

Commentary

Constituent Power in the Binary-Star Scenario: Insights from Constitutional Court Decision No. 18/2568 (2025)

Rawin Leelapatana*

Abstract

As an instrument that determines the trajectory for a nation's life and the distribution of political power, a constitution produced through an unpopular design can become a persistent source of political controversy and conflict. This dynamic is evident in Thailand's contemporary experience. Initiated by the military junta that seized power in May 2014 and ratified via a controversial referendum two years later, the 2017 Constitution has prompted widespread calls for replacement among segments of pro-democracy civil society. Yet, given the charter's design to institutionalise royal hegemony and entrench elite tutelage over electoral politics, many royalist-conservative supporters have undoubtedly adopted an intransigent stance against its amendment, let alone its replacement. In pursuing their agenda, each faction struggles to define the nature and scope of the power to make the constitution—constituent power. This Commentary analyses the Thai Constitutional Court (TCC)'s Decision no.18/2568 (2025) on 10 September 2025, regarding the latest attempt to overhaul the 2017 Constitution, focusing on its effects on the contours of Thailand's constituent power. Before examining and analysing the details of this ruling, however, it is essential to outline the surrounding political landscape—including the Court's prior verdict in 2021—that shaped the trajectory leading to the September 2025 decision. The analysis will be grounded in my theoretical framework—the 'binary-star' scenario.

Keywords: Constitutional amendment — Constituent power — Constitutional Court — Binary-star scenario

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I. POLITICAL TURBULENCE SURROUNDING CONSTITUTIONAL AMENDMENT

Labelled as the junta's product, the 2017 Constitution has struggled with a legitimacy deficit since its inception. Many of its provisions—notably those concerning the junta-appointed 250-member Senate holding the power to co-elect the Prime Minister with the House of Representatives, the junta-engineered national strategic plan, the amnesty clause absolving the coup makers of any liability, and the use of moral standards to impeach politicians—sparked widespread debate across Thai society, precipitating mass protests and calls for a new constitution, especially between 2020 and 2021.¹

Forced into the role of opposition by the eccentric electoral system enshrined in the current constitution, and proclaiming itself pro-democracy, the Pheu Thai Party (PTP) submitted a motion for constitutional amendment to pave the way for the establishment of a constitution-drafting assembly (CDA).² A similar proposal emerged outside Parliament, where an NGO—iLaw—mobilised eligible voters to sign a petition, ultimately gathering nearly 100,000 signatures.³ Surprisingly, despite benefiting from the charter, some members of the conservative ruling party, Palang Pracharath Party (PPP), also put forward a constitutional amendment draft aimed at initiating a new round of constitution-making, possibly due to their recognition of the political impasse inherent in this junta-initiated document.⁴ All of these drafts sought to introduce a new chapter—“Chapter 15/1: The Making of a New Constitution”—into the 2017 Constitution.

Nevertheless, the main discord lay in whether the members of the CDA should be fully and directly elected by the people. While the pro-democracy camp advocated a fully-elected assembly, the PPP proposed reserving seats in such a body for technocrats.⁵ This dissonance reflects the divergent views that have long pervaded the

¹ See ร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ . . .) พุทธศักราช . . . (นายจอน อึ้งภากรณ์ กับประชาชนผู้มีสิทธิเลือกตั้ง จำนวน 98,014 คน เป็นผู้เสนอ) 13/11/2563 [Draft Constitution of the Kingdom of Thailand (Amendment No. . . .), B.E. . . . (Proposed by Mr. Jon Ungphakorn and 98,014 eligible voters) 13 November 2020] (iLaw draft). See its rationale.

² ร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ . . .) พ.ศ. . . (ฉบับ นายสมพงษ์ อมรวิวัฒน์ สมาชิกสภาผู้แทนราษฎร กับคณะ เป็นผู้เสนอ) 14/9/2563 [Draft Constitution of the Kingdom of Thailand (Amendment No. . . .), B.E. . . . (Proposed by Mr. Sompong Amornvivat, Member of the House of Representatives, and colleagues) 14 September 2020] (PTP draft).

³ iLaw draft (n 1).

