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Comparative Legal Institutions
Professor Tom Ginsburg
July 10, 2018

**“Beyond Common Sense:”
The Resurgence of Thailand’s Anachronistic *Lèse-Majesté* Law¹**

I. The Origin and Decline of *Lèse-Majesté*

In 2016, a Dutch man was sentenced to thirty days in jail for intentionally insulting his monarch, King Willem-Alexander of the Netherlands, after he called him a murderer, rapist, and a thief.² Although his sentence was later halved to fifteen days, this man was nonetheless convicted under *lèse-majesté* law for the crime of violating the dignity of majesty, manifested in speech and thought crimes against one’s sovereign.³ Under Dutch law, disparaging the monarch is a crime, albeit one that is seldom prosecuted. In 2018, the Dutch Parliament voted to reduce the maximum sentence for insulting the king; in doing so, they reduced the severity and number of *lèse-majesté* charges able to be brought in the Netherlands.⁴ Instead of facing unique repercussions for the crime of insulting a royal, violators are treated as if they had insulted a public servant, similar to abuse hurled against police officers or ambulance drivers.⁵ In passing this measure, the Dutch Parliament is hardly distinctive, as *lèse-majesté* laws are becoming increasingly rare in Europe.

The history behind *lèse-majesté*, however, remains significant. The concept of punishing the violation of majesty may have originated in Ancient Rome, but it is most commonly

¹ See Thomas Fuller, *With King in Declining Health, Future of Monarchy in Thailand is Uncertain*, The New York Times, Sept. 20, 2015, available at <https://www.nytimes.com/2015/09/21/world/with-king-in-declining-health-future-of-monarchy-in-thailand-is-uncertain.html>.

² J. Weston Phippen, *Lèse-Majesté in the Netherlands*, The Atlantic, July 15, 2016, available at <https://www.theatlantic.com/news/archive/2016/07/dutch-king-insult/491498/>.

³ Carla Hesse, *The Law of the Terror*, MLN Vol. 114, No. 4, 707 (1999).

⁴ Christopher F. Schuetze, *How Is Dutch King Like a Cop? Insulting Them Is to Be Treated Equally*, The New York Times, Apr. 10, 2018, available at <https://www.nytimes.com/2018/04/10/world/dutch-bill-insulting-king.html>.

⁵ *Id.*

associated with France and their convoluted history with their monarchy.⁶ The traditional punishment for *lèse-majesté* was an excruciating, drawn-out death: the wrongdoer was to be drawn and quartered, expiating the crime of “lesion to the royal body... through its ritual reenactment on the body of the criminal.”⁷ The punishment, although extreme, fit the crime of ultimate treason against a valorized figure. Built from a foundation of royal absolutism, France elevated their king so that he was not only the father of his subjects, but also the “wielder of God’s temporal sword.”⁸ By virtue of this sacred status, any insult or criticism of the monarchy was rendered sacrilegious. To insult the nation was to insult the king; to insult the king was to insult God. *Lèse-majesté* became the crime that signified ultimate treason, and one that necessitated extreme punishment.⁹

Over centuries, however, the rise of republicanism and the disintegration of majesty signified the decline of harsh *lèse-majesté* laws. King Louis XIV of France famously said “*L'état, c'est moi* (I am the state),” but he was the last ruler before the fall of the French monarchy, with his downfall potentially symbolized in the 1789 storming of the Bastille.¹⁰ While it would be unrealistic to expect the king's influence and majesty, an “accrual of several centuries of habit, belief, and ceremony,” to immediately crumble, the French Revolution was a harbinger of the eventual decline of monarchies around the world.¹¹

The American Revolution exemplified a successful post-royalist movement, but while the war sprang from dissatisfaction with the British monarchy, America’s connection with their former monarch was not entirely severed. As in France, it would be unrealistic to assume that

⁶ G. A. Kelly, *From Lèse-Majesté to Lèse-Nation*, *Journal of the History of Ideas*, Vol. 42, No. 2, 208 (1981).

⁷ Hesse, *supra* note 3, at 707.

⁸ *Id.*

⁹ *Id.*

¹⁰ Andrew Alan Johnson, *Moral Knowledge and its Enemies: Conspiracy and Kingship in Thailand*, *Anthropological Quarterly*, Vol. 86, No. 4, 1066 (2013).

¹¹ Kelly, *supra* note 6, at 225.

ancient traditions could wholly disintegrate in the relatively short time it took America to win the Revolution. After England's defeat, King George III was no longer America's ruler, but images of a "political father must still have been strong in an age that could induce Americans to label Washington as the father of his country."¹² But Washington, unlike monarchs like King Louis XIV or King George III, had helped found a republic, and dedicated much of his life defending it. As America's founding President, George Washington was the culmination of a democratic nation's ideals, the antithetical equivalent of a centuries-old royal bloodline. Despite early and lingering vestiges of England's kingly influence, the concept of *lèse-majesté* is entirely absent from American legal doctrine.

Absolute monarchies have declined since their peak in the seventeenth and nineteenth centuries. Accordingly, the *lèse-majesté* laws that helped monarchies apply their power have subsided as well. In the modern age of democracy and transparency, such laws have come to be viewed as oppressive and anachronistic.¹³ *Lèse-majesté* laws are infrequently enforced, even in the countries where they still exist. This aligns with the United Nations Human Rights Committee's (UNHRC) stance on the subject. In calling for the decriminalization of *lèse-majesté*, UNHRC prescribes that the "law should only be countenanced in the most serious of cases," but even then, should never result in imprisonment as a punishment.¹⁴

II. *Lèse-Majesté* Around the World: A Brief History

The United States is unique, even among democracies, for its indefatigable protection of free speech. In a 1929 dissenting opinion, Justice Oliver Wendell Holmes, Jr. proclaimed, "If

¹² *Id.* at 229.

¹³ See generally Sukrat Baber, *Shout for freedom to curse at the Kingdom: Contrasting Thai Lèse-Majesté Law With United States First Amendment Freedoms*, *Ind. Int'l & Comp. L. Rev.*, Vol. 24, No. 3 (2014).

