Constitutional Engineering:
Studying Promotions and Revocations of Religious Freedom in Thailand

Karen Lee
Stanford University
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Faculty Advisor: Dr. David Laitin, Department of Political Science
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Abstract

Thailand has promulgated twenty constitutions and experienced more coups—eleven successful coups and seven attempted coups—than any other country since its conversion to a parliamentary monarchy in 1932. Does this pattern of coup transitions suggest that constitutional efficacy is weak in Thailand, or have constitutions been written and rewritten with the goal of directing policy? This thesis aims to answer this question through studying promotions and revocations of religious freedom in Thai constitutions. Through analyzing Thailand’s twenty constitutions and studying other observable indicators such as change in GDP and geo-strategic threats, this paper finds that there is no political logic behind promotions and revocations of religious freedom in Thai constitutions, thereby suggesting that constitutional provisions have little or no effect on policy towards religious freedom.
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Introduction

Thailand is the only Southeast Asian nation that was never colonized by a Western power. As colonial states are infamous for dividing the populations over whom they rule in order to conquer them, one would think that Thailand’s lack of colonial history means that it is a unified country, but it has been plagued by ethnic conflict in its southern provinces. As with many other Southeast Asian nations, political instability is rife: Thailand has promulgated twenty constitutions and experienced more coups—nineteen attempted coups, twelve of them successful—than any other country since its transition from an absolute monarchy to a constitutional monarchy in 1932. This pattern has led scholars to posit that constitutions in Thailand are merely “a set of rules for domestic political games” and a way for coup leaders to legitimize their power but in reality have no impact on rule of law (Chin 2007). This thesis aims to test this conventional wisdom by looking at promotions and revocations of religious freedom in Thai constitutions in search of a political logic, assuming that if promotions and revocations were more than “hot air”, they would be associated with policy shifts in regard to the government’s treatment of Thailand’s Malay Muslim population in the south.

Historical Background

Islam in Thailand

Thailand provides an apt case study for looking at the relationship between constitutional provisions and the treatment of religious minorities because of its extensive constitutional track record and the presence of a significant Muslim population in the country’s southern provinces. Thailand is the world’s most predominantly Buddhist country—according to the CIA World Factbook data from 2016, 93.6% of the population are adherents of Theravada Buddhism. Only 4.9% of the population are Muslims, and four-fifths of this population reside in the southern
provinces of Pattani (88% Muslim), Narathiwat (80% Muslim), Yala (72% Muslim), Satun (67% Muslim), and Songkhla (25% Muslim). Furthermore, Muslims in Thailand’s Deep South, as these provinces are collectively known, identify as ethnically Malay, in contrast with Muslims living in Bangkok and the northern provinces who view themselves as Thai.

Islam was likely first introduced to the Malay peninsula by Arab traders in the 13th century AD. The Malay sultanate of Patani is thought to have emerged around the late 15th century and encompassed what is now Pattani, Narathiwat, Yala, and parts of northern Malaysia. It became a vibrant trading hub and one of the centers of Islam in Southeast Asia in the 16th and 17th centuries, but was annexed by Siam (present day Thailand) in 1786 and brought under Siamese control completely in 1902. The current border between Malaysia and Thailand was officially established with the Anglo-Siamese Treaty of 1909, when Thailand ceded control of Kedah, Kelantan, Perlis, and Terengganu (now northern provinces of peninsular Malaysia) to British-controlled Malaysia in exchange for control of the five aforementioned provinces with a high concentration of Muslim residents (Thomas 1975) In contrast, Thai Muslims, who live in Bangkok and the northern provinces of Chiangmai and Chiangrai, are a more heterogeneous group comprised of many different ethnicities including Chinese, Bengali, Iranian, and Javanese, and have assimilated more smoothly into Thai society (Aphornsuvan 2003).

In 1932, a military coup replaced Thailand’s absolute monarchy with a parliamentary monarchy. This transition of power replaced a local governance structure, which had allowed some political autonomy to the Malay population, with a more direct form of control from Bangkok. Though the period from 1933 to 1937 saw high levels of Muslim representation in Parliament, General Phibunsongkram was elected as Prime Minister in 1938 and implemented

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1 A note on spelling: ‘Pattani’ is a modern-day Thai province, whereas ‘Patani’ often refers to the land area covered by the old Malay sultanate, and when used can have Malay nationalist implications (McCargo 2007).
nationalist policies from 1938 to 1944 that suppressed the rights of southern Muslims such as dictating their dress code, abolishing Islamic laws, and mandating attendance at Thai schools. These ‘modernizing’ policies were meant to reform ‘backwards’ Islamic traditions and promote a process of ‘Thaiization’. Siam’s name change to Thailand (*Mueang Thai*, meaning land of the free) in 1949 reflects the government’s desire to create a more unified population by promoting Thai-ness and suppressing other ethnic identities (Aphornsuvan 2003). As such, it is important to understand that the Deep South conflict is as much ethnic as it is religious, because Muslim grievances in the Deep South have always been driven by discontent at Bangkok’s refusal to recognize their ethnic identity.\(^2\)

*Insurgent Groups and Demands\(^3\)*

Currently, there are multiple insurgent groups in southern Thailand that are only loosely connected to each other. Several groups formed in the 1960s, each with different ideological perspectives, but all had the initial goal of creating an independent Patani state. Through low-level attacks such as ambushes, bombings, and extortion, these organizations attempted to put pressure on the Thai government to acquiesce to their separatist demands by presenting the South as an unsafe place for ethnic Thais beyond the control of Bangkok. To this day, attacks are still meant to discredit the military government and create instability in the region (Chalk 2008). Following the promulgation of the latest constitution on April 6\(^{th}\), 2017, the number of attacks in the South immediately increased, presumably as a way for insurgents to protest the new constitution.