⁴ ร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ . . .) พ.ศ. . . (ฉบับ นายวิรัช รัตนเศรษฐ สมาชิกสภาผู้แทนราษฎร กับคณะ เป็นผู้เสนอ) 14/9/2563 [Draft Constitution of the Kingdom of Thailand (Amendment No. . . .), B.E. . . . (Proposed by Mr. Wirat Ratanaset, Member of the House of Representatives, and colleagues) 14 September 2020] (PPR Draft).

⁵ PTP Draft (n 2) s 4; PPR Draft (n 4) s 4.

Thai constitutional landscape regarding whether the people should be recognised as the exclusive and rightful holders of the constituent power.⁶

As noted, not everyone supports the abolition of the current constitution, particularly most royalist-conservatives. The proposed efforts to establish a new CDA were questioned by two senators, who argued that the 2017 Constitution does not bestow the power to create a new constitution upon Parliament. Parliament was therefore prohibited from amending the current constitution to enable such an assembly. Uncertain of its own power, Parliament represented by its speaker chose to ask the Thai Constitutional Court (TCC) to determine whether it possessed such authority.⁷

In March 2021, the TCC delivered Decision no.14/2564[2021], siding with the two senators. For the Court, the power to amend the constitution is a constituted power—one that is framed and limited by the constitution itself.⁸ Accordingly, it cannot be exercised in ways that exceed the boundaries set out in the charter, including being invoked to replace the text entirely.⁹ However, the Court did not entirely preclude the possibility of initiating a new round of constitution-making. Endorsed through a referendum in 2016—widely criticised as unfree and repressive—it deemed the 2017 Constitution the product of popular constituent power.¹⁰ It accordingly recommended that if Parliament wishes to create a new constitution, two referenda must be arranged—the first one being held prior to the drafting process to determine whether the people, in their capacity as the holder of the constituent power actually desired a new constitution, and the second being launched to approve the final draft.¹¹

The March 2021 decision has rendered the question of who truly holds the constituent power in Thailand ambiguous. This uncertainty gives rise to several sub-questions, the answers to which remain contested. If the people are deemed the holders of the constituent power, why must the initiation of a new constitution proceed through Parliament? Why did the draft initiated by iLaw not qualify as the epitome of such an exercise? Is the 2017 Constitution actually a product of popular constituent power, given that the 2016 referendum for its approval was widely castigated as neither free nor fair given that dissenting voices against the draft were restricted from campaigning and significantly repressed? Why are Thai people unable to invoke their capacity as constituent power holders to democratise and overhaul a coup-engineered charter? The September 2025 decision, as analysed below, further complicates these matters.

⁶ Rawin Leelapatana, “Thailand’s 2017 Constitution: Constitutional Amendment in the Binary-Star Scenario” in Ngoc Son Bui and Mara Malagodi (eds), *Asian Comparative Constitutional Law, Volume 2: Constitutional Amendments* (Hart 2024) 285–88, 303.

⁷ Thai Constitutional Court Decision No. 4/2564 (2021) 28–32.

⁸ *ibid* 36–37.

⁹ *ibid* 37.

¹⁰ Khemthong Tonsakulrungruang, “Thailand’s Unamendability: Politics of Two Democracies” in Rehan Abeyratne and Ngoc Son Bui (eds), *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (Routledge 2022) 186 <<https://doi.org/10.4324/9781003097099-13>>.

¹¹ Thai Constitutional Court Decision No. 4/2564 (2021) 37.

II. THE CONSTITUTIONAL COURT DRAWN BACK INTO THE POLITICS OF CONSTITUTIONAL AMENDMENT: IMPLEMENTING THE MARCH 2021 RULING

Following its delivery, Parliament demonstrated no effort to resist the 2021 decision. However, the TCC's recommendation regarding the making of a new constitution is relatively brief. It does not elaborate on the details of the two referenda, especially whether Parliament could deliberate the motion to establish the CDA prior to the announcement of a referendum result. It fails to clarify the relationship between such deliberation and Section 256(8) of the 2017 Constitution, which stipulates that a referendum be held following parliamentary approval of any motion that seeks to amend the rules governing constitutional change. This ambiguity gave rise to divergent interpretations, once again causing disagreements that eventually drew the TCC into the political fray in 2025.

