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THE ORIGINS OF THAILAND'S MODERN MINISTRY OF JUSTICE

AND ITS EARLY DEVELOPMENT

by

Rungsaeng Kittayapong

A dissertation submitted for the degree of

DOCTOR OF PHILOSOPHY

UNIVERSITY OF BRISTOL

April 1990

## Abstract

This is a study of the origins of Thailand's modern Ministry of Justice and its early development. It divides into three main parts. Part one which is the background to this thesis consists of three chapters, and deals with political development in the reign of King Chulalongkorn, the Thai traditional legal system, and growing pressures for the establishment of a Ministry of Justice. Part two of this thesis divides into two chapters; chapter 4 is devoted to discussion of the impact of the West in terms of reform generally, and chapter 5 considers the Chakri reformation in other fields in the same period as this thesis.

Part three, which is the heart of this thesis, concerned with the period 1894-1910, divides into four chapters: chapter 6 and 7 analyse legal policy and judicial reform in the Ministry of Justice while Princes Phichit and Raphi were Minister. Chapter 8 investigates the role of the General Advisers and the Legal Advisers in judicial reform, and chapter 9 considers the staff of the Ministry of Justice and the role of leading Siamese lawyers in shaping the Ministry of Justice. Finally, the conclusion of the thesis considers the consequences of the judicial reform and the establishment of the Ministry of Justice.

To my late father, my mother

and my wife



MEMORANDUM

I declare that this thesis represents my own  
unaided work except where otherwise acknowledge.

*R. Kittayapong.*

Rungsaeng Kittayapong

Department of History  
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April 1990

## Preface

In attempting to write this thesis I have been encouraged by several factors. First, despite the fact that modern research has been going on in almost all fields of Thai studies since the 1960s, there is surprisingly only one book, by D.M. Engel, Law and Kingship in Thailand During the Reign of King Chulalongkorn,<sup>1</sup> concerned with judicial reform in the fifth reign, but this book did not investigate primary sources in the National Archives, Bangkok, or the voluminous comments of British diplomatic observers preserved at the Public Record Office, London, and therefore is not a fundamental study. Second, since the mid-1960s, a great many more historical documents have been discovered or collected together and transferred into the charge of the National Archives, Bangkok. These documents, particularly original documents of the Ministry of Justice, have never been investigated in depth by any historians before Western or Thai. I, therefore, resolved to research in depth into these documents as, I believe, they can contribute a great deal of knowledge about Thai studies, not only regarding legal reform but also other reforms during the reign of King Chulalongkorn.

Third, I am personally of the opinion that the origins of Thailand's modern Ministry of Justice and the judicial reform are very important and partly contributed to the maintenance of Siam's independence. Furthermore, this judicial reform was the root of the Thai modern legal system. I, therefore, design this research as a pioneering study to pave the way for other historians to delve further into the development of the Ministry of Justice and the judicial reform from the end of the fifth reign up to the present.

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<sup>1</sup> Engel D.M., Law and Kingship in Thailand During the Reign of King Chulalongkorn, U. of Michigan 1975.

### The Subject

This study concentrates on the Western impact upon the origins of the Ministry of Justice and its early development. Without the Western powers, the process of the judicial reform would have been much slower. It also investigates the Siamese traditional legal system before the reform. Besides it analyses whether the reform was qualitative or quantitative and who were the persons instrumental in carrying out the reform. Finally, the study suggests whether the establishment of the Ministry of Justice and the judicial reform achieved its purposes and what were the hindrances to reform?

### The Sources

Most of the primary sources referred to in this thesis are documents in the National Archives, Bangkok, and the Public Record Office, London. Other primary sources are files in the Foreign Ministry and the Ministry of Justice, Bangkok. Secondary sources are books and theses written by both Western and Thai scholars.

### Acknowledgements

I wish to express my gratitude for the Overseas Research Scholarship which helped make this research possible. I am much indebted to Dr. N.J. Brailey, under whose guidance and supervision this thesis was prepared. I also thank my friend, Sahathon Rattanapijit, for his kindly assisting me in finding specific documents in Thailand. I also appreciated the assistance of the staff of the National Archives, the Ministry of Justice Library, and the Foreign

Ministry Library, Bangkok, the Public Record Office, and the Library of the School of Oriental and African Studies, University of London, London. Finally, my thanks go to my family, whose moral support has prevented me giving up the whole project out of frustration.

Glossary

Chaophraya	second rank of Thai officialdom
Dika court	the supreme court of appeal
Kotmai Tra Samduang	the Law of Three Seals
kotmontienbarn	the royal family's law
krom	department of government
laksana	section of law
Luang	fifth rank of Thai officialdom
lukkhun nasarnluang	the king's legal advisers
monthon	1890s provincial government "circle"
phra	fourth rank of Thai officialdom
Phra ong chao	child of a king by a minor wife
Phra Ratcha-arya court	criminal court.
Phraya	third rank of Thai officialdom
Porisapha court	court of petty offences
rapsang court	courts established by the King for special purposes
senabodi	Thai ministers
Somdet Chaophraya	(rare) top rank of Thai officialdom
Thammasat	Siamese law in the Ayuthya kingdom
tralakarn	judges in courts before reform
Uparat	see Wangna
Wangna	(or Uparat) the Second King

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# The Origins of Thailand's Modern Ministry of Justice and its Early Development

## Introduction

Thailand's modern history probably starts with the reign of King Mongkut (Rama IV) (1851-1868) and King Chulalongkorn (Rama V) (1868-1910), as there is reliable and substantial evidence available. Historians have concentrated their research on the era of King Chulalongkorn because it was the most important and crucial period as Siam's independence was at risk, and it was the transitional reform period in which the Siamese elites tried to implement reform in many fields to survive colonization. Various studies have been made in this field, for instance, N.A. Battye researched society and military development in the reign of King Chulalongkorn;<sup>1</sup> Tej Bunnag studied the provincial administration;<sup>2</sup> I.G. Brown discussed financial development;<sup>3</sup> and D.K. Wyatt education reform.<sup>4</sup>

No Western historian has researched in depth the development of the legal system or the Ministry of Justice in Thailand during the reign of King Chulalongkorn. There is only one available book, "Law and Kingship in Thailand during the Reign of King Chulalongkorn" by David M. Engel, who ranged widely over the changes in the judicial system in that period but he did not investigate primary sources; therefore, his study is not profound. One important point which Engel failed to consider was the persons who carried out the changes. He tended to

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<sup>1</sup> N.A. Battye, The Military, Government and Society in Siam, 1868-1910, Cornell University Ph.D., 1974.

<sup>2</sup> Tej Bunnag, The Provincial Administration of Siam, 1892-1915 (Kuala Lumpur, 1977).

<sup>3</sup> I.G. Brown, The Ministry of Finance and the early development of modern Financial Administration in Siam, 1885-1910, University of London Ph.D., 1975.

<sup>4</sup> D.K. Wyatt, The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn (New Haven, 1969).

suggest that all the judicial reform was carried out by King Chulalongkorn himself, which was not in fact true, as the changes were supervised by the King but the persons who carried out those changes were Siamese lawyers and Foreign General Advisers and Legal Advisers. The lack of investigation of the persons instrumental in implementing the legal reform makes study obscure and uncertain. It is therefore indispensable to consider the actual legal reform by scrutinizing the ideas, personality, and relationships of the persons who influenced the reform with a view to finding the purposes and direction of the reform.

The judicial reform and the establishment and development of the Ministry of Justice were absolutely essential for Siam at that time as it would maintain peace and facilitate foreign commercial intercourse in Siam. The peaceful situation in Siam together with the policy of the Siamese Government to encourage British investment in particular played an important part in securing Siam's independence in face of French aggression. There is an argument that Siam survived because of the rivalry of the Western Imperialists, and therefore, the reforms during King Chulalongkorn's reign were not important as they did not do anything to help Siam in securing its independence. This argument is probably half true. It is accepted that the rivalry of the Western imperialists played a part in maintaining Siam's independence, but reform during the reign of King Chulalongkorn, particularly judicial reform, also contributed to Siam's survival. The truth of this argument will be displayed in this study.

Various studies have been made by Thai scholars relating to judicial reform and the development of the Ministry of Justice. These studies are:

1) Kanpratirup kansarn naisamai Phrachulachomklao (The Judicial Reform in the Reign of King Chulalongkorn), Bangkok, 1968, by Thanin Kraiwichian, who ranged widely and superficially over the judicial reforms implemented during King

Chulalongkorn's reign without researching into primary sources. The author proposed that all legal reform was initiated by King Chulalongkorn even though he hint that there were some ministers and lawyers who played a great role in the reform, but he did not investigate the role of the actual persons who influenced the reform.

2) An M.A. thesis, "Kanpratirup kansarn naikrasuang yuttitham naisamai Phrachulachomklao" (The Reform of Courts in the Ministry of Justice in the Reign of King Chulalongkorn), Prasanmit University, 1973, by Mr. Manu Udomwet, also studied judicial reform in this period. This study investigates primary sources in the National Archives in Bangkok and also considers the role of some important lawyers who influenced the reform, but it fails to analyse those primary sources fundamentally; therefore, it is a descriptive study.

3) A Chulalongkorn University study, Wiwattanakarn Khongkotmaithai nairobsongroipi (The Development of Thai law over 200 years), Bangkok, 1982, by a group of scholars who concentrates on the actual laws which had been implemented in Siam from 1782-1982. This study did not investigate primary sources in the National Archives, Bangkok. Even though it analyses the cause of the reform, it is only in the legal context and does not use any political or historical approach. It also failed to investigate the roles of important lawyers and advisers who influenced the reform.

By contrast with these three studies, the purpose of this one is to examine, through the use of Thai and British documents, firstly, the traditional Siamese legal system before the reform, secondly, the factors which influenced the judicial reform, the judicial reform process, by analysing how fundamental were the changes, and lastly, who were the persons instrumental in carrying out the reform, and how important was the judicial reform in securing Siam's independence?

The structure of this thesis is divided into three parts:

Part one, political and legal background and the origins of the Ministry of Justice, comprises three chapters: chapter 1 discusses Siam's political background from King Chulalongkorn's first coronation, in 1868, to the end of his reign, in 1910. This chapter emphasizes the important political events which affected judicial reform. Chapter 2 considers the traditional Siamese legal system before the reform. The significant law was the Law of Three Seals which had existed up to the reign of King Chulalongkorn. Another feature of this chapter is the royal despotism in the Siamese legal system. Chapter 3 focuses on the unequal treaties and the origins of the Ministry of Justice. The main part of this chapter concentrates on the effect of the unequal treaties and the role of Prince Phichit Prichakorn, who was the most knowledgeable Siamese lawyer in its traditional system. It also investigates why Prince Phichit was not appointed as the first Minister of Justice, and the role of Prince Sawat as the first Minister of Justice.

Part two features the Western powers' influence as the most important factor which forced Siam to commit itself to the reform programmes. This part divides into two chapters: chapter 4 explains Siam's struggle to maintain its independence and restore extraterritorial rights; chapter 5 studies the Chakri reformation which spread into every field in the Siamese administration, viz. military reform, provincial administration, financial and education reforms.

Part three focuses on the role and ideas of the persons instrumental in carrying out the judicial reform in the Ministry of Justice. This part divides into four chapters: chapter 6 and 7 investigate the judicial reform in the Ministry of Justice under Princes Phichit and Raphi respectively as the Minister; chapter 8



analyses the role and influence of the General Advisers and the Legal Advisers over the judicial reform; chapter 9 investigates the Siamese staff in the Ministry of Justice and their role in the judicial reform.

Finally the conclusion will answer these three significant questions: firstly, what caused the judicial reform; secondly, was the reform qualitative or quantitative; lastly, what were the consequences and hindrances of the judicial reform?

Sources for this thesis have been primarily documents from the National Archives (NA) in Bangkok, and from the Public Record Office in London. The files consulted at the National Archives were: firstly, files of the Ministry of Justice which are mainly correspondence between King Chulalongkorn and his Ministers of Justice and correspondence between the latter and their advisers or staff. These files also include the reports of the Ministry of Justice and of the cabinet meetings concerning the Ministry of Justice affairs. Secondly, there are files of the Foreign Ministry which are mainly correspondence between the Foreign Minister, Prince Thewawong, and the King or staff. These files are classified as R5 Ky for the files in the Ministry of Justice, and R5 Kt for the files in the Foreign Ministry. Thirdly, files of the Ministry of Finance and Ministry of Defence were also consulted. They are classified as R5 Kkh for the files in the Ministry of Finance, and R5 Kk for the files in the Ministry of Defence.

The files consulted at the PRO (Public Record Office) in London are files of correspondence between the British representatives in Siam and the British Foreign Office. These files are classified as FO 422 and FO 69. Other documents at the PRO also consulted are the diaries of Sir Ernest Mason Satow, the British Minister Resident in Bangkok, 1884-7. This file is classified as PRO 30/33/15. Moreover, King Chulalongkorn's diaries were also consulted.

One major problem encountered during the course of this thesis is a marked lack of materials in some areas. Such Thai documents are not found probably because of either their non-existence, or due to their sensitivity causing them to have been withdrawn from public inspection.

Another problem is the identification of individual Siamese, particularly Siamese officials, as surnames were not introduced in Siam until 1916. Previously, men were known by their personal name, but if they became government officials, they were known by their current official title, ranked from *Meun*, *Khun*, *Luang*, *Phra*, *Phraya*, to *Chaophraya* and exceptionally *Somdet Chaophraya*. Princes in the royal family may have been conferred these ranks and become *Chaotangkrom* (Prince of rank), for instance, Prince *Krommeun*, Prince *Kromkhun* etc. However, it is possible to discover the surname subsequently adopted by a man's descendants, and this is thus included in brackets after the title.

The name "Siam" was the name used for the country by Western imperialists at that time. As this thesis is a study of judicial reform during the period of Western imperialism and for the promotion of knowledge in the West, therefore, it is desirable to call the country "Siam" throughout the thesis. But the Thai people always called their country "Prathet Thai" or "Muang Thai" which is translated into English as Thailand.

It is also important to consider the countries subject to the same conditions as Siam. Such countries were China and Japan. In 1885, the Siamese Government demanded that their law should be applied and enforced upon British subjects. This is evident in Satow's, the British Minister Resident in Bangkok, diaries of 3 July 1885, in which he noted that:

With regard to the Siamese demand that their laws should be accepted by us without demur, and enforced against our people, such a claim had not yet been admitted in any other extraterritoriality country, not even in Japan, & that Her Majesty's Government had not given way on that point when I had urged it...<sup>5</sup>

In China, the Opium War and the Nanking Treaty of 1842 marked the first use of Western military force in China. Great Britain bought a large quantity of tea from China but it had few products that China was interested in buying by way of exchange, so Britain lost a lot of silver to pay for tea. In order to mitigate this loss, British merchants began to export opium which they obtained from India, to China. An increasing Chinese addiction to opium caused a boom in imports of opium and led to an unfavourable trade balance paid for by a steady loss of China's silver reserves. In the light of the economic effects of the opium trade, plus the physical and mental deterioration of opium users, the Chinese Government banned the opium trade. The enforcement of the ban became stringent toward the end of the 1830's; stores of opium were confiscated. On the second of November 1839, British warships decimated Chinese war junks at Canton. The overwhelmingly superior fire-power of the British forces caused a quick cease-fire. Again in 1842, the British threatened to bombard Nanking and China was forced to sign the Treaty of Nanking which provided for 1) cession of Hong Kong to the British Crown; 2) the opening of five treaty ports, where the British would have residence and trade rights; 3) China's concession of extraterritorial legal jurisdiction; 4) a fixed tariff.<sup>6</sup>

In the case of Japan, according to the policy of the Tokugawa Shoguns, Japan became a country closed to the outside world for nearly two centuries. Commodore Perry who left the United States for Japan in 1852 was the first to intrude. When he

<sup>5</sup> Satow Diaries, PRO 30/33/15/9.

<sup>6</sup> Gong, G.W., The Standard of Civilization in International Society (Oxford, 1984), pp.136-138.

returned to Japan in the early spring of 1854, he brought three steamships, three sloops of war, and three storeships. This hastened the signing of the treaty at the end of March 1854, which was the first of its kind between Japan and Western imperial powers. This Treaty opened the ports of Shimoda and Hakodate to the United States, but clauses granting extraterritoriality were conspicuously absent. Later, on 17 June 1857, Townsend Harris, the United States Consul General to Japan, secured a Convention which provided for the permanent residence of Americans at Shimoda and Hakodate, and secured extraterritorial privileges in criminal cases.

In 1858, another American-Japanese Treaty was concluded which led to the restriction of Japan to a fixed tariff and trade regulations. Later, the Netherlands, Russia, Britain, and France followed the American lead in signing new treaties within the year. Therefore, the fixed tariff and the export regulations, along with the extraterritoriality concession, formed the heart of Japan's grievances against the "unequal treaties" which left Japan less than fully independent. Extraterritoriality quickly became an issue, perhaps the first issue in Japanese history, to be influenced to a great extent by public opinion. The Japanese accepted their condition without using arms to protect their rights, because they realized that the Western imperialists were mightier than them both militarily and economically.<sup>7</sup>

The Western imperial impact quickly helped the Japanese Tokugawa regime to collapse. The other reason for its collapse was weakness and deterioration inside the Tokugawa regime. Japan at the time of Meiji restoration in which a new generation of Japanese leaders took over administrative power from the Tokugawa house, reverted to a unified central government. These leaders brought the nation through a great transformation and established many institutions which facilitated the process of social reconstruction. The Meiji Government reconstructed and strengthened the

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<sup>7</sup> Ibid., pp.168-170.

position of the Emperor by using the slogan "restoration of Imperial authority". The Meiji leaders looked back to the early Chinese and Japanese codes for inspiration in establishing a new legal system. According to the traditional Japanese legal system, their jurists and officials were in general more familiar with the Chinese legal tradition than the Western as a result of their common Confucian background, and the Japanese codifiers were inclined to follow the Chinese legal draftsmanship, but owing to the intensive contact with the Western world adjusted the Japanese legal system to Western legal principles. The idea of adopting the Western legal system became greater as Japan tried to secure its independence from Western political intervention and to abolish the unequal treaties between itself and the Western powers. The main intention of Japan was to convince the Western powers of Japanese willingness and ability to establish an acceptable legal system.

The Meiji leaders realized that the best way to impress the Western powers with Japan's progress was to adopt a constitutional form of government with representative institutions and, therefore, on 11 February 1889, the new constitution was promulgated as a gift from the Emperor, who remained the sole source of authority in Japan for the Japanese people.<sup>8</sup> Reform of the government along Western lines and the implementation of the principal codes of law which Japan adopted from the German and French systems brought approval from the treaty powers and provided an important step towards revision of the unequal treaties. The Aoki-Kimberley Treaty signed in July 1894 made Great Britain the first power to relinquish extraterritoriality in Japan by 1899 when the new Japanese legal codes would become fully operational. The other Western powers followed suit and in June 1899, an Imperial Rescript was issued to recognize the actual passing of extraterritoriality in Japan.

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<sup>8</sup> Ibid., p.177.

By contrast, in China, the Chinese were still struggling to preserve the old Confucian order. Even in the early twentieth century, the Boxer rebellion appealed to the popular misconception that the foreign devils, i.e. Westerners, could be driven into the sea and their influence eradicated. China was not the same as Japan because China had a strong belief in the tributary system, whereby the Chinese had long believed that China was the centre of the world, and other countries had to pay respect and tribute to it. Because of this belief, China was in too rigid a position to adjust and develop itself according to the ideas of the West. In comparison with Japan, China's acceptance of Western law and principles of social behaviour appears slow.

In January 1912, the Republic of China was founded after the revolution against the Ching dynasty. China's constitutional government intended to consolidate the gains of the revolution by restraining the powers of the conservatives and the military and to replace the Confucian orthodoxy which had lasted for many centuries with the fundamental principle of popular legitimacy. In fact the transition from the Ching dynasty to the constitutional government happened relatively quickly and was essentially bloodless because the Ching dynasty had been in decline even under the famous Dowager Empress who died in 1908.

There was another reason which made China's prospect of revising the unequal treaties slow. After the Republic of China was founded in 1912, but owing to the weakness which had undermined China under the Manchu regime, the problem of factionalism and rivalries for power emerged. Civil war, between the dominant Kuomintang party and the Chinese Communist party which gained strength from Russian support, made China's efforts to revise its unequal treaties appear questionable in the eyes of the Western powers.<sup>9</sup>

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<sup>9</sup> Ibid., p.148.

Ultimately China too realized that the only way to revise its unequal treaties was to reform its legal system in line with that of the Western powers. The reform of China's domestic legal system was well under way by the time of the 1911 revolution. The Law Codification Commission directed the drafting of Criminal, Commercial and Procedural Codes and the Criminal Code was promulgated in 1909. After the 1911 revolution, the Revised Law Codification Commission continued its work, enlisting French and Japanese advisers in 1914 to help make Chinese laws compatible with the general expectations of the Western powers. The instability of China and the lack of independence of the Chinese judiciary made the abolition of extraterritoriality happen very slowly. Only after Japan attacked Pearl Harbor in 1941 did change occur in the Western policy on extraterritoriality so that China could restore its full independence in July 1943.<sup>10</sup>

Siam also lost its full sovereignty through the unequal treaties. The process of restoring extraterritorial legal jurisdiction happened alongside the judicial reform which will be illustrated in full in this thesis.

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<sup>10</sup> Ibid., p.163.

PART ONE

TRADITIONAL THAI POLITICS AND LEGAL SYSTEM AND THE  
ORIGINS OF THE MINISTRY OF JUSTICE



## Chapter 1 Political Development in the Reign of King Chulalongkorn

There are many phases to Thai political development from the beginning of Thai history until the reign of King Chulalongkorn. It is desirable to investigate the changing of politics in each period briefly in order to understand the political system prior to King Chulalongkorn coming to the throne and the reason for the changes.

It is probably accepted among historians that Sukhothai was the first kingdom of Thailand. King Ramkhamhaeng was apparently the most able King of this period. He reputedly ruled his people like a father caring for his son. The kingdom was free of oppressive laws. Evidence of this is to be found in many inscriptions which were made during his reign. The political system during that time was paternalistic; if any commoner in the land had a complaint he could go to strike the bell which the king had hung at the gate and the king would settle the case by himself.

The kingdom of Ayuthya was founded by King Uthong (Ramathibodi I) in 1351. The kingdom progressed greatly in the reign of King Trailok (1448 - 1488). He undertook major changes to strengthen the administrative institutions of the kingdom. He is supposed to have promulgated two important pieces of legislation, the law of the civil hierarchy and the law of military and provincial hierarchies. The first concerned the hierarchy and the rank differentiation in which the law assigned to everyone a number of unit of *sakdina* (field power). For example, the *phrai* (peasant freeman) were given a *sakdina* of 25 *rai* (2.5 *rai* = 1 acre), the *khunnang* elite were given at least 400 *rai*. The second law was about the government administration. The law divided the bureaucracy into two divisions, with the military under the minister of *kalahom* and the civil under the minister of *mahatthai*.

The most distinctive change from the time of Sukhothai to Ayuthya was the political ideology of the king. In the Sukhothai kingdom the conception of kingship was paternalism but in the Ayuthya kingdom, probably because of Khmer (Cambodia's) influence in the meanwhile, the position of the king was far more distant because the king was believed to be descended from Hindu gods. Therefore the relationship between the king and his subjects changed from father and son to master and servant. This established the king as *thewaracha* (god king) and led to the conception of the king as *chao paendin* (lord of land) and *chao chiwit* (lord of life), with the absolute power of life and death over his subjects. But this concept of kingship was made less forbidding by the Mon tradition of Buddhism. According to this Buddhist theory, the king was to promote the teachings of the Buddha, and to conform his own behaviour to the ethical principles which the Buddha had articulated.<sup>1</sup>

In 1767, the kingdom of Ayuthya was completely destroyed by the Burmese owing to the weakness of King Suriyamarin. All laws, edicts and records were destroyed. It was King Rama I (1782-1809), the founder and the first King of the Chakri dynasty, who ordered the restoration of those laws and edicts. The outcome was the Law of Three Seals and other edicts. King Rama I maintained most of the Ayuthya's administration system. He also maintained the position of *Uparat* or second king as the most powerful person in the kingdom after the king, who was supposed to succeed to the throne if he outlived the king. Rama I appointed his brother, Surasi, as *Uparat*. The tradition of appointing an *Uparat* was followed by Rama II (1809-1824) and Rama III (1824-1851). When King Rama IV came to the throne he also appointed his brother, Prince Chutamani, as second king called King Pinklao.

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<sup>1</sup> D.M.Engel, Law and Kingship in Thailand during the Reign of King Chulalongkorn (Ann Arbor, Michigan, 1975), pp.2-3.

During the reign of King Rama III, the West exerted much pressure on Siam and its neighbouring countries. In early February 1826, the British concluded their first Burma war by inflicting a serious defeat on the Burmese. This forced Siam also to reach agreement with the British. The result of the agreement was the Burney Treaty of 1826, by which Siam agreed to abolish the royal monopoly on trade which the Western merchants had found injurious to their interests. This Treaty was between Siam and the British East Indian Company.

After King Rama IV came to the throne in 1851, Siam made many concessions in foreign policy. In 1855 the Bowring Treaty was signed between Siam and the British Home Government. This treaty conceded all the principal demands of the British. It gave the British the right to establish a consulate in Bangkok and the right to handle legal cases pertaining to their citizens (extraterritoriality). It also gave the British permission to reside in the country, own land, and conduct business. Within a decade Bowring-like treaties were negotiated with the United States, France and other states. King Rama IV and his chief minister, Chaophraya Si Suriyawong, realized that Siam needed to change its political and legal systems to bring the country to a position of equality with Western nations in order to preserve the country's independence.

#### King Chulalongkorn's Background

It is necessary to investigate the early life of King Chulalongkorn in order to understand the influences which were exerted over him. King Chulalongkorn was born in the Grand Palace on 20 September 1853, the eldest surviving son born to King Mongkut (Rama IV) by a senior wife, Rampoey Pamarapirom, who was later installed as Queen Thepsirin, and thus in a favoured position to succeed his father.

Prince Chulalongkorn had one sister and two brothers of the same parentage, namely, Princess Chantramonthon, Princes Chakraphatphong and Phanurangsi.

The birth of the Prince is said to have been of wonderfully good omen for the country as it was preceded by the welcome arrival in the Grand Palace of a white elephant which King Mongkut and his people believed would bring good fortune and prosperity to the country. Besides, the drought of that year which threatened to destroy the rice plants in the country was overcome by a downpour of rain continuing for three days which revived rice plants to yield a surprisingly good crop.<sup>2</sup>

When Prince Chulalongkorn reached a suitable age for schooling, King Mongkut provided education for him. His education was separated into two parts. Firstly, there was the education which followed the traditional patterns established for princes in the Ayuthya period. At an early age he was taught Thai by a specialist, *Phra ong chao Putri*. He also studied other subjects which at that time were considered as appropriate to the education of princes, including Pali. He was trained in the use of firearms, in wrestling and fencing, and was taught horsemanship and elephantry. This part of his education had a traditional character and was similar to the training which had produced warrior kings in the past. Prince Chulalongkorn ordained as a Buddhist novice in 1866 in order to know about monastery life. After his period in the monastery his traditional practical education was made more concentrated. He was normally in attendance upon his father during the royal audiences at which public business was transacted, and he stayed by his father's side at the multitude of ceremonies that filled the year. When King Mongkut was deliberating public affairs Chulalongkorn was asked to sit by his father and was asked for his opinions. King Mongkut frequently sent him to discuss affairs with

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<sup>2</sup> Prachoom Chomchai, Chulalongkorn the Great (Tokyo, 1965), p.2.

*Chaophraya* Sisuriyawong who was Mongkut's chief minister. All of these experiences made Chulalongkorn accustomed to politics and administration.

Secondly, Prince Chulalongkorn's education was also concentrated on Western knowledge. King Mongkut recruited the Eurasian Mrs. Anna Leonowens in 1862 to instruct his children in English language, science, and literature. Prince Chulalongkorn at that time was about ten years old, was one of her pupils and impressed her with his personal warmth, his serious nature, and the way in which he threw himself into his studies and was excited by them.<sup>3</sup> Prince Chulalongkorn studied with Mrs. Leonowens from 1862 until he underwent the *sokan* ceremony (tonsure) marking puberty and was ordained as a Buddhist novice in 1866. When he left the monastery he continued his studies with Mrs. Leonowens until she left Bangkok in 1867, and then with Dr. Chandler, an American missionary, until the end of his father's reign.

King Mongkut was instrumental in educating Chulalongkorn in both traditional and Western knowledge. During the period of the Prince's education, in 1861, King Mongkut also conferred upon him the rank of *Chaofa* Prince which distinguished him from most other sons of the King and would entitle him to succeed his father to the throne. But King Mongkut himself was not certain about the person who would succeed him because traditionally if he died before the so-called "second king", or *Uparat*, *Phra Pinklao*, the latter would succeed him.

The political development during the reign of King Chulalongkorn can be divided into four periods:

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<sup>3</sup> Leonowens, Anna, Siam and the Siamese, Six Years' Recollections of an English Governess at the Siamese Court (Philadelphia, 1897), p.6.

1. The regency period (1868 - 1873)
2. The second coronation period (1873 - 1883)
3. The period of full authority (1883 - 1893)
4. The post-Paknam period (1893 - 1910)

### Section I The Regency Period

King Mongkut planned for Prince Chulalongkorn to succeed him as king. He arranged for him to have a good standard of education and also privately taught him in principles of statecraft. After the death of King Pinklao, the second King, in 1866, it was most likely that, short of illness, Chulalongkorn would succeed as king. King Mongkut is said to have hoped to be able to hand over the government to his son when the Prince came to age in 1873, but both caught malaria on a visit to Southern Thailand to witness a solar eclipse in 1868. King Mongkut died shortly after their return to Bangkok while Chulalongkorn was left sick and near to death.<sup>4</sup>

Before King Mongkut died, he called his three half-brothers who were senior members of the royal family, Princes Mahamala, Worachak and Ratsihawikrom, and his *senabodi* (ministers) to his death-bed and asked them for their forgiveness if he had done bad things to them. He asked them to look after his children and also requested that if any of them had committed severe crimes which deserved capital punishment, the execution should be commuted to exile. On the question of succession to the throne, he left it to his brothers and ministers' consideration, suggesting that the accession council should consider one of his sons or brothers who was capable of governing the country to succeed him as king.<sup>5</sup> The reason King Mongkut did not ask them to appoint Prince Chulalongkorn as king was probably that

<sup>4</sup> Prachoom Chomchai, *op.cit.*, p.10.

<sup>5</sup> Nattawut Sutthisongkram, *Somdet Phra Piyamaharat* (Chulalongkorn the Great) (Bangkok, 1987), pp.25-26.

he feared that if he did so, a regent would be appointed who might depose the young king in order to appoint himself as king as had happened many times in the Ayuthya period. King Mongkut probably thought that it was better to leave this choice to the accession council as they would probably not overthrow the king whom they themselves had appointed.

At the accession council which met in order to select the new king, *Chaophraya* Si Suriyawong, who was the chief minister at that time, and others unanimously selected the sickly Prince Chulalongkorn to succeed his father, and *Chaophraya* Si Suriyawong as Regent until the young King came of age. On that occasion Si Suriyawong took the unprecedented step of declaring that Prince Wichaichan, son of the late Second King, Pinklao, should be appointed the Second King, an act that always before had been the prerogative of the new king. Prince Worachak, a half-brother of King Mongkut, opposed this appointment, but Si Suriyawong, the most powerful person in the country at that time, insisted and Prince Worachak's opposition was dropped.<sup>6</sup>

The appointment of Wichaichan as the Second King was interpreted firstly, as an attempt to entrench Si Suriyawong's position and influence in the kingdom. He was thought to have believed that Chulalongkorn would not recover from his illness and that Wichaichan then would come to the throne beholden to him. Prince Wichaichan had a close relationship with Si Suriyawong because since his father, King Pinklao's death in 1866, he had been training in government administration with Si Suriyawong; secondly, Si Suriyawong did not want to concede the teenage King Chulalongkorn absolute power; therefore, he appointed Wichaichan to balance the power of the King in order to maintain his influential position;<sup>7</sup> thirdly, it is also

<sup>6</sup> Nattawut Sutthisongkram, *Somdet Chaophraya Borommaha Si Suriyawong* (Bangkok, 1961), pp.481-482.

<sup>7</sup> *Ibid.*, pp.484-486.

possible that Si Suriyawong sympathized with Wichaichan and simply wanted him to succeed his father as the Second King.

It is important to consider Si Suriyawong's role at this stage. *Chaophraya* Si Suriyawong (Chuang Bunnag) was a son of *Somdet Chaophraya* Borommaha Prayurawong (Dit Bunnag), the *Phrakhlang* (Finance and Foreign Minister) in the reign of King Rama III. He was born on 23 December 1808, during the reign of Rama I, and was trained in government administration by his father. He started his government service as a royal page under King Rama II. During this period he gradually acquired some knowledge of engineering. His career prospects improved in the Third Reign when his father, who was a close friend of Rama III, became the *Phrakhlang* and at the age of 25 he was promoted from *Nai Chaikan Humprae* (a royal page) to *Luang* Sit Naiwen (a senior royal page) when he married Miss Klin.<sup>8</sup>

During the reign of King Rama III he had two promotions. Firstly, he was promoted to *Chamun Waiworanat* as a result of his instrumental role in dealing with Western powers who exerted their influence in this area at that time. He determined to obtain Western knowledge by getting in touch with many missionaries. By this way he could improve his knowledge in shipbuilding and engineering. As the eldest son of the *Phrakhlang* Minister, he was sent by his father to build forts at Samutprakan and Chantaburi in order to strengthen Siam's defences.<sup>9</sup> It was during this period that he built a first modern warship for Siam and several more were soon in progress. His role in building these warships probably helped him to be promoted to *Phraya* Si Suriyawong in 1850.<sup>10</sup>

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<sup>8</sup> Ibid., pp.145, 186.

<sup>9</sup> At that time the *Phrakhlang* Ministry was also responsible for the seaboard provinces of central Siam.

<sup>10</sup> Natawut Sutthisongkram, *Somdet Chaophraya*, op.cit., p.186.



Si Suriyawong's relationship with King Mongkut began when he, at that time *Chamun Wai*, and his half-brother, *Chamun Rachamat*, who later became *Chaophraya Thiphakorawong* (Kham Bunnag), agreed to renovate a deserted temple, Bupparam, situated near his house. After renovation, they invited monks from the Thammayut sect of which Mongkut was one of the chief monks. Mongkut had to come to inspect the temple and train new monks in the temple and consequently met Si Suriyawong several times. They developed a good relationship as they were both interested in and wanted to acquire Western knowledge and technology. In the absence of an obvious heir, it was Si Suriyawong who successfully persuaded his father and other members of the Bunnag family to give the throne to Mongkut after the death of Rama III. After Mongkut became King in 1851, he nominated the *Phrakhlang* to be *Somdet Chaophraya Borommaha Prayurawong* and Si Suriyawong became *Chaophraya Si Suriyawong*.<sup>11</sup>

There were many events in this period which are worth noting. Firstly, after Si Suriyawong became Regent he had absolute power over all affairs of state. He used his power in appointing his family and friends in high state positions and in financial manipulations of a self-interested character. He also appointed his son *Chaophraya Surawong Waiyawat* (Won Bunnag) to succeed him as the *Kalahom*. At that time the Bunnag family had full grip of Government's administration and its influence was at peak. Secondly, Si Suriyawong followed the foot steps of King Mongkut in continuing the conciliatory open-door policy in foreign affairs. Thirdly, Si Suriyawong supervised the young King's education by allowing him to tour Dutch and British colonial states in Java, Malaya, Burma, and India during 1871-1872. These trips enabled King Chulalongkorn to become familiar with modern administration and these knowledge enabled him to organize the modern administration after his second coronation.

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<sup>11</sup> Ibid., pp.305-306.

Why did Si Suriyawong not seize the throne for himself? One might suggest that at that time there was still a group of royalty and high government officials friendly to the King who might risk themselves to protect the Chakri line. This group was composed of half-brothers of King Mongkut, namely, Princes Mahamala, Worachak and Thewet, who supported the accession of King Chulalongkorn and had shown their determination in the accession council to support King Chulalongkorn.<sup>12</sup> Another possibility is that Si Suriyawong never had the idea of seizing the throne for himself because he remained faithful to King Mongkut and King Chulalongkorn. This might seem evident from his conversation with *Somdet Phra Putthachan* (To), one of the most famous monks of that time and also a close and long-respected friend of Si Suriyawong. One day during Si Suriyawong's regency period, *Somdet Phra Putthachan*, with a torch in his hand, went to see Si Suriyawong in his office and remarked to him that:

At present the future of the country is gloomy as I heard a rumour that someone is planning to seize the throne. Do you know whether it is true? And if it is true, I would like to beg him to cease the plan.<sup>13</sup>

Si Suriyawong replied that:

Venerable, please do not be worried. So long as I am alive, the future of the country will not become gloomy and nobody will seize the throne.<sup>14</sup>

King Chulalongkorn wrote his memoirs of this period to advise his son, Crown Prince Wachirunhit in 1893. He recalled that:

I was only fifteen when ascending the throne. I was alone without father and mother. The relatives on my mother's side were good-for-nothing and on my father's side were under *Chaophraya* Si Suriyawong's control and therefore could not support me. Most officials who were close to me were junior officials and all my

<sup>12</sup> Ibid., pp.477-479. And also see Prachoom Chomchai, op.cit., p.8. After the death of King Pinklao, the Second King, Mongkut had promoted these three brothers from *Krommun* to *Kromkhun*.

<sup>13</sup> Ibid., p.509.

<sup>14</sup> Ibid., p.509.

brothers and half-brothers were younger than me and consequently could not give any help. I myself was only a boy inexperienced and incapable of government administration. I was really unfortunate and dominated by the Regent and was at his mercy.<sup>15</sup>

## Section II The Second Coronation Period

King Chulalongkorn came of age in 1873 which marked the end of the regency period. He officially took over the administration of the country from the Regent on 16 November 1873. At that time the political divisions in the Government were clearly established. It was obvious that there were two groups known as "Young Siam" and "Conservative Siam".<sup>16</sup> Obviously, it was the King's party that represented "Young Siam" which was composed of many young members of the royal family and younger officials who showed a friendly attitude toward Western civilization. This group was sufficiently strong by the time of King Chulalongkorn's second coronation to lead and urge profound changes in Siam.

The second group was the group of officials around the Regent. This group can be called "Conservative Siam" and the Regent was its leader. This group had steadily increased its power since the reign of King Rama II. This power was based first on the *Phrakhlang*, or Ministry of Treasury and Foreign Affairs, and then on the *Kalahom*, or Ministry of Defence, which was the main bureaucratic fief of the Bunnag family, which firmly controlled half of the six ministries from the Third Reign. The power of this group reached its zenith when Si Suriyawong was instrumental in the accession of King Mongkut and became the Regent after King Mongkut's death. After the termination of the regency period, the Regent still had

<sup>15</sup> Nattawut Sutthisongkram, *Somdet Phra Piyamaharat*, op.cit., pp.28-29.

<sup>16</sup> D.K. Wyatt in his book The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn (New Haven, 1969) suggested that there were three political groups in Siam at that time, viz, young Siam, old Siam, and conservative Siam. But the old Siam group's role was minimal and therefore can be disregarded.

the most secure political position because the officials he appointed to government office were members of his family and his supporters.

One might mark this period with five particular events:

1. The abolition of the custom of prostration
2. The establishment of the Council of State and the Privy Council
3. The bill proposing the abolition of slavery.
4. The Front Palace incident.
5. *Phra Pricha* Affair

1. The abolition of the custom of prostration.

At King Chulalongkorn's second coronation in 1873, he announced his celebrated decree abolishing prostration in the royal presence because he thought that it was an oppressive custom and uncivilized. In the proclamation abolishing this custom, the King stated that:

When I came to the throne, I intended to help the country to progress and bring happiness to all people. The oppressive customs which caused trouble to the people needed to be abolished. Western countries have already abolished these oppressive customs to show that they are civilized countries. In our country, we have numerous oppressive customs all of which I intend to abolish gradually. Therefore from now on the custom of prostration is to be replaced by standing and bowing the head.<sup>17</sup>

2. The establishment of the Council of State and the Privy Council

King Chulalongkorn proclaimed the establishment of these two councils on 8 May 1874, in order to consult with him on important issues and assist him in the enactment of laws. The King gave his reason for establishing them that he could not

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<sup>17</sup> Ibid., p.54.

carry out public duties successfully and he needed the assistance of others in order to bring prosperity to the country and to remove oppressive customs which obstructed the development of the country.<sup>18</sup> This appears to conceal the King's real reason that he wanted to increase his power because he knew that even though he was crowned in the second coronation as King in 1873 with full powers, in reality Si Suriyawong, the ex-Regent, still held the major power in the Government. The King created these two bodies and appointed most of his supporters as members to employ the legislative function to balance the executive power of the ex-Regent's group. This is evident in King Chulalongkorn's reply to the petitioners of 1885, which will be illustrated later in this chapter. The King stated his reason for creating two legislative bodies that:

Siam's sovereignty is divided into executive and legislative powers. Both powers are in the hands of the king and his cabinet. During the regency period, they resided in the Regent and his cabinet. When I came to the throne in my own right, the executive power was still in the hands of the ex-Regent, but the legislative was neglected. Therefore, I took up this power by establishing two legislative organs [the Council of State and the Privy Council]. I became the leader of the legislative, the opposition to the Government. Subsequently, I gradually increased my influence in the executive and now have successfully become the Government.<sup>19</sup>

According to the royal edict for the establishment of these two councils, the Council of State and the Privy Council were composed of 12 and 49 members respectively. The King had a right to appoint more members or dismiss some members from both councils. The members of both councils were obliged to take an oath before they commenced their duty. The members of the Council of State had a right to discuss the points at issue and the right to vote to enact law but it had to be

<sup>18</sup> The Proclamation of the establishment of the Council of State and the Privy Council, Prachum kotmai pracham sok (PKPS), vol.8, pp.154, 170, 185.

<sup>19</sup> Thailand Fine Arts Department, Chaonai lae Kharachakan krapbangkhom thun khwamhen chat kanplianpleng rachakan phendin R.S. 103 (The 1885 Petition of Royalty and Officials regarding the Reorganization of Government), printed in the cremation volume of *Phra Anulakphubet (Tem Bunyaratpan)*(Bangkok,1970), pp.59-60.

a unanimous vote. This raises the question whether they had real power or had to depend on the King's approval. Constitutionally, the King had the real power and the members of the Council of State had none because: firstly, the King controlled the membership by appointment or dismissal; secondly, the King controlled the topics of discussion as every topic had to command approval from the King before discussion; thirdly, the King could add to the voting membership by inviting members of the Privy Council to attend the meeting with the right to vote.<sup>20</sup>

The Privy Council was only an advisory organ which the King designed to advise him in important matters. He could appoint a committee of the Privy Council from the members of the Privy Council as a special court or a special committee to investigate government work, but he was not obliged to accept the decision of the committee.<sup>21</sup>

King Chulalongkorn offered membership of the Privy Council to the ex-Regent, Si Suriyawong, but the latter refused to accept it on the grounds that he did not want to take an oath like other members. Apparently, the real reason was because Si Suriyawong knew the King's plan to increase his power to balance his own executive power. The refusal of Si Suriyawong to accept membership of the Privy Council indicates a serious collision between the conservative and the Young Siam groups which led to the Front Palace incident which will be illustrated later in this section. After receiving the letter of refusal from Si Suriyawong, the King was very anxious as evidenced by his lengthy letter to Si Suriyawong that:

According to your letter of refusal of the membership of the Privy Council on the grounds that you did not want to take an oathlike other members, there is an implication that I have insulted you in this matter. This is not true at all as we all know that the purpose of establishing the Privy Council is for the progress of the country. I am

<sup>20</sup> Prachum Kotmai Pracham Sok (Annual Collection of Thai Decrees) or PKPS, vol.8, p.170.

<sup>21</sup> PKPS, vol.8, p.185.

not angry with you as whether you will accept this membership or not I have to consult you as usual. But I am disappointed that your letter was stronger than I had anticipated.<sup>22</sup>

Practically, the King's original idea of using the two councils to balance the power of the conservative group was not practicable because the *senabodi* (ministers) were still in control of real power and they were not subject to the power of the two councils.

### 3. The bill proposing the abolition of slavery

On 21 August 1874, King Chulalongkorn proclaimed the *Phra ratchabanyat phikat krasien aryu lukthat lukthai* (The Act fixing the redemption age of the offspring of slaves) in order to release the offspring of slaves when they became 21 years old. The King stated clearly that he wanted to gradually abolish slavery because it was an oppressive custom. He stated at the outset of this Act that:

I want to maintain the country's ancient customs which have brought progress, benefit and justice to the people. But the bad customs which are unjust and detrimental to the people, even though they have existed in society for a long period of time, should gradually be reduced at the right speed. This will achieve the purpose of the plan at the right time without any serious disturbance.<sup>23</sup>

The King sympathized with the children of slaves who were born while their parents were slaves and were counted as in-debted slaves; therefore, he asked Prince Phichit, his legal adviser, to draft this Act to release slaves' children born in 1868, the year he came to the throne, and thereafter, when they became 21 years old.

### 4. The Wang Na (Front Palace or Palace of the Second King) Incident

This incident is supposed to have involved an attempted coup by Prince Wichaichan, the Second King (*Wang Na* or *Uparat*) who was Si Suriyawong's associate.

<sup>22</sup> Nattawut Sutthisongkram, *Somdet Chaophraya*, op.cit., pp.662-666.

<sup>23</sup> PKPS, vol.8, pp.197-207.

It indicates power-struggle between the conservatives, led by Si Suriyawong, and the Young Siam, led by the King, and consequently brought a halt to the King's radical changes. The fact in this incident was that on a night at the end of December 1874, a fire was set near the gunpowder warehouse within the wall of the Grand Palace in which the King resided. The Second King's troops, apparently fully armed, sought entrance to the Grand Palace offering their assistance in putting out the fire. They were refused admission. The fire was quenched by the palace guard, and King Chulalongkorn moved quickly to strengthen the palace defences. The Second King fled the Front Palace and in the absence of the British Consul-General, Thomas Knox, on leave in England, took up residence in the British Consulate on 2 January 1875. The Governor of Singapore, Sir Andrew Clarke, came to Bangkok at King Chulalongkorn's invitation and by treating the incident as a purely domestic quarrel within the Siamese royal family and refusing to intervene, ended any hope on either side of British aid.<sup>24</sup>

From this incident, the King realized that the process of change was indeed a difficult task, and if he went ahead with his radical ideas the conservative group must go against them. This might cause a chaotic situation in the country and lead to foreign intervention and the loss of Siam's independence. It is certain that this incident brought the role of the Council of State and the Privy Council to a low ebb.

For one thing, Si Suriyawong's influence in the Siamese Government was still very high after he left the office of the Regent. The young King always consulted with him in important matters, for instance, when the French Consul sent a letter to insist upon the right of a merchant, Her Jucker, to set up a rice mill. The King consulted Si Suriyawong in the matter and sent a draft letter to the latter to review

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<sup>24</sup> D.K. Wyatt, *op.cit.*, pp.57-62.



before sending it to the French Consul.<sup>25</sup> This indicates how influential Si Suriyawong was at that time. Subsequently, Si Suriyawong probably lost some power due to his worsening relation with his half-brother, *Chaophraya* Panuwong, who controlled the *Krom* Tha (Foreign Ministry).<sup>26</sup> But he managed to regain his power again in the *Phra Pricha* affair.

### 5. Phra Pricha Affair

The *Phra Pricha* affair represented another power-struggle between the conservative and the young Siam groups. By 1879, King Chulalongkorn, who was the leader of the young Siam group, was gaining more power at the expense of the conservatives led by Si Suriyawong. But the latter gained more confidence when he was reconciled with *Chaophraya* Panuwong, and both returned to Bangkok where they found themselves with sufficient support to project some sort of coup.<sup>27</sup> Both must have seen the marriage of *Phra Pricha* (Sam-ang Amatyakun) and Fanny Knox, a daughter of Mr. Knox, the British Consul General, as a good chance to damage the King's power by accusing *Phra Pricha* of marrying a foreigner without permission from the Government, and peculation in connection with the Kabinburi gold-mines, and also accused *Phraya Kesap*, *Phra Pricha*'s father, and his brothers as accessories and sent them to join *Phra Pricha* in prison. The Amatyakun family were supporters of the King, therefore damaging them was to damage the King's power. The other reason for attacking *Phra Pricha* was that Si Suriyawong wanted Fanny Knox to marry a member of the Bunnag family in order to keep Knox on his side, and probably Knox preferred the Bunnag to the Amatyakun because their relations had formerly been close. Si Suriyawong may even have felt that the marriage alliance

<sup>25</sup> Chotmai het phraratchakit raiwan (King Chulalongkorn's Diaries), vol.4 (1877), pp.21-22.

<sup>26</sup> N.J.Brailey, *The Origins of the Siamese Forward Movement in Western Laos*, University of London Ph.D., 1968, p.240.

<sup>27</sup> *Ibid.*, p.240.

between his family and that of Knox was still possible, once Fanny's husband was finally out of the way.<sup>28</sup>

But the incident evolved contrary to Si Suriyawong's expectation, as Knox demanded the release of *Phra Pricha* and called a gun-boat to Bangkok. *Chaophraya Panuwong* represented the matter to Lord Salisbury that Knox allowed personal affairs to interfere with his official duties and Knox was called back to England and *Phra Pricha* was sentenced to death, while the property of the whole family were sequestered. King Chulalongkorn's prestige had reached its nadir.<sup>29</sup> The Amatyakun family was made a scapegoat for the power-struggle between the conservative and the young Siam groups.

In the legal context, the marriage of *Phra Pricha* and Fanny Knox was not a crime because it did not require any royal or Government permission as evidenced by King Chulalongkorn's letter, of March 1879, to *Chaophraya Surawong* (Won Bunnag) and *Chaophraya Panuwong* (Thuam Bunnag), after the accusation of *Phra Pricha*. The King stated that:

There has not been any tradition of the nobles or government officials marrying foreigners; therefore, this matter is uncertain. The *senabodi* [ministers] should consider and institute a tradition for this kind of marriage.<sup>30</sup>

Subsequently, the King wrote a letter, to consult Si Suriyawong on the same issue through introducing a law that:

The noble or government official who wants to marry a foreigner has to inform the King and the ministers in order to get permission. If the King and the ministers give permission, he can marry, if otherwise, he cannot.<sup>31</sup>

<sup>28</sup> Ibid., pp.239-240.

<sup>29</sup> Ibid., 241-242.

<sup>30</sup> Nattawut Sutthisongkram, *Somdet Chaophraya*, op.cit., p.963.

<sup>31</sup> Ibid., pp.967-968.

These two letters of the King indicate clearly that at the time of *Phra Pricha* and Fanny Knox's marriage, there was no law or tradition of seeking permission from the King or ministers. Consequently, their marriage was not a criminal offence and *Phra Pricha* was not guilty in this respect. This case also illustrated the arbitrary practices of the influential government officials and demonstrated that the Siamese legal system at that time was still far from the Western powers' standard. The *Phra Pricha* affair was a political challenge by the conservative group which afforded Si Suriyawong the chance to regain power at the expense of the King.

#### Si Suriyawong's death

After the *Phra Pricha* affair, Si Suriyawong's influence reached a new peak but his health became uncertain owing to his age which at over seventy was quite old for a Siamese at that time. His power declined gradually but the King was still cautious in making any move in national affairs without consulting him. This was evident by the troublesome Chiangmai cases of Mong Shwe Gong and Mr. Cox regarding which the King sent the former Chiangmai Commissioner *Phraya Thep* with all relevant correspondence to consult Si Suriyawong at Ratburi where he now spent most of his time.<sup>32</sup> Finally Si Suriyawong died on 19 January 1883 on his boat at Katumban canal, Ratburi.<sup>33</sup>

#### Section III The Period of Full Authority

Si Suriyawong's death marks a considerable change in the hierarchy of Siamese politics as the power of the conservatives gradually declined thereafter. *Chaophraya*

<sup>32</sup> King Chulalongkorn's Diaries, vol.12 (1881), p.49.

<sup>33</sup> Nattawut Sutthisongkram, Somdet Chaophraya, op.cit., vol.2, p.1739.

Phanuwong, Si Suriyawong's half-brother in charge of the *Krom Tha* (Foreign Ministry) resigned in 1885, and Prince Wichaichan, the Second King, died the same year. Much of the conservative group was now out of the way and King Chulalongkorn gradually appointed his brothers to Government office starting with Prince Thewawong, a senior royal half-brother and the elder brother of three of the King's Queens, as the Foreign Minister in 1885. Prince Chakrapatphong, the King's older full-brother, was chosen to act as the Minister of Finance, Princes Phutharet and Prachak, half-brothers of the King, were appointed Ministers of the Capital and Palace respectively.

### 1. The Petition of 1885

In 1885, a petition of Princes and officials, all of them employed in or attached to the Siamese Legations in London and Paris, was presented to King Chulalongkorn. It argued that: firstly, there was an extreme necessity for Siam to change its governmental system because it was under threat of being colonized by either France or Britain; secondly, if Siam did not change, the Western powers would colonize Siam on the excuse of its backward governmental system; thirdly, superficial reforms which had already been implemented by the King were not adequate; Japan had tried the same and abandoned them as inadequate; lastly, the reform must be a fundamental one; ie. the replacement of absolute monarchy by constitutional monarchy in which the King would share his power and responsibilities with a cabinet. A cabinet should be established with major decision-making powers. Old laws and customs should be eliminated if they impeded progress. Freedom of speech should be guaranteed and also the right of public meeting and a free press. The law should be changed to guarantee the equal rights of every citizen.<sup>34</sup>

<sup>34</sup> Thailand Fine Arts Department, Chaonai lae Kharachakan krapbangkhom thun khwamhen chat kanplianpleng rachakan phendin R.S. 103 (The 1885 Petition of Royalty and Officials regarding the Reorganization of Government), printed in the

King Chulalongkorn refused to comply with the petitioners's suggestions on the grounds that it might provoke opposition by certain groups within the Government. He also explained two factors which prevented him from establishing a constitutional monarchy system: firstly, the inefficiency of the Siamese bureaucracy; secondly, the inadequacy of trained men who could carry out the reform. These two factors needed to be corrected before any reform could be implemented. The King assured the petitioners that he had no personal interest in preserving his absolute power but he inconsistently referred to his previous difficulty in gaining full authority from the ex-Regent.<sup>35</sup> The consequences of the petition will be illustrated in chapter 3.

## 2. The Establishment of the Modern Cabinet Ministers

When *Chaophraya* Surawong, Si Suriyawong's son, the Kalahom or Minister of the South, resigned from his office in 1887, and Prince *Chaofa* Mahamala, the King's uncle, the Mahatthai or Minister of the North, died the same year, King Chulalongkorn could organize a new cabinet administration according to his desires as evidenced by his 1888 proclamation of the Government Edict whereby he appointed twelve *senabodi* or cabinet ministers, nine from his brothers and three from his supporters as following:

1. Prince Chakrapatphong as the Minister of Finance
2. Prince Phanurangsi as the Minister of Army
3. Prince Thewawong as the Foreign Minister
4. Prince Naret as the Minister of the Capital
5. Prince Prachak as the Minister of the Palace

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creamation volume of *Phra Anulakphubet* (Tem Bunyaratpan)(Bangkok, 1970), pp.1-50.

<sup>35</sup> Ibid., pp. 57-64, and also Engel, op.cit., pp.14-15.

6. Prince Sawat as the Minister of Justice
7. Prince Damrong as the Minister of Education
8. Prince Sommot as the Minister of Royal Seal
9. Prince Narit as the Minister of Public Works
10. *Chaophraya* Ratanabodin (Bunrot Kalyanamit) as the *Mahatthai* Minister of North
11. *Chaophraya* Ponlathep later *Chaophraya* Ratanathibet (Phum Sichaiyan) as the *Kalahom* Minister of the South
12. *Phraya* Phatsakorawong (Porn Bunnag) as the Minister of Agriculture.

This ministerial structure combining old and new was designed by Prince Thewawong who went as King Chulalongkorn's representative to attend the celebrations in London that year marking Queen Victoria's fiftieth year on the British throne. Thewawong was instructed by the King to investigate European governmental system and administration. Prince Thewawong traveled through Europe, the USA and Japan, and on his return submitted a report on "constitution" to the King recommending a cabinet of twelve ministers.

### 3. The Power of the Siamese Monarch

It is important to consider the sphere of power of the Siamese monarch. One can determine his power from these issues:

Firstly, the Siamese king had power over the life and death of his subjects. The king could give an order to execute any Siamese or give amnesty to them. There was an expression that "the king is the Lord of Life". This is evident in the case of Mr. Bun who killed Mrs. Jew, in which King Chulalongkorn ordered his officials to execute Mr. Bun for murder.<sup>36</sup> But in some cases the King could change the sentence

<sup>36</sup> Chotmai het phraratchakit raiwan (King Chulalongkorn's Diaries), vol.4 (1877), p.9.

of the judges; for instance, in the case of Mr. Mui who killed Mr. Jam, King Chulalongkorn amended the judge's sentence of execution to sixty floggings.<sup>37</sup>

Secondly, the Siamese monarch had power to try or give judgment in all cases in the country; therefore he had power to fix the term of imprisonment for the convicts or prisoners. In the traditional Siamese legal system, judges who decided the cases had no power to fix the term of imprisonment. This is shown in the case of Mr. Nu when *Chaophraya* Surawong (Won Bunnag) submitted *Luang Wut's* plaint asking for the release of Mr. Nu, his son, who was put in prison for purchasing gunpowder, claiming that Mr. Nu had served in prison for seven years already. King Chulalongkorn ordered the release of Mr. Nu.<sup>38</sup> This point will be illustrated in detail later in the chapter on Prince Raphi who, when he was Minister of Justice, gave authority to the judges to fix the term of imprisonment.

Thirdly, the Siamese monarch had power to upgrade or reduce the ranks of the nobles or government officials. Mostly the King judged by blood not ability. This evidenced in his appointment of his two full brothers to *Somdet Kromphra* Chakrapatphong and *Somdet Kromphra* Panupanwongworadet (Prince Panurangsi) in 1885 without any special qualification<sup>39</sup> by comparison with Prince Phichit, a half-brother of the King, who had done a tremendous job in the Siamese legal system, who was still Krommun, a much lower rank, at that time. Another distinct case was the King's appointment of Prince Narit to *Chaofa Kromkhun* which the King made clear was because Prince Narit was not only his half-brother but a maternal cousin as Narit's mother was a full sister of Queen Thepsirin, the King's mother.<sup>40</sup>

<sup>37</sup> Chotmai het phraratchakit raiwan, vol.12 (1881), p.102.

<sup>38</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), p.28.

<sup>39</sup> Chotmai het phraratchakit raiwan, vol.19 (1885), p.184.

<sup>40</sup> Chotmai het phraratchakit raiwan, vol.24 (1887), p.134.

Moreover, the King could reduce the rank of any nobles or government officials or even royalty. This is evident from the case of *Phra ong chao* Yingyaowalak, the King's half-sister, and a favourite daughter of King Mongkut, who had a secret affair with Mr. To, a peasant, and gave birth to a son. King Chulalongkorn was very angry and ordered the authorities to take away her title of *Phra ong chao* and leave her only the title of *Mom*. Mr. To was sentenced to death.<sup>41</sup> The case indicates the standard of the Siamese legal system which was mostly based on the arbitrary practices of one powerful person and, therefore, was far short of the reputed European standard. If Mr. To had been a British subject, he could not have been executed.

One of the most interesting statements which indicates clearly the royal power in the eyes of King Chulalongkorn was his speech explaining the Government Reform in 1888. The King said:

The power of the Siamese king is not specified by any law and is free from all restraint because it is unlimited. But in practice the king is full of conscience and justice in performing his duties. Therefore I will not oppose the laws to limit my power as has been done in other countries, when laws are established as a principle for government throughout the kingdom. The limitation of the royal power in Europe was caused by people's dissatisfaction with the monarch. This is not the case in Siam, where the people have requested no such limitation but the King himself thinks it should be imposed. The circumstances in each country are different, for instance, a parliamentary system is not suitable for Siam because few people would be able to be members and none would have experience of government work owing to the lack of training. People will not trust the members of parliament as they trust the King because they know the King is just and loves them. Therefore, I am of the opinion that the power of the king should be maintained as it has always existed.<sup>42</sup>

<sup>41</sup> Chotmai het phraratchakit raiwan, vol.23 (1886), pp.23-26. Yingyaowalak was also the elder full sister of the future Buddhist Chief Patriarch, Prince Wachirayan.

<sup>42</sup> Thailand Fine Arts Department, Phraratchadamrat song thalaeng phraboromrachathibi kaekhai kanpokkhong phaendin (the King's speech explaining the Governmental Reforms), printed in Chaonai lae Kharachakan, in the cremation volume of *Phra Anulakphubet*, op.cit., pp.114-115.



King Chulalongkorn phrased his speech in a very wise way. First of all, he wanted to limit his power in this government reform, but to limit his power and confer it on members of a parliament would be rejected by the people because probably nobody was suitable and capable of being a member of parliament. Consequently, the people would trust the King more than members of parliament. Therefore, the power of the King should not be changed. It is difficult to discover King Chulalongkorn's intention; whether his speech on the power of the King was his genuine view or only an excuse to maintain his absolute power. He seems to have enjoyed exploiting his power to his own and his Prince-brothers benefit. His claim that nobody would be a capable member of parliament because of their lack of education and training for a member of parliament's duties is probably true. This is probably the reason Prince Damrong was appointed the Minister of Education in June 1888 to carry out educational reform. Apparently, the King's purpose in the governmental reform of 1888 was to consolidate his power but his intention to transfer the power to the people is still in doubt.

#### Section IV The Paknam Incident and the Post-Paknam Period (1893-1910)

During the the period of his full authority, King Chulalongkorn and the young Siam group were more complacent with their power as the conservative group was out of the way. They appeared to relax despite the presence of the Western imperialists as they took it for granted that in case of French aggression Britain would safeguard Siam's independence, because it had a great deal of investment and business in Siam. Furthermore, the Siamese Government was also misled by the British Minister in Bangkok, Capt. H. M. Jones, that Britain would assist Siam in case of French invasion.

The Paknam incident was caused by French colonial expansion in Southeast Asia. After France colonized Vietnam in 1883-4, it aimed to expand its empire into Laos which was a set of tributary states under Siam's control at that time. The French Government argued that it had a rightful claim over the Lao territory up to the left bank of the Mekong river on the ground that this part had been formerly claimed by the Empire of Vietnam, now a French colony. Apart from its policy of colonial expansion, France also wanted to strip off Siam's tributary states as it was not sure about British policy towards Siam; if Britain were to colonize Siam, the latter's tributary states would fall automatically under British control.

In July 1892, M. Pavie, French Vice-Consul at Luang Phrabang, was transferred to Bangkok as the French Minister to Siam. At the beginning of 1893, the conflicts between Siam and France with regard to the territory on the left bank of the Mekong river intensified. Prince Phichit Prichakorn, whom the King sent as Special Commissioner to Champasak to safeguard the area on the left bank of the Mekong river, sent *Phraya Prachakitkorachak* (Chem Bunnag) with Siamese troops to prevent the French invasion. M. Pavie demanded the withdrawal of Siamese troops from the area of the left bank of the river and also payment of an indemnity to French subjects for damage done by the Siamese troops. The demand was turned down and clashes between Siamese and French troops became inevitable. The result of the clashes was many deaths on both sides. M. Groscurin was a French officer who was also killed in the fighting but the French Government claimed that he was murdered by the Siamese troops and therefore the Siamese Government must be held responsible for this murder. The French Government used this issue as a pretext to send two gunboats to threaten Siam.

On 13 July 1893, the French gunboats *Comete* and *Inconstant* entered the Gulf of Siam with the *J.B. Say* as their pilot boat. As they passed the mouth of the

Chaophraya River through the port of Paknam (Samutprakan), they were fired upon by the defending batteries on the fort of the river. As a result the J.B. Say was sunk but the French gunboats returned the fire and manage to steam up to the French Legation about three miles short of the Grand Palace. The Siamese Government sent Prince Thewawong to negotiate with the French. M. Pavie demanded Siam surrender its claim to the whole area on the left bank of the Mekong and to withdraw all Siamese troops from the area. King Chulalongkorn opposed the French demand and on 25 July Pavie withdrew the gunboats from Bangkok to institute a blockade of the Chaophraya River with reinforcements from Saigon.

The institution of the blockade of the Chaophraya River had little effect on Siam as it could produce a great deal of food to meet its own demands, but it had an injurious effect on British trade and interests as British trade was flourishing and Siam was the main source of food supplies to the Straits Settlement and Hong Kong.<sup>43</sup> The British Government, instead of offering any assistance to Siam, persuaded Siam to surrender to French demands. Finally, the Siamese Government gave in and the Franco-Siamese Treaty of 3 October 1893 was concluded. According to this Treaty, Siam had to agree to: firstly, cede the entire area on the left bank of the Mekong River to France and to remove all of its military posts out of the area of a twenty-five kilometre deep zone the length of its west bank of the river as a guarantee of its willingness to maintain the agreement; secondly, to pay a three-million franc indemnity; thirdly to punish the persons found guilty of murdering M. Groscurin. Furthermore, the French Government demanded the temporary occupation of Chantaburi, a port on the east coast, until the Siamese Government fulfilled its obligations.

