widely accepted that a coup maker has full powers to revoke the constitution itself and pave the way for a new one. Coups have been committed throughout the past 80 years without any actual punishment for the coup makers and have become events in Thai politics, constituting a 'vicious circle'.

This paper begins by examining the conflict between the constitutional 'de jure' principle and the constitutional 'de facto' problems in Thai society. It then moves on to explain how the coup has been constructed into the Thai Constitution through the historical and the new institutional approaches, and this explanation can be divided into three parts. In the first part, we examine the first period in which there was no pattern or norm for early coup makers. We trace the disorderliness of the coup during the early democracy in Thailand. In the second part, we examine the period in which a series of coups was staged repeatedly and some patterns became visible. This was the period of the construction of the coup as an institution. The third part concerns the institutionalization of the coup in the Thai Constitution. The objective is to analyze how the coups could erupt from time to time during 80 years of Thai democracy.

2. Constitutional Principles and Problems

The concept of a constitution was originally developed in Europe and the United States. Constitutions attempt to establish a government based on the sovereignty of the people while restricting the power of the government. Constitutions establish the structure of the government and the check and balance system as part of the state's organization, especially in the legislative, executive and judiciary branches, and include procedures for assuming and resigning from government positions. Constitutions are meant to be the supreme law of the land, especially in cases in which rival political groups are competing.

Many countries followed in these footsteps of the early constitutions and enacted their own, often called 'modern constitutions'. The Thai Constitution apparently followed this tradition. The first Thai constitution made clear that it was the supreme law of the land; it established a system of government and explicitly declared that 'the supreme power belongs to the people'.¹

The term 'constitution' in Thailand is defined as 'the supreme law'. In this sense, it is not unlike the constitutions of many other states, most of which have a single document called 'The Constitution'. The first constitution enacted by Thailand is called the Temporary Charter for the Administration of Siam Act 1932. Since that time, Thailand has had a single document called Constitution which has been accepted as the supreme law.

However, a significant difference between Thailand and many democratic countries is that while many countries have had only one constitution, Thailand has declared 18 charters and constitutions since its first Constitution in 1932, many of them adopted following military coups, which reflects a high degree of political instability. After each successful coup, military regimes abrogated the existing constitution and promulgated a new one. Examples include the Constitution of the Kingdom of Thailand (Temporary) of 1947, Charter for the Administration of the Kingdom 1959, Temporary Charter for Administration of the Kingdom 1972, and Constitution for Administration of the Kingdom 1976.

¹ Temporary Charter for the Administration of Siam Act 1932, Article 2.

The difference between constitutions and charters in Thailand is that while constitutions are expected to become the permanent rule charters have traditionally been temporary instruments, promulgated following military coups. However, some charters, for instance the 1959 charter of the military dictator Sarit Dhanarajata, were used for years at a time. The 2006 coup resulted in an interim constitution rather than an interim charter. For the remainder of this paper, ‘charter’ (ธรรมนูญการปกครอง) will be used to refer specifically to the constitution after a coup and ‘constitution’ (รัฐธรรมนูญ) will be used interchangeably to refer to either charters or constitutions.

Thailand's current constitution was promulgated in 2007, replacing an interim constitution promulgated in 2006 after an army-led coup. The 2007 Constitution was written by a junta-appointed group of drafters and was approved by the first public referendum in Thailand before its enactment.

Table 1: Constitutions and Charters in Thailand 1932-2012

No.	Year of Enactment
1.	Temporary Charter for the Administration of Siam Act 1932 (2475 B.E.)
2.	The Constitution of the Siam Kingdom 1932 (2475 B.E.)
3.	The Constitution of the Kingdom of Thailand 1946 (2489 B.E.)
4.	The Constitution of the Kingdom of Thailand (Interim) 1947 (2490 B.E.)
5.	The Constitution of the Kingdom of Thailand 1949 (2492 B.E.)
6.	The Constitution of the Kingdom of Thailand 1932 (Revised 1952) (2475/2495 B.E.)
7.	Charter for the Administration of the Kingdom 1959 (2502 B.E.)
8.	The Constitution of the Kingdom of Thailand 1968 (2511 B.E.)
9.	Temporary Charter for Administration of the Kingdom 1972 (2515 B.E.)
10.	The Constitution of the Kingdom of Thailand 1974 (2517 B.E.)
11.	The Constitution of the Kingdom of Thailand 1976 (2519 B.E.)
12.	Charter for the Administration of the Kingdom 1977 (2520 B.E.)
13.	The Constitution of the Kingdom of Thailand 1978 (2521 B.E.)
14.	Charter for the Administration of the Kingdom 1991 (2534 B.E.)
15.	The Constitution of the Kingdom of Thailand 1991 (2534 B.E.)
16.	The Constitution of the Kingdom of Thailand 1997 (2540 B.E.)
17.	The Constitution of the Kingdom of Thailand (Interim) 2006 (2549 B.E.)
18.	The Constitution of the Kingdom of Thailand 2007 (2550 B.E.)

This constitutional phenomenon has raised several questions concerning the constitutional principle. The first question is whether the Thai Constitution truly the supreme law.

It is widely stated that the Constitution is the supreme law of the state. This is a fundamental concept of constitutionalism, such that the provisions of any rule or regulation which are contrary to or inconsistent with the Constitution should be unenforceable. Nevertheless, Thai Constitutions have often been revoked by the military coups that occur from time to time. Some state agencies' regulations and parliamentary acts are more stable than the Constitution. The criticism has been made that the 'Thai Constitution is easier torn than the stupid state agencies' regulations'.²

The second question is why no coup maker has been punished even though coups are highly illegal.

According to the Thai Criminal Code, coups are illegal and the penalty is capital punishment or life imprisonment.³ Historically, however, it is difficult to convict successful coup makers in court in spite of their wrongdoing.

² Nidhi Eawsriwong, 'Rattathammanoon Chabab Wattanatum', *SilpaWattanatum Magazine* 19, 1 November 1991.

³ Thai Criminal Code, Chapter 2, Offences Against the Internal Security of the Kingdom, provides in Section 113 that

'Whoever does any harm or threatens that any harm will be done for any of the following purposes

1 Abolishing or changing the Constitution;

2 Abolishing the legislative power, the executive power or the judicial power under the Constitution, or causing such power to be unexercised; or

3 Separating territory of the Kingdom or seizing the administrative power in any part of the Kingdom,

is said to commit the offence of insurrection and shall be subject to the death penalty or imprisonment for life'.