In 2023, despite its triumph in the general election, the Move Forward Party (MFP)—due largely to its anti-establishment, left-wing stance, including its calls to overhaul the 2017 Constitution and other coup legacies—was blocked by the junta-appointed Senate from forming a government. As the MFP was relegated to the role of opposition, the second largest party, PTP, took its turn to lead the government formation. Aware of potential pushback resulting from any challenge to the royalist-conservative elites and the military, one of PTP's leading figures and the then Deputy Prime Minister, Phumtham Wechayachai, clearly hesitated to initiate the establishment of a new CDA. Accordingly, he urged that three referenda be arranged to ensure that the making of a new constitution would not fail on grounds of unconstitutionality. The first and third referenda would be held before and after a new round of constitution-making, as articulated by the TCC. The second was proposed in light of Section 256(8) of the 2017 Constitution.¹²

Contrary to Phumtham, MFP spokesperson Parit Wacharasindhu proposed that the two referenda articulated by the TCC in 2021 would be sufficient. The first referendum, organised in light of Section 258(8), could be conducted to ask the people both for their approval of the constitutional amendment and for their support for initiating a new constitution.¹³ During the ongoing conflict over the number of referenda to be carried out, the TCC delivered a landmark decision declaring the MFP's proposed revision of the country's *lèse-majesté* law unconstitutional in August 2024. It eventually ordered the party dissolved and imposed a ten-year political ban on its

¹² “ประชามติ 3 ครั้ง คือ ‘ทางที่ปลอดภัยที่สุด’ จริงหรือ?” *บีบีซีไทย* (27 พฤษภาคม 2567) [“Three Referendums: Are They Really ‘the Safest Path’?” *BBC Thai* (21 April 2024)] (Thai) <<https://www.bbc.com/thai/articles/cd130qvpznjo>>.

¹³ หทัยกาญจน์ ตรัสวรณ, “เปิดใหม่ไลน์ประชามติ 2 ครั้ง ‘หนทางเดียว’ ใต้รัฐธรรมนูญใหม่ก่อนรัฐบาล แพทองธาร ครบเทอม” *บีบีซีไทย* (27 พฤษภาคม 2567) [Hatayakan Treesuwan, “Timeline of Two Referenda: The ‘Only Path’ to Have a New Constitution Before Paetongtarn’s Government Completes Its Term” *BBC Thai* (27 November 2024)] (Thai) <<https://www.bbc.com/thai/articles/c8rlzyoxnrko>>.

executive members.¹⁴ Nevertheless, this did not hamper the MFP's successor, the People's Party (PP), from their resolute efforts to spearhead the drafting of a new constitution.

On 13 December 2024, Parit and other PP MPs proposed a constitutional amendment motion before Parliament. To ensure that only two referenda would suffice, the Parit draft added a clause to Section 258(8), stipulating that, following parliamentary approval, a referendum must be held for an amendment motion that enables the drafting of a new constitution. Again, Chapter 15/1 on the making of a new constitution was proposed to establish a CDA comprising 200 members directly elected by the people. Parit intended that a compulsory referendum held under Section 256(8) would simultaneously serve to determine whether the people actually desire a new constitution. Provided a popular approval is secured, the election of CDA members would follow. Upon completion of the final draft, the assembly must present it before Parliament for comments and suggestions before submitting it to a referendum.¹⁵ On 8 January 2025, another amendment motion was submitted by PTP MPs, similarly proposing a change to Section 256(8) and the establishment of a popularly elected constitution drafting assembly composed of 200 members, albeit with slightly different details on the method of election.¹⁶

However, in March 2025, a PTP MP—who had jointly proposed the formation of the CDA—and a senator raised a concern regarding Parliament's authority to deliberate the above drafts during a parliamentary session. The central issue was whether Parliament possessed the constitutional authority to deliberate and approve an amendment motion that introduced Chapter 15/1 before a referendum is held to determine popular desire for a new constitution. As in 2021, the majority of MPs and senators voted to refer the matter to the TCC for determination. In Decision No. 18/2568 (2025), the Court divided the matters for adjudication into two separate questions.¹⁷

¹⁴ Thai Constitutional Court Decision No. 20/2567 (2024).

