

Confessions to Lese Majesty: A Lens into the Rule of Law in Thailand

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Abstract:

Rule of law in Thailand has its own characteristics due to its particular history and development. It has deteriorated during the political crisis over the past 10-15 years during which we saw the lese majesty charge skyrocket, especially as the consequences of the two military coups in 2006 and 2014. Unlike other crimes, most people who are arrested for lese majesty confessed to the crime. Why? What happened to them and what are the conditions that led to their confessions even though most of them were not physically abused or tortured by the police? The answers are telling about the history and the current state of the rule of law in Thailand.

Keywords: lese majesty, rule of law, confession, Thai monarchy, Thai prison

INTRODUCTION

Article 112 of Thailand's Criminal Code, the country's lese majesty (hereafter LM) law, states that "Whoever defames, insults or threatens the King, the Queen, the Heir Apparent, or the Regent shall be punished with imprisonment of three years to fifteen years."¹ During the political crisis in Thailand since the military coup in 2006, and especially since the latest coup in 2014, the number of the lese majesty charges has skyrocketed. The application of the law has been notorious in many respects, making it a highly controversial legal issue domestically and worldwide, as a legal instrument to intimidate and suppress opponents of the state, especially the junta, and to limit public expressions. Hence the state's control over public

¹ The article will use the term "LM" interchangeably with "Article 112", "or simply "112" as the law, the charge, the cases, the trials, and the controversies relating to any of them are known in Thailand today as the "112 (+ noun)".

sphere. Apart from the abuses of the law for political purposes, scholars and observers have pointed to the dubious legality of its process, trial procedures, its interpretations, and the unreasonably severe punishments for the violation of the law. There have been calls to reform or amend the law, or to abolish it altogether. Not only have the calls been put aside, but they were often threatened with the LM charge for trying to reform the law.

A phenomenon related to the LM cases has escaped the attention of most critics of the law, that is, most people who were charged for lese majesty confessed to the crime quickly instead of denying the charge and fight it out in court. Why did they do so? What were the conditions that compel or convince them to do so? In the new conditions since 2006 that have affected the LM issues significantly, has there been significant change to the tendency to confession and its reasons? What are the reasons in the particular conditions after 2006 that led to their confessions to the crime?

The article tries to answer this puzzling question. It will provide the background and historical context of the LM, and how problematic the law and its trial procedure have been. Then it will elaborate the political conditions since 2006 and how they affected the LM issues. After that, the article will explain the factors contributing to confession and the reasons these victims had in their decisions to confess.² But, first, let us look at how phenomenal the increase of the LM cases since 2006 has been.

THE RECENT SURGE OF 112 CASES

The surge of the 112 charges and trials over the past decade or so has been duly noted by major human rights organizations, journalists and by scholars of Thailand.³ The reports on the situation of human rights by both Amnesty International and Human Right Watch in recent years have mentioned this issue. Major media such as the New York Times, The Economist, Aljazeera, and so on, have called out the “draconian law” repeatedly. The surge coincided with the political crisis since 2006

² The “victim” of the 112 does not mean Their Majesties who are allegedly the injured party, but it means those who were accused, arrested, charged and/or imprisoned by the 112.

³ The numbers and statistics presented in this section should be taken with caution because they are not always clear or precise due to discrepancies and some confusions among the data from various sources in government agencies and civic organizations.

According to David Streckfuss (2014:107), the foremost scholar on LM in Thailand,

- 1) Prior to 2006, the highest number of arrests in a single year was 36 in 1977, the year of the heightened royalist and anti-communist fever at the peak of Thailand's Cold War.
- 2) The highest number of the LM cases on trial was eight in 1995, 1998, and 2005, the last one reflecting the beginning of a new trend.
- 3) Between 1992 and 2004, the average number of cases on trial was fewer than five per year; in 2005 the number of cases on trial moved up to eight, and between 2006 and 2008, the average number jumped to sixty cases on trial, with highest one, 126 cases, in 2007

The numbers of the new cases (not the ones in court) from 2007 to 2017 are shown in the diagram below.⁴ As shall be mentioned below, the majority of them were denied bail and were in prison since the arrests.



To focus on the period since the coup in May 2014 to the end 2017, here are some interesting statistics.