¹⁴ "General comment No. 34", U.N. Human Rights Committee, 102nd session, Sept. 12, 2011, available at <https://www.opensocietyfoundations.org/sites/default/files/UNHRCgeneral-comment34-20110725.pdf>.

there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not free thought for those who agree with us but *freedom for the thought that we hate*” (emphasis added).¹⁵ Unlike many other democracies, even the most formidable American political figures may not immunize themselves from criticism. Although each American president has succumbed to public insults and outright mockery, it is nevertheless “inconceivable that even the most caustic critic would be imprisoned for his or her words.”¹⁶ The United States Constitution and jurisprudence has worked to elevate the inviolability and primacy of freedom of expression, which trumps any concern for guarding the sanctity of the state. In its fierce protection of the First Amendment, United States law is the stark opposite to *lèse-majesté*, but serves as a useful contrast for countries that retain the law, many of which are found in Europe.

Europe’s rich history of monarchies means that *lèse-majesté* laws still exist in many of its countries. As in the Netherlands, however, even in nations with intact *lèse-majesté* laws, these laws are increasingly limited in scope, and cases are seldom prosecuted to their full extent. Until 2017, for example, Germany had a rarely-enforced section of their criminal code that prohibited their citizens from insulting representatives of foreign states, a form of *lèse-majesté*.¹⁷ When a well-known satirist by the name of Jan Böhmermann was investigated for insulting the Turkish president, however, the section of Germany’s criminal code became a source of national contention.¹⁸ The government eventually decided to abolish the section altogether in a move that continued the dilution of *lèse-majesté*. Justice Minister Heiko Maas of Germany said of the

¹⁵ See Anthony Lewis, *Freedom for the Thought That We Hate: A Biography of the First Amendment*, Basic Books (2007).

¹⁶ *Id.*

¹⁷ David Charter, *German comedians now free to insult Erdogan*, The Times, Jan. 27, 2017, available at <https://www.thetimes.co.uk/article/german-comedians-now-free-to-insult-erdogan-6fkr13cx2>.

¹⁸ *Id.*

decision, “The idea of *lèse-majesté* dates back to a long-gone era; it no longer belongs in our criminal law. The regulation is obsolete and unnecessary.”¹⁹

Similar rejections or corrosions of *lèse-majesté* law have cropped up in a spate of cases over the past decade. In 2011, the European Court of Human Rights overturned a Basque politician’s punishment for violating *lèse-majesté*, ruling that such a sentence undermined freedom of expression.²⁰ The politician was originally sentenced to a year in prison after he drew attention to the king’s practice of inflicting torture and violence throughout the country. The Court noted that the fact that a monarch “occupies a neutral position in public debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties or... in his capacity as representative of the State which he symbolises.”²¹ A few years later, Spain’s *lèse-majesté* law was productively challenged once again. In March of 2018, the European Court of Human Rights ruled in favor of two Spanish nationals who had burned a picture of the Spanish royal family.²² The court looked to Article 10 of the European Convention on Human Rights, which guarantees freedom of expression, and determined that it superseded Spanish laws shielding the monarchy from insults.²³

Lèse-majesté has an elaborate history in many Asian countries, given the prevalence of monarchies scattered across the continent. Japan is perhaps the most salient example, for although their *lèse-majesté* law was one of its harshest laws at the beginning of the twentieth century, it has since eroded. In 1907, the Japanese Criminal Code stated that those who commit

¹⁹ *Id.*

²⁰ Scott Griffen, *Defamation and Insult Laws in the OSCE Region: A Comparative Study*, Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media, March 2017, available at <https://www.osce.org/fom/303181?download=true>.

²¹ *Id.*

²² *Id.*

²³ Schuetze, *supra* note 4.

libel or insult against the Emperor were subject to imprisonment for a maximum of five years.²⁴ In 1947, however, a post-World War II Constitution was promulgated – one day after the Tokyo district court reached a decision on a case that ultimately led to amnesty for *lèse-majesté* offences.²⁵ The presence of the Allied troops played an undeniable role in the outcome of the case and eventual change of the law. Following the court’s decision, General MacArthur commented that it rendered all men equal before the law, meaning “no individual in Japan— not even the Emperor — shall be clothed in legal protection denied the common man.”²⁶ By ridding its Constitution of *lèse-majesté* and upholding freedom of expression, Japan signaled its willingness to modernize and adapt archaic laws in favor of democratic principles.

From this brief introduction of *lèse-majesté*, it may seem that, on a global level, the law is becoming obsolete in democratic countries, inevitably destined to become a “quaint and occasional footnote in history.”²⁷ This path has been thwarted by the resurrection of *lèse-majesté* in Thailand, resulting in the “richest concentration of the charge in recent history.”²⁸ Never before has such an “archaic law held such sway over a ‘modern’ society.”^{29, 30} This paper seeks to explore the causes underlying the intense revival of *lèse-majesté* cases in Thailand, and to determine the far-reaching consequences of this resurgence.

III. The “Storybook” Monarchy of Thailand³¹

²⁴ Norikazu Kawagishi, *The birth of judicial review in Japan*, International Journal of Constitutional Law, Vol. 5, No. 2, available at <https://doi.org/10.1093/icon/mom01101> (2007).

²⁵ *Id.*

²⁶ *Id.*

²⁷ David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté*, Taylor & Francis (2010).

²⁸ *Id.*

²⁹ With the exception of Muslim theocracies. *Id.*

³⁰ *Id.*

³¹ See James Palmer and Christina Larson, *The King Is Dead, and Thailand’s Storybook Monarchy Might Be Next*, Foreign Policy, Nov. 7, 2017, available at <https://foreignpolicy.com/2017/11/07/the-king-is-dead-and-thailands-storybook-monarchy-might-be-next/>.

To understand the recent deluge of *lèse-majesté* cases in Thailand, a preliminary understanding of the country's relationship with their monarchy is required. Despite being the most open society in southeast Asia in many ways, Thailand is renowned for its stormy and volatile political history.³² Since 1932, there have been twenty constitutions and nineteen attempted or successful coups in the country.³³ The cyclical nature of the coups and the continuous revisions of the constitutions have combined to generate enormous political uncertainty within the country.

A significant turning point in Thai politics came in 1958, when “divine kingship” was restored as the heart of the nation's social and political life by the authoritarian Prime Minister Sarit Thanarat.³⁴ Love and respect of the monarchy became vital to the “re-sacralization” of the institution, and King Bhumibol Adulyadej was thrust to the forefront of Thai culture.³⁵ Arguably, however, the renewed valorization of the monarchy came at the expense of the country's nascent democratic ideals.