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<sup>43</sup> Petition from Merchants, Bankers, Ship-owners to the Earl of Rosebery, 24 July 1893, PRO FO 422/36.

One of the most important outcomes of the Paknam incident was that it gave a lesson to Siam that it could not rely on assistance from other countries, including Britain, to maintain its independence. Undoubtedly the Siamese Government was misled by Captain Jones, the British representative during the Paknam incident, who, without authority, encouraged them to expect British support.<sup>44</sup> After the incident, the King and the Siamese elite realized that their country's independence was at risk and they needed to reform their administration in every field in order to bring the country up to the standard of the so-called "civilized" countries and escape colonization. The judicial reform through the Ministry of Justice is the focus of this study, and the military, provincial administration, financial and educational reforms will be illustrated in chapter 5, about the Chakri reformation.

### Conclusion

King Chulalongkorn was a capable leader who struggled from being a powerless to a powerful King. After his second coronation in 1873, he was supposed to have real power, but in reality Si Suriyawong, the ex-Regent, still held major power. King Chulalongkorn developed legislative power by creating the Council of State and the Privy Council to balance Si Suriyawong's power. The power-struggle between the King and Si Suriyawong led to the Wangna incident and the *Phra Pricha* affair. Si Suriyawong, after regaining power from the *Phra Pricha* affair in 1879, was soon dead of old age in 1883. Si Suriyawong's death was the beginning of the decline of the conservative group and the King gradually increased his power. The resignations of *Chaophraya* Phanuwong from the *Krom Tha* in 1885 and *Chaophraya* Surawong from the *Kalahom* in 1887 affirmed King Chulalongkorn's absolute power. After attaining absolute power, King Chulalongkorn seemed to relax and slowed

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<sup>44</sup> N.J. Brailey, Two Views of Siam on the Eve of the Chakri Reformation, (Singapore, 1989), p.30.

down his reform programme because there was no competition for power. The 1885 petition signified the Princes' vain attempt to share the King's absolute power. But after the Paknam incident the King fell seriously ill and nearly died, probably because he thought the incident was his fault. The Paknam incident signified the starting point of the acceleration of the Chakri reformation.

## Chapter 2 The Siamese Traditional Legal System

### Section I The Origins of the Thai laws before the Bangkok period

It is important to explain clearly at the outset that there were two main Thai kingdoms before the Bangkok period, namely the paternalistic Sukhothai kingdom which dated from the thirteenth century, and the Ayuthya god-kingdom, usually dated from its reputed foundation in 1351. The differing Thai legal traditions of these two kingdoms appear to have had a profound influence over the legal system of the early Bangkok period. But it is unfortunate that little evidence of the legal systems in those two kingdoms survive up to the present. Among this evidence are the inscriptions of several kings during the Sukhothai period, and a few royal decrees of King Petracha of the Ayuthya period.

There are many reasons for the scarcity of even the Ayuthya legal documents. Firstly, during the Ayuthya period the laws were written on forms of paper by hand, and in 1767 Ayuthya was attacked and burnt by the Burmese. As a consequence, the majority of the laws were destroyed by fire. Secondly, also could not last long in the local climate and tended to be damaged by damp and white ants. Thirdly, as a result of King Rama I's codification, as will be demonstrated later, the surviving Ayuthya laws became invalid and could not be cited in a court of law. Not appreciating the historical value of the old laws, they were neglected, and some of them were destroyed in order to avoid confusion with later ones.<sup>1</sup>

Owing to the destruction of a large amount of the Ayuthya legal documents, the study of Thai legal history has to depend mainly on the code of the Law of Three Seals which was promulgated by command of King Rama I, the founder of the

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<sup>1</sup> Robert Lingat, Prawatsat Kotmai Thai (Thai Legal History), Thaiwattanapanit, vol.1, Bangkok 1985, pp.16-17.

Chakri dynasty, in 1804. This code claims in its introduction that most of the law in the Law of Three Seals derived from the *Thammasat*, which was the law applied in Siam in the Ayuthya period.<sup>2</sup> Therefore, the main way to research into the Siamese traditional law is to investigate the Law of Three Seals.

### 1. The *Thammasat* and its origins

One important question is, what was the *Thammasat* and what were its origins? According to the Law of Three seals, it was an account of the development of the world, human beings, the origins of kings and laws deriving from the Sanskrit Dhamasastra. It regulated the relationships between the people and the state and among the people themselves. It also described the power of the king and his authority to rule the country. It was also the fundamental basis of the traditional Siamese laws.<sup>3</sup>

According to the *Thammasat*, Manu was a counsellor to King Mahasammata, the first monarch in the history of the world. Being ashamed of himself for giving an unjust decision in a case about a cucumber farm, he deserted the city to reside in the jungle as an ascetic in order to meditate and achieve enlightenment. He determined to find a book of law to confer justice on all people. One day he achieved enlightenment and was able to fly to the end of the universe and found the *Thammasat* being written on the wall of the universe. Manu then wrote out a code as his version of the *Thammasat* and submitted it to King Mahasammata who subsequently ruled the country efficiently by applying the *Thammasat*.<sup>4</sup>

<sup>2</sup> Pricha Suwantat ed., Kotmai Tra Samduang (The Law of Three Seals 1804), Thammasat University Press, volume 1, Bangkok 1985, p.8.

<sup>3</sup> Ibid., pp.7-34.

<sup>4</sup> Ibid., pp.13-14.

When did Siam adopt the *Thammasat* and from whom? The Law of Three Seals in its section 1 called *thammasat*, give a history of the origins of the code, stating that Siam derived the *Thammasat* from the Mon who had founded a kingdom in the south of Burma.<sup>5</sup> The Mon had derived it from the Hindu code of *Manusat*. The original Hindu code of *Manusat*'s stern and forbidding image of the king as *Devaraja* was mingled to some extent with the Buddhist conception of kingship which the Mon had adjusted to suit their own society, and this was transferred as the Siamese *Thammasat* via the Mon.<sup>6</sup>

One leading Thai historian, Charnvit Kasetsiri, who wrote The Rise of Ayudya [Ayuthya], believes that the Mon had adopted the Hindu code by adapting it to fit in with Buddhism. He suggested that when King Uthong founded the Ayuthya kingdom in 1351, he introduced the Mon *Thammasat* in governing his kingdom.<sup>7</sup>

## 2. The Thai laws in the Sukhothai and Ayuthya kingdom

It is necessary at this point to explain the traditional Thai laws in the period of Sukhothai and Ayuthya, but owing to the limitation of materials they must be stated briefly. One can trace the Sukhothai laws by studying several inscriptions during that period. There were many interesting aspects of laws indicated in various inscriptions. Firstly, the inscriptions indicated that the Sukhothai people had freedom to trade as trade was not monopolized by the king as in the later Ayuthya period. This aspect was illustrated in one inscription that:

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<sup>5</sup> Ibid., p.8.

<sup>6</sup> D.M.Engel, Law and Kingship in Thailand during the Reign of King Chulalongkorn, University of Michigan 1975, pp.2-3.

<sup>7</sup> Charnvit Kasetsiri, The Rise of Ayudhya, Oxford University Press 1976, p.134.



The people lead their cattle to trade or ride their horses to sell, whoever wants to trade in horses, does so; whoever wants to trade in silver and gold, does so.<sup>8</sup>

Secondly, there was a law of succession as indicated in the inscription that "When any commoner or man of rank dies, his estate comprising elephants, wives, children, granaries, rice, retainers, and groves of areca and betel-nut, is left in its entirety to his son."<sup>9</sup> Thirdly, there was a concept of ownership as shown in the inscription that "Whoever plants coconut farms, fruit farms and other farms; the trees and the produce belong to the farmer who plants them."<sup>10</sup>

Thus the Sukhothai legal system was paternalistic in character, whereby the king was to rule his people like a father ruled his son. This was evident in one inscription:

When commoners or men of rank differ or disagree, the King examines the case to establish the truth and then settles it justly. The King has hung a bell in the palace entrance: if any commoner in the land has a grievance or complaint and he wants to complain to the King, he strikes the bell and the King, hearing the bell, questions the man and examines the case and decides justly for him.<sup>11</sup>

#### The Siamese laws in the Ayuthya kingdom

As illustrated in chapter 1, the political ideology of the king changed from paternalism, in the Sukhothai kingdom, to thewaracha (God kingship), in the Ayuthya kingdom. According to the judicial system, the most important of all the Ayuthya laws were the sacred laws of the Thai *Thammasat* referred to in the Law of Three Seals. Another aspect of Ayuthya law was *rachasat* (the king's law) which was law

<sup>8</sup> *Phraya Nitisatpaisan, Prawatsat Kotmai Thai* (Thai Legal History), Thammasat University Press, (Bangkok, 1954), p.40.

<sup>9</sup> *Ibid.*, p.41.

<sup>10</sup> *Ibid.*, p.44.

<sup>11</sup> *Ibid.*, p.43.

declared by the kings during their current reigns. *Rachasat* was temporary law, binding on the people because of the power of the king, and therefore different from the *Thammasat*. But it could acquire permanent status if it conformed to the *Thammasat* and was later added to it.<sup>12</sup> The nature of the Ayuthya laws will be demonstrated in section II about the Law of Three Seals, which is the best way to research Ayuthya law.

### 3. The causes and the steps towards Rama I's Codification

After the city of Ayuthya capitulated and was burnt by the Burmese in 1767, more than half of the law books were destroyed by fire. King Rama I succeeded King Taksin who expelled the Burmese from the country. He built a new capital at Bangkok in 1782. Rama I realized that the surviving laws were not adequate according to the need of the courts, therefore, he ordered the revival of some past laws by investigating former Ayuthya court officials.<sup>13</sup> But this process was still unsatisfactory as gaps still existed. Furthermore, there appeared to be some obsolete laws which had not changed for many hundred of years since their inception. This was evident in the divorce case of *amdaeng* (Mrs.) Pom and *nai* (Mr.) Bunsu. The case came before Rama I in 1804 on a petition for his final judgment.

The fact of this case was that *amdaeng* (Mrs.) Pom sought to divorce her husband, *nai* Bunsu, a royal blacksmith, who resisted his wife's suit by alleging that she had been guilty of adultery with *nai* Racha-at. The judge had granted a divorce decision in favour of her. Upon review of the petition, Rama I opined that it was unfair to allow the wife to obtain the divorce decree whenever she requested a divorce, without any inquiry into allegation of misconduct on her part, and ordered his officials to compare the law book in the court with another two copies in the

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<sup>12</sup> Ibid., p.7.

<sup>13</sup> Robert Lingat, op.cit., vol.1, p.19.

palace. It appeared that the three copies stated the same provision that the wife could obtain a divorce even when there was no fault on the husband's part. Rama I believed that this provision was one of a number of defects and inequities which appeared in the existing law. Therefore, he established a Royal Commission to examine and revise the entire corpus of the Siamese laws.<sup>14</sup>

It is noticeable that one factor which led Rama I to have the Siamese laws recodified was the revision of the *Tripitaka* (the Buddha's teachings), the Buddhist equivalent to the Bible, at the beginning of his reign. The reason for this revision was that the existing *Tripitaka* was untrustworthy and needed checking. Rama I stated his desire clearly at the outset of the Law of Three Seals that this codification was designed to correspond to the *Tripitaka* revision.<sup>15</sup>

#### The steps towards Codification

Rama I established eleven Law Commissions to examine and revise the *Thammasat*. According to his command recorded in the Law of Three Seals, the Law Commissions had many duties to carry out for the reorganization of the *Thammasat*. Firstly, they had to reorganize it into *laksana* (sections). This enabled the Law Commissions to divide the *Thammasat* into substantive and procedural laws. Secondly, they had to eradicate repetitious laws. Thirdly, they had to examine obsolete laws and either eradicate or amend them, where necessary.<sup>16</sup>

It is important to note that Rama I did not commit himself to the Law Commissions' resolutions as he considered their ideas as recommendations and therefore he still reserved the right to reject their suggestions.<sup>17</sup> The process of

<sup>14</sup> Pricha Suwantat ed., *Kotmai Tra Samduang*, vol.1, op.cit., pp.2-3. and D.M.Engel, op.cit., pp.3-4.

<sup>15</sup> Ibid., pp.2-3.

<sup>16</sup> Ibid., pp.4-5.

<sup>17</sup> Robert Lingat, op.cit., vol.1, p.21.

codification began on 31 January 1804, and the Law Commissions had accomplished the code by 16 December in the same year. The whole process occupied only eleven months which was remarkably short for a codification. As a consequence, there were still some repetitions and the definition of sections was not distinct. This caused defects to emerge shortly after the implementation of the code. The implementation of the Law of Three Seals indicates that the codification was just a minor amendment which superficially changed the structure of the *Thammasat*, and Rama I, probably because of his conservative ideas, did not want to challenge Siamese customs and therefore did not want a revolution in the legal system. In his M.A.thesis, "Kanpratirup kansarn naikrasuang yuttitham naisamai Phrachulachomklao" (The Reform of Courts in the Ministry of Justice in the Reign of King Chulalongkorn), Manu Udomwet explains that the codification of laws in the reign of King Rama I was only a recompilation of Ayuthya law, and Rama I did not change the structure or principle of law from the Ayuthya period.<sup>18</sup>

As a direct outcome of the code, the old laws of Ayuthya became invalid and were probably destroyed in order to prevent confusion. Also the general Siamese public do not value antiquity. In order to signify the importance of the code, Rama I ordered the code be stamped with three seals, one each to represent the three regional, territorial departments of state, the *kalahom*, *mahatthai*, and *phrakhlang*. Only the code with the three seals on it could be used in Siamese courts, and because of these three seals originated the name "The Law of Three Seals".

<sup>18</sup> Manu Udomwet, "Kanpratirup kansarn naikrasuang yuttitham naisamai Phrachulachomklao" (The Reform of Court in the Ministry of Justice in the Reign of King Chulalongkorn), M.A. thesis, Prasanmit University, Bangkok, 1873, p.31.

## Section II The Law of Three Seals (Substantive Laws)

The Law of Three Seals divides into two parts namely the substantive and the procedural laws. The former were divided into 29 causes of action, and each cause of action required a specific procedure to deal with it, for example, cases of theft required a law of theft to be applied to cases.

It is evident that the Law of Three Seals concentrated on public law, not private law. This derived from three factors: firstly, the growth of business and industry during the Ayuthya and the beginning of the Bangkok periods was limited owing to the king's monopoly over the country's trade. The ordinary Siamese people were prohibited from trading with foreigners but even among themselves they could trade only to a small extent. Therefore the development of the law of contract was insignificant and the few kinds of contract which did exist during that period were the loan agreement, contract of sale of slaves, and surety contract.<sup>19</sup>

Secondly, the social structure of Siamese society prevented the development of private law. Siamese society at that time divided people into four classes: the royal family, the *khunnang* (nobility), the *phrai* (commoners or peasants), and *that* slaves. Of these four groups, the *phrai* made up the most substantial part. Every male *phrai* had to be under the control of a person called a *nai* (patron) who protected and looked after him, and in return he was entitled to demand service from the *phrai* for a period of six months, later reduced to three months, in a year. This obligation of the *phrai* deprived them of the right to freedom of movement and indirectly discouraged them from establishing a business or other enterprise which in turn limited the growth of private law which depends on business transaction.

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<sup>19</sup> Robert Lingat, *op.cit.*, vol.1, p.70.

Thirdly, during that period the economy of Siam had been mainly self-sufficient and therefore the process of division of labour and specialization could not develop. Householders produced almost everything necessary for their own consumption and, as a result, internal trade was very limited. The insignificant internal trade that existed was mainly transacted on a barter basis as the use of money was still not widespread.<sup>20</sup> This also contributed to the slow development of private law in Siam.

### The Important Substantive Laws

The Law of Three Seals concentrated on offences against the king, the Government and the public. This will be illustrated as following:

The *aiyakarn kabotsuk* (law of treason) was designed to protect the king and his throne by punishing the offender severely if he attempted or carried out an assassination of or rebellion against the king. It also covered such offences as betrayal of the state by assisting an enemy or the leak of confidential matters to an enemy. The offender who was found guilty of this charge would be executed and all of his properties confiscated. The offender's ancestors and descendants in line for seven generations, even though they did not take any part in the plot, would also be executed.<sup>21</sup> This law also covered the rulers of the distant *pratethserat* (dependencies) of Bangkok, who rebelled against the king, who too would be sentenced to execution.<sup>22</sup>

<sup>20</sup> Chatthip Nartsupha, The Political Economy of Siam (1851-1910), Sangroong Printing, (Bangkok, 1981), p.1.

<sup>21</sup> Pricha Suwantat ed., Kotmai Tra Samduang (the Law of Three Seals), Thammasat University Press, vol.2, (Bangkok, 1985), pp.462-463.

<sup>22</sup> *Ibid.*, pp.466-467.

The *kotmontienbarn* (the royal family law) was designed to regulate the accession to the throne. It declared that a prince who was born by a queen would be entitled to succeed to the throne after the death of the king.<sup>23</sup> It also provided regulations for the king's procession, properties, presence and officials. There was one article about the royal barge which was absurd and later cost the life of Queen Sunanta who was one of the four Queens of King Chulalongkorn. In 1880, Queen Sunanta was on a royal barge heading to Bangpa-in palace at Ayuthya, but the barge capsized at Nonburi. The Queen and her daughter, Princess Gannaporn, were drowned even though there a number of soldiers and other retainers had accompanied them. The reason which discouraged such people from saving her life appeared to be an article in the *kotmontienbarn* which provided that, in an event like this, the attendants could not stay near the barge but must try to rescue the queen by giving her coconut fruits or some other kind of support. The person who rescued the queen by holding her body must be executed because the law forbade any man but the king to touch the queen.<sup>24</sup> For this reason all the soldiers abandoned the barge and could not find any support to save Queen Sunanta and her daughter's lives. This was probably one of the reasons King Chulalongkorn desired to substitute the modern code for the Law of Three Seals.

The *kotmontienbarn* not only protected the king but also the royal elephants and the officials who performed royal duties, for example, the *lukkhun nasarnluang* (the king's legal advisers). The reasons behind this appear to be that the king's elephants, especially white elephants, were believed by the Siamese to be born for the king's merit, and whoever treated them wrongly must be punished severely.<sup>25</sup> And the *lukkhun nasarnluang* were representatives of the king in carrying out justice in

<sup>23</sup> Pricha Suwattat ed., Kotmai Tra Samduang, vol.1, op.cit., p.59.

<sup>24</sup> Ibid., p.67. In a similar incident in the reign of King Thai Sa of Ayuthya, the punishment had actually been applied, see W.A.R. Wood, A History of Siam (Bangkok, 1959), p.225..

<sup>25</sup> Ibid., pp.72-73.

the country. Therefore, whoever showed disobedience or resisted their order, must be punished.<sup>26</sup>

The laws of *phrai* and *that* (slave) As indicated above, the *phrai* were the largest class in Siam and therefore required many sections of law to deal with them. Every Siamese who was not of the royal family nor nobility had to be registered as *phrai*, or even worse as *that*. There were two kinds of *phrai*: the *phrai luang* and *phrai som*, the former registered to a department of the government to do the service for the government, the latter registered to the *nai* and to do service for him. The *phrai* laws were designed to control manpower by forcing them to register in order to restrict them to a certain area. This was because in Siam, manpower was lacking and was much more valuable than land which was plentiful.<sup>27</sup>

In the Law of Three Seals, a *nai* had responsibility to control, look after and give protection to the *phrai* assigned to him. He was the person who had to mobilize the *phrai* under him for corvee labour and for war.<sup>28</sup> He was to produce his *phrai* on the demand of the government. When one of his *phrai* was accused of a crime or became a defendant in a law suit, a warrant was sent to the *nai* to produce his *phrai* for trial.<sup>29</sup> It was an offence not to be registered under a *nai* who served as the only link between a *phrai* and the government, as his access to a court of justice had to be made through his *nai*, and only through his *nai* could his complaint be heard by the government.<sup>30</sup>

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<sup>26</sup> Ibid., p.81.

<sup>27</sup> Akin Rabibhadana, *The Organization of Thai Society in the Early Bangkok Period 1782-1873*, Cornell University New York 1969, p.85.

<sup>28</sup> Pricha Suwantat ed., *Kotmai Tra Samduang*, vol.2, op.cit., p.373.

<sup>29</sup> Pricha Suwantat ed., *Kotmai Tra Samduang*, vol.1, op.cit., p.297.

<sup>30</sup> Akin Rabibhadana, op.cit., p.86.



In return, the *nai* had almost complete control of the services of their *phrai*, as articles 103 and 106 of the law *laksana betset* (miscellaneous) stated that no one should hire or use the service of a *phrai* without the permission of his *nai*. The Law of Three Seals included an article preventing the *nai* from making excessive demands on the services of their *phrai* by threatening punishment of the *nai* whose *phrai* had ran away because of their oppression.<sup>31</sup>

The Law of Three Seals *laksana that* (slavery) defined the way in which people fell into slavery, given that a Siamese man, as the head of his family, had the ownership of himself, his wife and his children. Therefore, he was legally entitled to sell himself, his wives, and his children to other persons as slaves.<sup>32</sup> All contracts for sale of slaves were required by law to be made in writing which stated the date of the sale, the purchase money paid, the name of the purchaser, the seller and the slave. Children of slaves born in the house of the master would also become slaves of that master.<sup>33</sup>

A slave who was sold into slavery had a legal right to redeem himself and the price of liberty was that of the original sale.<sup>34</sup> This right helped to make the master treat the slave kindly, otherwise the slave might seek a new master to pay the purchase money and become a slave of the new master.<sup>35</sup> When the master allowed his slave to become a monk or a nun, the slave would be freed.<sup>36</sup> A female slave

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<sup>31</sup> Ibid., p.87.

<sup>32</sup> Ibid., p.105.

<sup>33</sup> Pricha Suwantat ed., Kotmai Tra Samduang, vol.1, op.cit., p.281.

<sup>34</sup> Pricha Suwantat ed., Kotmai Tra Samduang, vol.2, op.cit., *laksana that* article 51, p.99.

<sup>35</sup> Ernest Satow, the British Minister Resident in Bangkok, commented in his diaries on 7 July 1885, that the welfare of slaves in Siam proper was much better than in Chiangmai, a Siamese *pratethserat* in the North, because in Siam proper, the slaves could change their master if they disliked the treatment of the old master. See Satow Diaries, PRO 30/33/15/9.

<sup>36</sup> Pricha Suwantat ed., Kotmai Tra Samduang, vol.2, op.cit., *laksana that* article 75, p.110.

would become free automatically by having a child by her master or his relatives.<sup>37</sup> Therefore, the concept of *that* in the Law of Three Seals was different from slaves in the western concept.

The Law of Three Seals dealt with criminal offences mainly by two sections : the *laksana aryaluang* and the *laksana jone*. The significant difference between them was that the former dealt with criminal offences against the king and the government but the latter against the people in general. As an example of the *laksana aryaluang*: firstly, article 123 provided that :

Whoever being in possession of the royal property, dishonestly takes away or converts such property to himself is said to commit crime against the king, and shall be punished by execution. Any person in the offender's family who is party to the crime shall be punished like the offender, and if the offender disappears, his family, father, mother, brothers and sisters, will be accountable to compensate up to the value of the stolen property according to the nearness of the relationship.<sup>38</sup>

Again, article 13 and 28 provided that:

Whoever gives a daughter to a foreigner as wife and allows her to convert to another religion is said to commit a crime against the Government.<sup>39</sup>

Whoever accuses the king's official of any crime must have the king's permission to pursue the case. If there is no permission and that person takes the law into his own hand, he is said to commit crime against the king.<sup>40</sup>

As an example of *laksana jone* , article 66 provided that :

Whoever accuses another person of any crime must proceed according to the law through the appropriate government department. If the accuser, instead of proceeding by such steps, deliberately takes the law in his hand by arresting the accused, and the accused dies, the accuser is to be executed.<sup>41</sup>

<sup>37</sup> Ibid., p.120, *laksana that* article 96.

<sup>38</sup> Ibid., p.437, *laksana aryaluang* article 123.

<sup>39</sup> Ibid., p.380-381, *laksana aryaluang* article 13.

<sup>40</sup> Ibid., p.390, *laksana aryaluang* article 28.

<sup>41</sup> Ibid., p.326, *laksana jone* article 66.

One important aspect of criminal offences under the Law of Three Seals was, whether the members of the offender's family were liable for his crime, and if so, to what extent. It is probable that in the Ayuthya period the members of a criminal's family were liable for his crime both criminally and civilly. This belief is based on the political system in that period which divided people into groups. Each group had a leader and the supreme head of all the other leaders was the king. Every male Siamese had to registered to a *krom* (department of the government) when he was born and, once adult, was to be called to serve in that *krom* for a period in every year. People's lives depended substantially on the group with which they were registered.

As indicated above, by the Law of Three Seals in the *aiyakarn kabotsuk*, the convicted man and his ancestors and descendants, even if they did not cooperate with him, would also be executed. But in a less serious crime, the family of the convict would be held responsible for the crime the convict had committed only if they took part in the plan. And in any case, a member of a criminal's family who lived under the same roof with the criminal had to be civilly responsible to pay damages to an injured person but not the court fine. This is evident in the *laksana jone* article 38 which indicated the lenience of the Law of Three Seals towards the criminal's family. This article stated that:

The father, mother, brothers and sisters of a criminal who live within the same house are liable for the crime the criminal had committed if he escaped away. If they deny knowledge of the criminal's whereabouts, they must find a guarantor to guarantee against their knowing or being an accomplice, to be punished as the criminal, otherwise they will be remanded in custody until the criminal is arrested. If the criminal is not found, they are to be held responsible for the cost of the damage which the criminal has done, but they are not responsible for the court fine.<sup>42</sup>

<sup>42</sup> Ibid., p.313, *laksana jone* article 38. For another case of substitution, this time for debt, see Satow Diaries, 28 May 1884, PRO 30/33/15/8.

The traditional Siamese law as revealed by the Law of Three Seals emphasized the importance of the status of Siamese people in a society which was hierarchic as epitomized in the *nai-phrai* patronage and *sakdina* official ranking system. This is evident in the Law of Three Seals *laksana tamneng naponreun* (The law of official status) which defines the status of members of the royal family, and of all the Siamese official class in the country in terms of field power; for example, the *Uparat* (Second King) had a status of 100,000 *rai* (two and a-half *rai* = 1 acre).<sup>43</sup> Furthermore, the degree of punishment or fine inflicted upon the defendant depended upon the status of the injured person; ie. the higher the status the more serious the punishment. This is evident in the Law of Three Seals, *aiyakarn promsak* (The law of ranking status), in which it provides that injury to a high status person is punished more severely than to a low status person.<sup>44</sup>

The traditional Siamese legal system was mainly beneficial to the king, members of the royal family, and the *khunnang* class. It was not for the benefit of the *phrai* or commoners who made up the majority of the Siamese people. Further evidence is shown in the Law of Three Seals *laksana Paumia* (husband and wife) and *laksana Moradok* (succession) which accept the practice of polygamy. According to these two laws, wives can be divided into four categories: wife given by the king as a reward; a wife given by the king when asked for; a wife given by her parents; and other kinds of wife.<sup>45</sup> Traditional Siamese society accepted that the more powerful the person the more wives he could possess. This is clearly shown in the polygamous practice of the Siamese king. The word "*Khunnang*" means the ability of the noble to possess more than one wife.

<sup>43</sup> Pricha Suwattat ed., Kotmai Tra Samduang, vol.1, op.cit., pp.178-271. At the beginning of this law, it explains that this law was implemented in the reign of King Trailok of the Ayuthya Kingdom.

<sup>44</sup> Ibid., pp.161-177.

<sup>45</sup> Pricha Suwattat ed., Kotmai Tra Samduang, vol.2, pp.145-146, *laksana moradok*, article 5,6.

### Section III The Procedure Laws of the Law of Three Seals

#### I. The Important Procedural Laws

This study will illustrate only the important procedural laws. Firstly, the law *laksana raphong* (receiving of complaints or charges) defined the persons who were not eligible to bring cases to court, for instance, a person of unsound mind, or a senile person. If these persons submitted a charge or complaint to a court, the *tralakarn* (judges) would make a preliminary examination before accepting it.<sup>46</sup> Only persons registered under a *nai* could have access to bring a case to courts. If they were not registered they would be arrested and sent to register as *phrai luang*.<sup>47</sup> When the *tralakarn* accepted the charge or complaint, they would issue a writ to the defendant's *nai* to submit the defendant to court for trial.<sup>48</sup> There was a special character to the Siamese traditional legal system whereby defendants could not sue their parents and ancestors in court; if they did, they would be punished by flogging. Only the government could sue their ancestors in court on their behalf.<sup>49</sup>

Secondly, the law *laksana payarn* (the evidence law) prohibited thirty-three groups of people being witnesses unless the parties agreed together on them. These groups included, for example, the debtors or the slaves of the parties. The Law of Three Seals divided witnesses into three categories viz: monks and nobility, the laymen, and the relatives or friends of the parties. It also ranked the admissibility of these three groups as following, the first was more admissible than the second, the second more than the third.<sup>50</sup> Prince Raphi, one of King Chulalongkorn's sons, who

<sup>46</sup> Pricha Suwantat ed., Kotmai Tra Samduang, vol.1, p.295, *laksana raphong* article 1.

<sup>47</sup> Ibid., p.298, *laksana raphong* article 10.

<sup>48</sup> Ibid., p.297, *laksana raphong* article 8.

<sup>49</sup> Ibid., p.307, *laksana raphong* article 25.

<sup>50</sup> Ibid., p.340, *laksana payarn* article 16.

later became the Minister of Justice in 1897, criticized this idea as unfair. He believed that judges should use their discretion, not categories of witnesses, in considering whether to believe the witnesses.<sup>51</sup> After he became the Minister of Justice, this led him to reform the law *laksana payarn* in 1900.

Thirdly, the law *laksana tralakarn* (The law of judges) defined the qualification and duties of *tralakarn* in court procedure. It also prohibited the *tralakarn* who had a personal interest in a case or were related to any of the parties from presiding over the case.<sup>52</sup>

## 2. The Siamese Traditional Procedure System

In the Sukhothai period, it was likely that few cases were brought to court as society was based on the patriarchal system where the head of the family or the head-man of the village had a senior position and big role in settling disputes between members of the family or inhabitants of the village. Only big cases which were beyond their ability would be referred to the king. But in the Ayuthya period cases increasingly arose in courts due to the change of the political system to an aristocratic form in which the king was divine and had absolute power. Inevitably, the power of the head of the family and the head-man of the village was reduced. The *nai* was substituted for the head-man of the village but had no power to settle cases. The king had absolute power to settle the disputes. This power was conferred on him by the *Thammasat* which stated at the outset that all people gave this power to the king to settle their disputes.<sup>53</sup>

<sup>51</sup> Phraya Nitisatpisan, *op.cit.*, pp.168-169. And also Prince Raphi's lecture, The Ministry of Justice's library, no page number.

<sup>52</sup> Pricha Suwantat ed., Kotmai Tra Samduang, vol.1, *op.cit.*, p.420, *laksana tralakarn* article 113.

<sup>53</sup> *Ibid.*, p.9.

Robert Lingat, a French historian who specialized in Siamese legal history, suggested in his book, Prawatsat Kotmai Thai (Thai Legal History), that at the beginning of the Ayuthya kingdom, the kings authorized the *chatusadom* (four pillars), which consisted of the four original *senabodi* (ministers) who were responsible for the palace, the city, the treasury and the agriculture ministries, to settle cases among the people for him. Only difficult or complicated cases would be referred to the king. Subsequently, King Trailok (1448 - 1488) recruited a group of brahmins, who were mainly Mon people who lived in the south of Burma. These brahmins were knowledgeable in law and specialized in the *Thammasat*.<sup>54</sup>

King Trailok reorganized his counsellors by dividing them into two groups: firstly, the *lukkhun nasala*, which comprised the *chatusadom* and two newly created head ministers called *samuhakalahom* and *samuhanayok*, to advise him in the administration of the country. Secondly, the *lukkhun nasarnluang*, which was composed of a group of brahmins, would advise him in judicial matters.<sup>55</sup> From the Ayuthya period up to before King Chulalongkorn's reformation, there was no clear-cut difference between civil and criminal cases. Therefore they were subject to the same court procedure and the *lukkhun nasarnluang* played a substantial role in handling the cases.

Ideally the traditional Siamese court procedure divided into four stages:

- a) The reception of complaints or charges
- b) The investigation and examination of witnesses
- c) The settlement of issues and the explanation of legal issues
- d) The judgment and enforcement of the judgment.

<sup>54</sup> Robert Lingat, op.cit., vol.2, pp.391-392.

<sup>55</sup> Ibid., p.392.

Firstly, when someone wanted to bring his case to court he had to go to the *krom raphong* ( office for the reception of complaints) which was under *mahatthai* ministerial jurisdiction.. The registrar would require the plaintiff to sign a guarantee note that the case was genuine fact and that he had never previously brought this case before any court. After that the registrar would consider whether the plaintiff's claim was valid, and whether he was entitled to bring his case to court. In case the plaintiff could not write, the registrar would write the plaint for him. After that the registrar would channel the plaint to the court of the ministry which had specific jurisdiction over the case. If any problem occurred at this stage, the registrar would refer the case to the *lukkhun nasarnluang*.

Secondly, upon reception of the plaint, the *tralakarn* (judge) in the court which had jurisdiction over the case would issue a writ to the *nai* of the defendant to submit the defendant to trial within 15 days. When the defendant appeared in court, the *tralakarn* would give him a copy of the plaint and explain it to him. The defendant needed to answer the plaint. The *tralakarn* would note his answer in the record and both parties were required to sign or make a mark to signify that they were the plaintiff and defendant. *Tralakarn* were judges in the courts of each ministry who were not specialized in the *Thammasat* and worked under the minister's command. Therefore, the Siamese traditional procedure required them to send the record, which included the plaint and the answer of the parties, to the *lukkhun nasarnluang* to settle the issues. The facts which were raised by one party and not admitted by the other would be noted as points in dispute and would require evidence to substantiate the arguments. The *lukkhun nasarnluang* would send the record back to the *tralakarn* to investigate and examine the witnesses. Both parties were required to bring their evidence and witnesses to be examined by the *tralakarn* and the latter would make reports of all the examinations and send the report back to the *lukkhun nasarnluang* for stage three. It is important to note that all the litigation was



performed by the parties and the *tralakarn* without any assistance from lawyers because the traditional Siamese legal system did not allow anyone to represent the parties in courts.

Thirdly, the *lukkhun nasarnluang*, upon reception of the report, had no need to make a decision, but simply interpreted and drew conclusions from the evidence in the plaint, the answer, and the testimony of the parties and the witnesses. They also suggested the laws which applied to the case and sent the report to the *phuprap* (person who made judgment). Fourthly, the *phuprap* would make a decision and also enforce that decision. It is significant to note that the *phuprap* were officials who specialized in the *Thammasat* and their office was in the same building as the *lukkhun nasarnluang*.<sup>56</sup>

#### Section IV Royal Despotism in the Legal System

##### 1. The dika petition

Owing to the lack of evidence of Siamese legal history during the Sukhothai and Ayuthya periods, it is very difficult if not impossible to trace the origins of the *dika* petition. There are two possibilities; firstly, it might originate in the Sukhothai period when King Ramkamhaeng hung a bell in the gateway of his palace and allowed anyone in his kingdom who had some grievance or was treated unfairly by his officials to ring the bell in order to appeal to the King, the King himself would interrogate and settle the matter impartially. Secondly, it might originate in the principle of kingship in the *Thammasat* which represented that the people in ancient times had agreed together to elect one leader as king in order to settle their disputes, and then receive petitions.

<sup>56</sup> Ibid., p.396. All these procedures are derived from the example case of *jin* (Chinese) vs *nai Sa* (1871), also see Manu Udomwet, op.cit., pp.32-46..

The *dika* petitions were divided into two categories, firstly, the petitions submitted to the king by the people to complain that cases which were decided by the *tralakarn* in courts had been decided wrongly and asking the king to review those cases, and secondly, to complain that they were oppressed or treated badly by the government officials. It was the custom at that time that the king himself or his authorized officials would investigate those *dika* and settled them impartially for the petitioners.

It is important to note that the court system in the Ayuthya period and in the Bangkok period before the Fifth Reign reforms was the single court system. This means that a case finished when the *phuprap* gave and enforced the judgment. There was no appeal or *dika* court in the sense of the present legal system because there was no more procedure between the parties. But each party had two further choices: firstly, to sue the *tralakarn* who conducted the trial or the *phuprap* who gave the judgment that he or they were prejudiced or decided the case wrongly. Secondly, to submit the *dika* to the king to review the case.

In the first version, it was the party who lost the case who sued the *tralakarn* or the *phuprap*. This was allowed by the Law of Three Seals *laksana uthorn* (appeal law) which stated in article 8 and 9 that:

After the court gives judgment, the party which is not satisfied with the judgment can sue the *tralakarn* or the *phuprap* who conducted or decided the case by arguing that he or they were prejudiced or the judgment was wrong. The *tralakarn* or the *phuprap* will become the defendant and if the appeal court decide that he is wrong, he will be responsible for the appeal court's fees and the original case will go back to the original court to be conducted by a new *tralakarn* or *phuprap*. But if the *tralakarn* or the *phuprap* win the case, the appeal

party is subject to a severe fine and also responsible for the appeal court's fees.<sup>57</sup>

This aspect of the *laksana uthorn* of the Law of Three Seals was very negative and needed to be changed, so Prince Phichit reformed it when he became the Minister of Justice. This will be illustrated in the chapter on Prince Phichit.

In the second version, the party who lost the case could submit a *dika* to the king to review the case. If the king did review and give a judgment, this was final. The power of the king in this respect was not the power of the normal court procedure but the power of the "lord of the land" and the "lord of life". Therefore, this power was not bound by any laws as Prince Raphi explains in his book, Phraratchabanyat nai patyuban (The royal edicts in the present day) that:

The power of the king to receive and decide the *dika* is not the power of the court procedure but the lord of land which is unlimited and is not obliged by any laws. This power depends totally on the king so each king applies this power differently.<sup>58</sup>

One important question is whether the defeated party who sued the *tralakarn* in the appeal court and lost the case could again submit a *dika* to the king. The answer is probably yes, because there was no law to regulate this aspect and even a person who never brought his case to a normal court but wanted to bring his case to the king as a *dika* petition could also do so if he had a *nai* who was close to the king.<sup>59</sup> This unlimited and uncertain power of the king channelled a tremendous number of *dika* petitions into the king's hands particularly in the reign of King Chulalongkorn. This caused him to follow Prince Phichit's advice to establish the

<sup>57</sup> Pricha Suwattat ed., Kotmai Tra Samduang, vol.1, op.cit., pp.431-432, *laksana uthorn* article 8,9.

<sup>58</sup> Prince Ratburi Direkrit (Raphi), Phraratchabanyat nai patyuban (royal edicts in the present day), vol.2, (Bangkok, 1901), p.988.

<sup>59</sup> Chotmai het phraratchakit raiwan (King Chulalongkorn's diary), vol.10, p.58.

*Dika* Court and appoint Phichit in 1876 as the first *athibodi* (chief judge). This will be illustrated in chapter 3.

There is no evidence of the method of receiving the *dika* during the reign of Kings Rama I and II of the Bangkok period, but one can assume that it should have been the same as in the reign of King Rama III (King Nangklao), whereby the people could submit their *dika* petitions to the king when he went out of the palace to attend ceremonies. There was a famous *dika* against the eminent Prince *kromluang* Rakronnaret in which Rama III decided that the latter used his power to oppress the people, and also planned to overthrow the King so he sentenced him to be executed.<sup>60</sup> Subsequently, in 1850, Rama III put a drum called *winitchai peri* (drum for investigation) in his palace. Any person who wanted to submit a *dika* had to go to ask the official who looked after the drum and hit the drum. That person would be brought to the King's presence and the latter would investigate the petitioner by himself or assign his case to his officials.<sup>61</sup> It is possible that Rama III imitated King Ramkamhaeng of the Sukhothai Kingdom as shortly before this happened, Prince Mongkut, who was a leading monk of the Thammayut branch, had discovered several inscriptions of the Sukhothai period.

The access to the drum was not convenient as the drum was kept in the palace and the petitioner had to ask an official who looked after the drum to hit the drum. The other way was to submit a *dika* to the King when Rama III went out of the palace. His successor, Rama IV (King Mongkut), who had come to know the difficulties of the people in submitting their petitions during his monkhood, when he

<sup>60</sup> *Chaophraya* Thipakorawong, Phrarachapongsawadarn krungrattanakosin ratchakarn ti sarm, vol.2, (Bangkok, 1961), pp.135-136.

<sup>61</sup> *Ibid.*, pp.180-181.

came to the throne himself went out to receive the *dika* from the people four times monthly.<sup>62</sup>

King Mongkut also extended the right of the people to submit *dika* by allowing the relatives of a person where necessary to submit one for him. In order to discourage dishonest persons from making up false stories to submit as *dika*, King Mongkut would punish them severely. King Mongkut was always worried about his people's access to submit *dika*. Even on his death-bed in 1868, he asked his ministers to insist that the new king receive *dika* from the people as he had done.<sup>63</sup>

2. The rapsang courts (courts established by the king for special purposes) were special courts which the king could appoint for specific cases. These courts were not normal courts because the king considered that there were special circumstances which the normal courts could not cope with. It is important to note that there were no *rapsang* courts in the Law of Three Seals nor in Siamese legal history up to the reign of King Chulalongkorn. The *rapsang* courts were an unprecedented move of King Chulalongkorn in 1874, when he established these courts to deal with pending cases in four ministries, namely the *mahatthai*, *kalahom*, *khlang* and *nakhonbarn*. It was also intended as a radical change to the traditional court system in order to overcome the delay and corruption in major ministries.<sup>64</sup> The most famous instance of this court was the *rapsang* court which was established in 1893 by King Chulalongkorn to try *Phra Yot* in which Prince Phichit was appointed as the chief judge.

<sup>62</sup> Prince Damrong, Phrarachapongsawadarn krungrattanakosin ratchakarn ti ha, (Bangkok, 1971), pp.288-289.

<sup>63</sup> Prince Damrong, khwarmongcham (memorandum), Social Science Society Publisher, (Bangkok, 1962), pp.82-83.

<sup>64</sup> D.M. Engel, *op.cit.*, p.63.

## Conclusion

The traditional Siamese legal system had a long history back to the Sukhothai and Ayuthya periods but few of the laws in these two periods survive up to the present. The Ayuthya laws were based on the Siamese *Thammasat* which Siam derived from the Mon *Thammasat*. For the Bangkok period, it was King Rama I who revised the Siamese *Thammasat* and codified it into the Code of the Law of Three Seals. Most of the analysis in this chapter is based on this code.

It is important to analyse the advantages and disadvantages of the Siamese traditional legal system:

Advantages: Firstly, the procedure in court was controlled by the *lukkhun nasarnluang* who settled the issues and controlled the *tralakarn* to investigate and examine the evidences according to the issues of disputes. And the decision and the enforcement were in the hands of the *phuprap*. Therefore the interpretation of laws and the procedure were in the control of the same groups of officials and were consistent.

Secondly, the whole procedure was divided into four stages and each stage was controlled by a specific office so the officials in each group would be specialized in the work they handled. Thirdly, the offices of the *lukkhun nasarnluang* and the *phuprap* were theoretically independent of the ministers but under the king's control and should therefore have conferred true justice to the people.

Disadvantages: Firstly, the delay in the court procedure which was caused by many factors, for instance, the *tralakarn* in each court of every ministry or department were unsalaried officials whose incomes depended on the fees from the

parties. Consequently, they did not want the disputes to be settled rapidly in order to earn more fees. Secondly, the investigation and examination of witnesses was performed by the *tralakarn* who were officials under the control of the ministers or *athibodi*, and therefore the procedure in court was still under the influence of the latter. Thirdly, confusion usually occurred through the overlap of jurisdiction among the various *tralakarn* courts in numerous departments and ministries. Fourthly, the criminal procedure placed the accused or defendant in a disadvantageous position because the law presupposed that he was guilty, and so he had a duty to prove his innocence. Fifthly, the torture procedure allowed the officials to use torture to force a defendant's confession.

Two important questions are, whether true justice was available between people of different class, and was there any real substance to the traditional Siamese legal system? The answer to the first question is probably that true justice was mainly available between people of the same class, for example, between *phrai* and *phrai*, but if the *phrai* wanted to take an action against the *khunnang*, it was much more difficult as it was necessary to obtain the King's permission to do that.<sup>65</sup>

The answer to the second question is probably yes, but to a small extent. This was caused by the lack of independence of the judicial system due to the control of the executive power over the *tralakarn* court in each ministry. The litigation of a *phrai* against an accused or a defendant who was a *khunnang* or a member of the royal family would work if the latter had no influence over the executive power, but in reality they did have influence. In 1862, King Mongkut took an unprecedented step in issuing a proclamation to reform the judicial system by allowing courts access

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<sup>65</sup> This condition is provided by the Law of Three Seals *laksana aryaluang* article 28, see above p.56.

to make members of the royal family accountable for their crimes. This proclamation stated that:

This proclamation authorizes the *lukkun nasarnluang*, the court in every ministry, and the town councils all over the country to receive plaint or accusation from the people against *chaotangkrom* (Senior Prince) or any member of the royal family. The practice which these officials used to refuse to receive plaint or accusation on the ground that the people cannot sue members of the royal family must be abandoned. The purpose of this proclamation is to make members of the royal family accountable for their crimes.<sup>66</sup>

One important aspect is that the substantive laws were not well divided into appropriate sections and many of them were absurd as indicated in the *kotmontienbarn* about the capsize of the royal barge. King Chulalongkorn, before the legal reform, compared the situation of the traditional legal system to a decaying ship which was beyond repair and needed to be rebuilt.

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<sup>66</sup> Thailand Fine Arts Department, Prakat rama si pak hok (King Rama IV's Proclamation, vol.6), printed in the cremation volume of Prince Maruphong Siripat (Bangkok, 1923), pp.94-95.



### Chapter 3 The Origins of the Ministry of Justice

#### Section I The Conclusion of the Unequal Treaties and their Consequences

##### 1. The Bowring Treaty of 1855

The first unequal treaty between Siam and Western countries was the Bowring Treaty of 1855, which resembled the unequal treaties signed by Western powers with China and Japan in the same period. It was called an "unequal treaty" because it was not equal or reciprocal. Article II of this treaty provided that:

The interests of all British subjects coming to Siam shall be placed under the regulation and control of a Consul, who will be appointed to reside at Bangkok. Any disputes arising between Siamese and British subjects shall be heard and determined by the Consul, in conjunction with the Siamese officers; and criminal offences will be punished, in the case of British offenders, by the Consul, according to English laws, and in case of Siamese offenders, by their own laws, through the Siamese authorities. But the Consul shall not interfere with any matters referring solely to Siamese, neither will the Siamese authorities interfere in questions which only concern the subjects of Her Britannic Majesty.<sup>1</sup>

Besides, Article VIII of this treaty removed tariffs and duties from Siamese control. It limited import duty to three per cent of the market value of the goods.<sup>2</sup>

Consequently, the Siamese Government lost its autonomy in judicial and fiscal matters because it could not exercise jurisdiction over British subjects and could not fix the tax rate by itself. But the terms of the Bowring Treaty of 1855 were not clear; therefore, on 13 May 1856, the British Government sent Harry Parkes to conclude an agreement supplementary to the Bowring Treaty which the Siamese

<sup>1</sup> Thailand Treaty and Legal Department, Foreign Ministry, Bilateral Treaties and Agreements between Thailand and Foreign Countries and International Organization, vol.1 (Bangkok, 1968), pp.37-42.

<sup>2</sup> Ibid., pp.37-42.

Government agreed to sign. This supplementary agreement laid down the methods of procedure in detail but the essence of the treaty was still the same.

The reason why the Siamese Government signed the unequal treaty was that similar treaties had already been imposed upon Japan and China. If neither Japan nor the region's traditional dominant power, China, had been able militarily to resist the British, then Siam would be even less able to do so. Furthermore, the British were well established on the Malay Peninsula and they had recently been engaged in a second Anglo-Burmese war which, by 1852, had resulted in Burma's defeat and the cession of much of its territory to Britain's control.

It is significant that Siam, despite full knowledge of the disadvantageous consequences of an unequal treaty, entered into many similar treaties with other countries, viz. the United States of America and France in 1856, Denmark in 1857, etc. The reason was that letting many treaty powers into Siam was better than only one since Siam would be able to balance their influence instead of allowing one treaty power to dominate the country.<sup>3</sup>

The Western powers' justification for exercising extraterritorial jurisdiction in Siam was that the Siamese legal system was obsolete, unsystematic and uncertain. The judges were not independent enough to decide cases. As Sir John Bowring, when he was in Siam to complete the Bowring Treaty, commented :

In an absolute monarchy country the king has absolute power and the judges and legislative council cannot procure the people's security. Sometimes, the king's desire will prevail and affect the judge's opinion or court procedure. Moreover, the method of punishment in Siam was barbaric.<sup>4</sup>

<sup>3</sup> Chulalongkorn University, Kanpattana kotmaithai nai songroipee (The Development of Thai Law over 200 years) (Bangkok, 1982), vol.1, p.18, and also see Natawut Sutthisongkram, Somdet Chaophraya Bormmaha Si Suriyawong (Bangkok, 1961), pp.550-551.

<sup>4</sup> Chulalongkorn University, *Ibid.*, pp.15-16.

It is worth analyzing whether these reasons were justifiable. Firstly, the Siamese law at that time was the Law of Three Seals which originated in the time of the Ayuthya Kingdom and was revised by King Rama I in 1804. Some laws were obsolete as evidenced by the trial by ordeal called "diving trial". According to this method, the judge stuck two poles in deep water at about three metres distant. The parties, dressed in white, prayed and at the same time lowered themselves into the water holding on to the poles. The party which surfaced first would lose the case.<sup>5</sup>

Secondly, the courts of justice in Siam at that time were not independent but subject to intervention from the king, princes, and influential government officials. This was evident in the case of *Phraya Charoenratchamaitri* (That Amatyakun) as late as 1884 who had beaten a Mr. Lek to death. The judges gave the verdict that *Phraya Charoen* was a senior government official who knew the custom and intentionally broke the law together with his slaves by beating Mr. Lek to death, which was a violent crime. The *Phraya* was found guilty of murder and awarded the punishment of 90 floggings, confiscation of all his property and execution. But *Phraya Charoen* had given good service to the Government, which therefore reduced the punishment to imprisonment and 60 floggings and a fine of 28 *chang* (1 *chang* = 80 ticals).<sup>6</sup> Prince Putharet, King Chulalongkorn's half-brother, gave this case to the King to review. The King gave the order that the judges were right in delivering a guilty verdict but *Phraya Charoen* had given plenty of good service to the Government. Consequently, the King cancelled the judgment and changed the punishment to confine *Phraya Charoen* to the Palace in order to deter high Government officials

<sup>5</sup> Pricha Sunantat, Kotmai trasamduong (The Law of Three Seals) (Bangkok, 1984), pp.358-360. <sup>(c.d.)</sup>

<sup>6</sup> No specific term of imprisonment was defined because only the King had such authority.

from killing ordinary people.<sup>7</sup> This case indicates clearly the King's intervention in the administration of justice.

Another, earlier case in 1874 which showed the King's direct interference with court procedure by ordering an execution without trial was the case of *Luang Sanpakorn*, who was a government official accused of persecuting many innocent people. The police arrested him but he managed to escape. The King issued orders to arrest and execute him without trial.<sup>8</sup> But in some cases the King's intervention gave more justice. This was illustrated in the case of *Chin Mee* (*Chin* is the word the Siamese use for Chinese) who claimed that three provincial governors, *Phraya Sukhothai*, *Phraya Phichit*, and *Phraya Phichai* owed him 30 *chang*. The judges decided that his claim was unenforceable by lapse of time. Prince Phichit Prichakorn discussed this case with the King and the latter gave the decision that the three *Phraya* were actually in debt to *Chin Mee*, even though the claim was precluded, but as the three *Phraya* were government officials they should pay back their debts to only half the amount.<sup>9</sup>

Thirdly, the argument that the Siamese judicial system used barbaric punishments was partly true. This is evidenced by Prince Damrong's memoir where the Prince explained that when *Somdet Chaophraya Sisuriyawong* (*Chuang Bunnag*) was in power as Regent, 1868-1873, there were many violent crimes in Ayuthya province. The *Somdet* went up to Ayuthya with judges and officers. Whenever he arrested the leader of some bandits, he set up a court which gave a verdict of execution by publicly cutting the body of the bandit into two pieces while another bandit was executed by dissecting the body symmetrically in public in order to deter

<sup>7</sup> Chotmai het phraratchakit raiwan (King Chulalongkorn's Diaries), vol.19 (1884), p.163.

<sup>8</sup> Chotmai het phraratchakit raiwan, vol.1 (1876), p.44.

<sup>9</sup> *Ibid.*, p.52.

other bandits. Apparently these punishment did deter other bandits as the province was quiet after that.<sup>10</sup> Prince Raphi, who became the Minister of Justice in 1897, explained about this barbaric punishment that the Siamese method of punishment looked barbaric, for instance, amputation of a hand or opening the skull or dissecting the body, but in practice it was used only in a very extraordinary cases in order to restore peace.<sup>11</sup>

Therefore, it might be considered justifiable for the Western powers to request extraterritoriality over Siam because they did not want their subjects to be under the obsolete, uncertain laws and the arbitrary practices of the absolute monarchy and many kinds of barbaric punishment.

## 2. The Indo-Siamese Treaty of 1874

In the north of Siam, especially Chiangmai, there was a great deal of forest which attracted Burmese forest concessionaires who came from British Burma. Therefore British influence in this region in the early 1870s was greatly increasing. In response, the Siamese Government sent a Special Commissioner to Chiangmai in 1874 to guard against British intervention.<sup>12</sup> There had been many disputes concerning timber rights between the Lao states in the north and the Burmese foresters who claimed the right of extraterritoriality, and took these cases down to the British Consular Court in Bangkok. In the course of the proceedings, malpractices in the forest concessions were revealed and the Lao princes lost eleven out of the twenty-one cases. But as a result of the scale of this litigation, the British

<sup>10</sup> Prince Damrong, Khwarmsongcham (Memoirs), Sangkomsat Society Publisher (Bangkok, 1962), pp.131-132.

<sup>11</sup> Prince Raphi, Phraratchabanyat nai patyuban (Royal Edicts in the Present Day), vol.1 (Bangkok, 1901), p.1.

<sup>12</sup> Tej Bunnag, The Provincial Administration of Siam (1892-1915) (Kuala Lumpur, 1977), pp.68-69.

Government of India arranged the Indo-Siamese Treaty of 1874 which conceded to the Siamese Government responsibility for the adjudication of disputes between its Asian subjects without British papers and local people.<sup>13</sup>

The 1874 Treaty was signed between the Government of India and the Siamese Government at Calcutta on January 14, 1874. Its purposes, other than to promote commercial intercourse between British Burma and the adjoining territories of Chiengmai, Lakon (Nakon Lampang) and Lamphunchai (Lamphun), was to prevent dacoity and other serious crimes within the said territory. This was evident in article I of this Treaty which stipulated that the King of Siam was bound to cause the chief of Chiengmai to establish and maintain guard-stations on the right bank of the Salween River and to maintain sufficient force there. Article X which promoted commercial intercourse stipulated that British subjects with passport who desired to purchase or cut timber in the forest of the said territory had to enter into a written agreement for a definite period with the owner of the forest. Such agreement must be executed in duplicate, each party retaining a copy, and each must be sealed by one of the Siamese judges at Chiengmai.<sup>14</sup>

There was a unique character to this treaty which by Siam regained a small part of its jurisdiction over British subjects in Siam in dacoity and civil cases. Regarding dacoity, any persons apprehended in the territory in which the dacoity had been committed were to be tried and punished by local courts without question as to their nationality. This was the first time since 1855 that the British Government allowed Siamese courts to try and punish British subjects in criminal cases, even though this authority was confined to the three northern provinces and only to dacoity.<sup>15</sup> In civil cases, article V of this treaty stipulated that the King of Siam

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<sup>13</sup> Ibid., pp.68-69.

<sup>14</sup> Thailand Treaty and Legal Department, op.cit., vol.2, pp.67,84.

<sup>15</sup> Ibid., pp.65-66.

should appoint proper persons to be judges in Chiangmai, with jurisdiction: 1) to investigate and decide claims of British subjects against Siamese subjects in the three northern provinces; and 2) to investigate and determine claims of Siamese subjects against British subjects who had passport to enter into Siam territory from Burma. But this would be done only in case such British subjects consented to the jurisdiction of the courts; if not, the claims of the Siamese subjects should be investigated and decided either by the British Consul at Bangkok, or by the British officer of the Yoonzaleen border district of Burma.<sup>16</sup> As an effect of this treaty the Siamese Government regained a minor part of its jurisdiction over British subjects in the north of Siam.

### 3. The appointment of a British Vice-Consul at Chiangmai

Mr. Knox, the British Agent and Consul-General in Bangkok, wrote a letter to *Chaophraya* Phanuwong (Thuam Bunnag) the *Phrakhlang* or Foreign Minister, in November 1877, to say that the British Government wanted to appoint a resident British Vice-Consul at Chiangmai as a means by which the two Governments could give mutual assistance in the "oversight and protection" of their subjects.<sup>17</sup> The Siamese Government refused to agree to that proposal, on the ground that the establishment of the Vice-Consul would be a breach of the Treaty of 1874, article XIV of which provided that only after a period of seven years from the day that it came into force would the Treaty be subject to revision and amendment.<sup>18</sup> The appointment of a Vice-Consul was not a matter included in the Treaty, and it would be an unfortunate precedent for every country having treaty relations with Siam. In response, Knox held that the British Government had the right to do as it wished, since the privilege of appointing Consuls and Vice-Consuls in Siam was already

<sup>16</sup> Ibid., p.65.

<sup>17</sup> *Chotmai het phraratchakit raiwan*, vol.7 (1878), p.98.

<sup>18</sup> *Chaophraya* Phanuwong to Knox, 2 Jan.1878, PRO FO 69/94.

enjoyed by Germany. By virtue of article X of the Bowring Treaty which provided for the most-favoured-nation treatment for British subjects, the British Government could claim the equal privilege to appoint a Vice-Consul at Chiengmai.<sup>19</sup> At that time King Chulalongkorn consulted Si Suriyawong (Chuang Bunnag) regarding this matter. The latter, who was still very influential at that time, was of the opinion that if the British insisted upon the issue, the Siamese Government should allow them to appoint the Vice-Consul at Chiengmai in return for which the Siamese Government could also appoint Consuls in many cities in Britain.<sup>20</sup> Therefore, the Siamese Government gave way to the British Government's desire to appoint a Vice-Consul at Chiengmai.

#### 4. The Anglo-Siamese Treaty of 1883

The process of appointing a Vice-Consul was delayed until, in 1883, E.B. Gould was appointed the Vice-Consul at Chiengmai. Prince Phichit who was in charge of judicial matters in the Siamese Government at that time wrote a letter to *Phraya* Ratchasamparakorn, the Siamese Commissioner at Chiengmai, advising him how to receive Gould.<sup>21</sup> On 3 September 1883, the Anglo-Siamese Treaty was concluded at Bangkok aiming to maintain more effectual prevention of crime in the territories of Chiengmai, Lakon Lampang, and Lamphunchai, belonging to Siam, and the promotion of commercial intercourse between British Burma and these territories. This Treaty also abrogated the Treaty of 14 January 1874.<sup>22</sup>

The feature of the 1883 Treaty was article VIII which created an International Court at Chiengmai. This article provided that:

<sup>19</sup> Knox to Panuwong, 7 Jan.1878, PRO FO 69/94.

<sup>20</sup> Chotmai het phraratchakit raiwan, vol.7 (1878), p.105.

<sup>21</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), p.278.

<sup>22</sup> Thailand Treaty and Legal Department, op.cit., vol.2, p.85.



The King of Siam will appoint a proper person or persons to be judges in Chiengmai. Such judges shall, subject to the limitations in this Treaty, exercise civil and criminal jurisdiction in all cases arising in Chiengmai, Lakon [Lampang], and Lamphoonchai, between British subjects, or in which British subjects may be parties, according to Siamese law; provided always, that in all such cases the Consul or Vice-Consul shall be entitled to be present at the trial, and provided also, that the Consul or Vice-Consul shall have power at any time before judgment, if he shall think proper in the interests of justice by a written requisition to direct Siamese judges to transfer those cases to the British Consular Court at Chiengmai, and the case shall be disposed by the Consul or Vice-Consul.<sup>23</sup>

It is worth considering the reason why the British Government allowed the system of an International Court. The reasons probably were that: firstly, there were so many cases which concerned British subjects occurring in these three northern provinces and the British Consul at Chiengmai could not deal with all of them. Secondly, the Siamese judicial system was very much improved by 1883 by comparison with 1855. Thirdly, there were still two safeguards to protect British subjects. These two safeguards were : 1) The British Consul or Vice-Consul at Chiengmai had a right of evocation which entitled him to be present at the International Court and could withdraw any case which concerned the British subjects from the International Court to be decided in the Chiengmai Consular Court by giving a written requisition to the Siamese judge prior to judgment. 2) These cases in the International Court which were decided by the Siamese judges could still be appealed to the Appeal Court at Bangkok which would bring these cases under review by the British and Siamese authorities.<sup>24</sup>

One interesting point is why the Laos *chao* (princes) did not object to the Siamese Commissioners appointed to administer the 1874 and 1883 Treaties. The reason probably was that these *chao* were content with their tributary system under

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<sup>23</sup> Ibid., p.88.

<sup>24</sup> Mr. Archer to the Marquess of Lansdowne, Memorandum of the International Court at Chiengmai, 23 Aug.1902, PRO FO 422/56.

Siamese influence. They did not want to fall under British rule and it was possible that if they rejected the Siamese Commissioners the British would take them over from Siam.

### 5. The Problems caused by Extraterritoriality

The extraterritorial system in Siam caused tremendous problems to the Siamese Government. One problem was that many Chinese in Siam sought protection from foreign consuls by applying to be foreign subjects. When these Chinese committed crimes or were accused of crimes, the Siamese courts could not deal with them. This was evident in the case of *Chin Soon*, who was a Chinese in Chonburi province and was accused of committing a crime by forcing Mr. Bunthong to give him money illegally. The Siamese authorities in Chonburi prosecuted *Chin Soon* but the latter claimed that he was a Portuguese subject. *Chaophraya Phanuwong*, after inquiries by the Portuguese Consul, had to surrender *Chin Soon* to the latter.<sup>25</sup>

The extraterritorial system undermined the Siamese administration of justice because a warrant for the arrest of a British subject had to be obtained from the consul before the Siamese authorities could proceed to effect the arrest. This arrangement was not practicable in case of emergency, such as smuggling of opium, or in cases occurring far away from the consul, such as those taking place on the frontiers.<sup>26</sup> Furthermore, the number of foreign subjects in Siam at the signing of the Bowring Treaty in 1855 was small. As time passed by the increasing number of foreign subjects, especially the British Burmese in the north, increased tremendously which caused more problems to the Siamese Government. All these problems forced the Siamese Government to attempt to terminate extraterritoriality.

<sup>25</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), p.287.

<sup>26</sup> Siamese Delegates to Balfour, 22 Feb.1919, Memorandum respecting the Revision of Treaty and Tariff, PRO FO 422/74

The regaining of minor rights of jurisdiction in the north through the 1883 Treaty was an encouraging step. But the Siamese Government realized that the system of law in Siam at that time made it impossible to regain the whole jurisdiction. This was apparently shown by the King's decision to send Prince Thewawong to Europe in 1887 to observe modern governmental systems, and when Thewawong came back from Europe a modern governmental system was established on 16 June 1888. This was the starting point of the new, modern, Ministry of Justice.