The third question is whether the orders of coup makers are legal norms which can be enforced by a court, or do they merely represent the coups' demands without any legal legitimacy?

Even though their actions may be unlawful, they have supreme power in politics, and so the successful coup makers have been known to issue a large number of orders during their occupation, especially before a new Constitution is promulgated. Can these orders be evaluated as being on the same level as laws properly passed by an elected parliament? Should the amendment or revocation of these orders be completed through the process of a parliamentary system? However, the precedent set by the Thai Supreme Court has continuously stated that coups' orders can be enforced as law without any objection. This provokes the question of how this precedent formed during the 80 years of the democratic system.

In contrast to the legal and institutional approach which describes the role and status of constitutional organization according to the officially-written provisions, this paper will offer an analysis through the unwritten constitution approach in order to explain how coups have become an institution and how this has been gradually established in Thai Constitution since the revolution in 1932 and has been widely accepted among rival groups in Thai society.

Generally speaking, the objective of the written constitution is to limit and control the power of the government by providing the structure of the government and guaranteeing the basic rights of the people. However, in almost every society, not only the written constitution but also an unwritten constitution has existed together within the constitutional system. 'Unwritten constitution' refers to the rules which have been practiced and have become norms among the rival groups in each society. In this sense, the unwritten constitution may be irrelevant to the democratic principle or western constitutional theory.

During the 80 years of the constitutional monarchy from 1932 to 2012, not only the written constitution but also an unwritten constitution has been constructed in the Thai constitutional system. For example, the coup makers themselves can overthrow the Constitution, but promulgation of a new one requires the royal signature. This pattern has never been written in any of the Thai constitutions, but it has become the accepted norm in

Thai politics since the 1950s. The courts have also confirmed the legality of this practice through the court verdicts during this period.

The unwritten constitution has had significant effects on the written constitution. It can be said that the Thai unwritten constitution plays a role that is as important as that of the written constitution. However, it should be borne in mind that the unwritten constitution is not static but dynamic, so it can be adjusted from time to time. Exploration of the construction of the unwritten constitution will expand our understanding of the Thai Constitution.

3. Early Democracy and Disorderliness of the Coups 1932-1957 (2475-2500 B.E.)

The transition from absolute monarchy to constitutional monarchy began when the People's Party (คณะราษฎร), a coalition of civil servants, princes, and army officers, seized political power. King Rama VII agreed to sign the 1932 Temporary Charter which announced that 'the highest power in the land belongs to people'.⁴ Due to the temporary nature of this charter, a new constitution was enacted thereafter, called The Constitution of the Siam Kingdom 1932.

The 1932 Constitution stated the important principle that sovereignty belongs to the people and the King is the head of the state. The sovereign power is divided among the branches of government: legislative power is vested in the parliament, executive power in the Cabinet, and judicial power in the courts. The Constitution provides the structure of the government and the check and balance system as well as a legitimate procedure to assume and resign from government positions. Importantly, this structure relates to the supreme power which belongs to the people.

Under the 1932 Constitution, the King appoints the prime minister, who has the right to appoint members of the Cabinet. As for the members of parliament, some of them are elected by representatives of districts (ผู้แทนตำบล) who are chosen by voters. The rest are appointed by the King according to the advice of the Cabinet. This political structure was designed in line with the democratic system, especially the fact that the status of the monarchy is under the provision of the constitution.

Years after its enactment, the Constitution deteriorated⁵ due to conflict between the royalists and the People's Party, including the fact that King Rama VII (King Prajadhipok) disagreed with the political party on setting up the People's Association (สมาคมคณะราษฎร), which had a large number of members. The King gave the explanation that most citizens had

⁴ Temporary Charter for the Administration of Siam Act 1932, Article 2.

⁵ Duan Bunnak and Pirote Chainam, *Kamathibai Kodmairattathamnoon*, part 2, 1st ed. (Pranakorn: Nitisan, 2477 (1934)), 39.

not understood yet what a democratic regime is, and so the People's Association should be abolished.⁶

Afterwards the leader of People's Party proposed a National Economic Plan (เค้าโครงการเศรษฐกิจแห่งชาติ), which provoked a difference of opinion between the royalists and the People's Party. The opponents of the plan were led by the prime minister, Praya Manopakorn Nititada, and royalist followers. The proponents were led by the leaders of the People's Party, Pridi Banomyong, and revolution supporters.⁷ These conflicts led to the a declaration by the first prime minister, Praya Manopakorn, to dissolve the House of Representatives, appoint new Cabinet members, and reappoint himself as the prime minister.⁸

As a result of the dissolution declared in the royal decree, the incumbent Cabinet was terminated, while Praya Manopakorn resumed office as the prime minister of the new government. In addition, the new cabinet also had a legislative function. Such changes in the executive and the legislative branches were not carried out in accordance with the procedures required by the Constitution. Without abolishment of the Constitution, the prime minister had simply suspended some provisions. However, the 1932 Constitution did not, in fact, allow a prime minister to do so. Declaration of the termination of the parliamentary session and formation of a new government was one form of coup with no military force. This undeniably means Praya Manopakorn was a coup leader.

It is noted that the royal decree was signed by King Rama VII, so the first coup after Thailand's 1932 revolution resulted from an unconstitutional abuse of royal power.

Two months later, the suspension of certain provisions came to an end when Praya Phahon Phonphayusena sent a letter to the prime minister demanding his resignation so that the enforcement of entire Constitution would proceed and the parliamentary session suspended by the coup would be reopened. Praya Manopakorn submitted his resignation on 20 June 1933. Thereafter, the Speaker of the House had an audience with King Rama VII

⁶ Bundit Janrotkit, *Cheewaprawat Thammanoon Lae Rattathammanoon Haeng Ratch-anachak Thai 2475 - 2520 B.E. (1932-1977)* (Thailand Research Fund, May 2550 (2007)), 10.

⁷ Bundit Janrotkit, *ibid.*, 11.