- During that period, there were 138 people in 94 cases were charged for LM. This means the average of 46 people per year
- Among them, only fifteen (15) people got bailed, i.e. less than 11%; 89 % was denied bail.
- During that period, forty-three people were ruled by the court. Keep in mind that some cases were carried over from the time before the 2014 coup.
- Among the forty-three, thirty-nine (39) confessed, i.e. ninety-one (91) percent.
- Two did not confess but found guilty, and two were dismissed.

⁴ The data for this graphic is based on two main sources, namely, the iLaw group – the Internet Law Reform Dialogue <https://ilaw.or.th> and the Thai Lawyers for Human Rights – TLHR <https://www.tlhr2014.com>.

- The two highest/ harshest sentences in history of LM cases – 70 and 60 years in prison-- were given in this period.

A BRIEF HISTORY OF THE LESE MAJESTY LAW IN THAILAND

Before the modern Siamese state in the late nineteenth century, LM was part of treason since the state and the monarch were identical. But defaming the monarch was the less severe violation among the treasonous crimes like rebellion or defiance of the royal order. As the state and the monarch began to separate in the modern time, an offense to the monarch as a person, but not necessarily a treason or a threat to the security of the state. At the turn of the nineteenth to twentieth century, LM was considered nuisance to the absolute monarch or a mild form of insanity (a silliness or craziness), hence not a serious punishment such as tending the royal elephants, or a week or a month in the mental asylum. LM law has been part of Siam's modern criminal code since the first one in 1908 in such a sense, i.e. as an offence to the monarch as a person. Punishment was not as severe as it currently is, with the maximum of seven years in prison but without the required minimum punishment.

After the revolution that ended the absolute monarchy in 1932, the constitutional monarch was, legally speaking, the head of the state without real political power. Even though there was no change of the law, it was not considered a treason. Moreover, criticism of the monarchy was allowed if it was for public interests and if without malicious intention. In the wake of the 1947 coup engineered by the alliance between the army and the monarchists, a new stipulation in the 1949 constitution stated that the monarchy is inviolable. A defamation to the monarch became a serious crime. Article 112 as we know it today appears in the new criminal code of 1957. More importantly, it is a law in the “national security” section, meaning LM has become a crime against the national security. In the wake of the anti-communist massacre of the radical students in 1976, the royalist junta amended the 112, stipulating the minimum punishment of three years imprisonment and doubling the maximum to fifteen years. This severe punishment stands to the present day

The law has not changed since then, but politics and culture surrounding the monarchy have. The monarchy was heavily promoted from the 1960s by the United States and by the royalist military regime that ruled Thailand from 1957 to 1973 as a key instrument against communism. By the time the US left Thailand and Southeast Asia in the early 1970s, the monarchy was a

strong institution with its own agenda since then for the stronger political power, not as the ruler but as the domineering authority “above politics”, i.e. over the governments (Thongchai 2008). The basis for such political dominance was the royal hegemony created upon the public culture I call, “hyper-royalism” (Thongchai 2016).

The characteristics of hyper-royalism are the following. First, it is the permeation of royalism in everyday life and the increased demand for expressed loyalty to the monarchy. Second, hyper-royalism indulges in exaggeration and exaltation. Members of the royal family are often touted by royalists and acolytes as being at the best in every aspect of social affairs. Hyperbole becomes normative; eulogies become truth. Third, the manufacture and encouragement of hyper-royalism have not been exclusive to the palace or state. Civil society actively involves itself in the production and circulation of hyper-royalism while participating in the suppression of critics of the monarchy. Finally, the control of public discourse on the monarchy protects hyper-royalism. When royalism is akin to religion, detractors become blasphemers. Article 112 has been the main instrument for this purpose.

Under the hyper-royalist conditions and the royalist politics, an expression about the monarchy has increasingly a highly sensitive matter that must be prepared carefully. A slight hint of slander and negative gesture in public sphere regarding the monarchy could be scrutinized for LM. Hence, the increasing abuses of the law and the increase in social sanctions, i.e. reactions from the public, neighbors, and employers and so on, to the alleged LM violations.

PROBLEMATIC LM LAW AND TRIAL

LM in the current form is a crime of thought and expression. A thought crime is inevitably culturally and ideologically specific. It is rational and legitimate only to those who subscribe to certain ideology or claim the belonging to a culture. Since the demarcation of such a community of ideology or culture is always fuzzy, so is the application of the law. It is thus subjected to, and easily affected by, the changing political conditions.

In Thailand, LM is regarded as a serious crime even though there is no intended harm to anybody or to any property whatsoever. As it is always argued by the state, the judges in LM cases, and the supporting public, an offense to the monarchy hurts every Thai deeply and could lead to a disturbance of social order and harmony – thus a threat to national security.