\(^2\) For a more detailed narrative on the history of Islam in Thailand, please see “History and Politics of Muslims in Thailand” and “Origins of Malay Muslim ‘Separatism’ in Southern Thailand” by Thanet Aphornsuvan.

\(^3\) See Chapter 2 of “Conflict and Terrorism in Southern Thailand” edited by Rohan Gunaratna, Arabinda Acharya, and Sabrina Chua for descriptions of insurgent groups and actors in the region.
The Barisan Revolusi Nasional (BRN) is the main faction behind the attacks in southern Thailand now, and was created in 1960 in response to a government-sponsored program on educational reform that forced religious schools to adopt a secular curriculum taught in Thai. The BRN views Thai constitutions as illegitimate and aims to construct Pattani province into a sovereign state independent from Thailand and incorporate it into a larger Southeast Asian Muslim nation. Though it posed a threat to regional stability, it has not been able to attract a large enough following to effectively challenge the government due to its more left-wing ideology. The most active subgroup of the BRN is the BRN-Koordinasi (BRN-C), which has since 2016 extended an offer to enter peace negotiations for the military government, on the condition that the dialogue be overseen by international observers and mediated by a neutral party. The National Council for Peace and Order (NCPO), the military junta that has ruled Thailand since the 2014 coup, has repeatedly refused this offer, claiming that violence in the Deep South is a domestic conflict and that there is no need for external mediation (Newsweek 2017).

Another influential organization is the Patani United Liberation Organization (PULO), which was created in 1968 and was the largest and most active group in the south until 2000. Formed by Tengku Bira Kotanila, an Islamic scholar disillusioned with the Malay population’s ineffectual opposition, it has a dual action strategy aimed at improving education among the Malay population and increasing international visibility of the condition of Malay Muslims through armed conflict. Though successful attacks against “perceived symbols of Thai oppression” such as Buddhist monks, schools, and local government officials, improved border cooperation between Malaysia and Thailand from 1998 onwards caused many members to flee the region or surrender to the government, rendering the group ineffective by 2000 (Chalk 2008).
The period between 1998 and 2004 was marked by relatively low levels of violence, mainly thanks to greater border cooperation and attempts by the Thai government to better understand the Malay-Muslim way of life. Violence reemerged in 2001, when five coordinated attacks on police in Pattani, Yala, and Narathiwat provinces killed five police officers and one volunteer. The most infamous instance of violence against Muslims occurred in 2004, which is now considered the year in which the modern upsurge in violence began, when 32 suspected Muslim militants sought refuge in Krue Sae mosque in Pattani province after a string of militant attacks on police outposts in the Deep South provinces, and were all summarily executed by the Thai military. In the same year, 78 Muslim detainees at a protest in Tak Bai, Narathiwat, died from suffocation and organ failure en route to a military camp after they were piled in the same truck. No one was prosecuted for this incident. To date, more than 7000 people have been killed as a result of the insurgency, and according to Human Rights Watch, civilians have accounted for 90% of fatalities (Human Rights Watch 2015).

**Literature Review**

As mentioned above, the conventional wisdom among scholars of Thai constitutions is that constitutions in Thailand are merely parchment barriers to human rights abuse and have no tangible impact on rule of law. Globally, the average lifespan of a constitution is seventeen years, but the lifespan of a Thai constitution is only four years. Given this contrast, one wonders why constitutions in Thailand are even promulgated if they will only be replaced a few years later by another military government. The literature review below will outline existing scholarly research on why governments choose to grant or rescind religious freedoms to minority groups, the purpose of constitutions as a political tool, the role of Thai constitutions in governance, and the unique role of the military and the monarchy in Thailand, all of which are essential to
understanding the causes and persistence of the Deep South insurgency. Though the political logic of constitutions and the provisions of Thai constitutions have been studied extensively, and this paper fills the gap in literature by examining the relationship between Thai constitutional guarantees towards religious rights and the treatment of Malay Muslims in Thailand.

Regimes, Ethnic Diversity, and Religious Toleration

This project initially began as an attempt to find out whether military regimes in Thailand would be more likely to implement more repressive religious policies while democratically elected governments would be more likely to grant religious freedom. The idea that a political community should be united by a common culture was first proposed in 1861 by philosopher John Stuart Mill in his work *Considerations on Representative Government*. Mill argued that a liberal democracy would only be able to handle periods of democratic conflict if its citizens were united by a common identity, language, or culture (Kraus 2000). Many scholars have argued that ethnic diversity in a country complicates governance because it is more difficult for different ethnic groups to reach a compromise and minority groups may see their rights suppressed if they are not proportionally represented in the government (Alesina and La Ferrara 2005; Montalvo and Reynal-Querol 2014; Easterly 2001). Because Thailand has experienced so many coups since 1932, are patterns of religious toleration and repression correlated with the transitions of power between civilian and military governments? The relationship between regime type and freedom of religion has been widely studied, and some of the main schools of thought are summarized below.