⁸ Royal Decree on 1 April 2476 (1933), *Government Gazette*, vol. 50,1.

requesting the opening of the House session. King Rama VII issued a royal command appointing Praya Phahon Phonphayahasena as the prime minister and declaring the opening of the House session on 22 June 1933.

A combined action by groups of Thai army, navy, and air force members and civilians led by Praya Phahon Phonphayahasena was aimed at returning to full enforcement of the Constitution, but this action was similarly considered unconstitutional.

In the early stages of Thai democracy, political fluctuations and power struggles among the rivals, especially between royalists and People's Party supporters, caused unconstitutional abuses of power, but the entire Constitution had not been abolished at the time. This reflected the fact that the Constitution was still considered sacred. As we can see in the first coup by Praya Manopakorn, only certain provisions were suspended, and the counter reaction was simply aimed at returning to full enforcement of the Constitution. The coup makers were unable to imagine how the Constitution could be abrogated and written afresh. Despite two power seizures, the political system still proceeded under the existing Constitution. The 1932 Constitution was valid except for certain sections which were suspended, as declared in the royal decree by Praya Manopakorn who maintained his office as the prime minister. In the second overthrow led by Praya Phahon Phonphayahasena, the house session was reopened constitutionally according to the royal command.

The first 'abolishment' of the constitution in Thailand's democracy occurred when a military force took over the government in November 1947 and enacted the Constitution of the Kingdom of Thailand (Interim) 1947, which caused the 1946 Constitution to be terminated one and a half years after its promulgation.⁹

The 1947 Constitution was created to mark the beginning of a new administration that had seized power and abrogated the previous constitution, thereby discontinuing the political institutions under the previous Constitution.

Although 'revocation of the Constitution' occurred for the first time and would be the pattern for subsequent coups, not every military takeover during this time revoked the

⁹ Bundit Janrotkit, *ibid.*, 46.

Constitution. In April 1948, for instance, Prime Minister Kuang Apaiwong left office as demanded by the military force, and Marshal Por Phibulsongkram was appointed to replace him. This military-led coup did not revoke the existing Constitution.

Another coup that did not put an end to the existing Constitution was the one led by Marshal Sarit Thanarat in 1957. The Constitution of the Kingdom of Thailand 1932 (Revised 1952) remained in force by royal decree while the members of the legislative and executive branches were forced to leave office.¹⁰

During the early period of Thailand's democracy, there was no rigid pattern that every coup would be followed by abolishment of the existing Constitution. In some cases, the old Constitutions remained in force while the executive and the legislative bodies came to an end by order of coup maker.

In 1947, a group of military officers, mostly retired ones, took control and captured the key figures in the government while some of them took their draft constitution to be signed by a regent. It is notable that the coup did not enact a new constitution to replace the 1946 Constitution based on their own power but they took the bill (Interim Constitution 1947) to be signed by a regent instead. This occurred despite the fact that regents were legally appointed under the 1946 Constitution¹¹ which had been revoked following the coup. The fact that the coup council sought the signature of a regent reflects their assumption that their successful takeover did not legitimize them with absolute power to enact a new supreme constitution; they needed to rely on a royal command for promulgation of the new constitution.

However, the 1947 Interim Constitution was signed incompletely. According to the Declaration of Regent Appointment by the House of Parliament, both regents are required to sign official documents to validate them. In spite of this, the Constitution of the Kingdom of

¹⁰ *Government Gazette*, vol. 74, section 78, 18 September 1957.

¹¹ The Constitution of the Kingdom of Thailand 1946, Article 10.

Thailand (interim) 1947 was eventually promulgated on 9 November 1947 with only one regent's signature as the royal signature.¹²

In the opinion of Pridi Pranomyong,¹³ the regent¹⁴ who signed the new constitution broke the oath he made in the parliament because he was the only one who signed the 1947 constitutional bill. If he had followed his vow, not signed the 1947 Constitution, and represented the King as supreme commander, then the coup's constitution would not have been promulgated. This was the start of the series of constitutions that Thailand has had since then.

In November 1951, the Interim Ruler Committee (คณะบริหารประเทศชั่วคราว) consisting of Field Marshall Por Phibulsongkram and army officers seized power from the government (known as the 'silent coup' because it was done through a radio announcement). At that time, the 1932 Constitution was brought back into force, replacing the 1949 Constitution. In addition, the lower and the upper houses were dismissed, and establishment of political parties was not allowed. An announcement signed by Interim Ruler Committee without a royal command was made to appoint Field Marshall Phibulsongkram as the prime minister. The coup plotters exercised their power by enforcing the Constitution of the Kingdom of Thailand 1932. However, this was not a new constitution but rather was an old one that was resurrected and later referred to as the 1932 (revised 1952) Constitution.

The 1951 power seizure was scheduled just three days ahead of King Rama IX's homecoming. At the time, some ministers in Field Marshall Phibulsongkram's government went to see regents demanding their signatures to revoke the 1949 constitution. Despite a second visit by Field Marshall Phibulsongkram, they were refused. However, they declared the 1949 Constitution to be abolished on the following day, and interim ministers held power on behalf of the King,¹⁵ sharpening the controversy between the government and

¹² *Government Gazette*, vol. 64, section 53, Special Edition on 9 November 2490 (1947).

¹³ Pridi Banomyong, *Pridi Banomyong lae Sangkom Thai* (Bangkok: Thammasat University Press, 2526 B.E (1983)), 426.

¹⁴ This refers to Kromkhun Chainatnarendhorn, a member of the Regent Commission at that time.

¹⁵ Suthachai Yimprasert, *Panching Chat Thai* (Bangkok, Samaphan: 2534 (1991)), 250.

royalists. The King tried to prevent the 1932 Constitution from being re-enforced by the coup panel but failed.¹⁶ So after his arrival, the King signed a royal command to promulgate the 1932 Constitution on 6 December 1951, and the command was countersigned by the Interim Ruler Committee. On the same day, the King also issued a royal command appointing Field Marshall Phibulsongkram as the prime minister, countersigned by the Speaker of the House. This indicates that the King’s signature has significant implications in the Constitution .

It should be noted that, during this period, the King’s involvement in politics can be clearly observed. That should be considered inappropriate under a constitutional democratic system. After the 1957 coup, there was a Declaration of Royal Appointment without a countersignature which triggered the significant questions, ‘Is this the role of the King in a constitutional monarchy system? Or is it merely a system of “ad hoc absolute monarchy” in Thai society?’