## Section II Prince Phichit Prichakorn's role in the development of the Siamese Legal System before the establishment of the Ministry of Justice

One can divide Prince Phichit's role in this period into three stages:

1. Prince Phichit's role before his visit to Chiangmai
2. His role at Chiangmai
3. His role after coming back from Chiangmai

First of all it is necessary to consider Prince Phichit's background. Prince Phichit Prichakorn was the twentieth child of King Mongkut, born on 29 October 1855, by *Chaochommanda* (minor wife) Pheung. His original name was Prince Katkanang Yukon and Katkanang is the family name of his descendants. When he came of age in 1871, King Chulalongkorn sent him to supervise the construction of a building in the Palace, but Phichit was not interested in engineering but rather in law. This was the reason King Chulalongkorn sent him to practise law with Kromphra Thewetwatcharin, the president of the *Rapsang* Court in 1872. When King Chulalongkorn established the Privy Council in 1874, Prince Phichit was appointed one of the Privy Councillors. At that time Phichit was nineteen and had

adequate legal knowledge so the King appointed him a judge in the *Rapsang* Court to deal with cases from 1874. At this Court he gained considerable experience especially in procedural law.<sup>27</sup>

### 1. Phichit's role before his visit to Chiangmai

Prince Phichit's role in the Siamese legal system before his appointment to Chiangmai can be sub-divided into three aspects:

- a) his role in the *Dika* Court
- b) his role in general judicial administration
- c) his role in the *Phaeng Klang* and *Phaeng Kasem* Courts (both civil courts)

#### a) Prince Phichit's role in the *Dika* Court

Evidence from the King's Diary of 1876 indicates clearly that the *Dika* Court was first established in 1876, when Prince Phichit submitted the law of the establishment of the *Dika* Court, which regulated judges, secretaries and other *Dika* Court officials to the King.<sup>28</sup> The reason for the establishment of this court was probably that the King was overloaded with *Dika* cases. It was the custom of the Siamese judicial system that the people could present their cases to the king because the king was the sovereign who was responsible for all cases in the country. King Chulalongkorn could not deal with all these cases by himself; therefore, he set up the *Dika* Court and appointed an *athibodi* to be responsible for these cases instead of him. The reason for the King appointing Prince Phichit as the first *athibodi* was probably that Phichit was the only brother of the King who, at that time, had adequate

<sup>27</sup> Prince Damrong, "Phra prawat phrachao Boromwongter *Kromluang* Phichit Prichakorn" (the Biography of Prince Phichit), printed in Prachum phraratchanipon Kromluang Phichit Prichakorn (The Poety of Prince Phichit), printed in the cremation volume of *Mom Soun Katkanang*, Phichit's wife, (Bangkok, 1950), pp.(8)-(10).

<sup>28</sup> Chotmai het phraratchakit raiwan, vol.1 (1876), p.52.

knowledge of the Siamese judicial system. King Chulalongkorn's Diaries show conclusively that the King had already put Prince Phichit in charge of the *Dika* Court when *Kromkhun* Bodin submitted the *dika* of a Mr. Sun to the King. The latter ordered *Kromkhun* Bodin to submit it to Prince Phichit because it was a *dika* case.<sup>29</sup>

Moreover, the King's Diaries indicate that Phichit had already decided *dika* cases very frequently, for instance in the first half of King Chulalongkorn's Diary volume 2 in 1877, Prince Phichit decided *dika* cases almost every other day. Besides, King Chulalongkorn's Diaries state that Phichit submitted the monthly reports of *dika* cases to the King.<sup>30</sup>

The King also sent Prince Chumphon, another of his half-brothers, to be trained by Prince Phichit in the *Dika* Court. Phichit was in charge of the *Dika* Court up to 1883. By the end of 1883, the King ordered Prince Siritat, another half-brother, to help Prince Phichit in the *Dika* Court as the King wanted Phichit to go and deal with the problems in Chiangmai and leave the *Dika* Court in the hands of Prince Sirithat.<sup>31</sup>

#### b) Prince Phichit's role in general judicial administration

Apart from his responsibility in the *Dika* Court, one can say that Prince Phichit was also the chief legal adviser of King Chulalongkorn as is clearly demonstrated in the King's Diaries. When the King had any problems about issues of law, he always consulted Prince Phichit. This was evident in the case of a Mr. Sung who accused a Mr. Sawat about which *Chaophraya* Surawong consulted the King; the

<sup>29</sup> Chotmai het phraratchakit raiwan, vol.2 (1877), p.19.

<sup>30</sup> Chotmai het phraratchakit raiwan, vol.2 (1877) pp.32-33; vol.3 (1877) p.49, vol.4 (1877) p.25; vol.7 (1878) p.234.

<sup>31</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), p.125.

latter asked Phichit to check the law in this case.<sup>32</sup> Occasionally, during this period, Prince Phichit was in charge of the *Rapsang* Court, which was a court set up by the King to deal with one particular case or cases, as he reported the statistics of cases in this Court.<sup>33</sup>

Prince Phichit was also in charge of drafting law. This was evident in 1877 when he drafted the Evidence Act and submitted it to the King.<sup>34</sup> In some cases the King asked Phichit to investigate the persons concerned, for instance, in the case of a Mr. Yeun, the King asked Prince Phichit to check the facts with *Phra* Suriyaphakdi in order to reach a decision.<sup>35</sup> Prince Phichit was so close a legal adviser to the King that he was almost totally occupied by court cases. On one occasion, he had gone on a river trip up to Bangkhen, to the north of Bangkok, when the King wanted him in audience urgently to consult him about one case. The King was furious when he realized that Prince Phichit had gone away on a holiday without his permission, so he sent someone to get him back and threatened to confine him to the Palace, but as he wanted to consult with him, he abandoned the confinement.<sup>36</sup>

There was a case of *Chin* Tunmabun, a British subject, who was required to repay his debt to *Phraya* Phuket, but the former argued that the debt had already been repaid by him and he had some counterclaims. The judge in Phuket gave a decision, summarily without a presentation of evidence, in favour of *Phraya* Phuket. *Chin* Tunmabun asked for the British Consul-General, F.G. Palgrave's, protection and the latter demanded a retrial. Prince Phichit advised the King to send *Phraya* Arnulakyota as Commissioner to Phuket to deal with this case.<sup>37</sup>

<sup>32</sup> Chotmai het phraratchakit raiwan, vol.1 (1876), p.68.

<sup>33</sup> Chotmai het phraratchakit raiwan, vol.3 (1877), p.8.

<sup>34</sup> Chotmai het phraratchakit raiwan, vol.4 (1877), p.4.

<sup>35</sup> Chotmai het phraratchakit raiwan, vol.7 (1878), p.254.

<sup>36</sup> Chotmai het phraratchakit raiwan, vol.13 (1882), p.49.

<sup>37</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), pp.15-16 and pp.137,143.

Moreover, the King trusted Prince Phichit and awarded him the very important responsibility of checking the qualifications and behaviour of the persons who applied for the position of *tralakarn* (judges), as when a Mr. Ju applied for this position, and Prince Phichit examined his knowledge of law.<sup>38</sup> The King also consulted Phichit about a letter of British Foreign Secretary, Lord Granville, submitted by the British Consul regarding the case of Mr. Cox and *Phrachao* Chiengmai (the Prince of Chiengmai) asking for a retrial. Lord Granville knew that Prince Phichit was going up to Chiengmai so he expected that the case would be settled soon. He also asked Prince Phichit to investigate Mongkai and *Phrachao* Chiengmai's agent, the witnesses of the case, who were at Bangkok.<sup>39</sup>

Prince Phichit was also in charge of the drafting of the law of the abolition of slavery at that time. This Act was Phraratchabanyat phikat krasian ayu lukthat lukthai (the Act for determination of the value of slaves' children) of 21 August 1874. This Act provided that slaves' children born since 1868, the year in which the King came to the throne, were to be subject to a new formula for calculating their value. Consequently, they lost all their worth at 21 years of age and became completely free.<sup>40</sup>

The King also consulted Prince Phichit about the cases from Chiengmai, for instance when Mr. Palgrave, the British Consul-General, came to the King about the case of Mong Guna who had accused Nan-aut and Noi Mahachai of stealing elephants. The King sent Prince Phichit to explain the details of this case to Mr. Palgrave.<sup>41</sup> Subsequently, the King wrote a letter of October 1883 to *Phraya*

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<sup>38</sup> Ibid., p.48.

<sup>39</sup> Ibid., p.289.

<sup>40</sup> Prachoom Chomchai, Chulalongkorn the Great (Tokyo, 1965), p.61.

<sup>41</sup> Chotmai het phraratchakit raiwan, vol.9, pp.87,90.

Ratchasamparakorn in Chiangmai to advise him to consult privately with Prince Phichit in any cases concerned with foreign subjects.<sup>42</sup> When Mr. Gould was sent up to Chiangmai as the British Vice-Consul there, Prince Phichit wrote a letter of March 1884 to *Phraya* Ratchasamparakorn advising him how to receive and deal with the British Vice-Consul.<sup>43</sup> This probably was one reason for the King's subsequent decision to send Prince Phichit as a Special Commissioner to Chiangmai to deal with its problems at the beginning of 1884.

c) Prince Phichit's role in the *Phaeng Klang* and the *Phaeng Kasem* Courts

Prince Damrong wrote in his biography of Prince Phichit that Phichit was responsible for the *Phaeng* Court when he drafted the Act for the abolition of slavery in 1874. Therefore, one can conclude that Prince Phichit was responsible for the *Phaeng Klang* and *Phaeng Kasem* Courts from 1874. Subsequently, the King wrote a letter of September 1877 to Phichit asking him to enforce cases in both civil courts. Later Prince Phichit drafted the regulations for these two civil courts and submitted them to the King for consideration and the King gave his permission to Prince Phichit to implement the regulation of these two civil courts in September 1877.<sup>44</sup> Prince Phichit, as the *athibodi* or Chief Judge of these two civil courts, reported the statistics of cases in both courts to the King.<sup>45</sup> Subsequently, probably because of his heavy load of responsibilities, Prince Phichit delegated his responsibility in the *Phaeng Klang* and the *Phaeng Kasem* Courts to *Phra Kasem* and *Luang Thepthada* respectively, in 1878, but both remained still under Prince Phichit's supervision.<sup>46</sup>

<sup>42</sup> Chotmai het phraratchakit raiwan, vol.14 (1883), p.172.

<sup>43</sup> Chotmai het phraratchakit raiwan, vol.16 (1883), p.287.

<sup>44</sup> Chotmai het phraratchakit raiwan, vol.3 (1877), pp.81,90

<sup>45</sup> Chotmai het phraratchakit raiwan, vol.3 (1877), p.90, vol.4 (1877), p.25, vol.7 (1878), p.234.

<sup>46</sup> Chotmai het phraratchakit raiwan, vol.7 (1878), p.24.



## 2. Prince Phichit's role at Chiengmai

It is necessary, first of all, to consider why the King sent Phichit to Chiengmai. In the King's letter of February 1884 to *Chaofa* Prince Mahamala, his uncle, he stated clearly that:

I have considered that your trip to organize the system in the Laos state will take about two or three years. Therefore, I would postpone your mission for a year and send someone to pave the way for you in order to enable you to organize it more easily. It is difficult to select a suitable person to go there because he should be a person who knows the Government system and at the same time should be respected by the Lao people.

I have carefully considered whether Prince Phichit Prichakorn has considerable knowledge in Government work and is clever in corresponding. He is also trustworthy and has considerable knowledge in the Siamese legal system and the law concerning foreign subjects. Besides, he knows the customs and is cautious and considerate. His mission, even if not successful, will obtain much information about the Laos state which will be useful for your future mission. Moreover, the Laos people will give more respect to the Prince than a government official. I told him of this idea two days ago. He complained that it is a big job and asked for time to think it over. He came to see me today and agreed to go to Chiengmai.<sup>47</sup>

This indicates the King's plan for Prince Phichit's mission as a mission to pave the way for *Chaofa* Prince Mahamala, the King's uncle, and how the King did not expect much success from it because he knew that it was a very difficult job and should take many years to fulfil. And Prince Mahamala also wrote a letter of April 1884 to Prince Phichit stating that this mission was a very difficult one and it was more difficult than fighting in the battle field.<sup>48</sup>

In his "Chiengmai and the Inception of an Administrative Centralization Policy in Siam", Dr. Brailey states about Prince Phichit's mission that:

<sup>47</sup> Thailand National Archives, Nangsue Chut piset (The Record Book of the Royal Secretary), vol.25, pp.31-32.

<sup>48</sup> Ibid., vol.26, p.99.

The choice of Phichit indicated perhaps how the enthusiasms of the next "young Siam" group had already been unleashed in the course of the struggle to displace the Bunnags. But Chulalongkorn's dominant concern, undoubtedly, was to ensure adequately easy relations between the British Vice-Consul and the Lao Chao, but to prevent them becoming too intimate.<sup>49</sup>

This is probably true because the King knew that the British influence in the north was increasing and he wanted to send one of his trusted supporters to keep an eye on the British and prevent any step to take over the Lao state.

What did the King want Prince Phichit to do at Chiangmai? The King's desire appeared in Phichit's letter of June 1884. In his letter Prince Phichit responded to the King's suggestions and explained his plan according to King Chulalongkorn's desire that:

Firstly, about the teak concession, he would organize the system of the teak concessions and make the system efficient for the benefit of the Government by: (1) levying the timber tax at the standard rate; (2) calculating the number of the forests and issuing laws to force the owners of the forests to register with the Government; (3) using the standard form of contract between the owners and the concessionaires in order to reduce conflict.

Secondly, in the establishment of the International Court, Prince Phichit planned to separate the judges from the Commissioners by setting up a group of judges to deal with cases only, and they were not to be Commissioners or government official. The correspondence with the foreign consul was the duty of the Commissioner who would deal with politics and administration only. Phichit also planned to draft a new law of procedure by adopting the English law adjusted to the Lao custom with the consent of the Lao *Chaos* and the Consul. Thirdly, Phichit

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<sup>49</sup> N.J. Brailey, "Chiangmai and the Inception of an Administrative Centralization Policy in Siam", *Kyoto Southeast Asia Studies*, vol.11, No.4, March 1974, p.451.

planned the adjustment of the tax system by applying the Siamese tax system, and fourthly, the establishment of security forces in the area.<sup>50</sup>

This outline shows Prince Phichit's ideas for the separation of court procedure and judge's powers from the Government administration because his legal experience indicated that government officials could influence court procedure and if the Commissioner was the judge at the same time, it could cause injustice.

Prince Phichit's mission in Chiangmai proved to be unsuccessful. He was faced with many difficulties over the International Court because he could not keep the British subjects and the Lao people on good terms. But at least he could establish a good International Court system which proved to work satisfactorily after he left. His expansionist border policy involving an attempt to extend the effective frontier of Western Laos right up to the Salween River in the West and Northwest at the expense of Kengtung and other Shan states had eventually to be halted as a result of British diplomatic pressure in Bangkok.<sup>51</sup> His policy of increasing the Bangkok share of the royalty of teak-cutting, by requiring the forest-owners to register their forests with the Government in order to calculate the amount of teak-cutting, encouraged the connivance of the local Lao officialdom in the non-registration of cut timber.<sup>52</sup>

The serious incident which caused King Chulalongkorn to recall Prince Phichit to Bangkok was the slave case of Imung. One of *Phrachao* Inthanon of Chiangmai's relatives attempted to repossess Imung the Lao, freed slave wife of a British Asian subject. Vice-Consul Gould protested to Phichit on her behalf, but gaining no immediate satisfaction, broke into Inthanon's palace. Inthanon protested to Bangkok both of Gould's behaviour and Phichit's general uncooperativeness. This case put a

<sup>50</sup> Thailand National Archives, Nangsue chut piset, op.cit., vol.26, pp.94-95.

<sup>51</sup> N.J. Brailey, op.cit., p.454.

<sup>52</sup> Ibid., p.453.

real blight on the rest of Phichit's Commissionership. It was around October - November 1884 that Bangkok began to put a definite brake on most of his activities, and in early 1885, the King decided to order his return to the capital after June.<sup>53</sup>

These problems proved to be very difficult for the Siamese Government to deal with as *Phraya Montri Suriyawong* (Cheun Bunnag), the next Commissioner, did not risk any step to undermine the internal authority of the local Lao hierarchies.<sup>54</sup> Actually it was not Phichit's fault, but it was the nature of the three parties Siamese, British and Lao, that they each tried to pursue their own interests.

### 3. Prince Phichit's role after his Chiangmai mission

Phichit's mission to Chiangmai seems to have prove proved the truth of the belief among the Princes that going far away from Bangkok caused the disfavour of the King. As the British tutor R.L. Morant indicated in his 1894 memorandum, "All the King's half-brothers are always jealous of each other and are always waiting to rejoice in and profit by one another's falls".<sup>55</sup>

Prince Phichit came back from Chiangmai not even successful there but without disgrace because the King himself did not expect success in such a difficult job. Phichit resumed his duty as a Privy Councillor. There is no evidence to indicate whether Phichit resumed his presidency in the *Dika*, *Phaeng Klang* and *Phaeng Kasem* Courts, but he was still responsible as judge in the *rapsang* Court as evidenced by the King's letter of 19 June 1891 to Phichit, by which time he had been sent as royal commission to Ubon, which stated that Phichit's verdict in the case of a

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<sup>53</sup> Ibid., pp.454-455.

<sup>54</sup> Ibid., p.455.

<sup>55</sup> N.J. Brailey, Two Views of Siam on the Eve of the Chakri Reformation (Singapore, 1989), p.98.

robbery at Chonburi was correct according to the law and ordered punishment of the robbers according to Phichit's opinion.<sup>56</sup>

Prince Phichit worked closely with Satow, the British Consul-General and then Minister, on many occasions. In his diary, Satow recorded commenting about Prince Phichit to Prince Thewawong, on 25 February 1885, that Phichit was a capable judge and should be appointed to the post of the Lord Chief Justice of Siam.<sup>57</sup>

After his mission to Chiangmai, Phichit still played a large role in the development of the Siamese legal system as following:

Firstly, he wrote an essay called Thammasan Winitchai (A Consideration of Justice) in 1885, which exemplifies the transition from the traditional Siamese and Indian legal theory to newer ideas which were influenced by Western thought. He explained that the King could enact laws based upon four *thamma* (the right conscience): (1) The providing of food and sustenance; (2) The creation of plenty or abundance provided for time of war or famine; (3) Equality and fair treatment; (4) Peacefulness and protection from danger.<sup>58</sup>

Prince Phichit's theory explained that the broad absolute power of the King should be limited by these *thamma* in order to confer provisions or food supply, equal treatment under law, and protection to the Siamese people. Phichit's essay might have caused some dissatisfaction to King Chulalongkorn because he suggested

<sup>56</sup> Thailand Fine Arts Department, Prachum ratchahattha leka (The King's letters), vol.1, p.231.

<sup>57</sup> Satow's Diaries, PRO FO 30/33/15/7. Satow was a barrister of Lincoln's Inn, which was why he was interested in Siam's legal system and Prince Phichit.

<sup>58</sup> D.M. Engel, Law and Kingship in Thailand during the Reign of King Chulalongkorn (Ann Arbor, Michigan, 1975), p.10.

limiting the absolute power of the King which he had only just gained after the death of *Somdet Chaophraya* Sisuriyawong in 1883.

Secondly, Prince Phichit was the first person to propose the plan for the establishment of the Ministry of Justice. He was of the opinion that the courts in every Ministry or Department should be abolished and the newly established Ministry of Justice would take over their duties to handle all cases in Bangkok and its suburbs.<sup>59</sup> All the Ministers objected to his ideas on the ground that it was not a suitable time for them. The real reason for their objection probably was they did not want to change the system because they benefited from it and doubtless this was also the reason not only why nobody liked the idea of a Ministry of Justice, but why nobody thought of it before. Unfortunately, Phichit's full report disappeared so it is impossible to investigate thoroughly his idea of a Ministry of Justice.

Thirdly, Prince Phichit was dissatisfied with the King and Thewawong's inactivity as he criticized them to Satow in April 1886:

He said they could not get the King to surrender any part of his authority: he is the legislature. Told him how Russia had been ruined in the Napoleonic wars by the system of so-called Cabinet Ministers, whereas there was no real cabinet, but only Ministers reporting to the King separately.

Phichit says that he is disappointed. The King does not show the same appetite for reform that he had expected. The death of the Regent and the Second King had removed all obstacle, and yet no progress is made. Thewawong had done nothing towards abolition of force service, which Phichit thinks very important, especially in the Eastern Laos states or provinces where 4 ticals a year has to be paid by the able-bodied men as a penalty for the rebellion of Vientiane 50 years ago. In face of France it is necessary to reform the condition of those provinces.<sup>60</sup>

<sup>59</sup> Phichit to King, no date, NA R5 Ky 1/9. Also see Satow's views of Phichit in *Satow Diaries*, 13 Sep.1885, PRO 30/33/15/9.

<sup>60</sup> N.J. Brailey, "Chiengmai and the Inception", *op.cit.*, p.456.

According to Prince Phichit's role stated above, one can judge that he was the most capable Prince among the brothers of the King with respect to the Siamese legal system. But his relations with the King and Thewawong became aggravated. The King probably disliked him because of the radical ideas he displayed in the *Thammasan Winitchai* or "A Consideration of Justice" and his criticism of the King's inactivity to Satow might actually have been reported back to the King some way. Thewawong probably hated Phichit because of Phichit's criticism of his inactivity, and probably he was jealous of Phichit and every other Prince who played a great role in Government office. Thewawong was a conceited person, always thinking of himself as more important than all his brothers except the King. This is evident by his conversation with Satow on 24 April 1887, when he said that:

In the last twenty years, no one but the King had taken any interest in judicial matter, and how could he do anything if he had not a Minister to execute his wishes.<sup>61</sup>

Thewawong made this unfair comment to Satow despite the fact that he was in full knowledge of both Phichit's role in the development of the Siamese legal system and Satow's comment two years earlier to him that Phichit should be appointed the Lord Chief Justice of Siam.

Another incident which worsened the relationship between Prince Phichit and King Chulalongkorn was Phichit's novel "Sanuk Nuk" which he wrote in Wachirayan Wiset, the magazine of the Wachirayan Library, of which he was the chairman. Apart from his knowledge of law, Prince Phichit was also a famous poet of his time. He attempted to imitate Western-style writing, and the novel form, to which Siamese people at that time were not accustomed. He wrote a novel "Sanuk Nuk" which was a story set in Bowonniwet temple where the Prince-monk Pawaret, the King's uncle and senior monk of the Thammayutnikai royalist sect, was the abbot. The latter,

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<sup>61</sup> Satow's Diaries, PRO FO 30/33/15/11.

being unfamiliar with such a style of writing, must have felt offended, thinking that the writer intended to create a scandal about the monastery for which he was responsible. He was so much upset that he contemplated resigning from his post. In response to this affair, King Chulalongkorn wrote letters to Prince monk Pawaret and Wachirayan to express his anger towards Prince Phichit that:

When I knew that the story upset your Highness a great deal, I was very worried, for your Highness is old and might come to fall ill ... I, therefore, have felt very angry with Kromluang Phichit [Prince Phichit].<sup>62</sup>

### Section III The Petition of 1885 and its Consequence

The content of the petition of 1885 has been illustrated in chapter 1, therefore this section is designed to investigate the consequences of the petition. The legal implications of this petition were very important because a constitutional monarchy would give more rights to the people and every citizen would have the same rights and would be under the same laws. People would have freedom of speech, public meeting and free press which never existed in Siamese society before. But the whole idea failed because the King declined to follow the suggestions of the petitioners on the grounds that it would cause strong opposition among certain groups within the Siamese Government. His explanation of how difficult it had been for him to gain full power from Sisuriyawong implied that he did not want to lose this power again when he had had it for only a few years.

The King was furious with all the petitioners. Most of them were called back from London and Paris to Bangkok. All of the senior Princes managed to escape by putting the blame on Prince Prisdang the King's cousin. This was evident in

<sup>62</sup> Wibha Senanan, Genesis of the Thai Novel, (Bangkok, 1975), pp.120-124,



Prisdang's letter, of 13 December 1890, after his exile at Saigon, to *Phra Satjaphirom*, one of his friends. He says in his letter that:

I am in great difficulties because of many of my best friends Princes Thewawong, Sawat, and *Phraya Surasak* who together with me ten years ago took the oath of allegiance, when we had the idea to submit a petition to the King in order to save the country from the Western powers, and signed our names together to propose a constitutional monarchy system. The King was furious, and accused us as of a radical idea. My friends managed to escape by putting the blame on me. When I came back from Europe, the King gave me a job in public works. I tried to organize a good system and develop as a department. When I was about to fulfil this, Prince Sawat, my devoted friend, showed my private letter to him to the King. The King was more furious and issued orders to take away my land and salary.<sup>63</sup>

King Chulalongkorn never forgave Prisdang and later he went into exile. During his exile, his house and all his property and servants were confiscated without any reason being openly given or accusation made. When the French Consul asked on his behalf if he had done anything wrong, the reply was that he had done no wrong but gone mad and run away with a widow.<sup>64</sup> This incident indicates the arbitrary practice of the Siamese Government at this time.

Prisdang was in exile for all the rest of King Chulalongkorn's reign and only came back to Siam in the sixth reign (1910-1925).

One very important question is, was the King really interested in legal change? The King replied to the petitioners that he agreed with them but any change would be strongly opposed by certain groups in the Siamese Government. These groups were in a position to limit the extent and success of any reforms which the King might wish to undertake. Was the reply a genuine answer or only an excuse? One has to look into the situation at that time, in 1885. The ex-regent, Sisuriyawong, had died, *Chaophraya Phanuwong*, Sisuriyawong's brother, had resigned

<sup>63</sup> Prisdang to *Phra Satjaphirom*, 13 Dec.1890, NA R5 Kt 6.26/2.

<sup>64</sup> N.J. Brailey, Two Views of Siam, op.cit., p.59.

in 1885 and been replaced by Thewawong. But there still might be other conservatives who would cause problems if the King changed the Governmental system. Therefore, the King might have been right, but subsequently, in 1888, the King did establish a set of functionally-organized ministries according to the Western style as observed by Thewawong on his trip to Europe. The cabinet comprised nine of the King's half-brothers and three other strong supporters. At this point, the situation was ripe for the King to change anything he desired because there should not have been any problem owing to his absolute control of the Government. But King Chulalongkorn did not take any step to change any fundamental law or aspect of the governmental system. On the contrary, he still carried on with a virtual puppet cabinet under the absolute monarchy. This raises the question whether the King did not want to give a constitution to the people because he wanted to keep his absolute power as long as possible, or he considered that it was not the right time to do that as the Siamese people were not ready for a constitutional system. It is difficult to discover for certain King Chulalongkorn's attitude on this point. The King took a step in upgrading the educational system in Siam by appointing Prince Damrong as the Minister of Public Instruction in charge of education in June 1888. But even at the end of his reign in 1910, when the situation of Siam in every aspect was very much improved, the King still did not show any sign of surrendering his absolute power.

#### Section IV The Establishment of the Ministry of Justice and the Role of Prince Sawat as the first Minister

The Ministry of Justice was established informally, at the same time as the other nine new ministries, in June 1888, according to the plan which King Chulalongkorn devised after Thewawong returned from observing the Governmental systems in Europe in 1887. At that time there were three persons whose

qualifications at least adequately suited the post of the Minister of Justice; viz. Princes Phichit, Sawat, and Sirithat.

Prince Sawat was a son of King Mongkut by *Chaochom manda* (minor wife) Piam. He was a full brother to Thewawong and three of the King's four chief Queens, one by now deceased. He had been in the first group of Siamese students who were sent to study in England in the early 1880s. Indeed, Prince Sawat was the only brother of King Chulalongkorn who was ever sent to be educated abroad. The King stated the reason for sending him to study in England in his diary as follows:

Prince Sawat is a clever young man but untidy and hot-tempered. If he stays in Siam, he might cause problems. Therefore, we should send him to study in England. Write to *Phra Siamturapa* to send him the same amount of money as Prisdang.<sup>65</sup>

Prince Sawat eventually studied law at Balliol College, Oxford University. He studied law, like the English nobility, for no degree. He finished his study and came back to Siam in 1886.

The King evidently disliked Prince Phichit because of his radical ideas and therefore he did not want to appoint him as the Minister of Justice, even though his experience in the Siamese legal system was greater than all other Princes. Prince Phichit's ability in the Siamese legal system was also recognized by Ernest Satow, the British Minister Resident in Bangkok, as he noted in his diary of 13 September 1885, in which he suggested that the proper post of Prince Phichit was the Minister of Justice, to organize the judicial system, and look after the personel [sic]. Even though at that time the Ministry of Justice had not been established.<sup>66</sup>

<sup>65</sup> Chotmai het phraratchakit raiwan, vol.12 (1880), p.27. It is noticeable that he was to get the same financial support as Prince Prisdang even though the latter was a Siamese diplomat and the former was only a student.

<sup>66</sup> Satow's Diaries, 13 Sep.1885, PRO 30/33/15/9.

Satow made this suggestion in response to Prince Phichit's ideas about a new judicial system with trained staff. Phichit said that:

Difficulty of a new system would be in getting men; all [existing] judges belonged to a school which was governed by tradition. Young men the only ones for reform. Old people had laid out too much money on their attempts to care about innovations.<sup>67</sup>

Without Prince Phichit, the King was left with only two choices, viz. Princes Sawat and Sirithat. Prince Siritat was a traditional Siamese lawyer albeit trained by Prince Phichit, and therefore, was in a less favourable position than Prince Sawat who had studied law in England. Apart from that, Sawat was also a full brother to two of the King's chief Queens as well as the Foreign Minister and chief minister Prince Thewawong. His close relationship with the King's family was also evident when Prince *Chaofa* Tripetcharut, one of the King's *Chaofa* sons by Queen Sawang, when he was ill stayed at Prince Sawat's palace until he died.<sup>68</sup> Thus, Prince Sawat was appointed the first Minister of Justice in June 1888.

The proclamation of the establishment of the Ministry of Justice like the other Ministries was only formally published on 25 March 1892. It explained as the reason for the establishment of the Ministry that the people faced inconvenience and problems because of various different courts scattered among many Ministries and Departments with overlapping jurisdiction and uncertain lines of authority and supervision.<sup>69</sup> At that time there was a commoner, Luang Ratana Yati (Pleng Wepara), who won a King's scholarship to study law in England, and graduated Barrister from the Middle Temple, also qualified for the Minister of Justice because he was knowledgeable in both English and Siamese laws as he was trained by Prince Phichit in traditional Siamese law before he won a King scholarship.<sup>70</sup> Of course he

<sup>67</sup> Ibid., same date.

<sup>68</sup> *Chotmai het phraratchakit raiwan*, vol.24 (1887), p.120.

<sup>69</sup> *Ratchakitjanubeksa* (Thai Government Gazette), vol.9 (1892), pp.9-10.

<sup>70</sup> His role and biography will be illustrated in depth in chapter 9.

was not considered either, and Prince Sawat was formally appointed the Minister of Justice on 1 April 1892 because he was a Prince of the royal blood, and therefore, in a much better position than a commoner.

The essence of the proclamation was: firstly, the Ministry of Justice was to be responsible for facilitating business and removing obstacles and administering the procedure in courts to ensure justice in the decisions of the courts. Secondly, the various courts in each ministry which amounted to sixteen courts were abolished and there were to be now only seven courts in existence. The seven courts were: the *Dika* Court (Royal Appeals Court); the People's Appeals Court; the *Phra Ratcha-arya* Court (Criminal Court); the *Phaeng Klang* and *Phaeng Kasem* Courts (both were Civil Courts); the *Sanphakorn* Court (Revenue Court); and the International Court. An *athibodi* (chief judge) was appointed in each court to supervise the trial process. The practice of sending the case out of court to a separate *tralakarn* court in a different ministry was eliminated. Each case was to be supervised from the beginning to end by the *athibodi* of the court in which it was brought. Thirdly, the *Krom Rapphong* (the office to receive complaints), was established in the Ministry of Justice to receive cases from the people and channel them to the appropriate court. This abolished the practice of submitting cases through influential government officials.<sup>71</sup>

The transferring of the *Dika* Court (Royal Appeals Court) under the control of Ministry of Justice was probably to relieve the King from the burden of *dika* cases. The new *Dika* Court was intended to receive cases from the Court of the First Instance when a party was not satisfied with the decision. From now on, the *dika* petition could be submitted to the King only when there was an accusation that the judges or the Minister of Justice were prejudiced in performing their duties.<sup>72</sup>

<sup>71</sup> Ratchakitjanubeksa (Thai Government Gazette), op.cit., vol.9 (1892), pp.9-12.

<sup>72</sup> For the petition of *dika* also see Pritsdang comments in N.J. Brailey, Two Views of Siam, op.cit., pp.73-74

Prince Sawat's role as the Minister of Justice

During his office in the Ministry of Justice, Prince Sawat introduced several new laws as follows:

1) The most important law during Prince Sawat's period of office was the Court Organization Act 1893. This Act established a new criminal court called *Ratchathanphichet* Court (Penitentiary Court) to divert half of the cases from the *Phra Ratcha-arya* Court which was overloaded by criminal cases. Moreover, this Act merged the two Appeals Courts together to be called the People Appeals Court. Consequently, the *Dika* Court which had been transferred from the King's control in March 1892, was transferred back to the King's control again.<sup>73</sup>

2) Prince Sawat also established the *Porispha* Court (Court of Petty Offences) in 1893 in order to deal with petty cases where the punishment could not exceed fifty floggings, six months imprisonment, or a fine of more than 160 ticals. This court was well established and helped to divert petty cases from the *Phra Ratcha-arya* Court. The work of this court expanded considerably when Prince Phichit was the Minister of Justice as will be illustrated in depth in chapter 6.

3) Prince Sawat also introduced several unimportant laws such as: The Act requiring the plaintiff to take an oath before suit 1892; The Pinai Luang Act (The Fine Act) 1892; The Ministry of Justice's regulation for copying records 1892. Prince Sawat himself probably knew that Prince Phichit was more suitable for the post of the Minister of Justice than himself as he wrote a letter, dated 13 December 1892, to

<sup>73</sup> PKPS Prachum Kotmai Pracham Sok (Annual Collection of Thai Decrees), vol.13, p.180.

the King, when he was already Minister of Justice, and there was no one in charge of the *Phra Ratcha-arya* Court which was overloaded with unsettled cases. Sawat wrote that:

Honestly, I am not enamoured of the position of the Minister of Justice. I do not mind if Your Majesty would put me in charge of the *Phra Ratcha-arya* Court and appoint Prince Phichit as Minister of Justice because I am worried about the Government's effectiveness more than my personal benefit.<sup>74</sup>

But the King wanted Sawat to carry on with his post. Despite the extreme shortage of staff in the Ministry of Justice, Prince Sawat failed to initiate any important project for the training of the staff.

It is worth considering why Prince Sawat was sent to Europe in 1893, and therefore had to resign as Minister of Justice. According to R.L. Morant's memorandum, most of the King's half brothers were jealous and distrustful, and competed fiercely with each other. This had considerable consequences in the emergency of the Paknam incident in July 1893, because it prevented any joint action of the cabinet, and therefore the cabinet was hopeless and could not respond to French aggression.

Morant further stated in his memorandum that:

Prince Sawat was the member [of the cabinet] who caused the most dissension and the worst scenes in the Council; indeed his tones and action in the council-room became in time so gross as to absolutely terrorise his brothers into the wildest plans; and he latterly took to behaving in such a fashion as to make any courteous interchange of opinion impossible during his presence at the table... However, the tension was at last slightly relieved by his being persuaded to take himself out of the country in August under the pretext of an important "Diplomatic Mission" to France, to the immense relief of the King and the remaining ministers.<sup>75</sup>

<sup>74</sup> Sawat to King, 13 Dec.1892, NA R5 Ky 3/1.

<sup>75</sup> Brailey, Two Views of Siam on the Eve of the Chakri Reformation, (Arran, Edinburgh, 1989), p.90, and also see Pritsdang's views of Sawat, same book, p.79.

It was no misfortune for Siam when Sawat left the country because the period of his office in the Ministry of Justice had little improved the Ministry. This gave a chance to Prince Phichit who was the only choice for the King as Sawat's replacement after the Paknam incident.

### Conclusion

The unequal treaties signed during the Reign of King Mongkut (Rama IV) caused Siam to lose its autonomy in legal jurisdiction and revenue. The basis upon which the Western powers imposed unequal treaties upon Siam was that Siam's legal system was obsolete, unsystematic and uncertain. This was probably true as Siam's administration of justice was still under direct influence from the executive power and the Law of Three Seals, which as applied in Siam at that time, was obsolete. By the provision of the Indo-Siamese Treaty of 1874, the British Government of India allowed the Siamese courts to try and punish British subjects in the three northern provinces of Chiangmai, Lakon, and Lumphunchai for dacoity, but in civil cases the Siamese court could try cases if British subjects consented to the Siamese jurisdiction. By the provisions of the Anglo-Siamese Treaty of 1883, the International Court system was established by the Siamese Government in the same three northern provinces to try British subjects according to Siamese law, but the British Consul or Vice-Consul had a right to withdraw those cases for decision in the Consular Court.

Prince Phichit Prichakorn was the most knowledgeable traditional Siamese lawyer, who was also instrumental in reforming the traditional Siamese legal system and who initially was also chief legal adviser to King Chulalongkorn. Prince Phichit's departure for Chiangmai to organize the northern provinces' administration reduced his influence over the King dramatically. His relationship with the King became aggravated when on his return he started criticizing the King's inactivity and



expressing radical ideas to curb the King's absolute power. This deprived him of the chance of being appointed the first Minister of Justice, the most suitable job for him. Prince Sawat, who had no experience in the Siamese legal system, was appointed instead, and because of his inexperience, he did little to develop the Ministry of Justice. The Paknam incident was partly the consequence of an unsuccessful cabinet of ministers and King Chulalongkorn realized that he needed to change his Minister of Justice.

PART TWO

THE IMPACT OF THE WEST AND THE CHAKRI REFORMATION

## Chapter 4 Siam and the Climax of Western Imperialism

### Section I Background of Siam's Foreign Relations before the Paknam Incident

Before the Paknam incident of 1893, the relationship between Siam and Britain was substantially based on trade. Thus the statistics submitted by the London Chamber of Commerce to the Earl of Rosebery, Secretary of State for Foreign Affairs, on 24 May 1893, showed that the percentages of British trade with Siam were ninety-three per cent of the total imports, and eighty-five per cent of the total exports, while the percentage of French trade was only about 0.3 per cent of the total.<sup>1</sup> The British interest in Siam was concentrated on tin mines in the Malay Peninsula and the teak forests in the north of Siam. The Siamese Government at that time allowed the British trade to grow increasingly because it doubted that Britain was interested in annexing Siam, therefore, increasing the British interest would probably safeguard Siam from French colonization. But the Paknam crisis indicated clearly that so long as the British interest was not affected, Britain would not assist Siam to fight the French. As the Earl of Rosebery stated when he dispatched British warships to Siam at the time of Paknam crisis, the dispatch of the British ships to Siam was rendered necessary by the fact that British merchants loudly demanded protection, but not aimed against France.<sup>2</sup>

The British and the French imperialists colonized other states each in order to create their own empires in the nineteenth and twentieth centuries. The contrast between them as empire-builders was that Britain annexed areas where it had interests to protect, whereas France annexed areas where it wished to have interests to

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<sup>1</sup> The London Chamber of Commerce to the Earl of Rosebery, PRO FO 422/39.

<sup>2</sup> Rosebery to Phipps, 3 July 1893, PRO FO 69/157.

protect, and so hoped to shut out competition from the start.<sup>3</sup> This phenomenon can be illustrated by the British policy to annex Burma in order to secure its interests in the Indian empire, whereas the French tried to annex the area of the Menam (river) Kong (Mekong) because they wished to secure the way to interests in Southern China.

When King Chulalongkorn became King of Siam in 1868, the British had already expanded their Indian empire to lower Burma and some parts of the Malay Peninsula to the west and south of Siam respectively. To the east of Siam, the French also created their empire in Vietnam and much of Cambodia. The location of Siam made it suitable to be a buffer state between the British and the French empires in order to prevent difficulties should they have a common frontier. France took the first step in 1889 by making a proposal to Britain for the neutralization of Siam. The French claimed to want to establish a strong, independent kingdom of Siam, with well-defined frontiers on both sides, and that they desired to come to an arrangement by which a permanent barrier might be established between the possessions of Great Britain and France in the Indo-China Peninsula. They proposed that such an agreement would be advantageous to both countries, and would prevent the complications which otherwise might arise between them.<sup>4</sup> But the real reason was probably that France wanted to maintain the dominant role in the Mekong valley to secure the way to Southern China and to stop the British from approaching this area as Nigel Brailey explains in Two views of Siam on the eve of the Chakri Reformation:

French oriental interest in the nineteenth century had always focused on China, so that even in the latter part of the century, Siam's main significance for the French was still its command of the Mekong valley, one of the best putative back-door routes into the always uncooperative middle Kingdom.<sup>5</sup>

<sup>3</sup> D.E.G. Hall, A History of South-East Asia, 3rd ed.(New York, St. Martin's Press, 1968), p.679.

<sup>4</sup> Salisbury to Earl of Lytton, 3 April 1889, PRO FO 422/34.

<sup>5</sup> N.J. Brailey, Two Views of Siam on the Eve of the Chakri Reformation (Arran and Edinburgh, 1989), p.4.

The French proposal was unsuccessful because the British Government was not interested in guaranteeing the neutralization of Siam at that time.

After the vain attempt to guarantee the neutralization of Siam, France desired to control all of the areas on the left bank of the Mekong by increasing its influence to eliminate the Siamese control in this area. Count Kergaradec, the French Charge d' Affaires in Bangkok in the late 1880s, regarded such states as Luang Phrabang and all the other towns on the banks of the Mekong, plus Battambang in the east, as well as Chiangmai, Nakhon Lampang, Nan, and Phre in the north, as really by right independent states. Siam had used its power as the strongest state in the area to force them to send annual or triennial tributes, but Siam had no right to reduce these states to the condition of provinces of Siam proper. The Count further stated that it was more necessary for France to prevent Siam from absorbing these states into Siam proper, because it was possible that Siam might at any time become so subject to British influence as to enable England to gain these states which would bring British influence too near to the French empire in Annam and Tonquin.<sup>6</sup> The conflicts over these territories between Siam and France brought about the Paknam incident. At the same time in the Malay Peninsula, the British also increased their influence.

In 1891 the Russian Crown Prince, the Tsarevich who later became Tsar Nicholas II, visited Southeast Asia en route to Uladivostok to open the Pacific Ocean terminus of the tran-Siberian Railway. King Chulalongkorn, spotting a way to balance the powers of Britain and France by having good relations with Russia, tried to persuade the Crown Prince to visit Siam. Unfortunately, there was news of cholera spreading in Siam, and the Russian Government informed *Luang Suriya*, later *Phraya Suriya*, the Siamese Ambassador in Paris, that the Crown Prince could not

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<sup>6</sup> Mr. Gould to Salisbury, 9 Aug. 1888, PRO FO 422/34.

visit Siam owing to the fear of contracting cholera.<sup>7</sup> King Chulalongkorn tried his best to communicate to the Russian Government via *Luang Suriya* that there was no risk in the Crown Prince coming to Siam and Siam would receive him with honour.<sup>8</sup> Eventually, the Crown Prince visited Siam.

Good relations between King Chulalongkorn and the Russian Crown Prince developed out of the latter's stay in Siam, and in recognition of the courtesy shown to the Crown Prince during his stay in Bangkok, the reigning Tsar, Alexander III, presented to King Chulalongkorn the Grand Cross of St. Andrew. In response, King Chulalongkorn sent a mission headed by Prince Damrong to Russia later in 1891, to present the Tsar with the order of Chakri, which is the highest order of Siam. H.B. Smith suggested in his article, "Nineteenth Century Siamese Adventures in Fringe Diplomacy", that Prince Damrong's mission had more intriguing undertones than the form of the mission suggested. He opined that the trip represented a deeper and more complex effort on the part of the Siamese to adopt diplomatic courtesies and rituals to achieve greater, and, hopefully more egalitarian, European recognition for Siam. He also suggested that the Siamese Government wanted to keep the British Government suspicious about Prince Damrong's mission to Russia, but without giving grounds for reaction against Siam.<sup>9</sup>

King Chulalongkorn tried to emphasize the importance of the relationship between his country and Russia by ordering Damrong to visit Russia first before going to other European countries.<sup>10</sup> The King had two purposes: to show Russia that Siam considered it to be the most important and powerful country in Europe, and at the same time to reveal to the other European countries the importance of Siamese-

<sup>7</sup> Thewawong to Damrong, 21 Feb.1891, NA R5 Kt 2.3/1.

<sup>8</sup> *Luang Suriya* to Thewawong, 13 Oct.1890, NA R5 Kt 2.3/1.

<sup>9</sup> H.B. Smith, "Nineteenth Century Siamese Adventures in Fringe Diplomacy", *Southeast Asia* (Univ. of S. Illinois, Fall, 1971), pp.288-299.

<sup>10</sup> *Suriya* to Damrong, 2 Sept.1891, NA R5 Kt 12.1/1.

Russian friendship. The King was delighted to know that Damrong's mission to Russia caused some perturbation to the British Government and the latter's treatment of Siam was better thereafter, as he suggested in a letter to Damrong:

It is good to keep the British suspicious about your mission to Russia. The newspaper reports were good in reporting about your trip that there was no element of politically related aims in spite of the fact that we might talk with the Russians about political relations. We have to manage on the way to have the British suspicious, but without giving them grounds for reaction because if they know that we are trying to have political relations with the Russians, they might attack us at a time when we are still unprepared. I notice that the British officials treated your mission better than formerly which probably was caused by this mission to Russia.<sup>11</sup>

Even though the order of the countries to be visited had reluctantly to be changed by the King owing to the Tsar's inability to receive Damrong until mid-November 1891, King Chulalongkorn had arranged that the Russian court would not be offended.<sup>12</sup> But the Siamese Government's effort to balance off the European powers could not save it from conflict with France.

## Section II The Franco-Siamese Treaty of 1893 and its Consequences

After the Paknam crisis of 1893, Siam had no alternative but to yield to the French ultimatum by which the Franco-Siamese Treaty of 3 October 1893 was concluded.

By article 1 of this Treaty, the Siamese Government renounced its claim to all land on the left bank of the Mekong. By articles 2,3,4,6,7, the Siamese Government undertook not to maintain or employ armed vessels on the Mekong, or on its affluents within certain regions of Siamese territory, nor to maintain any military post in the provinces of Battambang and Siem-Reap, nor a twenty-five

<sup>11</sup> King to Damrong, no date Aug.1891, NA R5 Kt 12.1/1.

<sup>12</sup> H.B. Smith, *op.cit.*, pp.288-299.

kilometre deep zone the length of the Siamese west bank of the Mekong River, as a guarantee of Bangkok willingness to maintain the agreement. By article 5, the Siamese Government could not make fiscal regulations in those above-stated areas and allowed French subjects or dependents to travel and trade in those territories on a French passport. By Article 8, the Siamese Government allowed the establishment of French consulates wherever the French Government pleased.

By this treaty the Siamese Government also practically renounced all sovereign rights over the areas to the east of the Mekong. The consequence was that Siam laid itself open to attack along a frontier of many hundreds of miles, while at the same time such attack would be facilitated by the establishment of French posts on the west bank as the French were not restricted by a similar stipulation. Besides, the Siamese Government was to pay an indemnity of two million francs, and deposit three millions to pay for damage incurred in the fighting. The French were to continue to occupy Chantabun until all stipulations of the Treaty had been fully executed.

After the signing of the Franco-Siamese Treaty of 3 October 1893, the relationship between France and Siam again became aggravated owing to the conflict between them over the following aspects:

1. The conflict over the territory on the right bank of the Mekong and the Mekong itself

By article 1 of this treaty the Siamese Government renounced all claims to the whole of the the territories on the east bank of the Mekong and to the islands of the river, but it contended that any rights of sovereignty and jurisdiction which Siam had possessed before the signing of the treaty in territories on the west bank of the Mekong were left untouched by the treaty. The problems arose when the French



Government acted repeatedly as if the renunciation of the east bank could be extended to any part of the west bank by encouraging and assisting the Chief of Luang Prabang and the persons who acted under his orders to behave as if the part of his territory, situated on the right bank of the Mekong, had entirely ceased to be dependent on the kingdom of Siam.<sup>13</sup> The Siamese Government agreed that it had promised not to send any troops into the area of the 25 kilometre-zone on the west bank, but insisted that the civil administration was still in its hands. However, the French wanted to have full control in the area and cut the Siamese Government off from further communication with people inside it, so they drove all the Siamese officials out of the area including administrators and even postmasters.<sup>14</sup>

Conflict also occurred over the River Mekong itself owing to the French Government acting as if the Mekong was entirely under French sovereignty and control. But, on the other hand, the Siamese Government contended that by the terms of article 2 of the treaty the Siamese Government bound itself not to maintain or navigate armed ship or vessels on the Mekong which, far from implying that the water was placed under the exclusive sovereignty and control of France, suggested that the Mekong River might be freely used for all peaceful purposes by Siamese subjects of the west bank, as well as by French subjects of the east bank.<sup>15</sup>

## 2. The conflicts over the occupation of Chantabun

The French promised that as soon as all stipulations of the 1893 Treaty were fully executed, they would withdraw their troops from Chantabun, but originally they showed no intention to do so. They used the occupation of Chantabun not only as a guarantee for the Siamese performance of their part in the treaty but also as a pretext

<sup>13</sup> Thewawong to M. DeFrance, 23 June 1898, PRO FO 422/49.

<sup>14</sup> M.L. Manich Jumsai, "Report of Research on old Thai History during my trip to Europe in 1974-1975" (Mimeo), p.2.

<sup>15</sup> Thewawong to M. DeFrance, 23 June 1898, PRO FO 422/49.

to remain in this part of Siam because they had planned in advance that they would use Chantabun to bargain with the Siamese Government in order to gain more territory. This is evident from the fact that as early as April 1894, Siam had already fulfilled all of its obligations under the Treaty of 1893,<sup>16</sup> and yet on 3 December 1900, the British Foreign Secretary, the Marquess of Lansdowne, wrote a letter to his Charge d Affaires Mr. Archer in Bangkok to say that the Siamese Minister had made a statement that Siam had long since fulfilled its obligations to France under the 1893 Treaty, but France still retained 500 troops at Chantabun.<sup>17</sup>

The occupation of Chantabun, an important part to the east of Bangkok, by the French troops, caused considerable concern to British interests. In July 1894, the London Chamber of Commerce wrote a letter to the Earl of Kimberley explaining that with the French troops in Chantabun, and also considerable forces in Cochin China, France could at any time easily occupy Bangkok. Should this happen the British interests in Siam would suffer a grievous blow, while the annexation would endanger the British control of the Bay of Bengal and threaten the Indian empire.<sup>18</sup> This probably was one of the reasons which steered British foreign policy towards guaranteeing the central area of Siam in January 1896.

Mr. Delcasse, the later French Minister of Foreign Affairs, also made a statement in 1902 to *Phraya* Suriya, the Siamese Ambassador to Paris, that normally wherever a powerful country like France put its flag in the ground, the longer the time, the deeper the root of the flag. If the flag was there for one or two years, it was easier to negotiate withdrawal, but if it were to stay there for many years as it had in Chantabun, he would hesitate to withdraw it.<sup>19</sup>

<sup>16</sup> Kimberley to Marquis of Dufferin, 25 Apr. 1894, PRO FO 422/39.

<sup>17</sup> Lansdowne to Archer, 3 Dec. 1900, PRO FO 422/53.

<sup>18</sup> London Chamber of Commerce to Kimberley, 24 July 1894, PRO FO 422/40.

<sup>19</sup> Suriya to Thewawong, 21 Jan. 1902, NA R5 Kt 2.20.

### 3. The Question of Registration

By the 1893 Treaty, The Siamese Government admitted that, as a consequence of its renunciation of the territory on the east bank of the Mekong, any Siamese subjects who at the time of the conclusion of the treaty were domiciled in this territory, and continued to be so, had become French subjects. But no person domiciled on the west bank of the Mekong, who before the treaty was a Siamese subject and under Siamese jurisdiction, had ceased to be so by the effect of the treaty. The conflict occurred when the French Consul indiscriminately registered as French subjects persons who were in fact Siamese subjects, domiciled on the west bank of the Mekong at the time of the treaty, because they or their fathers or grandfathers, or remote ancestors, were born on the east bank of the Mekong at the time when the east bank belonged to Siam.<sup>20</sup>

Moreover, the French Consul issued blank certificates of registration to his subordinates, who afterwards went about and filled in the names of all the people they could find willing to accept certificates, or in some cases, if they refused to accept, those French subordinates forced them to accept by threatening them.<sup>21</sup> In the worst case, the Siamese Governor of Intaburi was secretly lured to a French steamer, then arrested, and put in the consular prison in Bangkok, simply because he did not allow his people to be registered as French subjects.<sup>22</sup> The registration caused considerable problems to the Siamese authorities because by becoming French subjects, those registered could be free from Siamese law and administration. They also paid no taxes, could not be conscripted for the Siamese army, could not be arrested by Siamese police nor judged by Siamese courts. Many Chinese ran illegal businesses to the disadvantage of the Siamese Government and sought protection as French proteges from the French Consul. The French scheme to increase their

<sup>20</sup> Thewawong to M. DeFrance, 23 June 1898, PRO FO 422/49.

<sup>21</sup> *Phraya Uthai to Phraya Sarit*, 21 Feb. 1899, NA R5 Kt 2.8/5.

<sup>22</sup> M.L. Manich Jumsai, *op.cit.*, p.3.

subjects on the west bank of the Mekong was clearly designed to turn this zone into an area of complete French control, and for the further purpose of expanding their empire into the northeast of Siam even after 1896 joint declaration.

After the Paknam incident of 1893, French demands on Siam were tremendous and the British Government offered no help but recommended the Siamese Government to yield to the French demands. Furthermore, the option of partitioning Siam between Britain and France was under consideration as indicated in a letter of 26 May 1894 from the Earl of Kimberley, the British Foreign Secretary, to Mr. Scott, the British Representative in Bangkok: "The partition of Siam, or some similar arrangement is in contemplation between England and France."<sup>23</sup>

Siam reacted to the threat of partition by dropping hints to Mr. Scott for transmission to the Earl of Kimberley that if Britain agreed with France to partition Siam, Siam would put all of its territories under French protection.<sup>24</sup> The Siamese Government totally disagreed with the idea of partition because it realized that if the country was divided into two parts, it would be very difficult ever to reunite them again. Therefore, it threatened the British Government with sacrificing all of its territories to France along with the loss of all British interests in Siam. This also contributed to the changing of British foreign policy to guarantee the central area of Siam. The Siamese Government realized that it could not rely on any assistance from foreign powers. The independence of the country depended on its own foreign policy of how to play off Britain and France against each other, and another most important thing was to improve the administration of the country, especially the administration of justice, and this was the reason why Prince Phichit, the most capable Siamese person in the legal field at that time, was appointed the Minister of Justice despite King Chulalongkorn's prejudice against him.

<sup>23</sup> Kimberley to Scott, 26 May 1894, PRO FO 422/39.

<sup>24</sup> Chandran Jeshurun, The Contest for Siam (1889-1902), (Kuala Lumpur, 1977), pp.112, 118 and 125, and also N.J. Brailey, Two Views, op.cit., p.93.

### Section III Siam's Struggle to Maintain its Independence

#### 1. The Anglo-French Declaration of 1896

The British Government was anxious about the French movement in Siam because the French could establish their consulates wherever they pleased, which could lead to the French control of the resources of the country at the expense of British trade. Moreover, in the case of French influence in Siam becoming increasingly great, the British trade which was preponderant at that time might be affected tremendously. The issue which caused most anxiety to the British Government was the fear of the imminent death of King Chulalongkorn, which could have sunk the country into chaos and exposed it to French annexation which could lead to the total loss of British interests in Siam. This had affected the British Government's policy with regard to the neutralization of Siam. Another important reason was that after the Paknam crisis, a part of the new French empire in Laos bordered on British Burma, and if the British did not stop the expansion of French influence in Siam, not only their interests in Siam would be affected but their Indian empire could also be vulnerable. All these reasons led to the conclusion of the Anglo-French Declaration signed in London on 15 January 1896. By this agreement, the British and the French Governments engaged to each other that neither of them would, without the consent of the other, in any case or under any pretext, advance their armed forces into the region of the valley of the *Menam* (river) Chaophraya; i.e. the central part of Siam.

Was Siam satisfied with the Anglo-French Declaration? The answer was probably no, the reason being principally, that the agreement only involved the area of the valley of the Chaophraya River, not all Siamese territory. But some Siamese

leaders were partly satisfied because it was better than no guarantee at all. The evidence appears in a letter from Prince Sawat to Prince Raphi in which he wrote:

I will not tell you all that I think of the arrangement but I will tell you some for I can't help it. You will understand me if I use the idiom "Half a loaf is better than no loaf at all".<sup>25</sup>

The Siamese Government attempted to expand the Declaration by sending Prince Chira, a son of King Chulalongkorn, then aged twenty and later head of the Siamese army, to Paris in order to induce the French Government to consent to an extension of the Anglo-French Agreement so as to effect a joint guarantee of the integrity of the whole Siam, instead of just the valley of the Chaophraya River. The Siamese believed that if the French were willing to extend it, the British would be ready to accede to the extension.<sup>26</sup> But the attempt failed because the French Government rejected the Siamese Government's proposal.

It is interesting to consider the reasons why the Anglo-French Declaration did not include all of the Siamese territories; Lord Salisbury stated that the object of guaranteeing only the valley of the Chaophraya River was because "it is an area which affected British interests as a commercial nation" and that "there would be advantage in giving the necessary security to the commercial world that, with regard to the region where the most active development was likely to take place, no further disturbance of territorial ownership was to be apprehended".<sup>27</sup> But Mr. Rivett-Carnac, the later Financial Adviser to the Siamese Government, in his minute upon the present political situation of Great Britain, France, and Siam in 1902, stated that:

The political reason for not embracing in the Convention the whole of the dominions of the Kingdom of Siam was, it may be surmised, the desire to reserve to the two guaranteeing Powers a means of putting pressure upon the King of Siam, should it at any time become necessary to do so, by reminding him that a large portion of his

<sup>25</sup> Sawat to Raphi, 31 Jan.1896, NA R5 Kt 38/2.

<sup>26</sup> Archer to Lansdowne, 20 Aug.1902, PRO FO 422/56.

<sup>27</sup> Minute by Mr. Rivett-Carnac, 11 Feb.1902, PRO FO 422/56.

territory could, at any moment, presumably by mutual consent of the two Great Powers, be seized by either power separately.<sup>28</sup>

It is also conspicuous that Siam was not a party to the Declaration of 1896. This means that Britain and France, at any time, by mutual consent, could abolish the agreement and seize or partition Siam at any time and Siam would not be able to protest because it was not a party to the agreement.

King Chulalongkorn and all the Siamese leaders, including Prince Raphi, the new Minister of Justice who was appointed only one year after the conclusion of the Declaration, were all aware of the impending danger which still threatened Siam's independence despite the existence of the Anglo-French Declaration. They realized that the only way that Siam could maintain its independence was to reorganize and reform the administration of the country. As King Chulalongkorn, on 18 January 1896, a few days after the signing of the Anglo-French Declaration, reiterated the case for the reform of the government and administration, in his letter to Prince Damrong:

In former times, our territories adjoined those of countries which possessed similar strength and systems of administration. Now from the west to the north-west, those countries have fallen to the British, and from the east to the north-east, they have fallen to the French. Our country finds itself in the midst of nations which possess more rigorous systems of administration and greater power than our former neighbours. We can no longer regard our neighbours with indifference, for we come into constant contact with them on the frontiers. There are three ways by which we can protect ourself against internal and external dangers. Firstly, we can maintain peaceful relations; secondly, we can possess sufficient power to defend the peace within our country; and thirdly, we can make our administration as good as theirs. If we are to protect ourselves by maintaining peaceful relationships, the fact that we do not possess the power to defend the peace within the country will prevent peaceful negotiations from being always successful. If we do not put our administration in order, we will not have enough income, which is the source of the power needed to defend the country. The expansion of power depends on the administration's taxation of the earnings which result from the facilitation of the people's methods of earning their livelihood and making a living out of the produce of the soil. The strengthening and the rationalization of the administration and the

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<sup>28</sup> Ibid.

development of the economy are therefore the ultimate aims of this kingdom.<sup>29</sup>

This process of improving the administration of the country included the legal reform which was designed to maintain the internal peace. Prince Rapi had to carry on this project after the first steps had been carried out by Prince Phichit.

It is significant that King Chulalongkorn wrote this very important letter to Prince Damrong only a few days after the conclusion of the Anglo-french Declaration of 1896, clear evidence that the King realized that Siam was still at risk despite the guarantee of the Declaration. This letter indicates clearly that King Chulalongkorn determined to improve the administration of his country in order to maintain Siam's independence. Actually, the letter also highlighted most of the King's policies which he subsequently implemented in every Ministry and supports the argument that the Chakri Reformation proper was in fact started after the Paknam incident.

## 2. The Anglo-Siamese Secret Agreement of 1897

The British authorities in Malaya wanted to increase their sphere of influence in the Malay peninsula. Mr. Satow, the British representative at Bangkok, stated in 1885 that he believed the true British Malayan policy was to extend British influence over all the Malay states of the Malay Peninsula up to British Burma, for even if Siam fell under French influence Britain would still have influence in those areas.<sup>30</sup> Britain wanted to be the only power in the Malay Peninsula and the southern part of Siam since Britain had established its influence in Singapore in 1819, and in Perak, Selangor, Negri Sembilan and Pahang in 1874. But the Malay states in the

<sup>29</sup> Tej Bunnag, The Provincial Administration of Siam, 1892-1910, (Kuala Lumpur, 1977), pp.91-92.

<sup>30</sup> Satow memorandum, 20 June 1885, PRO FO 69/103.



north of the Malay Peninsula were still under Siamese influence and the Singapore Government desired to extend its influence to these states.

After the Paknam incident, France was interested in digging a canal across the narrowest point in the Kra Isthmus to shorten the journey from Indian Ocean to its Indo-Chinese empire. Regarding this project, the British Government strongly opposed the French and submitted an ultimatum to the Siamese Government that if the latter allowed the French to dig this canal the British Government would seize the Malay Peninsula.<sup>31</sup> Moreover the British Representative in Bangkok demanded assurances from Foreign Minister, Prince Thewawong, that there was no agreement for a Kra canal in any contract which the Siamese Government had signed with the French Government.<sup>32</sup> This incident indicated clearly that even the British Government in London did not want any other powers to have influence in the Malay Peninsula because it realized that if the French dug the Kra canal British influence in this area must be disturbed.

Besides the French project for a Kra canal, there were also rumours of the German and the Russian Governments trying to obtain the concession of islands in the south of Siam for the purpose of establishing coaling stations. The British Government, being aware of the vulnerability of its interest in this area, desired to maintain it by proposing a secret pact to the Siamese Government. This was designed to block any attempt by any third power to acquire dominion or to establish influence or protectorate in the Siamese Malay Peninsula territory in exchange for Siam's promise not to grant, cede or let any special privilege or advantage, as regards land or trade, within this territory, either to the Government or to the subjects of a third power without the written consent of Britain.

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<sup>31</sup> Mahayota to Thewawong, 23 Aug.1893, NA R5 French Secret File 18/8.

<sup>32</sup> Thewawong to King, 11 Oct.1893, NA R5 French Secret File 18/10.

The Siamese Government recognized two consequent benefits; firstly, that they would gain a limited guarantee of this territory which was not covered by the Anglo-French Declaration of 1896; secondly, by signing this agreement, the British Government might seem to recognize the Siamese rights over the northern Malay states, which is not inconsistent with Prince Pritsdang's statements to F. Swettenham, the British Minister Resident in Perak 1889-1895, about Siam's policy towards its *pratethserat* (dependencies) that:

The Siamese Government has always told him [Pritsdang] they wished to claim as much as they could (whether on the French side or in the Malay Peninsula) & hold on to it as long as possible with the idea that some day that might, like Medea, save Siam or some part of it, by throwing these outlying provinces, one by one, to the pursuers, France on one side & England on the other.<sup>33</sup>

As a consequence, the Siamese Government signed the Secret Agreement with the British Government on 6 April 1897, in the hope that London would impose its views on the British authorities in Malaya.

#### Section IV King Chulalongkorn's Plan to improve Relationships with Russia and Germany and the Idea to resist France

King Chulalongkorn's first European trip in the summer of 1897 was aimed mainly at improving the relationship between Siam and other European powers such as Russia and Germany. At that time German trade in Siam was second only to England's but Russian trade in Siam was not considerable. This trip was the King's attempt to increase German and Russian interests in Siam to balance the British interest and at the same time to reduce French aggression towards Siam. The King visited Russia first because he knew that Russia was an ally of France and could probably influence France to settle the conflicts between Siam and France.

<sup>33</sup> N.J. Brailey, *op.cit.*, p.82, and this similar statement also appears in memorandum by F. Swettenham, PRO FO 422/56.

Moreover, since France and Russia were allies, the Siamese Government had ever since 1891 worried that they might cooperate together with Russia attacking India and France attacking Siam.<sup>34</sup>

After his own arrival in Russia in April 1897, King Chulalongkorn was delighted with his successful talk with the Tsar, the former Tsarevich of 1891. He described his success in a letter to Prince Thewawong that:

The Tsar was very generous to me, agreeing to settle the conflicts between us and France. He also promised that he would try his best to maintain Siam's independence. My trip to Russia was of the greatest benefit to our country.<sup>35</sup>

The apparent close relationship between Chulalongkorn and Tsar Nicholas II seems to have caused the latter to use his influence over his ally France to receive Chulalongkorn with honour. By September 1897, Hanotaux, the French Foreign Minister, had to change his hostility to a warm welcome and the discussion between them seemed to be harmonious but nothing important was agreed. As a matter of fact, the Siamese Government paid a price for Chulalongkorn's visit to Paris as the French Minister of Foreign Affairs demanded that the Siamese Government release a murderer named Bila, and all the French subjects held in detention in all Siamese prisons throughout the whole country. According to Thai evidence, Bila was a cold-blooded criminal who killed many people in Bangkapi, a district of Bangkok, in order to turn them off lands he claimed. He also shot dead a policeman who went to stop him shooting people. He then claimed French protection as a person of Cambodian parentage. The Siamese Government had no alternative but to accept the French Minister of Foreign Affairs' demand.<sup>36</sup>

<sup>34</sup> Thewawong to Damrong, 24 Aug. 1891, NA R5 Kt 12.1/1.