Political theorist John Locke argues in his letter concerning toleration that religious and civil rights must be kept separate. As such, discrimination against another person because of their religion is unacceptable because “all the rights and franchises that belong to him as a man…are
undeniably preserved to him” regardless of his religion (Locke 1689). Because what is considered orthodox or heretical is subjective to each religion, no one religion is ‘correct’, but the basic rights accorded to a person under any government should be the same. Similarly, Alfred Stepan calls religion and democracy the “twin tolerations”, in that democracy should provide a platform for all groups to advance their own interests as long as they do not use violence or violate the rights of other groups. However, some scholars have posited that certain religions, due to their teachings, are incompatible with democracy. For example, given the large number of terrorist attacks in the 21st century that have been tied to Islamic nations, there is a widespread perception that Islam is incompatible with democracy. However, Stepan points out that half of the world’s Muslims live in democracies or near-democracies, or intermittent democracies if one takes into account the Muslim populations of Pakistan, Turkey, India, Western Europe, implying that political leadership has more of an effect on democratization than religion. After studying the political party activity and constitutions of the above regions, Stepan also concludes that “military and intelligence organizations unaccountable to democratic authority” in places with Muslim majorities or large Muslim minorities are more threatening to democracy than Islam (Stepan 2000). By extension, we can also ask, must governments have a separation between religion and state (SRAS) to be able to govern successfully, and do the world’s democracies have SRAS? Research finds that democracy and religion are not incompatible, though not all democracies observe SRAS either. For example, Stepan finds that as of 1990, five countries in the EU (Denmark, Finland, Greece, Norway, and the United Kingdom) had established churches. Other scholars such as Steven Mazie argue that some aspects of religion can be adaptable to democracy. For example, national religious holidays are acceptable as long as they are not mandatory and adherents to the non-national religion are allowed to
observe their own holidays without penalty (Mazie 2004). While we will later see that in the case of Thailand, military regimes are not generally associated with periods of religious repression, just as periods of democracy are not associated with periods of greater religious freedom, it is still valuable to be familiar with this literature on the relationship between regime type and the suppression or promotions of religious rights.

*State Repression and Cultural Violence*

Another relevant field of literature to this topic is why governments choose to repress religious freedoms and how citizens have responded. Research on state repression focuses on “why and how political authorities use coercive power domestically amid potential and existing challenges and challengers”, and Davenport (2013) analyzes quantitative data from newspapers, human rights NGOs, and surveys from insurgents to draw conclusions about the mechanisms behind state repression. Davenport does criticize NGO data for not providing information “beyond identifying who did what to whom” and not shedding light on why governments may institute repressive policies, and the methodology of this thesis will take that into account. One key finding is that governments respond to political instability with repression, though there are competing arguments on whether repression results in higher or lower levels of dissent. Davenport also points out that no scholar has ever studied the conditions under which governments have been successful at eliminating or quelling dissent, so it is possible that conditions conducive to ethnic and political conflict are unique to each country. Fearon and Laitin’s (2003) seminal work on insurgency and civil war uncover multiple components that favor insurgency, such as poverty, rough terrain, political instability, and weak governance. Davenport also finds that democracies are less likely to use repressive behavior because the costs of doing so are higher, since citizens can vote democratically elected officials out of office.
Democracies can also “weaken the justification for coercive activity by reducing the likelihood for human conflict and facilitating the conveyance of grievances” (Davenport 2013). However, some studies suggest that there is “more murder in the middle”, in that full autocracies and democracies have low levels of repression while regimes with mixed elements are the most coercive (Fein 1995). Historical examples, such as institutional slavery in the US, also show that increased democracies do not always move towards lower levels of repression, and as such additional research into what specific aspects of democracy help to decrease repression is necessary.

Two peripheral findings from Davenport (2013) relate to the impact of the economy and international agreements on government behavior. Some studies that use GNP as a measure of economic development find that poor economic conditions lead to social conflict and cause governments to contain the conflict through enacting repressive measures. Countries that are more integrated into the global economy are found to have higher levels of political stability because of higher living standards that decrease dissent and social unrest. Similarly, countries that are part of international trade and human rights agreements are more likely to adhere to them because of the high costs of defecting.

What does this say about Thai governments and their relationship with the Malay Muslim population? The empirical section of this paper looks at some potential causes of religious repression in Thailand, such as economic shocks and foreign relations with neighboring countries. Political instability as a driver of repression seems to be applicable in the case of Thailand, as the transition of power to a constitutional monarchy resulted in political power being concentrated in the hands of a small group of elite, who run the country from Bangkok and are largely disconnected from the rural populations in the north, northeast, and the Malay ethnic
group in the south. Assimilationist policies pursued by governments throughout the latter half of the 20th century suggest that religious and ethnic minority rights were repressed in the name of national unity. Periods under democratic governments have not correlated with promotions of religious freedom as the empirical research below also shows. Furthermore, though Thailand has ratified multiple international human rights treaties, the government’s history of its treatment of Malay Muslims shows that these promises exist on paper only.

*The Role of Constitutions in Government*

From a Western perspective of governance, constitutions are the ‘supreme law of the land’ and the basis upon which all other laws derive their legitimacy. They are a crucial component of governments that lay out the basic rights of a nation’s citizens and are a record to which governments can be held accountable later. It is useful to look at how effective constitutions have been in protecting minority rights, and see whether democracies or autocracies are more likely to adhere to the laws in their constitutions. Through comparing constitutional provisions such as clauses on freedom of worship, bans on religious discrimination, and SRAS with variables measuring religious discrimination and religious legislation, Fox and Flores (2009) found that constitutional provisions protecting freedom of religion have a “limited impact of government behavior”, regardless of whether the government is a democracy or an autocracy, despite the intuitive reasoning that democracies are more likely to protect religious freedom because democracies are more likely to have robust and independent judiciaries that will enforce constitutional laws. However, even democracies can suspend constitutional rights when national security is considered to be at risk, so Fox predicts that “relatively uncorrupt democratic states that are not experiencing a serious national security threat which have an independent media a politically neutral and professional civil service, and protections for minority political parties”
would be most likely to adhere to their constitutions (Fox and Flores 2009). Fox subsequently questions why states would include such clauses into their constitutions if they lack appropriate law enforcement mechanisms. Some possible explanations he suggests are that countries are often pressured to include international norms in their constitutions when they are writing new ones in periods of political transition because they increase a regime’s political credibility at face value. Based on this conclusion, the analysis of Thai constitutions in this thesis is perhaps useful only in identifying broad patterns of religious freedom and abrogation, but only a more in-depth analysis of the specific policies implemented under Prime Ministers during periods of abrogation and their effects will be illuminating in the causal factors behind these patterns.