As one of the laws in the national security section, the provisions and precedents for the crimes against national security, such as treason, insurrection, arms trafficking, terrorism, and so on, are applied to LM as well. The most consequential provision is that anybody can notify the authority of the alleged LM violation, like one can do for a terrorist activity, but unlike a defamation case in which only the injured party can initiate a legal suit. This is a highly controversial and problematic aspect of the LM.

According to Thai laws, three to fifteen years in prison is the same punishment for manslaughter, slightly lower than rape (four to twenty years), but higher than an assault that causes physical harm or the loss of parts of the body (no more than two years). This suggests that in Thailand a thought crime is comparable to those felonies. In the repressive condition after the recent coups, as we shall see, the punishment for LM can be more severe than a murder. When royalism is akin to a religion, LM becomes blasphemy, and as dangerous as taking someone's life.

Unlike a defamation, proving of truth about the king does not matter for LM case. Guilt was adjudicated based on the perceived damage of such an expression to the majesty. Whose perception? A typical LM trial, then, involves witnesses who offer their opinions on the alleged expressions. The judge ultimately decides which perceptions are valid and acceptable as the basis for the ruling. In Thailand, especially under hyper-royalism of the past forty years, the normative ideology includes the belief that the king is indispensable for the survival of the country, that every Thai in the normal state of mind reveres and is loyal to the monarchy, thus those who do not must have mental problem and/or malicious intent. As a judge of a LM trial once stated, if what the defendant said about the monarchy is not true, he is guilty, but if it is true, the guilt is even worse for making such truth public

More legal flaws and anomalies have manifested in the authoritarian political climate such as after the coups in 2006 and 2014.

THE POLITICAL CONDITIONS SINCE 2006

From a historical perspective, we can say that the democratization process in Thailand has been the contests of power among three main political forces, namely the military, the monarchists,

and ordinary people. After the end of the absolute monarchy in 1932, the new regime was unstable for about 15 year, as the monarchists attempted to resume to power, though failed. From the mid-1940s, the military rose to become the dominant political force until the popular uprising in 1973, the historic turning point that followed by the surge of popular democracy of ordinary people and, at the same time, the revived political power of the monarchists. The military's political power gradually declined since then while the era of hyper-royalism began. After another popular uprising in 1992, the military retreated from politics "back to the barrack" as the "royal democracy" achieved its triumph.

Ostensibly, "royal democracy" is a parliamentary democracy, but the elected authority was in fact under the influence and active supervision by the monarchists. We may call it the royal-guided democracy. The unprecedented popularity of Thaksin Shinawatra, who won landslide elections twice in 2001 and 2004, however, made the elected authority a threat to the status quo under the dominance of the monarchists. The coups in 2006 and 2014 were attempts to secure the royalist political dominance by curbing the growing popular democracy. The monarchists did so by bringing the military back into politics. But the royalist coup also produced the opposite effects, that is, the growing dissents to the monarchy among Thai people and their demand for popular democracy. Meanwhile, the military tried to resume its political strength, not necessarily under the command of the monarchists. Thailand's political crisis has protracted and polarized due to this tug-of-war among these political forces.

The junta regime after the coup in 2014 is one of the fiercest and most powerful military rules in Thai history. Its repressive measures were swift, effective, uncompromising, and even brutal at times. The junta decisively eliminate all political activities and severely limited freedom of expressions especially about the monarchy. Despite the protests, condemnations and sanctions of various degrees from the international community, the junta has been able to secure the dominant power of the monarchists in alliance with the military elites.

LM ABUSES SINCE 2006

Under the hyper-royalism, the alleged wrongdoer would be subjected to distressful social sanction from the public, including his neighbors and cohorts. When hyper-royalism combined with the repressive power of the coups in 2006 and 2014, the abuses of the law proliferated.

LM has become a legal instrument to intimidate and suppress the critics and the opponents of the royal democracy and to control the public.

There are three main areas of abuses, namely the interpretation of the law, the unjust process, and the excessive punishments.

1) Abuses in the Interpretations of the law

The LM law specifies the four people under its protection: the current King, Queen, the Heir to the throne, and the Regent. In the hyper-royalist fervor since 2006, the law has often been applied beyond the scope of the law, such as to other royals, historical kings, and even the king's pet.