The abolishment of the absolute monarchy in Thailand in 1932 led to its political sidelining until the specter of Communism arose... Thailand's Cold War dictator [Sarit Thanarat] revitalized the monarchy in an attempt to rally nationalism against the perceived Communist threat in Southeast Asia. But the legacy of this revitalization far surpassed Sarit's Cold War plan. Bhumibol Adulyadej, Rama IX, rose... to the most potent symbol of development, progress, and nationalism for the Thai nation during the 20th century.³⁶

³² Ian Buruma, *Thailand: a kingdom of coups*, Prospect Magazine (2015).

³³ *See id.*

³⁴ *Id.*

³⁵ Andrew Walker, *David Streckfuss on lèse-majesté*, New Mandala (2010).

³⁶ Johnson, *supra* note 10.

King Bhumibol Adulyadej grew into his role as an omnipresent and omnipotent ruler. His royal portrait hung high from government buildings and marked the entrance to airports and other public spaces. Today, rousing images, music, and videos of Thailand’s royal family are endlessly displayed on television and in movie theaters. From an early age, schoolchildren read about how the king tirelessly worked to ease the suffering of his people in every imaginable way: providing scholarships to needy students, dispensing university diplomas, providing assistance to humble farmers, and promoting the arts.³⁷ The national anthem is played two times a day in certain public spaces, including on Bangkok’s BTS Skytrain.³⁸ Thai nationals are expected to stop, mid-commute, and “stand still and straight,” reminding them of the “power of the state, headed by the king, to reach deep into their daily lives.”³⁹ The power of the monarchy is a unifying and unescapable force. “Everywhere, the king's bespectacled gaze [looks] out and [meets] the gaze of the subject.”⁴⁰

Rekindling the authority of the kingdom steered the course of the country’s emerging ideology: to be Thai was to be monarchist. “Not being a monarchist is to be against the throne, and to be against the throne is not to be Thai.”⁴¹ There is no better example of the Thai people’s loyalty to the monarchy than their unflagging devotion to King Bhumibol Adulyadej, who passed away in 2016 after ruling for over seven decades.⁴² His longevity meant that much of the Thai populace had known King Bhumibol, and only King Bhumibol, as their ruler, and in that time, they had grown to genuinely love and care for him. This warmth was demonstrated when “hundreds of thousands of Thais, at their own behest, thronged Rajadamnern Avenue to wish

³⁷ *Id.*

³⁸ Michael Peel, *Thailand's monarchy: where does love end and dread begin?*, Financial Times, Oct. 11, 2017, available at <https://www.ft.com/content/149d82a4-ae17-11e7-beba-5521c713abf4>.

³⁹ *Id.*

⁴⁰ Johnson, *supra* note 10.

⁴¹ Streckfuss, *supra* note 26, at 245.

⁴² *Id.*

their King well on the occasion of the 60th anniversary of his accession to the throne,” or when the entire nation kept a watchful vigil upon news of his declining health.⁴³ When he passed away, the demand for black clothes – mourning attire – became so great that impromptu dyeing businesses sprang up in order to mute brighter fabrics into something more befitting of the somber occasion.⁴⁴

King Bhumibol attained the status of a demigod in the eyes of many of his citizens, a position that was key to the country’s mythicizing of the monarchy.⁴⁵ To some of his subjects, the king was a *bodhisattva*, a holy figure, “the last incarnation of the future Buddha.”⁴⁶ Borwornsak Uwanno, a professor-emeritus of law at Chulalongkorn University, points to religion as a driving force behind Thailand’s special esteem for their monarchy.⁴⁷ As the majority religion in Thailand by a tremendous margin, it makes sense that Buddhist ideals permeate every sphere. During his funeral, Western journalists noted that although the monks presiding over the ceremony were Buddhist, the true religion on display was monarchism, “with the late king as its avatar and savior.”⁴⁸ But although adoration of King Bhumibol had worked to unify the Thai people, the “storybook monarchy” of Thailand is not as picture-perfect as it may seem.⁴⁹ Sulak Sivaraksa, an eighty-five-year-old Thai academic and activist, has taken issue with this sanctification of the king, blaming this mentality for much of the country’s political strife. In his words, the more sacred the monarchy, the more unaccountable it becomes, transforming the

⁴³ Borwornsak Uwanno, *Lèse-majesté”: A Distinctive Character of Thai Democracy amidst the Global Democratic Movement*, Thailand Today, 2017, available at www.thailandtoday.in.th/monarchy/elibrary/article/200.

⁴⁴ *A royal mess*, The Economist, Oct. 20, 2016, available at <https://www.economist.com/leaders/2016/10/20/a-royal-mess>.

⁴⁵ *Id.*

⁴⁶ Charlie Campbell, *Thailand Bids Farewell to Beloved King Bhumibol Adulyadej*, Time, Oct. 13, 2016, available at <http://time.com/4043989/thailand-king-dead-obituary-bhumibol-adulyadej/>.

⁴⁷ Uwanno, *supra* note 41.

⁴⁸ Palmer & Larson, *supra* note 29.

⁴⁹ *Id.*

nation into “something beyond common sense.”⁵⁰ Regardless of the rationale, however, the beatific image of King Bhumibol recalls the reason why *lèse-majesté* originated in the first place: as a law befitting the outrageous crime of blasphemy.

When the late King Bhumibol passed away, his son ascended to the throne in 2016. Yet upon his ascension to the throne, King Maha Vajiralongkorn was by no means the beloved and sanitized figure that his father was. King Bhumibol was a pillar of strength and supremacy for his country, but his son came into power with a reputation for “fast cars, parties, and women.”⁵¹ He had spent much of his adult life living outside the country, and unflattering, compromising images of King Vajiralongkorn had circulated while he still the Crown Prince. There was a scandalous leaked video of a lavish birthday party thrown for his dog, Air Chief Marshal Fufu.⁵² He wore a yellow crop top and fake tattoos while out in public in Germany. When he sued Facebook in an effort to take down embarrassing pictures, he became the subject of ridicule in other countries, although there was no mention of his outrageous behavior in the mainstream Thai media.⁵³ While Thailand’s government had succeeded in fostering a cult of personality around King Bhumibol, the same efforts have not yet proven true for King Vajiralongkorn.