In a similar paper, Fox uses the Religion and State dataset to determine whether democracies have SRAS using variables measured between 1990 and 2002. Among the RAS variables he measures are official support, official hostility, religious legislation, and general government involvement in religion (GIR). He finds that the vast majority of democracies do not have SRAS, and observes other interesting relationships between his variables and GIR. For example, he finds that there is a positive relationship between per-capita GDP and GIR, and population and GIR. He also finds that democracies have lower levels of GIR, while states with Muslim majorities have the highest score using the GIR variable. The conclusion of this experiment and his experiment with Flores above is that SRAS is not a necessary factor for successful democracies. Because the “the major difference between democracies and non-democracies is not the presence of SRAS but rather an upper limit on GIR”, it would be more useful to study which types of government restrictions on religion are more compatible with democracy (Fox 2007). A cross-national study of constitutions shows that the separation between
religion and state is much less clear than Locke suggests in his letter on toleration, and each country has different ways of civil and religious governance.

Additionally, constitutions are effective only if a government respects them, the likelihood of which increases if they are formed with citizen input. In countries where citizens feel estranged from their constitutions, there is less respect for a constitution’s laws, which can lead to disregard for the law and violation of minority rights. FT Abioye (2011) cites Africa’s poorly-written constitutions as one reason behind the “disjuncture between the people and the law; the inability of the law to establish rule, to inspire compliance, to address the different challenges, and to provide a conducive environment for growth and nation building”, which has led to the continent’s persisting problems of poverty, political and ethnic instability, and corruption. Because the process of drafting a constitution in African countries is “devoid of popular input, devoid of consent of the society, and does not reflect the values of the people”, its laws are not respected. Many constitutions in Africa were imposed by colonial governments with minimal or no input from the people. Comparing Nigeria and South Africa, Abioye finds that constitution-making in Nigeria did not have popular participation, and as a result civilian governments today are still plagued by corruption, bribery, and extortion of public funds. In South Africa, on the other hand, drafters of post-apartheid constitutions “deliberately sought public participation and input of the people to ensure legitimacy” (Abioye 2011). In contrast, the constitutional drafting process in Thailand is tightly managed by Bangkok elite and citizens are at this point skeptical that any constitution churned out will make a difference.

*The Conventional Wisdom of Thai Constitutions*

The quote below from Mya Saw Chin perhaps best describes the unique role of constitutions in Thailand:
“The political history of Thailand is reflected in its constitutional history. The latter indicates that a constitution is for the Thai a set of rules for domestic political games. When the participants in the game become unruly, or fail to follow the rules of the game, the result is an unfair play. In those countries where the rules were strictly observed, such unruly participants would be pressure out of the game. In Thailand, however, it is the disobedient participants themselves who use their power and influence to revise the rules.” (Chin 2007, vi).

The conventional wisdom among scholars of Thai constitutions is that they are more of a tool for new regimes to legitimize their power, rather than a tool for directing actual policy. As mentioned above, the average lifespan of a Thai constitution is four years, compared to the global average of seventeen years. After each coup, military regimes annul the old constitution and promulgate a new one. The occurrence of coups are themselves proof of the inefficacy of rule of law in Thailand; Chapter 2 of the Thai Criminal Code states that the punishment for coup-making is the death penalty or life imprisonment, yet no coup leader has ever been convicted. Though scholars have studied the changes in Thai constitutions with regards to the composition of Parliament, changes in judicial review, and powers of the Prime Minister, there is very little scholarship on how provisions of religious freedom have changed from constitution to constitution.4

**Zooming in: Civil-Military relations in Thailand**

Finally, when considering case studies in Africa and Asia, one must recognize the significant role the military has played in the political development of countries in those regions. There are multiple factors that may explain this phenomenon. George Mirsky (1981) argues that the absence of a dominant social class in Africa and Asia provided a vacuum that the military could exploit. During industrial-era Europe, the bourgeoisie were able to gain political power as

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the economic elite. In Africa, feudal landowners were weakened due to agrarian reforms, and in many Asian countries the bourgeoisie are comprised of a different nationality and in some cases barred from political participation, and so were less influential. Oriental religions like Buddhism and Islam also deemphasized material wealth, which decreased the social importance of the middle class and allowed the army to take control easily (Mirsky 1981). Though the army taking charge in a heterogeneous society may seem like a unifying force, many officers do not have the training to run political affairs and govern inefficiently, and continued coups in many developing countries have contributed to sustained political instability—Thailand is a perfect example.

On a smaller scale, it is also important to study the role of the military in Thai society and how exactly the country has been able to weather so many mostly peaceful political transitions. Farrelly (2013) suggests that a distinctive coup culture has emerged in Thailand as a result of the prevalence of military intervention in politics. The fact that regime changes have not occurred as a result of periods of economic recession or instances of threatened national security, as would be expected, suggests that there are unique factors behind Thailand’s political transitions. Farrelly offers four explanations behind Thai coups: fear of threats to the monarchy, relative tolerance of military interventions, relations between economic elite, and international support. Consequently, militaries have always ceded control to civilian governments because of their reliance on international support, and geopolitical conditions which allowed military dictatorships in the 20th century to survive with support from international powers such as the US or China no longer exist.

Catharin Dalpino argues that the prevalence of Thai coups reveals a lack of political accountability and the underlying attitude within the military that “democratization is a zero-sum game” (Dalpino 1991). A large number of Thai constitutions have been drafted by the military,
and the 1978 constitution did not require the Prime Ministers or cabinet members to be members of parliament, which has allowed military officials or their surrogates to assume high political positions. Thailand’s lack of colonial history has allowed its military to assume a unique role in society and politics. In other Southeast Asian countries like Indonesia and Burma, anticolonial independence movements allowed militaries legitimate claims to power, but the Thai transition of power in 1932 with the overthrow of the absolute monarchy only led to a military-bureaucratic partnership that has encouraged factionalism within the military. Constitutional reforms were usually implemented to allow the military to maintain control in Thai society. One can also question whether the frequency of political transitions in Thailand has desensitized the public to the significance of these coups and normalized the role of the military in politics—Dalpino claims that “the best evidence of the government’s lack of credibility was less the coup itself than the public’s acquiescence”.