Image 1: Declaration of Royal Appointment without Countersignature¹⁷



¹⁶ Thak Chalermtianrana, *Karn Muang Nai Rabob Pokhun Oppathum Bab Padedkarn* (Bangkok: Moonnidhi Tamra Sangom Satre Lae Manut Satre, 2548 (1995)), 359 .

¹⁷ Source: *Government Gazette*, vol. 74, section 76, 16 September 2500 (1957) .

Coups cause discontinuity of political institutions, and coups' exercise of power is unconstitutional. Consequently, the question arises as to whether a political institution directly set up by a military junta is lawful. How to explain such an institution's legality is an important issue because such conduct is not recognized by the Constitution. Moreover, actions against the Constitution are considered to be a crime of insurrection punishable by capital punishment.¹⁸

The 1947 coup was the first case of constitutional revocation in Thailand's history, and it raised the question of what explanation the subsequent political institutions would provide for this phenomenon.

Because of wide criticism from the public, the coup makers in 1947 were aware of the need for an explanation of the legitimacy of the government they established. The following is the explanation in their official statement.¹⁹

'The Kiattisak Newspaper (หนังสือพิมพ์เกียรติศักดิ์) dated 13 November 1947 discusses the problem of political change resulting from a coup in which a new government is appointed to replace the ousted one. Typically, a switch of the governing body is an occurrence after every coup. Initially, an attempted uprising is a breach of the Constitution and the current laws, but these can be later abolished by a successful coup panel because they hold sovereign power. Moreover, they have the authority to enact a new Constitution and laws. As a result, their actions against the old Constitution and laws at the beginning of the coup are no longer considered a violation. An old Constitution can be terminated after a successful coup, and a new Constitution can be promulgated. Members of the old Cabinet appointed under the old Constitution must leave office, and submission of resignations is unnecessary'.

¹⁸ According to the Criminal Code, Article 113.

¹⁹ Press Release No. 15 of the Thailand Military Headquarters (กองบัญชาการทหารแห่งประเทศไทย) in Suchin Tantikul, 'Ponsaton Tangkanmuang kong Ratprahan 2490 (1947)' (master's thesis in Political Science, Chulalong Mahawittayalai, 2517 (1974)), 160-161.

That was the explanation from the army junta’s perspective, justifying the ‘principles’ that allow them to exist and empower them to enact a new Constitution. However, a case relating to the coup was brought to court. The case involved some military officers who caused their fellows to be absent from service without permission by persuading them to join the coup after that they were filed by the military.

According to the Supreme Court decision 1872/1949 (2492 B.E.), it was ruled that

‘There is no doubt that if there were no law to grant amnesty to the coup participants, they would have been punished. The court dismissed the lawsuit on account of Article 3 in the Amnesty Law of 1947, which provides no punishment for any action resulting in a change of government illegally or by force.’

The court’s primary consideration was that the defendants were not charged with rebellion under the criminal code but with their conduct in support of the operation of coup,

Table 2: Coups and the Amnesty Laws

Coups and the Amnesty Laws	
1933 Coup led by Praya Manopakorn (2476 B.E.)	Act of Amnesty
1947 Coup (2490 B.E.)	Act of Amnesty
1948 Coup (2491 B.E.)	None
1951 Coup (2494 B.E.)	Act of Amnesty
1957 Coup (2500 B.E.)	Act of Amnesty
1958 Coup (2501 B.E.)	Act of Amnesty
1971 Coup (2514 B.E.)	Act of Amnesty
1976 Coup (1976 B.E.)	Act of Amnesty
1977 Coup (1977 B.E.)	Act of Amnesty
1991 Coup (2534 B.E.)	Act of Amnesty

which damaged military discipline. Considering the court's reasoning, the coup was an illegal action but it went unpunished due to the protection afforded by the amnesty law.²⁰ Subsequently, successive successful coup participants issued amnesty laws after their coups in order to grant themselves criminal immunity except in the 1948 Coup, after which no amnesty law was issued to prevent prosecution.

After that decision, there were another two cases that set a significant precedent for judgment in any lawsuit concerning a coup.

The first of these cases concerned the status of a junta-appointed government which was accused of unlawful acts because the government took power through a coup. The other case concerned an accusation that it was illegal for the military junta to implement rules and regulations because its power was acquired through seizure.

In the first case, the Supreme Court, as stated in Supreme Court Decision 1153-1154/1952 (2495), initially held that seizing power from the ruling government was unlawful. However the existence of a junta-appointed government becomes legitimate once people come to accept and respect it. In other words, the government established by coup makers becomes legitimate when it can maintain the peace of the country without being resisted.

What about the legal effect of all orders enacted under the coup regime? According to Supreme Court Decision 45/1953 (2496),

‘the military coup council has the power to govern the country by changing, revising, abolishing or enacting laws because of their successful coup in 1947’.

That is to say, the court recognized the power exercised by the coup makers and the legitimacy of the 1947 Constitution.

This argument of the Supreme Court indicates that it recognized a successful coup and recognized the authority of the panel in power to amend or revoke laws according to ‘the revolutionary system’ (ระบอบแห่งการปฏิวัติ). This decision has been cited as a precedent for similar

²⁰ Act of Amnesty 1947

occurrences at later times. Acceptance of the acts of coup makers depends not only on their force but also on recognition by the judiciary.

In the commentary of Supreme Court Decision 45/1953 (2496), Yud Seng-Uthai, a widely known legal scholar, gave a clear explanation how a junta-appointed government becomes legitimate, summing up his ideas as follows:

Firstly, a coup is initially an act against the law, but its power remains valid because legitimacy is not an essential part of state power. However, at a later time, the act of the coup becomes legitimate in accordance with the new system of law that the coup participants enact.

Secondly, although power is taken through seizure, the government appointed by the coup makers is a governing body with real authority. For this reason, it has the authority to enact laws.

Although opinions of scholars and academics are not a source of law, Thailand is a civil law country. The opinions of scholars have strong authority. Judges usually look to their opinions before writing a decision. In the above-mentioned case, Yud Saeng-Uthai's view reinforces the Supreme Court's decisions. They all agreed that a successful coup generates the authority for a junta-appointed government to govern the country legally.