The definitions of the violating actions (defame, insult, and threat) are also broadened. Saying that a nineteenth-century king ruled the society with slaves was found guilty because it tarnished the reputation of the present dynasty, thereby the present king. Misspoken or misspelling of the royal names, sitting or behaving improperly at the royal events, were charged for LM. Even calling for the amendment of the 112 is considered violating the 112.

2) The unjust process:

As mentioned earlier, as a crime against national security, the typical provisions for those serious felonies are applied to LM. The most troubling one is that anybody can report to the police against somebody else for LM. This makes LM a convenient weapon against political opponents. The junta regimes of the past two coups actively abused LM in the name of protection of the monarchy. They created the cyber units to monitor and collect information about such activities among users of social media. LM charge is a witch-hunt.

Next, unlike a normal defamation case in which bail is granted, a petition for bail in an LM case under the repressive atmosphere was usually denied. The judges usually justified the denial by the reason that LM violation seriously hurt (the feeling of) a vast number of people. As a result, the accused would be locked up in jail during the police investigation (maximum 84 days) regardless of being charged or not, and during the trial regardless of the final ruling.

Moreover, under the state of emergency, which was always declared for quite a period after every coup, LM would be under the jurisdiction of the military court, not the criminal court, regardless if the accused was a civilian. It is notorious that a trial in the Thai military court always takes much longer time than in the civilian court because the court would call a witness to testify only once every few months. Moreover, the ruling of the military court in such exceptional time is final. There is no appeal process. Finally, the LM trial usually proceeded in secret, based on a dubious reason that a public discourse such as what was said, could also disturb peace and social order, thereby harmful to public safety. A report of the trial could violate 112 as well.

3. Excessive and unreasonable punishment

The sentences for LM after 2006 tended to be more severe than the previous period, such as 10 years per count. Worse, it has become a normal practice that each posting or sharing on social media counts as a single action, thereby, sharing the same message twice was taken as the second act, and so on. If found guilty, each act could be punished separately. In one of the most (in)famous cases in 2010, for example, “A-Kong”, was sentenced to twenty years in prison for sending four short text messages in one sequence, each of which was punished for five years. But this was not the most severe sentencing for LM. The two highest sentences were given in 2015 -- seventy and sixty years in jail respectively, for seven and six counts of posting/sharing Facebook messages that violate the LM law, i.e. ten years per count. Thanks to confession, the sentence was reduced by half, i.e. thirty-five- and thirty-years imprisonment. There was a case currently in the military court in which the accused was charged for sharing a message 29 times. The original writer who posted the violating message was considered committing only one act of violation. He confessed, hence the sentence commuted by half, served the short-term sentencing, and already released from prison while the trial of the sharer remains in court.

After the coup in May 2014, the abuses of the 112 have been intensified. The ruthless regime accused a number of people of LM in one of its first public announcements, summoning a larger number for interrogations and “attitude adjustment”. Those who reported themselves to the authority spent three to seven days in military compounds throughout the country. More were on trial in military courts.

An important observation should be noted here. The majority of victims of the LM abuses in the wake of the 2014 coup were not political opponents but ordinary people, many of whom

violated the LM law out of carelessness or ignorance to the proper conducts, such as sharing messages, clicking “like” for some of those messages, writing a graffiti on the wall of a public toilet, and so on. I would argue that one of the objectives of the 2014 coup regime was to reinforce the royalist status quo at the time of likely royal transition, especially from a revered monarch to the unpopular one as the new king had been, the coup regime wanted to control the public sphere and set the norm of what can be said and done and what not regarding the royals. In my opinion, the harsh punishment was to “send the message” to the general public, those several thousands and beyond

It should also be noted that hyper-royalism and the abuses of the LM especially after the 2006 coup generated the anti-monarchy current even more and stronger than any previous time in Thai history. In the wake of the 2014 coup, however, it may be harder to observe such opposite reactions, thanks to the swift and harsh measures against them that forced them to hide quietly.

CONFESSIONS TO LM

Most of those charged for LM confessed to the crime. Why? Writing before the political crisis since 2006, David Streckfuss (1995: 463-465) argues that confession to LM was ritualistic for the defendant to beg for re-admission to the society. Most victims were typical royalist Thais who made careless remarks without slight intention to question or criticize the monarchy. According to Streckfuss,

“... the typical three-stage drama which has characterized the lese majeste cases for the last three decades [i.e. before the 1990s – TW] – confession: I committed the act; recantation: I did not mean it for I revere the king; and collective reaffirmation: We Thai revere the king. In the trials, defendants confess to having committed the act and then, with lavish praise to the king and assurance of a steadfast loyalty, recant having had any intention of insulting the king.