Rakson (2010) supports Farrelly’s claim that the persistent influence of Thailand’s military has negatively impacted the consolidation of democracy in the country. Using the 1991 and 2006 coups as examples, Rakson presents possible reasons behind the military’s intervention in Thai politics, most notably “the military’s self-identification…as the guardian of the state, as well as the notion of preserving the corporate self-interest of the armed forces”. In the West, militaries often view themselves as professional institutions that play an external role of managing state security. Asian militaries, on the other hand, have their country’s economic and political interests in mind. Poor performances of civilian governments can also induce military intervention. In the case of Thailand, an ineffective bureaucracy coupled with unpopular elected parliamentary officials causes a lack of confidence in civilian governments, which in turn contributes to the relative acquiescence of the public to accept military intervention as a means
of improving the state. The Thai military’s ideology also stresses loyalty to the monarchy—one of the reasons behind the 2006 coup, which deposed populist Prime Minister Thaksin Shinawatra, was concern that he had criticized the royal family and possibly violated Thailand’s strict law of lèse majesté. The most recent coup in 2014 was purportedly carried out because the military wanted to be in control of the royal succession, and it succeeded when King Bhumibol Adulyadej passed away on October 13th, 2016.

This project fills the gap in the existing literature by studying political transitions in Thailand in conjunction with the country’s continuing insurgency in the Deep South, as well as the conditions under which the insurgency has been exacerbated or mediated. To date, much has been written on coups, military rule and their transitions to democracy, and the unique role of the military in Thai society, but this project synthesizes the literature on coups and religious freedom with a historical study of Muslim insurgency in the Deep South with the hopes of better understanding the causes and demands of the insurgency, and how Thailand’s government can reach a lasting and peaceful compromise with insurgent groups.

Methodology: The Status of Religious Freedom in Thai Constitutions

To determine the causes of religious freedom in Thai constitutions, I first looked at each of Thailand’s constitutions to see if there were clauses explicitly granting religious freedom. These constitutions, along with their English translations, are taken from the legal database HeinOnline. Table 1 shows the list of Thai constitutions promulgated since 1932. Each constitution is coded Y if freedom of religion is explicitly provided in the text, or N if it is not mentioned at all. The structure and organization of each constitution has generally remained the same—the first chapter is usually titled “General Provisions”, the second chapter states the rights of the King, and the third is titled “Rights and Liberties of the Thai People”. From the 1949
constitution onwards, provisions of religious liberty can be found in the first or second article of Chapter 3. For example, Article 1 of the General Provisions chapter of the December constitution of 1932 states, “The Siamese people of whatever race or religion are all equally entitled to the protection of this constitution”. Chapter 2, titled “Rights and Duties of the Siamese”, states, “Every person is entirely free to profess any religion or creed and to exercise the form of worship in accordance with his own belief, provided that it is not contrary to the duties of a national or to public order or public morals”. From 1949 constitution afterwards, this paragraph is followed by another protecting against discrimination on the basis of religion, stating, “in exercising such liberty a person is protected against any act of discrimination by the State which is prejudicial to his rights on the ground that his form of worship differs from that of others.” The constitutions that provide no mention of freedom of religion are the constitutions of June 1932, 1959, 1972, 1976, 1977, 2016, and 2014.

Out of the twenty constitutions, six have also been interim constitutions or charters, which are meant to be temporary. If temporary constitutions are only meant to secure a military takeover, does that explain the absence of basic clauses on civil rights granted to citizens? As seen from Table 1, the constitutions of 1932, 1947, 1959, 1972, 2006, and 2014 are designated as interim charters and were indeed promulgated following a military coup. However, the constitutions after the coups of 1952, 1976, 1977, and 1991 were not temporary charters. Furthermore, not all interim charters omit clauses protecting religious freedom—the 1947 charter does guarantee religious freedom.

I then look at measures of development and political conflict in conjunction with these periods of religious abrogation. My aim is to see whether any outliers in these observable indicators correspond to periods in which religious rights were omitted from the constitution. If
there is no correlation between periods of religious rights abrogation and these indicators, I conclude that the fluctuations in the promotions or revocations of religious freedom in Thai constitutions are, in line with conventional wisdom, arbitrary, and not influenced by external factors.

**Findings**

*Change in GDP per capita*

The first indicator I look at is change in GDP per capita. I originally wondered if poor economic performance results in the government’s punishment of a minority group as a scapegoat, but periods where GDP per capita decreases do not correspond to periods in which religious freedom was revoked in Thai constitutions. Figure 1, which uses World Bank data, plots Thailand’s GDP per capita from 1960 to 2016. We can observe that there is an overall upwards trend in GDP per capita. The periods in which GDP per capita falls are 1985, 1997, 2000, 2009, and 2014, and freedom of religion was omitted from the constitutions of 1932, 1959, 1972, 1976, 1977, 2006, and 2014, so the only year in which there is a correlation between these two variables is in 2014. However, the drop in GDP per capita in 2014 was mostly due to a decrease in tourism after the 2014 coup; there were two million fewer tourists in the first nine months of 2014 compared to 2013, and tourism revenue comprises 10% of Thailand’s GDP (DailyMail 2014). Additionally, the decrease in GDP per capita may have been due to the stagnation of growth as a result of the middle-income trap and a decade of political instability. Furthermore, the 2014 was an interim constitution, which as mentioned above is usually a truncated version of a constitution more concerned with securing the military’s power than protecting the rights of the Thai people. I therefore conclude that GDP shocks are not associated with constitutional revocations of religious freedom in Thailand.
Malaysian support of the Deep South insurgency