The series of Supreme Court decisions in cases involving the issue of legitimacy are in harmony. They take similar views regarding the fact that the government appointed following a successful seizure of power has the authority to promulgate new laws. That is an important condition for establishing and recognizing a system of coup in the Thai Constitution. As can be seen in the Supreme Court decisions made after the coups, the arguments were based on an important principle: a successful coup empowers coup makers to appoint a legitimate government. The Supreme Court also regarded the coup as having the absolute power to issue, amend or rescind the law according to the revolutionary system. This proved to be a 'branching point' that paved the way for subsequent coups.

4. The Construction of the Coup Institution 1958-1972 (2501-2515 B.E.)

From the early period of Thai democracy through the 1950s, a series of coups was staged, as if they were part of the political cycle. Also, an obvious procedure for coups emerged. That is to say, every coup followed a similar course of action that consisted of overthrowing the existing Constitution, the executive body, and the legislature.

In October 1958, a coup group led by Field Marshal Sarit Thanarat which called themselves ‘The Revolutionary Group’ (คณะปฏิวัติ)²¹ launched a coup to seize power.²² The Revolutionary Group repealed the 1932 (revised 1952) Constitution and dismissed the members of parliament and the Cabinet while allowing the courts to maintain their jurisdiction. In addition, the country was administered by the Revolutionary Headquarters (กองบัญชาการปฏิวัติ) headed by Field Marshal Sarit.

Another coup took place in November 1971. The coup makers, also known as ‘The Revolutionary Group’ (คณะปฏิวัติ) staged a self-coup led by Field Marshal Thanom, who was then prime minister. The 1968 Constitution was abolished; the legislature and the executive body were also terminated. In addition, Field Marshal Thanom, the leader of the coup council, became the head of the Revolutionary Headquarters which assumed high command over military officers and civil servants.

It can be seen that both of the coups shared a similar procedure involving a similar course of action. Meanwhile, they established a pattern of some norms followed by subsequent coups.

Unlike prior coups, both of these coups led to abolishment of the existing constitutions. In other words, during this period of time, whenever a coup was staged, the existing Constitution would be revoked by the coup makers based on their own power without any

²¹ Bundit Janrotkit, *op. cit.*, 96

²² After Field Marshal Thanom Kittikachorn submitted his resignation from office as prime minister on 20 October, 1958.

appeal to other powers. According to the Declaration of the Revolutionary Council,²³ the 1932 (revised 1952) Constitution was repealed after the coup staged in October 1968. The 1968 Constitution was also repealed, as declared in the Declaration of the Revolutionary Council,²⁴ after a coup was successfully staged in November 1971.

Unlike the coups taking place during the 1940s, coup makers in both the coups during this period of time did not need to justify their act of revoking the constitutions. Such a phenomenon partly resulted from the Supreme Court's acceptance of acts of coup as 'might makes right,' which means that successful coup makers have the right to repeal the Constitution. Moreover, there was no argument over the rights of successful coup makers such as in the 1940s. This suggests that coup makers derived legitimacy through the success of their coup.

However, abolishment of the Constitution was not the central aim of their political change but rather they desired control of the legislative and executive bodies, which are political institutions of the elected politicians who control the government. This issue is explained as a problem of the Thai political system. As seen in the 1958 coup, coup makers not only abolished the Constitution, but they also removed all members of the lower house and the Cabinet. In addition, they revoked the Act of Political Parties of 1955; thus, existing political parties were dissolved and new ones were barred from being established.²⁵ However, the courts' jurisdiction remained in force, and the coup makers would protect and praise the Monarchy.

Furthermore, in the 1971 coup, there was an explanation, in a coup declaration, that the ousted government was not efficient in administration because of too much interference from members of parliament.²⁶

²³ Declaration of the Revolutionary Council No. 3, 20 October 2501 (1958).

²⁴ Declaration of the Revolutionary Council, No. 3, 17 November 2514 (1971).

²⁵ Declaration of the Revolutionary Council, No. 8, 20 October 2501 (1958).

²⁶ Declaration of the Revolutionary Council, No. 6, November 2514 (1971).

Thus, the coup aimed to change the Constitution, the legislature and the executive body, as declared in the following orders:

1. The Constitution of the Kingdom of Thailand 1968 is terminated.
2. The senate, the members of parliament and ministers are terminated together with the Constitution.
3. Privy councilors remain in office.
4. Courts remain, having their jurisdiction according to laws and the orders of the Revolutionary Council.²⁷

A coup that is followed by abolishment of the Constitution, the executive body and the legislature while there is no interference with the judiciary automatically implies that the coup's aims are mainly focused on those institutions.

Therefore, it is recognized that coups usually do affect the judiciary. However, there was a coup order that affected the judicial institution. It was the Declaration of the Revolutionary Council No. 299,²⁸ which granted the executive body authority to appoint or transfer judicial authorities. This made the judiciary feel that their task was being directly interfered with, thus widespread opposition was expressed from judicial authorities and the public. Only one day after the declaration of the order, it was aborted by a retrospective order.²⁹ The judiciary's attitude and the force of the public's reaction against such an exercise of power by the coup makers reminded them of the limit of their power. That is to say, the judiciary is untouchable; otherwise, strong opposition like this would arise.

It is to be noted that several coups took place before this period in time, and the old Constitution was usually replaced with a new one. However, in both coups, the new

²⁷ Wipalai Theerachai, 'Karn-suksa-chuang-prawattisat-kong-Rattathammanoon-thai-chabab-tangtang', (master's thesis in History Department, Chulalongkorn University 2522 (1979)), 237-238.

²⁸ Declaration of the Revolutionary Council, No. 299, 12 December 2515 (1972).

²⁹ Saneh Jamrik, *Karnmuang Thai Kab Pattanakarn Rattathammanoon* (Bangkok: Thai Kadi Suksa Thammasart University, 2529 (1986)) ., p. 280

constitutions were not made as soon as the old one had been revoked. Thus, this was the first time that the country was ruled without a constitution.