Despite King Vajiralongkorn’s tarnished reputation and lack of legitimacy, his actions after his succession to the throne revealed him to be a more authoritarian leader than the late King. Within his first four months in power, he had fired more than forty palace officials.⁵⁴ Two former advisors, members of his inner circles, died in mysterious circumstances while imprisoned under his orders.⁵⁵ King Bhumibol, the great ruler who inspired reverence and

⁵⁰ Fuller, *supra* note 1.

⁵¹ Claudio Sopranzetti, *From love to fear: The rise of King Vajiralongkorn*, Al Jazeera, Apr. 11, 2017, available at <https://www.aljazeera.com/indepth/opinion/2017/04/thailand-junta-king-vajiralongkorn-170411102300288.html>.

⁵² See Peel, *supra* note 36.

⁵³ Sopranzetti, *supra* note 49.

⁵⁴ *Id.*

⁵⁵ See *id.*

devotion in his subjects, had left his country in the hands of his son, who immediately cultivated dread. This climate of fear sparked early speculation that the country would backtrack to even greater monarchical absolutism, a theory that has been largely proven true.⁵⁶ His unpopularity notwithstanding, two years into his reign, King Vajiralongkorn has at least managed to retain his seat on the throne – not an easy feat during perhaps the most vulnerable political period in modern Thai history.

IV. A “Kingdom of Coups:” The Rise of the Junta⁵⁷

Thailand still retains many of the markers of successful democracies: a thriving tourist industry, a rising middle class, and prosperous banks. In fact, the transformation Thailand has undergone over the past century is extraordinary, from a “poor agrarian country to a mid-level developing nation,” all while weathering war, dictatorship, and constant uprisings.⁵⁸ Thailand is a constitutional monarchy, meaning that, although the monarchy might be considered the soul of the people, the Prime Minister is the head of the government. Still, the success or “virtues” of a constitutional monarchy is measured by the monarch sitting on the throne.⁵⁹ While constitutional monarchies may seem like a “hybrid vestige of a bygone age,” the reason for its success in Thailand was attributable to their beloved late monarch:

King Bhumibol’s reign demonstrates [a constitutional monarchy’s] genuine virtues.

Monarchs are repositories of public faith and act as a source of authority outside the bounds of ordinary politics who can step in when the going gets tough. Particularly when

⁵⁶ *Id.*

⁵⁷ Buruma, *supra* note 30.

⁵⁸ Tom Ginsburg, *Heavy Lies the Crown*, Foreign Policy, Oct. 14, 2016, available at <https://foreignpolicy.com/2016/10/14/heavy-lies-the-crown-thailand-king-death-bhumibol-adulyadej>.

⁵⁹ *Id.*

a country is in the midst of rapid change, a single individual who serves as a symbol of national unity can provide a crucial anchor.⁶⁰

In 2006, populist Prime Minister Thaksin Shinawatra was deposed in a military *coup d'état*, largely because he was considered to be lacking in loyalty to the monarchy.⁶¹ Critically, however, this narrative only reveals some of the story. As an elected official, the charismatic Thaksin represented the “other Thailand;” he was the Red Shirt candidate, the leader of rural, working-class citizens and liberal activists.⁶² Thaksin’s dramatic rise to popularity caused unease in traditionalist, Yellow Shirt circles, leading his opponents to name him as an aspiring usurper to the throne.⁶³ During the upheaval of the military takeover, both nationalism and royalism were exploited by in order to condemn Thaksin and vilify the Red Shirt movement.⁶⁴ Despite the revolt, Thaksin’s politics “refused to die,” with proxies winning every election since his self-imposed exile.⁶⁵

The political climate drastically changed in 2014, however, when the Royal Thai Army bypassed any form of a democratic election. Instead, they declared martial law, established the military junta – officially known as the National Council for Peace and Order – and named General Prayut Chan-ocha as the Prime Minister.⁶⁶ Although Prime Minister Prayuth Chan-ocha pledged to lead the country into a “Thai-style democracy,” the junta instead conferred itself such

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² David Streckfuss, *The Contrecoup in Thailand*, The New York Times, June 17, 2015, available at <https://www.nytimes.com/2015/06/17/opinion/the-contrecoup-in-thailand.html>

⁶³ *Id.*

⁶⁴ James Buchanan, *The Darker Side of Thai Royalism*, The Diplomat, Oct. 26, 2016, available at <https://thediplomat.com/2016/10/the-darker-side-of-thai-royalism/>

⁶⁵ Sopranzetti, *supra* note 49.

⁶⁶ Anna Fifield, *Thai junta enjoys absolute power as opposition quietly bides its time*, The Washington Post, April 13, 2015, available at https://www.washingtonpost.com/world/thai-junta-enjoys-absolute-power-as-opposition-quietly-bides-its-time/2015/04/12/dbaf5592-dc83-11e4-b6d7-b9bc8acf16f7_story.html?utm_term=.04fa2c36f11d.

sweeping powers that words such as “‘antediluvian’ and ‘baroque’” are used to describe it.⁶⁷ At this point, King Bhumibol – elderly, frail, and hospitalized for much of his later years – was unable to effectively intervene between the bloody clashes of the two movements.⁶⁸ In other words, it was the perfect time for the military junta to establish an authoritarian regime.

This short history of Thailand’s monarchy, infused with democratic traditions, informs the rise of *lèse-majesté* laws. The Thai people are unquestionably loyal to their sovereigns, but after a “history of voting,” they have become used to seeing “ballots win real changes.”⁶⁹ When Thaksin’s younger sister, Yingluck Shinawatra, became Prime Minister in 2011, her party hoped to see her policies lessen, or even possibly repeal, the *lèse-majesté* laws.⁷⁰ Following the 2014 *coup d’état*, however, the opposite has proven true: the ruling military junta has enforced *lèse-majesté* laws with greater zeal than its predecessors.⁷¹ Thailand’s democratic efforts are at odds with the National Council for Peace and Order’s avenging and reactionary defense of the monarchy. In 2017, for example, a historic Bangkok plaque that commemorated the king’s acceptance of constitutional government in 1932 disappeared under mysterious circumstances.⁷² In another recent incident, Prime Minister Prayuth Chan-ocha berated a student activist who criticized university students who prostrated themselves in front of a statue of King Chulalongkorn, despite the fact that King Chulalongkorn himself had abolished prostration in the eighteenth century.⁷³ Thailand’s explosive decade of political instability – including the esteemed late king’s death, King Vajiralongkorn’s succession to the throne, and the intrusion of

⁶⁷ *Id.*

⁶⁸ Palmer & Larson, *supra* note 29.