In this way, ... the defendants’ individual acts of public redemption provide a collective reaffirmation of Thai-ness: the errant member is brought back into the fold, and the people are made whole again” (Streckfuss 2005: 465)

They had fumbled their Thai identity and belonging, then they wanted badly to get readmission to the royalist imagined community. Many confessed to the police “right off the bat” (in Streckfuss’ word).

Under the political conditions after the royalist coups in 2006 and 2014, has such confession for readmission still been the case? Or the phenomenon of confession is attributed to different reasons? As I have argued elsewhere (Thongchai 2014), hyper-royalism since 2006 has unprecedentedly generating a large number of critics and doubters of the repressive royalism. Many LM victims in this period were the critics of royal democracy and of the junta regimes. Careless as some might have been, they were not the fumbler. Confession was not for readmission to the royalist fold but for one's survival in the alienated political community.

Nevertheless, since 2006 LM became the state's higher priority for persecution. Although all the sources informed me that they were not the victims physically abused or tortured, the conditions surrounding the arrest and trial were more repressive. Most victims understood well that they likely faced a secret trial for a very lengthy period, more likely to get punished severely. They also remained in prison throughout the duration from the arrest to the end of the trial. The victims, therefore, had to consider the confession as a possible option because it would end the trial abruptly. More importantly, a confession would reduce the prison term by half. It has been understood that those are reasons for confessions.

In most LM cases, a confession was the result of rational thinking and careful calculation for the best possible option. Unlike most cases before 2006 in which the arrested ones often offered confessions "right off the bat", i.e. to the police, in the cases after 2006, the optimal timing of confession was when they were formally charged before the trial was even started. At that point, the formal charge provided the necessary information to evaluate one's particular situation – how many witnesses, how long the trial might be, how serious each count was, and the possible prison term. Then, they would calculate how much a confession would help cut short the trial period and jail time.

If the speculated sentence is shorter, the LM prisoner would confess early, to cut short the trial period and to reduce the punishment by half the prison time. If the speculated jail time is very long, they would not confess because half of such time could likely still be much longer than the trial period even in the military court. In this scenario, the prisoner would take a chance going on trial. A confession can be reconsidered and submitted during the trial. The longer speculated jail time, the less meaningful the confession and the reduced prison time would be. Given that LM is as a political as a legal case, moreover, some also believed that the possible changes in political conditions might help cut short their very long prison times while the confessions might not do as much. However, how long is worth a confession is up to individuals.

It must be noted that in most cases, the defendants' evaluations were done in close consultation with their lawyers.

THAI PRISON: THE KEY FACTOR TO CONFESSION

This understanding among the victims implies another necessary factor in the consideration for confession – life in Thai prison. To many LM victims, prison was probably the decisive factor that induced them to confess.

This answer seems no-brainer. But there are much more to it. A prison in Thailand is not a detention place that only takes away one's freedom and disciplines the prisoners. It does far more and other than depriving freedom as the method of punishment. It is hardly the "correctional facility" either. A Thai prison is highly notorious for hardship due to destitute conditions.

There is no individual cells, except for the privileged prisoners (such as powerful public figures) and the Westerners. Normally, prisoners cramped together in several super-crowded rooms behind bars with only the head-to-toe space for individuals. Illness and skin diseases are common. Next, food as provided in Thai prisons is inexplicable. It is barely edible. Next, a common advice for life in a Thai prison is, "do not get sick" because health facilities are extremely inadequate and poor. A-Kong, as mentioned earlier, died only a year after imprisonment because he received only minimal medical treatment, far from what he needed, even though the authority knew about his health condition before he was put in jail.

The social life in prison is under the mafia-like system of control – the hierarchical order of power relations from the prison guards down to some selected "big boss" prisoners in each crowded room. The big bosses assist the prison officers in exchange for privileges and benefits such as the better living conditions. Some were the eyes of the officers on the LM prisoners inside the prison cells. Conditions in the women prison were even worse. The basic staples for prison life – food, space and health facilities are similarly miserable. But the social life is probably more distressful, making the material provisions worse. The rule of the matriarchs is pervasive from top to bottom, from prison officers to prisoners and among prisoners themselves. The exercises of power, according to prisoners, is more intensive and intrusive. In addition to

sheer power, humiliation is common as a method for control. Physical searches were too often. Every prisoner who goes outside for any reasons (such as for the trials, interrogations, or for hospitals) must go through the pelvic exam every time upon return, allegedly to prevent drug smuggling into the prison. The physical humiliation is merely to reinforce that the higher authority may exercise power over the body of the inferior female as they wish.

