

The Hidden Transcript of Amnesty: The 6 October 1976 Massacre and Coup in Thailand

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ABSTRACT: There were two, not one, amnesty laws passed in relation to the 6 October 1976 massacre at Thammasat University and coup in Thailand. The first amnesty law, passed on 24 December 1976, legalized the coup and prevented those who created the conditions for the coup and seized power on the evening of 6 October from being held to account. The second amnesty law, passed on 16 September 1978, freed eighteen student activists still undergoing criminal prosecution and dismissed the charges against them. Although neither amnesty mentioned the massacre, the urgency of producing and then safeguarding impunity for the state and para-state actors behind the violence at Thammasat was the absent presence in both laws. Combining a close reading of both laws with examination of archival documents about the drafting of the first amnesty law and court and other records related to the second, this article uncovers the hidden transcripts of both amnesty laws as a point of departure for examining questions about impunity, law, and history. First, what are the legal mechanics through which violent actors escape accountability? Second, what are the legal and political functions of amnesty when no crime has been committed? Third and finally, might accountability for past violence be possible, and if so, under what conditions? The answers to these questions illuminate how impunity was produced in the specific case of the 6 October 1976 massacre in Thailand as well as address broader concerns about impunity's role in state formation.

Keywords: Thailand; state violence; impunity; amnesty; human right; 6 October massacre

On 14 October 1973, what began as a call for a new Constitution by a small group of people expanded quickly in Bangkok and around the country to an uprising of students and citizens against decades of dictatorship.¹ Fueled by years of dissident cultural political work and supported in the final hour by the monarchy, they succeeded in fomenting a transition to democracy.² The triumvirate of dictators – Thanom Kittikhachorn, Narong Kittikhachorn, and Praphat Jaru-sathien – left the country and the rector of Thammasat University, Sanya Thammasak, was appointed as an interim prime minister until elections could be held. For three years, political

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¹For detailed accounts of the events of 14 October 1973, please see Charnvit 2544 [2001] and NSCT 2517 [1974].

²For analysis of the historiography of this intervention of the monarchy, please see Thongchai 2544 [2001]. For a rich history of progressive cultural political production from the late 1950s until October 1973, please see Prajak 2548 [2005].

space expanded to include previously marginalized actors and cultural and social protest flowered. Workers carried out strikes against capitalists, farmers demanded justice from landlords, intellectuals read, wrote, and translated progressive and leftist literature, students called on the government to be accountable to the people, and artists experimented with new forms and topics in the service of political struggle.

However, the changes taking place in Thai society, which pointed to a reconfiguration of both social relations and material interests, were not welcome by all. Capitalists, landlords, royalists, conservatives, and other elites viewed the actions of the students, workers, farmers, and others as dangerous and in need of repression. What began as fear turned into a violent panic. The right wing had never fully conceded defeat after 14 October 1973, and beginning in 1975, intimidation, harassment, attacks, and targeted assassinations of progressive and leftist activists grew in frequency.³ When Thanom Kittikachorn returned to the country on 19 September 1976 to ordain as a monk, students were suspicious of his claim that the reason for his return was religious in nature. In response, progressive and leftist student activists began protesting his return as a dangerous warning sign of a potential return to dictatorship. Two labor activists were hanged in Nakhon Pathom Province on 25 September 1976 while posting flyers protesting Thanom's return to the country. The students suspected that the activists were hanged by the police.⁴ Four to five thousand students massed inside the gates of Thammasat University to continue their protest, and on 4 October, they performed a skit that included a reenactment of the hanging as a critique of police violence.⁵

Emboldened by cold war fears heightened by transitions to Communism in Vietnam, Laos, and Cambodia in 1975, the right wing, both inside and outside the state, first criticized the students and then openly called for them to be repressed. On 5 October, *Dao Siam*, a right-wing Thai-language newspaper, reported that the skit about the murdered labor activists was actually a mock hanging of an effigy of the Crown Prince and that the student activists wanted to destroy the monarchy.⁶ Right-wing forces circulated copies of the photograph and the newspaper article about the alleged mock hanging of the Crown Prince.⁷ Dissident students were accused of being Vietnamese, Chinese, and/or Communist, all three code names for being treacherously un-Thai. On 5 and 6 October, these accusations were taken one step further and the armed forces radio called for mobilization against the alien students massed inside the walls of Thammasat University.