⁶⁹ Peel, *supra* note 36.

⁷⁰ *Id.*

⁷¹ *Thailand’s junta intensifies its hunt for critics of the monarchy*, The Economist, May 18, 2017, available at <https://www.economist.com/asia/2017/05/18/thailands-junta-intensifies-its-hunt-for-critics-of-the-monarchy>.

⁷² *Id.*

⁷³ *Id.*

the military junta – has rendered this new era a distinct time in Thai history, and one in which *lèse-majesté* laws have prospered.

V. Thailand's *Lèse-Majesté* Law

Thailand's use of the *lèse-majesté* law is singular in the world. The law is enshrined in Section 112 of the Thai Criminal Code: "Whoever defames, insults, or threatens the King, the Queen, or Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years."⁷⁴ This law, found in the country's first criminal code in 1908, buttresses the clause in the Constitution in the Kingdom of Thailand that proclaims: "The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action."⁷⁵

There is a provision on free speech in the Constitution in the Kingdom of Thailand, allowing citizens to enjoy the liberty to express, print, write, or publicize their opinion. This provision, however, is quickly limited:

The restriction on liberty... shall not be imposed except by virtue of the law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other persons, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.⁷⁶

While these provisions have been part of Thailand's legal system for decades, the country's recent political changes have conspired to punitively restrict freedom of speech. In an added blow to freedom of expression in Thailand, the junta-appointed National Legislative

⁷⁴ See Criminal Code [CRIM. C.] B.E. 2499 (1956), s. 112, 17; see also Baber, *supra* note 13.

⁷⁵ Campbell, *supra* note 101.

⁷⁶ Baber, *supra* note 13, at 708.

Assembly enacted a more stringent version of the Computer Crime Act in 2016.⁷⁷ Following this restrictive law, even the simple act of “liking” a social media post could provide sufficient grounds for prosecution.⁷⁸ The Human Rights Watch has cautioned Thailand against this excessive form of control, stating that the new Act gives “overly broad powers to the government to restrict free speech, enforce surveillance and censorship, and retaliate against activists.”⁷⁹ Yet the National Council for Peace and Order has continued to steadfastly ignore international condemnation on this issue.

Under Prime Minister Prayuth Chan-ocha, government relations with the media has progressively worsened. An increased number of government agencies work together to enforce *lèse-majesté* violations in the media, including the army, the police, the Ministry of Justice’s Department of Special Investigation (DSI), the Ministry of Information and Communication Technology (MICT), and the Internal Security Operations Command (ISOC).⁸⁰ In 2007, YouTube was blocked for a number of months.⁸¹ From March 2008 to July 2009, more than 8,300 websites were blocked by MICT on *lèse-majesté* grounds.⁸² In another attempt to manipulate the dissemination of information, Thailand’s main cable provider was encouraged to censor certain foreign television channels that the junta deemed unfavorable.⁸³ Quick-tempered Prime Minister Prayuth Chan-ocha has not shied away from controversy, from hurling a banana

⁷⁷ *Thailand: Cyber Crime Act Tightens Internet Control*, Human Rights Watch, Dec. 26, 2016, available at <https://www.hrw.org/news/2016/12/21/thailand-cyber-crime-act-tightens-internet-control>.

⁷⁸ *Lèse-majesté Warning for Facebook*, Bangkok Post, Nov. 24, 2011, available at <http://www.bangkokpost.com/breakingnews/267732/facebook-like-button-may-bring-lese-majeste-charge-against-users>.

⁷⁹ Human Rights Watch, *supra* note 75.

⁸⁰ *Thailand: End Harsh Punishments for Lese Majeste Offenses*, Human Rights Watch, Dec. 2, 2011, available at <https://www.hrw.org/news/2011/12/02/thailand-end-harsh-punishments-lese-majeste-offenses>.

⁸¹ *Treason in cyberspace*, The Economist, July 2, 2009, available at <https://www.economist.com/asia/2009/07/02/treason-in-cyberspace>.

⁸² *Id.*

⁸³ *A royal mess*, *supra* note 42.

peel at a reporter to “humorously” threatening to execute critical journalists.⁸⁴ In January of 2018, he used a life-sized cardboard cutout of himself to deflect questions from the media, telling the press, “If you want to ask any questions on politics or conflict, ask this guy.”⁸⁵ From an outsider’s perspective, the Prime Minister’s actions seem ridiculous and almost laughable. But it is no laughing matter: the increasing chokehold placed on the media, coupled with Thailand’s existing *lèse-majesté* rules, has opened the floodgates for increased arbitrary prosecutions, even in cases that seem patently unfair or unreasonable.

The 2011 case of “Uncle SMS” is illustrative of the rise of indiscriminate *lèse-majesté* prosecutions. Ah-Kong, a poor man, allegedly sent four SMS messages that contained offensive content about the royal family to the deputy secretary of former Prime Minister Vejjajiva.⁸⁶ After his conviction, he soon died in prison at the age of sixty-one. The man’s advanced age, poverty, and twenty-year prison sentence – as well as lingering questions as to how he even acquired such an important official’s phone number – sparked outrage and protests across the country.⁸⁷ In 2009, an activist named Darunee Charnchoensilpakul was sentenced to nearly two decades in prison.⁸⁸ Another activist, Jatupat Boonpattaraksa, was sentenced to two-and-a-half years in prison merely for sharing an article of King Vajiralongkorn published by the BBC.⁸⁹ Noted activist Sulak Sivaraksa, arrested for violating *lèse-majesté* numerous times, was charged yet again in 2014 when he cast doubt on a sixteenth-century Thai king’s involvement in an

⁸⁴ *Thailand’s Leader Uses Cardboard Stand-In to Avoid Journalists’ Questions*, The New York Times, Jan. 8, 2018, available at nytimes.com/2018/01/08/world/asia/thailand-prime-minister-prayuth.html.