¹⁵ Thai Constitutional Court Decision No. 18/2568 (2025) 9–10; ร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ . . .) พุทธศักราช . . . (นายพรสิริฐ วัชรสินธุ สมาชิกสภาผู้แทนราษฎร พรรคประชาชน กับคณะ เป็นผู้เสนอ) (แก้ไขเพิ่มเติมมาตรา 256 หลักเกณฑ์และวิธีการแก้ไขเพิ่มเติมรัฐธรรมนูญ และเพิ่มหมวด 15/1 การจัดทำรัฐธรรมนูญ ฉบับใหม่) 13 ธันวาคม 2567 [Draft Constitution of the Kingdom of Thailand (Amendment No. . . .), B.E. . . . (Proposed by Mr. Parit Wacharasindhu, Member of the House of Representatives from the People's Party, and colleagues) (Amending Section 256 on the criteria and procedures for constitutional amendment and adding Chapter 15/1 on the drafting of a new constitution) 13 December 2024].

¹⁶ ร่างรัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ . . .) พุทธศักราช . . . (นายวิสุทธิ ไชยณรรณ สมาชิกสภาผู้แทนราษฎร พรรคเพื่อไทย กับคณะ เป็นผู้เสนอ) (แก้ไขเพิ่มเติมมาตรา ๒๕๖ หลักเกณฑ์และวิธีการแก้ไขเพิ่มเติมรัฐธรรมนูญ และเพิ่มหมวด ๑๕/๑ การจัดทำรัฐธรรมนูญฉบับใหม่) 8 มกราคม 2568 [Draft Constitution of the Kingdom of Thailand (Amendment No. . . .), B.E. . . . (Proposed by Mr. Wisut Chainarun, Member of the House of Representatives from the Pheu Thai Party, and colleagues) (Amending Section 256 on the criteria and procedures for constitutional amendment, and adding Chapter 15/1 on the drafting of a new constitution)] 8 January 2025.

¹⁷ Thai Constitutional Court Decision No. 18/2568 (2025) 11–12.

First, the TCC confirmed a precedent set in 2021 that ‘Parliament can initiate or articulate its aspiration for the drafting process of a new constitution.’ Yet, prior to that, a referendum must be carried out to determine whether the people qua the holders of the constituent power aspire for a new charter.¹⁸ Strikingly, Parliament, the Court added, cannot confer upon the people the authority to directly elect CDA members.¹⁹

Secondly, the TCC addressed the issue of how many referenda must be held. Slightly departing from the 2021 ruling, it concluded that three referenda must be conducted.²⁰ Where Parliament seeks to initiate a new constitution, it must request that the Cabinet conduct a referendum prior to deliberating any draft that contains provisions for a new constitution.²¹ The second referendum serves to endorse the amended 2017 Constitution, which incorporates Chapter 15/1 and has already received parliamentary approval under Section 256. Put simply, this process is intended to gather public opinions on the procedures and essential contents regarding the making of a new constitution.²² The third referendum must be carried out to approve the final draft of a new constitution.²³ According to the TCC, the first two referenda may be conducted concurrently.²⁴

From a broader perspective, the September 2025 ruling embodies both liberal and conservative ethos. On one hand, the Court underscored the importance of civic participation qua the holders of the constituent power, asserting that voters who express disapproval in one referendum must not be excluded from participating in subsequent ones.²⁵ Still, the making of a new constitution, it remarked, must proceed in accordance with the ethos of the Democratic Regime with the King as Head of State (DRKH).²⁶

III. BINARY STARS AND TAMED CONSTITUENT POWER

The September 2025 ruling, to reiterate, complicates the issue of the genuine holder(s) of the constituent power in Thailand, while reflecting the uneasy yet inextricable coexistence of liberal and conservative ideologies—and, more importantly, divergent perspectives towards constituent power. This ambiguity is manifested in what I describe as “the binary-star scenario.”²⁷

¹⁸ *ibid* 21–22.