<sup>35</sup> King to Thewawong, no date April 1897, NA R5 Kt 11.1/1.

<sup>36</sup> M.L. Manich Jumsai, *op.cit.*, p.4.

King Chulalongkorn also aimed to persuade Germany to increase its interest in Siam to balance the British. At that time German trade in Siam was increasing rapidly. Chulalongkorn also urged the German Kaiser Wilhelm II that the independence of Siam should be guaranteed jointly by Britain, France, Germany, and Russia. The Emperor agreed with him.<sup>37</sup> He met the Tsar of Russia for the second time on this trip in Darmstadt, where he asked him to be the arbitrator to settle the conflict between Siam and France. The Tsar agreed to do so,<sup>38</sup> but France refused to settle the matters with Siam, and so the King returned to Siam at the end of 1897.

In April 1899, King Chulalongkorn informed Mr. Greville, the British Minister in Bangkok, that the suggestion had been made in 1897 by the German Emperor that an agreement should be entered into between Britain, Russia, France, and Germany to guarantee the independence of Siam. The King asked Mr. Greville to inquire whether the British would be willing to join such an agreement.<sup>39</sup> The Marquess of Salisbury responded that the existing agreement of 1896 between Britain and France and the Secret Agreement between Britain and Siam of 1897 rendered Siam sufficiently secure against foreign aggression. Under a guarantee of the four powers, Siam would be less independent, and quarrels between the powers would follow which would not be to the benefit of Siam.<sup>40</sup> It is obvious that Britain did not want this kind of agreement because if this was allowed to happen, it was inevitable that Russia and Germany would share the benefits which Britain already enjoyed in Siam.

After the Paknam incident, the influence of France in Siam had steadily declined while that of Britain and Germany had steadily increased. This was because

<sup>37</sup> Greville to Salisbury, 22 Apr.1899, PRO FO 422/51.

<sup>38</sup> King to Thewawong, 8 Oct.1897, NA R5 Kt 11.1/33.

<sup>39</sup> Greville to Salisbury, 22 Apr.1899, PRO FO 422/51.

<sup>40</sup> Salisbury to Greville (telegraph), 23 Apr.1899, PRO FO 422/51.

of France's action in the incident and also its excessive demands after the incident. The French Government, aware of its disadvantages sent the Governor of Indochina, M. Doumer, to Siam in April 1899. King Chulalongkorn was very pleased with M. Doumer's visit, for in his eyes, M. Doumer was the only French gentleman he had ever seen in Siam. M. Doumer promised to keep order on the frontier and he also agreed to the Siamese reading of the treaty of 1893 that the civil administration of the 25-kilometre zone should be in Siamese hands. He also promised to use his best endeavours to bring about a permanent arrangement between the two countries; he was quite in favour of the withdrawal of the French garrison from Chantabun on certain conditions. In return the King promised to employ more Frenchmen in Siamese service and also promised that French should be taught in schools.<sup>41</sup> But M. Doumer failed to settle any satisfactory arrangement between them owing to the French Government and Colonial Party being still on the look-out to absorb Siamese territories wherever possible.

At the end of 1898, the influence of Russia over France declined owing to Russia's refusal to assist France, its ally, if France went to war with Britain in the Fashoda incident. But the Siamese Government was still optimistic that Russia was still capable of assisting it to come to an arrangement with France. Therefore, in August 1902, the King sent Prince Chira to Russia to ask the Tsar to persuade France to settle their conflict.<sup>42</sup> As a consequence, on 7 October 1902, a new Franco-Siamese Convention was signed, but subsequently, at the beginning of 1903, the French Assembly refused to ratify this convention because the French Colonial Party was making demands involving the construction of two railway lines, one from Phnom-Penh to Ubon, and the other from Nakhon Phanom to Nongkhai. These lines were to connect respectively with French lines from Saigon to Pnom-Penh and Hue to

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<sup>41</sup> Greville to Salisbury, 24 Apr. 1899, PRO FO 422/51.

<sup>42</sup> Chira to King, 28 Aug. 1902, NA R5 Kt 6.2/4.

Nakhon Phanom. The Siamese Government's reply was that Siam was not prepared to pledge itself to the construction of railway lines near its frontier such as those suggested by the French Government; nor was it prepared to contemplate their construction except possibly at some future date in connection with an international railway scheme.<sup>43</sup> This refusal to comply with the French demand led to the abandonment of the convention.

At that time the Siamese Government was very frustrated with the excessive French demands. They considered that the French demands could not be met because if they yielded to them, the French Government would come up with others until Siam was left with nothing. A group among the Siamese leadership led by Prince Chira, the Siamese Army Commander-in-Chief, was in favour of resistance to French demands wherever they were excessive. Prince Chira had anticipated this approach since 1899 when he assured the King, his father, that Siam could support an army of ten divisions of ten thousand troops each with which he reckoned that the French army in Indo-China could be countered.<sup>44</sup> On 28 October 1902, Prince Chira wrote a letter to the King, suggesting that if the French Government did not get Morocco, it was likely that France would move into Siem Reap and Battambang. Should France do this, he recommended that Siam respond with a diplomatic protest rather than military resistance, but should France move beyond these two provinces, he recommended armed resistance.<sup>45</sup>

The King seemed to agree with Chira as the Siamese Government then imported a large consignment of rifles and ammunition from Japan, and Maxim guns.<sup>46</sup> This policy of possible resistance to the French was probably based on the

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<sup>43</sup> Paget to Lansdowne, 3 March 1903, PRO FO 422/57.

<sup>44</sup> N.A. Battye, "Military Government and Society in the Reign of King Chulalongkorn", Cornell Univ. Ph.D. 1974, p.405.

<sup>45</sup> Ibid., p.431.

<sup>46</sup> Paget to Lansdowne, 18 Nov.1903, PRO FO 422/57.

assumption that the safety of Bangkok and the central part of the country were anyhow guaranteed by the Anglo-French Declaration of 1896, while the French forces in Indo-China were not much superior to Siamese troops and the latter were more accustomed to the area. Another reason was probably the feeling that Siam would be unable at the end to satisfy the greed of the French Government except by the surrender of the whole valley of the Mekong, which meant they had not much more to lose by defeat than by a peaceful acceptance of the terms of the additional convention.

#### Section V Siam's Attempt to end Extraterritoriality

The system of the International Court which was established by article 8 of the 1883 Treaty between Siam and Britain, returned some judicial autonomy back to Siam via the International Court at Chiangmai. As a Siamese Court established for the purpose of this treaty, it could exercise civil and criminal jurisdiction in all cases concerning British subjects according to Siamese law, but the consul had power to withdraw cases to decide by himself at any time before the judgment was made. Subsequently, in 1902, the Siamese Government represented by Prince Thewawong, made a proposal to the British Government that British subjects should be allowed to hold land within the territories of northern Siam affected by the Treaty of 1883,<sup>47</sup> in return for the abandonment by Great Britain of the provisions of article 8 of that treaty. It was article 8 which conferred on the British Consul or Vice-Consul at Chiangmai the power to remove from the International Court to his own Consular Court all cases in which both parties were British subjects, or in cases where the accused or defendant was a British subject.<sup>48</sup>

<sup>47</sup> The measures of prevention of the acquisition of land by foreign settlers were necessitated by the Treaty of 1856, which allowed foreigners to hold land only within the limit of twenty-four hours' journey by boat from Bangkok.

<sup>48</sup> Lansdowne to Paget, 27 Feb.1903, PRO FO 422/57.

The Marquess of Lansdowne, the British Foreign Secretary at that time, after consultation with the Secretary of State for India, informed Mr. Paget, the British Minister in Bangkok, that the British Government was ready to sign an agreement modifying the Treaty of 1883 in the manner the Siamese Government proposed.<sup>49</sup> The reason the Marquess of Lansdowne made this decision was probably due to a letter sent to him by Mr. Archer, the British Consul at Chiengmai. Mr. Archer explained that the system of the International Court worked with remarkable success. An indication of its satisfactory working was, doubtless, the Consul's lack of need to transfer cases to his own Consular Court. He stated that during the ten years of his connection with the Consulate at Chiengmai, he did not remember removing a single case. He accepted that the power of removing cases might act as a check to any possible injustice against British subjects, but the effect was not considerable. In his opinion, the power of appeal to Bangkok, which would bring a case under review by the British and Siamese authorities, would be adequate safeguard against any injustice.<sup>50</sup> Mr. Archer considered that the right to hold land was more valuable than the right of removal of cases from the International Court, and he strongly favoured the Siamese Government's proposal.

Mr. Archer also enclosed a memorandum on a suggested alteration in the Chiengmai Treaty of 1883 by Mr. Stringer, the Acting Consul at Chiengmai from 1889-1894. Mr. Stringer explained that during the period of about four and a half years for which he was acting Vice-Consul, he only remembered removing one case from the International Court to his Consular Court. In that case a British firm at Chiengmai wished to prosecute a British subject for obtaining money by false pretences, and the Siamese Judge informed the Consulate that the offence was

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<sup>49</sup> Ibid.

<sup>50</sup> Archer to Lansdowne, 23 Aug. 1902, PRO FO 422/56.



unknown to Siamese law, and he, therefore, removed the case because the accused could not be prosecuted criminally in the Siamese International Court. He was now of the opinion that the power of removing a case had become less necessary in Chiangmai as the present Judge was a much more intelligent and better trained man. In his opinion the right to hold land was more valuable than the right of removing cases and he was in favour of the Siamese Government's proposal.<sup>51</sup>

By contrast, Mr. Paget, the British Minister in Bangkok, was against the Siamese Government's proposal. He wrote a letter dated 4 August 1903 enclosing a memorandum about the Siamese International Court in the north by Mr. Lyle, the Vice-Consul at Nan, a province in the north of Siam. In his memorandum Mr. Lyle illustrated three weak characteristics of the Siamese International Court system: firstly, he was of the opinion that all the progress and improvements of the judicial system in the north could be traced to and were dependent solely upon the abilities of a single individual Judge, and the replacement of that particular Judge would bring the system back into decline. He accepted that the International Court system at that time was workable because it was under the charge and direction of *Phraya Charanyar*, a Siamese Judge of exceptional ability and firmness, who had been appointed in 1899. But prior to *Phraya Charanyar's* appointment, Mr. Gould, the British Vice-Consul at Chiangmai from 1884-1886, described the Siamese judicial system in the north as still falling short of the necessary standard to take charge independently of British subjects. Secondly, the Siamese Government was short of fit and competent officials. Mr. Lyle explained that suitable men were indeed scarce in Siam, and the few who existed declined to accept service so far from the capital. He raised the example that in 1902, the Judge of Sawankaloke Court had been found

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<sup>51</sup> Ibid., Mr. Archer enclosed Mr. Stringer's memorandum to the Marquess of Lansdowne in order to substantiate his opinion.

guilty of corruption and been put in prison, but on his release he was reinstated, owing to the impossibility of finding another to fill his position.<sup>52</sup>

Thirdly, Mr. Lyle was of the opinion that the Siamese judicial system was not independent but was subject to political influence. His illustration was the case in which *Chaophraya* Surasak, the Siamese Commander-in-Chief of an army to the north in 1902, demanded that the Chief Justice condemn certain people alleged to have been connected with a rising in Phrae, also a province in the north of Siam. The latter demanded the production of a charge, and evidence, but was informed that such details were quite unimportant; all he was required to do was to frame a condemnatory judgment. On his refusing to take part in such a proceeding, one of his junior Judges was obliged to perform the task.<sup>53</sup>

Lastly, Mr. Lyle explained that the International Court system in the north was greatly improved only at Chiangmai, while the Nan International Court was still far from sharing in the improvement in Chiangmai owing to the lack of a competent judge. Although strenuous efforts were made by the British Consul to persuade the Siamese Government to transfer a capable judge to Nan, when the latter responded by ordering a capable judge to go to Nan, that judge actually resigned on the spot rather than go to Nan.<sup>54</sup> This was due to the belief amongst the Siamese elite and high rank officials that being sent very far away from Bangkok was a terrifying exile because they not only had to sacrifice their convenience and luxurious life but also lost the chance to maintain or increase the King's favour.

<sup>52</sup> Paget to Lansdowne, 4 Aug.1903, PRO FO 422/57.

<sup>53</sup> Ibid., In this point, the contemporary Japanese judicial system was more independent from the executive power as shown by Arthur Von Mehren in his book, *Law in Japan*, Harvard University Press, 1963, p.121, in which he raises an example in the Otsu case whereby the Japanese Chief Justice sentenced the defendant, who attacked the Crown Prince of Russia, to life imprisonment, despite the Japanese Government's pressure for capital punishment.

<sup>54</sup> Paget to Lansdowne, 4 Aug.1903, PRO FO 422/57.

Mr. Paget also submitted his own ideas about the power of removing cases and the Siamese legal system generally to the Marquess of Lansdowne. In his letter he indicated: firstly, that he was of the opinion that the Chiangmai International Court had proved adequate to obtain justice for British subjects due to the influence exercised therein by the British Consul to remove any cases in which a British subject was defendant. The removal of a case with a view to preventing the delivery of a certain decision by a Siamese judge would amount to a declaration that the judge was behaving unjustly and that the court was unfit to deal with the case in question. Naturally the Siamese judge, who was not certain about the decision he was about to make, must consult the British Consul before he made his decision.<sup>55</sup>

Secondly, Mr. Paget explained that even though the interests of the British subjects would be amply safeguarded by the facilities which remained for appeal to the Consul-General in Bangkok as provided by the Treaty of 1883, in practice the expense and distance between Chiangmai and Bangkok would prohibit British subjects and witnesses from attending the Appeal Court at Bangkok. Consequently, cases before the Appeal Court would be decided mostly on evidence in the report, and evidence was likely to be misleading owing to the particular patron-client relations existing in Siamese society, whereby every man owed allegiance to another above him in rank. This type of relationship discouraged witnesses who, though they might know the truth, preferred often to testify against it rather than incur the risk of punishment by their patrons.<sup>56</sup>

Mr. Paget concluded that if the Consul was deprived of the power to remove cases from the International Court, British subjects would be put in the hands of

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid., This indicates that Paget was of the opinion that the *nai-phrai* (patron-client) system in Siam hindered the administration of justice.

Siamese judges who, owing to the Treaty of 1883, would apply to the cases Siamese law, which he explained as a very ill-defined substance. He admitted that the Siamese law at that time was making progress as the introduction of codifying was in process, as well as the abolition of unsuitable laws, but it was still far from possessing a satisfactory system applicable to the needs of a modern community. He also suggested that an unscrupulous Siamese judge could produce some obscure rule to support any judgment he wished to deliver.<sup>57</sup>

After reconsidering this matter, the Marquess of Lansdowne advised Mr. Paget by letter dated 28 April 1904, to withdraw from the negotiation with the Siamese Government because he believed that it was dangerous to put British subjects in the hands of the Siamese Courts. He suggested that Mr. Paget justify this action by giving the reason that to surrender the right of removal of cases would cause people to stir up British subjects in the north because the French Consul had only just gained this identical right from the Franco-Siamese Treaty of 1904.<sup>58</sup>

The purpose behind the Siamese Government's proposal to allow British subjects to hold land in return for the abandonment of the Consul's right of removal of cases from the International Court was to eliminate extraterritoriality gradually, starting with the International Court in the north, and, if successful, to proceed to effect the plan all through the country. The British Government at the beginning was so impressed with the dramatic progress in the International Court system at Chiangmai, it was inclined to accept the proposal, but when it took into account that the surrender of this right would amount to the abolition of extraterritoriality in the Lao states, and that the Siamese judicial system was still not up to an acceptable standard, it declined to accept the proposal.

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<sup>57</sup> Ibid.

<sup>58</sup> Lansdowne to Paget, 28 Apr. 1904, PRO FO 422/58.

## Section VI The Consequences of the Entente Cordiale of 1904

It was fortunate for Siam that Britain and France reached agreements, collectively known as the "Entente Cordiale" on 8 April 1904, whereby they agreed on territorial compensation between them. By one section of the agreement France recognized the British right to dominate Egypt in return for France gaining an option to embark on a policy to obtain similar rights in Morocco. In the Entente Cordiale treaties they also agreed on the future of Siam whereby the two Governments confirmed the Anglo-French Declaration of 15 January 1896. They also agreed to disclaim all idea of annexing any Siamese territory, and determined to abstain from any act which might contravene the provisions of the existing treaties.<sup>59</sup>

It is evident that the independence of Siam was much more secure after the signing of the Entente Cordiale. It is interesting to consider why France accepted Morocco instead of Siam. The reasons probably are: firstly, Morocco was nearer and was adjacent to Algeria which had already been colonized by France; therefore, it was much easier to effect colonization in both countries together. Secondly, if France wanted to annex Siam, it would have to fight with Siam which was very far away and therefore difficult to transport troops and arms to. Lastly, at that time Germany, which wanted to share the colonial market, threatened both Britain and France by building up a strong navy, and being in conflict with France over Morocco, threatened France with war. Consequently, France's colonial expansion diminished because its own independence was at risk. German hostility promoted friendship between Britain and France because Britain anticipated that if Germany defeated France, it might also attack Britain.

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<sup>59</sup> P.J.V. Rolo, The Entente Cordiale (London, 1969), p.272-273.

After the signing of the Entente Cordiale in April 1904, French aggression in Siam was reduced dramatically. Later in the same month the differences between Siam and France were largely settled and the Agreement of 1904 was signed between them. According to this agreement France would evacuate Chantabun and would instead occupy Trat, a Siamese province close to the Cambodia border, in exchange for the Siamese Government giving up its claims to the territories of Luang Prabang on the right bank of the Mekong River. The Siamese International Court also obtained jurisdiction over French Asiatic subjects in civil cases but the French Consul kept the right to withdraw those cases to consider and decide in his own Consular Court. Later in March 1907, France and Siam signed another agreement by which France agreed to withdraw its troops from Trat in exchange for Siam abandoning its suzerainty over the three Cambodian provinces of Battambang, Siem Reap, and Srisophon. And the Siamese International Court now gained jurisdiction over French Asiatic subjects both in civil and criminal cases on condition that the French Consul had the right to withdraw cases to consider and decide in the Consular Court, rights which would be terminated when the Siamese Criminal Code and Civil Code were promulgated. However, this agreement did not affect full French citizens who still were not subject to Siamese law.

Besides the two Franco-Siamese Treaties of 1904 and 1907, the Siamese Government also signed an Anglo-Siamese Treaty of 9 July 1909 with the British Government. By this Treaty, the Siamese Government transferred to the British Government all rights of suzerainty, protection, administration and control which they possessed over the States of Kelantan, Trengganu, Kedah, and Perlis and adjacent islands, in exchange for the extension of the Siamese International Court system to cover all British subjects in Siam registered at the British Consulates before the date of this Treaty. This system would be terminated, and the jurisdiction of the International Courts would be transferred to the ordinary Siamese courts, after the

promulgation and the coming into force of the Siamese Codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure, and the Law for Organization of Courts.

Conclusion The Siamese Government concentrated considerably on its foreign policies because it saw how its neighbours resisted the Western powers and lost their independence. The Siamese appreciated their independence and steered their policy to maintain it. Despite the existence of the Anglo-French Declaration of 1896 and the Anglo-Siamese Secret Agreement of 1897, the Siamese Government, led by King Chulalongkorn, realized that the independence of the country was still at risk and tried to improve the administration of the country. The Paknam incident was a good lesson for the Siamese that their survival depended on internal change as well as their foreign policy, and the Chakri Reformation ensued. After the failure to obtain the international guarantee and the exhaustion of French demands, the Entente Cordiale released Siam from many difficulties and assisted Siam to conclude treaties with France and Britain. These treaties promised to return judicial autonomy to Siam provided that Siam implemented modern Codes of Law. This forced the Ministry of Justice to produce new Codes of Law which will be illustrated in later chapters.

## Chapter 5 The Chackri Reformation

In order to respond to the Western threat, King Chulalongkorn established a new trial governmental administration of twelve ministries on 16 June 1888. The arrangement resulted in ten different functional ministries along with two regional ministries, the *Mahatthai* and *Kalahom*, which were still responsible for the administration in the northern and southern provinces respectively. The establishment of these twelve ministries was formally announced in March 1892.<sup>1</sup> Despite the change Siam could not escape French aggression in the Paknam incident of July 1893. One lesson the Siamese learned from this incident was that they could not rely on the British for military support in case of French intrusion. The Siamese ruling elite realized that they needed to reorganize the administration of the country dramatically in order for it to survive as an independent country. This appeared in Rolin-Jaequemyns, the General Adviser to the Siamese Government's, description of the response of the Siamese ruling elite to the Paknam crisis:

There is a general feeling among the enlightened Siamese that instead of brooding over their loss, they must try to improve as soon and as completely as possible, the administration of the splendid country which is still under their rule. A new impulsion must be given. The last [late] events have revealed how sadly deficient are some services which everybody thought to be at least satisfactorily organized, what is the want of unity, of serious organization, how urgent it is to create or improve all sorts of communications, to provide for the police and security of the country at large.<sup>2</sup>

One of the consequences of the Paknam incident was King Chulalongkorn's prolonged and serious illness. The King was deeply regretful of the loss of Siamese territory and was afraid of being blamed for this. His illness started in September

<sup>1</sup> At that time the *Mahatthai* and *Kalahom* were still territorial Ministries. They became different functional Ministries at the death of *Chaophraya* Rattanathibet (Phum Sichaiyan), the *Kalahom* Minister, in 1894, when the southern provinces were transferred under Prince Damrong, henceforth the Interior Minister, in charge of provinces all over the country except the capital.

<sup>2</sup> Rolin-Jaequemyns to F. Verney, Secretary to the Siamese Legation in London, 16 Aug. 1893, PRO FO 69/141.



1893 and became aggravated because of his refusal to take any medicine. He wrote many letters to his relatives, for instance Prince Damrong, to describe his sorrow about the incident and warn of his impending death.<sup>3</sup> It was fortunate for Siam that King Chulalongkorn survived his illness, for otherwise there might have been a chaotic situation consequent upon the vacation of the throne. This would have given an opportunity to ambitious French colonialists who were on the look-out for such a chance to annex Siam.

Two prime questions about the Chakri Reformation are: what was the Chakri Reformation and when did it start and end? The Chakri Reformation was a period of dramatic changes in the administration of Siam which were motivated by the realization of the Siamese Government and the ruling elite that Siam could only secure its independence by the reorganization of its administration and the maintenance of internal order. The process started simultaneously in most Ministries after the Paknam Crisis of 1893. Some scholars have opined that it started from the beginning of the Chakri Dynasty, some at the beginning of King Mongkut's reign, some at the second coronation of King Chulalongkorn in 1873. But the changes in those periods represented ordinary progress in the society which only gradually changed at a modest pace. This study views the Chakri Reformation in terms of dramatic changes which affected the whole country, ie. after Paknam. The termination of the Chakri Reformation is more debatable. Some argue that the Conscription Act of 1905 was the last important act which affected the majority of the Siamese people. Therefore the Reform ended in 1905. But in a legal context, the judicial reform continued until at least the departure of Prince Raphi from the

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<sup>3</sup> Natawut Sutthisongkram, Somdet Phra Piyamaharaj (Chulalongkorn the Great) (Bangkok, 1987), pp.297-299.

Ministry of Justice at the end of May 1910, which marked a major set-back for the Ministry of Justice as will be illustrated in the chapter on Prince Rapi.<sup>4</sup>

If one looks back to the time of King Chulalongkorn's second coronation in 1873, the King made efforts to develop the country and at the same time to regain the powers of the monarch from the Regent which led to the Front Palace incident in 1875, when he had to stop his programmes. After the Regent's death, in 1883, the King gradually re-established his power, and had largely attained absolute power by 1885. But at that time the King became complacent with his authority, because there was no lasting challenge, and the balance between his power and the progress of the country proceeded very slowly. In 1888, the King established a trial cabinet and appointed his brothers as Ministers in most Ministries mainly still in order to secure his status and increase his power. The French aggression in Siam's northeast territory became increasingly important, but the King and his brothers remained hopeful that in case of French invasion the British would support them. The real cabinet was announced on 1 April 1892, but it did nothing to prevent the Paknam incident. After the crisis the King and all the Siamese elite realized that they could not rely on British support and they had to stand on their own feet to reorganize the country radically to secure Siam's continuing independence. The changes in the reign of King Wachirawut, Chulalongkorn's son who succeeded him (1910-1925), were only to continue his job. This section is designed to illustrate reform in different Ministries related to each other. The Chakri Reformation brought about advance in many different aspects of the Siamese administration which this chapter is about to investigate as follows:

1. Military Reform

2. Provincial Centralization

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<sup>4</sup> One might indeed argue that the Chakri Reformation continued until the end of the first half of King Wachirawut's Reign (1917), as he still implemented many changes in that period.

### 3. Financial Reform

### 4. Education Reform

Each of these is already covered by a substantial study, N.A.Battye's "Society and Military in the Fifth Reign Thailand", Tej Bunnag's The Provincial Administration of Siam, I.G.Brown's "The Ministry of Finance in the Fifth Reign", D.K.Wyatt's Politics of Reform.

## Section I Military Reform

The Paknam incident marked the failure of the Siamese Navy to resist the French gunboats. The fight was limited to a small area at Paknam, the province at the mouth of the Chaophraya (Bangkok) River. The Siamese army was not directly involved in the crisis of 1893, but there was evidence of a shortage of troops during the incident.<sup>5</sup>

### 1. Phanurangsi's proposal of reform

The military reform started half a year after the Paknam crisis. On 4 March 1894, Prince Phanurangsi, one of the King's full brothers and the Minister of War, presented the King with an analysis of military organization, an assessment of strength and a reform proposal. The Prince criticized the lack of co-ordination between the Ministry of the South (the old *Kalahom*) and the new Ministry of War. He stressed the need for a single, central authority to concentrate all the military functions within a single ministry in order to overcome the overlap of offices and duties within the military affairs. He also advocated the extension of military organization throughout all provinces and the increase of the army to 16,000 men. Provincial military organization was to follow on the heels of the new centralized provincial government (*thesaphiban*) as that reached into the country. By 23 April

<sup>5</sup> N.A. Battye, "State, Society and the Military in the Fifth Reign Thailand", Cornell Univ. Ph.D. Thesis, 1974, p.375.

1894, Phanurangsi secured the support of a council of eight ministers, seven of them princes, for his first reform proposal.<sup>6</sup>

#### The King's health relapses and delays the reform

King Chulalongkorn's health relapsed in June 1894, and the Government came to a stand-still and the issue of the succession to the throne diverted attention from reform. Most of the Princes left Bangkok to visit the King at Si Chang, an island in the Siamese Gulf where the King mostly had his holidays. The King's death was believed imminent. The British Legation supported the Crown Prince, Wachirunhit, in order to secure his uncle, Foreign Minister, Prince Thewawong's position. On the other hand, Prince Phanurangsi was suspected of counting on French support to counter the plan of his rival.<sup>7</sup> Fortunately, most of the princes came to the same conclusion that if there were any quarrels between them regarding the succession to the throne, they would seriously imperil the independence of Siam because it would open the way for the French or the British to colonize or partition Siam. Therefore the Princes united behind the Crown Prince as heir.

One difficult problem which would have ensued with regard to the succession of the throne had the King died, was who was to be appointed as Regent to govern the country in the name of the Crown Prince until the latter came of age. This might have caused a serious problem in Siam had the King died, but it was fortunate for Siam that the King did survive his illness.

#### 2. Phanurangsi's proposal fails and the decline of the Army

When King Chulalongkorn was clear of danger in the second half of 1894, Rolin-Jaequemyns, the Belgian international lawyer and General Adviser to the

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<sup>6</sup> Ibid., pp.374-375.

<sup>7</sup> Ibid., p.376.

Siamese Government, devised a national plan which was read to the King by Prince Damrong, fast establishing himself as the King's favourite after the Paknam incident. This plan rested on the proposition that the safety and existence of Siam as an independent state depended on urgent internal reforms. It was essential that the King set his kingdom in order by manifesting himself as a strong ruler and patriarch. The highest priority had to be given to public security and the administration of justice. There must be an end to legal delays. Military reform was not absolutely urgent and the army and the navy were assigned low priorities.<sup>8</sup> The King agreed with Jaequemyns' plan and disregarded Phanurangsi's urgent military reform.

The military share of the budget began to decline gradually according to the re-ordering of the national priorities as statistics show as follows: 18% in 1894/5, 19.3% in 95/6, then 16.3% in 96/97, 13.1%, 12.4%, 13.8%, and in 1900/01 only 12.1%. In 1898/9 the Ministry of Interior received a larger share of the budget than the Ministry of War and, by 1902/03, War received less than half the allocation of Interior.<sup>9</sup>

Prince Phanurangsi resigned his post in 1896 after the military share of budget decreased dramatically. It is evident that his resignation was caused by his failure to convince the King and his colleague Ministers of the importance of military reform. Phanurangsi's failure was not his fault but because of the circumstances of Siam at that particular period, and the increasing favour of the King towards Prince Damrong who pressed the importance of provincial centralization. Another important reason which caused the decline of the army was the general Siamese idea of a military career as unattractive, as Wyatt explains in his book The Politics of Reform in Thailand for the 1880s:

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<sup>8</sup> Ibid., p.378.

<sup>9</sup> Ibid., p.381.

Siamese parents were hesitant to send their sons to the new schools, fearful that the schools were but devices for recruiting boys into the army... The King acted to dispel their fears in a decree of 1 May 1885, in which he explained that the rumors to the effect that the schools were merely a disguised form of conscription were completely unfounded, and that, if he wished to conscript men into the army, he had no need to go to the trouble and expense of founding schools.<sup>10</sup>

Battye also stresses the low general estimate of the prospect of a military career in the eyes of the Siamese general public which left a shortage of men entering military service.<sup>11</sup> Prince Phanurangsi's resignation caused more suffering to the army because he was a full brother of the King who voiced his opinion and fought battles in the cabinet to gain more budget for the army. The Siamese army at that time needed a strong leader to reform the military administration and play a considerable role in keeping the peace of the country.

### 3. Prince Chira and the new era of the Army

Prince Chira Prawat Woradet who was to succeed in persuading King Chulalongkorn to regard the army as the top priority was born on 7 November 1876. He was the seventeenth son of King Chulalongkorn by *Chaochom manda* Thap Thim, mother also to a later Minister of Defence, Prince Singhwikrom Wutthichai. He was educated in Siamese and English in the palace, and at *Suan Kulap* (Rose Garden) School. At the age of nine, the Prince became one of the first sons of the King to be sent to England for education at the King's personal expense. He later graduated from the Royal Danish School of the General Staff as an army officer and came back to Siam to serve in the Department of the General Staff in April 1898. Prince Chira began to urge his father in 1899 that Siam could support an army of ten divisions of

<sup>10</sup> D.K. Wyatt, Politics of Reform in Thailand; Education in the Reign of King Chulalongkorn (New Haven, Yale Univ. Press, 1969), pp.115-116.

<sup>11</sup> N.A. Battye, *op.cit.*, p.381.

ten thousand troops each. With such a force, he reckoned, the French army in Indo-China, Siam's most likely opponent, could be countered.<sup>12</sup>

Two external conditions which motivated Chulalongkorn to reconsider his idea of the army were; firstly, his knowledge of Western treatment of China after its defeat by the Japanese in 1895. Secondly, the King anticipated imminent problems stemming from the Franco-Siamese Treaty of 1893, by which France had insisted on occupying Chantabun even though Siam had fulfilled its parts of the treaty (France claimed to occupy Chantabun in order to obtain a guarantee that Siam would fulfil its obligations of the treaty ). After many vain attempts to renegotiate with France, the King continued to worry about Siam's independence.

#### 4. Universal Conscription substituted for Patron-client Relations (Corvee)

In Siam under the old corvee system every free commoner male (this term excluded slaves) who was not an official was required to pay a head tax, or, as an alternative, to serve the Government for three months a year, each under the direction of an official patron to whom he was responsible. Commoners would derive legal protection from their patrons in return for their services. This meant that when commoners had been injured or their rights were infringed by outsiders, their patrons would take legal proceedings for them. Earlier, the required service period had been four months, and before that six.<sup>13</sup> Theoretically, men had the right to choose their patrons. This traditional system was organized to control the amount and the flow of Siamese population.

In 1901, the Siamese army was still rather weak. There were only about four or five thousand troops who were capable of combat, and the method of raising men on

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<sup>12</sup> Ibid., p.405.

<sup>13</sup> For more detail of the *nai-phrai* (patron-client) system see Kachorn Sukhaphanit in *Thanandon phrai* (The Status of Commoner) (Bangkok, 1971).

the basis of the corvee system had long been unworkable. By that time Prince Chira had successfully persuaded the King to believe that Siam could create a strong army. The King made his decision in favour of Prince Chira in November 1901. The Military Council which included Prince Chira, the Commander-in-Chief of the army, and Prince Phanurangsi, the Minister of War and Commander-in-Chief of the Navy who had been enticed back out of retirement, agreed that a large army could only be recruited by military conscription.<sup>14</sup>

Prince Damrong, the Minister of Interior and a member of the Military Council, anticipated popular opposition to this plan. The Prince argued that the enactment of compulsory universal conscription would incite rebellion and mass desertion. He suggested that the Government give something as an incentive for the service, for instance, upon completion of their service, conscripts could be exempted from payment of the poll-tax that other commoners had to pay in lieu of service. The King agreed with his idea.<sup>15</sup> Prince Damrong was of the opinion that universal conscription and tax collection could entail the abolition of the traditional corvee system. But it was obvious that this method would seriously threaten the power and wealth of the nobles who would no longer be able to call for personal service. Prince Phanurangsi suggested that a cash compensation be paid to those who suffered from the loss of services and taxes enjoyed under the old system, but the majority of the council opposed his idea.<sup>16</sup>

Prince Chira volunteered to draft the Conscription Act according to the consensus of the meeting on 30 November. He finished the draft of the Act and submitted it to the King on 7 January 1903.<sup>17</sup> The King gave this draft Act to Prince Damrong to

<sup>14</sup> N.A. Battye, *op.cit.*, p.407.

<sup>15</sup> *Ibid.*, p.408, and the Report of the Military Council's meeting, 30 Nov.1901, NA R5 Kk 13.2/21.

<sup>16</sup> *Ibid.*, p.410.

<sup>17</sup> Chira to King, 7 Jan.1903, NA R5 Kk 13.3/6.



make comments and revise on 6 February.<sup>18</sup> This is one of the incidents which indicates clearly that after the Paknam incident the King trusted Damrong's opinion more than Foreign Minister Thewawong's. In his letter of 16 February to the King, Damrong was of the opinion that some provisions in the draft Act needed revision and owing to the importance of this Act he dared not correct it alone. He requested the King to call the meeting of the Council of the Ministers to review this draft Act.<sup>19</sup>

The King disagreed with Damrong by expressing his ideas in a letter of 19 February to Damrong anticipating problems and difficulties as following: firstly, he believed that the majority of the Council of Ministers would oppose the plan and this might lead to the delay and abandonment of the Act. Secondly, he planned to promulgate the Universal Conscription Act gradually from *monthon* to *monthon* (circle) all over the country. This process would consume a long period of time. The meeting of the Council of Ministers, if it took place, would panic the public and would afford a good opportunity for people to oppose the plan, or for persons who wished to incite a rebellion to do so. Lastly, the meeting of the Council of Ministers would be reported by the newspapers and would cause suspicion among the Western powers who might obstruct the plan. The King believed that the meeting of the council of Ministers should not be called until the plan was successfully tried in some Monthons.<sup>20</sup>

##### 5. The Implementation of the Conscription Regulation 1903

Instead of implementing the Conscription Act, the King issued a "Conscription Regulation 1903" and implemented it for the first time in *monthon* Nakhon Ratchasima in the Northeast. This regulation was composed of nine sections which

<sup>18</sup> King to Damrong, 6 Feb.1903, NA R5 Kk 13.3/6.

<sup>19</sup> Damrong to King, 16 Feb.1903, NA R5 Kk 13.2/26.

<sup>20</sup> King to Damrong, 19 Feb.1903, NA R5 Kk 13.2/26.

dealt with the name of the regulation, the age of men who were under the regulation, the exemptions, the registration, the method of selecting, the release from the regulation, the departments in charge, the punishments, and the Ministries which supervised this regulation respectively.<sup>21</sup> Under the absolute monarchy system, the King could still bypass a regulation without any meeting of the Council of Ministers. But the main purpose of bypassing the Council of Ministers was to avoid alarming the public.

Before the implementation of the 1903 Conscription Regulation there occurred "The Holy Mens Rebellion" or *Kabot Phu Mi Bun* in the Northeast of Siam at the beginning of 1902. Because of the inadequacy of the troops sent out from Bangkok, the conscript army of Nakhon Ratchasima participated in the suppressing of the uprising which was defeated in April 1903.<sup>22</sup> The following Shan Rebellion which occurred later in 1902, in the North of Siam, caused the King to order the provincial authorities of Phitsanulok and Nakhon Sawan to muster men and arms wherever they could find them and to march North to engage the Shans while Bangkok prepared an army itself. This caused the King to order the implementation of the 1903 Conscription Regulation to *monthon* Phitsanulok and Nakhon Sawan in August 1903.<sup>23</sup> These two risings were suppressed with some difficulties and delay because of the Siamese Government's lack of a strong army and these incidents confirmed the King's ideas of the need for creating a strong army.

#### 6. The Conscription Act 1905 and its consequences

After the Conscription Regulation of 1903 had been successfully implemented in *monthon* Nakhon Ratchasima, Phitsanulok and Nakhon Sawan, the King called for

<sup>21</sup> The Conscription Regulation 1903, NA R5 Kk 13.3/6.

<sup>22</sup> The conference report of the application of the Conscription Regulation, 28 Aug.1905, NA R5 Kk 13.3/5.

<sup>23</sup> Damrong to King, 11 Aug.1903, NA R5 Kk 13.2/26.

a meeting of the Council of Ministers on 28 August 1905, in order to consult them whether it was the right time to promulgate the Universal Conscription Act all over the country. He delivered a speech in the meeting that:

I hesitated to promulgate this Act at the beginning because; firstly, I was afraid that the Western powers would misunderstand that Siam was preparing for a war and at that time the problem with France still existed. Secondly, this is a very important Act which would change the old tradition of the corvee system that affects the whole country and probably cause alarm to the people. Consequently, I issued a Conscription Regulation in 1903 in three Monthons which proved to be successful. But the regulation is not a law so that the application of the regulation to an offender might cause problems. Now the Franco-Siamese Treaty of 1904 has been finally signed and I consider the time has come to promulgate this Act all over the country.<sup>24</sup>

The Council of Ministers agreed with the King and the Conscription Act was promulgated in October 1905. The content of the Act was very similar to the Conscription Regulation of 1903, but the exemptions in the new Act stated clearly that the Act was not applicable to the members of the Royal Family and the high government officials who had been given titles, and if they wished to serve in the army they should be appointed in high positions according to their qualifications. The Act included the schedule of implementation to each *monthon* and *monthons* all over the country would be under this Act by 1916.<sup>25</sup>

#### The Consequences of the Conscription Act

The Conscription Act 1905 had three profound effects in Siam. Firstly, it created a strong, effective and efficient army to maintain the stability inside the kingsom and, in the Siamese Government's contemplation, to defend the country. Secondly, it released the peasants from the burdensome corvee system to become free citizens who enjoyed an equal and independent life. Thirdly, the corvee system had prevented the emergence of bourgeois or middle class people because commoners were subject to

<sup>24</sup> The meeting report of the Council of Ministers, 28 Aug.1905, NA R5 Kk 13.3/6.

<sup>25</sup> The Conscription Act 1905, NA R5 Kk 13.3/6.

the control of their official patrons and a limitation of trade ensued. The Act abolished the corvee and created middle class people who subsequently played a great role in developing Siam. The legal consequence was that the Act abolished the legal relation between commoners and their patrons; commoners were no longer under legal protection of their patrons and therefore they had a right to proceed in both criminal and civil actions in the court by themselves. As a consequence, they also were more free to testify as witnesses in the courts of justice without any threat from their patrons.

### Section II Provincial Centralization

The traditional Siamese provincial administration was divided into the Ministry of the North (*Mahatthai*) responsible for the administration of the northern provinces, the Ministry of the South (*Kalahom*) responsible for the administration of the southern provinces, and the *Phrakhlang* responsible for a few of the Gulf of Siam provinces. Prince Damrong, a half brother of the King, was the Minister of the North for over two years before he became the first Minister of Interior on 23 December 1894. The Ministry of the South was finally dissolved upon the retirement of its Minister, *Chaophraya* Rattanathibet (Phum Sichaiyan), in 1894. Its territorial responsibilities were transferred to the Ministry of the North (*Mahatthai*) and it was then merged with the Ministry of Defence. The *Mahatthai* then became the Ministry with sole responsibility for the kingdom's provincial administration and was called the Ministry of Interior from 1894.<sup>26</sup>

The traditional provincial administration became unworkable because, firstly, the central Government was lacking in resources and could not afford to pay regular

<sup>26</sup> Tej Bunnag, The Provincial Administration of Siam 1892-1915 (Kuala Lumpur, 1977), pp.92-93.

salaries to its officials. The officials had to make a living out of their job which led to much abuse in the administration. Secondly, the traditional administration was lacking in functional differentiation. The direct consequence of this was the inefficiency of all the government departments resulting in long delays and waste of resources. Thirdly, during Prince Damrong's unprecedented provincial tour to find out the intrinsic defects of the traditional system of provincial administration during October to December 1892, he found that the quality of the officials in the provincial administration was generally poor. He strongly criticized many of the governors who made a living out of the provincial administration, and that many of the governors were too old to perform their duties.<sup>27</sup>

#### New Policy of Provincial Administration

The traditional system of provincial administration was largely put right by Prince Damrong between 1892 and 1899. During his first two years 1892-1894, he transformed the Ministry of the North into the basis of the modern Ministry of Interior. The old Ministry, whose sphere of activities had overlapped those of other Ministries, became a Ministry with a clearly differentiated function. The old departments whose responsibilities had overlapped each other's became functionally differentiated departments. New men were recruited and given a new professional training.<sup>28</sup> After he had established the modern Ministry of Interior as the centre of administration, he was searching for a new system of provincial administration.

Prince Damrong did not create a new method of provincial administration by himself but was able to apply the ideas of the experimental cabinet expressed in 1891 about the provincial administration, namely that the Government should, first of all, continue to create High Commissionerships which would superimpose a centralized

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<sup>27</sup> Ibid., pp.99-100.

<sup>28</sup> Ibid., p.98.

structure of command upon the traditional provincial administration. Secondly, it should terminate the provincial nobility's almost independent existence by transforming them into salaried civil servants. Thirdly and fourthly, it should systematically centralize the judicial and financial administration of the provinces. The fifth step was added by Prince Damrong in 1892, that the Government should also secure the cooperation of the people for the lower levels of every sphere of provincial administration.<sup>29</sup>

### 1. The Creation of *monthon* as the Basis of Provincial Administration

After the Paknam crisis of 1893 had passed, Damrong pursued his new policy of provincial centralization by establishing "*monthon*" as the basis of provincial administration. Between 1893 and 1899, fourteen commissionerships were established on these principles. The commissioner was given the new name of superintendent commissioner or *khaluang thesaphiban*, and his area of jurisdiction was called an administrative circle or *monthon*.<sup>30</sup>

In order to enforce the policies of provincial administration through the *monthon*, in 1897 Damrong issued the Act concerning district administration or the *Phraratchabanyat laksana pokkhrong thongthi*, and the regulations concerning provincial administration or the *Khobangkhap pokkhrong huamuang*. By these two laws, the functions and powers of the *muang* and district officials were defined with great precision. The heads of large *muang* were placed directly under the superintendent commissioners, the head of their *monthon*, and were directly appointed by the King. It was planned that all directives should be sent to the superintendent commissioners, who then passed them to the *muang* chiefs for implementation at the lower levels; viz the *muang*, district, communal and village administration.<sup>31</sup>

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<sup>29</sup> Ibid., pp.100-101.

<sup>30</sup> Ibid., p.101.

<sup>31</sup> Ibid., pp.118-119.

The *monthon* was the backbone of the provincial administration and it was also the unit for other Ministries to attach their officials to, for instance, *monthon* military assistant commissioner, *monthon* revenue commissioner, *monthon* education officer. These officers were selected and assigned by their Ministries which gave directives and received response by the chain of *monthon* administration.<sup>32</sup> But it was accepted that they were under indirect command of the superintendent commissioners, as the heads of the *monthon*.

## 2. The Integration of the Tributary states into the *Thesaphiban* system

The Ministry of Interior proceeded also to integrate the peripheral tributary states into the *Thesaphiban* system in 1899 because, firstly, the Siamese considered that they had to be integrated in order to secure the kingdom's territorial integrity against continued pressure from France and Britain. Secondly, despite the Anglo-French Declaration of 15 January 1896, the Siamese Government realized that the declaration had not guaranteed Siamese control of the tributary states. Therefore, it was necessary for them to integrate the tributary states into the *Thesaphiban* system in order to guard against any further loss of the territory. Thirdly, the centralization of the judicial and financial systems of the tributary states were major purposes of the Siamese Government because the uniform and progressive judicial system would eliminate the extraterritoriality enjoyed by the western powers, and the financial centralization would bring about more efficient tax collection and more revenue from all over the country to finance all the reforms of the country.

When Prince Damrong extended the *Thesaphiban* system to the northeast and the north of Siam, there were some opponents who objected to the destruction of the

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<sup>32</sup> W.J. Siffin, The Thai Bureaucracy: Institutional Change and Development (Honolulu, 1966), p.86.

old system. This perhaps helped to cause two uprisings in 1902, namely the Holy Men or *Phu mi bun* rebellion in the northeast, and the Shan rebellion in the north. According to Tej Bunnag, in his book The Provincial Administration of Siam, 1892-1915, both uprisings had related to some local nobility who suffered from the change and opposed the reform but this is disputed elsewhere.<sup>33</sup> However, the Siamese authorities were able to suppress the uprisings with some difficulty. These two rebellions apparently worried the Siamese Government whether it had made the correct decision to centralize the tributary states before the situation had got out of hand.<sup>34</sup>

The provincial centralization proceeded seriously after the Paknam incident as evidenced in the creation by Prince Damrong of *monthon* as the basis of the *Thesaphiban* system after the crisis had passed. The completion largely by 1899 of the *Thesaphiban* system or *monthon* organization strengthened the Siamese Government because the modern and efficient provincial administration collected more revenue, upgraded the judicial system, and modernized every aspect of administration. Every sphere and level of provincial administration had been centralized and controlled by the *monthon* headquarters. The provincial centralization had considerable impact over the whole area of Siam except Bangkok, the capital and the most important city of Siam, which was main residential area for European people; therefore it had small impact on them.

<sup>33</sup> Tej Bunnag, op.cit., pp.151-152. With regard to the Northern rebellion A. Ramsay, "Modernization and Reaction Rebellion in Northern Siam", Journal of Asian Studies, XXXVIII (Feb. 1979), 283-298, especially footnote 39, suggested that the Shan rebellion in Phrae was caused only by Shan immigrants, and the Lao Princes were forced to cooperate. *Chaophraya Surasak*, the Commander-in-Chief sent by Bangkok, used this opportunity to punish the Lao Princes in order to scare them, a view apparently substantiated above, chapter 4, p.126.

<sup>34</sup> Tej Bunnag, Ibid., pp.154-155.



### Section III Financial Reform

One of the significant changes in the Siamese financial system which happened in June 1873 was the establishment of the Central tax Office (*Hor Ratsadakornphiphat*). King Chulalongkorn was very much involved in financial reform because he realized that the progress of the reforms he might accomplish and the extent of his absolute power would depend upon the provision of adequate revenues, and the traditional organization of state finances would not suffice to raise them.<sup>35</sup> This motivated the King to establish a Ministry of Finance, as one of the twelve Ministries in the trial cabinet in 1888, to be in charge of taxes and public revenue and expenditure.

Despite the establishment of the central Tax Office and the Ministry of Finance, the Siamese tax system was still far short of efficient. Mr. Mitchell-Innes, who became the first Financial Adviser to the Siamese Government in 1896, described the Siamese fiscal system in his report of 6 September 1896:

Almost all the tax collection violates the principles of good taxation. They press more heavily on the poor than on the rich, they interfere with commerce, they are easy to evade, difficult to collect and impossible to control. Taxes are collected in many different ways, some taxes are collected by the Ministry of Finance, some by the Ministry of Agriculture, some by the Ministry of Interior, while some are given out to farmers. As regards the control it may truly be said that there is no means of properly controlling either the revenue or the expenditure. It is hardly an exaggeration to say that there is no such thing as inspector [sic] in any branch of the finance. There is the absence of organization. Actually there is no existence of the Ministry of Finance in the proper sense of the word and this Ministry of Finance is indeed little more than an office for the receipt of portions of the revenue and the payment of salaries.<sup>36</sup>

<sup>35</sup> D.K. Wyatt, op.cit., p.53.

<sup>36</sup> Mitchell-Innes's Report on the Financial System of Siam, 6 Sept.1896, NA R5 Kkh 5.1/14.

### 1. The Appointment of Prince Mahit as Minister of Finance

After slow progress from 1888 to 1896, the appointment to the Ministry of Finance of Prince Mahit, another half brother of the King, in 1896, was a sign of advance for the ministry. His main policy was to establish a system of efficient and effective budget procedures. He demanded that every ministry submit its preliminary expenditure estimates to the Ministry of Finance before the council of Ministers met to consider the budget, but at first most ministers ignored and did not cooperate with his requirement. The King's outburst in January 1899 on being told of this by Prince Mahit, at last convinced the Ministers of the importance of submitting their preliminary expenditure estimates to the Ministry of Finance on time.<sup>37</sup>

After the reorganization of budgetary control, Prince Mahit faced some difficulties in raising money to finance the northern railway's construction and the modernization of the army. These two projects were necessary because the Siamese Government wanted to maintain control of its northern tributary states after the Shan Rebellion of 1902 which had shaken its position in the north. Owing to a shortage of resources to finance both programmes, Prince Mahit explained the need for a European loan; otherwise the Government had to stop the reform programmes.<sup>38</sup> The King, being convinced by Prince Chira that the modernization of the army was necessary to keep the internal peace and deter French aggression, reprimanded Mahit and ordered that the suppression of disorder had priority over long-term economic development and commanded Mahit to find money; if necessary, railways could be set aside.<sup>39</sup>

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<sup>37</sup> I.G. Brown, "The Ministry of Finance and the Early Development of Modern Financial Administration in Siam, 1885-1910", London Univ. Ph.D., 1975, p.89.

<sup>38</sup> Ibid., p.129.

<sup>39</sup> N.A. Battye, op.cit., p.428.

Despite strong opposition to the European loan by Princes Thewawong and Narit, former Minister of Finance, the King, being advised by Mr. Strobel, the American General Adviser to the Siamese Government, in favour of the loan, proceeded with the plan. With the help of *Phraya* Suriya, the Siamese Ambassador in Paris, the first European loan was successfully negotiated in April 1905,<sup>40</sup> and the Siamese Government could proceed with the reform programmes.

## 2. The Currency Reform and the Abolition of the Gambling Dens

In November 1902 Siam had abandoned the silver standard and adopted a gold-exchange standard. Under the new exchange mechanism one of the principal obligations of the Ministry of Finance was to ensure that the Treasury always had sufficient reserves of baht coin to meet all the demands of the Bangkok banks in connection with the financing of the trade of the kingdom. Were the Ministry to fail in that obligation, the kingdom's trade could grind to a halt. Rivett-Carnac, the new Financial Adviser, argued that the Government could not allow its reserves to fall below twenty-two million *baht* (Siamese currency) without endangering trade.<sup>41</sup>

The actual gold standard Act was promulgated in November 1908. The reason for introducing this Act was to maintain the stability of the rate of exchange in order to secure the trade of the kingdom. This Act determined the issue of coin and fixed the value of the baht, the Siamese monetary unit, as equivalent to a certain weight of gold, and the reserve fund was set up to stabilize the rate of exchange between the Siamese currency and the foreign ones.<sup>42</sup>

<sup>40</sup> I.G. Brown, *op.cit.*, p.148. For government priorities in this period, see also I.G. Brown, The Elite and the Economy in Siam, c.1890-1920 (Singapore, 1988).

<sup>41</sup> *Ibid.*, p.137.

<sup>42</sup> Prachoom Chomchai, Chulalongkorn the Great (Tokyo, 1965), p.86.

The abolition of gambling dens had been initiated by Prince Chakrapatphong, a full-brother of the King, in the late 1880s when he had been appointed the Minister of Finance. The closure of gambling dens by Chakrapatphong had been limited to the Bangkok area.<sup>43</sup> Later, in May 1898, Prince Damrong, the Minister of Interior, and Prince Mahit, the Minister of Finance at that time, decided also to abolish all the provincial gambling farms where the revenue was small or where the existence of the dens was found to be encouraging crime.<sup>44</sup> The Council of Ministers' decision on 14 January 1905, concluded that the remaining gambling dens should be gradually closed down over a period of three years.<sup>45</sup> The abolition of gambling dens was gradually and successfully implemented all over the country, and the Siamese Government successfully recovered the lost gambling tax by raising the level of the land tax.

The Siamese Government proclaimed the Note Act in 1902 because the commerce in the kingdom had grown considerably more than before, and circulation of money as a medium of exchange thus became more rapid. Therefore the ministry of Finance arranged the paper-money called notes to render counting and inspection convenient and carrying easier than that of a good deal of money.<sup>46</sup>

### 3. Prince Mahit's resignation and the appointment of Phraya Suriya as the Minister of Finance

Prince Mahit resigned from the Ministry of Finance in 1906 officially on the ground of bad health, but I.G. Brown in his thesis indicated that Mahit's opponent in the Council of Ministers, Prince Thewawong, who was resentful of Mahit's success in

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<sup>43</sup> Ibid., p.67.

<sup>44</sup> I.G. Brown, "The Ministry of Finance", p.151.

<sup>45</sup> Ibid., p.155.

<sup>46</sup> Prachoom Chomchai, op.cit., p.80.

floating the European loan, used the so-called "Book Club" issue to force Mahit's resignation. The British Minister had complained that Mahit used his influence to benefit the Book Club, the first Siamese bank which began business on 4 October 1904.<sup>47</sup>

*Phraya Suriya* (Koet Bunnag, 1862-1937), a son of *Phraya Montrisuriyawong* (Chum Bunnag) and a grandson of *Somdet Chaophraya Borommahaprayurawong* (Dit Bunnag), and formerly a leading Siamese diplomat in Europe, was appointed the new Minister of Finance in June 1906. According to Brown, he soon greatly antagonised the King, Princes Thewawong and Damrong. The King criticized Suriya severely, arguing that a loss of revenue to the kingdom was caused by Suriya's lack of ability, causing everyone to despise him. Damrong asserted that no one had faith in Suriya.<sup>48</sup> Suriya and Damrong were in dispute over the audit by which Suriya tried to increase his power to audit the finance of other Ministries.<sup>49</sup>

Suriya's failure in tax collection was not actually his fault for the reduction of revenue was intensified by the poor monsoons of 1906 and 1907 and also the collapse of the opium monopoly. The poor level of agricultural production discouraged the tax farmers from competing for the farms which caused a further loss of revenue. Suriya's policy was distinct from the King and other Ministers, for instance, he insisted on his recommendation to establish a national bank to give credit to poor farmers, stimulate cultivation, and confer benefit to Government revenue rather than the construction of railways.<sup>50</sup> His policies were consistent with his book, *Suppayasat*, which he wrote later in 1911. In this book he pointed out that the basic problem of the economy of Siam was the unequal distribution of income and wealth.

<sup>47</sup> I.G. Brown, "The Ministry of Finance", pp.162-163.

<sup>48</sup> *Ibid.*, p.187.

<sup>49</sup> *Ibid.*, p.178.

<sup>50</sup> *Ibid.*, p.127.

The problem was not adequately dealt with by King Chulalongkorn because various reforms of the King had not fundamentally changed the structure of Siamese society.<sup>51</sup> His book was duly suppressed.

*Phraya* Suriya was forced to resign as the Minister of Finance in February 1908 probably because of his socialist ideas rather than his failure in tax collection caused by monsoons. Another possible reason was that he was not a member of the royal family but a son of a noble of the Bunnag family. He was replaced by Prince Kittiyakorn, a son of King Chulalongkorn, in February 1908.

By the end of the nineteenth century, the Siamese Government regarded the tax-farm system as an inefficient and oppressive way of collecting the kingdom's revenue. It developed the new idea of collection of revenue by direct Government agency which was believed to be the most effective, efficient, and least oppressive method of securing the Government's tax income.<sup>52</sup>

Even though the Ministry of Finance was first established in the trial cabinet in 1888, there was no radical change in its administration under Princes Narathip, Narit, and Sirithat, all half-brothers to the King, as the Ministers of Finance in 1889-1893, 1893-1894, 1894-1896 respectively. The dramatic reforms were initiated when Prince Mahit was appointed the Minister in 1896, and after the report of Mitchell-Innes about the defect in the financial administration of Siam. During 1896-1904, Mahit reorganized the financial system by introducing budgetary control, the Note Act, the Gold Standard Act, and the first local bank, the Bank of Siam which became the Siam Commercial Bank. He also started abolishing the tax-farm system and completed the abolition of the gambling dens. That the financial system operated more efficiently

<sup>51</sup> *Phraya* Suriyanuwat, *Suppayasat* (Bangkok, 1911), pp.71-74.

<sup>52</sup> I.G. Brown, "The Ministry of Finance", p.342.

facilitated the Government administration.

#### Section IV Educational Reform

##### 1. Traditional Siamese Education

Traditional Siamese education was based on the monastery as the place of learning where monks were teachers. When the parents wanted their children to be educated, they would send their children to monks who taught the boys in reading and writing of Siamese, Pali and a fair amount of arithmetic. The aim was to give them basic knowledge which would enable them to continue on their own. It can be seen that this system of education was confined solely to men, while women stayed at home and were educated in domestic affairs by their parents. When King Mongkut became King in 1851, he realized the importance of western education, so he employed Anna Leonowens from Singapore to teach his children English during 1862-1867. This was the first step in adopting western-style education in Siam. The young Prince Chulalongkorn was one of her pupils.

It was during the Regency period, 1868-1873, that the new King Chulalongkorn paid two trips to Singapore and India in the early and late months of 1871. These two trips had favourable effects on the progress of education because upon his return the King commanded that a school be set up in the Grand Palace to teach Siamese and English to the children of the Royal Family and civil servants. *Phraya* Sisunthorn Woharn (Noi Achariyangkul) and Mr. Francis Patterson were responsible for Siamese and English teaching respectively. This school was named "*Suan Kularp*" or Rose Garden School.<sup>53</sup>

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<sup>53</sup> Prachoom Chomchai, *op.cit.*, p.98.

The Front Palace (*Wang Na*) incident of 1875 marked a serious conflict between the conservatives led by Si Suriyawong, the former Regent, and the reformers led by the King. The course of reform proceeded much slower and no fundamental change was initiated by the King for nearly ten years. But four months after the incident, the King made some small progress in education by issuing a decree calling for the extension of public primary education under royal patronage to all the royal monasteries. The King expressed his real concern for the quality of the traditional Siamese education, the monk-teachers and textbooks they were using. It is evident that this decree of 1875 had absolutely no effect at the time it was issued. Contemporary sources make no mention of any regular teaching having been established in the royal monasteries; they report on no distribution of textbooks and no public examinations.<sup>54</sup> The decree seems to have had absolutely no effect. This might have been caused by the political intrigues during that time in view of the fact that when an identical decree was issued nine years later, after the death of Si Suriyawong, it had some effect almost immediately.

## 2. Prince Damrong's Role in Educational development

In 1884, the King gave Prince Damrong the task of planning the extension of public education along the lines of the 1875 decree, which called for the founding of modern schools in the royal monasteries. In September of that year, the King appointed a committee to prescribe the organization, textbooks and standards for these public schools. The arguments in favour of establishing schools in the monasteries were so strong that no alternatives seem seriously to have been considered. Firstly, traditional education had been carried on in the monasteries, and the physical facilities to sustain formal instruction were readily available there. Secondly, the monks who acted as teachers gained additional commitment and support

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<sup>54</sup> D.K. Wyatt, *op.cit.*, p.75.



from the boys' parents. Thirdly, if the Government were to establish schools outside the monasteries, they would lead to duplication and waste.<sup>55</sup> Lastly, it was a means to promote Buddhism at the same time. The Government gave full support to the monastery school system and it grew fast, expanding to monasteries all over the country.

The establishment of the Education Department was officially announced by royal decree on 6 May 1887, for the purpose of controlling and distributing modern education all over the country. Actually the department per se dated from 1885, for it was at that time that all modern education was put under Damrong's control and handled through a special bureau of his office in the Royal Pages' Bodyguard Corps. From summer 1885, Damrong submitted directly to the King quarterly an annual reports on the educational activities under his direction on a letterhead marked "Office of the Education Department".<sup>56</sup>

During the first seven years (1885-1892) of the Education Department under Prince Damrong, the Siamese education system was reorganized and systematized. In 1891, Damrong was sent on his first trip to Europe as King Chulalongkorn's special envoy, to visit Russia. During his trip he investigated modern education systems in order to apply them in Siam, but when he came back to Siam he was appointed as Minister of the North on 1 August 1892. The King gave this job to him to organize the provincial administration because the king believed that this job was now more important than education.<sup>57</sup>

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<sup>55</sup> Ibid., p.112-113.

<sup>56</sup> Ibid., p.115. This seems to suggest that by 1885 functional ministry was already formed as foreign, judicial, and educational affairs were in the hand of Princes Thewawong, Phichit and Damrong.

<sup>57</sup> Ibid., p.144.

### 3. The Appointment of *Chaophraya* Phatsakorawong as the Minister of Public Instruction

*Chaophraya* Phatsakorawong (Phon Bunnag), a partly British-educated son of *Somdet Chaophraya* Borommaha Prayurawong (Dit Bunnag), was appointed Minister of Public Instruction in charge of education in 1892. Supposedly because of his incapability and lack of support from the King, the Ministry of Public Instruction went through uncertainties and indirection, but as a commoner and Bunnag, he probably faced much the same jealousy and hostility from the royal family as did *Phraya* Suriya later. Within six months of the King's return to Bangkok from his first European trip in 1897, the King became concerned for educational reform in Siam. At the King's request, *Phraya* Wisut Suriyasak (Pia Malakun), a grandson of *Chaofa* Prince Mahamala, who had been sent to England as the Siamese Minister in London and Siamese language tutor to Prince Wachirawut, sent a report back recommending educational reform to the King. Remarkably, the report recommended raising the Siamese educational standard to a level with the British. By late July 1898, the King was looking for support in carrying out new educational policies. On 26 September 1898, the King called for a meeting of the Ministry of Public Instruction to which Damrong and Prince-monk Wachirayan, yet another half brother of the King, were also invited. At this meeting King Chulalongkorn made a decision to transfer the education in the provincial monasteries into Prince Wachirayan's hands to organize with the assistance of Prince Damrong. The King left only education in Bangkok under the control of the Ministry of Public Instruction.<sup>58</sup>

At the beginning of 1899, the problem of shortage of staff was facing every Ministry, particularly the Ministry of Interior. At the end of April 1899, Damrong wrote a letter to Wisut in London complaining that all the plans of the Ministry of

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<sup>58</sup> Ibid., p.224.

Interior were severely jeopardized by the lack of educated men to fill newly created positions. He stated that he was in need of two High Commissioners, not less than five provincial governors, not less than fifteen deputy governors. He added that were the King to allow him to do so he would resign to return to the field of education, which was the only solution to such problems.<sup>59</sup>

Wisut's recommendations for the establishment of the civil service school, sent by sea from London in February 1899, did not reach Bangkok until early May, and therefore crossed with Damrong's letter to him. Damrong opposed Wisut's suggestions that the school from the beginning should be designed to serve the civil service in general, that it should work closely with the Education Department, and that *Nai* (Mr.) Sanan, who had finished a teacher-training course in England, should be appointed its director. Damrong argued that Wisut simply was not aware of the hindrance in educational reform caused by Phatsakorawong and added that the only possible course was to create a civil service school within the Ministry of Interior, with Damrong himself acting as director until such time as Wisut could assume the duty. Upon receiving Damrong's complaining letter of 20 April 1899, Wisut agreed to return to Bangkok for the post. At the beginning of 1900, the civil service school had begun operation, and by the end of that year it already had graduated seventeen young men for service in the Ministry of Interior and had a total enrollment of 182.<sup>60</sup>

#### Section V Agricultural development and the development of Buddhism

It is important also to consider economic development and particularly that in agricultural development in the time of King Chulalongkorn. Up to 1855, the year of the signing of the Bowring Treaty which marked the opening of Siam to foreign

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<sup>59</sup> Ibid., p.260.