⁸⁵ *Id.*

⁸⁶ Fifield, *supra* note 64.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Thailand’s junta intensifies its hunt for critics of the monarchy*, *supra* note 69.

elephant battle.⁹⁰ After a two-year investigation, prosecutors ultimately dropped charges when King Vajiralongkorn personally pardoned him. Despite his eventual pardon, Sulak's case emphasizes the broad latitude given to the Thai government to investigate *lèse-majesté* charges: the law may apply not only to the reigning king, but to long-dead monarchs, as well.⁹¹

The application of *lèse-majesté* laws in Thailand veers from irrational and vindictive, as in Sulak's case, to the realm of the absurd, as in a recent case involving Queen Chammathewi of Thailand. Whether Queen Chammathewi existed is not a verifiable fact. The only historical record of her comes from a "fanciful 15th-century chronicle written on palm leaves in an ancient liturgical language," which also describes how she conjured a city out of a jungle.⁹² Despite this questionable history, criticisms of the possible monarch have been treated as a crime under *lèse-majesté*. In 2017, a provincial court prosecuted a local of the crime after he posted a crude, suggestive comment about her on his Facebook account.⁹³ These cases reveal that rather than focusing on the substantive content of the speech, the junta appears to be willing to make an example out of anyone who comes close to crossing the line.

Under modern Thai law, threats to the monarchy are rendered nearly infinite. Potential violations can be easily manipulated by government actors, as evidenced by the illiberal cases of Uncle SMS, Sulak Sivaraksa, and countless others.⁹⁴ A careless whisper, a comment on a social media post, a vulgar joke: any one of these actions is enough to be faced with the threat of decades in prison. The punishment, especially in the many trivial instances where *lèse-majesté* is

⁹⁰ Brigit Katz, *Thailand Drops Charges Against Historian Who Questioned the Facts Around Historic 16th-Century Duel*, Smithsonian.com, Jan. 19, 2018, available at [smithsonianmag.com/smart-news/thailand-drops-charges-against-historian-facts-duel-180967881/](https://www.smithsonianmag.com/smart-news/thailand-drops-charges-against-historian-facts-duel-180967881/).

⁹¹ *Id.*

⁹² *Thailand's junta intensifies its hunt for critics of the monarchy*, *supra* note 69.

⁹³ *Id.*

⁹⁴ David Streckfuss, *Kings in the Age of Nations: The Paradox of Lèse-Majesté as Political Crime in Thailand*, 37 *Comp. Stud. Society & History*, 445, 463 n.25 (1995).

successfully brought up, seems draconian, untenable, and incredibly disproportionate to the crime. Perhaps the biggest absurdity of *lèse-majesté* in Thailand is the paradox that David Streckfuss points out: “With each arrest, with each re-publication of those slanderous words, with each defense of the monarchy, both the state and the monarchy become more defined, and so, more prone to attack.”⁹⁵ The very act of charging a violator becomes more harmful to the monarchy than the criticism itself; in trying to quash valid criticism, more is generated. The crisis enveloping Thailand is self-inflicted, and it is almost poetic justice that the reactive military state has become the “primary vehicle for ensuring the preservation of the very subversive voices it has sought to silence.”⁹⁶

VI. “A chokehold on freedom of expression:” *Lèse-Majesté* as a Political Instrument⁹⁷

The steady rise of punitive *lèse-majesté* cases in the past decade is not coincidental, but rather speaks to its use as a political instrument, wielded by government forces as a retaliatory and unforgiving form of defense. Before his death, the late King Bhumibol himself objected to the law. In a birthday speech addressed to the public, he said:

“Actually, I must also be criticized. I am not afraid if the criticism concerns what I do wrong, because then I know. Because if you say the King cannot be criticized, it means that the King is not human. If the King can do no wrong, it is akin to looking down upon him because the King is not being treated as a human being. But the King can do wrong.”⁹⁸

King Bhumibol gave this speech in 2005, before the *coup d'état* in 2006. At the time he gave the speech, *lèse-majesté* charges were relatively few: between 1992 and 2004, there was an

⁹⁵ *Id.* at 473.

⁹⁶ *Id.* at 452.

⁹⁷ Human Rights Watch, *supra* note 78.

⁹⁸ Charlie Campbell, *supra* note 101.

average of 5 cases per year.⁹⁹ It is telling that the numbers begin to rise after the military junta rose to power. Between 2006 and 2008, over two hundred cases were tried. In 2009, the number skyrocketed, with over three thousand cases tried.¹⁰⁰ Concurrently, the number of people who have proved able to successfully defend themselves against charges has sharply fallen: from 2011 and 2013, around twenty-four percent of wrongdoers prevailed, while in 2016, the number fell to a mere 4 percent.¹⁰¹

Thailand's democratic history has faded. The declining health of King Bhumibol around this time helps to explain the increase of *lèse-majesté* cases, so that the National Council for Peace and Order could work to preemptively silence opposition of King Vajiralongkorn's upcoming succession. The junta did not want to risk anti-royalist sentiments being widely propagated in such a vulnerable time of transition; after all, the monarch is the "main character" of Thailand, the one who, "by his meritorious acts, unites the people, the nation, and the state ideology."¹⁰² Without such a unifying force, the junta's own position in the political framework would become attenuated. Consequently, in order to maintain their "vice-like grip on power" during a delicate time, the junta has used *lèse-majesté* as a legal m in order to mete out harsh and indiscriminate sentences.¹⁰³ In other words, the law has served as the ultimate weapon used to stifle critics of the military and claims of corruption, all while reinforcing the military state's own legitimacy.

Laws has always been capable of being weaponized, but *lèse-majesté* is arguably the most significant political weapon wielded to quell dissent. Historically, regular criminal charges

⁹⁹ Sukrat Baber, *supra* note 13, at 707.

¹⁰⁰ *Id.*

¹⁰¹ Press briefing note on Thailand from the UN High Commissioner for Human Rights, June 13, 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21734&LangID=E>.

¹⁰² Streckfuss, *supra* note 92.