Thai prison turns out to be the most effective factor to induce confessions. It is the place for every day's slow torture – a living hell, as some say. This is why almost every one of the 16% of the arrested who got bailed out at any stage of the process **did not** confess and were willing to go on trial regardless of what they did, while 91% of those who were denied bail thus stayed in prison, decided to confess, regardless of what they did.

OTHER INFLUENCES FOR CONFESSION

Those who were arrested after the 2014 coup were brought to the military camps for 3-7 days before they met the police. The military officers usually wanted to find the supposed co-conspirators, funding sources, and so on, as they always presumed that the LM violation was part of the larger anti-monarchical scheme. They were the first authority who tried to convince the LM victim to cooperate and confess in exchange for the lenient treatment.

In a few cases, a “team” of military intelligence, police, the government agencies involving security matters, and an agent from the palace, met with the defendants several times during the period of police investigation. They usually convinced the defendants to confess with some promises.

Almost every victim got contacts with agents of the palace in one way or another. Many met them in person; some met with well-known representatives of the palace whom they can identify. Most contacts were not intensive, such as a few visits from without significant consequence. Nevertheless, a few of the victims had serious communications for months. In most cases, they discussed the benefit of confession. Senior prison officers often offered help establishing contacts with the palace if the defendants agreed to confess.

None of the accused, however, agree to confess because of these extra-police authorities. In must be noted that, while almost all meetings and contacts mentioned above took place without

the presence of lawyers, the defendants had opportunity to consult with their lawyers afterward before making any decisions. All confessions, as far as I have learned, came after the consultation with lawyers.

A confession must be voluntary, not the result of force or other illegal methods which would make it “false”, thus unacceptable by the court. In a civilian court, a judge has the obligation to ask the defendant, including the LM case, to make sure a confession is not wrongfully induced. However, most LM confessions were pro forma, that is, no investigation into the condition of the confessions. For a military court, according to the law, a confession can be accepted out of court without the judge’s inquiry. According to some lawyers, a few judges even went further, trying to convince the defendants in LM cases to confess. Their reasons were that the trial would not help the defendants while the bail was not possible because the defendants had committed a serious crime, and that it was difficult to deny the LM charge, thus why wasting the time instead of getting reduced sentence. Despite that these reasons are probably true and might be based on good intention, the judges’ advices were unwarranted. Above all, such advices reflected the presumption of the defendant’s guilt even though the trial had not ended yet.

Finally, another common source of advice for confession was the accused’s own family. In general, the family believed that a confession would help lessen the hardship in prison and reduce the prison term. Out of concern and sympathy, they too made the calculation and if the anticipated result fell on the border line between confess and not confess, they usually urge the defendant to confess. Their advices for confession were the persuasive and perhaps most influential ones to the prisoners.

WHY DID A FEW REFUSES TO CONFESS?

Some of the accused adamantly refused to confess despite knowing well that they would remain in prison for a long time. For some, after their rational calculation of the duration in prison, they believed that the possible prison time after sentencing would be very long and confessions would not help much, as explained earlier. Then the trials at least gave them the chance to fight for justice. In a few well-known cases, confession was not even an option for ideological reason.

I met one victim whose case entered the fourth year but only three witnesses had testified in the military court. The case may go on for 6-7 years. He insisted in his right and freedom of expression, thus refused to confess despite the lengthy trial. In addition, he believed that his imprisonment during the trial would draw international attention, thereby the pressure to the junta. In another well-known case, A young student was charged in late 2016 for sharing a news piece from the BBC about the wealth of the monarch. The BBC and its journalist were not charged. Neither were 2400 other people who also shared the same news to others. The student was determined to fight the unfair charge and trial. Initially he got bailed. But afterward, the court revoked the bail and locked him up. A year later, with only five witnesses testified, he changed his plea, confessing to the court to end the trail and reduce the jail term.