In the 1958 coup, the abolishment of the old Constitution was declared on 20 October 1958, and the new one was promulgated on 28 January 1958, leaving the country in a vacuum without a constitution for 98 days. During the absence of supreme law, the coup makers governed the country through 57 revolutionary declarations,³⁰ providing important measures covering matters of politics and the economy. In the 1971 coup, abolishment of the Constitution was declared on 17 November 1971, and the new one was promulgated on 15 December 1972. It lasted one year and 27 days,³¹ accompanied by 364 revolutionary declarations and 79 orders.³²

This was the beginning of a vacuum between the revoked constitution and a coup's new one, and subsequently it became the format for coup procedure following power seizures. During the absence of a constitution, coup makers exercised power without being controlled by any rule or regulation. When such a case of power use was taken to court, it was clearly recognized by court's decision.

Although they possessed the right to revoke the constitution in force then, the coup makers replaced the old Constitution with a new one that was signed by the King and countersigned by the head of the coup. According to the royal commands, the administrative charters of 1959 and 1972 were countersigned by Field Marshal Sarit and Field Marshal Thanom, respectively. Unlike the 1951 coup, neither coup provoked conflict. This also indicates that the royal institution played a role in promulgating a new constitution after successful coups. Since then, every new constitution resulting from a coup has always been endorsed by the King.

Even though the power exercised by a successful coup was recognized by the Supreme Court, it was still argued that amendments, enactment of laws, and coup orders were

³⁰ Bundit Janrotkit, *ibid.*, 98.

³¹ See Table 5.1.

³² Saneh Jamrik, *ibid.*, 366.

unlawful due to the fact that they were neither enacted by the legislature nor signed by the crown.

Such an argument appeared in Supreme Court Decision 1662/1962 (2505) involving the Provincial Council President of Angthong Province, who filed a lawsuit against a police officer. In this case, the council president filed a petition with Field Marshal Sarit, accusing a police officer of misconduct in office. After that, he was allegedly arrested and charged by a police officer with being a rogue and illegal gambling. Therefore, he brought the case to court according to the Thai criminal code.

The defendant stated that he acted in keeping with the Declaration of the Revolutionary Council No.21, detaining the plaintiff) for investigation without the frame-up. Although found guilty, he was granted a pardon under the amnesty law issued following the successful coup.³³

Trial and appeal courts dismissed the action. The President of Provincial Council, therefore, appealed the ruling to the Supreme Court, claiming that the Declaration of the Revolutionary Council was not a law because it was legislated by neither the country's parliament nor the legislature and also was not signed by the crown, and thus, the defendant had no authority to capture or imprison him. The Supreme Court held that:

‘When coup makers succeed in seizing power, they have the right to rule the country. Although not signed by the crown or approved by the parliament or the legislature, any statement they make to command the people is regarded as law.’

This decision reinforced the concept of recognizing the power of a coup group. It can be said that this concept has set a precedent for the judiciary branch in considering how the exercise of power through a coup is legitimate.

³³ 1958 Amnesty Law declared on 20 October 2501 (1958).

It should be realized that the military was unable to use its power alone to promulgate the new Constitution. All constitutions following a coup were enacted by royal assent. This practice of receiving legitimization from the monarchy became the standard pattern for successful coups.

In addition to this pattern of procedures followed by every coup continuously during this period of time (1958-1972), there was also an unprecedented procedure that later became a standard course of action for coups to come.

Focusing on coup power, the coups taking place during this period of time had a significant feature: there was a provision that granted the prime minister, the head of the coup, the ultimate power to suppress activities considered harmful to the country's security. Known as Article 17 of the 1959 Charter, it was as follows.

‘During the enforcement of this charter, the prime minister, by the Cabinet’s resolution, has the authority to order or take any action to suppress conduct that is considered to cause insecurity to the kingdom or the throne, or to threaten domestic peace. Moreover, such orders or activities are regarded as legal’.

‘Once having issued orders or taken any action, the prime minister shall inform the parliament’.

Sompop Hotrakit explained that such a concept results from two reasons.³⁴ Firstly, the concept is attributed to the influence of Article 16 of France’s 1958 Constitution, which provides the prime minister with the extraordinary power to take any action in order to suppress activities that threaten national security. Secondly, coup makers are accustomed to exercising ultimate power in the branches of legislature, executive and judiciary.

In the 1972 Charter, there was also an Article 17, which resembled the Article 17 of 1959 Charter. Although the article number and the operations of both the laws were alike, t

³⁴ Bundit Janrotekit, *op. cit.*, 100.

Article 17 of the 1972 Charter provided longer list of offences, including activities undermining the country's economy, damaging natural resources, or threatening public order or good morals and people's health. These were regarded as vicious crimes equivalent to undermining national security. This means that the prime minister was granted greater authority. Also, this authority is always usable, regardless of whether a new constitution has been enforced or not.³⁵ However, such a provision is flagrantly against the law because it has effect before being approved.

Such authoritarian power was exercised by the prime minister or head of the coup council especially to punish the accused without due process of law. Under Field Marshall Sarit's regime, at least 11 people were sentenced to death under this article without a court hearing.³⁶

This clearly contrasts with the principle of the rule of law, but charters and constitutions following coups have inherited absolute power.

Table 3: Authoritarian Power in Constitutions and Charters following Successful Coups

Constitutions and Charters	Article
1959 Charter	Article 17
1972 Charter	Article 17
1976 Constitution	Article 21
1977 Charter	Article 27
1991 Charter	Article 27
2006 Constitution	Article 36

³⁵ Wipalai Theerachai, 'Karn-suksa-chuang-prawattisat-kong-Rattathamnoon-thai-chabab-tangtang' (master's thesis in History Department, Chulalongkorn University 2522 (1979)), 232.

³⁶ Bundit Janrotekit, op. cit.

In this period, it is generally known that the Monarchy, the role of which had been restricted after 1932, was allowed to revive. Field Marshal Sarit actively arranged for the King to attend various public activities and raised his status so that he was accorded high reverence. Meanwhile, charters enacted by the coups had always been proclaimed under royal signature without any obstruction. The construction of the coup in Thailand was significantly related to the role of the Monarchy.

5. Institutionalization of the Coup in the Thai Constitution 1976-2012 (2519-2550 B.E.)

The coup was successfully institutionalized in the Thai Constitution through the court's decisions and royal involvement.