<sup>60</sup> Ibid., p.262.

transaction, the economy of Siam had been mainly self-sufficient with householders producing almost everything necessary for their own consumption. After Siam began to participate in international trade in 1855, there were significant changes in the structure of the traditional agriculture which was evident by the expansion of the rice cultivation area. One article of the Bowring Treaty of 1855 provided that Siam was obliged to export rice except when there was a shortage in the country. This article was included in the Treaty because of the demand for Siamese rice in the British colonies as well as in the European countries.<sup>61</sup>

Despite the increasing demand for Siamese rice in the market, Siamese agricultural development in the reign of King Chulalongkorn was not entirely successful. The traditional method of rice growing totally depended on the rain, therefore, the lack of rain could devastate the production. This was evident by the petition of 14 January 1891 of 404 families of an eastern province complaining to the Department of Agriculture (*krom Na*) that they were facing a crop failure in which the rice fields had dried up owing to lack of rain in that year.<sup>62</sup> The Bangkok Times, which was the main English-language newspaper published in Bangkok, had published an article in early 1891 warning the Siamese Government about the issue of irrigation and recommended that irrigation become a governmental undertaking in order to overcome the problem of lack of water.<sup>63</sup>

After the Paknam incident of 1893, agricultural like other economic development proceeded very slowly because the Siamese Government gave priority to justice, provincial centralization, the army and finance. In 1897, *Chaophraya* Surasakmontri, the Minister of Agriculture, submitted his resignation because the

<sup>61</sup> D.B. Johnston, "The Rice Frontier in Thailand 1880-1930", Yale Univ. Ph.D., 1975, pp.18-19.

<sup>62</sup> Chatthip Nartsupha, The Political Economy of Siam 1851-1910, 2nd edition (Bangkok, 1981), p.427.

<sup>63</sup> D.B. Johnston, op.cit., p.86.

Government's policy disregarded agriculture and consequently the Ministry of Agriculture ceased to exist for two years. In 1899 *Chaophraya* Thewetwongwiwat (Larn Kunchon) was appointed the new Minister of Agriculture. He reviewed the irrigation projects and in 1902, J. Homan van der Heide, a Dutchman, was hired as the first director of the Irrigation Department. Van der Heide produced a report recommending the construction of a dam across the Chaophraya River at Chainat, a province in the central Siam, to distribute water to numerous smaller canals, with the end result being a totally coordinated system of irrigation for all of central Siam.<sup>64</sup> But Van der Heide's project was turned down by the Siamese Government because it considered that railway construction was a higher priority than irrigation and the Government thought it unwise to embark on major projects in both fields at the same time owing to its limited resources.

Another agricultural project which was submitted by *Phraya* Suriya, as Minister of Finance, was the establishment of a national bank to give credit to poor farmers, also rejected by the Siamese Government in favour of railway construction. It was inevitable that agricultural development during the reign of King Chulalongkorn proceeded very slowly because it was given a low priority.

It is also worth considering the development of Buddhism during the reign of King Chulalongkorn. Buddhism was and also is a fundamental institution in Siam on which most of the Siamese custom and culture are based and it also sustained the monarchy. King Chulalongkorn realized its importance as he vowed that:

When I came to the throne, I intended to improve Buddhism in order to maintain a firm foundation of Buddhism in Siam. I gave a vow that so long as I live I will constantly foster the growth of Buddhism.<sup>65</sup>

<sup>64</sup> Ibid., p.91. See also I.G. Brown, The Elite and the Economy, op.cit., chapter 1.

<sup>65</sup> Phra ratchabanyat songthaleng, 1874-1910 (King Chulalongkorn's Speech), Sophonpipatanakan Publisher (Bangkok, 1915), p.89.

King Chulalongkorn had longed for the opportunity to put one of his brothers in charge of Buddhism; therefore, when Prince Wachirayan, a half-brother of the King, ordained as a monk on 27 June 1879 at the age of twenty, hesitated whether to remain monk for the rest of his life because he believed that becoming a monk meant discarding government service, Chulalongkorn actively encouraged Prince Wachirayan to remain by persuading him that such a course could serve the government, and also promised to grant a *krom* rank to him if he remain in the monkhood for three lenten seasons.<sup>66</sup>

In his thesis, "The Buddhist Monkhood in Nineteenth Century Thailand", Reynolds explained that Wachirayan decided to remain in the monkhood for the rest of his life when the King came to visit him at his residence in *Wat* (temple) Bowornniwet a month after his ordination, and showed respect to him in a way that he would not give to other half-brothers. Moreover, the King increasingly favoured him after he had consented to try the monkhood and he did not want the King to lose his faith in him.<sup>67</sup>

King Chulalongkorn utilized the Buddhist temples to increase the Government's control and to implement some of his policies. With the assistance of Wachirayan, the King implemented the *Sangha* (monk) law of 1902 which created a Monk Association (*Mahatelasamakom*) to be his advisers to deal with religious affairs. Furthermore, he appointed a uniform *Sangha* hierarchy headed by *Chaokana Monthon* (the head of monks in the *monthon*) in each *monthon* to coincide with the provincial centralization. In effect, the law announced that the central Government was prepared to consider more seriously than ever before its role of projecting a model for Buddhist practice throughout the kingdom.<sup>68</sup> That the Siamese Government

<sup>66</sup> C.J. Reynolds, "The Buddhist Monkhood in Nineteenth Century Thailand", Cornell Univ. Ph.D., 1973, p.145.

<sup>67</sup> *Ibid.*, pp.146-147.

<sup>68</sup> *Ibid.*, p.226.

implemented some of its policies through the temples is evident in the implementation of the policy of provincial education in the temples in 1898. It is conspicuous that Chulalongkorn's government not only centralized the country's civil administration, it also centralized the temples and utilized them to implement government policies.

Conclusion The Chakri Reformation was initiated in most Ministries after the Paknam crisis of 1893. Two problems which every Ministry faced together in the reform programme were the shortage of budget and staff. The Ministry which had most budget was often the Ministry whose Minister was currently the favourite of the King and could convince him of the prospect of the reform programmes. This is evident in the King's support for Prince Damrong when he was in charge of the educational reform and the standing of education was considerably increased. Subsequently, when Damrong was transferred to the Ministry of the North, he still gained support from the King, and with his distinct ability he successfully reorganized the whole provincial administration. In transferring Damrong to the Ministry of the North, the King indicated the lower priority that education henceforth would enjoy in pressing its claims upon the state's limited resources. When *Chaophraya* Phatsakorawong succeeded Damrong in the Ministry of Public Instruction, his lack of support in either the Council of Ministers or on the part of the King led to a delay in educational reform.

It was difficult for the Ministers who were commoners to gain support and obtain funds for their Ministries from the King and the Council of Ministers which was dominated by the royal family. This phenomenon also appeared when *Phraya* Suriya, the Minister of Finance, and *Chaophraya* Surasakmontri, the Minister of Agriculture, could not obtain support and budget for their Ministries. The royal family, especially the King, had experienced deprivation of power by the Bunnag

family at the beginning of his reign and they were determined never to allow this situation to happen again.

The legal reform which is the main concern of this study was one of the most important reforms in the Chakri Reformation. The appointment of Phichit whom the King disliked indicates how important the legal reform was. The King knew that Prince Promwaranulak, who was temporarily in charge of the Ministry of Justice after Prince Sawat's departure for Europe in 1893, was incapable of running the Ministry as nothing had progressed since his appointment. The King was left with virtually no choice except Phichit whose legal ability he knew of. Consequently, for the benefit and independence of Siam, the King put his prejudice against Phichit aside.



PART THREE

JUDICIAL REFORM, THE FOREIGN ADVISERS AND THE STAFF  
OF THE MINISTRY OF JUSTICE

Chapter 6 Legal Policy and the Reform of the Ministry of Justice while Prince Phichit was the Minister ( 22 October 1894 - 3 March 1897 )

Section I The Appointment of Prince Phichit as the Minister of Justice

As a consequence of the Paknam Incident, *Phra Yot Muang Kwang* who was a Siamese official at Tong Chieng Kam east of the Mekong River was charged with murdering Inspector Grosgrin, a French official, in June 1893. There were two trials in this case, the first trial undertaken by the Siamese authorities, a representative of France attending the judgment, while a second trial before a Mixed Court was to be insisted upon by the French Government as it felt the penalty of the first trial was not sufficient. The composition of the mixed court was to be determined by the French Government. At first, King Chulalongkorn called Prince Phichit back to Bangkok from his commissionership at Ubon to preside over this case for the Siamese authorities. In the Siamese view, Prince Phichit conducted the case splendidly and gave judgment "not guilty" in favour of *Phra Yot*. This judgment was acceptable to the Siamese and most foreigners including the English Representative, Mr. Scott, the English Charge d' Affaires, who reported to the Foreign Secretary, the Earl of Kimberley in London, that:

It appears that the accused is guilty of no crime, the court in pronouncing judgment, shall conclude by declaring him quit and discharged of the accusation. *Phra Yot* is not guilty of any of the five charges as set forth in the indictment.<sup>1</sup>

*Khunluang Phraya Kraisi* (Pleng Wepara), the first Siamese called to the English Bar, who held the title of *Luang Ratana Yati* at that time and was appointed the Registrar of the Court in *Phra Yot's* case, wrote in his memoir that Prince Phichit who was the presiding judge performed his duties splendidly and speedily so that this

<sup>1</sup> Scott to Kimberley, 19 March 1894, PRO FO 422/39.

very long case could be concluded within three weeks and that the decision was substantiated by reliable evidence.<sup>2</sup>

One most important point is why King Chulalongkorn appointed Prince Phichit the second Minister of Justice in October 1894, despite his apparent prejudice against Phichit. One has to look at the situation at that time when the King's health was mentally and physically poor. Following Prince Sawat's departure to Europe in September 1893, he was left with virtually no choice except Phichit, for the Ministry of Justice could not be left in the hand of Prince Promwaranulak who had been temporarily in charge since Prince Sawat's departure, but who had proved incapable of running the Ministry as nothing had been done since his takeover. Besides that, Prince Damrong's influence over the King had grown increasingly after the Paknam incident until he was appointed the full Minister of Interior in December 1894. It is probable that Prince Damrong supported Phichit's appointment as the Minister of Justice because it would be much easier for him to reorganize the Northeast of Siam if Phichit was withdrawn from Ubon and it was under the control of a commoner commissioner. Damrong also admired Phichit, as he wrote years later in Phichit's biography that the latter had performed splendidly in the *Phra Yot* case and was outstanding in qualifications and experience as a Judge in the *Rapsang* Court, the president of the *Phaeng Klang* and *Phaeng Kasem* Courts, and the president of the *Dika* Court.<sup>3</sup>

<sup>2</sup> Marut Bunnag (ed.), Arnusorn nai nganphraratchatanpengsop Khunluang Phraya Kraisi (Pleng Wepara) (Biography and career of Khunluang Phraya Kraisi), Printed in his cremation volume (Bangkok, 1983), p.33.

<sup>3</sup> Prince Damrong, "Phra prawat phrachao Boromwongter *Kromluang* Phichit Prichakorn" (the Biography of Prince Phichit), printed in Prachum phraratchanipon Kromluang Phichit Prichakorn (The Poetry of Prince Phichit), printed in the cremation volume of *Mom Soun Katkanang*, Phichit's wife, (Bangkok, 1950), p.10.

After King Chulalongkorn decided to appoint Phichit as Minister of Justice, he wrote a letter of 18 October 1894 to Phichit describing the situation of the Ministry of Justice:

I consider that the administration of the Ministry of Justice is one of the most important issues in the country at the present. Now the post of the Minister of Justice is vacant, and there is a huge amount of unsettled cases. I consider you as the most suitable person with the experience to perform this duty. Therefore I appoint you the Minister of Justice and request you to perform your duty and bring about progress to the country.<sup>4</sup>

King Chulalongkorn's decision in appointing Prince Phichit as Minister of Justice was an appropriate decision because Phichit's reputation at that time did not only impress the Siamese but also the representatives of the Western Powers as evidenced by a letter of Mr. De Bunsen, the new British representative in Bangkok, to the Earl of Kimberley, the British Foreign Secretary, in November 1894, where he reported:

Some proof of His Majesty's renewed interest in public affairs is perhaps to be found in the appointment of a new Minister of Justice in the person of Prince Bijit [Phichit], a man of known energy and capacity, who is already engaged in reforming his Department, and assures me of his intention immediately to increase the number of City Magistrates, and to invest them with such summary powers of punishment in small cases as will enable them to clear off a huge mass of arrears and to keep pace in future with the more pressing requirement of their office.<sup>5</sup>

Phichit probably had quite a good idea of the problems in the Ministry of Justice. After a personal discussion with the King at the latter's request, there was an announcement proclaiming that Prince Phichit was appointed the Minister of Justice on 22 October 1894. On the same day, he wrote a letter to the King expressing his anxieties about his job, and that he believed that the whole system of the administration of justice in Siam faced deep-rooted problems which had existed for

<sup>4</sup> King to Phichit, 18 Oct. 1894, NA R5 Ky 3/2.

<sup>5</sup> De Bunsen to Kimberley, 11 Nov. 1894, PRO FO 422/40.

hundreds of years. The piecemeal method of putting some procedure right temporarily, or correcting some minor points, was not durable and needed reform. He suggested that the whole system of the administration of justice be reorganized. Apart from that, the quality of judges and the court officials was not up to the standard to enable the reform. The parties in complicated cases had to compromise with each other to make a decision possible.<sup>6</sup>

Phichit clearly visualized the problems of the Ministry of Justice he was about to face at that time. Therefore, he requested some special authority from the King in supporting his performance. He asked for full support from the King and full cooperation from the other ministries concerned with the Ministry of Justice, and power of direct command and punishment over the officials and departments within his responsibility. Besides, Prince Phichit requested a conference of government officials to consult about issuing desirable laws according to a programme, and for speed and convenience he requested the establishment of petty courts to deal with trivial cases in Bangkok and the suburbs of Bangkok.<sup>7</sup>

Why did Phichit ask the King for some special authority? There are two probable reasons, firstly, the nature of the job, for Phichit foresaw the difficulties of work he was about to encounter. Secondly, there was the personal relationship between him and the King. He apparently knew that the King disliked him, perhaps because of his criticism of the King's earlier inactivity and his own controversial novel Sanuk Nuk.<sup>8</sup> Without this special authority he would not be able to solve the difficult problems and the King could dismiss him because of his failure and he would end up in disgrace. The King, however, granted permission for all Phichit's requests, and

<sup>6</sup> Phichit to King , 22 Oct. 1894, NA R5 Ky 3/2.

<sup>7</sup> Ibid.

<sup>8</sup> The detail of King Chulalongkorn's prejudice against Phichit is illustrated in Chapter 3.

confirmed that a meeting of all the ministers could be held provided that Phichit informed the Minister of the Privy Seal to set the date, and if he needed any other consultation, the King would be available for him most of the time.<sup>9</sup>

Prince Phichit was a very active person. After his appointment as Minister of Justice he commenced work immediately. With his experience in judicial affairs going back many years he knew well the defects of the whole system. There were various projects of judicial reform implemented by him. One can divide his reform into three categories:

1. The enactment of laws
2. The solution of case backlog
3. The improvement of the staff and the court procedure

## Section II Prince Phichit's role in the Enactment of Laws

Phichit was instrumental in issuing many laws while he was Minister of Justice. These are only the important laws which were implemented by him.

### 1. The Evidence Act 1895

The evidence law which was applied in courts in Siam up to the time of Prince Phichit's judicial reform was the evidence law of the Ayuthya Kingdom reputedly implemented in the reign of King Ramathibodi I (King U-thong) who reigned from 1350 - 1369. This law had thus been used for more than five hundred years so it was obsolete by the time of Phichit. It is probable that on the establishment of the Ayuthya Kingdom, Ramathibodi I, the first King, issued the evidence law to start the process of judicial reform. It was the same when Prince

<sup>9</sup> King to Phichit, 30 Oct.1894, NA R5 Ky 3/2.

Phichit, as perhaps the person to start the process of Chakri judicial reform, issued the Evidence Act 1895 to launch the reform programme.

In his letter to the King dated 30 November 1894, Prince Phichit expressed his opinion:

Now, owing to Western influence, the judges cannot any longer use arbitrary practices to summarise or shorten the judicial process and we have abolished all arbitrary practices. And our old evidence law is obsolete. Consequently, Siam needs a new, specific, and efficient evidence law to deal with the load of unsettled cases in the courts. Prince Sawat, the previous Minister of Justice, had submitted the Evidence Act which I have reviewed and amended. I am confident that this act will be very useful to the Government and the people.<sup>10</sup>

On 6 December 1894, Phichit wrote another letter to the King to ask for permission to implement this new Evidence Act. The King agreed with Phichit and therefore he allowed it to be promulgated on 1 April 1895.<sup>11</sup>

As admitted by Phichit the idea of implementing the Evidence Act had been initiated by Prince Sawat when he was the Minister of Justice. The latter wrote a letter dated 26 January 1892, informing the King about the obstacles in the judicial process caused by the obsolete evidence law at that time. He submitted his idea of solving the problems and improving the judicial procedure by implementing a new Evidence Act which he enclosed in the same envelope. The King submitted it to a meeting of the ministers for consideration. The ministers consulted together and finished the amendment in 1893.<sup>12</sup>

It is noteworthy that this Evidence Act was still only promulgated nearly two years after the original amendment meeting of the ministers even though it was absolutely necessary for the Ministry of Justice to apply this Evidence Act in

<sup>10</sup> Phichit to King, 30 Nov.1894, NA R5 Ky 1/9.

<sup>11</sup> King to Pitthayalap, 23 Dec.1894, NA R5 Ky 2/2.

<sup>12</sup> Phichit to King, 6 Dec.1894, NA R5 Ky 2/2.

procedure in courts. A major reason behind the delay appears to have been the long and serious illness of King Chulalongkorn after the Paknam incident in July 1893. As Mr. Scott, the British representative in Bangkok, reported to the Earl of Kimberley, the British Foreign Secretary, in April 1894:

The King recently spent a fortnight at *Koh Sichang* [Sichang island]. While at *Koh Sichang* he could not be induced to take any interest in questions of state, but it is said that since his return he has shown some intention of attending to public affairs, which is fortunate, for nothing can be done without His Majesty's authority, and since the beginning of December 1893, when he fell ill, it has been impossible to get any business transacted.<sup>13</sup>

King Chulalongkorn's prolonged sickness which disrupted government administration also appeared in Prince Damrong's letter in response to the King's letter in which the King had indicated his despondency and sense of doom ensuing from the Paknam incident. Damrong consoled the King that:

When I received Your Majesty's letter, I felt very anxious about your sickness as the country would lack a captain. At the moment the cabinet ministers are disorientated and, as a result, public transactions are at a standstill. I wish you to get well soon as I am a fully equipped horse ready to be Your Majesty's instrument in carrying out projects which Your Majesty desires.<sup>14</sup>

The new Evidence Act of 1895 changed the principle of witness in the Siamese judicial system distinctly. The most conspicuous change was in the prohibition of groups of people being witnesses in court, as the old evidence law prohibited thirty-three groups of people as witnesses unless the parties agreed together on them. These groups, for example, included the debtors of the parties, the slaves of the parties, the persons who cohabited with the parties, homosexual persons, children below seven years of age, old people above seventy years old. But the Evidence Act of 1895 provided that any man or woman who was conscious,

<sup>13</sup> Scott to Kimberley, 3 April 1894, PRO FO 422/39.

<sup>14</sup> Natawut Sutthisongkram, Somdet Phra Piyamaharat (King Chulalongkorn the Great) (Bangkok, 1987), pp.299-300.



responsible, and comprehensible, could be a witness for the prosecution or plaintiff, or for the defence or defendant, unless they were specially prohibited according to this Act, or a person whom the judge considered could not understand the questions, or could not answer them owing to their very young or old ages, or persons who were seriously ill physically or mentally and could not remember the incidents at issue.<sup>15</sup>

## 2. The Constitution of the Ministry of Justice's Staff

As a consequence of the Evidence Act 1895, Phichit initiated a new programme to establish the staff of the Ministry of Justice. In his letter to the King of 29 May 1895, two months after the promulgation of the Evidence Act, he expressed his idea:

Currently the staff of the Ministry of Justice is not permanent. None of the people who work here, except the persons who were conferred titles by the King, belong to the Ministry of Justice. They belong to their patrons and have no fixed salary. Their incomes depend on the cases they handle. I think it is the right moment to recruit some qualified persons, dismiss those redundant, and reorganize the structure of the staff in order to put them in positions to enhance the Ministry of Justice's efficiency. I enclose the new constitution of the Ministry of Justice's staff together with this letter.<sup>16</sup>

The King replied that this constitution of the Ministry of Justice's staff was inappropriate and returned it to Phichit.<sup>17</sup> There was no further reason given but the real reason was probably that the King did not want to spend a large sum of money on the staff's salaries. These salaries had to come from the treasury which the King regarded as his own money. This was a myopic opinion because if the Ministry of Justice had been well organized it might have needed less staff, would have worked more efficiently, would have had less corruption, and would have earned much more fee revenue. It was inevitable that with the existing system, where the

<sup>15</sup> The Evidence Act 1895, Prachum Kotmai Pracham Sok (PKPS) (Annual Collection of Thai Decrees), volume 14, p.228.

<sup>16</sup> Phichit to King, 29 May 1895, NA R5 Ky 3/1.

<sup>17</sup> King to Phichit, the King wrote his opinion on the envelope of Phichit's letter of 29 May 1895.

staff's income depended on the cases they handled, that there must have been a great deal of corruption. Worst of all, the Ministry was still disorganized and this caused frustration and tremendous problems to Phichit. This was a disadvantage of the absolute monarchy system whereby the king's opinion was final, and if one could not persuade the king to change his mind, no change would be implemented.

### 3. The Proclamation changing the Punishment of Flogging to Imprisonment

In the same request of 30 November 1894, which caused the King to give his permission to Phichit's proclamation of the improvement of the *Porispha* Court (announced on 25 December 1894) which will be dealt with later in section 3, Phichit introduced the punishment of imprisonment instead of flogging in these new *Porispha* Courts.<sup>18</sup> After long experience in the administration of justice in Siam, Phichit seems to have sympathized with the persons who were punished by flogging. Therefore, when he took charge of the Ministry in 1894, he initially abolished this kind of punishment in the *Porispha* Courts.<sup>19</sup>

Later Phichit desired to apply this change to every court under the Ministry of Justice. This was a big change and it needed the King's consent so he wrote a letter of 1 August 1895 to ask the King's permission. The King gave his consent on 13 January 1896, stating that:

Flogging is an unnecessary torturing punishment. Even in the *Phra Ratcha-arya* Court, Appeal Court or *Dika* Court whereby the convict was subject to flogging and imprisonment, I often cancel flogging. The Proclamation changing the punishment of flogging to imprisonment of 25 December 1894 has already been implemented in the *Porispha* Court. This proclamation proves to be suitable for our reformed judicial system, and therefore from today, 13 January 1896, I allow this proclamation to be applied to every court under the Ministry of Justice.<sup>20</sup>

<sup>18</sup> Phichit to King, 30 Nov.1894, NA R5 Ky 1/9.

<sup>19</sup> The Proclamation of improvement of the Porisapha Court 1894, PKPS, volume 14, pp.208-209.

<sup>20</sup> The Proclamation to replace flogging by imprisonment, PKPS, volume 15, pp. 49-50.

4. The Implementation of the Temporary Criminal Procedure Act 1896 and the Temporary Civil Procedure Act 1896

Owing to the obsolescence of the old criminal procedure law, the criminal procedure in courts was inefficient and slow. Prince Phichit realized this problem and therefore, in September 1895, he submitted to the King a proposal to reform the criminal procedure and the civil procedure laws. Phichit suggested that the completion of the full codes which was part of his policy but had not yet been started, would consume much time and the Ministry of Justice needed these laws urgently.<sup>21</sup> Consequently, Phichit's proposal revived the Temporary Criminal Procedure Act which had already received the consideration of the Legislative Council but was delayed owing to the King's request to apply this law also to the provincial courts. Prince Pitthayalap, formerly Prince Sonabanthit, the president of the Legislative Council, instead of adding the provision to apply this Act to the provincial courts and be pronounced as law, resubmitted the same draft to the King with the provision to apply it to the provincial courts. This was a waste of time. The reason for doing this appears to have been his being afraid of being attacked by his half-brother ministers as they were all jealous of each other and trying to win the King's favour. (This will also be seen later when Phichit appointed *Luang Thammasat* as the *athibodi* of the International Court in the place of *Phraya Manusansat*, who refused to accept the post, and was severely attacked by Prince Thewawong for it.) As a result, the King probably forgot to review the Act when it was resubmitted and Pitthayalap had to remind him,<sup>22</sup> and after nearly one year's delay this temporary Criminal Procedure Act was promulgated on 27 April 1896.

<sup>21</sup> The conclusion of Phichit's suggestion to the King in September 1895, NA R5 Ky 1/10. (The date on the document is obliterated).

<sup>22</sup> Pitthayalap to King, 21 April 1896, NA R5 Ky 2/7.

The draft of the Temporary Civil Procedure Act 1896 was submitted by Prince Damrong, the Minister of Interior since 1894, and a member of the Legislative Council, on 21 January 1896.<sup>23</sup> The King submitted this draft to the Legislative Council for consideration. The latter investigated and amended it in three stages and resubmitted it to the King for promulgation. The King promulgated it on 21 October 1896.<sup>24</sup>

These temporary Criminal and Civil Procedure Acts of 1896 were designed by Phichit to be temporary because the completion of the full Acts would consume a long period of time and the Ministry of Justice needed them urgently. After they had been amended by the Legislative Council, Phichit complained to the King that the amendments removed so many articles that the drafts were not adequate.<sup>25</sup> But the King gave permission to Pitthayalap to promulgate as they stood. These two Acts did not turn out as well as Phichit hoped. The codes were inadequate and worked to a certain extent as Phichit had already foreseen.

##### 5 The Abolition of Torture Procedure Act of 1897

One of the old traditional procedures in the Siamese judicial system prior to Prince Phichit's reform was the torture procedure, *jareatnakornban*, which was a method to force the accused to speak the truth. Practically, it was a means to torture the accused to confess that he had committed the crime. Sometimes the accused was innocent but he had to confess in order to release himself from torture.

The idea of abolishing torture was proposed by M. Kirkpatrick, a Belgian legal adviser to the Foreign Ministry and protege of Rolin-Jaequemyns, the General

<sup>23</sup> The Temporary civil Procedure Act 1896, PKPS, volume 15, pp.157-232.

<sup>24</sup> Ibid.

<sup>25</sup> Phichit to King, no date, NA R5 Ky 1/10.

Adviser. He also advised the Ministry of Justice to abolish the practice of sometimes arresting relatives of the defendant instead of the defendant himself which the Siamese judicial system called "*Chamnam*" (guarantee).<sup>26</sup> This Act was applied at once in Bangkok courts after its proclamation on 1 March 1897,<sup>27</sup> but in the provincial courts which were under the Ministry of Interior the practice of torturing still continued in use for some time.

Prince Phichit had never studied abroad but he had more advanced ideas than some princes who had been educated abroad. For instance, Phichit issued this Act which put an end to this kind of torture. By contrast, Prince Sawat, who studied at Oxford University, supported this practice as seen in the case in which Prince Naret, on behalf of *Phraya Mahayota*, sued the latter's wife for adultery with several gentlemen of rank. Prince Sawat was one of the judges who had *Nai* (Mr.) Rong Snor *Mahatlek* (Royal Page) submitted to flogging in order to extort a confession.<sup>28</sup> It is necessary to note here that Crown Prince Wachirawut in 1910 tried to restore the torture procedure in a particular case. Prince Raphi objected but his objection failed.<sup>29</sup> This caused conflict between Raphi and the Crown Prince which will be discussed in the chapters on Prince Raphi.

Most of the laws in this section were very useful to the Siamese judicial system practically and therefore were not a paper reform. Prince Phichit planned to implement these laws to enhance the efficiency of the Ministry of Justice. But some of his ideas could not be implemented because the King still held absolute power and could stop any law he opposed. Phichit's plan was to confer benefit to Siamese all

<sup>26</sup> Prince Raphi, Phraratchabanyat nai patyuban (Royal Edicts in the Present Day) Vol.2, Bangkok 1902, p.621.

<sup>27</sup> The Abolition of Torture Procedure Act 1897, PKPS, Vol.15, pp.243-247.

<sup>28</sup> King to M. Rolin-Jaequemyns, 8 June 1899, NA R5 Kt 2/13.

<sup>29</sup> Second lieutenant Lien Sichan, Kanpatiwat kungraek naimuangthai 2454 (The First Revolution in Siam 1911), printed in his cremation volume, (Bangkok 1971), pp.2-3.

over the country including the subjects of the Western powers. But his plans were sometimes limited only to Bangkok and its suburban areas because the provincial courts at that time were still in the hands of Minister of Interior.

### Section III The Solution to Case Backlog

When Phichit accepted the post of Minister of Justice in October 1894, he realized that one of the most difficult problems for the Ministry was the great number of unsettled cases in courts. He estimated that the number would be much greater in the near future if he could not find a method to overcome them, because the inflow of cases into courts was much more than the rate of settlement. He detailed the statistics of the inflow and the settled cases of the *Phra Ratcha-arya* Court (Court of Punishable Offences) and the *Ratchathanphichet* Court (Penitentiary Court), both of which were criminal courts for felony, in his letter to the King of 30 November 1894:

In September 1894, the month before I became Minister of Justice, the unsettled cases in these two courts amounted to 1,500 cases, those reaching settlement were 26 cases, but the inflow amounted to nearly 100 cases per month. I would like to remark that if the Ministry of Justice cannot overcome this problem it will face a chaotic situation and will eventually collapse. I would suggest that it is most urgent for me to deal with this problem.<sup>30</sup>

Prince Phichit's policies towards the reduction of the backlog of unsettled cases in the Ministry of Justice's courts:

#### 1. The Regulation to abolish the punishment of the judges of the Court of First Instance whose decision was reversed by the Appeal Court

This was the first policy of Prince Phichit to deal with the problem of the tremendous number of unsettled cases in the Court of First Instance. This defect

<sup>30</sup> Phichit to King, 30 Nov.1894, NA R5 Ky 1/9.

should have been eliminated long before, but had been in existence until Phichit became Minister of Justice because of the obsolete legal system and incompetent leadership. The old regulation punished the judges of the Court of First Instance whose decisions were reversed by the Appeal Court. The regulation provided that:

After the judge of the Court of First Instance gives his decision, a party who is not satisfied with the decision can appeal it to the Appeal Court by arguing that the decision was wrong. The judge of the court of First Instance will be the defendant and if the Appeal Court reverse his decision, he will be responsible for the Appeal Court's fees.<sup>31</sup>

This obsolete regulation delayed the procedure in every Court of First Instance because the judges were afraid of their decision being appealed by the party who was not satisfied with it. Inevitably, the judges in the Court of First Instance, in some cases where they were in doubt of the decision, hesitated to decide the cases. Thus there were some cases in the civil or criminal court where the trial had been completed but which awaited decisions for a year or more, by which time the judge might be transferred to another court.<sup>32</sup>

When Prince Phichit became the Minister of Justice, he was fully acquainted with the situation and proposed that such regulation be abolished. He issued a Ministry of Justice regulation on 18 November 1894, prohibiting the Appeal Court from charging the judge of the Court of First Instance whose decision was reversed, for the Appeal Court's fees. This new regulation provided that:

If the plaintiff or the defendant in the Court of First Instance appeal the decision to the Appeal Court, the judge in the Appeal Court cannot treat the judge in the Court of First Instance as the defendant, and if the decision is reversed, the latter is not responsible for the Appeal Court's fees unless the party accuse the judge personally.<sup>33</sup>

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<sup>31</sup> The Ministry of Justice's Regulation prohibiting the Appeal Court to charge the Court of First Instance's judges whose decision was reverse, PKPS, Vol.14, pp.199-200.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

Regarding the Appeal Court's fees, if the Appeal Court reversed the decision, the fees would be returned to the appellant, but if otherwise, the fees fell to the Crown.<sup>34</sup>

This regulation complies with the natural rule because no judge who tries to interpret and apply law honestly and genuinely likes to be held responsible if his decision is reversed by another judge's opinion. Applying law to the circumstances of all cases is an art of which the result is not certain like arithmetic. It depends upon the opinion of particular judges, therefore it is right to protect judges who are sincere in using the law.

Prince Phichit's new regulation was practical and had three consequences: firstly, it gave direct support to the judges of the Court of First Instance by releasing them from the anxiety of being defendants in cases in which they gave the decision, so they would no longer hesitate or delay in giving a decision. Moreover, they were not to be responsible for the Appeal Court's fee except when they were dishonest in applying law. Secondly, it gave direct support to the contending parties because their cases would be settled much quicker. Lastly, it improved the efficiency of the Ministry of Justice owing to the consequent dramatic fall in unsettled cases.

## 2. The Improvement of the Porisapha Court (Court of Petty Offences)

The *Porisapha* Court was first established when Prince Sawat was the Minister of Justice (1888 - 1894). Prince Phichit's method of using the *Porisapha* Court to tackle the backlog of unsettled cases was to divide it geographically into four separate jurisdictions. Each court had an equal area of responsibility. The first and second *Porisapha* Courts were responsible for the northeast and southeast of Bangkok and

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<sup>34</sup> Ibid.



surrounding towns. The third and fourth *Porisapha* courts were responsible for the northwest and southwest of Bangkok and the surrounding towns respectively.<sup>35</sup>

Prince Phichit's main purpose in improving the *Porisapha* Court was to divert the trivial cases from the higher courts. He considered that it was not convenient for people to present their cases to the original *Porisapha* Court owing to its extensive territorial jurisdiction which covered the area of Bangkok, Thonburi, and various surrounding towns. Therefore, if he divided this jurisdiction geographically into four separate areas, it would confer benefit to the people to forward their cases to courts within their reach.<sup>36</sup> But there was no alteration in the competency jurisdiction of the *Porisapha* Court for offences where the punishment was not more than fifty floggings, or six months imprisonment, or fine not exceeding six hundred *baht* (Siamese currency).

Prince Phichit transferred judges from other courts in the Ministry of Justice to the newly established *Porisapha* Courts. His principle was that judges in the *Porisapha* Courts were to be transferred every two or three years in order to prevent corruption.<sup>37</sup> This policy had both advantage and disadvantage. The advantage was that it prevented corruption and arbitrary practices which often occurred if judges were positioned permanently in one place for a considerable duration of time. But the longer judges were in one territorial jurisdiction, the more efficient the handling of cases became. Thus this method also had the disadvantage that when the judges were transferred to the new territorial jurisdiction, it took time for them to become accustomed to the cases in the new area.

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<sup>35</sup> Phichit to King, 30 Nov. 1894, NA R5 Ky 1/9.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

Prince Phichit was a leader who knew how to mobilize potential resources. This was seen in his management of the new *Porisapha* Courts. He ordered the transfer of cases which were under the *Porisapha* Courts' jurisdiction from higher courts to their territorial jurisdiction.<sup>38</sup> This benefited the Government because the newly established courts would have cases to consider and decide from the beginning of their establishment, without any lapse of time waiting for new cases to enter into them.

The King agreed with Phichit's policy and gave his permission on 31 November 1894. Apart from that the King increased the Ministry of Justice's budget by 1550 *baht* per month from January 1895 onwards for these newly established courts.<sup>39</sup>

The weakness of dividing the *Porisapha* Court geographically into four equal territorial jurisdictions was that Phichit overlooked the size of the population in each area. As one can see, Phichit was cautious in that the division of jurisdiction was only a trial. This is seen in his policy of using unoccupied government offices or leasing buildings as new court offices. He did not use the Ministry's budget to build new offices. This enabled him to make use of these offices immediately without waiting for newly constructed offices. After the *Porisapha* Courts had operated for seven months, Prince Phichit knew from the statistics of cases that the cases in the third and fourth courts were less than the first and second courts. Consequently, he asked permission from the King to merge the third and fourth courts as one court responsible for the area of the previous third and fourth courts. The King gave his permission on 1 August 1895.<sup>40</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> King to Phichit, 31 Nov.1894, NA R5 Ky 1/9.

<sup>40</sup> Phichit to King, 1 Aug.1895, NA R5 Ky 1/15. Phichit wrote this letter to ask the King's permission to merge the third and fourth courts and the King gave his sanction on the same date by writing on Phichit's letter.

This policy of Phichit worked splendidly as evidenced by the statistics of all cases in the Ministry of Justice in January 1895. The output of settled cases in this month was 560 cases, 347 of which were dealt with by the newly established *Porisapha* Courts.<sup>41</sup>

### 3. The Regulation to abolish Appeal during Trial

One of the most important causes which delayed proceedings in courts was "appeal during trial". Prince Phichit who had plenty of experience in court procedure knew that the practice of allowing one party to appeal against a court order during the trial disrupted the Siamese judicial system. Such a party who was losing or did not want the case to be finished, was able to delay the procedure in court by submitting an interlocutory motion to the judge. If the latter gave an order against his motion, he could still appeal to the *Dika* Court (the Supreme Court), and when the *Dika* Court gave an order against his motion he could submit another interlocutory motion again in the first court. Consequently, cases could be endless, some were abandoned, and some took many years until the trial commenced, thereby placing the witnesses in difficulty.<sup>42</sup>

Prince Phichit attempted to apply his reform first in the four *Porisapha* Courts, planning if successful to apply it to all courts in the Ministry of Justice, and if possible to courts all over the country. The regulation he issued in the *Porisapha* Courts was:

Whilst the trial is in process, if one of the parties submits an interlocutory motion, the judge has to consider it within three days, make an order and explain it to the parties. If the claimant is not satisfied with the court's order, the judge must make note of it. But

<sup>41</sup> Phichit to King, 25 May 1895, NA R5 Ky 1/9.

<sup>42</sup> Phichit to King, 18 Nov.1895, NA R5 Ky 1/9.

the claimant should not appeal at this stage, but wait until the judge decides the case, when the claimant can appeal the motion at the same time as the whole case.<sup>43</sup>

A present-day lawyer should see one disadvantage in this regulation owing to some cases needing a court order for the interlocutory motion to be corrected at the first stage. For if a lower court had ordered the interlocutory motion wrongly, it would still carry on until disposing of the case and the party who objected to the order would then appeal on the order and the decision. If the Appeal Court considered that the order of the motion was wrong, the judge of the Appeal Court would have to order the lower court to hold a retrial. Such procedure would still be time-consuming and would be eliminated if the first order were corrected at once. Despite this weakness, Phichit's policy had advantages and was practicable as evidenced by the fact that it was adopted as a principle of law in the Thai Civil Procedure Code of 1934, subject to some exceptions. This policy of Phichit was very distinct. It improved efficiency and business in the *Porisapha* Courts which proceeded rapidly as shown by the statistics of all cases which had been disposed of by them for January 1895, which amounted to 347 cases, ten times the cases which were disposed of by the *Phra Ratcha-arya* Court during the same period.<sup>44</sup>

After nearly one year of trial in the *Porisapha* Courts, Phichit suggested that the regulation be applied to every court under the Ministry of Justice, and all provincial courts throughout the country. The provincial courts which were still under the Interior Ministry also had the same problems with appeal against the court order during trial. They sent these cases to the Appeal Court in Bangkok and this caused many difficulties. Phichit wrote a letter to King Chulalongkorn complaining that " if we still allow the parties to appeal against the court orders during trial, a

<sup>43</sup> The Proclamation of the *Porisapha* Court of 1894, PKPS, Vol.14, pp.210-212.

<sup>44</sup> Phichit to King, 25 May 1895, NA R5 Ky 1/9.

chaotic situation and pile of unsettled cases would be unavoidable. We should apply this regulation to all the courts throughout the country."<sup>45</sup> The King noted that this regulation was already in operation in the *Porisapha* Courts and up to then it had worked efficiently and there was no defect. Therefore, he promulgated this regulation as an Act to apply throughout the country in November 1895, without any sanction from the Legislative Council.<sup>46</sup>

Prince Phichit was a careful person who would not take a risk. This is evident from his method of implementing this Act which he initially introduced as a regulation in the *Porisapha* Courts, and when successful, expanded it to apply to the whole country.

#### 4. The merger of the *Phra Ratcha-arya* (Court of Punishable Offences) and the *Ratchathanphichet* Court (Penitentiary Court)

These two criminal courts had jurisdiction over serious criminal cases (felony) in Bangkok. The *Ratchathanphichet* Court was established on 1 April 1893, by Prince Sawat, when he was Minister of Justice, on the grounds that one criminal court in Bangkok was not enough to deal with the load of cases. He proclaimed the establishment of the *Ratchathanphichet* Court without any separate territorial jurisdiction from the *Phra Ratcha-arya* Court.<sup>47</sup> When Prince Phichit became Minister of Justice in 1894, he believed that the existence of two criminal courts had caused confusion, disunity, irresponsibility, and a waste of resources.<sup>48</sup> This was evident by the number of unsettled cases in these two courts as of September 1894, the month before Phichit became Minister of Justice, which amounted to 1500 cases.

<sup>45</sup> Phichit to King, 18 Nov.1895, NA R5 Ky 1/9.

<sup>46</sup> King to Phichit, the King gave his sanction by writing on Phichit's letter of 18 Nov.1895.

<sup>47</sup> The Court Organization Act 1893, PKPS, vol.13, p.181.

<sup>48</sup> Phichit to King, 27 Nov.1895, NA R5 Ky 1/9.

The output of settled cases in that month was 26, but the inflow amounted to nearly 100.<sup>49</sup>

The reason for the confusion, disunity, and avoidance of their responsibilities by the two criminal courts was that they had no separate territorial jurisdictions. This was due to Prince Sawat's failure to define the separate jurisdiction of the newly established *Ratchathanphichet* Court. Phichit had two ideas to cure this failure, either defining separate territorial jurisdictions or merging them together. Phichit asked permission from the King on 4 January 1896 to merge the two criminal courts together to be called "*Phra Ratcha-arya*" Court (Court of Punishable Offences). The King gave his sanction on the same date.<sup>50</sup>

The advantages of merger of the two criminal courts were that it enabled some of the judges to be transferred to other courts, it ended the avoidance of responsibility, expenditure was reduced, and the Government could use the vacated offices for other purposes.

5. The Establishment of Special Commissioners to deal with Unsettled cases who later formed a *Rapsang* Court

This policy of Prince Phichit was recommended to the King in the same 12 November 1895 letter as the merger of the two criminal courts. The situation of the unsettled cases in all courts at that time was very serious because there were about 3,000 unsettled cases in all courts in the Ministry of Justice.<sup>51</sup> This tremendous number of unfinished cases suggested to the Western Powers the obsolescence of the

<sup>49</sup> Phichit to King, 30 Nov.1894, NA R5 Ky 1/9.

<sup>50</sup> Phichit to King, 4 Jan.1896, NA R5 Ky 1/9. The King gave his sanction by writing on this letter on the same date.

<sup>51</sup> Phichit to King, 27 Nov.1895, NA R5 Ky 1/9.

Siamese judicial system. Phichit believed that he should appoint three groups of Special Commissioners to deal with the quantity of pending cases because the normal court procedure was in no position to deal with all these cases. He also wanted to reduce these pending cases dramatically before the enactment of the Temporary Criminal Procedure Act of 1896.<sup>52</sup> He discussed this matter with M. Kirkpatrick, the Legal Adviser to the Foreign Ministry, regarding the proclamation and regulations of the Special Commissioners. Prince Phichit was a leader with initiative and a sense of judgment. He realized that M. Kirkpatrick was enthusiastic and willing to assist him in dealing with this problem. He reckoned that Kirkpatrick would be disappointed if he was excluded from the project. Moreover, Phichit believed that the appointment of a European as one of the Special Commissioners would impress the Western powers. Therefore he appointed Kirkpatrick as a Special Commissioner in group 1. This appointment was to kill two birds with one stone; namely gain a capable person to help and impress the Western powers at the same time.

One of the issues which aroused much discussion was the order of priority of cases to be decided. Prince Phichit argued that they should give priority to all cases which had been pending in courts for more than three years; i.e. cases which had been pending in courts before 1892, or before the proclamation of the Ministry of Justice. However, M. Kirkpatrick held a different opinion. He proposed that the Special Commissioners should deal with all kinds of pending cases simultaneously by dividing all pending cases into groups and allotting each group to a set of Special Commissioners organized by themselves into three groups.

Group 1 of the Commissioners would deal with all pending cases which had been in courts for more than three years.

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<sup>52</sup> Ibid.

Group 2 would deal with all pending cases already decided but left in the courts for execution of judgment. This group would also deal with pending cases which had been left in courts for less than three years.

Group 3 would deal with compoundable offences. Cases in which the parties had failed to reach a settlement would be transferred to group 1 to be considered and decided upon.

M. Kirkpatrick was applying the European mode of thinking. He knew that giving priority only to cases pending in courts for more than three years would not be effective. As a result Europeans would find Siam's judicial system rather backward owing to the number of cases which had been pending in courts for two or three years.<sup>53</sup> Eventually Phichit concurred with M. Kirkpatrick as there had been more than three hundred cases pending in courts after 1892.<sup>54</sup> It was found appropriate to settle cases simultaneously.

Prince Phichit submitted his opinion on appointing three groups of Special Commissioners and his choice of suitable persons to King Chulalongkorn. Group 1 had seven persons including M. Kirkpatrick, group 2 had five persons including Prince Phichit himself, group 3 also had five persons. Writing three days after the Anglo-French Joint Declaration which purported to guarantee Siam's independence, King Chulalongkorn agreed with Phichit and wrote a letter of 18 January 1896 asking if there was any guarantee that cases which had been pending in courts less than three years would not accumulate. The King also stated in his letter that the reason why Siam's judicial system was overloaded with pending cases was due to the lack of modern procedural laws. After introducing these laws the Siamese judicial system would gain confidence, and the King also warned Phichit that:

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<sup>53</sup> Phichit to King, 17 Jan. 1896, NA R5 Ky 1/13.

<sup>54</sup> Ibid.



When we obtain these new procedural laws, at the same time all the pending cases would be settled. This will show clearly the efficiency of the Ministry of Justice. You must try your best to plan and improve Siam's judicial system.<sup>55</sup>

The King's letter of 18 January 1896 to Phichit was distinct from all others because in this letter the King demanded some success from Phichit and asked for guarantees. The reason behind this was perhaps that the King knew that Prince Raphi, his son, whom he had sent to study law at Oxford University, had finished his studies and was coming back to Siam. The King's old prejudice against Phichit might have come back to his mind. Now Phichit was not indispensable to him any more, and if Phichit fell short of required standards in any project, he could dismiss him in due course and appoint Raphi in his place.

One of the arguments which caused much discussion was the status of the Special Commissioners. Phichit suggested that they should hold *Rapsang* Courts (Courts appointed by the King to deal with particular case or cases). Phichit had much experience in *Rapsang* Courts because he had been appointed by the King to deal with a *Rapsang* Court back in 1874, and he had also been appointed the president of the *Dika* Court in 1885, and the *Dika* Court was a kind of *Rapsang* Court. Phichit knew that the *Rapsang* Courts' procedure was brief and efficient, that there was no appeal to the Appeal Court, and therefore if one or both parties were not satisfied with the decision of a *Rapsang* Court, he or they could appeal straight to the *Dika* Court. The King gave his consent to Phichit's idea on 18 January 1896.<sup>56</sup> Finally there was a proclamation of a Royal Ordinance to establish the *Rapsang* Court for dealing with all unsettled cases in courts in the Ministry of Justice on 9 February 1896.<sup>57</sup> The establishment of the Special Commissioners who subsequently became a

<sup>55</sup> King to Phichit, 18 Jan.1896, NA R5 Ky 1/13.

<sup>56</sup> Ibid.

<sup>57</sup> The Royal ordinance to establish the *Rapsang* Court for dealing with unsettled cases in the Ministry of Justice, PKPS, Vol.15, pp.72-75.

*Rapsang* Court was the culmination of Phichit's ideas in co-operation with M. Kirkpatrick, the Legal Adviser. This *Rapsang* Court considered and decided about 100 pending cases per month. This statistic shows its efficiency, and therefore, when its initial life expired, it was given two extensions of six months each.<sup>58</sup> Phichit's policies had been realized and when he left office in March 1897, the number of unsettled cases had dropped dramatically.

#### Section IV The improvement of the Staff and the Court Procedure

##### The Royal Pages' Inspection of the Court of Justice

One factor which delayed proceedings in the courts of justice was the inactivity of the staff. The court officials including judges were accustomed to a slow routine. Prince Phichit was aware of this problem and sought to overcome it. King Chulalongkorn's answer to this problem after February 1896 was sending Royal Pages to inspect the Ministry of Justice's courts. There were various reasons for this: firstly, it was likely that the King still heard numerous rumours about the inefficiency of the Ministry of Justice. This can be seen from a letter from the King to Phichit of 15 September 1895, where the King mentioned that "...at present there are widespread rumours that the Ministry of Justice is inefficient and deserves to be criticized."<sup>59</sup> This was too early to blame Phichit because, in September 1895, he had been Minister of Justice only ten months and the Ministry of Justice had deep-rooted problems dating back hundreds of years.

Secondly, it might also seem that the King wanted to assist Prince Phichit, because the King was aware of Phichit's mounting difficulties at that time. Thus in the King's letter of 11 February 1896, to Phichit, he wrote:

<sup>58</sup> The Proclamation of extension of time for the *Rapsang* Court for dealing with the pending cases, PKPS, Vol.15 p.125.

<sup>59</sup> King to Phichit, 15 Sept.1895, NA R5 Ky 1/10.

I sent the Royal Pages to inspect the courts in order to ease your work load. This practice should stimulate the judges and the court officials to perform their duties efficiently. I do not base my opinion on the Royal Pages' reports. I believe that the efficiency of the Ministry of Justice depends on the Minister. If the Minister constantly inspects and trains the staff to be responsible in their duties and develops the court procedure, it is certain that the work of the Ministry of Justice will be achieved and the reports of the Royal Pages will be unnecessary.<sup>60</sup>

The Advantages and Disadvantages of sending Royal Pages to inspect the Courts.

Advantages Firstly, the direct consequence was, as the King claimed, the activation of the courts' officials including judges. When the King read reports of the Royal Pages, any defect he identified would be mentioned to Phichit. For instance, in one criminal case, four defendants were imprisoned for theft for three years each. After serving the full term in prison, three of the defendants were released. The judge abandoned the case of the fourth defendant because the latter was supposed to have died during his term of punishment. Subsequently, the relatives of the fourth defendant who was in fact still alive, submitted a complaint to the court in order to get him released. The judge then ordered his officials to clarify the situation and found that the fourth defendant was still in prison. Only then did the judge order the release of the fourth defendant. The King mentioned this case to Phichit.<sup>61</sup>

Secondly, the reports of the Royal Pages informed the King of the diligence of judges. Some judges were irresponsible. For instance, one Royal Page inspected the Civil Court twice and found that two cases were adjourned because *Phra Kasaem*, the judge who was in charge of these two cases, did not attend the court. At first the King did not believe the Royal Pages so he inquired of *Nai (Mr.) Mote*, a Siamese

<sup>60</sup> King to Phichit, 11 Feb.1896, NA R5 Ky 1/9.

<sup>61</sup> *Phraya Thewet's* report to the King, 1 Oct.1896, NA R5 Ky 1/9.

Barrister, who worked in the Public Prosecution Department, and *Phraya Pracha* who was a judge. Both informed the King that *Phra Kasaem* had been engaged in private business and seldom came to the court. The King mentioned this matter to Phichit and demanded that Phichit should investigate the diligence of judges and punish and reward them according to their responsibilities.<sup>62</sup>

Lastly, the Royal Pages' reports showed the dishonesty of officials in courts. Dishonesty tends to occur everywhere if there is no inspection. For instance, one Royal Page went to inspect the International Court and discovered two cases which were submitted in 1895. *Khun Prasat*, a court official, charged the parties for the court's fees but did not buy stamps to affix them to the reports<sup>63</sup> (It is a court regulation in the Ministry of Justice up to the present to use the money for the court fees to buy stamps and affix them in the report).

Disadvantages All the Royal Pages whom the King sent to inspect the courts were inexperienced young men. They were likely to make mistakes in their reports. This was the reason why the King did not rely entirely on their reports. The King considered that the most important person in the administration of Justice was the Minister. If the Minister was competent, honest, and whole-heartedly willing to improve the Ministry, all the Royal Pages' reports would be unnecessary. This point indicates that the King may have been suspicious from the outset that Phichit did not use all his authority to improve the Minister of Justice. One of the King's advisers, *Phraya Thewetwongwiwat*, attempted to find mature Royal Pages to direct their juniors, but the King disapproved because the King wanted these young Royal Pages to work independently and report directly to him. If the mature Royal Pages directed

<sup>62</sup> King to Phichit, 2 Feb.1897, NA R5 Ky 1/10.

<sup>63</sup> *Nai Chit* to King, 26 Nov.1896, NA R5 Ky 5/1.

the young ones, the reports would be the former's reports.<sup>64</sup> The other disadvantage was that the inspection of the Royal Pages at times obstructed the normal court procedure.

According to the reports of the Royal Pages together with the King's own experience in visiting the courts of justice, towards the end of April 1896, the King felt justified in telling Phichit that the proceedings in the courts commenced too late in the day owing to the lack of punctuality of the parties and judges, and suggested that the Ministry of Justice should require the parties to be punctual.<sup>65</sup> Phichit informed the King that the Temporary Civil Procedure Act was in process of preparation so he would temporarily apply the rule of the Evidence Act 1895 to this matter.<sup>66</sup> The King concurred with Phichit but before its implementation, he consulted with Prince Thewawong. The latter agreed with the King and suggested that the Ministry of Justice should print the regulation on the writ to make the people aware of it and act accordingly.<sup>67</sup> It seems at times evident that the King was the centre of the Government administration, and the ministers had no real power. But the King sought opinion from Thewawong, Minister of Foreign Affairs, even though the latter's influence had declined tremendously after the Paknam incident,<sup>68</sup> and applied it to the Ministry of Justice. This caused complications and conflict between the different ministers as is evident from the circumstances of Phichit's resignation which will be outlined shortly.

On 3 May 1896, three months after beginning to send the Royal Pages to inspect the courts, the King mentioned to Phichit about the lack of punctuality of

<sup>64</sup> King to *Phraya* Thewet, 17 Feb. 1896, NA R5 Ky 1/9. The document did not state his office at that time.

<sup>65</sup> King to Pitthayalap, 2 May 1896, NA R5 Ky 2/8.

<sup>66</sup> Phichit to King, 2 May 1896, NA R5 Ky 2/8.

<sup>67</sup> Thewawong to King, 7 May 1896, NA R5 Ky 2/8.

<sup>68</sup> N.J. Brailey, Two Views of Siam on the Eve of the Chakri Reformation, (Singapore, 1989), p.98.

judges and expressed his desire that he require judges to arrive at courts before 10 a.m. Consequently, Phichit drafted a Ministry of Justice regulation and submitted it to his Majesty.<sup>69</sup> This regulation was very strict because it required judges to arrive at courts before 10 a.m. and commence the business at 10 a.m. exactly. If a judge came one minute late, he would be reported to the Minister of Justice on that day by the registrar, and if the latter concealed it, he himself would be punished and the informant of this matter would be rewarded. The judges could not take their leave unless they received permission beforehand. The King authorized this regulation on 6 May, 1896.<sup>70</sup>

#### Section V Prince Phichit's resignation as Minister of Justice

According to the documents at the Thai National Archives, Bangkok, Prince Phichit resigned from the post of Minister of Justice because he became seriously ill with an incurable disease to the extent that he was unable to perform his duties, which took effect from 3 March 1897. The King accepted his resignation and appointed Prince Raphi as the next Minister of Justice on the same date.<sup>71</sup> However, this explanation seems unsatisfactory because it ignores or contradicts other evidence.

Firstly, regarding the relationship between the King and Phichit, as has been seen, there is evidence to indicate that before the appointment of Phichit as Minister of Justice the King disliked him. Secondly, a matter which is worth considering is the relationship between Phichit and Prince Thewawong, Minister of Foreign Affairs. There were two conflicts between them:

<sup>69</sup> Phichit to King, 5 May 1896, NA R5 Ky 1/18.

<sup>70</sup> King to Phichit, 6 May 1896, NA R5 Ky 1/18.

<sup>71</sup> The Appointment of the new Minister of Justice, PKPS, Vol.15, pp.247-248.

1) Phichit criticized Thewawong's inactivity; in conversation with Ernest Satow back in April 1886, Phichit said that "he was disappointed. The King does not show the same appetite for reform that he had expected....Devan (Prince Thewawong, *Phrakhlang* Minister) has done nothing towards abolition of forced service, which Phichit thinks very important, especially in the Eastern Laos states or provinces where 4 ticals a year has to be paid by the able-bodied men as a penalty for the rebellion of Wiengchan (Vientiane) 50 years ago. In face of France it is necessary to reform the condition of those provinces".<sup>72</sup> Thewawong could not stand this kind of criticism and it is likely that if he heard of it he disliked Phichit himself.

2) The serious conflict in 1894 between Phichit and Thewawong over the issue of transferring a judge from the International Court. Phichit asked permission from the King to rearrange the positions of judges in the Ministry of Justice by transferring *Phraya* Thammasanwit from *athibodi* (Chief Judge) of the International Court to be *athibodi* of the *Ratchathanphichet* court, and to transfer *Phraya* Manusansat from Vice-*athibodi* of the Appeal Court to be *athibodi* of the International court. Prince Phichit's intention in the rearrangement was to place judges according to their abilities and to remove Prince Promwaranulak from *athibodi* of *Sanpakorn* (Tax) Court to Vice-*athibodi* of the Appeal Court to assist *Momchao* Khao the *athibodi* of the Appeal Court who was not well. The King approved Phichit's plan promptly, on 25 December 1894, because it was a change within the Ministry of Justice itself.<sup>73</sup> The Ministry of Justice had to report this change to the Foreign Ministry to give notice to the ambassadors and consuls of other countries in Siam.

<sup>72</sup> N.J. Brailey, *Chiengmai and the Inception of an Administrative Centralization Policy in Siam (II)*, *Kyoto Southeast Asian Studies* vol.II, No.4, March 1974, p.456.

<sup>73</sup> King to Phichit, 25 Dec.1894, NA R5 Ky 3/1.

The problem occurred when *Phraya Manusansat* refused to accept the post of *athibodi* of the International court claiming that he was not suited to occupy this post and resigned from Government office. Prince Phichit reported this difficulty to the Foreign Ministry and ordered *Luang Thammasat* to assume the position temporarily until the matter could be settled. The Ministry of Justice informed the Foreign Ministry by a formal letter on 31 December 1894,<sup>74</sup> and the latter answered on 19 January 1895, that Prince Thewawong was not satisfied with *Luang Thammasat* retaining this position and demanding that this decision should be reported for approval of the King.<sup>75</sup> On the same day, Prince Thewawong wrote a letter to Prince Sommot, the Royal Secretary, demanding that the latter should write a formal letter to warn the Ministry of Justice to get permission from the King. King Chulalongkorn answered Thewawong's letter:

It is true that I have written a letter to Prince Phichit allowing him to transfer judges in the Ministry of Justice according to his discretion, but my wording leaves a gap for the person who seeks an opportunity to use his power.<sup>76</sup>

It is evident that the King's dislike of Phichit became aggravated because the phrase "the person who seeks an opportunity to use his power" presumably means Phichit. It is not clear whether Phichit is to be blamed in this incident, but looking at the circumstances the King may have left the matter to Phichit's discretion which means Phichit had authority to appoint *Luang Thammasat* in the place of *Phraya Manusansat*. However, this incident did worsen both the relations between Thewawong and Phichit, and the King and Phichit.

It is worth considering the reason why Thewawong interfered with the management of the Ministry of Justice. There are two possible reasons:

<sup>74</sup> *Phraya Srithammasan* to *Phraya Pipatkosarat*, 31 Dec.1894, NA R5 Ky 3/1.

<sup>75</sup> *Phraya Pipatkosarat* to *Phraya Srithammasan*, 19 Jan. 1895, NA R5 Ky 3/1.

<sup>76</sup> Sommot to Thewawong, 20 Jan.1895, NA R5 Ky 3/1.



1) He might have done it because he genuinely believed that Phichit's decision to replace *Phraya Manusansat* with *Luang Thammasat* was not according to the Government's best interest and he wanted to correct it.

2) The nature of the Government administration in the time of King Chulalongkorn meant that each minister tried to show his ability to please the King. The competition and cooperation for the common benefit would bring progress to the country but, on the other hand, self-interested competition could bring about confusion and hatred. At that time, two Ministers who competed with each other were Prince Thewawong, Minister of Foreign Affairs, and Prince Damrong, Minister of Interior. Thewawong's influence declined dramatically after the Paknam incident because he signed the Convention of 3 October 1893 with the French, which involved great losses to Siam.<sup>77</sup> But Damrong's influence was increasing because after he took charge of most of the provincial administration in 1892, his projects met with great success.<sup>78</sup> Thewawong's interference here seems to indicate his struggle to regain power.

Thewawong and Damrong disliked each other. Their dislike was known among the foreign ambassadors, consuls, and the government officials. Soon after the Paknam crisis, Mr. Scott, the British Charge, reported to the Earl of Kimberley in April 1894 that:

A perhaps inevitable result of the King's illness has been a series of plots among Princes. There has been an organized attempt to overthrow Prince Thewawong, the Minister of Foreign Affairs. The most prominent schemers have been Princes Damrong and Pitthayalap.<sup>79</sup>

<sup>77</sup> Scott to Rosebery, 28 Jan. 1894, PRO FO 422/39.

<sup>78</sup> Tej Bunnag, The Provincial Administration of Siam 1892-1915, the Ministry of Interior under Prince Damrong, Oxford University Press, 1977.

<sup>79</sup> Scott to Kimberley, 14 April 1894, PRO FO 422/39.

Damrong had a good relationship with Phichit and later claimed to admire the latter for his willingness and ability to improve the Siamese judicial system, and especially for his prominence in the Phra Yot case.<sup>80</sup> The good relationship between Damrong and Phichit would have strengthened Damrong's position and weakened Thewawong's. Thewawong had earlier had the advantage because he was a full brother of three of the Queens of the King. Queen Saowapha became increasingly influential with the King and subordinated all the *Chao Chom* (the minor royal wives who gave a child or children to the King, though the King had no more children after 1893) under herself. It is probable that Thewawong used her to get rid of one of his opponents, namely Phichit, but Damrong himself was the King's favourite and difficult to deal with in this way.

Also the opportunity to replace Prince Phichit arrived when Prince Raphi, one of the King's sons by *Chao Chom* Talap, who graduated law from Oxford University, came back to Siam in 1896, and was appointed the president of the Justice Ministry Special Commissioners to reorganize the provincial courts. The King may have thought that the time had come for him to substitute Raphi for Phichit. He still disliked Phichit and Raphi was well qualified for this position despite his inexperience in the Siamese judicial system, so the King no longer had need for Phichit's service any more.

The reason cited for Phichit's resigning from his post, his serious illness, seems unlikely. Even though his health was not good, he was still active and capable of performing his duties. This is evident from the last important legislation he attempted to enact, "The Abolition of the Torture Procedure Act 1897", which was promulgated only two days before he left his office. And if he had been seriously ill, he should have died soon after his resignation. But he lived twelve more years.

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<sup>80</sup> Prince Damrong, *op.cit.*, pp.12-15.

After his resignation he was also appointed by the King as a judge in the *Dika* Court. This is evident in the report of Prince Sirithat and Dr. Masao, the Japanese Legal Adviser, to the King dated 10 April 1906 that Prince Phichit's return to the *Dika* Court, in the middle of 1905, was a great help as the *Dika* Court was under-staffed.<sup>81</sup> Phichit was also a teacher in the newly established Law School. After his resignation in 1897, he was also appointed by the King as a member of the Law Commission for Codification along with M. Rolin-Jaequemyns and others to revise old laws and codify codes of law.<sup>82</sup> This indicates that he was still capable of continuing his job.

### Conclusion

Prince Phichit was a liberal, imbued with the idea of setting people free from oppression; i.e. he was instrumental in abolishing slavery, and his policies of releasing people from flogging and torture procedures, support this argument. He was even in a sense a revolutionary, as seen from his suggestion to the King of reorganizing the whole system of the Ministry of Justice, and his plan to implement the Constitution of the Ministry of Justice's staff to reorganize the whole of its staff.

Prince Phichit was a good administrator as shown by his ability to mobilize resources; he appointed M. Kirkpatrick as a Special Commissioner to deal with unsettled cases in order to have his full support and cooperation. He increased the number of the *Porisapha* Courts with separate jurisdictions to improve their capacity and benefit people, enabling them to forward their cases to the nearer court. He knew the importance of the cooperation of other Government ministries as he requested a conference of the Government officials to consult about issuing desirable laws. And Phichit's method of solving the problems was to apply his policies at the lower level and, if successful, then extend them to the whole Ministry of Justice.