Two of former prisoners – one female and the other male -- refused to confess. They were sentenced to 18- and 10-year imprisonment respectively and were released after 11 and 7 years respectively, thanks to their good behaviors in prisons. For the female one, despite her ordeal in women prison, she adamantly refused to confess. Had she done so, she said, it would have betrayed her conviction and she would have lost her dignity and integrity. The male one also shared similar reasons for his decision not to confess. As he said, “Had I confessed, I could not have lived being myself for the rest of my life.”

To understand the possibly frightful condition after confession, the fate of Winston Smith in the classic, *Nineteen Eighty-Four*, by George Orwell may be helpful. In such the totalitarian condition, the state tightly controls everybody’s behaviors, actions and thoughts. Winston’s individuality is a serious crime, especially a thought crime. After his arrest, at first, he tried to fight the thought police, but later he broke down and confesses the crimes. The ultimate surrender of individuality is his betrayal of love, putting blame for the crime on his lover. He was then released from prison. He may walk like a normal person in the street, but he has lost his soul. He was a prisoner inside his body for the rest of his life. The male editor I describe above was afraid of living with the “Winston syndrome” for the rest of his life.

Despite these decisions not to confess by a few, it does not mean that the decisions by most other victims to confess meant that they have lost their convictions or betrayed their conviction. Keep in mind that the choices given to all LM victims were limited and none was good. For most former prisoners, neither did the prison experiences nor the confession change their political views at all, according to the ones whom I met and to their lawyers. Most decided to confess in order to getting out for personal and family reasons. Most chose not to get involved

with politics any more while a few have resumed their active political activism. No dignity lost, nor any psychological scars, no Winston syndrome.

AN EXCEPTIONAL CASE AND THE POSSIBLE CHANGES

There is a very unusual case of five people arrested for chatting on Facebook in 2016 about the current King. Initially, the military detained them for interrogation, sometimes in the middle of the night. A senior palace agent came to talk to them and asked them to write a short essay about the king every day. Later they were put in prison like many other LM victims. One day during that time, however, the five were brought to have an audience with His Majesty. They did meet the king! They did have a face-to-face conversation with the king and his companion. The king did not talk much, according to “the scholar”, one of the five whom I interviewed, but his companion reprimanded the five sternly, reminding them the severity of LM. They discussed about the law too. The scholar offered his opinion to the king about the law, how it has been used, how it has diminished the reputation of the king instead of enhancing it and has damaged the image of the country rather than improving the security of it. After the audience with the king, all five were taken back to the prison, staying there for some more weeks before all five were released without charge. Nevertheless, a senior palace person kept in touch with the scholar after his release, asking the latter’s opinion on various subjects and asking him to participate in the king’s volunteer projects. He duly complied, though his participation and the contacts from the place person faded off after some months.

Since 2018 there were signs of changes regarding the 112 charges and trials. The number of arrests and charges precipitately dropped off since early 2018. More bails were granted. In February 2018, the Attorney General issued an instruction to the state’s prosecutor at all levels that after the police investigations, all the materials from the police must be delivered to the Attorney General Office. No recommendation or comments required. The Attorney General will be the only person who decides to charge in court or otherwise. The state’s prosecutors at the lower levels should not make any decision, even comments, as they had done before. This action, as it is understood, is a measure to stem the abuses of LM.

Then, two cases signaled a change. In the first case, the victim was a lawyer who had represented several LM defendants and who had fought doggedly that the military court has no jurisdiction over his case. He refused to cooperate with the authority at every level, and,

moreover, he also wrote a manifesto on what was wrong with the rule of law and the judiciary in Thailand. Surprisingly, the case against this dogged lawyer was dropped. According to him, the judge in his case hinted that the order from the high place came unexpectedly a day before his release.

The other case was a person who faced several LM charges, thanks to his prickly speeches at different political gatherings since 2010. After deciding not to confess but losing his first two trials, each of which resulted in ten years in prison, he lost his will to fight and prepared to confess in other trials. The third trial was even worse than the previous two and his chance to win was even less. His confession would reduce the additional jail time. Surprisingly, his third and other trials were dropped in July 2018.

As this article was written, it is still too early to know the reason for these two surprises or whether there is a real change in how the LM law is enforced. If there is, is it a matter of policy, the politics of the law, or other reasons? Does the change an initiative of the government, or the judiciary, or higher than them? Why – political shrewdness, realization of the backfires, or the king's benevolence?