On 6 October 1976, a coup group known as the 'National Administrative Reform Council' (คณะปฏิรูปการปกครองแผ่นดิน) seized state power and repealed the 1974 Constitution.³⁷ On the following day, the head of the coup group had an audience with the King in order to report the situation at the time.³⁸ The 1976 Charter was promulgated through the royal command of the King³⁹. Subsequently, Thanin Kraivichien was appointed prime minister on 7 October, and the government then issued an amnesty bill to grant a pardon to the coup makers who seized power on 6 October 1976.

It can be said that the actions of coup participants on 6 October 1976 reinforced the traditional method of power seizure by following a similar course of action, which was mainly comprised of the following actions:

First of all, abolishment of Constitution can be done by a coup group that comes to power. This reinforces the traditional method of previous coups, as it has been implicitly acknowledged that successful coup makers rising have the right to revoke the Constitution. During 1976 –2006, for instance, three coups were staged, in 1977, in 1991 and on 9 September 2006, all of which similarly brought about the end of the existing Constitution, and the aims of these coups were to terminate the constitutions, executive bodies and legislatures including the constitutional court,⁴⁰ but not the judiciary, which continued to perform its duty in accordance with existing laws.

³⁷ Order of the National Administrative Reform Council, No. 3, 6 October 2519 (1976).

³⁸ Pongsuriya Law Office, Order of National Administrative Reform Council and the Constitution of the Kingdom of Thailand 1976 (Bangkok: Ugsorn Bundit Ltd., 2519 (1976)), 8.

³⁹ On 22 October 2519 (1976).

⁴⁰ Declaration of the Council of Democratic Reform, No. 3, 19 September 2549 (2006).

After a successful coup, it became traditional to leave an interval of time before promulgating a new constitution. During this time, no new constitutions were promulgated immediately after a coup. During the absence of a constitution, the coup groups administered the country using their own authority. In the coup of 6 October 1976, for instance, the new Constitution was declared on 22 October 1976 to replace the 1974 Constitution. In the coup of 21 October 1977, the 1976 Constitution was repealed and that of 1977 was promulgated on 9 November 1977. In the coup staged by the National Peace keeping Council (คณะรักษาความสงบเรียบร้อยแห่งชาติ) on 23 February 1991, the new Constitution was promulgated on 1

Table 4: Constitutional Revocation and Proclamation and the Period of Vacuum

	Date of Revocation	Date of New Constitutional Proclamation	Period of Vacuum
1946 Constitution	8 November 1947	9 November 1947 1947 Interim Constitution	-
1949 Constitution	29 November 1951	29 November 1951 1932 (revised 1952) Constitution	-
1932/1952 Constitution	20 October 1958	28 January 1959 1959 Charter	98 days
1968 Constitution	17 November 1971	15 December 1972 1972 Charter	1 year 27 days
1974 Constitution	6 October 1976	22 October 1976 1976 Charter	15 days
1976 Charter	20 October 1977	9 November 1977 1977 Charter	18 days

March 1991. In the coup of 19 September 2006, the declaration of the Constitution of 2006 occurred on 1 March 2006. The leaving of a vacuum between the previous and the new constitutions has become a traditional practice followed continuously since then. Thus, during the absence of a constitution, coup groups would govern the country through their own power without reference to any other power. It is undeniable that such a pattern is mainly attributable to the fact that coup groups' power has been continuously recognized by the courts.

However, the vacuum period has been shortened to a few weeks in recent times; in contrast, in the previous period, it lasted from three months to more than one year, which could influence the democratic pattern in Thai society and attract pressure from the international community.

Following in the footsteps of prior coups, the promulgation of new constitutions was carried out by means of the King's royal signature. Although having taken power and repealed an existing constitution by their own power, the coup groups were unable to use their authority alone to promulgate new constitutions but instead presented them to the King for his royal signature. This step of coups became institutionalized because all coups continuously followed it, and it came to be accepted that a new constitution should be promulgated through the royal signature.

Witsanu Krua-ngam, a legal scholar, explains that such constitutional proclamation is an agreement between the head of state and the coup maker based on the following reasons: to display the royal endorsement to people, to obtain approval from the international community, and to show the full respect to the King.⁴¹

In the opinion of a well-known lawyer, Bawornsak Uwanno, an interesting justification is given for this situation in which a new constitution requires the King's endorsement.

⁴¹ Witsanu Krua-ngam, *Kodmay Rattathamnoon*, 3rd ed. (Bangkok: Sawaeng Suthi Karnpim, 2530 (1987)),79.

‘Back in the period before 24 June 1932, it can be seen that the sovereignty resided in a monarch. After the 1932 coup, the monarch surrendered his power to the people as a whole and signed a draft constitution. As a result, he became a constitutional monarch but remained to exercise power on behalf of the people. It is, therefore, regarded that the monarch and the people legally share the sovereign power. When the Constitution is abolished through a coup, the sovereignty that had ever passed on to the people will go back to the monarch, who was the former sovereign before 24 June 1932’.

‘When a coup group intends to effectuate a new constitution, they will present it to the monarch for his royal signature. Once the monarch has signed the Constitution, it means that he has given sovereignty back to the people. In short, sovereignty, or legitimate power, is vested in either the monarch or the people’.⁴²

During this period of 1976–2006, a few cases concerning the exercise of power by coup groups were brought into court. The court’s decision was to recognize the coup groups’ rights in accord with the precedent, by giving a clear explanation of how the orders following their successful actions became legitimate.

The main point of the cases concerned whether the coup declarations remained in force after the new Constitution had been promulgated. The plaintiff argued that the coup declarations must be abolished once the Constitution was enforced; otherwise, it was an invasion of the Thai people’s sovereignty. In Supreme Court Decision 1234/1982 (2523), the court held as follows.

‘The coup group (คณะปฏิวัติ) or the National Administrative Reform Council (คณะปฏิรูปการปกครองแผ่นดิน) has the right to issue those declarations or orders once they have succeeded in seizing power. The new Constitution of the Kingdom

⁴² Bawornsak Uwanno, *Kodmai Mahachon*, vol. 2, 3rd ed. (Bangkok: Winyuchon Publication House, 2547 (2004)).

of Thailand was promulgated while the declarations or orders of the coup group or the National Administrative Reform Council were not yet revoked. Thus, such declarations or orders are still in use as laws’.