<sup>81</sup> Sirithat and Masao to King, 10 Apr.1906, NA R5 Ky 10/18.

<sup>82</sup> Botbandit (The Ministry of Justice's journal), (Bangkok, 1968), vol.25, p.490.

This is evident from the laws of "Changing the punishment of Flogging to Imprisonment" and "The Abolition of Appeal during Trial."

One controversial question is whether the reformation of the Ministry of Justice was simply aimed to please the Western powers in order to secure Siam's independence, or to genuinely benefit Siamese people. In Prince Phichit's case, it is difficult to be certain whether his policies aimed mainly to secure Siam's independence or to benefit the Siamese people. One could conclude from many of his policies that it is unlikely that Phichit, as Minister of Justice, even without any Western threat, would have done nothing to improve the Ministry of Justice to benefit the Siamese people. If one considers in depth many of his policies, for instance, the "Changing the punishment of Flogging to Imprisonment" and "The Abolition of Torture Procedure Act", one could conclude that his policies were designed to release poor Siamese people, who had no money to pay fines and had to receive a barbaric punishment, from agony. The second purpose of these two laws was to improve the image of the Siamese judicial system in the eyes of the Western powers. But some other of his policies, for instance, "the Establishment of the Special Commissioners to deal with unsettled cases" and "the Merger of the two Criminal Courts", were aimed to make the Siamese judicial system more efficient in order to satisfy the Western powers and secure Siam's independence; the benefit of the Siamese people was the second purpose. Admittedly, as a whole, the Western powers' threat was a great catalyst to stimulate changes in the Ministry of Justice during Prince Phichit's term of office.

Generally, the main purpose of Phichit's modernization of the Ministry of Justice was to upgrade the Siamese judicial system to a standard which would be acceptable to the Western powers in order to persuade them to cancel extraterritoriality. It is ironic that he served in his office only two years and four

months, for within this short period he improved the Ministry of Justice to a great extent.

Chapter 7 Judicial Reform while Prince Raphi was the Minister of Justice(3  
March 1897-26 June 1910)

Section I The Background of Prince Raphi

Prince Raphi Pattanasak was the fourteenth child of King Chulalongkorn, born on 21 October 1874, by *Chaochom* Talap. He was educated at primary level in Siamese language by *Phraya* Owatworakit (Kaen) in 1883. At that time Prince Damrong was in charge of establishing *Suankulap* (Rose Garden) School in the Palace. By 1884 *Suankulap* School was firmly established, and in that year King Chulalongkorn went to give prizes to the good students. After he had seen the progress of the school, he mentioned to Prince Damrong that his four eldest sons, namely Princes Kittayakorn, Raphi, Prawit and Chira were old enough to enter *Suankulap* School, and asked Damrong to accept them as students. Prince Damrong suggested that these four princes should study together in the same class separate from other students, and he selected Mr. Pan Sukhum, a member of a wealthy family in Kanchanaburi who had disrobed from the monkhood and served under Prince Damrong's command, and who later became *Chaophraya* Yommarat, as their teacher, because he knew of Mr. Pan's ability and quality in the Siamese language.<sup>1</sup>

It was the King's intention to send his sons to study in Europe. Therefore, in 1885, after Prince Raphi and the other three princes had passed the ceremony of cutting their topknots and had served as Buddhist novices for fifteen days at *Wat Phra Keo* (Emerald Temple), in the Grand Palace, the King commanded *Phraya* Chaisurin to accompany the four princes to London, and ordered Prince Naret, the

<sup>1</sup> Prince Damrong, Phraratchahattaleka Phrabatsomdet Phrachulachomklao thung Chaophraya Yommarat and prawat Chaophraya Yommarat (Pan Sukhum) (Private letters of King Chulalongkorn to *Chaophraya* Yommarat and Biography of *Chaophraya* Yommarat), printed in the cremation book of *Chaophraya* Yommarat 10 April 1939, p.(37).

Siamese Ambassador to London, to be their guardian. The King also took into consideration that the four princes were educated in Siamese language only one year in the *Suankulap* School and were likely to forget it if there was no one to instruct them in Siamese. Consequently, the King asked Prince Damrong to find a suitable Siamese teacher to accompany the princes. Prince Damrong suggested Mr. Pan because he was already the teacher to the princes and was very well qualified in the Siamese language. The King agreed with Prince Damrong and promoted Mr. Pan as *Khun Wichitworasan* to accompany the princes as their Siamese teacher.<sup>2</sup>

When Prince Raphi and the other three princes arrived in London, Prince Naret provided a house for them in which to stay, together with *Khun Wichitworasan*, and also provided an English teacher to teach the princes everyday. During their free time *Khun Wichitworasan* taught Siamese language to them. In 1886 Prince Naret returned to Bangkok,<sup>3</sup> and therefore *Khun Wichitworasan* became their Siamese teacher and guardian at the same time. In 1887 the King sent Prince Thewawong to the celebration of Queen Victoria's Golden Jubilee. On his return to Siam via the USA and Japan, he took Raphi and the other three princes on a visit home. He also brought back *Khun Wichitworasan* and the English teacher to continue teaching English during the princes' stay in Siam. During this time in Bangkok, the English teacher taught them English for half a day and *Khun Wichitworasan* taught Siamese for half a day.<sup>4</sup>

Princes Raphi, Kittiyakorn, Prawit and Chira stayed in Bangkok for ten months. In 1888, the King ordered Prince Saisanitwong, his cousin, to go to inspect the Siamese officials in Europe and also to escort Prince Raphi and the other three

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<sup>2</sup> Ibid., pp.(38)-(39).

<sup>3</sup> The reason for King Chulalongkorn calling Prince Naret back to Bangkok was probably his participation in the submission of the 1885 petition. Though see Satow Diaries 28 March 1886, PRO 30/33/15/9.

<sup>4</sup> Ibid., pp.(38)-(39).

princes back to London. *Khun Wichitworasan* was then married to a Miss Talap and was promoted to Assistant Secretary to the Siamese Ambassador, still in charge as Siamese teacher to the princes. Prince Raphi had a deep relationship with him and his new wife because not only were they in charge of his study but also looked after him very well when he was in England.<sup>5</sup>

Prince Raphi was sent to study in a school in London for three years and finished high school in 1892. The previous year (ie. 1891), Prince Damrong was sent on his first trip to Europe as the King's special envoy to return the visit of the Tsarevitch of Russia and confer Siamese decorations on European heads of State. The King also ordered him to enroll Prince Raphi as a law student at Christchurch College, Oxford University, according to Raphi's desire. Raphi started his legal education in Christchurch college in 1892. In 1893, shortly before the Paknam crisis, King Chulalongkorn also sent Prince Wachirawut to study in England. It is difficult to determine the relationship between Prince Raphi and Wachirawut, who later succeeded as Crown Prince on the death of Prince Wachirunhit in January 1895. They met together once in Paris on 13 July 1895, when the Crown Prince visited Paris and Raphi also went there.<sup>6</sup> Much later, when the Crown Prince became King Wachirawut and appointed Raphi as the Minister of Agriculture, he claimed to have good relations with Raphi, stating that:

Prince Raphi is a good elder brother and has had a good relationship with me since I studied in Europe right up to the present. He always remained loyal to me since I became King and also understands my policies. He was a capable Minister of Justice when he reorganized the Siamese judicial system and had full legal knowledge. Now the post of Minister of Agriculture is vacant and I consider that Prince Raphi is a capable person to accept this position.<sup>7</sup>

<sup>5</sup> *Ibid.*, pp.(42)-(49). The English Secretary to the Siamese Legation, F.W. Verney, also bore some responsibility. See Brailey, Two Views of Siam on the Eve of the Chakri Reformation, (Singapore, 1989), p.100 footnote 42.

<sup>6</sup> Tavi Muktarakosa, Phra Mahatiraratchao (King Wachirawut), Bangkok 1963, pp.56-58.

<sup>7</sup> Turakitbandit College (ed.), Raphi Sompochkrung (Biography of Prince Raphi), (Bangkok 1982), pp.1-2. Yet Raphi the candidate of the 1912 military plotters to



Prince Raphi graduated with a law degree from Christchurch College in 1896, and went back to Siam in the same year.

### Section II Prince Raphi's role before his Appointment as Minister of Justice

Prince Raphi returned to Siam with his English law degree at the beginning of 1896. Owing to his eleven-year education in England, he was lacking in experience of government administration and knowledge of Siamese law. Therefore, the King sent him to train in government administration in the Office of the Royal Secretary which was under Prince Sirithat's control. At the same time, Prince Raphi spent his time studying Siamese laws under the tutelage of *Khunluang Phra Kraisi* (Pleng Wepara)<sup>8</sup> who had been the first Siamese to be called to the English Bar and at that time was the *athibodi* of the Public Prosecution Department. *Khunluang Phra Kraisi* was expert in both English and Siamese law because he was educated in English law at the Middle Temple and had been trained in Siamese law by Prince Phichit before he won the King's scholarship to study law in England.<sup>9</sup>

During his training in the Office of the Royal secretary, Raphi established a close relation with La-or Krairoek, a clerk who later became *Chaophraya Mahithorn* and the right hand man of Prince Raphi during his period as Minister of Justice. It is important to note his career. La-or Krairoek was born on 2 July 1874, the same year as Raphi, into a noble family. His father, *Phraya Petcharat* (Mora Krairoek) was a grandson of *Phraya Kraikosa* (Roek), the founder of Krairoek family. His mother, Mrs. Tarn, was the third wife of *Phraya Petcharat*. He received one year of

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replace Wachirawut as King. See Vella W.F., Chaiyo! King Vajiravudh and the development of Thai Nationalism, the Univ. Press of Hawaii 1978, 58-59.

<sup>8</sup> His biography will be illustrated in chapter 9.

<sup>9</sup> Marut Bunnag (ed.), Arnusorn naingan Phraratchatan poengsop Khunluang Phraya Kraisi (Pleng Wepara) (Biography and work of Khunluang Phraya Kraisi), printed in his cremation volume, (Bangkok, 1983), pp.(1)-(2).

primary education at Chakrawat Temple School, and after that enrolled as a student in the *Suankulap* School in the Palace in 1886, a year after Raphi's first departure for England. After six year of study in this school, he finished when he was seventeen.<sup>10</sup>

In August 1891, *Phraya* Petcharat recommended him to Prince Sirithat, the *athibodi* of the *Dika* Court in succession to Prince Phichit, to be trained in the *Dika* Court. He worked as a clerk in the *Dika* court until March 1892, when the Proclamation of the Establishment of the Ministry of Justice changed the *Dika* Court to the Royal Appeal Court within the Ministry of Justice. As a consequence, the *Dika* Court ceased to exist during this period and Prince Sirithat was transferred to be the Royal Secretary for legal affairs. La-or was also transferred as a clerk in the Office of the Royal Secretary. In 1894, he ordained as a monk in Bowornniwet Temple, and during this period he established a relationship with Prince-Monk Wachirayan. After his period as a monk, he resumed his position in the Office of the Royal Secretary and he married Miss Kleep, a descendant of *Chaophraya* Rattanapipit (Son), the founder of the Sonthirat family.<sup>11</sup>

La-or, who was interested in the judicial system and spent his time in the office, studied *dika* cases. This enabled him to research cases for Prince Raphi when the latter came to train and seek legal knowledge in his office. Owing to their common interest in law, they exchanged legal knowledge and became close friends.<sup>12</sup>

When the King set up the Royal Pages' school in 1896 to train persons for government service, he required a qualified person to run this school. As the director of this school had to be qualified in the academic field and respectful to others, the

<sup>10</sup> Luang Chakraprani, Reungkhong Chaophraya Mahithon (La-or Krairoek) (the Career of *Chaophraya* Mahithorn), printed in the cremation volume of *Chaophraya* Mahithorn, (Bangkok, 1956), p.63.

<sup>11</sup> *Ibid.*, pp.46-47.

<sup>12</sup> *Ibid.*, pp.49-50.

King inquired of Prince Raphi whether he would accept this post. Raphi replied that he was specially qualified in the legal field and would prefer a post he was trained for, so he rejected this offer.<sup>13</sup>

Prince Raphi's Role as the President of the Special Commission to Reorganize the Provincial Court

At that time, the work of reorganizing the modern Ministry of Justice had been proceeding under Prince Phichit for a period of about two years, but was restricted to the area of Bangkok and the surrounding towns. The King and Prince Phichit shared the opinion that if they carried on with the reorganization of the Bangkok courts and left the provincial courts alone, by the time they completed the reform of the Bangkok courts, it would be too late to deal with the provincial courts. Consequently, they agreed to establish a Special Commission to reorganize the provincial courts.<sup>14</sup> On 21 September 1896, there was a proclamation to appoint a Special Commission which comprised Prince Raphi as president of the Commission, *Khunluang Phra Kraisi* (Pleng Wepara), the *athibodi* of the Public Prosecution Department, and M. Kirkpatrick, the legal adviser.<sup>15</sup>

*Khunluang Phra Kraisi* explained the purposes and methods of reorganizing the provincial courts in his memorandum:

Firstly, the Commission has to establish a provincial court in every town in each *monthon* in order to confer convenience on people who want to bring their cases to court. The town which is the centre of the *monthon* has to establish a *Monthon Court*. Secondly, the Commission will select some officials in each town who are capable of acting as judges and send their names to the Ministry of Justice to appoint them as judges. Thirdly, the Commission will authorize these judges to decide and enforce cases in their jurisdiction without any

<sup>13</sup> Botbandit, the Ministry of Justice's journal, (Bangkok, 1972), vol.29, section2, p.261.

<sup>14</sup> *Ibid.*, p.261.

<sup>15</sup> The Appointment of the Ministry of Justice's Special Commissioners 1896, Prachum Kotmai Pracham Sok or PKPS (Annual Collection of Thai Decrees), vol.15, pp.148-149

interference from Bangkok except in very serious cases. They can also give judgment without consultation with the *Khaluang Thesaphiban* (the head of the *monthon*). Fourthly, the Commission will appoint capable persons as public prosecutors in each provincial court. Fifthly, the Commission should work from *monthon* to *monthon* in order to train the officials in the *monthon* court to retrain the officials in the provincial courts in that *monthon*.<sup>16</sup>

Because of their close relationship, Prince Raphi persuaded La-or to be his secretary while he was President of this Commission. La-or accepted this offer and resigned from the Office of the Royal Secretary with Prince Sirithat's consent. But on 3 March 1897, as La-or was preparing to accompany Raphi to Ayuthya to deal with provincial courts in *monthon* Krungkao (Ayuthya), there was a proclamation to appoint Prince Raphi as the Minister of Justice. As a consequence, La-or became instead secretary to the Minister of Justice.<sup>17</sup>

### Section III Judicial Reform while Prince Raphi was the Minister of Justice

The Ministry of Justice had been formally established in April 1892 and had progressed very slowly while prince Sawat was the first minister. The process of development had accelerated rapidly while Prince Phichit, the second minister, was in charge, but owing apparently to the political situation of that time, he was dismissed on 3 March 1897. Even though Phichit had inaugurated fundamental changes in the ministry, his period in office lasted only two years and four months, and therefore, when he left, the Ministry of Justice's work in the modernization of the country's legal system was still far from complete.

When Prince Raphi took over the office of the Ministry of Justice on 3 March 1897, he also kept his position as president of the Special Commission of the

<sup>16</sup> Marut Bunnag (ed.), *op.cit.*, p.37.

<sup>17</sup> Luang Chakraprani, *op.cit.*, p.50.

provincial courts whose duty was to reorganize the the provincial courts.<sup>18</sup> The first problem he faced in the Ministry of Justice was the overcrowded jails which, from his investigation, was caused substantially by the indefinite terms of imprisonment inflicted upon prisoners. According to the old Siamese system, when someone was put in prison for a crime, the judge had no authority to fix the term of punishment. Officially throughout the whole country, this duty rested with the King, but he had many other responsibilities in running the country, and therefore had little time to fix the terms of imprisonment for prisoners. Consequently, some of the prisons were overcrowded. Prince Raphi recognized this problem because he was the president of the Special Commission to reorganize the provincial courts which had less problem of overcrowded jails. He investigated and found out that in the provincial areas the governors of the provinces applied the method of *Prakanchoengla* (guarantor), whereby the prisoners were allowed to go out of the jails if they could find a reliable person to guarantee them. Raphi realized that this system had many weak points: firstly, every prisoner irrespective of the violence of the crime he had committed would be subjected to the same penalty; secondly, prisoners who were rich would have an advantage, and lastly, the system offered chances of bribery of governors and their subordinates.<sup>19</sup> He then reported to the King and recommended that authority be given to the Special Commission to fix the term of imprisonment for prisoners. As a consequence, the Proclamation to allow the Special Commission to fix the terms of imprisonment for prisoners in the provincial courts was promulgated on 21 October 1896. When Raphi became the Minister of Justice, he recommended to the King that the same Proclamation should be applied to all the Ministry of Justice's courts by giving the same authority to judges. The King granted permission on 10 March

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<sup>18</sup> King to Raphi, 4 March 1897, NA R5 Ky 3/1.

<sup>19</sup> Prince Raphi, *Phraratchabanyat-nai-patyuban* (Royal Edicts in the Present Day), vol.1, Ministry of Justice, (Bangkok 1901), pp.1-3.

1897.<sup>20</sup> After the promulgation of this Proclamation the problem of overcrowded jails was gradually solved.

### 1. The Establishment of the Law School

The most outstanding aspect of Raphi's role in developing judicial reform was the establishment of a Law School to teach law to young Siamese. This idea was first recommended to the King by the Belgian, Gustave Rolin-Jaequemyns, when he was recruited as the Siamese Government General Adviser in 1892. M. Rolin-Jaequemyns argued that Siam needed a law school to produce young lawyers to improve and administer their own judicial system. But his idea was not practical at that time because the Siamese Government could not find qualified persons to organize the school. The idea of establishing the school was emphasized again under Prince Phichit, the second Minister of Justice, in November 1895, but he did not carry out this project, perhaps because he was dismissed in March 1897.

The Law School came into existence when Prince Raphi became the Minister of Justice. Raphi realized how important the Law School was to the process of developing the ministry and gave top priority to it. Consequently, he established the Law School shortly after he became the Minister. La-or Krairoek, a student in the first group at the Law School who was the first barrister to qualify from the Law School and later became *Chaophraya* Mahithon, recalled the establishment of the Law School:

At first the Law School established by Prince Raphi in 1897 had no status in Government office. The class was informal as Prince Raphi conducted his teaching in his dining-room connected to his office. The number of the law students increased rapidly which forced him to move the teaching to the big hall in the *Phra Ratcha-arya* Court. Prince Raphi taught by himself every weekday after lunch time.

<sup>20</sup> King to Raphi, 10 March 1897, NA R5 Ky 1/9.

Subsequently, on 22 November 1897, there was an announcement of the Ministry of Justice by Prince Raphi, the Minister, to all the law students in the Law School who wanted to sit for the first Bar examination to register for the examination which would take place on 2-7 December 1897. The subjects to be examined were the criminal law, the law of contract, succession and tort, law of husband and wife, procedural laws and international law.<sup>21</sup>

*Chaophraya* Mahithon, much later, lecturing at Thammasat University, recalled the Law School as a semi-governmental body composed of the president, a secretary, a treasurer and another two assistants. Prince Raphi was permanent lecturer and *Phraya* Prachakitkorachak (Chem Bunnag), *Khunluang Phra* Kraisi (Pleng Wepara), Prince Phichit and *Phraongchao* Wachariwong were part-time lecturers. The number of the students amounted to 100 plus, among whom were a few judges from provincial courts. The class was lively as the students and lecturers joined together in working out conclusions. Most of the students agreed that Prince Raphi was a good and devoted lecturer.<sup>22</sup>

*Chaophraya* Mahithon described Prince Raphi's policy in the Law School:

Prince Raphi was of the opinion that the teaching in the Law School should follow the style of Western law schools. He explained that we must follow the modern legal system. Prince Raphi used the English law text books and he also wrote his own text books for the law students. He also helped the law students in practising litigation in court by assigning some cases to them.<sup>23</sup>

In Raphi's summary of his work in the ministry three and a half years after he took office, he emphasized the importance of the Law School to the King:

The progress in extending new courts depends entirely on the supply of fit men. Why it has not been quicker is because the supply is small; why it has been possible to make progress at all is because there is a

<sup>21</sup> *Luang* Saranaiprasat (Thanya Nasongkhla), Pattanakan kansuksa kotmai nai prathetthai (Development of Legal Education in Thailand), printed by Thammasat University for the cremation volume of *Chaophraya* Mahithon (La-or Krairoek), (Bangkok, 1956), pp.3-4.

<sup>22</sup> *Ibid.*, pp.8-9.

<sup>23</sup> *Ibid.*, p.9.

supply, even though small. I think I have taken every advantage of it. Now Your Majesty will see that this supply is of the highest importance; it is our very life-blood. If it were to cease, everything may as well be given up as hopeless. This Ministry would be shipwrecked.<sup>24</sup>

Raphi always emphasized the importance of the Law School as the most urgent and indispensable policy of the Ministry of Justice as will be seen in many parts in the rest of this study.

## 2. The Transfer of Provincial Courts to the Ministry of Justice

The main purpose behind the establishment of the Ministry of Justice was to take responsibility for judicial affairs including the control of all courts all over the country, but when the Ministry was formally established in April 1892, it was considered capable of taking charge only of the courts in Bangkok and left the provincial courts all over the rest of the country in the hands of the regional ministries. These ministries were then amalgamated into the new Ministry of the Interior in late 1894, which took charge of all their courts.

At the beginning of May 1897, during the King's absence on his first European tour, Raphi received a letter from Queen Saowapha, the Regent, that the Committee of the Regency had reached the conclusion that the time had come for the transferring of the provincial courts all over the country under the Ministry of Justice's control. Raphi, without any prior knowledge of this matter, wrote a letter of 13 May 1897, to the Regent, complaining that the King had never mentioned this matter to him, nor had he known the intention of the King. As the Minister of Justice and a member of the cabinet, he had to accept the decision of the Regency, which included Princes Damrong and Thewawong, which fell upon him. But he disagreed with this decision and he saw no need to state his reasons because the

<sup>24</sup> Raphi to King, 2 Sept.1900, NA R5 Ky 1/9 (in English).



decision had been made without his knowledge. Therefore, he submitted this as a letter of resignation from his post.<sup>25</sup>

It is evident from the letter of the Regent in reply to Raphi's letter, and of the same date, that the Committee's decision was based on Prince Damrong's claim that he had informed Raphi of the matter and the latter had agreed with it. The Regent accepted that there was confusion about the facts, and therefore the Committee's decision was void and she could not accept Raphi's resignation. She also asked Raphi to attend the Committee's meeting on Monday 17 May 1897, to settle the matter.<sup>26</sup> The confusion ended with a decision that the provincial courts would be gradually transferred to the Ministry of Justice as the provincial administration of the Ministry of Interior developed, and finally the whole process of transfer was to be completed on 5 April 1908, when King Chulalongkorn promulgated a new Court of Justice Law by which all courts all over the country except the *Dika* Court were brought under the authority of the Ministry of Justice.<sup>27</sup>

Prince Raphi revealed the reason for his original disagreement in this matter in the summary of his work for King Chulalongkorn of 2 September 1900, that he was of the opinion that justice would never be perfect in any provincial courts as long as the civil administration of the provinces was in a backward state.<sup>28</sup> Raphi also suggested in his 1897 letter of resignation that the Ministry of Justice was not ready at that time to assume the responsibility for all courts in the country. This probably means the Ministry was still short of staff at that time and the transfer certainly would have been a disaster had the decision been made then.

<sup>25</sup> Raphi to Regent (Queen Saowapha), 13 May 1897, NA R5 Ky 8/14.

<sup>26</sup> Regent to Raphi, 13 May 1897, NA R5 Ky 8/14.

<sup>27</sup> Engel D.M., Law and Kingship in Thailand During the Reign of King Chulalongkorn, U. of Michigan 1975, p.72.

<sup>28</sup> Raphi to King, 2 Sept.1900, NA R5 Ky 1/9.

### 3. The Distinction between Criminal and Civil cases and the Amendment of the Evidence Law

Before Raphi became the Minister of Justice the Siamese law did not distinguish clearly between criminal and civil cases. Raphi later explained that at that time criminal offences were limited and there were fewer criminal offences in Siamese law than the Western law. Raphi considered this an important matter because he knew that in order to develop Siamese law up to a standard acceptable to Western countries he needed to change obsolete aspects of Siamese law. He explained that Siamese criminal law mainly covered offences against the King and Government which could cause riot or disorder in the country, for example, treason and murder, but the offences which only affected one particular person normally were not criminal, for instance, cheating and fraud, or embezzlement. As the trade of the country developed and society became more complex, Raphi had already expanded the criminal offences to cover such things.<sup>29</sup> He also amended the law of theft by making it a criminal offence even for relatives to steal from each other. The only remedy previously was a civil action, which gave rise to a certain amount of hardship and public disorder. Husband and wife were excepted from the operation of this amendment.<sup>30</sup> Moreover, Raphi made an effort to distinguish between criminal and civil cases by giving as the definition of a civil case in the Amendment of the Civil Procedure law in 1900:

A civil case is a case in which:

- 1) There is no request for criminal punishment or,
- 2) If there is a request for criminal punishment and other request, the former is not material.<sup>31</sup>

<sup>29</sup> Prince Raphi, Lecture on Civil and Criminal laws, Ministry of Justice's Library, no page number.

<sup>30</sup> Beckett to Lansdowne, 6 Nov.1904, Report of the Minister of Justice for the year 122 (1903-1904), PRO FO 69/255.

<sup>31</sup> The Amendment of the Civil Procedure RS 115, PKPS, vol.17, p.198.

Raphi accepted that this definition was still not clear because the judge still had to consider whether the request for criminal punishment was material or not. He further explained that it was difficult to be certain because basically it was the policy of the Government to decide arbitrarily whether a particular action should be a criminal or civil case, for instance, breach of contract was normally a civil case but at times the Siamese Government wanted to punish criminally a person of bad faith if the other party could prove that the accused originally, before entering into the contract, had no intention to fulfil it. This offence was named Cheating and Fraud (*Choukong* in Siamese).<sup>32</sup>

Raphi explored the Evidence law at that time and found out that it did not confer real justice on the defendant because, according to the Evidence Act of 1895, while the plaintiff could call himself, the defendant, his ancestors or descendants, as witnesses on his behalf, the defendant could not. Therefore Raphi amended article 6 of the 1895 Act by allowing the defendant also to call himself, the plaintiff, and his own ancestors or descendants as witnesses on his behalf. In his letter dated 16 February 1900 to the King, Raphi gave his opinion that the defendant should receive the same treatment from the court as the plaintiff.<sup>33</sup>

#### 4. Appeal to the Appeal Court and *Dika* Court (Supreme Court of Appeal)

As illustrated in Chapter 6, Prince Phichit tackled the problems of appeal in the Appeal and *Dika* Court by issuing the regulation to abolish "Appeal during trial" which proved to be quite successful, but the problem in both courts of case backlog still increased because Phichit had not defined the conditions by which cases were qualified to be appealed. This point was explained to the King by Raphi in order to

<sup>32</sup> Prince Raphi, Lecture on Civil and Criminal laws, op.cit.

<sup>33</sup> Raphi to King, 16 Feb 1900, NA R5 Ky 2/3.

limit the number of cases flowing into the *Dika* Court. In his letter to the King dated 28 April 1898, Raphi expressed his opinion that in order to solve this problem it was necessary to impose some conditions on cases appealed to the *Dika* Court. In his opinion in civil cases in which the value of the property or the amount in dispute did not exceed 160 ticals, or criminal cases in which the maximum period of punishment did not exceed 6 months, no appeal should be lodged to the *Dika* Court unless a Judge of the Court of the First Instance or Appeal Court trying the case had certified that there were reasonable ground to appeal or, in the absence of this certification, unless the Minister of any Ministry, or the Director of the Public Prosecution Department, or two Siamese Barristers certified that there were reasonable grounds to appeal to the *Dika* Court.<sup>34</sup>

The King agreed with Raphi and later, on 5 May 1898, the proclamation of the conditions for appeal to the Appeal and *Dika* Courts was implemented. At that time the judicial system was a time-consuming business because a case might be proceeded from the Court of the First Instance, appealed to the *monthon* Appeal Court, appealed to the Appeal Court at Bangkok, and finally appealed to the *Dika* Court. In order to limit the cases which could be appealed to both the latter courts Raphi issued an Appeal Act in 1904.

The substance of this Act was that no appeal in which the amount in dispute did not exceed 400 ticals lay to the *Dika* court, and no case in which the amount in dispute did not exceed 160 ticals that had been decided in the Court of the First Instance and confirmed or a little modified in one Appeal Court was allowed to be further appealed. Special provision for appeals in such cases was allowed according to Raphi's recommendation in the previous paragraph.<sup>35</sup> This Act had the potential

<sup>34</sup> The Regulation of the Ministry of Justice no.39, PKPS, vol.18, pp.543-544.

<sup>35</sup> Appeal Act 1904, PKPS, vol.19, pp.115-116.

to reduce considerably cases from appeal and *Dika* Courts, because in the year 1903 alone there were about 700 cases of under 160 ticals sent up to the Appeal Court at Bangkok.<sup>36</sup>

#### 5. The Amendment of the Criminal Procedure Law

In 1901 there was confusion in the practice of issuing criminal warrants because the existing law was ambiguous regarding who was entitled to issue these warrants and on what conditions. Therefore Raphi, in order to simplify the conditions for the issuing of these warrants, wrote a letter of 23 April 1901 to King Chulalongkorn.<sup>37</sup> The King arranged a meeting of his Ministers in the Palace on 27 April, and as a result the Amendment Act of the Criminal Procedure was promulgated on 29 April 1901. This Act established that the arrest warrant could be issued by a judge on condition that the Judge made enquiry into the evidence that there were reasonable grounds to issue the warrant. Such grounds might be derived from information given on oath by the prosecutor or his witness, but if the case was conducted by the public prosecutor, enquiry was not necessary. This Act also gave power to certain officials in Bangkok and the provinces to issue search warrants, but in any cases involving the Palaces of the Royal family from *Momchao* (a king's grandchild or nephew) upward, they could not be searched unless permission was given by the King.<sup>38</sup>

The conditions of the search warrants are one of the examples indicating that the King and the Royal family were not under the law of the country. It is unfortunate that the record of the meeting of 27 April 1902 of the Ministers cannot be found and, therefore, nobody knows Raphi's ideas on this matter. But supposing that Raphi

<sup>36</sup> Beckett to Lansdowne, FO69/255, op.cit.

<sup>37</sup> Raphi to King, 23 April 1901, NA R5 Ky 2/16.

<sup>38</sup> The Amendment of Criminal Procedure Law 1901, PKPS, vol.18, pp.22-23.

disagreed that the palaces of *chaofa*, *Phra ong chao* and *Momchao* should not be exempt from this Act, it is unlikely that his opinion could prevail because most of the Ministers were at least *Phra ong chao* themselves.

#### Section IV The Influence of Western Education on Prince Raphi

Raphi had been sent to be educated in England from eleven years old until, with some breaks for visits home, he finished his bachelor degree in law from Christchurch College at the age of twenty-one. Therefore, his ideas must have been heavily influenced by the West. This section will investigate to what extent his ideas and conduct were formed by Western influence.

##### 1. Raphi's idea of the independence of the court of justice

Prince Phichit's idea of the independence of the courts was probably the separation of the Ministry with all its staff from them, and their authority to deal with cases in their jurisdiction. This is the reason why Phichit proposed the Constitution of the Ministry of Justice's staff in 1895, in order to organize all the staff to belong to and be paid monthly by the Ministry and not their own patrons. Yet the modern idea of the independence of the administration of justice from the executive power was probably inconceivable to Phichit because he was a largely traditional Siamese lawyer who had never been educated abroad.

Raphi's concept of the independence of the court of justice was different from his half-uncle owing to his legal education in England. In his lecture on this matter which later became a book called Phraratchabanyat-nai-patyuban (Royal Edicts in the Present Day), published by the Ministry of Justice in 1901, he explained that justice in court procedure could only be maintained on condition that courts were

independent from the executive power.<sup>39</sup> Rapi adopted the idea from the "Rule of Law" which is the fundamental principle of the British constitution, and this principle was developed by Professor Dicey while Rapi was studying in England. Dicey explained this principle thus:

Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished by nothing else.

It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the "rule of law" in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals....<sup>40</sup>

According to Dicey, this principle will work only if judges are removed from the control of the executive.

Rapi believed in this "Rule of Law" principle and attempted several times to implement it. On 1 April 1901, he appointed *Phraya* Chakrapanee (La-or Krairoek), who later became *Chaophraya* Mahithon, as Under-secretary of the Ministry of Justice. He informed the latter that his intention was to apply the principle of the English Court system by delegating all his administrative power to him, so that he could control the court procedure independently from the executive power. In his opinion judges should perform their duties independently without any interference from the executive, not even the Minister of Justice, and the latter had a duty to render it convenient for them to operate their court procedure.<sup>41</sup> Rapi also put forward his idea of the independence of the court of justice in the Ministry of Justice's report of 1902. The report states:

At the moment, the principle of the independence of the courts of justice is indispensable. The administrative power in the general Government office cannot be applied to judges. There may be many groups who oppose the independent power of judges but it is

<sup>39</sup> Prince Rapi, Phraratchabanyat-nai-patyuban vol.1, op.cit., p.156.

<sup>40</sup> C. Turpin, British Government and Constitution, (London, 1985), p.47.

<sup>41</sup> Prince Rapi, Phraratchabanyat-nai-patyuban vol.1, p.162.

absolutely necessary that judges should perform their duties independently without any control from the Government.<sup>42</sup>

At that time Raphi still could not implement the idea of the independence of the court of justice because the King and his *Senabodisapha* (Cabinet) still controlled the appointment of judges and interfered with the court procedure.<sup>43</sup> Raphi had to be frustrated by not being able to implement what he thought best for the Ministry. His last attempt was at the beginning of 1910, when he proposed to the King that judges and court procedure should be independent from the administrative power. The King informed the *Senabodisapha* that Raphi had already persisted in this opinion for a long time, wishing to be the Chief Justice who would control all judges in the country but not interfere with their discretion in specific cases. The Minister of Justice, in Raphi's opinion, should perform his duty like the Minister of Foreign Affairs deciding policy, and the Under-secretary of the Ministry would deal with the internal administration of the Ministry. That meant a court had sovereignty absolutely separate from the control of the Government. The King and *Senabodisapha* disagreed with Raphi on the basis, so they said that it was not the right time to apply this principle.<sup>44</sup> Raphi was very upset with this decision and on 21 April 1910 he resigned from his post on the grounds of bad health.

2. The principles of the English Court procedure which Raphi adopted to apply to courts in the Ministry of Justice.

a) The Accusatorial system

Siamese criminal procedure before the judicial reform put the burden on the unfortunate accused because there was a presumption that the accused was guilty, so that he had the responsibility to prove his innocence. The judges would use various

<sup>42</sup> The Ministry of Justice's report of 1902, NA R5 Ky 1/31.

<sup>43</sup> Luang Chakraprani, *op.cit.*, p.63. Also see *Chaophraya Surasak and the suppression of the 1902 Shan Rebellion*, chapter 4 above.

<sup>44</sup> *Ibid.*, p.73.



torture methods, for example flogging, in order to extort confession. These methods of torture procedure were abolished by Phichit in 1897, only two days before he was replaced. When Raphi succeeded him, he adopted the accusatorial system from the English court system and applied it to the Ministry of Justice's courts. As a consequence, the position of the accused was much better because there was a presumption that he was innocent until the public prosecutor could prove beyond doubt that he was guilty.<sup>45</sup> Raphi also applied this principle in civil cases. Therefore, if a party alleged any fact in support of his plaint or answer, the burden of proof of such fact lay with the party alleging it. Raphi explained in his book, Phraratchabanyat-nai-patyuban, that the torture procedure was totally abolished and the judges could punish the accused only if there was clear evidence indicating his guilt.<sup>46</sup> The judge in this system would examine the witnesses impartially and only in the interest of justice.

It is noteworthy that Raphi did not adopt the English jury system. He did not explain his reasons for not adopting it but it is probable that he considered it unsuitable for Siam. Even among the well-educated Siamese, people did not want to adopt this system owing to the long established belief that the King had the duty to give justice to the people. This belief still exists in the present judicial system because all judges perform their duties in the name of the King. Another reason was probably that the standard of education of the Siamese was very low at that time,<sup>47</sup> and therefore they lacked the consciousness of the good citizen. Moreover, the patron-client relations which still existed in Siamese society at that time deprived most Siamese of free will because they were dependent on their patrons.

<sup>45</sup> Prince Raphi, Phraratchabanyat-nai-patyuban vol.2, op.cit., p.621.

<sup>46</sup> Ibid., p.623.

<sup>47</sup> Thanin Kraiwichian, Kanpratirup kansarn naisamai Phrachulachomklao (The Judicial Reform in the Reign of King Chulalongkorn), (Bangkok 1968), p.56. A national education act was only proclaimed in 1921, see Vella W.F., op.cit. 164.

Under this system, every free commoner male was required by law to register himself under an official patron. This registration would entitle them to legal protection from their patrons in return for their services given for a certain period in a year. Therefore, when commoners had been injured or their rights were infringed by outsiders, their patrons would take legal proceedings for them. They themselves had no right of action in the court of justice. This peculiar relationship put male commoners, the majority of the Siamese workforce, under their official patron's influence, and they were likely to obey their patron's command. This prevented them from exercising quality of a good juror under a jury system.<sup>48</sup>

#### b) Private and Public Prosecutors

In Siam before the establishment of the Ministry of Justice, the practice was to have criminal cases conducted principally by Private Prosecutors. When the Ministry of Justice was established, Public Prosecutors were appointed, but they only acted in cases where there was no Private Prosecutor, or when the Private Prosecutor had abandoned the action, or in cases of offences committed against the Government. The Siamese system in this respect was very similar to the English which has both Private and Public Prosecutors. In the report of the Ministry of Justice in 1900, Raphi confirmed his intention to maintain the existing system.<sup>49</sup>

Subsequently, before the Criminal Code of 1908 was promulgated, the question of whether it should allow a criminal prosecution to be brought by Private Prosecutors as well as Public Prosecutors was raised before the Criminal Code Commission. Raphi and Mr. Padoux, the French Legislative Adviser, shared the opinion that the existing system should be maintained because: firstly, there were a number of criminal cases in which only private interest was involved and which would be conducted much

<sup>48</sup> See also the consequences of the Conscription Act in section I of chapter 5.

<sup>49</sup> Report of the Ministry of Justice 1900, NA R5 Ky 1/9.

better by Private Prosecutors, for example, the offence of defamation committed to the injury of a private individual. Secondly, a private person and a Public Prosecutor might have a quite different view as to the importance of an alleged offence. The Public Prosecutor might think that it was a mere trifle but the injured person might believe in good faith that the offence was an extremely serious one. Therefore, it was a good thing that the injured person could take up the case as a Private Prosecutor if the Public Prosecutor refused to enter an action.<sup>50</sup> This opinion prevailed in the Commission and the Criminal Code of 1908 maintained the existing system.

c) Raphi's improvements to the status of Siamese lawyers up to a standard acceptable to Western countries

Prince Raphi approached this standard by firstly, establishing a Law School to convey modern legal knowledge and judicial ethics to young Siamese who later became judges, public prosecutors and lawyers. Secondly, he successfully persuaded the King to raise the standard of the legal profession to the top class in Siamese society by giving the incentive of a high salary. In his report to King Chulalongkorn in 1902, he insisted on his opinion that judges were not the same as other Government officials because they not only needed to be intelligent persons, but they also required a special knowledge called in English "technical", which needed at least three years study to obtain, and there were very few high rank positions. Therefore, they needed good rewards to compensate for these disadvantages.<sup>51</sup> Mr.Beckett, a later British Charge d'Affaires in Bangkok, reported to Sir Edward Grey, the Foreign Secretary, in 1907, that a Siamese judge who had finished from the Law School started at a salary of 240 ticals a-month including a house, if he was appointed a

<sup>50</sup> Padoux's Report on the Criminal Code Commission, NA R5 Ky 23/4.

<sup>51</sup> Thanin Kraiwichian, op.cit., p.53.

judge in the provincial court, and judges in Siam had every reason to be satisfied with their employment.<sup>52</sup>

#### Section V Prince Raphi's Character

It is not exaggerating to conclude that Raphi was an obstinate person who always insisted on his opinion, and if his demands were not met he would protest by either resigning from his post or washing his hands of that work. This character of his is evident from various incidents.

1) When the Committee of the Regent imposed its decision transferring all the provincial courts to the responsibility of the Ministry of Justice, he disagreed with them and protested by resigning from his post until, at the end, his demand was met. This incident has already been illustrated on pages 214-215. Raphi also dared to disagree with the King on the points of law. This is evident in a *dika* case 634/121 in which Dr. Masao, the Japanese Legal Adviser and also a judge in the *Dika* Court, made a decision in favour of the defendant. The plaintiff submitted a petition to the King. The latter disagreed with Dr. Masao's decision, and called Raphi to meet him in order to alter that *dika* decision. Despite inclining to follow the King's idea, Raphi, after considering the case, insisted that Dr. Masao's decision was correct. Raphi also wrote a letter dated 23 March 1902 to Dr. Masao to tell him about this matter.<sup>53</sup>

2) In 1906 Raphi was appointed by the King to review the draft of the Criminal Code submitted by Mr. Padoux the Legislative Adviser, together with Prince Damrong as chairman of this Commission and two other Ministers. *Chaophraya*

<sup>52</sup> Beckett to Sir Edward Grey, 17 Oct 1907, PRO FO 422/61.

<sup>53</sup> Sathaporn Malila, Phraboromwongthoe Kromluang Ratchaburi (Prince Raphi's Biography), (Bangkok, 1953), p.61.

Mahithon (La-or Krairoek) recalls that he was the Under-secretary of the Ministry of Justice at that time, and Raphi complained to him that as this Commission was chaired by Prince Damrong who was a Government administrator, so Damrong desired to adopt a Criminal law which suited his administrative purpose such as to persuade the defendant to confess in order to obtain a reduction of punishment under section 59 of the Criminal Code. But Raphi disagreed because it was against the principle of justice. Consequently, Raphi washed his hands of this Commission by joining King Chulalongkorn on his visit to Europe in 1907.<sup>54</sup>

3) On 21 April 1910, Raphi submitted a letter to the King announcing his resignation as Minister of Justice. He based his resignation on his bad health, that he had a terrible head-ache and he could not work properly. Therefore, he should leave his post in order for the King to find a better man to replace him.<sup>55</sup> The pretext of bad health was not a true reason, while at the beginning of 1910 Raphi suffered two successive disappointments over his principles of justice.

Firstly, there was the conflict between him and the Crown Prince, Wachirawut, over the restoration of flogging. At the beginning of 1910, a small group of soldiers got into a quarrel with a group of pages of the Crown Prince over the favour of a girl who sold betel nut. The quarrel ended with the soldiers, armed with sticks, chasing the pages back into the safety of Parusakawan Palace. The following day the Crown Prince demanded redress for the insult to his position by the application of an old law of flogging. King Chulalongkorn at first resisted and Raphi resisted strongly by pleading that flogging had already been abolished. Undoubtedly both the King and Raphi were concerned for the possible bad effect that the resumption of such a barbaric practice would have on Western countries' attitude at

<sup>54</sup> Luang Chakraprani, *op.cit.*, pp.71-72.

<sup>55</sup> *Ibid.*, p.75.

the very time Siam was seeking to achieve removal of treaty restrictions on its judicial sovereignty. But the Crown Prince insisted. At last the King yielded to the Crown Prince's demand, and the beatings were carried out oblivious to legal procedures.<sup>56</sup> Raphi was very distraught with the King's decision as there were already many privileged persons in Siam who were not subject to the law of the country and could do anything regardless of law. Secondly, also at the beginning of 1910, Raphi demanded from the King that the judicial power should be proclaimed independent from the executive power but the King rejected his demand on the basis that it was still not the right time to apply this principle. This has already been illustrated on page 21&-2 20 Obviously, these two incidents frustrated Raphi's desire to implement his principles of justice and therefore he resigned from his post.

Raphi was also a self-respecting person who always behaved according to his opinion of righteousness without considering whether his action would bring punishment or prejudice to him. This is shown in the book Kerd Wang Parut (Born in the Parut Palace) in which Prince Chula Chakraphong, the son of *Chaofa* Prince Chakraphong, a full-brother of the Crown Prince Wachirawut, wrote:

Most of my father's brothers disregarded my mother because they were afraid of my grandfather [King Chulalongkorn]. Their action was understandable. But I am delighted to be able to record that *Kromluang* Ratburi [Prince Raphi], one of my uncles, who was not afraid of anybody and anything, came to visit my mother and asked about her well-being. He also gave a camera to her. His action was appreciated as he risked the anger of my grandfather.<sup>57</sup>

It is noteworthy that often Prince Raphi wrote letters to the King in English. This was probably because his English was better than his Thai, and he found it more difficult to write in Thai as he was educated in England for eleven years. Also, his

<sup>56</sup> Vella W.F., *op.cit.*, p.54.

<sup>57</sup> Sathaporn Malila, *op.cit.*, pp.60-61. King Chulalongkorn and Queen Saowapha were furious when their son, *Chaofa* Prince Chakraphong, married a Russian wife, and would not accept her.

English would have been better than his father's, and thus not liable to his father's criticism. It is quite possible that his ideas were more English than Thai. He was appointed the Minister of Justice in 1897, only one year after his return from England. In the cabinets which comprised most of his uncles, whose ideas were conservative, Raphi's ideas were frequently contrary to theirs. This led to his frequent absence from cabinet meetings and caused dissatisfaction among his uncles. One can compare Prince Raphi's fate with that of Prince Pritsdang as they were both educated in the West and had radical ideas. Pritsdang was forced into exile because of his initiative in drafting the petition of 1885. Raphi was more fortunate as he was a son of the King and was only forced to depart from the Ministry of Justice as his novel ideas for reforming the Ministry were rejected by the King and cabinet.

Section VI The Appointment of Prince Charun as the Vice-Minister of Justice and Prince Raphi's Resignation

On the 29 April 1909, Raphi had a personal talk with the King as the King referred to that date in a letter to Raphi.<sup>58</sup> In this talk Raphi probably complained to the King about his excessive responsibilities in the Ministry that prevented him from proceeding with the urgent issues in the Ministry which should be tackled and suggested that the King find someone to substitute for him as Minister of Justice.

On 30 April 1909, Raphi wrote a letter to King Chulalongkorn to complain that he was anxious about his heavy work-load in the Ministry. He implied that he was not capable of being responsible for all the work of the Ministry, and if he must still carry on as before, improvements in the Ministry would not happen in the way they should. Raphi also suggested at the end of this letter that the implementation of the

<sup>58</sup> King to Raphi, 2 May 1909, NA R5 Ky 6/7.

new Anglo-Siamese Treaty of 1909 required finding someone to replace him in order to prepare in advance for the implementation of this treaty.<sup>59</sup>

The King responded with his letter of 2 May 1909:

I am of the opinion that changing the Minister at a crucial time like this will bring disadvantages to the Ministry and I cannot find any suitable person to substitute for you except as we said that day that I will ask Charun to assist you.<sup>60</sup> I sent a letter to Charun, and he should have received it by now. I observed that at present only you can argue and control the *Farang* [western citizens] because they respect you. In this Ministry, the work is concerned with the *Farang* not only to control them as subordinates, but also to communicate diplomatic policies concerned with the International Court. Therefore, the responsibilities of the Minister are tremendous, and if your health is not good I think the appointment of a Vice-Minister, to assist you in foreign policy and when you are sick, will be a great help. Charun is suitable to be appointed for this job. Even he lacks domestic knowledge and is not respected among Siamese, but with your assistance and recommendation he will gain knowledge, and with his ability in international affairs he will be a great help to you. I have already telegraphed him and I hope you will be satisfied with this arrangement.<sup>61</sup>

The King sent a telegram to Charun on 2 May 1909 to call him back to assume the post. He also wrote a letter to follow the telegram to explain the reasons to Charun. His letter can be summarized as arguing that the Ministry of Justice had three tasks: to administer internal affairs, to control the Foreign Advisers, and to communicate about diplomatic policy with the Foreign Ministry and foreign diplomats Consuls. Raphi could deal with domestic affairs with the help of his Under-secretary, but in the work of control of Foreign Advisers and diplomatic policy relations with consuls he lacked an assistant. The King and cabinet considered that Charun was the most suitable person to be appointed Vice-Minister to deal with

<sup>59</sup> Raphi to King, 30 April 1909, NA R5 Ky 6/7.

<sup>60</sup> Prince Charun was a *Momchao* son of Prince Naret and therefore he was a half-nephew of the King. He was educated in England and at that time was in his first spell as the Siamese Minister in Paris.

<sup>61</sup> King to Raphi, 2 May 1909, NA R5 Ky 6/7.



these matters.<sup>62</sup> After Charun returned to Bangkok the King issued a decree appointing him Vice-Minister on 12 July 1909, and informed both Raphi and Charoon by formal letters.<sup>63</sup>

Raphi wrote a letter of 21 October to the King to describe his aims in the Ministry of Justice:

When there was the plan to appoint Charoon to the Ministry, I aimed to spend my time teaching in the Law School for half a day and assist Prince Siritat for half a day as my top priority is to deal with the Law School which is very important as the source of the food we have to eat everyday. Without the production of qualified lawyers from the school, the work of the Ministry cannot progress. The situation of the Law School has become aggravated and I cannot see anybody who can restore it except me. Next year we will scarcely recruit a person from it. This is the reason why I however, even though lacking in confidence, must try my best to take it up again as soon as possible. My second and third priorities are the production of Codes of law and helping Prince Sirithat to deal with the *Dika* Court. But now I have to give up my plan owing to Charoon's lack of Siamese legal knowledge, so that whenever issues concern legal aspects he has to seek my advice, and those issues raised by *Farang* are mostly difficult and need a long time to explore the principles of law. As a consequence, this consumes nearly all my time and I hardly have any left for my original plan. However, I persist in my plan to improve the Law School immediately, but I still do not know how to solve the problem of the Code drafting and the *Dika* court.<sup>64</sup>

One can conclude from those letters that Raphi was rather pessimistic about the future of the Ministry of Justice. It is evident that Raphi's letter of 30 April 1909 recommending the King to find someone to take over the post of the Minister from him was written because he realized that his responsibilities had spread all over the Ministry and he could not concentrate on what he thought were priorities. Even the King had disagreed with him and had instead appointed Charun as Vice-Minister. In Raphi's opinion the plan still did not work because he still needed a lot of time to advise Charun. At that time the situation became aggravated because Siam had to

<sup>62</sup> King to Charoon, 2 May 1909, NA R5 Ky 6/7.

<sup>63</sup> King to Raphi and King to Charun, both 12 July 1909, NA R5 Ky 3/7.

<sup>64</sup> Raphi to King, 21 Oct 1909 NA R5 Ky 10/16.

adjust the court system according to the new Anglo-Siamese Treaty of 1909, and Raphi had in mind an idea to transfer some capable judges from the north, but he was afraid to carry out this idea because it would damage the court system in the north.<sup>65</sup> The root of all the problems stemmed from the inadequacy of staff which was caused by wrong policy at the beginning of the first cabinet in 1888. Had a law school been established at that time, the Ministry of Justice would not have had the same problems in 1909.

#### Raphi's Resignation from the Ministry of Justice

It has been indicated above that at the beginning of 1910 Raphi was despondent about two incidents, viz: his conflicts with the Crown Prince over the restoration of flogging, and with the King over the independence of the courts which, in Raphi's opinion, absolutely obstructed the progress of the administration of justice. As a consequence Raphi submitted a letter of resignation as Minister on 21 April 1910.

After the reception of Raphi's letter of resignation the King kept the letter and did not order anything; probably he thought that Raphi's reaction was a protest to him about his disagreement over the separation of the judicial power and his consent to the Crown Prince's punishment of the soldiers. He did not respond to Raphi's resignation probably because he weighed up the situation and concluded that Raphi was not so determined for he still continued with his work, and hoped that time would calm him down. But it was unfortunate for the Ministry that the *Phraya Raka* case happened at the end of May 1910. The focus of this case was Prince Narathip, a son of King Mongkut, a half-brother of the King, and a former Minister of Finance, whose principal occupation was now the production of plays at his theatre in Bangkok, both as author and manager.

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<sup>65</sup> Raphi to King, 30 April 1909. NA R5 Ky 6/7.

Prince Narathip fell in love with an attractive Siamese actress named Pak and took her as one of his concubines. Narathip treated Pak badly, hitting her many times. The last time happened in December 1909. Pak could not stand any more so she escaped to seek protection from *Chaophraya* Phatsakorawong (Phon Bunnag) who did not want conflict with Narathip and so brought Pak to submit to *Chaophraya* Yommarat (Pan Sukhum), the *Nakornban* Minister, who accomodated her in a police station. Prince Narathip went to see *Chaophraya* Yommarat but the latter did not allow him to see Pak claiming that it might provoke further argument, but promised to persuade Pak to go back to Narathip. But Pak rejected Yommarat's arguments, and as he could not allow her to stay in the police station for a long time as she was a woman, therefore Yommarat, in consultation with Prince Damrong, asked Prince Raphi to accept Pak into his palace. Raphi, who had an old loyalty to Yommarat and his desire to protect Pak, accepted her to stay in his palace. Pak stayed there until March 1910 when she left his palace.

Prince Narathip was furious with Raphi and Yommarat and tried to find a means to take revenge on them. He finally published 500 copies of a lampoon, in which the principal characters were meant to represent himself as *Phraya* Raka (a powerful cock), Pak as a hen in his control, *Chaophraya* Phatsakorawong as a pelican, *Chaophraya* Yommarat as a hawk, and Raphi as an owl. The story suggested that Pak was a hen in *Phraya* Raka's charge but she was sexually insatiable and went out to see the pelican until the pelican's wife was jealous. The pelican brought the hen to the hawk and the hawk brought her to the owl. The owl committed adultery with the hen.

The story suggested that Raphi's intervention to keep the girl was for his own sexual purposes. Before it could be produced on the stage, the printer furnished

Raphi with a copy of the lampoon, and he, being most indignant at the libel, determined to take an action against Narathip. But he himself realized that taking any action against another Prince was very difficult as he was one of many privileged persons in Siam who were still above the law. Hearing that the King did not do anything on getting news of this matter, Raphi, who was already disappointed with the King, left the Ministry to stay at Rangsit, a suburb of Bangkok, on 31 May 1910. Before he left for Rangsit, Raphi wrote a letter dated 31 May 1910 to *Chaophraya* Yommarat explaining the reason he left the Ministry of Justice that:

I have reconsidered my decision up to now and still insist that it is the right decision. My departure is for the benefit of the Crown, not for myself. I have typed the announcement regarding the incident but Tilleke argued that I should not circulate it.

I think that most lawyers understand my reaction even though it is really difficult for commoners. When Kraisi (Pleng) was assaulted by some nobles, the court was in disarray fearing being attacked when it performed its duty. I have fought until victorious and regained confidence in the courts of justice. But this incident has proved that I cannot even protect myself from scandal and so how could I protect others? Therefore I should not remain the Minister otherwise I would be the person to destroy Siam by my own hand.<sup>66</sup>

On the following day the King ordered a *Rapsang* Court which comprised Princes Damrong, Thewawong, and Sanpasit to try Narathip on the charge of defamation. Narathip rejected the accusation on the basis that he had no intention to insult Raphi, but the *Rapsang* Court found him guilty of the charge and gave a decision on 6 June to imprison him for one year.<sup>67</sup>

On 2 June, 28 judges of the courts in Bangkok, led by *Khunluang Phraya* Kraisi (Thiam Bunnag), the Chief Judge of the International Court and *Phraya* Chakraprani, the Undersecretary of the Ministry of Justice, drew up a document of resignation

<sup>66</sup> Turakitbandit College (ed.), *Raphi Sompochkrung* (Biography of Prince Raphi), (Bangkok, 1982), p.79.

<sup>67</sup> The Report of Phraya Raka case, June 1910, NA R5 Ky 1/67.

from their posts.<sup>68</sup> The King did not allow them to resign claiming that there was no reason to resign and ordered them back to their respective duties.<sup>69</sup> All except *Phraya Kraisi* agreed. On 7 June, the King dismissed *Phraya Kraisi* from Government service, and on 26 June, the King appointed Charun as Minister of Justice.<sup>70</sup> Raphi came back to Bangkok at the beginning of July to apologize to the King. The King did not punish Raphi for his sudden departure from his post, but their relations were beyond repair.

Probably the King did not want to reinstate Raphi because the latter was too determined and obstinate and difficult for him to control, and Raphi did not want to be reinstated because it was clear beyond doubt that he could not implement his policies at the Ministry owing to the obstacles presented by the King and the cabinet.

One significant question which is worth considering is whether Prince Raphi deserves to be called "The father of Thai law". To answer this question one has to look carefully at the role and behaviour of Prince Raphi. Firstly, the most important reason why Siamese lawyers call him "the father of Thai law" is because he was the founder of the Law School which has produced all lawyers in Thailand up to the present. He himself considered that the Law School had the top priority of all his policies. He himself was a very good teacher and tried his best to teach the students by himself even though he had not much time to do so. Secondly, Prince Raphi lived his life as a perfect lawyer. As a Prince and the Minister of Justice he performed his duties honestly and never abused his power. He appreciated justice and laws. He remained probably the poorest son of King Chulalongkorn. All of his properties were given to him by the King.

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<sup>68</sup> Ibid.

<sup>69</sup> King to Judges, 2 June 1910, Ibid.

<sup>70</sup> Ibid.

Thirdly, he raised the status of the Siamese legal profession by increasing its income in order to persuade capable persons to join this profession and consequently improved the legal professional standard. Fourthly, Raphi had firm principles which sometimes caused conflict with other princes and even the King. These are evident when he disagreed with Crown Prince Wachirawut on the restoration of flogging, and when he resigned from the Ministry of Justice when the King and other Ministers opposed his plan to separate judicial power from the executive power. Fifthly, he believed in the principle that everyone should be equal under the law as evidenced by his departure from the Ministry of Justice when Prince Narathip damaged his reputation and he could not take an action against him. Most important of all, he was the lawyer who organized the modern Siamese legal system. Even though he was super-sensitive as evidenced when he resigned from his post, suddenly without trying to compromise, this weak point of his was not serious enough to tarnish his image. Therefore most Siamese lawyers agree that he deserves to be called "the father of Thai law".

It is also important to consider why Prince Phichit was not considered "the father of Thai law". The reason is probably that Prince Phichit was only an expert in Siamese traditional law, even though he played a great role in developing it, but the application of this title focused on the founder of the modern Thai law. So, in this context, Raphi's role was more prominent. Obviously, Phichit's role in reforming the Siamese legal system as a whole was not second to Raphi, but because of his radical criticism of the King and other ministers he caused himself to be written out of Thai history. This study, therefore, desires to emphasize his contribution to the modern Thai legal system.

## Chapter 8 The role of the General Advisers and the Legal Advisers

### Section I The Reasons and Objectives of employing the General Advisers and the Legal Advisers

The fate of the 1885 petition was certainly a political disaster for Siam, for Prince Pritsdang, instead of writing confidentially to advise King Chulalongkorn on the latter's request of how Siam could survive Western colonization, instigated a group of young Siamese to submit the petition to the King. If Prince Pritsdang had written to the King personally, the latter might have accepted his ideas. The 1885 petition had greater consequences than might appear. King Chulalongkorn publicly declined to follow the suggestions of the petitioners, but in fact he complied with some of those suggestions. The only suggestion of the petitioners which the King totally rejected was the recommendation to replace the absolute monarchy by a constitutional monarchy. This is evident in the unofficial establishment of the twelve modern ministries in June 1888 under the King's control. Critical to the development of reform policies was the employment foreign General Advisers and Legal Advisers to advise the modern ministries including the Ministry of Justice.

Since early in the Fourth Reign, Siam had recruited Westerners to various advisory government positions but, like Japan, had never conceded them much influence. After the Paknam crisis King Chulalongkorn began to recognize that his country required substantial reorganization in administration, including that of the judicial system. In order to comply with this sudden necessity, Siam needed a competent bureaucracy which, during the first half of King Chulalongkorn's reign, it always lacked. Therefore, Siam needed foreign advisers to help with the modern administration. This is evident later on in the King's letter to *Phraya Wisut* (M.R.

Pia Malakun) in 1899, in which he explained the reason for employing foreign advisers, that:

At the moment the greatest shortage of all in our country is the lack of capable staff, and because of this we are forced to employ foreign advisers to assist us in the fields where our people are not expert and able to deal with them. Our people are not particularly bad because of lack of strength or capability, but we lack modern knowledge and this is the reason why we need foreign advisers because when we use them we use the methods which they have already proved to be successful.<sup>1</sup>

Owing to the Bowring Treaty between Siam and Britain signed in 1855, and the similar treaties which Siam signed later with other European countries and the United States, Siam had lost the power to fix its own import tax which was settled by the treaties at the rate of three per cent. Furthermore, Siam lost its right to exercise its own jurisdiction over foreign citizens and subjects. The reason these countries claimed to exercise their own laws over their people was that Siamese law was obsolete, barbaric, and was not up to the standard of civilized countries. The problem became more serious when Asian people under European protection were also allocated to consular jurisdiction and even the Chinese in Siam sought consular jurisdiction by registering themselves as foreign subjects and therefore independent of Siamese jurisdiction. Siam's leaders realized that in order to restore their country's autonomy and jurisdiction it needed to reform its judicial system by creating modern codes of law. Inevitably they needed foreign legal advisers to assist them.

Another reason was probably foreign advisers were employed partly to look after Western subjects who came to work or reside in Siam in order to keep them happy. Furthermore, their duty was to settle the conflicts between foreign subjects

<sup>1</sup> Thailand Fine Arts Department, Phraratchahattalekha laenangsuekrabangkomtun khong Chaophraya Phrasadet Surainthathibodi (Letters between King Chulalongkorn and Phraya Wisut), printed in the Cremation volume of Sangiam Sura-inthathipbodi, (Bangkok 1961), p.304.



and the Siamese or between foreign subjects themselves because they would know their requirements and mentality better than the siamese Government.

All these aspects related to the legal system, and the three General Advisers who served between 1892-1915, though mainly advising the Foreign Ministry, also influenced the development of the legal system in a variety of ways.

## Section II The Role of the General Advisers and the Legal Advisers

The post of the General Adviser when it was first established in Siam in September 1892 was a unique one as there had been no such position in other independent Asian countries. Quite what the objectives of the Siamese Government in creating this post were remain unclear, as the role of its first occupant was long hampered by political rivalries within the Siamese Government. In the eyes of some knowledgeable foreigners, it was originally intended simply as part of the effort to prevent a facade of reform while at root little was to change, although retrospective judgments often ascribe much more significance to it.

### The Sphere of Responsibilities of the General Adviser

When M. Gustave Rolin-Jaequemyns<sup>2</sup> assumed the post of General Adviser on 27 September 1892, there was apparently no precedent for the authority vested in this post. The contract of employment signed on 29 July 1892, stated that he had to perform his duties as the International Legal Adviser to the Siamese Government, and to give advice on any problem which might occur in any ministry. Furthermore, he

<sup>2</sup> The spelling M. Rolin-Jaequemyns in this study follows the book "Two Views of Siam on the Eve of the Chakri Reformation" of N.J. Brailey.

must assist the Siamese Government in international relations.<sup>3</sup> But prior to the 1893 crisis, it is questionable whether even he enjoyed much influence, thereafter, as he gradually convinced the King of his ability and loyalty, his responsibility gradually increased. However, by the middle of 1899, Rolin-Jaequemyns realized that his declining health would not allow him to stay on any longer so he tried to persuade M. Numa Droz, the ex-President of the Swiss Federation Council, to succeed him as the General Adviser to the Siamese Government. In his letter to M. Numa Droz, dated 10 June 1899, he explained clearly the sphere of his duties.

Regarding the title General Adviser, his functions do not by themselves involve any particle of executive power. And it is better that it be so, because the General Adviser has to consider himself as a disinterested friend, who had to look everywhere, to the utmost of his ability, for what may promote justice and public works, without any pretension to public power for himself personally. His functions are thus merely consultative, but they are so in the broadest sense of the word, because he may give his advice about suppression of abuses or introduction of desirable reforms, without waiting to be consulted either by His Majesty or by his Ministers.<sup>4</sup>

Rolin-Jaequemyns also explained the projects which the General Adviser had to pursue by that time; firstly, to negotiate with France, with a view to substituting really good neighbourliness for the existing strained relationship and try to secure an agreement by which France would withdraw from Chantabun at the least cost to Siam; secondly, to negotiate with Britain about the Siamese Malay states and the British subjects in that area; thirdly, to act as liaison between foreign diplomats and the Siamese Government, and advise the latter of ways to reach a harmonious solution; fourthly, to be instrumental in improving the administration of justice and creating Western or modern-style codes of law as soon as possible, fifthly, to secure more flexibility in tax regulation, in which Siam had lost autonomy under the unequal treaties, in order to improve its economy.<sup>5</sup>

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<sup>3</sup> The contract of employment of Rolin Jaequemyns signed 28 August 1892, NA R5 Kt 2/6.