¹⁹ *ibid* 22.

²⁰ *ibid* 22–23.

²¹ *ibid* 22.

²² *ibid* 24.

²³ *ibid* 23–24.

²⁴ *ibid* 23.

²⁵ *ibid*.

²⁶ *ibid* 24.

²⁷ Rawin Leelapatana, “Thailand’s Competing Notions of Constituent Power: The Making of the 2017 Constitution in the Binary-Star Scenario” in Ngoc Son Bui and Mara Malagodi (eds), *Asian*

In my previous works, I argued that two conceptions of constituent power have long struggled for dominance in the Thai constitutional landscape. The “sturdier but still inferior” liberal-democratic conception of constituent power (LDCP) professes the people as the “actual and active” rational force capable of self-determination, while its “hegemonic but increasingly challenged” royalist-conservative counterpart (RCP) portrays them as a collectivity whose primary duty is to acclaim and protect the three pillars of the DRKH—Nation, Religion, Monarchy (sacred trinity).²⁸ The RCP is grounded in the rationale that most Thais are susceptible to political manipulation and unprepared for a fully-fledged democracy, thus requiring a tutelage by other organs—particularly the monarchy and the military—notably in the constitution-making process.²⁹ These two ideas coexist in a manner resembling two stars with a common barycentre. While striving to exert gravitational pull upon the other, neither emerges as an absolute victor.³⁰

On the one hand, the September 2025 decision affirms that the LDCP has become an undeniable source of legitimacy in the Thai polity. In fact, its outright objection would only cause more harm than good to both the junta-engineered 2017 Constitution and the TCC itself, as this would imply that the charter is a product of an authoritarian regime, and that the Court is merely a constituted organ of this illegitimate document.

Yet, the TCC’s approach apparently benefits the RCP. Beyond subjecting popular constituent power to the rationale behind its royalist-conservative counterpart—that most Thai people lack democratic maturity and require guardians—the 2025 ruling also appropriates the former’s language and institutional forms to safeguard the latter’s hegemony. As will be elaborated below, these strategies are actualised through five forms of tutelage. In effect, despite invoking the discourse of the people’s power, the 2025 ruling blatantly defies its ethos that the power of the self-determining demos is “unrestricted by any rules, institutions, or superior orders.”³¹ This Commentary focuses primarily on the Court’s main decision, with individual judicial opinions referenced where relevant.

To begin with, by choosing not to dismiss this case despite its overtly political nature and laying down conditions for the exercise of popular constituent power, the TCC enables itself as a shared holder of it, one capable of defining its scope and competence.³² The Court significantly undermines the Thai people’s capacity “to

Comparative Constitutional Law, Volume 1: Constitution-Making (Hart 2023) 312 <<https://doi.org/10.5040/9781509949724.ch-015>>.

²⁸ *ibid* 311–17.

²⁹ *ibid* 316.

³⁰ *ibid* 318.

³¹ Jorge Farinacci-Fernós, “Constitutional Courts as Majoritarian Instruments” (2020) 14 *Vienna Journal on International Constitutional Law (ICL Journal)* 379, 388 <<https://doi.org/10.1515/icl-2020-0014>>.

³² Cf “‘ปิยบุตร’ ชี้ ศาล รธน. ปิดทางทำรัฐธรรมนูญใหม่” *ไทยรัฐออนไลน์* (10 กันยายน 2568) [“‘Piyabutr’ Points Out that the Constitutional Court Closes the Door for the New Constitution” *Thai Rath Online* (10 September 2025)] (Thai) <<https://www.thairath.co.th/news/politic/2882005>>.