Even if it is a good sign that finally those in power have come to a common sense, does this change suggest that only the extra-legal, extraordinary authority can rein in the abuses of the 112? Does it suggest the law is not a legal matter but the one of policy and politics? Does it mean that the widespread problems and the end of it has nothing to do with the rule of law? Does it mean there is no rule of law, but the law is up to the discretion of the supreme authority? Is Thailand reverted to absolute monarchy and all people can do is to pray for his benevolence or to please him?

IMPLICATIONS AND FURTHER QUESTIONS

The different aspects of the LM law in Thailand that this article has dealt with – the law and its enforcement, and how it has led to the confession – raise many other questions. This article is not the end of the inquiry. Rather, I hope, it opens up many directions for further studies. In this final section, I would like to point out three important ones.

1. False confession

Given the conditions and reasons for confession as explain in this article, should the confessions to LM in Thailand be considered the “false” ones? In the normative rule of law, a confession obtained by force, threat, torture, lure or deception, is a “false confession” that would be unacceptable in court. What if the torture and physical threat come in the form of the military custody, the state of emergency, and the inhumane conditions of the prison?

The LM confession was mostly the result of the rational, calculating thinking for the best option for the defendant. But there were only a few available options in the repressive political conditions, unjust legal process, and inhumane prison. None of the options was good. Does the presumption of guilt by many authorities, sometimes even by the judges, hence the persuasion and attempts to get a confession, make the confession from this process false and unacceptable? The scholarship on false confession should extend the examination to those societies in which the legal system and prison conditions are below the normative one.

2. Thai Prison

Is a prison in Thailand a “correctional facility”? Is it a “modern” prison as scholars have discussed so much in recent decades? Is Foucault’s analysis, Bentham’s panopticon prison, or and the ideas of modern prison applicable to prisons in many countries such as Thailand? Is it a “correctional facility” according to the standard criminology? I doubt very much. In many ways Thai prison is quite opposite from those modern concepts of prison. If so, how should the scholarship on the normative rule of law take into account this kind of prison as part of the justice system?

Thai prison seems not a form of punishment by depriving one’s freedom, by controlling and disciplining the prisoner’s body. I doubt if Thai prison aims at correcting anything or rehabilitating anybody. Thai prison seems, I would argue, operate primarily a place for physical punishment, and for diminishment of life, i.e. the denial of humanity. It is a mode of torture. I believe that the legacies of the ancient mode of criminal punishment remains dominant in the modern institution of Thai prison, from the physical arrangement and the architecture of prison, the material provisions such as food and health facilities, to the social and power relations in prison as reflected in the mafia-like regime of control and in the prison culture as evident in

the women prison. Unfortunately, this fascinating question is beyond the scope of this article and beyond my expertise.

3. Rule of law in Thailand

Is Thai prison the only institution in the Thai legal and justice systems that have inherited strong legacies from the past? Perhaps the entire legal system has as well, including the laws, the judiciary, and other institutions in the justice system such as the legal professions, legal education, and the relationship between the state and the justice system.

Siam was an ancient civilization with its legal culture, institutions and system that were based on the Hindu-Buddhist philosophical, institutional, political and cultural basis, and that had developed for several hundred years. Such basis and history were quite different from the European experience that produced the normative rule of law. The diversion from the normative rule of law is not due to backwardness, however. Rather, the rules of law in a country is the outcome of particular historical developments, such as under colonial conditions that were different from the European political, cultural and legal history.

Unfortunately, scholarship on the modern laws and legal system in Siam and Southeast Asia has been largely framed in the modernization concept, particularly the introduction of modern laws and the modern judicial system. Only recently, the works by the pioneers in this field, namely Loos (2006), Rajah (2012) and Cheesman (2015) have explained quite convincingly that the modern legal system and rules of law in Siam, Singapore and Myanmar respectively have been different from the normative rule of law because of particular historical developments under colonial conditions, even though Siam was not directly or formally colonized.

The LM law and how it has been enforced and abused, and Thai prisons as have been discussed in this article strongly indicate the legacies of the legal practices and cultures before the modern rule of law in many respects. The security laws including the 112 seem the “exception” to the normative rule of law and to the just and due process. But in fact, this exception is a permanent part of the codes, a customary practice and the legal culture in Thailand. The laws and the practices they entail may reflect the legacies of the Hindu-Buddhist legal system and culture in many other respects that deserve careful and critical examinations, such as the relations between the state and laws, the supremacy of the monarchy to laws, the presumption of guilt,

how confession is taken, and so on. The LM thought crime is a good lens into the development of the modern legal system in Thailand today

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