¹⁰³ Charlie Campbell, *The Draconian Legal Weapon Being Used to Silence Thai Dissent*, Time Magazine, Jan. 2015, at time.com/3650981/thailand-lese-majeste-article-112/.

could only be brought by a department of public prosecutions.¹⁰⁴ In contrast, *lèse-majesté* charges may be brought by any Thai citizen against any other, engendering a climate of fear and distrust. In a self-fulfilling cycle, complaints of *lèse-majesté* are usually followed up by the police, who may worry that ignoring the violation will lead to their own incrimination.¹⁰⁵ By criminalizing dissent through *lèse-majesté*, the ruling junta have forced any criticism of the monarchy underground, meaning that what would otherwise be open to public commentary is reduced to whispered gossip and unsubstantiated rumors. “How popular is... Vajiralongkorn? No one knows, because you cannot have a poll on the subject. Would Thais prefer some other system? Other than anonymous Internet posts and expatriate critics, it is not up for discussion.”¹⁰⁶ The result is something akin to a witch-hunt, a “black hole in the center of the Thai body politic” that makes the truth impossible to gauge.¹⁰⁷

It is patently undeniable that the Thai government is deliberately limiting opposition by charging would-be dissidents with *lèse-majesté* charges. Studies have shown that during the time of the *coup d'état*, more than ninety percent of those summoned to military headquarters were academics, journalists, or other individuals who were associated with the Thaksin government.¹⁰⁸ The lack of transparency and clarity in the prosecution of these cases also plays a role in its political repression: the Thai state is allowed to conduct trials related to *lèse-majesté* in secrecy, ostensibly to protect the public.¹⁰⁹ In fact, no such trial has allowed the defendants to argue or provide evidence to answer the question that what they stated was true or for a societal good. Judges typically deny bail to those facing *lèse-majesté* charges, labelling the

¹⁰⁴ *Id.*

¹⁰⁵ Peel, *supra* note 36.

¹⁰⁶ Fuller, *supra* note 1.

¹⁰⁷ Streckfuss, *supra* note 26, at 196.

¹⁰⁸ *Repression, Civil Conflict and Leadership Tenure; the Thai Case Study: 2006-2014*, available at ucl.ac.uk/politicalscience/research/pastprojects/conflict/repression/downloads/Thailand_Case_Study.pdf.

¹⁰⁹ *Id.*

accused as flight risks.¹¹⁰ By shrouding the cases in secrecy, the National Council for Peace and Order may carry out their political machinations without fear of public reprisals.

Individuals charged with *lèse-majesté* often have their legal problems further exacerbated by prison authorities. Thai Lawyers for Human Rights (TLHR), an organization of Thai lawyers who help combat human rights violations, take on *lèse-majesté* cases. Their client-lawyer relationship is plagued by confidentiality problems, since lawyers are only allowed to speak to their clients through thick glass barriers.¹¹¹ Even more worrisome is the frequent harassment that these lawyers face, despite their stated political neutrality. In an interview with *The Diplomat*, one TLHR lawyer recalled comments by prison officers: “They always say ‘why do you dare to represent [*lèse-majesté*] cases?’” In 2015, the junta shut down an event where TLHR lawyers were set to present research on recent abuses under the Thai government. In the face of such targeted opposition, giving up might be the safest option. Yet as one TLHR researcher put it, “We think people have a right to know... If we don’t speak out, no one else will.”¹¹²

Despite continued bursts of resistance, the draconian *lèse-majesté* laws are working to quash opposition. Decades ago, Thai mainstream media used to analyze and write critically about the monarchy. Today, they exercise, without hesitation, “self-censorship on anything deemed even mildly critical.”¹¹³ The result is an Orwellian-like, paranoia-inducing state, and an ideal environment in which to circulate propaganda. In 2015 alone, the junta spent \$540 million on a promotional campaign titled: “Worship, protect, and uphold the monarchy.”¹¹⁴ The

¹¹⁰ Gina Tam & Tyrell Haberkorn, *How the Opposition Is Silenced in Hong Kong and Thailand*, Foreign Affairs, Sept. 15, 2017, available at www.foreignaffairs.com/articles/east-asia/2017-09-15/how-opposition-silenced-hong-kong-and-thailand

¹¹¹ Shawn Crispin, *Battling Thailand’s Lese Majeste Crackdown*, *The Diplomat*, Jan. 16, 2016, available at thediplomat.com/2016/01/battling-thailands-lese-majeste-crackdown/.

¹¹² *Id.*

¹¹³ Walker, *supra* note 33.

¹¹⁴ Fuller, *supra* note 1.

campaign – comprised of commercials, prison seminars, school lessons, singing contests, and literary competitions focused on praising the monarchy – had a distinctly political message.¹¹⁵ When he was still in power, former Prime Minister Vejjajiva’s image was plastered on billboards across Thailand, instructing citizens to “protect the monarchy by reporting those whom defamed the institution.”¹¹⁶ Current Prime Minister Prayuth Chan-ocha dismissed criticism of these methods and denied his role in spreading propaganda.¹¹⁷ Nevertheless, the message was unmistakable then, and holds true today: to avoid swift and unforgiving punishment, critics of the new Thai order must learn to keep their thoughts to themselves.

VII. What Thailand’s Reliance on *Lèse-Majesté* Means for its Future

Not long ago, many Thais and much of the outside world thought the country could eventually transform into a solid democracy. The nation was even termed a “poster child for democratization in the developing world.”¹¹⁸ The 2001 elections were among the freest in Thailand’s history; the 1997 version of the Constitution was fairly progressive; Thai Army leaders had sworn to “respect civilian control and never engage in politics again.”¹¹⁹ In 1999, international watchdog organization Freedom House declared Thailand a “free” country, marking it as one of the only Asian countries to make the list.¹²⁰ During his reign, however, King Bhumibol failed to take full advantage of his opportunity to stabilize Thailand’s constitutional monarchy, instead choosing to reinforce ties between the monarchy and the military.¹²¹ The late

¹¹⁵ *Id.*

¹¹⁶ Campbell, *supra* note 101.

¹¹⁷ Fuller, *supra* note 1.