define and redefine oneself and to shape and reshape the contours of the state,” positioning itself above them by depriving them the right to elect representatives to draft *their* constitution.³³ While the main decision remains silent on the rationale behind this deprivation, a more elaborated—yet perplexing—justification appears in an individual opinion of Judge Wirun Saengthian.³⁴ In essence, Judge Wirun adopted a strictly literal interpretation, asserting that the 2017 Constitution provides no channel for the people to elect CDA members. Furthermore, he argued that such direct election would amount to a usurpation of Parliament’s authority to amend the constitution. However, he went on to suggest that the legislature needs not assume sole responsibility for creating a new constitution, but may delegate this task by appointing appropriate individuals as drafters. Additionally, he invoked Thailand’s constitutional history, asserting that Thai citizens have never been granted the right to elect CDA members. Respectfully, not only does this opinion reflect scepticism towards majoritarian politics, but it also does not align with the nature of popular constituent power. As an extraordinary and unlimited authority, constituent power transcends—and is not subject to—constitutional constraints.³⁵ Judge Wirun’s opinion on who bears responsibility for drafting a new constitution leads us to the second and third forms of tutelage.

Regarding the second and third tutelage organs, the 2025 decision not only upholds its 2021 predecessor, which held that “the LDCP cannot be manifested without parliamentary [initiative],” but also adds the Cabinet as the final gatekeeper of its activation.³⁶ Consequently, while invoking the language of the LDCP, the TCC renders this power incapable of autonomous exertion. From a broader perspective, the 2025 decision should be considered in tandem with the 2017 Constitution’s deficiency in operationalising popular constituent power. Although it draws legitimacy from such a power, the 2017 Constitution provides no mechanism for its re-invocation and mobilisation, as both the charter itself and the Referendum Act 2021 designate the Cabinet as the sole authority to implement a referendum.³⁷ As a result, under the current constitutional format, there is no legal channel for the Thai people—qua the holders of the constituent power—to mobilise in pursuit of a new constitution.³⁸

³³ Richard Albert, “Constitutional Handcuffs” (2010) 42 *Arizona State Law Journal* 663, 673.

³⁴ Individual opinion of Judge Wirun Saengthian, 6–7.

³⁵ Yaniv Roznai, “Amendment Power, Constituent Power, and Popular Sovereignty: Linking Unamendability and Amendment Procedures” in Richard Albert, Xenophon Contiades, and Alkmene Fotiadou (eds), *The Foundations and Traditions of Constitutional Amendment* (Hart 2017) 37.

³⁶ Rawin, “Thailand’s 2017 Constitution” (n 6) 306.

³⁷ Referendum Act 2021, art 9. See Joel Colon-Rios, “The Legitimacy of the Juridical: Constituent Power, Democracy, and the Limits of Constitutional Reform” (2010) 48 *Osgoode Hall Law Journal* 199, 201–202 <<https://doi.org/10.60082/2817-5069.1107>>.

³⁸ รวิณห์ ลีละพัฒนะ และชมพูนุท ตั้งถาวร, “จากการแก้ไขเพิ่มเติมรัฐธรรมนูญที่ไม่ชอบด้วยรัฐธรรมนูญ ไปสู่บทบัญญัติของรัฐธรรมนูญที่ควรถูกแก้ไขเพิ่มเติม: ถอดบทเรียนจากทฤษฎีของยานีฟ รอซไน” (2568) 54 *วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์* 105 [Rawin Leelapatana and Chompunoot Tangthavorn, “From Unconstitutional Constitutional Amendments to Constitutional Provisions that Should Be Amended: Lessons From Yaniv Roznai’s Theory” (2025) 54 *Thammasat Law Journal* 105] (Thai) 153–54.

Rather than empowering the people, the 2025 decision effectively endorses the existing format of power allocation—if not its constitutionality.

Moreover, in a binary-star system long torn apart by intractable conflict between pro-democracy and pro-establishment forces, it is unrealistic to expect advocates of either star “to fully endorse its opposite as the primary guiding line for a constitution-making process,” as this would only backfire, exacerbating deeper polarisation.³⁹ As discussed, many royalist sympathisers obviously resist efforts by pro-democracy advocates to dismantle the sinew of the royalist dominance—the 2017 Constitution. The royalist masses therefore become another form of tutelage—or perhaps even a veto mechanism—against the LDCP, a phenomenon facilitated by the TCC’s requirement that three referenda be carried out instead of two.⁴⁰ The more the referenda are held for a new constitution, the greater the likelihood that it will be countered by royalist mobilisation and eventually fail. Put simply, the 2025 decision transforms the language of popular constituent power into a mechanism that obstructs the implementation of its own democratic ethos—namely, the open and inclusive constitution-making process that would pave the way for a truly democratic constitution. At the same time, this decision demonstrates that notwithstanding its preference for subjecting the role of the people to acclaiming and protecting the DRKH, the stronger force of the LDCP compels the RCP to increasingly acknowledge the importance of mobilising masses to preserve its legitimacy and hegemony.