<sup>4</sup> Rolin Jaequemyns to Droz (his original letter in English), NA R5 Kt 2/8.

<sup>5</sup> Ibid.

Rolin-Jaequemyns wrote this letter to M. Droz when he had been serving as the General Adviser for almost seven years. Therefore he was in full knowledge of the sphere of responsibilities of this post. Unfortunately, M. Droz declined to accept Rolin-Jaequemyns's proposal on the basis of the indifferent health of his wife. Rolin-Jaequemyns then heard with surprise of M. Droz's own sudden demise in February 1900.<sup>6</sup>

### Section III The General Advisers

There were three General Advisers during the reign of King Chulalongkorn

1. M. Gustave Rolin Jaequemyns (1892 - 1901)
2. Mr. Edward Henry Strobel (1904 - 1908)
3. Mr. Jens I. Westengard (1908 - 1915)

#### 1. The role of M. Gustave Rolin-Jaequemyns

Rolin-Jaequemyns was a Belgian, born in 1835 at Ghent, who graduated in law from the University of Ghent in 1857. He worked first as a barrister in the Appeal Court of Ghent and then became the editor of the journal "The Review of International Laws and Comparative Legislation" in 1869. In 1873, he became a founder member of the International Law Council of Belgium and was appointed the secretary of this council, and was later selected its president. From 1878-1884, he was Belgium's Minister of Interior and Minister of Public Works, so he became expert in governmental administration. In 1879 he had been an honorary lecturer in law in the universities of Edinburgh and Oxford. He was also a member of Law Councils in Madrid, Paris, and Canada, and was appointed a judge in the international arbitration

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<sup>6</sup> Rolin Jaequemyns to King, 26 March 1900, NA R5 Kt 2/8.

court at the Hague. Before he accepted the post of General Adviser to the Siamese Government he wrote many books on law and International Law.<sup>7</sup>

Rolin-Jaequemyns's relationship with Siam started when Prince Damrong was on a special mission to Europe in 1891. At that time the Siamese Government considered itself in need of an international lawyer to advise it on the internal and international affairs illustrated in section I. Therefore Prince Damrong was authorized on this trip to recruit an international lawyer to assume the post of General Adviser to the Siamese Government. On arrival in London Prince Damrong referred this matter to Mr. Frederick Verney who was the English Secretary to the Siamese Legation in London. Mr. Verney introduced Prince Damrong to the German-born Lord Reay who was a trained lawyer and Governor of Madras in India. Prince Damrong asked Lord Reay to find an international lawyer for him. After the completion of his business in Europe, again on Verney's advice, Prince Damrong visited the Khedivate of Egypt en route home in order to observe the progress of a country colonized by the British empire. He again met Lord Reay in Egypt and the latter introduced him to M. Rolin-Jaequemyns who was a famous international lawyer and was seeking a job suitable for his qualifications in the Egyptian Government. The reason for his desire to work outside Belgium was that his financial standing in Belgium had been undermined followed by the total loss of his fortune. As the president of a joint-stock company, under the direct control of his younger brother, which came under threat he sacrificed to the enterprise the whole of his personal fortune, as well as that of his wife and children.<sup>8</sup> Unfortunately, at that time the Egyptian Government had no high-ranking position available. But when he met

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<sup>7</sup> Thailand Fine Arts Department, Chaophraya Apairacha (Rolin Jaequemyns's Biography), (Bangkok, 1972), pp.1-3.

<sup>8</sup> "France and Siam", The Times, 25 Aug.1893.

Prince Damrong, the latter was very impressed with his personality and knowledge, and offered him the post of General Adviser to the Siamese Government.<sup>9</sup>

After consultation by telegraph between Princes Damrong and Foreign Minister Thewawong, they decided to recruit Rolin-Jaequemyns. King Chulalongkorn, being informed about the matter, also agreed with them. What induced Prince Damrong to select him was not only his high legal reputation, his experience as a European statesman, his political erudition, and his honourable character, but also, and perhaps chiefly, his Belgian nationality, which rendered his position independent alike of the criticism of both England and France.<sup>10</sup>

The contract of employment between the Siamese Government, represented by *Phraya* Mahayotha, the Siamese Minister in London, and Rolin-Jaequemyns, was signed in London on 28 August 1892. The contract commenced from the day on which Rolin-Jaequemyns arrived at Bangkok. Rolin-Jaequemyns arrived on 27 September 1892, and went to see Prince Thewawong on 29 September. The latter was pleased with his character and personality.<sup>11</sup> Rolin-Jaequemyns had a first private audience with the King on 12 October 1892.

#### a) Rolin-Jaequemyns's role in the Law School

In his first year in office, Rolin-Jaequemyns inspected various aspects of traditional Siamese administration. In the administration of justice, he realized that to eliminate foreign extraterritoriality Siam needed judicial reform with modern codes of law and capable staff to operate the new system. In 1893 he launched the idea of establishing a law school to produce qualified lawyers. This was recorded in the

<sup>9</sup> Thailand Fine Arts Department, *Chaophraya Apairacha*, op.cit., and see Damrong to Thewawong, 30 June 1892, NA R5 Kt 2/6.

<sup>10</sup> "France and Siam", *The Times*, 25 Aug.1893.

<sup>11</sup> Thewawong to Sommot, 30 Sep.1892, NA R5 Kt 2/1.

memoirs of *Chaophraya* Mahithon (La-or Krairoek), the first barrister to emerge from the Law School.<sup>12</sup> If Rolin-Jaequemyns was first to recommend a law school, the second in November 1895 was Prince Phichit. It was probably the shortage of capable staff to run it which delayed its establishment until Prince Raphi became Minister of Justice in 1896.

The King decided to appoint Raphi as Minister in March 1897 partly because Rolin-Jaequemyns promised to assist him in running the Ministry.<sup>13</sup> Although Rolin-Jaequemyns had no time to lecture in the Law School, he took part as member of the committee of examiners which comprised Prince Raphi, *Phraya* Prachakitkorachak (Chem Bunnag), *Khunluang Phraya* Kraisi (Pleng Wepara), Rolin-Jaequemyns, and another Belgian and Rolin-Jaequemyns's son-in-law, M. Kirkpatrick.<sup>14</sup> The first bar examination was arranged at the end of 1897, and nine persons were called to the Bar. La-or Krairoek was the first Siamese-trained barrister.

#### b) His role in improving criminal justice

Rolin-Jaequemyns was appointed by the King in 1896 as a member of the committee to improve the administration of criminal justice. He accepted this appointment with pleasure as he replied to Prince Sommot, the Royal Secretary:

I had the honour of receiving today your note dated 6 instant with a translation of the Royal Mandate, by which His Majesty has been pleased to appoint me with Their Royal Highnesses Princes Phichit and Nares to consult together about the best means of improving the administration of criminal justice.<sup>15</sup>

<sup>12</sup> *Luang Chakprani, Ruangkhong Chaophraya Mahithon* (La-or Krairoek) (the Career of *Chaophraya* Mahithorn), printed in the cremation volume of *Chaophraya* Mahithorn, (Bangkok, 1956), p.51.

<sup>13</sup> See chapter 7.

<sup>14</sup> Thailand Fine Arts Department, *Chaophraya Apairacha*, op.cit., p.30.

<sup>15</sup> Rolin Jaequemyns to Sommot, 7 Oct.1896, NA R5 Kt 2/8.

As a member of this committee, Rolin-Jaequemyns introduced his ideas about the privilege granted in former times by *laksana Aryaluang* (Crime against the government), section 28, to noble men of *sanyabat* (government officials conferred titles by the King), not to be prosecuted in criminal cases except after Royal sanction had been given. Rolin-Jaequemyns considered that this exemption should be abolished as he stated clearly in the letter dated 27 July 1899 to the King:

In my opinion this law has been implicitly repealed by the new Code of Criminal Procedure [Temporary Criminal Procedure Code of 1896], which mentions no exception for the institution of criminal proceedings. This privilege would already be a great obstruction and nuisance in Bangkok. But in far distant parts of the Kingdom it would be perfectly intolerable and cause entire paralysis of the hand of justice.<sup>16</sup>

Actually this *laksana Aryaluang* section 28 was one of the laws which discriminated between the *khunnang* (noble) and the *phrai* (peasants), because *phrai* could take legal action against *khunnang* only when they obtained permission from the King. As for members of the Royal Family, it was quite out of the question as nobody could touch them except the King. Rolin-Jaequemyns's idea for abolishing this law was to eradicate inconvenience in courts far from Bangkok, and to reduce the gap between the *khunnang* class and the *phrai*. Therefore, this issue was very controversial and was debated at length in the meeting of the *senabodi* on 7 August 1899. Prince Thewawong argued that this *laksana Aryaluang* section 28 had been confirmed by a Royal Proclamation of 1892, and that the new Temporary Criminal Procedure Code had not included any provision to abolish this law. Therefore, it still existed.<sup>17</sup>

Prince Raphi was of the opinion that the abolition of this law might bring chaos to the administration of justice owing to the Siamese liking to make up stories

<sup>16</sup> Rolin Jaequemyns to King, 27 July 1899, NA R5 Kt 2/13.

<sup>17</sup> The report of the *senabodi*'s meeting on 7 Aug.1899, NA R5 Ky 1/25.

and bring them to court. He also explained the practice of the courts at that time, that if someone sued *khunnang*, the judge would submit that case to him and he would order the court to make a preliminary examination. If there was a prima facie case, he would accept the charge and submit it to the King for authority to proceed, but if in his view there was no prima facie case, the charge would be dismissed.<sup>18</sup>

The King presided over the discussion and stated that Rolin-Jaequemyns had misunderstood this law, and the meeting of the *senabodi* unanimously decided to dismiss Rolin Jaequemyns's proposal.<sup>19</sup>

M. Rolin-Jaequemyns also assisted Prince Phichit by advising him on the Evidence Act of 1895, and the Criminal and Civil Procedure Acts of 1896.<sup>20</sup> Apart from his role in judicial matter, Rolin-Jaequemyns also assisted the Siamese Government in international relations. This is evident at the time of the Franco-Siamese Treaty of 1893, when he was appointed Minister Plenipotentiary by the Siamese Government to negotiate with the French, but the latter refused to talk with him, and Prince Thewawong was appointed instead. But Thewawong signed with France a Treaty totally disadvantageous to Siam without authority from the King who had retired up the river. Rolin-Jaequemyns then criticized Thewawong, and accused him of disregarding Siam's national interests. From that time the relationship between them deteriorated and these circumstances shook the confidence of the King in Prince Thewawong.<sup>21</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> There is no evidence in the National Archives, Bangkok, to support this, but a letter from Beckett to Grey dated 17 Oct.1907, inclosure number 3, memorandum of Mr. Black, PRO FO 422/61 evidences this claim.

<sup>21</sup> Scott to Rosebery, 28 Jan.1894, PRO FO 422/39, and one can see that from this time Thewawong's role was declining and Damrong's increasing.



c) Relationship between Rolin Jaequemyns and King Chulalongkorn

Rolin Jaequemyns had a very good rapport with King Chulalongkorn as is evident from the King's letter of 2 April 1901 to him when he had to leave Siam owing to bad health. The King wrote:

I regret very much that you have to return but it is necessary for your health and happiness. I willingly allow you to go because your life is very valuable to our country. I am entirely satisfied with your service and please believe that I myself and all my cabinet still desire your assistance. We are worried that without you we would suffer and we could never expect that anybody could replace you.<sup>22</sup>

In this letter the King also referred to Rolin-Jaequemyns's promise to find a suitable person to replace him, and he also praised his ability in drafting letters. Rolin-Jaequemyns went back to Belgium in April 1901. Even though he went back to Belgium the King still paid him his full salary. In August 1901, Rolin-Jaequemyns sent a letter to the King informing him that he might be able to return to Siam in the winter of that year. The King was delighted and dispatched a letter to him to say that his coming would greatly benefit Siam.<sup>23</sup> Unfortunately, however, he died on 8 January 1902 at his home in Brussels.

After the death of Rolin-Jaequemyns, the King's hope of his coming back or himself finding a substitute vanished. Therefore, the King wrote a letter dated 2 February 1902, to *Phraya Suriya* (Koet Bunnag), the Siamese Ambassador in Paris, asking him to find capable person or persons, knowledgeable in diplomacy and English, and not a citizen of one of the big nations. The King also outlined the distinct abilities of Rolin-Jaequemyns in drafting correspondence or letters, giving advice, and reporting other ministerial activities. After his departure the projects of

<sup>22</sup> King to Rolin Jaequemyns, 2 April 1901, NA R5 Kt 2/12.

<sup>23</sup> Correspondence between King and Rolin Jaequemyns, Aug.1901, NA R5 Kt 2/12.

all ministries had seemed to slow down. The King explained that it was difficult to find someone of the same quality as Rolin-Jaequemyns.

In the same letter, King Chulalongkorn complained to *Phraya Suriya* that he was desperately in need of a capable person to draft correspondence for him. At that time, Prince Thewawong arranged for M. Schlessler, a Belgian lawyer employed in the Ministry of Justice by Rolin-Jaequemyns, to draft correspondence, but the King was not satisfied with his work, for he said to *Phraya Suriya*, M. Schlessler was an incompetent lawyer, stupid, undiplomatic and not capable of drafting correspondence. Because of the incompetence of the other Belgian advisers, the King had no alternative but to seek advice from Mr. Rivett-Carnac, the British Financial Adviser, even though the King did not trust him as he explained to *Phraya Suriya* in the following letter dated 25 April 1902 that:

There were difficulties in drafting correspondence and telegraphs. M. Schlessler, the Belgian lawyer, was undiplomatic and brusque. This necessitates me to swim towards the crocodile, Mr. Rivett-Carnac, the Financial Adviser, to seek his advice, and because of his ambition to replace *Chaophraya Apairacha* [Rolin-Jaequemyns] he willingly assist me in the required matters. He helped me because his assistance conferred benefit upon Britain, but if otherwise he would not help.<sup>24</sup>

Because of this assistance Rivett-Carnac was appointed the Acting General Adviser. But the King planned to abolish the post of the General Adviser and employ a capable person to replace Rolin-Jaequemyns calling this person the general adviser to the Foreign Ministry. The reasons for this change were probably that the King did not expect that *Phraya Suriya* could recruit any person as capable as Rolin-Jaequemyns, and he did not want to upset Mr. Rivett-Carnac who wanted to occupy the post. But the King made out an exception that: "If the person who is recruited as

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<sup>24</sup> King to Suriya, 25 Apr.1902, NA R5 Kt 2/1

the general adviser to the Foreign Ministry is a capable and knowledgeable person, he may be promoted to be General Adviser."<sup>25</sup>

It is necessary to consider why King Chulalongkorn did not want to employ British or French citizens as the General Adviser. It was probably because of the scale of both British and French interest in Siam; Britain was increasing its influence in the Siamese Malay states and France still occupied Chantabun as a bargaining counter to exchange for other Siamese territories. It is understandable that King Chulalongkorn and Prince Damrong always believed that the British or French Advisers would only assist Siam when Siam's interest coincided with their countries' interest, otherwise they would not help. This is the reason the Siamese Government never intended to employ Rivett-Carnac as the General Adviser as they believed that in the last analysis he would defend British rather than Siamese interests.<sup>26</sup>

King Chulalongkorn also believed that if Siam employed either a British or French General Adviser, this would enhance the opportunity for that nation to influence the Siamese Government and at the same time would give a chance to other nations to claim something to balance their influence. This is the reason the Siamese Government decided to employ an American, Mr. Edward Strobel, as the General Adviser to the Foreign Ministry, and later as the second General Adviser.

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<sup>25</sup> Ibid.

<sup>26</sup> This is probably not true in Rivett-Carnac's case as he sometimes showed more concern for Siamese than British interests. For instance, in 1899, he advocated a joint guarantee of Siam's independence by Great Britain, France, Germany, Russia and the United States, but his idea was rejected by the British Government, see Greville to Salisbury, 16 Dec. 1899, PRO FO 422/53.

## 2. The role of Mr. Edward Strobel (1904-1908)

When King Chulalongkorn authorized *Phraya* Suriya to recruit a capable person as the General Adviser to the Foreign Ministry, the latter was in favour of employing an American as he explained to *Phraya* Akkaraja, the Siamese ambassador to Washington, in a letter dated 10 June 1902. In his view, if Rolin-Jaequemyns had been an American, Siam would have obtained more sympathy from the American people and Government and would have been in a better position regarding the relationship with France. Consequently, he asked *Phraya* Akkaraja to engage a capable American lawyer to fill this position.<sup>27</sup>

Mr. John Hay, the American Secretary of State for Foreign Affairs, introduced a Professor of law at Harvard University, Mr. Edward Strobel, to *Phraya* Akkaraja. Akkaraja then wrote a letter dated 24 July 1902 to *Phraya* Suriya, describing the career of Mr. Strobel with experience in politics and diplomacy as he used to work as secretary to the American ambassador to Madrid 1888-1889, and was appointed third Assistant Secretary of State for Foreign Affairs 1893-1894. He could speak five languages; English, French, German, Spanish and Portugese, and was also expert in finance.<sup>28</sup> *Phraya* Suriya was interested in Mr. Strobel and the latter was asked to travel to meet *Phraya* Suriya in Paris where the contract of employment was signed on 21 October 1902.

Mr. Strobel requested a secretary to help him with shorthand and typing to which the Siamese Government agreed, but the latter reckoned that it should employ a secretary who was a lawyer as it should benefit Siam more. This is what brought Mr. Jens Westengard, Mr. Strobel's student, into Siamese service. The contract

<sup>27</sup> Suriya to Akkaraja, 10 June 1902, NA R5 Kt 2/1.

<sup>28</sup> Akkaraja to Suriya, 24 JULY 1902, NA R5 Kt 2/2.

between the Siamese Government and Mr. Westengard was signed on 11 March 1903.<sup>29</sup>

Mr. Strobel and Mr. Westengard's arrival in Bangkok on 18 March 1904 was delayed because they had personal affairs to organize, and they stopped at Paris on the way to Bangkok in order to assist *Phraya* Suriya in negotiating a treaty with the French. Soon after Mr. Strobel arrived in Bangkok, he found out that he was intended to replace M. Rolin-Jaequemyns, a more influential post. Therefore, he requested to be appointed the General Adviser. The Siamese Government reckoned that Mr. Strobel was adequately qualified and experienced and agreed to appoint him the General Adviser.

a) Mr. Strobel's role in the conclusion of the Franco-Siamese Treaty of 1904

Two main problems ensued from the disadvantageous position of Siam under the 1893 Treaty, firstly, the French occupation of Chantabun, and secondly, the increasing number of French Asiatic subjects who were entitled to claim extraterritorial rights and therefore were not subject to Siamese jurisdiction. The Siamese Government's attempt to persuade the French to renegotiate always failed. Finally, at the beginning of 1904, Siam successfully negotiated a new treaty with France.

*Phraya* Suriya, Siam's representative, asked Mr. Strobel and Mr. Westengard who were on their way to Bangkok to stop at Paris and assist him in the negotiation. Mr. Strobel considered that the 1904 Treaty was very important for Siam because it was the first restriction of French extraterritorial rights, albeit at the cost of some Siamese territory.<sup>30</sup> Through it, the Siamese International Court obtained jurisdiction

<sup>29</sup> The employment of Mr. Strobel and Mr. Westengard, 21 Oct.1902, NA R5 Kt 2/2.

<sup>30</sup> Strobel to Thewawong, 25 Dec.1904, Foreign Ministry document, File 2.10.

over French Asiatic subjects in both civil and criminal cases, but the French Consul was entitled to be present at the trial, and be furnished with copies of proceedings. He also had the power to evoke such cases from the Siamese International Court if he thought proper in the interests of justice and he submitted a written requisition before the judgment of the case. Then those cases would be transferred to the French Consular Court and the French Consul would decide and deliver the judgment. In exchange for this Siam abandoned its claim to the territory of Luang Phrabang and other areas on the right bank of the Mekong River, while France promised at last to evacuate Chantabun.<sup>31</sup>

On the day he arrived in Bangkok, Mr. Strobel submitted a letter dated 18 March 1904 to the King. In this letter he expounded the immediate problems which Siam should try to solve. Firstly, regarding foreign extraterritorial rights, Siam must try its best to restore its judicial autonomy. So far its first steps had been successful as evidenced in the Chiangmai Treaty of 1883 and the Franco-Siamese Treaty of 1904. Secondly, he emphasized the importance of a clearly-defined frontier between Siam and French Indochina. He suggested the idea of establishing a mixed commission to determine the frontier.<sup>32</sup>

The Franco-Siamese Treaty of 1904 was successful because of the cooperation between *Phraya* Suriya and Mr. Strobel and the political settlement between Britain and France which led to the Entente Cordiale of 4 April 1904. One problem ensuing from the 1904 Treaty was that after evacuation from Chantabun, the French troops moved to Trat, a Siamese province right on the Cambodian border, claiming that they needed Trat as a guarantee that Siam would evacuate the right bank of the Mekong River and would comply with the conditions in the 1904 Treaty.

<sup>31</sup> Thailand Treaty and Legal Department, Bilateral Treaties between Thailand and Foreign Countries, vol.2, (Bangkok,1969), pp.191-193..

<sup>32</sup> Strobel to King, 18 Nov.1904, Foreign Ministry document, File 2.11.

The influence of Mr. Strobel over the King gradually increased after his arrival, and it reached its peak when he successfully persuaded King Chulalongkorn to conclude the Franco-Siamese Treaty of 1907. Mr. Strobel was instrumental in the success of this treaty by consulting with the French Minister, Prince Thewawong and King Chulalongkorn. He gave advice, provided conditions, and drafted the treaty by himself.

b) His role in the Franco-Siamese Treaty of 1907

The significant elements of this treaty divided into two parts, firstly, Siam agreed to abandon its claim to suzerainty over the three Cambodian provinces of Battambang, Siemreap and Sisophon in return for the French evacuation of Trat and its islands. And both parties agreed to establish a commission to determine the common frontier between them. Secondly, France agreed to submit all its Asiatic subjects who registered before the date of the Treaty, 23 March 1907, to the jurisdiction of the Siamese International Court in both civil and criminal cases. The French Asiatic subjects who did not register, or registered after this date, were placed under the jurisdiction of the ordinary Siamese Courts in all cases, either as plaintiff or defendant, prosecutor or accused. In the International Court the French Consul had the right to withdraw cases to be decided in the French Consular Court. The system of the Siamese International Court would come to an end, and its jurisdiction would be transferred to the ordinary Siamese Courts after the promulgation and enforcement of the Siamese Codes: the Criminal Code, the Civil Code, the Code of Procedure, and the law of Judicial Organization.<sup>33</sup>

As illustrated in a) Mr. Strobel's top priority in dealing with Siamese problems was to end extraterritoriality. He was keen to persuade the King to agree to abandon

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<sup>33</sup> Thailand Treaty and Legal Department, *op.cit.*, pp.200-205.

the suzerainty of Siam over the three Cambodian provinces. He argued that the French considered that Cambodia was very important for the security of French Indochina and therefore they wanted to possess the whole Cambodian territory so they initiated this Treaty through him. If Siam insisted on its claims to these three provinces, France would one way or another succeed in obtaining them and Siam would lose the chance of repossessing Trat and restoring part of its jurisdiction.<sup>34</sup> Mr. Strobel was probably also of the opinion that this Treaty marked a significant move toward the termination of the whole problem of extraterritoriality in Siam as it included a provision to end extraterritoriality. And this might set an example for other European powers.

c) His role in the Anglo-Siamese Treaty of 1909

After reading the report of Mr. Westengard whom Mr. Strobel sent to study the situation in the Siamese Malay states since 1896, Mr. Strobel realized that British influence was increasing, and it was probably inevitable that in the near future Britain must annex these states to its empire like France with regard to the Cambodian provinces. He considered that Siam should also seek some compensation from Britain in exchange for offering these Siamese Malay states; namely, Trengganu, Kelantan, Kedah, and Perlis to Britain. In his memorandum he wrote:

The Siamese Government receives no advantage whatever from these states, is responsible for their administration and at the same time cannot exercise any effective control over them without interference from Great Britain.<sup>35</sup>

In his memorandum he also noted that King Chulalongkorn might reject his proposal, but he was quite confident that his idea was the best for Siam's situation at

<sup>34</sup> Memorandum by Wister, 23 March 1907, PRO FO 422/61.

<sup>35</sup> Strobel's memorandum, 4 Dec. 1907, Foreign Ministry document, File 1.8. And also see Thamsook Numnonda, "Negotiations Regarding the Cession of Siamese Malay States 1907-1909", Journal of Southeast Asia Studies, vol.2 (July, 1967), p.229.



that time. He noted that "My position is such that I cannot afford to take any steps unless I am fairly sure of success beforehand".<sup>36</sup> After King Chulalongkorn arrived in Bangkok from his second European tour, Mr. Strobel proposed his idea to the King. According to his memorandum, he substantiated his idea by listing the benefits Siam would obtain for the sacrifice of those Malay states. He explained that in exchange for the abandonment of those four states, Siam could demand firstly, the restoration of its legal jurisdiction over British subjects along the same lines as the Franco-Siamese Treaty of 1907. He was of the opinion that if Siam succeeded in persuading Britain to submit its Asiatic subjects to Siamese jurisdiction, the other European countries which had fewer Asiatic subjects would follow suit.<sup>37</sup>

Secondly, Siam could demand the abolition of the Secret Agreement of 1897. Mr. Strobel was of the opinion that in practice this agreement conferred benefit only to Britain because Britain could increase its influence directly all over the Southern part of Siam, but Siam received nothing from this agreement. Thirdly, Mr. Strobel opined that Siam could demand a loan with low interest from Britain to build a railway in the South. He explained that the railway construction would enable Siam to concentrate on improving the real Siamese territory after it had abandoned the troublesome Southern Malay states. But this purpose would be fulfilled only if the Secret Agreement of 1897 had been abolished, otherwise this railway would enable Britain to monopolize the whole Southern part of Siam. Mr. Strobel concluded that this was now the best way for Siam to employ its tentative hold over its Malay states. If Siam hesitated and waited, it would lose all of these states without any benefits in return.<sup>38</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., and see Thamsook Numnonda, *op.cit.*, p.231.

King Chulalongkorn agreed with Mr. Strobel and therefore the latter pursued his plan seriously by approaching Mr. Paget, the British Minister in Bangkok, and proceeded to hold discussions with him as he desired to conclude the Treaty before anyone came to replace Mr. Paget. But owing to several problems in the negotiations, the conclusion of the Treaty was delayed, and then Mr. Strobel died in Bangkok on 15 January 1908. Fortunately, Mr. Westengard who closely cooperated with Strobel on this project, was available to continue the negotiations. The Anglo-Siamese Treaty was therefore concluded on 10 March 1909 on the terms proposed by Strobel.

d) Relationship between Mr. Strobel and King Chulalongkorn

King Chulalongkorn was pleased with Mr. Strobel's commitment to the interest of Siam, but when on one occasion Strobel acted beyond his authority, the King wrote a letter dated 11 June 1904, asking Prince Thewawong to warn him while indicating in the letter that he did not want to lose Mr. Strobel:

In this case of *muang* [town] Kaentow, Mr. Strobel represented his idea to the foreign representative without informing the Siamese Government and if they genuinely believe that it is our intention and act upon it, and if this issue is one on which we cannot agree, we will have problems and we could also lose Mr. Strobel. I think that this kind of thing should not be repeated.<sup>39</sup>

When Strobel died in Bangkok, aged 53, the King organized a Royal cremation for him at Thepsirin Temple and went to preside at the cremation. The King also wrote a letter of condolence dated 6 September 1908, to Mr. Strobel's mother that:

It is needless for me to say how much I deplore the loss of so excellent and accomplished a man. It is, however, my duty to mention that he had been a devoted servant and true friend of my government. I rather doubt being able to find another man equal to him in every respect to fill his place. There is for us only one consolation, that is,

<sup>39</sup> King to Thewawong, 11 June 1904, Foreign Ministry document, File 2.11 (Siam and France).

that the memory of him and of the good he has done for my country will ever remain in history and in the minds of the people of Siam.<sup>40</sup>

### 3. The role of Mr. Jens I. Westengard (1908-1915)

The employment of Mr. Westengard by the Siamese Government had of course already commenced at the same time as Mr. Strobel. Mr. Westengard had also arrived in Bangkok on 18 March 1904, and had acted as the assistant to the General Adviser. When Mr. Strobel died in 1908, he took over as the General Adviser, following Mr. Strobel's example, and concluding the Anglo-Siamese Treaty of 1909.

When Mr. Westengard took over the post of the General Adviser after Strobel's death in the middle of January 1908, he was consulted by the Siamese Government on M. Padoux's plan of codification. Padoux, as the Legislative Adviser and the president of the Law Commission for Codification, advised two alternative codification plans: the first plan contemplated the employment of one assistant and one secretary. This very limited force could accomplish the work within twelve years. The second plan contemplated the employment of three assistants and one secretary. This larger force would hope to complete the work within five years. Westengard preferred the second plan as he suggested that both plans would cost almost the same, because, although the second plan employed a larger force, it would accomplish the work in less than half the time which would be required under the first plan.<sup>41</sup> He substantiated his arguments in political and legal respects:

The larger force will insure the prompt completion of the work, whereas the smaller force would result in the work dragging on for a long series of years. Now the completion of the codes is of the greatest importance in connection with the extension of Siamese jurisdiction over foreign subjects. The sooner the codes are completed

<sup>40</sup> King Chulalongkorn to Mrs. Strobel, 6 Sep.1908, NA R5 Kt 2/8.

<sup>41</sup> Westengard to Thewawong, 29 Jan.1908, NA R5 Kt 35.1/11.

the sooner we shall be able to exercise jurisdiction over foreign subjects.<sup>42</sup>

Princes Thewawong and Raphi agreed with Westengard's idea and the second plan was adopted.<sup>43</sup>

When King Chulalongkorn died on 23 October 1910, Westengard still carried on in his position, and was appointed *Phraya* Kanlayanamaitri in 1911. He played a great role in eliminating foreign extraterritoriality for the Siamese Government but this is outside the period of this study which ends in 1910. Mr. Westengard resigned from the Siamese Government's service in 1915 out of concern for his family responsibilities. He returned to the United States and lectured in law at Harvard University until he died in 1918. He was the last General Adviser because after his resignation Siam felt more secure and abolished the position of the General Adviser.

#### Section IV Legal, Judicial and Legislative Advisers

With respect to the more directly relevant aspect of foreign legal advise, there were four important advisers:

1. M. Richard Kirkpatrick, Legal Adviser
2. Dr. Masao Tokichi, Legal Adviser
3. Mr. Stewart Black, Judicial Adviser
4. M. George Padoux, Legislative Adviser

##### 1. M. Richard Kirkpatrick

M. Kirkpatrick, a Belgian barrister despite his name, came into the Siamese Government's service by the persuasion of M. Rolin-Jaequemyns. He was engaged as the Legal Adviser to the Foreign Ministry and arrived in Bangkok in 1895. During

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<sup>42</sup> Ibid.

<sup>43</sup> Thewawong and Raphi to King, 19 Feb.1908, NA R5 Ky 35.1/11.

his service in Siam he married a daughter of Rolin-Jaequemyns. He left the Siamese Government's service in 1898 on the grounds of bad health and died in 1901.

M. Kirkpatrick's first job in the Siamese Government was to assist Prince Phichit, the Minister of Justice at that time, to overcome the tremendous number of unsettled cases in the Ministry of Justice. He was the person who drafted the regulations for the Special Commission to deal with unsettled cases.<sup>44</sup> He was so enthusiastic and willing that Prince Phichit found it indispensable to appoint him as one of the Special Commissioners. In this capacity he argued that all kinds of unsettled cases should be dealt with simultaneously irrespective of how long they had been pending in courts. But Prince Phichit held a different opinion as he believed that priority should be given to cases which had been pending in courts for more than three years. Eventually, M. Kirkpatrick successfully persuaded Phichit to agree with him.<sup>45</sup>

When the Siamese Government carried out the reorganization of the provincial courts by creating *monthon* courts to coordinate the many provincial courts in the same area, there was a proclamation on 21 September 1896 appointing Prince Raphi as the president of the Commission, M. Kirkpatrick and *Khunluang Phra Kraisi* (Pleng Wepara) as Commissioners to deal with this project. They initiated the programme in *monthon* Krungkao (Ayuthya) by dealing with unsettled cases, and on 10 June 1897 the King proclaimed the *monthon* Krungkao Court as the first *monthon* Court in the country.<sup>46</sup>

<sup>44</sup> Phichit to King, 27 Nov. 1895, NA R5 Ky 1/9.

<sup>45</sup> Phichit to King, 17 Jan. 1896, NA R5 Ky 1/3.

<sup>46</sup> Marut Bunnag (ed.), Arnusorn naingan Phraratchatan poengsop Khunluang Phraya Kraisi (Pleng Wepara) (Biography and work of *Khunluang Phraya Kraisi*), printed in his cremation volume, (Bangkok, 1983), p.40.

In 1897 M. Kirkpatrick was appointed by the King as a member of the Law Commission for Codification which comprised Prince Raphi as the president, Prince Phichit, *Phraya* Prachakitkorachak (Chem Bunnag), Rolin-Jaequemyns, M. Kirkpatrick and Dr. Masao. The job of this Commission was to revise old laws and to codify codes of law.<sup>47</sup> King Chulalongkorn also appointed him as a judge in the *Dika* Court on 29 May 1898 at the same time as Princes Phichit, Sirithat, and Raphi and *Phraya* Arnuchitchanchai to take charge of all *dika* cases submitted to the King after 1 April 1898. Therefore these cases were tried and decided by a quorum of at least three judges whose majority opinion formed the decision.<sup>48</sup> Unfortunately, M. Kirkpatrick only served in these two capacities for a short period as he resigned on the basis of bad health in 1898 and died three years later in 1901.

## 2. Dr. Masao Tokichi

Masao Tokichi, a Japanese lawyer, studied English in a High school in Tokyo and finished from the school in 1889. He taught English in Japan for a short period and went to study law in the United States, finished a law degree at West Virginia University in 1895, and finished his doctorate at Yale University in 1897. He returned to Japan in the same year and started work as the editor of the English-language newspaper "Japan Times". As the editor he knew the Japanese Foreign Minister, and probably because of this he was soon sent to Siam as the Legal Adviser to assist Siam in codification as a programme under the Japan-Siam Treaty of 1898.<sup>49</sup>

The story of Siam-Japan relations in this period is currently under investigation by Mr. Iida Junzo with particular attention devoted to the role of Masao Tokichi. The idea of signing a treaty between Siam and Japan probably originated in

<sup>47</sup> Botbandit, the Ministry of Justice journal, (Bangkok, 1968) vol.25, p.490.

<sup>48</sup> The Proclamation of the Appointment of *dika* judges, 29 May 1898, NA R5 Ky 10/17.

<sup>49</sup> Yoneo Ishii, Kharmsampan Thai-Yepun hokroipi (600 Years Thailand-Japan Relations), (Bangkok, 1987), pp.125-126.

the visit of Prince Thewawong to Japan in 1887, on his way back from Europe. During this visit Thewawong signed a "Declaration of Trade and Friendship between Siam and Japan" on 26 September 1887. At that time, Japan under the Meiji Government wanted to create relationships with other Asian countries. In March 1897, Inagaki Manjiro was sent as the first Japanese Minister to Bangkok and represented Japan in negotiating the 1898 treaty. The process of negotiation consumed one and a half years owing to different opinions about extraterritoriality, desired by Japan but rejected by Siam. Japan argued that at that time Siam still did not have modern codes of law and promised that after the implementation of the Civil and Criminal Codes, Codes of Civil and Criminal Procedure, and the Law of the Constitution of the Courts of Justice, Japan would abandon extraterritoriality.<sup>50</sup> This is the reason Masao came to Siam in November 1897, to assist the Siamese Government with the drafting of all codes. The Siamese Government agreed to sign the Treaty on 25 February 1898, on the terms Japan proposed, probably because this was the first Treaty which provided for the termination of extraterritoriality and it wished to set this as a model for future treaties with Western powers.

After his arrival in Bangkok, Masao assisted Inagaki in negotiating the Treaty with the Siamese Government. During this period he worked closely with Rolin-Jaequemyns, and after the conclusion of the Treaty the latter successfully persuaded him to accept the post of Assistant to the General Adviser. Masao was also appointed by King Chulalongkorn to the Law Commission for codification (at the same time as M. Kirkpatrick and others). In this capacity he was in charge of drafting a Criminal Code which will be illustrated in detail in the following section.

When Rolin-Jaequemyns went back to Belgium because of his poor health in 1901, the office of General Adviser temporarily disintegrated and Masao was

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<sup>50</sup> Ibid., p. 102.

appointed instead Legal Adviser under the Ministry of Justice. He was also appointed a judge in the *Dika* Court. In 1909, when Masao and M. Padoux were in charge of drafting the Civil Code, he had a serious conflict with Padoux over the question of polygamy, which seems to have left him feeling isolated and unappreciated. He resigned from Siamese Government service in 1913, and was elected a member of the Japanese Diet in 1915. In 1920 he was appointed the Japanese Minister at Bangkok, but died in Bangkok in 1921.<sup>51</sup>

### 3. M. Georges Padoux

M. Padoux was employed in the Siamese Government service according to a provision in the Franco-Siamese Treaty of 1904. This obliged Siam to employ Frenchmen as advisers in high positions. At that time Siam needed a capable lawyer who specialized in legislation. Therefore the French Government proposed M. Padoux, one of their nationals, a lawyer who had experience in legislation. His qualifications appear in a letter dated 23 September 1904, from *Phraya* Suriya to Prince Thewawong:

Monsieur Padoux is a clever and nice lawyer whose character and qualification is not easy to find in France. He has good experience in both legislation and consular courts as he promulgated legislation in Tunisia and he also presided as judge in consular courts in French colonies. His command of English is not good but he can improve. I have investigated the qualifications of many French lawyers and I feel that I should recommend Monsieur Padoux.<sup>52</sup>

Consequently M. Padoux was employed by the Siamese Government in 1904 as the Legislative Adviser whose duty was to design codes of law. His role in drafting the Criminal Code will be illustrated in the following section. In 1909, after the implementation of the Criminal Code of 1908, M. Padoux and Masao were in charge of drafting a civil code. In the part of the Civil Code dealing with Persons and

<sup>51</sup> Ibid., p. 130; also Dr. Masao's file, NA R5 Kt 2.6/135.

<sup>52</sup> Suriya to Thewawong, 23 Sep.1904, The Foreign Ministry's document file 2.1.9.



Family law, the question whether it was advisable to substitute monogamy for polygamy in Siam was raised for the first time. Padoux opined that the Siamese Government and statesmen alone could know what Siam might require and how far the old rules of the Siamese Family Law might be altered. He suggested that polygamy was an old custom of Siamese society and should be legalized in the Civil Code.<sup>53</sup> All the Siamese members of the Law Commission for Codification agreed with Padoux, but Masao strongly objected that such an immoral custom, no matter how long it had existed, should not be legalized as it would undermine the value of the law. He raised the example of Japan which had also had polygamy until M. Boissonade, a French Legislative Adviser to the Japanese Government, codified the Japanese Civil Code, rejecting polygamy. Subsequently the practise of polygamy in Japan had gradually declined.<sup>54</sup>

The conflict was referred to King Chulalongkorn, who himself had practised polygamy, for his decision. The King was of the opinion that this topic should be postponed and await a survey which would be carried out by the Siamese Government to estimate the number of men who had several wives. Masao insisted on his opinion and argued that the European countries, from which Siam was trying to withdraw extraterritorial rights, considered that polygammy was illegal and uncivilized. Therefore, in order to ensure their cooperation, Siam should not legalize polygammy. But Masao's argument was ignored and he was disappointed with the outcome. He foresaw that the survey would take many years and it was unlikely that his opinion would prevail.<sup>55</sup> This is probably one of the reasons Masao resigned from the Siamese Government's service.

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<sup>53</sup> Padoux's memorandum on the question of polygamy dated 9 May 1913, NA R5 Ky 2/6.

<sup>54</sup> Yoneo Ishii, *op.cit.*, pp. 129-130.

<sup>55</sup> *Ibid.*, p.130, and Dr. Masao's file, NA R5 Kt 2.6/135. Apparently the survey was never launched.

#### 4. Mr. Stewart Black

Mr. Stewart Black was an English lawyer who was recruited by the Siamese Foreign Ministry and entered into Siamese Government service in 1902 as the first Judicial Adviser. He explained his duties in his memorandum which Mr. Beckett, the British Charge d Affaires in Bangkok, enclosed in his letter dated 17 October 1907 to Sir Edward Grey, the British Foreign Secretary. Mr. Black explained that:

The Judicial Adviser is also a judge of the *Dika* Court (Supreme Court of Appeal) and a Special Judicial Commission for the Provinces. The Judicial Adviser is the only European in the central office of the Ministry. He controls all the other Europeans, and has a voice in all matters of general policy; for instance, in the promotion and discipline of all Siamese judges, the building of Courts, the issue of departmental legislation, the preparation of the budget. All cases in which foreigners are concerned are reported to him, and as Judge of the *Dika* Court he has the last say in such cases.<sup>56</sup>

Mr. Black also noted in the same memorandum about the Belgian advisers in the Ministry of Justice that:

Up to the engagement of the present Judicial Adviser [he means himself] in 1902, the advisers in the Ministry of Justice were all Belgian. There were eight appointments. They have all left or been dismissed for incompetence (mostly dismissed) and two only remain. When they leave the vacancies will be filled by Frenchmen in all probability.<sup>57</sup>

According to Mr. Black's account, the authority of the Judicial Adviser was tremendous and covered a wide area. He was satisfied with his increasing role, and at the same time Prince Raphi, the Minister of Justice, was fully engaged in the administration of the Ministry of Justice and Raphi also wanted to concentrate on the Law School as already stated in chapter 7. Owing to Raphi's preoccupations, he left several aspects of administration in Mr. Black's hands. This subsequently caused a serious conflict between Mr. Black and Raphi, as he thought he was working for the benefit of the Ministry of Justice but Raphi and the King thought differently.

<sup>56</sup> Beckett to Grey, 17 Oct.1907, inclosure number 1, PRO FO 422/61.

<sup>57</sup> Ibid.

The conflict happened following the conclusion of the Anglo-Siamese Treaty of 1909, which caused dissatisfaction to a group of British subjects. The cause of the conflict was explained in detail in King Chulalongkorn's letter, dated 2 May 1909, to Prince Charun, the Siamese Ambassador to Paris. The King explained:

At present there is a chaotic situation in the Ministry of Justice as Mr. Westengard attempted to solve the dissatisfaction of British subjects who came under the Siamese jurisdiction by drafting a proclamation that in the absence of relevant Siamese law, the British law should be applied. It is unacceptable that if we abolish that country's consular court, we must apply that country's law. Therefore I refused to implement it, informing the British Embassy that the issue needs consultation with Raphi.

The following day I received Raphi's letter with memorandum stating that Mr. Black drafts the court regulations cancelling the advantage Siam should obtain from the new Treaty, by abolishing the Ordinary Siamese Court, maintaining only the International Court, and allowing the Consul to preside and interfere with all cases. I enclose all relevant documents in this letter. Thewawong informed me that Mr. Black discussed the draft with Mr. Beckett and Mr. Westengard without informing the Ministry of Justice, although Mr. Westengard thought that Raphi knew about the regulation. But when Thewawong arranged a meeting between Raphi and Mr. Westengard, then the latter knew that Raphi did not know.

If Mr. Black's regulations and Mr. Westengard's proclamation take effect, not only will we lose the benefit from the new Treaty but also the benefits we maintain under the previous Treaty. We formerly had problems with Mr. Black several times, but not as serious as this. Mr. Black, as we know, always considers himself as the British Official, and because Raphi has always been fully occupied and entrusted him with general administration, he acts as if he has full authority in the Ministry of Justice, and this has misled Mr. Westengard to believe that Mr. Black's opinion is Raphi's, until this affair, of which Raphi knew nothing, happened. Consequently, I ask you to come back to assist Raphi as Vice-Minister of Justice.<sup>58</sup>

Raphi's letter which the King referred to Charun was the letter dated 30 April 1909, which Raphi sent to the King enclosing a memorandum on his discoveries. In his memorandum he explained that:

<sup>58</sup> King to Charun, 2 May 1909, NA R5 Ky 6/7.

Mr. Black's Draft rules take away all our jurisdiction in that by Treaty there is a distinction between the International Courts and the Ordinary Siamese Courts, but the Ordinary Siamese Courts recognised by Treaty is [sic] abolished by Mr. Black. We further lose our rights before the Treaty in that formerly where defendant or accused is a Siamese, we have sole jurisdiction in the case; now that jurisdiction is to be controlled by advisers as well as diplomatic consular officers.<sup>59</sup>

This incident caused the King to recall Prince Charun from Paris to assume the position of Vice-Minister of Justice. When Raphi left the Ministry of Justice on 31 May 1910 owing to the *Phraya Raka* incident, King Chulalongkorn appointed Charun as the Minister of Justice on 26 June 1910. His first job in the Ministry was to reorganize the European advisers. He was of the opinion that Siam was capable of conducting the administration of justice without foreign assistance, and that if European advisers were, in view of treaty stipulations, regrettable necessities, their employment should be as limited as possible.<sup>60</sup>

Prince Charun had a low opinion of Mr. Black and so he dismissed the latter after he was appointed the Minister. This emerges in a conversation between Mr. Peel, the British Minister in Bangkok, and Prince Thewawong. Upon the question put to him by Mr. Peel whether it was definitely settled that Mr. Black was not coming back to the Siamese Government's service, Prince Thewawong answered that:

Mr. Black was not coming back. Prince Charoon [Charun]'s plan was to put all the advisers together on one level. Hitherto there had been titles of Judicial Adviser, Legal Adviser, Legislative Adviser. Prince Charoon's intention was to make all these persons Legal Advisers.<sup>61</sup>

Mr. Peel reported this to Sir Edward Grey, the British Foreign Secretary, and the latter wrote back on 22 September 1910, explaining that the nationality of the Judicial Adviser in question was a circumstance which had duly been taken into

<sup>59</sup> Raphi to King (in English), 30 Apr. 1909, NA R5 Ky 6/7.

<sup>60</sup> Peel to Grey, 30 June 1910, PRO FO 422/65.

<sup>61</sup> Report of conversation between Thewawong and Peel, 13 July 1910, NA R5 Ky 1/70.

consideration by the British Government when they consented to make important concession to the Siamese Government in the matter of jurisdiction over British subjects. He also wrote again on 27 September 1910, ordering Mr. Peel to secure the position of Judicial Adviser for Mr. Skinner Turner, a British lawyer. At last the Siamese Government agreed to appoint Mr. Turner, as Mr. Peel reported to Grey in his letter dated 17 October: " The Siamese Government have now given way and agreed to the appointment of Mr. Turner. They had made up their minds to abolish the post, and I had some difficulty in persuading them to alter this decision."<sup>62</sup>

#### Section V The Role of Foreign Advisers in drafting the Criminal Code

The idea of drafting modern codes of law probably originated when Prince Phichit was the Minister of Justice, as he suggested when implementing the Temporary Criminal and Civil Procedure Acts of 1896 that these two Acts were designed to be temporary because the completion of the full modern codes would consume a long period of time and the Ministry of Justice needed them urgently (This has been illustrated in chapter 6). The process of codification was properly launched at the end of 1897, a few months before the conclusion of the Siam-Japan Treaty of 1898. It was this Treaty that caused the issue of extraterritoriality to be discussed again. Japan had just terminated its unequal treaties with all the European powers starting in 1894, by producing modern codes of law, and Siam wanted to imitate Japan. Consequently, in 1897 the Law Commission for Codification, which comprised Prince Raphi as its president, Prince Phichit, *Phraya Prachakitkorachak*, M. Rolin-Jaequemyns, M. Kirkpatrick and Dr. Masao, was created to establish modern codes of law.

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<sup>62</sup> Correspondence between Peel and Grey, PRO FO 422/65.

Before considering the role of this Commission, it is necessary to discuss why Siam needed modern codes of law and to eradicate extraterritoriality. It was in order to raise the standard of Siam as a "civilized" nation. The European powers and even Japan acquired extraterritoriality in Siam on the grounds that Siam did not have modern law and therefore their subjects were exposed to uncertainty and needed consular protection. The Siamese Government started its codification programme with Criminal Codification because it was less complicated and easier to draft than other codes.

The Commission faced difficulty when M. Kirkpatrick resigned in 1898 on the grounds of bad health. M. Schlessler, a new Belgian Legal Adviser, was appointed in his place. Owing to most of the commissioners being occupied with work in the Ministry of Justice, they deputed Masao and Schlessler to be responsible for the drafting of the Criminal Code. Eventually in 1904, the first draft of the Criminal Code of Masao and Schlessler was submitted to the Siamese Government. By that time Siam had already signed the Franco-Siamese Treaty of 1904 by which Siam was obliged to employ Frenchmen in high rank positions, so Siam recruited the aforementioned M. Padoux as a Legislative Adviser to take over responsibility for the drafting of the codes.

Thus from beginning of 1905 M. Padoux was responsible for the drafting of the Criminal Code. He investigated the draft of Masao and Schlessler and concluded that this draft was based on the Indian Criminal Code which was a compilation of the British Common Law system. Before the appointment of M. Padoux, the commissioners led by Prince Raphi believed that Siam should adopt the British Common Law system as the model of its codification because Siamese lawyers were

accustomed to this system, and at that time Siam introduced several English-style laws into the courts of justice.<sup>63</sup>

But M. Padoux had a different opinion. He accepted that the Common Law system was suitable for Britain because there it had had a long period of development. But it was customary law, based on the principle of precedent, which guided the decisions of the courts and therefore involved no clearly-defined code, so it was difficult to apply and study. He argued that even Britain found it difficult to apply its Common Law system to its colonies. As he argued in his report:

There are certain forms of English Procedure imported into Siam. I beg to state that I have no idea of criticizing the English Criminal Procedure. But I doubt very much whether a system which has developed during centuries in one of the most peculiar European countries may be suitable for Siam. English life and English ideas are not so different from Continental life and ideas. Yet the whole English judicial system differs very much from the Continental systems. And Siam's Government, administration, social life, public spirit, religion, economical conditions are far different from the Government, administration, etc. of England or Europe. The British Government themselves have found that it was not advisable to import their Criminal Procedure into all British colonies. There are for instance substantial differences between the English and Indian Criminal Procedure.<sup>64</sup>

M. Padoux introduced the alternative Continental system which he thought more suitable to Siam. He insisted that the Continental system was clearer, easier to understand, and more convenient to apply because it had definite codes of law.<sup>65</sup> He observed in the same report that:

<sup>63</sup> Raphi to King, 16 March 1905, NA R5 Ky 23/3.

<sup>64</sup> "Report on the Proposed Penal Code for the Kingdom of Siam submitted to HRH Prince Rajburi Direckrit (Raphi), Minister of Justice, by M. Padoux, the Legislative Adviser", Bangkok 6 Aug. 1906, NA R5 Ky 23/4.

<sup>65</sup> Yut Saenguthai, "Karnrangkotmainaiprathetthai" [Codification in Thailand], printed in the book "*Nganchalong koprop hasippi khongnetibanditsapha*" [50 years anniversary of Thai Barrister Association], (Bangkok 1964), p.94 and also "M. Padoux's memorandum on the drafting of the Criminal Code 1908", Warasan Nitiat (Thammasat Law Journal), (Bangkok 1988), pp.10-11.

With one exception (England), all civilised countries have realized the superiority of codification over any other legal system, either common law or case law. In a country like Siam where so large improvements are being made and the administration is being transformed in every respect, what is most necessary is short lucid Codes, accessible, and easily understood by the people. To the public it will give a fair knowledge of their duties and rights. To the judges a clear and simple statement of law, to which they may refer in any case coming under their jurisdiction. Besides, the question of codification has in Siam its peculiar importance with regard to foreign relations. It seems doubtful whether foreign Powers will ever consent to the abolition of the extraterritorial rights as long as Siam cannot bring forward a better legal system..... Such were undoubtedly the reasons which induced the Ministry of Justice to take up the matter of codifying the Penal Law.<sup>66</sup>

Most of the commissioners and King Chulalongkorn agreed with M. Padoux. One person in the Siamese Government who could influence the opinion of the King and other Ministers was Prince Damrong. After the Paknam incident Prince Damrong was acting as virtual Prime Minister of Siam. Damrong was also of the opinion that the Continental system was more suitable to Siam than the Common Law system. In a letter dated 13 December 1903, he wrote to the King that he agreed with the idea of codification even though it might take ten or fifteen years to complete, and therefore there was no reason to delay the process.<sup>67</sup>

But the conflict of ideas between the English-trained Prince Raphi and M. Padoux caused dislike between them. As the Minister of Justice, Prince Raphi should have continued as the president of the commissioners, but he refused to accept this duty, explaining to King Chulalongkorn:

The process of codification consumes a great deal of time. I already have tremendous responsibilities in the Ministry of Justice and I am afraid that I have no time to take on this duty. And I would not like to be responsible for a job I have not actually performed.<sup>68</sup>

<sup>66</sup> "Report on the Proposed Penal Code..", op.cit.

<sup>67</sup> Prince Damrong's idea of Codification, NA R5 Ky 23/3, and his letter to the King dated 13 Dec.1903, NA R5 Ky 23/3.

<sup>68</sup> Raphi to King, 16 March 1905, NA R5 Kt 23/3.



Consequently M. Padoux was appointed the president of the Commission. He suggested that as there had been no Siamese involved in completing the previous draft, the King appoint a new Criminal Code Commission composed of himself as president, Mr. Tilleke, a Ceylonese lawyer who was working as the director of the Public Prosecution Department, *Phra Attakarnprasit* (Peum), a Judge in the International Court, and *Luang Sakonsattayathon* (Tongbun), a Judge in the Civil Court.<sup>69</sup>

The new draft of the Criminal Code was produced by M. Padoux with only mere consultation with the other Commissions. The draft was finished at the beginning of 1907, and M. Padoux suggested that the draft should be checked by the Ministers involved with this code. Therefore, Princes Damrong, Naret, Thewawong and Raphi were appointed to check the new draft. In March 1907, King Chulalongkorn went on his second trip to Europe, and Prince Raphi accompanied him so the latter appointed Masao and Black to attend the investigation for him. On 1 June 1908, the first Siamese Criminal Code was implemented. One reason for Raphi's accompanying the King to Europe was that he disagreed with Prince Damrong when they reviewed the draft together (this has been illustrated in chapter 7 pp.224-225). Another reason was probably that Prince Raphi had already disagreed with the King about adopting the Continental system of law and therefore did not want to interfere with the Criminal Code's drafting. After the review and investigation, the first code of Siam, the Criminal Code, was promulgated on 1 June 1908.

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<sup>69</sup> "M. Padoux's Memorandum on the drafting of the Criminal Code", op.cit., pp.10-11.

The question whether the Criminal Code repealed the *kotmontienbarn* (Royal Family Law) was raised by King Chulalongkorn who, in the middle of March 1907, commanded Prince Narit, the Palace Minister, to investigate this matter. Prince Narit analysed the draft code and replied to the King on 17 March 1907:

I have investigated the draft of the Criminal Code and am of the opinion that on the whole it does not oppose the *kotmontienbarn*. But at first I was doubtful as the beginning of the draft code states that when it comes into force any laws which are inconsistent with its provisions shall be repealed; therefore, I wrote a letter to ask *Phraya Chakraprani* [La-or Krairoek, the Undersecretary of the Ministry of Justice] regarding the matter. He replied that the Criminal Law Commission agreed to add a provision to exclude the application of the code to the *kotmontienbarn*, the monk law, and the military law. I enclose his letter in this letter for Your Majesty's consideration.<sup>70</sup>

This indicates the King's concern over the application of the Criminal Code lest it interfere with the privilege of the royal family.

### Conclusion

The influence of the General Adviser depended on the political situation at the particular time; if the independence of Siam was at risk, the General Adviser would have more influence on the Siamese Government's policy because King Chulalongkorn and his Ministers were desperately in need of the adviser. This is evident from the role of Rolin-Jaequemyns after the Paknam incident. His influence was so prominent that the King appointed him *Chaophraya Aphairacha* (the only foreigner who received *Chaophraya* title in the Bangkok period) in 1897, and in the same year the King also appointed him to the Committee of Regency when he went on his first European trip. In April 1899, the King allowed him to establish a ministry (*krasuang*) of his own, but it was abolished in March 1900 owing to his bad health.<sup>71</sup>

<sup>70</sup>Narit to King, 17 March 1907, NA R5 Ky 23/3.

<sup>71</sup>The establishment and abolition of the Ministry of General Adviser, NA R5 Miscellaneous file 3/9.

In 1904, when Mr. Strobel arrived in Siam, the independence of Siam was much more secure owing to the conclusion of the Entente Cordiale of 1904 between Britain and France recognizing Siam's right to independence. Strobel was still very influential over the King as he successfully persuaded him to conclude the 1907 and 1909 Treaties with France and Britain. But the influence of the Legal, Judicial and Legislative Advisers was limited to the Ministry of Justice. They were responsible for advice, administration and codification in the Ministry. They were responsible to the Minister of Justice but they also had to seek advice from and listen to the opinion of the General Adviser. But the latter was always fully occupied with the general administration of the Siamese Government and therefore had no time to draft codes by himself.

The functions of the General Adviser, the Legal, Judicial and Legislative Advisers were merely consultative and not policy-making. Decision-making was still in the hands of the Siamese Government but if their advice was desirable and practical, it could be implemented and enforced by the Siamese Government. One point worth noting is that foreign advisers could be beneficial but sometimes could be detrimental particularly when they were recruited under pressure from Western imperialists or by King Chulalongkorn and Princes Damrong or Thewawong without consultation with the Minister of Justice. This is evident from the conflict between Prince Rapi and Mr. Black, as has been stated above.

## Chapter 9 The Staff of the Ministry of Justice

The foreign staff of the Ministry of Justice did not cooperate well with Prince Raphi because the latter, as Minister of Justice, had never been consulted when they were recruited. This caused various problems as illustrated in chapter 8. On the other hand, the Siamese staff in the Ministry of Justice worked harmoniously under Prince Raphi's control. This was probably because he set a good example as a hard-working, honest, and capable leader. This chapter will investigate the problems of the Siamese staff in the Ministry of Justice at the beginning of its establishment when Princes Sawat and Phichit were Minister. The problems were alleviated when Prince Raphi was Minister. It also highlights the role of some important Siamese lawyers in the Ministry at that time.

### Section I The Organization of Staff in the Ministry of Justice under Princes Sawat, Phichit, and Raphi as Minister

It is helpful at this stage to recall the traditional Siamese staff in the administration of justice before the establishment of the Ministry of Justice in 1888-1889. The administration of justice was previously not centralized but spread through every department of government. The procedure in Bangkok was divided into four stages; firstly, both criminal and civil cases commenced at the *krom Rapphong* (office for the reception of complaints); secondly, the registrar of the *krom Rapphong* would channel cases to the appropriate *tralakarn* court of the department which had jurisdiction over the case. The *tralakarn* (judge) would investigate and examine the witnesses and evidence and make a report; thirdly, the report would be sent to the *lukkhun nasarnluang* which comprised so-called "Brahmin" legal specialists who would give advice on legal matters; fourthly, the *Phuprap* would make decision and fix the punishment or amount of fine. All the officials in the traditional Siamese

administration of justice were Siamese including the *lukkhun nasarnluang* who were descendants of immigrant Brahmins. All the offices were common to every case in Bangkok except the *tralakarn*, who were situated separately in each department, for the *tralakarn* (judges) were officials in a particular department.<sup>1</sup> The traditional administration of justice in towns outside Bangkok was in the hands of the *chaomuang* (governor of the town) and his officials, except cases which carried capital punishment which had to be sent to Bangkok to obtain the King's sanction.

1. The Organization of Staff in the Ministry of Justice while Prince Sawat was the Minister

As described in chapter 3, the Ministry of Justice was established informally in June 1888, and Prince Sawat was appointed the Minister at the same time. Prince Sawat's role as the Minister of Justice during the first few years was minimal. His activity suddenly increased in March 1892, when the Ministry of Justice was about to be established formally and he feared to lose his position to another prince. He submitted an important letter of 24 March 1892 to King Chulalongkorn about how to reform the Ministry. In his letter, apart from the reorganization of all the Bangkok courts illustrated in chapter 3, he also introduced a radical reform of the organization of staff, as he explained to the King:

The present procedure, by which the *tralakarn* judges conduct trials separately from the *lukkhun nasarnluang*, produces various disadvantages. This is because the *tralakarn* judges in each department examine witnesses and evidence and send reports to the *lukkhun nasarnluang* to decide. The latter deliver verdicts or decisions according to the reports sent to them without any participation in the trial. This system not only opens the way to the *tralakarn* to receive bribes but also delays the procedure in the court. I therefore request Your Majesty's permission to abolish the *tralakarn* and *lukkhun nasarnluang* and appoint some of these persons as judges in the seven newly established courts. These judges will have authority to examine

<sup>1</sup> Examples of traditional Siamese procedure in the file of *Phraya Thammasanniti*, the Ministry of Justice Library.

witnesses and evidence and also deliver judgment upon cases in their jurisdiction.

I will submit to Your Majesty the names of suitable persons to be appointed as judges in the seven newly established courts and also ask Your Majesty's permission to allocate salary for them. But the clerks and other officials in the Ministry will still receive their incomes from the fees as usual as I consider that allocating salary for them would cost a great deal of Your Majesty's money. In order to eradicate the inconveniences of the administration of justice, I am of the opinion that the judicial function should be separated from the administrative and a group of staff should be established to deal with the administrative function to facilitate procedure such as communication with other ministries, storage of reports etc.<sup>2</sup>

The Ministry of Justice was formally established on 25 March 1892. The King still supported Prince Sawat as there was a formal proclamation to appoint him as the Minister of Justice on 1 April 1892, and the details of the establishment of the modern Ministry of Justice were proclaimed on 10 April in the form suggested by Prince Sawat.<sup>3</sup> It was unfortunate for the Ministry that even Prince Sawat knew that there was a serious shortage of capable persons qualified as judges as he showed by asking the permission of the King to transfer some capable persons from other ministries,<sup>4</sup> but he did not initiate any projects to train Siamese people in legal affairs.

## 2. The Organization of Staff in the Ministry of Justice while Prince Phichit was the Minister

When Prince Phichit took over the Ministry of Justice on 22 October 1894, the shortage of staff in the Ministry was still a serious problem and this entailed a backlog of cases and work in the Ministry. This is evident from Phichit's letter of 30 November 1894 to the King, in which he complained that:

<sup>2</sup> Sawat to King, 24 March 1892, NA R5 Ky 1/3.

<sup>3</sup> The Proclamation of the Establishment of the Ministry of Justice, 10 April 1892, Ratchakitchanubeksa (the Government Gazette), vol.9, pp.9-10.

<sup>4</sup> Sawat to King, 13 Dec.1892, NA R5 Ky 3/1.

At present the courts which deal with criminal cases are the *Phra Ratcha-arya* court (criminal court), the *Ratchathanphichet* court (Penitentiary Court), and the *Porisapha* court (court of Petty Offences). These three courts cannot overcome the backlog of unsettled cases and the influx of new cases because of the inadequacy of the number of judges in these three courts.<sup>5</sup>

Prince Phichit was very good at finding resources and the following day, 1 December 1894, he wrote another letter to ask permission from the King to appoint some Princes in the Royal family and some government officials, who were not employed by any ministry, as judges. In this letter, he enclosed a list of five members of the Royal family and three government officials and explained to King Chulalongkorn that:

At the moment apart from conducting trials, judges have to investigate accusations against some Government officials and judges themselves. The Ministry is short of judges. I therefore ask Your Majesty's permission to appoint some princes and Government officials as judges. I enclose a list of names of these persons in this letter.<sup>6</sup>

Prince Phichit was clever in appointing Princes as judges as he knew the traditional Siamese custom that Princes of Royal blood should not work under the command of nobles. They could work as top officials but there were not many in such positions and therefore a good number of Princes were redundant even though they were knowledgeable. Prince Phichit utilized this opportunity to ask the King to appoint some of them as judges, because all judges in Siamese custom until today, work in the name of the king. King Chulalongkorn gave his permission on 25 December 1894.<sup>7</sup>

<sup>5</sup> Phichit to King, 30 Nov.1894, NA R5 Ky 1/9.

<sup>6</sup> Phichit to King, 1 Dec.1894, NA R5 Ky 3/1. The list comprised Princes Kasemsi, Chiyanuchit, Worawut, Phanumat, and three government officials.

<sup>7</sup> The Royal Secretary to Phichit, 25 Dec.1894, NA R5 Ky 3/1.