The second indicator I look at is Malaysian support of the Deep South insurgency, using the hypothesis that periods of cooperation with Malaysia cause Thailand to be more lenient towards Malay Muslims, and periods of conflict with Malaysia result in Thailand placing more restrictions on religious freedom. Though there have been no recorded military interstate disputes between Thailand and Malaysia from 1932 to the present, diplomatic relations with Malaysia over the Deep South conflict have indeed varied. In the 1950s when the United Malays National Organization (UMNO) was struggling to gain independence from the British, party leaders discussed whether or not to include southern Thailand in an independent Malaysia. In 1955, party president Tunku Abdul Rahman pledged that in return for Thai support of Malaysia’s independence, Malaysia would not provide assistance to the Deep South insurgency. Another security concern in the 1950s was the rise of the Communist Party of Malaya (CPM), which was suspected to operate from southern Thailand, and the 1950s saw greater border cooperation between Thailand and British-controlled Malaysia. In 1959, the Pan-Malaysian Islamic Party (PAS) won a majority of Parliament seats in Kelantan, a province of peninsular Malaysia bordering Thailand and one of the territories Siam ceded to the British in 1909. Throughout the 1960s and 1970s, PAS leaders spoke out in support of the Malay Muslims’ struggle in Southern Thailand and supported southern Thai autonomy and independence. The 1980s and 1990s saw another shift towards greater Thai-Malaysian cooperation as the CPM weakened and various joint commissions were formed to facilitate trade and security. In 1994, Thailand arrested and handed over the head of Darul Arqam, an Islamic sect banned in Malaysia, and Malaysia subsequently withdrew its support of the Deep South insurgency and handed over five separatist leaders of PULO in 1998 (Funston 2010).
The upsurge in violence in 2004 again strained Thai-Malaysia relations. After the Krue Sae and Tak Bai incidents, Malaysian PM Abdullah Badawi seemingly offered shelter to refugees fleeing violence after pressure from PAS and local Islamic groups, but two days later Foreign Minister Syed Hamid hurriedly confirmed Malaysia’s commitment to non-intervention. Malaysia’s continued unwillingness to condemn Thai violence against Malay Muslims in harsher terms also illustrates the extent of ASEAN’s non-interference policy among its member states. Leaders of the Barisan Revolusi Nasional extended an offer to enter into negotiations with the Thai government in April 2017 on the condition that negotiations be mediated and observed by international third party observers, but PM Prayuth Chan-ocha has repeatedly refused, claiming that the insurgency is an internal matter and requires no outside mediation (Reuters 2017).

If we look at how periods of cooperation or tension match up with periods of greater or lesser religious freedom, religious freedom was not included in the constitutions of 1959, 1972, 1976, and 1977, which do roughly correspond to periods when PAS advocated for the independence of Malay Muslims in Thailand. However, the constitutions of 1968, 1974, and 1978 include clauses granting religious freedom, which is inconsistent with the hypothesis that constitutions in the 1960s and 1970s would all be religiously repressive. Looking at the increase in violence in the south in the past decade, we should also expect constitutions in the 2000s and 2010s to all be religiously repressive, the constitutions of 2006 and 2014 do not include clauses guaranteeing religious freedom, yet the constitutions of 2007 and 2017 do. It is therefore unlikely that Malaysian support of the Deep South insurgency predicts constitutional revocations of religious freedom.

*Bilingual Education*
If there were a clear logic to religious freedoms being granted in constitutions, we should find a correlation between liberal constitutions and other cultural concessions to Thai Muslims. One example would be the language of instruction in southern schools. For my third indicator, I wanted to use bilingual education as a proxy for constitutional change to see if a change in the number of bilingual schools may have had an impact on relations between Malay Muslims and Thais in the south. Though this turns out to be an empty indicator because there are currently no bilingual schools in the south, it still provides an informative look at the causes and consequences of the insurgency and presents a potential solution for reconciliation.

All government-funded public schools teach in Thai, which has resulted in the academic underachievement of Malay Muslim students in government schools--according to a Minister of Education report, 35% of primary school children in third grade are illiterate, and only 25% to 30% of Muslim students attend these schools. Options for Islamic education include pondoks, which teach a curriculum of Islamic education in Jawi (Pattani Malay) and Arabic, and Islamic private religious schools that are partially funded by the Thai government and teach a standard national curriculum in Thai and Islamic subjects in Jawi and Arabic. These school are attended by 70% to 75% of Muslim students. A pilot program implemented by Dr. Suwilai Premsrirat of Mahidol University and partially funded by UNICEF attempted to teach listening, speaking, reading, and writing in both Thai and Jawi to primary school students and received overwhelmingly positive feedback from parents and educators. 90% of parents approved of the program, saying that their children’s literacy and curiosity in both Thai and Jawi improved, and 80% to 90% of teachers also commented that their students seemed more enthusiastic and engaged in class (Premsrirat 2015). Though the program was discontinued in 2016 due to lack of funding and periods granting religious liberty are not associated with levels of cultural
accommodation of Malay Muslims, its success shows that bilingual education and the Thai government’s support of it allows Malay Muslims to feel less marginalized in Thai society because their culture and language are being valued.