Interestingly, an unprecedented practice of coups during this period of time was the fact that coup groups had an audience with King Phumibol Adulyadej in order to respectfully inform him about the country’s situation at that time and gave reasons why they needed to stage the coup. In fact, although the monarch occasionally gave opinions on the matter of coups, he always did so in written form. In the 1947 coup, for instance, he expressed satisfaction, in a letter, for the fact that the coup was the bloodless one.⁴³ In a letter revealed after the 1957 coup, the monarch said that he had confidence in Field Marshal Sarit.⁴⁴ In some cases, coup groups sought an audience with the King. Field Marshal Sarit, for example, had an audience with the King on the night of 16 September 1957. To have an audience with the King after a successful coup had not been a part of traditional coup procedure until the coup of 6 October 1976, which was followed by the coups of 23 February 1991 and 19 September 2006, respectively.

Regarding amnesty, the way in which amnesty was granted to the coup group in 2006 was different from the previous times. Previously, coup groups were granted pardon through an amnesty bill passed by the legislature appointed after their takeover. However, the amnesty law was not passed in the form of an act but as a provision of the 2006 Interim Constitution providing that all the declarations, orders and actions related to that coup were legal and constitutional. The following is the provision of Article 37:

‘In regard to the actions relating to the 19 September 2006 seizure of power by the head of Council of Democratic Reform under Constitutional Monarchy⁴⁵ (คณะปฏิรูปการปกครองในระบอบประชาธิปไตยอันมีพระมหากษัตริย์ทรงเป็นประมุข), including any of the actions of the people relating to such seizure or those of people who were

⁴³ Wor Chor Prasangsit, *Patiwat Ratprahan lae Kanotjarajon* (Pranakorn: Ratpakdee Press, 2492 (1949) p. 245.

⁴⁴ Thak Chalermtianrana, *op. cit.*, 359.

⁴⁵ It should be noted that the name was shortened to Council of Democratic Reform (CDR) in order to rule out suspicions about the role of the monarchy, but the first name has significant meaning for the this coup d’etat.

assigned by the head of Council of Democratic Reform to such actions, no matter whether all such actions were intended to affect the legislature, the executive branch or the judiciary, including any punishments and other government affairs, no matter whether they were imposed or run by principals, advocates, orders or people who were assigned such actions, and no matter whether those actions took place before or after 19 September 2006, none of the actors shall be held guilty or liable whatsoever in any case where such actions were against the law’.

This was the reason why the coup did not issue an amnesty law as had always happened, and this sentence is rewritten in the 2007 Constitution as follows.⁴⁶

‘Any act, the legality and constitutionality of which has been recognized by the Constitution of the Kingdom of Thailand (Interim) 2006 (B.E. 2549), including all acts related therewith whether committed before or after the date of promulgation of this Constitution, shall be deemed constitutional under this Constitution’.

Such a provision has never appeared in any permanent constitution. This marked the first occasion of implanting amnesty into a constitution. However, this article led to a severe conflict between factions that supported the 2006 coup and those that opposed it.

⁴⁶Article 309.

6. Conclusion: From Alienation to Constitutional Institution

A modern constitution attempts to establish a government based on the sovereignty of the people under a democratic system. It provides the structure of the government and a check and balance system, including a process for political change.

In contrast, the term ‘coup’ generally refers to a change in political institutions mainly by means of force. Such an action is not recognized in a written constitution or by any provision or regulation. A coup is therefore an action against a constitutional regime, which is based on a constitution as the supreme law in regulating a political change. Legally speaking, a coup is a criminal action subject to capital punishment, so it is extraneous to the concept of a constitution.

The constitutions of Thailand as well as modern constitutions in other countries have never provided the right to stage a coup. However, coups in Thailand continuously occurred from 1932 until the last coup in 2006. Nothing guarantees that a coup will not happen again.

Despite the fact that the coups which took place in Thailand were carried out using force to make political changes, they became institutionalized as they were accepted by each party and also became part of the unwritten constitution in Thailand.

Since the transitional period to the democratic system, the military has played a significant role in overthrowing existing governments and constitutions by force, as happens in many developing countries. However, military force is not the only factor needed to complete a coup. In order to legalize the new government, other branches also play an important role.

The court regards the coup makers as having absolute power according to the revolutionary system. The Thai Supreme Court has confirmed that a successful coup has the power to rule the country; meanwhile, the court has accepted that the amnesty law passed after a successful coup provides immunity to coup makers from criminal liability. This is the reason why it is rare to obtain a conviction of coup makers in court even though a coup is a crime subject to capital punishment.

The role of the King in the coup, including the King's granting of royal assent to the Constitution following the coup, is important. It could lead a question about the King's role under the parliamentary system.

The academics who support successful coups also recognize the legality of the coups and the subsequent constitutions. This strengthens the power struggle in Thai politics and constructs the prerogative of the King in promulgating a new constitution under the coup regime.

It would be useful for understanding the existence of the coup in the Thai Constitution as an institution among rival groups and at the same time it can be seen the mutual relation among them.

The institutionalization of coups has been overtly established through bargaining and justification all of the parties involved over time. These rules do not arise, exist or change according to the needs of any of the parties. It is assumed that a coup group will hold absolute supreme political power once they come to power. As Marcus Cicero said, 'For among arms, the laws fall mute' (*Inter arma silent leges*). As a result, the coup group can independently perform any action without being controlled by rules or regulations. Given the dynamics and institutionalization of the Thai coup process, such a course of action was also directed by unwritten laws of coups. Some of the coup rules, however, are mandatory practices for coup groups. As discussed previously, the coup groups have the right to overthrow the Constitution on their own, but they cannot promulgate a new one. This law of coup obviously reflects the pattern of Thailand's coups and the fact that various political institutions, not only the military with its tanks and arms, played some role in the institutionalization of the coup.

Despite not having been legally recognized and being against law, such action has become part of Thai political institutions, where it is widely acknowledged and accepted. Course of actions that may be taken and the conditions and limitations under which they may be taken by coup groups after a successful power seizure is assumed to be defined.

A case in Thailand would be such kind of implanting the western institution into Thai society. It can be clearly seen that the Constitution will be mediated by context often

inherited from its own background. Contention and conflict among rival groups for resources lie at the heart of politics, and we should pay more attention to analyzing this.

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