Prince Phichit was selective in appointing judges as he expressed his ideas about the ideal judge to King Chulalongkorn in his letter dated 24 December 1894:

Judges should possess: firstly, legal knowledge; secondly, legal knowledge based on firm and right principles; thirdly, they must be reliable and respectful; fourthly, they must be honest and free of secret dealing; fifthly, they must follow decent behaviour and conduct.<sup>8</sup>

Prince Phichit's opinion of ideal judges partly contributed to the shortage of judges in the Ministry of Justice because he had to be fairly certain that the persons he wanted to appoint as judges should be able to maintain these standards. When Phichit took over the Ministry of Justice, all courts in Bangkok, except the *Porisapha* court, had three judges: one *athibodi* and two ordinary judges. Phichit needed to make the most of these judges and in his opinion these judges were not best placed according to their abilities. Therefore he successfully obtained permission from the King on 25 December 1894 to rearrange their positions in those courts. This reorganization caused a serious conflict between him and Prince Thewawong. This conflict has been illustrated in depth in chapter 6, pages 195-197.

One dramatic change which Prince Phichit wanted to introduce to reorganize all staff in the Ministry of Justice was the Constitution of the Ministry of Justice's staff which he recommended in his letter of 29 May 1895 to the King, but the latter disagreed with him as the project would require tremendous finance and therefore the project was abandoned. This has been illustrated in chapter 6, pp.173-174.

Prince Phichit also introduced the idea of establishing a law school in the Ministry of Justice to train Siamese in legal education. He suggested this idea to the King in his letter dated 27 November 1895. There is no evidence of the King's

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<sup>8</sup> Phichit to King, 24 Dec.1894, NA R5 Ky 3/1.



response to his letter, but on 1 May 1896, King Chulalongkorn paid a surprise visit to the courts of justice and wrote a letter on that date to Prince Phichit that:

I have just visited several courts and made various comments today. I have returned just now. The other day, I met *Khunluang Phra Kraisi* at the ceremony which celebrated my reign as equal to King Rama I's and discussed with him how to create more judges. He suggested the idea of establishing a law school which I absolutely agree with as the Egyptian Government has already done it. I also met *Khunluang Phra Kraisi* today in the court and invited him to draw up a plan for the establishment of a law school. He replied that he has already submitted his plan to you. I consider that this is a very important matter for you to carry out, and if the plan is settled upon, we should not hesitate to allocate funds in this year's budget for this purpose. I am disappointed at not meeting you at the court today but I deliberately arranged no appointment.<sup>9</sup>

Prince Phichit responded to the King's letter by writing on 2 May 1896 with the plan of the law school.<sup>10</sup> The latter wrote further on 3 May to Phichit:

Thank you for your letter dated yesterday with the plan of the law school. I have scanned *Khunluang Phra Kraisi*'s plan of the law school and am of the opinion that it is rather a huge project. I think the project in Egypt is not as big as this. I have no idea of how the law school should be, but I think M. Rolin-Jaequemyns should have some idea; therefore, we should ask *Khunluang Phra Kraisi* to translate this plan into English and give it to Rolin-Jaequemyns to advise on it. After that you should conclude and submit it to the meeting of the *senabodisapha*. I will carefully read the copy which you submit to me when I have time.<sup>11</sup>

There is no evidence of the further progress of the law school project until after Prince Phichit's resignation from the Ministry of Justice on 3 March 1897.

<sup>9</sup> King to Phichit, 1 May 1896, NA R5 Ky 2/8.

<sup>10</sup> Phichit to King, 2 May 1896, NA R5 Ky 2/8.

<sup>11</sup> King to Phichit, 3 May 1896, NA R5 Ky 2/8.

### 3. The Organization of Staff in the Ministry of Justice while Prince Raphi was the Minister

The shortage of staff in the Ministry of Justice under Prince Raphi began improving as a direct result of the establishment of the Law School in April 1897. This is evident from Raphi's letter of 2 September 1900 to King Chulalongkorn:

I refer to the Law School. I do not think I will exaggerate what I am going to say. Before R.S. 115 [1896 - 1897] the cry was that there were no men; instead of crying in the wilderness and trying to discover what do not exist, I thought fit to experiment making what we want. This is done by the Law School. It has turned out men, some of remarkable ability; young Siamese have not ceased to astonish me yet by what they can do if properly treated. It is true that the School has only turned out some 30 men or so, but these 30 have already brought a change to Your Majesty's service.<sup>12</sup>

Prince Raphi also complained to the King in the same letter that there were even more lawyers at that time but there was no incentive for good lawyers to enter the Government's service. He explained that:

Judges' salary even where high were [sic] not sufficient inducement to men of ability, the very men whom we want. It is perhaps unfortunate that such men can earn more elsewhere than in Your Majesty's service. Furthermore, the work under this Ministry is, I can here take my oath, harder than in any other Departments [sic]. It was, and is by no means easy to induce men to see their conditions patriotically.<sup>13</sup>

In order to improve the status and to protect judges from executive power when they exercised their authority, Raphi initiated the idea of the independence of the courts of justice in the Ministry of Justice's report of 1902. This has been illustrated in chapter 7 pp.218-220. In the Ministry of Justice's report of 1902, Prince Raphi had upgraded the judges' salary to a satisfactory level and he stated that

<sup>12</sup> Raphi to King, 2 Sept.1900 (in English), NA R5 Ky 1/9.

<sup>13</sup> Ibid.

an attempt to even further increase their salary was in the process. Raphi also issued Ministry regulations to explain in detail duties, behaviour, and court regulations to the judges.<sup>14</sup>

Prince Raphi always maintained that his ideal judge should be a judge who was honest, wise, and diligent. The Ministry of Justice's report of 1906 stated that:

The Ministry of Justice has already trained judges for ten years but it is still not satisfied with the quality of judges it has produced. The ideal judge should be honest, wise and diligent. Dishonest judges are investigated and, if found guilty, punished by the Ministry. It is absolutely essential that judges should be honest. The Ministry is anxious about judges who are not wise or diligent. Dismissal has been considered but owing to the limited number of qualified judges it hesitates to do so. The Ministry is optimistic because the young active qualified judges will eventually replace the old inactive ones. At present judges' salary is sufficient.<sup>15</sup>

Raphi always emphasized the maintenance of good and qualified staff. In his opinion the most important means to secure those staff was through the Law School. In 1900 he referred to the Law School as "the Ministry's very life-blood. If it were to cease, everything may as well be given up as hopeless. This Ministry would be shipwrecked."<sup>16</sup> In 1909, he observed: "The Law School is very important as the source of the food we have to eat everyday. Without the production of qualified lawyers from the School, the work of the Ministry cannot progress."<sup>17</sup> This is the reason Prince Raphi, during the last few years of his term of office, disagreed with King Chulalongkorn over the issue of the independence of the court of justice, still concentrated on the progress of the Law School.

<sup>14</sup> The Ministry of Justice's report of 1902, NA R5 Ky 1/31.

<sup>15</sup> The Ministry of Justice's report of 1906, NA R5 Ky 1/31.

<sup>16</sup> Raphi to King, 2 Sept.1900 (in English), NA R5 Ky 1/9.

<sup>17</sup> Raphi to King, 21 Oct.1909 (in English), NA R5 Ky 10/16.

Section II The Role of leading Siamese Staff in shaping the Ministry of Justice

This section will investigate the most important Siamese lawyers who contributed to the improvement of the Ministry of Justice. These lawyers were:

1. *Khunluang Phraya Kraisi* (Pleng Wepara)
2. *Chaophraya Mahithon* (La-or Krairoek)
3. *Phraya Attakarnprasit* (William Tilleke)

1. *Khunluang Phraya Kraisi* (Pleng Wepara)

*Khunluang Phraya Kraisi*, personal name Pleng Wepara, was a son of *nai* (Mr.) Ling, himself a son of *Chaophraya Phonlathep* (Chim) in the Third reign. His mother's name was Kaeo. He was born on 27 October 1862 at Banglambu district, Bangkok. He started his schooling when he was nine at Bowornniwet Temple School. He also had private tuition in Siamese and Pali with his aunt, Saeng, who was a daughter of *Chaophraya Phonlathep* (Chim). After he finished his schooling at Bowornniwet Temple when he was fourteen, Prince Phichit trained him in traditional Siamese laws and Governmental work for two years. Prince Phichit also sent him to further his study at Nanta-uttayan Palace School which was a school in the Palace set up by King Chulalongkorn to teach English and Siamese to Siamese commoner boys. Mr. Mcfarland was the head master of the school and Mrs. Edna Cole was also employed to teach in this school.<sup>18</sup> Pleng had an excellent record at this school as he was the first of his class for the whole three years and received an award from the King every year. He finished from this school in 1881 and was then trained by

<sup>18</sup> For the establishment of this school also see D.K. Wyatt, The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn (New Haven, 1969), pp.76-77.

Prince Phichit at the *Dika* Court, and Phichit also sent him to train at the office of the *lukkhun nasarnluang*.<sup>19</sup>

In that year, 1882, when he was twenty, Pleng won a King's scholarship to study law in England. When he arrived in London, under the direction of the Siamese Minister, Prince Pritsdang, and the Secretary of the Legation F.W. Verney, he studied fundamental subjects at the South Hampstead Collegiate School for two years. In 1884, he entered the Middle Temple which was one of the four legal institutes for studying law and being called to the Bar. He studied Roman law, English law, International law, Mahomedan law, and Hindu law and was called to the Bar in July 1888. He was the first Siamese to be called to the English Bar, and because he could graduate within three and a half years which was surprisingly fast, King Chulalongkorn gave him a fifty pounds reward.<sup>20</sup>

#### Khunluang Phraya Kraisi's role in Siamese Government Service

After the completion of his education in England, Pleng returned to Siam and arrived back at Bangkok in September 1888. He commenced his work in Siamese Government service in the following offices:

1) The *krom Tha* Ministry (Foreign Ministry) which he entered in September 1888 as a legal adviser and lawyer whose duties were; firstly, to advise and draft correspondence for the Minister, Prince Thewawong; secondly, to facilitate and assist

<sup>19</sup> Marut Bunnag (ed.), Arnusorn naingan Phraratchatan poengsop Khunluang Phraya Kraisi (Pleng Wepara) (Biography and work of Khunluang Phraya Kraisi), printed in his cremation volume, (Bangkok, 1983), pp.(1)-(2).

<sup>20</sup> Ibid., p.(2). Pleng was the first student who received such a reward from the King for quick completion, and later, in Jan.1890, the King issued a regulation to inspire Siamese Government students in Europe, that if they finished within 3 or 4 years they would all be entitled to 50 pounds reward, if within 5 or 6 years, a 25 pounds reward.

foreign diplomats in various communications with the *krom Tha*; thirdly, he was appointed *Luang Ratana Yati* on 17 December 1889 as a reward for his work in this Ministry, and as he was knowledgeable in both foreign and Siamese laws, therefore, he was always appointed the representative of the Siamese Government at the foreign consular courts.<sup>21</sup>

2) The Ministry of Justice which was formally established in March 1892; *Luang Ratana Yati* was transferred to this Ministry on 1 April 1892 to work under the command of Prince Sawat, the first Minister, as the head of the *sarabob* department (Registration office). Owing to the abolition of the sixteen obsolete courts in various departments in Bangkok to form only seven modern courts in the Ministry of Justice, all the unsettled cases in those sixteen courts had to be channeled to and redistributed by the Ministry to the appropriate newly established courts which had jurisdiction over them. Prince Sawat authorized *Luang Ratana Yati* to be responsible for this job, and on 1 May 1892, only one month after his appointment to this office, he had already accomplished this task.<sup>22</sup> He also introduced a modern registration office in each new court and established formal papers for plaint or charge, answer, request, warrant of arrest, writ etc.

While he was the head of the *sarabob* department, there was the controversial case of *amdaeng Pao* versus *Phraya Siharatdechochai*<sup>23</sup> and his subordinates in which she accused them of beating her husband, *nai To*, to death. At that time the idea of establishing the *krom Aiyakarn* (Public Prosecution Department) was in contemplation, therefore Prince Sawat, the Minister of Justice, appointed *Luang Ratana Yati* as the

<sup>21</sup> Ibid., p (3).

<sup>22</sup> Ibid., pp. 16-17, Sawat to King, 29 May 1892.

<sup>23</sup> His own name was To Bunnag, a son of *Chaophraya* Surawongwaiyawat (Won Bunnag), and a grandson of *Somdet Chaophraya* Borommaha Sisuriyawong (Chuang Bunnag), graduated from Woolwich England and later in 1900 promoted *Chaophraya* Surawong Wattanasak.

public prosecutor to deal with this case. This was the first case where there was a public prosecutor representing the injured person in the name of the crown, and *Luang Ratana Yati* was the first person to perform this duty.

*Amdaeng* (Mrs.) Pao explained that on 5 April 1892, she accompanied King Chulalongkorn's entourage as a cook to Sichang island. On 18 June, when she was still at Sichang island she heard that the defendants, *Phraya* Siharatdechochai and his subordinates, had arrested her husband and had unlawfully detained him for many days. During those days, she claimed that they beat him until he died. All the defendants pleaded not guilty and owing to *Phraya* Siharatdechochai being a government official on whom the King had conferred an important title, Prince Sawat needed to obtain the King's permission in order to proceed against him. The King gave his permission and the case started on 3 July 1892. The public prosecutor, *Luang Ratana Yati*, made an elaborate report of this case in a special note.<sup>24</sup>

Because of its uniqueness and sensitivity, the case had been referred to the *Dika* Court (supreme court of Appeal) which comprised Prince Phichit, *Phraya* Prachakitkorachak (Chem Bunnag), and *Phra* Thammasat, who eventually gave judgment in August 1896, that *Phraya* Siharatdechochai ordered his subordinates to punish *nai* To, the deceased, by beating him, because he believed his subordinates' story that the deceased was a thief who had stolen property from his late grandfather, *Somdet Chaophraya* Borommaha Sisuriyawong (Chuang Bunnag)'s house. He had no intention to kill the deceased and was therefore punished only by a fine. But his subordinates who were the persons who carried out the beating had beaten the deceased excessively, and were each sentenced to three years imprisonment.<sup>25</sup>

<sup>24</sup> Marut Bunnag (ed.), *op.cit.*, p.28.

<sup>25</sup> *Ibid.*, p.29.

3) *Luang Ratana Yati* was appointed by the King as the first *athibodi* (director) of the *krom Aiyakarn* which was established in the Ministry of Justice on 1 April 1893. The reasons for his appointment were probably; firstly, he was knowledgeable in both Siamese and English law; secondly, he had performed perfectly his duty in the case of *amdaeng Pao* versus *Phraya Siharatdechochai*. The purposes of establishing the *krom Aiyakarn* were to prosecute criminal offences in the name of the crown and act as Government lawyers in advising departments in the Government or representing them in civil cases. While *Luang Ratana Yati* was the *athibodi* of the *krom Aiyakarn* there arose the very important political case of *Phra Yot Muangkwang* which ensued from the Franco-Siamese Treaty of 3 October 1893, concluded after the Siamese Government surrendered to the French ultimatum in the Paknam incident in July 1893. According to article 3 of this Treaty, the Siamese Government was obliged to commit *Phra Yot Muangkwang* to trial as charged by the French Government of murdering Inspector Groscurin, a French official, at Kangchek in June 1893. This case produced two trials; the first undertaken by the Siamese authority. But a second trial before a mixed court could be claimed by the French Government if it considered the penalty to be insufficient. The composition of the mixed court was to be determined by the French Government.

The first trial which was arranged by the Siamese authorities was led by Prince Phichit as Chief Judge and six other judges, including *Phraya Siharatdechochai*.<sup>26</sup> *Luang Sunthonkosa* (Koyule Naranong), the second Siamese called to the English Bar, was appointed the public prosecutor, and Prince Phichit appointed *Luang Ratana Yati* as Registrar of the court in this case. The reason for appointing him was probably that Phichit knew of his ability as he had trained him in Siamese traditional law. This trial commenced on 24 February 1894, and

<sup>26</sup> At that time *Phraya Siharatdechochai* was still a defendant in the case with *amdaeng Pao*, so it was always unlikely that he would be punished with imprisonment in that case.



proceeded splendidly and speedily so that the decision which acquitted *Phra Yot* of all charges was reached within three weeks. In the judgment Prince Phichit expressed appreciation of *Luang Ratana Yati's* assistance, and suggested that the trial was concluded so quickly because of his capacity and reliability.<sup>27</sup>

As the first *athibodi* of the *krom Aiyakarn*, *Luang Ratana Yati* laid down the duties of public prosecutors as following: firstly, to be adviser to all ministries and departments of Government in all cases including cases which concerned foreign subjects, and advise them on international treaties; secondly, to provide representation as Government lawyer in civil and criminal cases when requested by ministers or *athibodi*; thirdly, to prosecute criminal offenders; fourthly, to draft acts or proclamations as requested by the Minister of Justice; lastly, at the Minister of Justice's request, occasionally to act outside the normal duties of public prosecutors. He further explained that every case in the *krom Aiyakarn* was his responsibility and he must direct all public prosecutors to perform their duty according to law and justice.<sup>28</sup>

In 1894, *Luang Ratana Yati* was promoted *Khunluang Phra Kraisi*, previously the title of a judge in the *lukkun nasarnluang*. This promotion was probably a reward for his role in the *krom Aiyakarn* and also in the *Phra Yot Muangkwang* case. The title *Khunluang Phra Kraisi* dated back to the Ayuthya period as it was mentioned in the Law of Three Seals that *Khunluang Phra Kraisi* and *Phra Kasem Ratchasupawadi* were judges in the *lukkun nasarnluang* who were more knowledgeable in law than other judges in the same office. Their duties had been to maintain the principles of law and interpret them when applied to cases. When they applied the Law of Three Seals, they used the original copy which was kept at their

<sup>27</sup> Marut Bunnag (ed.), op.cit., p.34.

<sup>28</sup> Ibid., p.13.

office and they were more influential than other judges in the *lukkhun nasarnluang* office.<sup>29</sup>

The appointment of *Khunluang Phra Kraisi* as the *athibodi* (Chief Judge) of the *Phra Ratcha-arya* Court (the Criminal Court) occurred on 5 April 1897, only eighteen days after Prince Raphi was appointed the Minister of Justice. There is a record of the day on which the appointment ceremony took place in the Thammasat Samai, the law journal of the Ministry of Justice:

On 5 April 1897, Prince Raphi, the Minister of Justice, followed by judges and officials in the Ministry and public prosecutors, assembled in the *Phra Ratcha-arya* Court to signify the appointment of *Khunluang Phra Kraisi* as the *athibodi* of the *Phra Ratcha-arya* Court. There were other important persons at the ceremony such as Prince Damrong, the Minister of Interior, Prince Maruphongsiriphat, the Special Commissioner of Ayuthya, *Phraya Sukhumnawinit* (Pan Sukhum), M. Kirkpatrick and M. Schlessler. Prince Raphi read the King's proclamation in which King Chulalongkorn stated that *Khunluang Phra Kraisi* was capable and knowledgeable both in Siamese and international law and also honest, therefore he deserved the post of *athibodi* of this court.

*Khunluang Phra Kraisi* then took an oath that he would serve his Majesty the King as the Chief Judge of the *Phra Ratcha-arya* Court to the best of his ability and would perform his duty impartially without any prejudice and would maintain justice in this court. The representative of the *krom Aiyakarn* stated that they regretted *Khunluang Phra Kraisi's* departure from their department as he was a remarkable leader who worked diligently and always advised them in their duties regarding both traditional and international practice. But they were glad that he was promoted to a job which needed his ability to tackle it and they were confident that he would perform his duty splendidly.<sup>30</sup>

Undoubtedly, the appointment of *Khunluang Phra Kraisi* as the *athibodi* of the *Phra Ratcha-arya* Court was at the suggestion of Prince Raphi as the proclamation

<sup>29</sup> There were three original copies of the Law of Three Seals, two were kept in the Grand Palace and one at the office of the *lukkhun nasarnluang*. This was stated in the Law of Three Seals, Thammasat University Press, volume 1, Bangkok 1985, p.2.

<sup>30</sup> Thammasat Samai, the Law Report of the Ministry of Justice, volume 1, Bangkok, April 1897.

was issued eighteen days after his appointment as the Minister of Justice. Raphi recognized the ability he had shown in the foundation of the *krom Aiyakarn* and his cooperation in the reorganization of the provincial courts. Raphi was showing himself absolutely confident in him as the *Phra Ratcha-arya* Court was the most important court of the First Instance in the Ministry of Justice. Thereafter *Khunluang Phra Kraisi* showed his determination in maintaining justice irrespective of the status of the person whether commoner or noble. This is evident in the case of the public prosecutor versus Mr. Reun in 1897-8.

The fact of this case was that Mr. Reun was accused by the *krom Aiyakarn* of possessing counterfeit money. He pleaded not guilty by stating that he held a bag of counterfeit money for Mr. A, an adopted son of *Khun B*<sup>31</sup>, a noble in the Siamese service, and was arrested without knowing that it contained counterfeit money, having been asked by Mr. A and his father to hold it temporarily during their absence in retreat at a temple. He in turn countercharged Mr. A and *Khun B*, but the latter being a noble, this second case again needed the King's permission to proceed.

The first case in which Mr. Reun was the defendant came to a conclusion when the *Dika* Court found him guilty and sentenced him to 10 years imprisonment. The second case in which Mr. Reun accused Mr. A and *Khun B* commenced on 10 June 1897, when Mr. Reun had already been sentenced by the *Dika* Court. *Khunluang Phra Kraisi*, as the *athibodi* of the *Phra Ratcha-arya* Court, the leading Judge in this case, investigated the evidence and witnesses and concluded that the counterfeit money really belonged to Mr. A and therefore delivered a judgment of not guilty for Mr. Reun, while *Khun B* was also found not guilty as there was no evidence to indicate his collusion with his adopted son, Mr. A. But practically Mr.

<sup>31</sup> The publisher of the cremation book of *Khunluang Phraya Kraisi* avoids printing the real names as it might damage the reputation of the descendants of *Khun B*.

Reun could not be released as the *Dika* Court's sentence still applied, so *Khunluang Phra Kraisi* submitted this case to Prince Raphi for his consideration. Prince Raphi then submitted this report and asked the King to release Mr. Reun. The King gave his permission on 4 April 1898.<sup>32</sup> This case signified *Khunluang Phra Kraisi's* determination to confer justice to a commoner against an adopted son of a noble, and it also set a precedent for the revision of a miscarriage of justice. After he had served as the *athibodi* of the *Phra Ratcha-arya* Court for one and a half years, the King conferred on him the title of *Khunluang Phraya Kraisi* on 17 October 1898.<sup>33</sup>

4) Apart from his work in the Ministry of Justice, *Khunluang Phraya Kraisi* was the first person to initiate legal education by means of the press. He established a printing house called *Rongpim Wichakorn* (Academic Publisher) to publish three kinds of legal materials; firstly, when he was *Luang Ratana Yati*, the head of the Registration office in the Ministry of Justice, he launched a newspaper called Thammasat Winitchai (Legal Analysis). This newspaper was issued fortnightly, every other Sunday, the first issue on Sunday 3 April 1892. Its contents were news of the court of justice, laws, and the political situation which concerned the Ministry of Justice, for instance, this newspaper reported in depth about the Paknam incident and the trial in *Phra Yot Muangkwang's* case. As the editor of the newspaper, *Luang Ratana Yati* once reported the arrest of a group of nobles and people who were accused of illegal gambling. On 27 July 1894, as he was travelling from his home to his office, he was attacked by three people, one of them a noble, angry with his reference to their arrest, who consequently were found guilty of assault and battery and sentenced to imprisonment.<sup>34</sup>

<sup>32</sup> Marut Bunnag (ed.), op.cit., pp.54-56.

<sup>33</sup> Ibid., p.(5).

<sup>34</sup> Ibid., p.62.

Secondly, *Luang* Ratana Yati compiled laws of the land such as acts and proclamations since 1868, the beginning of King Chulalongkorn's reign, and published them in seven volumes called kotmaithai (Thai laws), the first volume appearing on 1 March 1894 when he was the *athibodi* of *krom Aiyakarn*, and the seventh and last volume in 1899. Each volume contained about 330 to 400 pages. The publishing of these acts and proclamations was very useful to the court procedure as it enhanced and facilitated the application of laws to judges, lawyers, public prosecutors, and the people. *Luang* Ratana Yati expressed his objectives in publishing the first volume of these books:

All acts and proclamations which have been issued by the King to the people to comply with since 1868 up to now, have been disseminated all over as they were published in the Ratchakitchanubeksa [the Government Gazette] and leaflets. But most people have not maintained them, therefore I am of the opinion that it is desirable to collect all of them into one book in order to facilitate the application of laws. In this compilation, I only select acts and proclamations about law and ignore other proclamations. Apart from this objective, I also aim to identify for the people acts or proclamations which have been cancelled by subsequent ones, for it is vital for the people to comply with the up-to-date laws; and also for the purpose of legal education, as people who want to study law can educate themselves with these books which can be useful to students and the people as a whole.<sup>35</sup>

Thirdly, he issued the law reports called Thammasat Samai (Contemporary Law) ten days after he was appointed the *athibodi* of the *Phra Ratcha-arya* Court in 1897. These reports contained the judgments of the Court of the First Instance, the Appeal Court, and the *Dika* Court. They were issued twice each month, on the sixteenth and at the end of each month. The first issue was distributed on 16 April 1897 and they continued until September 1900, when *Khunluang Phraya Kraisi's* health began deteriorating, probably the reason for the cessation of these reports.<sup>36</sup>

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<sup>35</sup> Ibid., pp.65-66.

<sup>36</sup> Ibid., p.68.

During his life time Kraisi had a good relationship with both the King and Queen Saowaphongsi, the Chief Queen. He was a favourite person of the Queen. He had four children with Tongkam, his wife; his third child was a girl whose name, Phongsi, was conferred by Queen Saowapha on 1 December 1897.<sup>37</sup>

*Khunluang Phraya* Kraisi was one of the greatest lawyers of Siam who gave himself to the progress of the administration of justice and achieved as much as was then possible for a commoner. His role in the Ministry of Justice was tremendous and he also set a good example of an honest, hard-working, and brave lawyer. It was unfortunate that he died prematurely in 1901 when he was only thirty-nine, for otherwise the progress of the Ministry of Justice would probably have been much greater. His reputation rapidly diminished after his death and his full funeral was never held as none of his descendants knew the place where his wife placed his coffin. After his coffin was eventually found and his body was cremated, a book about his work and career was published as his cremation volume. This thesis is the first scholarly study to investigate his role in the Ministry of Justice.

## 2. Chaophraya Mahithon (La-or Krairoek)

The early life of La-or Krairoek and his relationship with Prince Raphi until he was appointed by Raphi as the Secretary to the Minister of Justice when Prince Raphi was appointed the Minister on 3 March 1897, has been illustrated in chapter 7 pp.205-206. When La-or took the job of Secretary to the Minister of Justice in 1897, he lacked legal training, but he was interested in legal affairs as he noted in his memoir that he had spent much time while he worked in the Office of the Royal

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<sup>37</sup> Ibid., p.(23).

Secretary studying *dika* cases.<sup>38</sup> Therefore when Prince Raphi established the Law School in March 1897, La-or registered himself as a student in the School. Owing to the shortage of staff in the Ministry of Justice, the course in the Law School was only nine months, and the examination was set for the first week of December that year. The first group of Siamese barristers who passed the examination numbered only nine out of about one hundred candidates. La-or was the first of the class and was given an award by the King on 26 January 1898. He was also the first person called to the Siamese Bar.<sup>39</sup>

La-or only served as the Secretary to the Minister of Justice until 1 April 1898, when he was appointed a judge in the *Phra Ratcha-arya* Court. It was fortunate for him to have the chance to work in this court under the instruction of *Khunluang Phra Kraisi*, as the latter was able to advise him on the duties of judge. La-or seemed to admire *Khunluang Phra Kraisi* as the latter had been his law teacher at the Law School and also law teacher to Prince Raphi. He noted in his memoir that *Khunluang Phra Kraisi* commanded the respect of most lawyers, and even King Chulalongkorn treated him differently from other officials.<sup>40</sup>

La-or had been working hard since he was appointed a judge in the *Phra Ratcha-arya* Court. Apart from his work as judge, he assisted *Khunluang Phra Kraisi* in selecting articles for the law journal, Thammasat Samai. He noted in his memoir that on 10 December 1898, Prince Raphi came to the *Phra Ratcha-arya* Court and asked him through *Khunluang Phra Kraisi* to help in the *Phaeng* (Civil) Court and to teach in the Law School. This was due to the lack of law teachers in the Law School and the increasing number of law students so that even La-or, who had just finished

<sup>38</sup> *Luang Chakraprani, Ruangkhong Chaophraya Mahithon (La-or Krairoek) (the Career of Chaophraya Mahithorn)*, printed in the cremation volume of *Chaophraya Mahithorn*, (Bangkok, 1956), pp.49-50.

<sup>39</sup> *Ibid.*, pp.53-56.

<sup>40</sup> *Ibid.*, pp.57-58.

from the school the previous year, was requested to teach there. As a reward for his hard work in 1898, on 28 December, the King conferred the title of *Luang Chakraprani* on him. On 15 January 1899, he was selected as an examiner in the Law School to mark the papers of the law students in that year.<sup>41</sup>

After one year of hard work in the *Phra Ratcha-arya* Court, *Luang Chakraprani* was transferred to a higher position as *athibodi* (Chief Judge) of the *Phaeng* Court on 1 April 1899, when he was only twenty five. Before his transfer the *Phaeng* Court had been divided into two parts, viz: the *Phaeng Klang* Court and the *Phaeng Kasem* Court. When he was transferred to this office the two Courts merged into one *Phaeng* Court and he was appointed its *athibodi*. This indicates that King Chulalongkorn and Prince Raphi must have been very confident of his ability, while *Krommeun Charatporn*, a *Phra ong chao* Prince and previously the *athibodi* of the *Phaeng Kasem* Court, was reduced to a simple judge in the *Phaeng* Court under *Luang Chakraprani*'s instruction. On 27 September 1899, he was promoted *Phra Chakraprani*, and after exactly two years in the *Phaeng* Court, on 1 April 1901, he was promoted to be Undersecretary to Prince Raphi at the Ministry of Justice.<sup>42</sup>

*Phra Chakraprani* and Prince Raphi were both hard workers. This is evident from *Phra Chakraprani*'s memoir, for when he was first appointed Undersecretary, Prince Raphi remarked to him one afternoon that the Ministry of Justice had decided to put up a modern building for the *monthon* Krungkao (Ayuthya) Court in 1901, to celebrate its establishment as the first of the *monthon* (circle) courts of the country, but the first step was to buy suitable land. Prince Raphi then authorized him to buy the land for the building. That very afternoon, *Phra Chakraprani* caught the train to Ayuthya and found a friend who recommended a piece of land situated on the bank

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<sup>41</sup> Ibid., p.58.

<sup>42</sup> Ibid., p.59. *Krommeun Charatporn* was a son of the Fourth Reign Second King.



of the river. He asked that friend to invite the owner of the land to meet him at the residence of the Special Commissioner of *monthon* Krungkao, Prince Maruphongsiriphat, a half-brother of King Chulalongkorn. That night the contract for purchasing the land was signed in front of Prince Maruphong, and the following morning *Phra* Chakraprani returned to Bangkok and informed Prince Raphi that suitable land was already purchased. Raphi was very pleased with his performance.<sup>43</sup> *Phra* Chakraprani was very cute in inviting the owner of the land to meet him at the residence of the Special Commissioner, as the latter was the most powerful person in the *monthon* and people tended to please him, and therefore *Phra* Chakraprani could buy the land at a modest price.

*Phra* Chakraprani served as Undersecretary in the Ministry of Justice from 1901 until Prince Raphi's resignation as the Minister in June 1910. In his memoir he described the duties of Undersecretary as: firstly, to control the administration of Justice according to the policy laid down by the Minister; secondly, to secure and distribute the Ministry's budget; thirdly, to procure land for the building of courts; fourthly, to govern, reward, and discipline the administrative staff in the Ministry; fifthly, to control the execution of judgments in both criminal and civil cases, for which purpose the Execution of Judgment Department was established in 1901. After two years in this office, *Phra* Chakraprani was promoted to *Phraya* Chakraprani in 1903.<sup>44</sup>

*Phraya* Chakraprani had a very good rapport with Prince Raphi and the latter had tremendous trust in him and even often authorized him to represent him in the meetings of the *senabodi* (Ministers). Raphi always complained to *Phraya* Chakraprani that the reason for his absence from meetings was because the other

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<sup>43</sup> Ibid., pp.61-62.

<sup>44</sup> Ibid., pp.67-70.

*senabodi* could not understand him; therefore, he would attend or authorize *Phraya Chakraprani* to attend meetings only when there were issues directly concerning the Ministry of Justice. This caused ill-feeling between Prince Raphi and the other Ministers, but they could do nothing as King Chulalongkorn permitted Raphi's conduct.<sup>45</sup> Not only were Prince Raphi and *Phraya Chakraprani* good colleagues, but they also enjoyed each other's company in hobbies like photography and motor-boating. They were also of an age, as they were born in the same year. In 1904, another plague occurred in Thonburi which was opposite Bangkok on the other side of the river. *Phraya Chakraprani's* house was in Thonburi and was affected as one of his sisters died of the disease. He then moved his family to the compound of Prince Raphi's palace for several months before moving to a new house in Bangkok.<sup>46</sup>

On 2 June 1910, following the *Phraya Raka* incident,<sup>47</sup> which caused Prince Raphi to leave the Ministry of Justice on 31 May in protest at the immunity of Prince Narathip to court jurisdiction, *Phraya Chakraprani* and the new *Khunluang Phraya Kraisi* (Tiam Bunnag)<sup>48</sup> led 26 other judges and officials in the Ministry of Justice to resign from the Ministry in support of Prince Raphi. The consequences of this incident have been illustrated in chapter 7.

This incident not only affected the future of the Ministry of Justice, but also *Phraya Chakraprani's*. King Chulalongkorn did not allow the resignations, and when he set up a *rapsang* court to try Prince Narathip, *Phraya Chakraprani* and others

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<sup>45</sup> Ibid., p.68.

<sup>46</sup> Ibid., p.70.

<sup>47</sup> The detail has been illustrated in chapter 7, pp.230-233.

<sup>48</sup> Tiam Bunnag was called to the Siamese Bar at the same time as La-or Krairoek. He was the second in the class. He served in the Ministry of Justice and later succeeded to the title of *Khunluang Phraya Kraisi*, the same title as Pleng Wepara. In the *Phraya Raka* incident, he strongly supported Raphi and did not apologize for his behaviour to the King, and therefore the latter stripped off his title and dismissed him from Government office. He was written out of Thailand's history and the materials about him are minimal.

submitted letters of apology to the King. The King accepted *Phraya Chakraprani's* apology but did not give promotion to him and his followers that year. After the *Phraya Raka* incident, Prince Charun was appointed the Minister of Justice on 27 June 1910. Prince Charun disliked *Phraya Chakraprani* and wanted to dismiss him as he was a close friend of Raphi, but King Chulalongkorn died in October 1910, and the Crown Prince Wachirawut, who succeeded as King, considered that *Phraya Chakraprani* was an honest and capable person and therefore simply removed him as Undersecretary at the Ministry of Justice to be a judge in the *Dika* Court. In his memoir *Phraya Chakraprani* noted that also he did not want to work under Prince Charun as he had been taught by Prince Raphi to consider people as innocent until proved guilty, and he could not change.<sup>49</sup> Later in the Sixth Reign, *Phraya Chakraprani* was appointed *athibodi* of the *Dika* Court, Royal Secretary, and was also promoted *Chaophraya Mahithon*. After the revolution in June 1932 which changed Thailand to a constitutional monarchy, *Chaophraya Mahithon* was appointed the Minister of Justice himself for one year.

### 3. Phraya Attakarnprasit (William Tilleke)

Mr. William Tilleke was a Ceylonese barrister who came to work as a lawyer in Siam. He proved loyal to Siam and naturalized as a Siamese citizen. He was born on 21 August 1860 to a wealthy family in the old capital of Kandy in Ceylon. He finished high school in Colombo and graduated as Barrister from Colombo University. He came to Siam in 1892 and cooperated with Mr. Gibbins, an English lawyer, to establish a law firm in Bangkok called "Tilleke and Gibbins". His reputation spread through Bangkok in 1894 when he represented *Phra Yot Muangkwang* as defence

<sup>49</sup> *Luang Chakraprani*, op.cit., p.80.

lawyer in the controversial case in which the French Government accused *Phra Yot* of murdering a French official.<sup>50</sup>

After *Luang Ratana Yati* (Pleng Wepara), the *athibodi* of the *krom Aiyakarn*, was appointed the *athibodi* of the *Phra Ratcha-arya* Court in April 1897, Mr. Tilleke was appointed the *athibodi* of the *krom Aiyakarn* in his place. During his time in this office he was appointed a member of many law commissions. The most influential one was as a Commissioner for Codification. The reason for appointing Mr. Tilleke was probably his experience both in English and Siamese law. Even Mr. Black, the Judicial Adviser, whose opinion against codification was overruled, suggested to the Commission for the Criminal Code:

My idea is that there should be a small drafting commission of 4 members of which M. Padoux should take charge. The second member should be a lawyer skilled in drafting in English, and if a man who knows something of the country can be found all the better. I don't think a more suitable man than Mr. Tilleke could be found for this work. He is a good English lawyer, understands Siamese, and has had 10 years experience of the working of the present Criminal laws. He might be temporarily transferred to the Commission, and one of the young advisers could take his place in the meantime. The two other members should be Siamese legal men. I would suggest *Phra Atakarn Prasiddhi*, judge in the Foreign Causes Court, as one.<sup>51</sup>

It is still surprising that the Criminal Code Commission selected by M. Padoux was according to Mr. Black's suggestion. Mr. Tilleke was in fact selected because he was considered as one of the Siamese staff in the Ministry of Justice since he had ten years experience in the Siamese law up to that time and was also fluent in Siamese.

In 1893, Mr. Tilleke and a Mr. Ward organized an English newspaper in Bangkok called "The Siam Observer", published at the printing house of Dr. Samuel

<sup>50</sup> Chulalongkorn University (ed.) *Wiwattanakarn khongkotmaithai nairobsongroipi* (The Development of Thai law in 200 years), (Bangkok, 1982), pp.129-131.

<sup>51</sup> Mr. Black's proposal to the Commission for the Criminal Code, 11 March 1905, NA R5 Ky 23/3.

John Smith. The Siam Observer tended to criticize the political situation in the interest of the ordinary Siamese people, as Thienwan, a liberal Siamese newspaper journalist, commented: "The Siam Observer criticizes and emphasizes the political situation for the advantage of the Siamese people."<sup>52</sup> Furthermore, the Siam Observer also cooperated with other newspapers to protest against class-distinctions. It also stimulated patriotism among Siamese as it printed in its headline everyday after the French insisted on occupying Chantabun that " The French still occupied Chantabun, but in the near future they must certainly leave."<sup>53</sup>

Mr. Tilleke had a calm and thoughtful personality as he showed in the *Phraya Raka* incident when he successfully persuaded Prince Raphi to stop the idea of circulating a letter of protest to the public designed to attract support against Prince Narathip and the Government. In that letter, Raphi explained in brief the facts of the incident and condemned Prince Narathip for exploiting the status of royal birth to escape from the rule of law. The Government (the King) did not do anything to bring Prince Narathip to justice and therefore Raphi asked justice from the public. Prince Raphi planned to circulate this letter before he left Bangkok on 31 May 1910, but Mr. Tilleke explained to him the likely bad consequences of that letter, and eventually, Raphi agreed with him and gave up his plan.<sup>54</sup>

Mr. Tilleke served in the Siamese Government as the *athibodi* of the *krom Aiyakarn* through to the end of the Fifth reign and continued in this capacity until his death in 1917. At the beginning of the Sixth Reign, he naturalized as a Siamese

<sup>52</sup> Chamnong Wiboonsi, Nangseupimraiwan phasa angkit naiprathetthaj (The English Daily Newspaper in Thailand), Chulalongkorn University's research, (Bangkok, 1980), pp.43.

<sup>53</sup> Ibid., pp.42-43.

<sup>54</sup> Turakitbandit College (ed.), Raphi Sompochkrung (Biography of Prince Raphi), (Bangkok 1982), pp.103-107.

citizen and King Wachirawut conferred on him the title of *Phraya Attakarnprasit* and also conferred the surname Kunadilok on him. He died in Bangkok in March 1917.

### Conclusion

The root problem of staff in the Ministry of Justice was caused by the shortage of capable lawyers to run the Ministry efficiently. The cause of the shortage was the lack of a college to train capable lawyers. The idea of establishing a law school to train lawyers was ignored by Prince Sawat, the first Minister of Justice. The idea of creating more staff through a law school was initiated by M. Rolin-Jaequemyns, Prince Phichit and *Khunluang Phra Kraisi* (Pleng), but Phichit failed to carry out the project probably because of his resignation soon after the conception of the idea. However, the project was successfully launched when Prince Raphi became the Minister of Justice and the progress of the Ministry of Justice during the second half of King Chulalongkorn's Reign was largely the product of founding the Law School.

*Khunluang Phraya Kraisi* (Pleng Wepara) played a great role in developing the Siamese legal system and also the foundation of the *krom Aiyakarn*, the *Phra Ratcha-arya* Court and legal education. It was unfortunate for the Ministry of Justice when he died at the age of thirty-nine. *Chaophraya Mahithon* and *Phraya Attakarnprasit* also contributed tremendously to the Ministry of Justice but the *Phraya Raka* incident was a major setback for the progress of the Ministry.

### Conclusion

During the forty-two years of King Chulalongkorn's reign, the King not only consolidated the power of the monarch, but also strengthened it. He had had experienced as a puppet king when he was crowned for the first time and gradually managed to increase his power after the death of *Somdet Chaophraya Si Suriyawong*, the ex-regent, in 1883. He gradually achieved in gaining absolute power by 1885. King Chulalongkorn experienced difficulties in struggling for power, therefore once he gained it he did not want to lose it again. His determination to maintain his absolute power is very important as it operated as a hindrance to the judicial reform.

The course of the judicial reform, which has been explained in the preceding chapters, raises a number of crucial questions which are necessary in explaining the extent and the consequences of the judicial reform. These questions are: firstly, what really caused the judicial reform?; secondly, what were the limitations of King Chulalongkorn's reform?; thirdly, how far did the King intend to pursue it and were the other princes in agreement with him?; fourthly, what were the social implications of the judicial reform?; fifthly, was it possible to have equality before law in the absolute monarchy or corvee system?; sixthly, was the judicial reform of the Ministry of Justice a failure and, if not, what did the reform contribute to Siam's survival and the legal system?

The first question-what really caused the judicial reform?-can be discerned by throwing light on the circumstances during the first half of King Chulalongkorn's reign. The situation in Siam during that period was very volatile because the country was either on the verge of losing its independence or being partitioned between Britain and France. The petition of 1885, initiated by Prince Pritsdang, substantiates this argument as it symbolizes the struggle of the Princes

and the nobles at that time to persuade King Chulalongkorn to develop the country radically. The King rejected their proposals but eventually, after 1893 complied with nearly all of them except the surrender of his monopoly of power. It was probably the gradual increase in the Western powers' influence which necessitated King Chulalongkorn to develop all the country's administration, including the administration of justice. Apart from that, the Bowring Treaty of 1855 and the similar treaties which Siam signed with the other Western countries, restrained Siam from exercising its sovereign jurisdiction over foreign subjects. The pretext which the Western powers used to secure extraterritoriality over Siam was that Siamese law was barbaric and inadequate in exercising jurisdiction over foreign subjects. Such a Western perception played a significant role in forcing Siam to reform its laws and judicial system, as a nation which could not exercise jurisdiction over foreign subjects in its territory was considered as only a semi-independent country. It appears that without the Western powers' threat, Siam was complacent with its administration and was therefore unlikely to radically improve its administration of justice.

The second question considers the limitations of King Chulalongkorn's reform. In response to the petition of 1885 instigated by Prince Pritsdang, the King refused to accept the constitutional monarchy system on the grounds that any change would be strongly opposed by certain groups in the Siamese Government. He also explained two more factors viz, the inefficiency of the Siamese bureaucracy and the inadequacy of trained men who could carry out the reform. These two factors needed to be improved before any reform could be implemented. Another limitation of King Chulalongkorn's reform was the patron-client relations or corvee system which eradicated the freedom of all commoners and prevented equality in the Siamese society.



Were these limitations real obstacles to King Chulalongkorn's reform? In 1888 the King established a set of functionally organized ministries following the Western style. The cabinet comprised nine of the King's brothers and three other strong supporters. At this point the situation was ripe for the King to conduct his reforms. Even at the end of his reign in 1910 when the situation in Siam in every aspect, including the bureaucracy and the inadequacy of trained men, had improved, the King still showed no signs of surrendering his absolute power. Apparently, these limitations were only excuses of the King for not granting any form of constitution to the people because he wanted to maintain his absolute power as long as possible. It is evident that the crucial constraints to King Chulalongkorn's reforms were the King himself and the members of the royal family who wanted to maintain their privileges.

The third question investigates how far King Chulalongkorn intended to pursue the reforms and were the other princes in agreement with him? Even though the King and the royal family did not want to undertake fundamental changes which could affect their privileges, yet they were forced to do so by the Western powers' threat. This is evident from the period before the Paknam incident of 1893 whereby the King wanted to have "window-dressing" changes. After the incident, the King and the members of the royal family realized that they had to compromise and allow fundamental changes to occur but without undermining their authority and privileges. They knew that if they did not compromise Siam's independence would be placed in jeopardy.<sup>1</sup>

King Chulalongkorn wanted to reorganize the judicial system in order to abolish extraterritoriality which prevented his government from exercising jurisdiction over foreign subjects. Furthermore he wanted to use law as a means

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<sup>1</sup> This point has been illustrated in chapter 1 p.40 and chapter 5 p.134.

to facilitate commercial intercourse and to encourage British investment in Siam as he believed that this would protect Siam from any French aggression. The King was in a difficult position of how to proceed with the judicial reform without undermining his privileges and absolute power. This is evident from the implementation of the Criminal Code of Siam in 1908 when the King and the Siamese Government considered this code as a major step in abolishing extraterritoriality. At the same time the King and the royal family wanted to be certain that this Criminal Code would not limit their privileges pertaining in the the *kotmontienbarn* (the royal family's law). In the middle of March 1907, before the promulgation of the code, the King ordered Prince Narit, the Palace Minister, to investigate this matter. Prince Narit's report, which ensured that the application of the Criminal Code would not interfere with the privileges of the royal family in the *kotmontienbarn*, led the King to promulgate the code in June 1908.

As regard the absolute power, the Siamese monarch had authority over the life and death of his subjects. The King could authorize execution or grant amnesty to any Siamese. It was also his prerogative to try, and give judgment to, all cases in the country. Moreover he had the power to promote and demote members of the royal family, nobles and government officials. This is reflected in the King's speech whereby he explained that the power of the Siamese king was not specified by any law and was free from all restraint because it was unlimited. The King was not directly opposed to laws which would limit his power, but regarded any parliamentary system as impractical for Siam due to the lack of experienced bureaucrats. People would not trust the members of parliament as they trust the King. Therefore the power of the King should be maintained as it had always existed. King Chulalongkorn considered that the traditional Siamese monarchy at that time was the core of the country, the people

and the effective functioning of the government. For this reason the King refused to permit the power of the Siamese monarch to be weakened or restrained by any law or institution.

Most of the members of the royal family supported King Chulalongkorn because the latter also protected their interest. There were few members of the royal family i.e. Princes Phichit and Raphi who disagreed with the King. Prince Phichit was the first person in the judicial field who dared to challenge the power of the King. In 1886 he criticized the fact that the King did not want to surrender any part of his authority. He was disappointed that the King did not show the same appetite for reform as he had expected because the death of the regent (Si Suriyawong) and the Second King (Prince Wichaichan) had removed all obstacles. Furthermore, in 1885, Prince Phichit also wrote an essay "Thammasan Winitchai" (A Consideration of Justice) which recommended that the King's power should be limited by *thamma* (the right conscience) in order to confer adequate food supply, equal treatment under law and protection from danger to the people. These two criticism deprived Prince Phichit from being appointed as the first Minister of Justice in 1888, when the first cabinet ministers were established, even though he was the most suitable person for this job.

Prince Raphi, one of King Chulalongkorn's son, whom the king appointed the Minister of Justice in March 1897 to carry out judicial reform under the King's control, was the second member of the royal family to disagree with the King. Raphi was liberal in his ideas having been educated in England for eleven years. Prince Raphi tried to apply the principles of English law to the Siamese judicial system, but some of his ideas were totally opposed by the King and other members of the royal family. The two most serious disagreements between them

were the principle of the independence of the court of justice from the executive power and the equality of people before the law.

Firstly, King Chulalongkorn did not allow the court to be independent from the government's control by claiming that the time was not right and that all the Ministers were opposed to such a structure. This was only an excuse. The real reason was probably that the independence of the court would remove the judicial system away from the King's control and would create severe problems if he wanted to change his policy in the court of justice. Secondly, Prince Rapi disagreed with the King concerning the privileges of the members of the royal family who were not subject to the law of the country. This is evident in the incident at the beginning of 1910 in which a group of soldiers got into a quarrel with a group of pages of the Crown Prince, Wachirawut. The soldiers chased the pages into the Crown Prince's Palace. The Crown Prince demanded redress for the insult to his position by the application of an old law of flogging, which had been abolished by Prince Phichit in 1897, without trial in the court of law. Prince Rapi resisted strongly to the Crown Prince's demand, but the King permitted the Crown Prince to carry out the flogging. Rapi was very disappointed with the King's decision.<sup>2</sup>

Both Princes Phichit and Rapi considered the judicial reform in terms of conferring benefit to the ordinary people. But King Chulalongkorn considered it as a method to consolidate his power and used it to impose law upon the people.

The fourth question is what were the social implications of the judicial reform? One can interpret social implications of the judicial reform in terms of the benefit of the reform to the society and its people. Most of the laws issued

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<sup>2</sup> Further details see chapter 7 pp.225-226.

by Prince Sawat, the first Minister of Justice, were mainly "window dressing" and therefore gave no substantial benefit to the Siamese people. When Prince Phichit became the Minister of Justice in October 1894, the policy of the Ministry of Justice experienced significant changes as Phichit aimed his reforms to benefit the Siamese people. This is evident in his implementation of "Changing the punishment of flogging to imprisonment" and "The Abolition of Torture Procedure Act". These two laws were designed by Phichit to provide humanitarian protection. His policy of increasing the *Porisapha* Courts with separate jurisdiction benefited the people by enabling them to forward their cases to the nearer court. His implementation of "The Regulation to abolish the punishment of the judges of the Court of First Instance whose decision was reversed by the Appeal Court" and "The Regulation to abolish Appeal during Trial" benefited the people who suffered from delayed cases. Surprisingly Prince Phichit's policies were successful in social terms, even though he was a traditional Siamese lawyer who had never been educated abroad.

Prince Raphi's ideas for judicial reform in social terms was more effective than those of Phichit. His role in the establishment of the Law School gave tremendous benefit to the Siamese people by producing qualified lawyers to assist them in courts. Raphi's policy of establishing the *monthon* and provincial courts, and gradually centralizing them under the control of the Ministry of Justice benefited the people throughout the country because before the establishment of these courts, people were often subject to arbitrary practices of the local chief. After the reorganization, these courts were operated on the same standard of law and judges. Furthermore, Raphi adopted the accusatorial system from the English court system and applied it to the Ministry of Justice's courts. This policy tremendously benefited ordinary people as it reversed the burden of proof from

the defendant (who prior to change had to prove his innocence) to the public prosecutor, who now must prove beyond doubt that the defendant was guilty.

Prince Raphi tried his best to persuade King Chulalongkorn and other Ministers to accept the principle of the independence of the court of justice and equality of people before law. But his proposal was rejected on the grounds that the time was not appropriate. At the end of May 1910, Raphi himself was the victim of injustice as he was defamed by Prince Narathip in the *Phraya Raka* incident and could not bring Narathip to court. He wrote a letter of 31 May 1910 to *Chaophraya Yommarat* (Pan Sukhum) that "..this incident has proved that I cannot even protect myself from scandal and so how could I protect others? Therefore I should not remain the Minister otherwise I would be the person to destroy Siam by my own hand." This indicates that Prince Raphi was conscientious about protecting ordinary people from injustice.

Regarding the benefit to ordinary people, there is one important question. What new rights were created for the people under law, and how were these rights to be enforced against the government? New rights, for example, the abolition of the corvee system by the Conscription Act of 1905 gave right to commoners to take their action on their own right, instead of depending on their patron. This right gave them access to litigation among the people but they still had no access to take action against Government oppression or malpractice. This was because the court of justice was under the Government's control and this was the reason Prince Raphi was very much concerned with the independence of the court. The King and the cabinet, except probably Princes Raphi and Phichit, did not appreciate the value of law as they considered law as an instrument of the Government to impose its policies upon the people. Therefore the courts of justice and judges needed to be under the Government's control in order to

control the people effectively. This was evident when *Chaophraya* Surasak, the Siamese Commander-in-Chief of an army to quell the Holy Men rebellion in Phrae in 1902, tried to force the chief judge of Phrae to frame a condemnatory judgment against some of the Lao *Chao* (Princes) to deter the other *Chao* from rebelling against the Siamese Government. But when the chief judge of Phrae refused to comply with Surasak's request, on the grounds that there was no substantial evidence, another junior judge was appointed to carry out the judgment.<sup>3</sup>

The fifth question asks was it possible to have equality before law in the absolute monarchy or corvee system? This was unlikely because the nature of the absolute monarchy or the corvee system was in themselves unequal. Equality before law could not be expected when the government of the country was practically a monopoly of royal family, uncontrolled by public opinion. The absolute monarchy system prevented popular limitation of the king's power and consequently enabled the king to give immunity to some groups of people. Therefore the concept of "everyone is equal under the law" was practically inapplicable. This is evident in the *Phraya Raka* incident where Prince Raphi, as the injured person, had difficulty in bringing his case against Prince Narathip to the court of justice. Another injured person in this incident was Pak, Prince Narathip's concubine, who was assaulted by Narathip. It would have been impossibly difficult for Pak as a commoner to bring her case against Prince Narathip had she desired to do so.<sup>4</sup> Despite the substantial reforms during King Chulalongkorn's reign, the law was in practice applicable between commoners. It was more difficult for a commoner to bring a case against a government official

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<sup>3</sup> This point has been illustrated in detail in chapter 4 pp.126 and chapter 5 p.148.

<sup>4</sup> For details see chapter 7 pp.230-233.

holding a title conferred by the King, and much more difficult still against a member of the royal family.

Moreover, the application of law always excluded the King and the members of the royal family. This is evident in the Conscription Act of 1905 which was applicable to all commoners, but was not applicable to the members of the royal family nor to senior government officials. Another example is the Amendment of Criminal Procedure Law of 1901 which authorized certain officials in Bangkok and the provinces to issue search warrants, but in any cases involving the Palaces of the royal family, from *Momchao* (a king's grandchild or nephew) upward, they could not be searched unless permission was granted by the King.

Under the corvee system, commoners (*phrai*) would derive legal protection from their patrons in return for their services given to them. When commoners had been injured or their rights were infringed by outsiders, they could not take legal action by themselves, but they had to depend on their patrons to take action for them. This relationship deprived commoners from access to the court of justice, therefore equality before law under the corvee system was by itself impossible. Furthermore, the practice of polygamy prevalent in the Siamese society at that time, prevented the equality of people before the law because women were subject to men's domination.

The sixth question considers whether the judicial reform of the Ministry of Justice was a failure, and, if not, what did the reform contribute to Siam? The judicial reform of the Ministry of Justice did not achieve its full purposes because the King and members of the royal family obstructed the reforms owing to their desire to protect their benefits and privileges. This is evident from the King's rejection of Prince Phichit's proposal for the constitution of the Ministry



of Justice's staff, which would reorganize the whole staff of the Ministry, because the King was not prepared to spend a large sum of money on the staff's salaries. Another example was the King and the cabinet's rejection of Prince Raphi's proposal for the independence of the court of justice because they wanted the courts to be under their control. It was unfortunate that under the absolute monarchy system the King's decision was final.

Even though Princes Phichit and Raphi were not allowed to have a free hand in the management of the Ministry of Justice, they and *Khunluang Phraya Kraisi* (Pleng Wepara) and other capable Siamese staff had laid the foundation of the Ministry of Justice, the Public Prosecution Department (*Krom Aiyakarn*), and the Law School. Through these institutions, particularly the Law School, their ideas were adopted and developed. The judicial reform of the Ministry of Justice contributed to: firstly, Siam's survival as an independent nation; secondly, the abolition of extraterritoriality. It is obvious that Siam's independence was always at risk after the Paknam incident of 1893 until the conclusion of the "Entente Cordiale" of April 1904, whereby Britain and France agreed to confirm the Anglo-French Declaration of 15 January 1896, and they also agreed to disclaim all ideas of annexing any Siamese territory in favour of French annexation of Morocco. But without the reform of Siam's administration, including the reform of the judicial administration of both in Bangkok and outside, along with the provincial centralization of administration and other efforts which made Siam a prosperous and secure place for Western investment, Siam would have been colonized or partitioned even before the conclusion of the Entente Cordiale of 1904.

Secondly, the judicial reform was one of the most important factors for abolishing extraterritoriality in Siam. At the end of May 1910, when Prince Raphi left the Ministry of Justice due to his disagreement with King Chulalongkorn over the issue of the independence of the court of justice and the *Phraya Raka* incident, Siam already appeared to be on the road to success in restoring its extraterritorial rights by signing treaties with France in 1907 and Britain in 1909. These two treaties provided that extraterritoriality in Siam would be abolished when Siam promulgated complete codes of law i.e. the Criminal Code, the Civil Code, the Codes of Procedure, and the law of Judicial Organization. Already Siam had promulgated the Criminal Code in 1908 and the codification of other laws was well under way, and in 1925 it achieved the virtual abolition of extraterritoriality with five major Western countries.<sup>5</sup>

In this thesis, the origins of Thailand's modern Ministry of Justice and its early development have already been examined. One question still remains, namely the long term contribution of the judicial reform. The question is what was the contribution of the judicial reform of the Ministry of Justice during the reign of King Chulalongkorn to the egalitarian society in Thailand? Regarding the Chakri Reformation, historians hold two views; the first view such as that of David K. Wyatt, who studied education in the reign of King Chulalongkorn, argued that King Chulalongkorn was a perfect leader who reorganized Thailand's administration for the benefit of the country and the people. His reform was successful and helped Thailand to secure its independence.<sup>6</sup> He explains:

<sup>5</sup> In his thesis, "Siam's Effort to Revise the Unequal Treaty System in the Sixth Reign (1910-1925)", The University of Michigan, Ph.D., 1974, P.B. Oblas, suggests that even though the 1907 and 1909 treaties were steps towards the abolition of extraterritoriality in Siam, they did not mark the beginning of the end of the treaty system.

<sup>6</sup> D.K. Wyatt, The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn, (New Haven, 1969).

A feature of great significance for Thailand's survival, however, was the fact that the transformation of her society and government was accomplished largely through action from above, by leaders who were more than leaders; visionaries who were sensitive to the needs of the age and who forced change upon their nation and themselves directed and ordered its economic, social and political development.<sup>7</sup>

On the other hand, historians such as Benedict R. O'G. Anderson, in his article "Studies of the Thai State: The State of Thai Studies", disagrees with Wyatt. He argues that the Siamese monarchs were themselves hindrances to the development of Thailand. He explains:

It will immediately be apparent that these hypotheses call into question the accepted view of the modern Thai monarchy and, still more important, the relationship between that monarchy and the modern Siamese nation. Rather than assuming a harmonious lineal descent from one to the other, they suggest contradictions between them. In fact, it is tempting to argue that it has been the identification of the two that has, on the scholarly level, systematically distorted understanding of 20th-century Thai politics and, on the political level, retarded the development of the Siamese nation--leaving it, in some important respects, "behind" its directly-colonized neighbors.<sup>8</sup>

He also believes that the Chakri Reformation was insignificant as it did not play a role in developing Thailand by substantiating his argument that between 1850 and 1950, a century of revolutionary upheaval in the world, Thailand in very substantial ways remained very much the same.<sup>9</sup> He is of the opinion that the changes in Thailand occurred only after the student revolution in October 1976, and therefore disregards the Chakri reformation.<sup>10</sup> He also believes that the 1932 coup was not successful, and was the product of a failure either to maintain the pool of royal talent or to remove royalty from active politics.<sup>11</sup> He substantiates

<sup>7</sup> Ibid., p.376.

<sup>8</sup> Benedict R. O'G. Anderson, "Studies of the Thai State: The State of Thai Studies", in Eliezer B. Ayal (ed.), The Study of Thailand: Analyses of Knowledge, Approaches, and Prospects in Anthropology, Art History, Economics, History, and Political Science, Athens, Ohio: Ohio University, Center for International Studies, Southeast Asia Series no. 54, 1978, p.200.

<sup>9</sup> Ibid., pp.215-216.

<sup>10</sup> Ibid., p.197.

<sup>11</sup> Ibid., p.208.

his argument that the coup failed to secure the transition of the Thai monarchy to the Japanese or the European 20th-century monarchical style, by stating the fact that the Siamese monarchy still retains some political power.<sup>12</sup>

Having examined the judicial reform of the Ministry of Justice, several points may be added. Firstly, Wyatt's ideas of King Chulalongkorn as a perfect leader has been challenged as this study demonstrates the King's intention of reform to secure his absolute power more than to benefit the country and his people. This has been illustrated in question number two and three above. On the other hand, this study is in agreement with Wyatt in terms of effectiveness of the Chakri Reformation, even though judicial reform was not successful to its full purposes.

Secondly, the ideas of the judicial reform, especially Prince Raphi's ideas of equality before law and the independence of the court of justice, have been in existence up to the present-day legal system. His ideas have been succeeded from generation to generation through the Law School. They were also *sine qua non* for later changes in Thailand toward egalitarianism. The following evidence confirm this argument: 1) In 1912, only one year after King Wachirawut's succession to the throne, a group of about 100 young officers were arrested on charges of conspiracy to overthrow the government. These officers determined to bring radical changes to the country by planning to abolish the absolute monarchy and substituted it with a constitutional monarchy or the republic. The coup plan, however, leaked out to the authorities and all of those officers were arrested and punished severely. One of the coup groups suggested that the monarchy be completely abolished and a republic instituted, with Prince Raphi installed as first president. Raphi's name was nominated because of his reputation for fairness,

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<sup>12</sup> Ibid., pp.208-209.

based, no doubt, on his opposition, as the Minister of Justice, to the flogging of the army officers in 1910.<sup>13</sup>

2) Pridi Banomyong, the engineer of the 1932 coup which abolished the absolute monarchy in Thailand, was a law student in the Law School and was called to the bar in 1919. It was apparent that he adopted Prince Raphi's ideas of the independence of the court of justice from the executive power and the equality of people before the law. This is evident from his appointment as a teacher in the Law School in 1931, when he taught these ideas to the law students and was warned by King Prachathipok (Rama VII), through the Minister of Justice, to stop stirring up the students.<sup>14</sup> 3) The Law School of Prince Raphi which now becomes the Faculty of Law, Thammasat University, was one of the leading institutes in the student revolutions in 1973 and 1976, which brought down the dictator regime of Thanom Kittikachorn and Prapas Charusathien. Prince Raphi's ideas have been followed by generations of lawyers and this is the reason he deserves to be called "The father of Thai law".

Thirdly, the process of changes in Thailand which entailed egalitarian society was developed gradually. It was not only a big bang in October 1976, consequential from the students revolution, as Anderson suggests in his article. The process was probably divided into three stages. 1) The judicial reform under Princes Phichit and Raphi were two steps forward as they had granted more

<sup>13</sup> Vichitvong na Pombhejara, Pridi Banomyong and the Making of Thailand's Modern History, (Singapore, 1979), pp.51-53. Also see W.F. Vella, Chaiyo! King Vajiravudh and the development of Thai Nationalism, (The Univ. Press of Hawaii, 1978), pp.54, 58-59. Vella also suggests in footnote number 15, p.285, that Prince Raphi's resumption of his government career immediately after the coup as Minister of Agriculture was possibly that the new appointment was meant to insure his loyalty.

<sup>14</sup> Vichitvong na Pombhejara, op.cit., p.37, and Chulalongkorn University (ed.), Wiwattanakarn khongkotmaithai nairobsongroipi (The Development of Thai law in 200 years), (Bangkok, 1982), vol.2, pp.67-68.

rights to commoners. Raphi's ideas of equality before law and the independence of the court of justice had set the right path for Thailand. But the substitution of Prince Charun for Raphi, in June 1910, was a step backwards, as he did not make any progress to the Ministry. 2) The revolution of the People's Party of 1932 was two steps forward because it abolished the absolute monarchy and substituted a constitutional monarchy. But the military coup of 1947 which brought Thailand under the dictator regime of Pibul and later Sarit Thanarat was a step backwards. 3) The student revolutions of 1973 and 1976, abolished the dictator regime of Thanom Kittikachorn and Prapas Charusathien, Sarit's successors, and set Thailand on the right path of democracy, was another two steps forward .

The judicial reform of the Ministry of Justice initiated by Princes Phichit and Raphi had set the right path for the present-day legal system. It is actually still working through various institutes founded by them and is shaping the modern legal system of Thailand.

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