_Birthplace of Thai Prime Ministers_

The fourth indicator I look at is the birthplace of Thai Prime Ministers in power at the time of the promulgation of a new constitution, positing that the regional focuses of leading politicians, rather than constitutional shifts, are what drive the difference in treatment of Malay Muslims over time. However, no Prime Ministers who were in power at the time of the promulgations of Thai constitutions were born in any province in the South--three were born in the northern region, two in the northeast region, and three in the central region in addition to seven born in Bangkok--suggesting that the regional background of Prime Ministers does not predict the decision to include or exclude clauses granting religious freedom in the constitutions. Nevertheless, this does not mean that Muslims have never held positions of political power in Thailand before. Notable examples are Surin Pitsuwan, Minister of Foreign Affairs from 1997 to 2001 and 12th Secretary General of ASEAN, Sonthi Boonyaratglin, Commander in Chief of the Royal Thai Army from 2005 to 2007 and de facto prime minister for one month after the 2006 coup, and Wan Muhamad Noor Matha, Deputy Minister of the Interior from 1994 to 1995. All three are Thai Muslims.

_Democracy and Religious Freedom: Prem Tinsulanonda’s career as a case study_

Though the literature above suggests that religious freedom does not necessarily expand under democratic governments, are periods of democratic rule associated with periods of greater cooperation and understanding of the Malay Muslim population? This democratic indicator is also proven false, as the Prime Minister who was most successful in creating institutions that
fostered greater cooperation and understanding between the Thai government and Malay Muslims was Prem Tinsulanonda, a military leader who was PM from 1980 to 1988.

His connection to this project notwithstanding, Prem Tinsulanonda is “one of the most experienced, canny, and influential figures in modern Thai history”, with experience in both the military and politics (BBC News 2006). Born in Songkhla in 1920, he joined the Thai Army as a sub-lieutenant in 1941 and entered politics in 1959 as a member of the constitutional drafting committee that wrote the 1959 constitution. Prem has served in many public offices since then, including Deputy Interior Minister in 1977, Defense Minister in 1979, and Prime Minister from 1980 to 1988. After stepping down, he was appointed to the Privy Council, a group of 19 advisors to the King that, under Prem’s leadership, has increasingly served “as a nexus between the palace and the armed forces” (Chambers 2010). Prem also served as Regent of Thailand in the months between the late king’s death in October 2016 and the coronation of current King Vajiralongkorn in December 2016.

Prem’s career as Prime Minister provides a noteworthy case study for this project because he is credited with building governing systems in the Deep South that reduced levels of violence. Peacemaking prior to the Prem government had mainly consisted of forced cultural assimilation and military strategy aimed at putting down insurgencies with violence. The most extreme example of this was seen immediately after Thailand’s transition to a constitutional monarchy under General Phibunsongkram, who suppressed Malay-Muslim identity by imposing concepts of ‘Thai-ness’ on the Southern populations, such as Buddhism and the Thai language. Contrastingly, General Prem “began to reverse the legacy of Thaization by providing local administrators significantly higher levels of cultural and religious autonomy while injecting needed infrastructure and economic development” (Eichensehr and Reisma 2009). General Prem
gave a speech to the Philippine Armed Forces in March 1995, sharing Thailand’s experiences in combating insurgency. Though he mainly talks about his negotiations with the Communist Party of Thailand (CPT), another episode for which his skill as a politician is acknowledged, the tactics he describes reflect his approach with negotiating with the insurgency in the South. Identifying a key obstacle to reconciliation efforts as mistrust leading to violence, Prem and his squadron offered to help villagers by “teaching children to read, tilling the fields, tending to the sick or doing whatever chores they would let us” (Tinsulanonda 1995). Gaining the villagers trust was the first step to recruiting them into Self-defense Volunteers Program, a counter-insurgency program that recruited local leaders and engaged discussion on how to train volunteers to resist the CPT. In the speech, Prem also identified widespread poverty as a root cause of the communist insurgency and describes his efforts to combat poverty through improving schooling and healthcare.

The collaborative techniques he used in his interactions with the CPT were similar to his peacebuilding efforts in the South. In 1981, Prem created the Southern Border Provinces Administrative Center (SBPAC), which “sought to integrate administrative and bureaucratic functions across the south in order to provide greater efficiency and accountability of government” by serving as a structure through which locals could lobby for reform (Eichensehr 2009). The SBPAC eventually came to be led by local Malay-Muslim leaders, which granted the organization greater legitimacy in the eyes of the local population. Prem also organized village-level committees whose job was to promote economic development and security, which afforded the local population greater autonomy. Addressing concerns of police brutality, Prem created a Civilian-Military joint police force (CMP 43) that coordinated security operations in the south which allowed military and police personnel to be tried through the SBPAC if they were accused
of brutality or committing extra-judicial killings. Prime Minister Order 65/2525 also introduced a proposal for amnesty deals for insurgents that would allow them to join rehabilitation programs and have their citizenship rights reinstated (Human Rights Watch 2016).

There was marked short term success after the implementation of Prem’s strategy—levels of violence decreased and locals now had a way of expressing their grievances to an institution that would be guaranteed to listen. The notable aspect of Prem’s approach was “its emphasis on drawing away popular support for insurgent goals by addressing the underlying grievances of the population” (Eichensehr 2009). However, both the SBPAC and CPM 43 were dismantled during Thaksin Shinawatra’s term as PM from 2001 to 2006 and the institutions with which they were replaced had much less influence because they were centered on Thaksin’s goal of establishing his own network in the South, which disregarded the relationships between locals and the government that Prem had carefully cultivated.

**Back to Conventional Wisdom?**

Though I have only looked at five indicators, which are by no means exhaustive, they all seem to suggest that constitutional shifts in promotions or revocations of religious freedom have had no significant impact on the Thai government’s treatment of Malay Muslims in the South. Thus, if the highest law of the land does not dictate the treatment of religious minorities in Thailand, what does? I return to the conventional wisdom of the inefficacy of Thai constitutions and discuss two hypotheses on the factors behind political governance in Thailand. The first hypothesis posits that network monarchy, a network of relationships between the monarchy, military, and Privy Council, a group of elite advisors to the King, is the basis of Thai governance. This network is one example of how political power in Thailand is concentrated in the hands of a small group of elite, and the military’s role as a protector of the monarchy
explains the continued occurrence of coups whenever there seems to be an elected Prime Minister who will threaten the military’s power. This is also connected to the second hypothesis, which is that the personal biases and governance styles of Prime Ministers and other individuals in positions of power largely govern policy-making; the example of Prem detailed above supports this hypothesis.  