¹¹⁸ Joshua Kurlantzick, *Bangkok Blues*, Foreign Policy, May 22, 2012, available at foreignpolicy.com/2012/05/22/bangkok-blues/.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Paul Handley, *Bhumibol, a King of the People, Leaves Them to the Generals*, The New York Times, Oct. 13, 2016, available at nytimes.com/2016/10/15/opinion/bhumibol-a-king-of-the-people-leaves-them-to-the-generals.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer.

king's death left an entire nation bereft, but it also catalyzed its politics down a familiar path: into the waiting "hands of corrupt and shortsighted generals."¹²²

With the political turmoil of the last decade, any claim to democracy that Thailand has preserved has all but collapsed. After all, the guarantee of any true democracy includes the ability to withstand the free dissemination of opinions, public criticism, and scrutiny. The very presence of a coercive *lèse-majesté* law that manipulates and distorts the truth signals a rapidly deteriorating political system. It is no surprise, then, that the junta's commitment to hold a new election have been postponed at least six times, with their new election date slated for February 2019.¹²³ Each time, their promise to reinstate democratic methods rings hollower.

Thailand's growing reliance on *lèse-majesté* law as a way to stifle dissent is an affront to democratic ideals. While countries like China have selectively used its laws to silence the voices of activists or dissenters for decades, Thailand's situation is distinctive because of the sudden reversal of certain hard-won freedoms. The junta's recent actions further legitimize a bleak phenomenon, leading to worries about the consequences for other constitutional monarchies or forms of governments. In February of 2018, Cambodia unanimously passed their own, very similar, *lèse-majesté* law, which forbids any insults against the monarchy.¹²⁴ In Singapore, an anti-harassment law was circulated that would have prevented journalist from pursuing sensitive issues involving the government.¹²⁵ In Malaysia, the prime minister threatened a lawsuit for seditious comments that were left up for too long on a website.¹²⁶ If Thailand's democracy can

¹²² *Id.*

¹²³ See Pavin Chachavalpongpun, *Don't Expect Democracy in Thailand Anytime Soon*, The Diplomat, Feb. 8, 2018, available at <https://thediplomat.com/2018/02/dont-expect-democracy-in-thailand-anytime-soon/>.

¹²⁴ See Prak Chan Thul, *Cambodia parliament adopts lese-majeste law, prompting rights concerns*, Reuters, Feb. 14, 2018, available at www.reuters.com/article/us-cambodia-king/cambodia-parliament-adopts-lese-majeste-law-prompting-rights-concerns-idUSKCN1FY0RV.

¹²⁵ Mong Palatino, *Free Speech Under Attack in Southeast Asia*, The Diplomat, June 5, 2014, available at <https://thediplomat.com/2014/06/free-speech-under-attack-in-southeast-asia/>

¹²⁶ *Id.*

break down, then any developing country's own transition might be less secure than it seems.¹²⁷

Given President Rodrigo Duterte's controversial tenure in the Philippines, and the Rohingya crisis under Aung San Suu Kyi, democracy in Southeast Asia is already tenuous at best.¹²⁸

Thailand's politics affect not only Thailand, but the world.

Advocates of *lèse-majesté* argue that the laws enforced by the National Council for Peace and Order work to benefit Thai society by unifying a polarized nation. Borwornsak Uwanno, a chief architect of the 1997 Thai constitution, defended *lèse-majesté* on the grounds that that the bond between the Thai monarchy and the Thai people is an expression of its particular "ethical and cultural character," one that forms the foundation for an inimitable relationship.¹²⁹ This relationship, he argues, generates a level of monarchical allegiance and deference that may be difficult for foreigners to grasp, and it is this deference that accounts for "social consensus" that buttresses *lèse-majesté* laws.¹³⁰ It is true, as the law's defenders claim, that Thailand has a complex and deeply reverential regard for their monarchy. But by this logic, the crime of *lèse-majesté* should not even exist. There would be no need for it, for no one would ever think to speak ill of a universally-beloved, faultless kingdom. The very presence of the law belies the notion that it stems from communal harmony. *Lèse-majesté* was not birthed by social consensus, but is the strategic innovation of a dictatorial and calculating regime. The argument that such crimes are an attempt to unite the nation ignores the fact that the law has only created wider political schisms.

The irony that arises from the Thailand's *lèse-majesté* laws is that, in repressing any sort of criticism, the nation is only wounding itself. The junta-ruled state may feel it is in their best

¹²⁷ Kurlantzick, *supra* note 116.

¹²⁸ Chachavalpongpun, *supra* note 121.

¹²⁹ Streckfuss, *supra* note 26, at 315.

¹³⁰ *Id.*

interests to imprison critics, but the effort is doing as much harm to their institution as the censure itself. The epidemic of *lèse-majesté* creates an underground vehicle for unverifiable rumors, muttered and passed along in secretive circles. The inherent mystery surrounding such chatter means these whispers cannot be refuted, causing a self-perpetuating cycle of uncertainty and half-truths. By forcing such criticism underground, it becomes impossible to distinguish fact from fiction.¹³¹ The junta's prolonged deception, coupled with its practice of inflicting excessively stringent punishments, has aroused the ire of a growing anti-monarchist movement.

At their current pace, the *lèse-majesté* laws will inevitably grow to “consume everything, at the probable cost, in the end, of the monarchy itself.”¹³² As history has demonstrated, leaders who try their best to suppress criticism – like Prime Minister Prayuth Chan-ocha and King King Vajiralongkorn – are rendered “vulnerable to rapid shifts in public opinion.”¹³³ By persecuting Thais, the “moral guardians” enforcing *lèse-majesté* are “adding to the anger against Bangkok's elite and, perhaps, fanning the flames of republicanism.”¹³⁴ In their overzealous enforcement of the law, Thailand has compelled a state-sanctioned, tyrannical form of loyalty. What its leaders fail to grasp is that coercion fails to engender true fidelity, but rather masks a simmering and dangerous resentment. The end result is intolerance and violence, “a precarious and fragile unity born of repression.”¹³⁵ Centuries of history has already taught countries all over the world that *lèse-majesté* will never work to completely eradicate dissent. The law only work to muddy the truth, constrain freedoms, and sow deep pockets of discord within society. In desperately relying on *lèse-majesté* to cling to power, the junta is inadvertently stoking a rebellion. Dissidents who

¹³¹ *Id.* at 310.

¹³² *Id.* at 314.

¹³³ Ginsburg, *supra* note 56.

¹³⁴ *Treason in cyberspace*, *supra* note 79.

¹³⁵ Streckfuss, *supra* note 26, at 314.

dare to speak up for their dreams of a fairer and more democratic future may be losing the current battle, but will emerge victorious in the war.