Finally, the 2025 decision ultimately filters—and thereby domesticates—the people’s capacity as holders of the constituent power by affirming that constitutional re-drafting must respect the DRKH. In other words, the people can invoke their constituent power as an active force only insofar as it does not encroach upon the DRKH. Within the domain of the sacred trinity, the self-determining demos must transform into *Phu Pakdee*—loyal people—and unwaveringly profess their allegiance to it.⁴¹ This accordingly signifies that any change to its core—the sacred trinity—alongside the royal status or royal prerogatives would render a draft of the new constitution what described by Richard Albert as “unconstitutional constitution.”⁴² The TCC’s precedent, I argue, ultimately imprints a boundary between sky (*fah*) and soil (*din*) upon the exercise of constituent power. The place of the LDCP is thus confined to the soil, while the ethos and institutions of the RCP remain enshrined in the sky.⁴³

³⁹ Rawin, “Thailand’s Competing Notions of Constituent Power” (n 27) 218.

⁴⁰ Cf Eugénie Mériau, *Constitutional Bricolage: Thailand’s Sacred Monarchy vs. The Rule of Law* (Hart 2022) 198–99 <<https://doi.org/10.5040/9781509927722>>.

⁴¹ See Rawin Leelapatana and Suprawee Asanasak, “Constitutional Struggles and Polarised Identities in Thailand: The Constitutional Court and the Gravitational Pull of Thai-Ness Upon Liberal Constitutionalism” (2022) 50 *Federal Law Review* 156, 162–63 <<https://doi.org/10.1177/0067205X221087476>>.

⁴² Richard Albert, “Four Unconstitutional Constitutions and Their Democratic Foundations” (2017) 50 *Cornell International Law Journal* 169, 178–82 <<https://doi.org/10.31228/osf.io/v9tz4>>.

⁴³ Rawin Leelapatana, “The Separation of Powers Under a Royalist Regime: Lessons from Thailand’s Binary-Star Scenario” in Ngoc Son Bui, Mara Malagodi, and Christopher Roberts (eds), *Asian Comparative Constitutional Law Volume 3: Constitutional Structure* (Hart 2025) 319.

IV. CONCLUSION

The TCC's Decision No.18/2568 (2025) constitutes the latest site of contestation between liberal-democratic and royalist-conservative ideologies over the nature and limits of constituent power in Thailand. Contrary to the generic thesis that the constituent power transcends constitutional limits, it imposes a layered architecture of tutelage that cumulatively demarcates the boundary of the LDCP. Yet, despite raising concerns over the problem of "abusive judicial review," this ruling may also be read in an optimistic light.⁴⁴ The 2025 decision reflects how the gravitational pull of the LDCP upon the RCP has rendered extra-legal measures less legitimate and gradually shifted the ideological struggle into the legal terrain, where legal concepts, especially constituent power, command greater normative importance.⁴⁵

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Rawin Leelapatana. "Constituent Power in the Binary-Star Scenario: Insights From Constitutional Court Decision No. 18/2568 (2025)." (2025) 5(2) *Thai Legal Studies* 165–174. <https://doi.org/10.54157/tls.283933>

⁴⁴ Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press 2021) 81–87 <<https://doi.org/10.1093/oso/9780192893765.003.0005>>.

⁴⁵ Cf Eugénie Mériau, "Thailand's Deep State, Royal Power and the Constitutional Court (1997-2015)" 46 *Journal of Contemporary Asia* 445, 448–49, 456 <<https://doi.org/10.1080/00472336.2016.1151917>>.

* **Indexing Thai names.** "Although family names are used in Thailand, Thai people are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies." *The Chicago Manual of Style* (18th edn, University of Chicago Press 2024) §15.93.