**Conclusion: From Coup to Where?**

Though my research has only covered five indicators, they all suggest that none of these indicators influence patterns of promotions and revocations of religious freedom in Thai constitutions, and therefore a likely conclusion is that religious freedom is rescinded and granted trivially in Thai constitutions. The conventional wisdom about the inefficacy of Thai constitutions thus holds true even in the realm of religious rights, which further supports the argument that Thai constitutions are merely cheap talk that have no impact on rule of law. The answer to the follow-up question of why Thailand continues to promulgate constitutions if they are useless can also be explained by the conventional wisdom--constitutions in Thailand are merely tools for military coup leaders to legitimize their power and consolidate their political gains. As the Economist explains in an article written after the promulgation of the 2016 constitution, Thai constitutions “divide the spoils of power between the army and the elites while leaving everyone else with enough crumbs to prevent rebellion” (Economist 2016). As Thailand has become more integrated into the global economy, constitutions and the military relinquishing power to a democratically elected government a few years after a coup have also allowed Thailand to maintain a facade of democracy in the eyes of the international community. Though there were public protests against the military-backed constitution of 2016, the referendum

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5 Duncan McCargo’s “Thaksin and the resurgence of violence in the Thai South” also talks about the failure of Thaksin, a democratically elected Prime Minister, to mediate peace in the Deep South.
passed by a wide margin, suggesting that constitutions “can win approval simply by offering a chance at political participation, even if the game is rigged” (Economist 2016). The exclusion or inclusion of clauses in the constitutions granting religious freedom therefore seems to be a trivial decision, considering how the language of these clauses has virtually remained the same since 1932. However, other provisions of the constitutions specifying the powers of the monarch, political parties, and Parliament have varied over the years, further supporting the hypothesis that Thai constitutions merely redistribute power among the elite minority involved in politics and are divorced from the rights of ordinary citizens.

Looking ahead, Thailand seems to be moving in a troubling direction politically. The country is still in mourning over the death of the late king, Bhumibol Adulyadej, who passed away on October 13th, 2016. His successor and son, Maha Vajiralongkorn, accepted the throne and title of Rama X on December 1st, 2016, but will not be formally crowned until the end of 2017. He commands much less respect than his father, who as the world’s longest reigning monarch was a paternal figure and symbol of unity for the country, and Vajiralongkorn’s support of the latest military-backed constitution shows that the military will continue to retain power in the near future. Freedom House rated Thailand as ‘Not Free’ in 2015 and 2016 and in 2016, the country’s score in Freedom of Expression and Belief was rated 6 out of 16. Though strict lese-majeste laws have always censored criticism of the monarchy, convictions and punishments have been increasing in severity since the 2014 coup. The latest Computer Crimes Act, passed on December 16th, 2016, gives the junta broad powers to restrict free speech and remove any online content that it deems harmful to the “maintenance of national security, public safety, national economic security, [and] public infrastructure serving the public interest” (Human Rights Watch 2016). This not only threatens the rights of activists who speak out against state-sponsored
human rights violations, such as the treatment of Malay Muslims, but also discourages corporate transparency; in December 2015, a mining company sued a 15-year old student on defamation charges for her comments accusing the company of contaminating her village’s water supply (Human Rights Watch 2016). In April 2017, the junta ordered Thai citizens to stop following three prominent critics of the monarchy on social media and has even threatened Facebook with legal action if it refuses to remove content it deems damaging to the monarchy’s image (Time 2017).

Amidst this political climate, the violence in Thailand’s Deep South is low on the junta’s list of priorities. Figure 2, a comic showing a group of people in Bangkok praying for the victims of the November 2015 bombings in Paris while the South tears itself apart, also suggests that domestically, the Deep South insurgency does not receive much attention despite being one of the bloodiest conflicts in Southeast Asia’s modern history. This is especially problematic as attacks in the south increased immediately after the promulgation of the newest constitution, and the number of attacks against civilian targets have also been increasing (BenarNews 2017). Non-interference in domestic issues has long been a policy among ASEAN member states, but if the level of violence in Thailand persists, the international community must actively assert itself as third-party observers to the government’s peace negotiations with insurgent groups and pressure Thailand to change the way it treats the Malay Muslim minority.
References


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Appendix

Table 1: Thai constitutions from 1932 to present

<table>
<thead>
<tr>
<th>[Number]</th>
<th>Date implemented</th>
<th>Thai Year</th>
<th>Temporary Charter? (I if yes)</th>
<th>Post Coup? (C if yes)</th>
<th>Freedom of Religion?</th>
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<td>1</td>
<td>June 27th, 1932</td>
<td>2475</td>
<td>I</td>
<td>C</td>
<td>N</td>
</tr>
<tr>
<td>2</td>
<td>December 10th, 1932</td>
<td>2475</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>May 9th, 1946</td>
<td>2489</td>
<td></td>
<td></td>
<td>Y (2.13)</td>
</tr>
<tr>
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<td>I</td>
<td>C</td>
<td>Y (3.22)</td>
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<tr>
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<td></td>
<td></td>
<td>Y (3.28)</td>
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<td></td>
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<td></td>
<td>C</td>
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<tr>
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<td>2520</td>
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<td>2560</td>
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Figure 1: GDP per capita in Thailand from 1960 to 2016

![GDP per capita: Thailand](image)


Figure 2

![Thailand Deep South](image)

Speech bubble: “We the Thai people stand with the rest of the world to pray for Paris”.