This call for mobilization turned into violence shortly after 2 a.m. on the morning of 6 October. The unarmed students and activists at Thammasat University were beaten, lynched, hanged, and killed by an angry mob of state and para-state forces. That evening, the National Administrative Reform Council (NARC), a military junta led by Admiral Sangad Chaloryu, announced that they had successfully launched a coup and ousted elected Prime Minister Seni Pramoj. The NARC reported that forty-six people were killed, 180 were injured, and 3059 were arrested at Thammasat University; unofficial estimates were higher.⁸ Those arrested were the survivors of the massacre; no arrests were made for the assaults and murders of the students and other activists massed inside the university. Thirty-eight years later, the perpetrators of the violence have enjoyed complete impunity: there has not been a public state investigation into

³For a broad picture of assassinations and other repression of progressive and radical activists, please see Morell and Chai-anan 1981. For an analysis of the series of assassinations of leaders of the Farmers' Federation of Thailand in mid-1975, please see Haberkorn 2009.

⁴*Thai Rat*, 26 September 2519 [1976], 1.

⁵Puey 1977, 5.

⁶Thongchai 2002, 249.

⁷Puey 1977, 5.

⁸Zimmerman 1978.



Photo 1. Members of the Thai royal family, including King Bhumipol Adulyadej, Queen Sirikit (left), and Princess Chulaborn came out to speak to demonstrators on 15 October 1973 in Bangkok. The royalty appeared after protestors took refuge in the Chitralada Palace compound. (Credit: © Bettmann/Corbis/AP Images)

the violence, let alone anyone held to account for it.⁹ This impunity is both cause and effect of what Thongchai Winichakul argues is the silence, ambivalence, and ambiguity surrounding the event, for both those who survived it and Thai society.¹⁰

That state officials and their civilian co-conspirators got away with murder on 6 October 1976 is not unusual. Even if only the three years between 14 October 1973 and 6 October 1976 are examined, let alone the periods before or since, impunity was the established norm for state violence.¹¹ What makes the impunity for the 6 October 1976 massacre remarkable is that a legal trail was documented and left. In the two years after 6 October 1976, two different amnesty bills centered on that day were promulgated. The first, the “Amnesty for Those Who Seized the Government Power of the Country on 6 October 1976 Act,” was promulgated by the National Administrative Reform Assembly (NARA) on 24 December 1976.¹² The second, the “Amnesty for Those Who Committed Wrongdoing in the Demonstrations at Thammasat University between 4 and 6 October 1976,” was passed by the National Legislative Assembly (NLA) on 15 September 1978.¹³ Neither law mentioned the massacre, the deaths of students, nor even noted that violence had taken place at Thammasat University. On the surface, the first amnesty seems to

⁹An unofficial, civil society fact-finding report was completed by Ji and Yimprasert 2544 [2001].

¹⁰Thongchai 2002.

¹¹For an account of the *thang daeng* (red drum) killings in 1972 and their exposure and failed calls for accountability in 1975, see Haberkorn 2013.

¹²“Amnesty for Those Who Seized the Government Power of the Country on 6 October 1976 Act,” *Ratchakitchanubeksa*, 24 December 2519 [1976], Book 93, Part 156, 42–45.

¹³“Amnesty for Those Who Committed Wrongdoing in the Demonstrations at Thammasat University between 4 and 6 October 1976,” *Ratchakitchanubeksa*, 16 September 2521 [1978], Book 95, Part 97, 1–4.

be an ordinary amnesty for the coup fomented by the NARC. The second appears to be an amnesty to end the legal proceedings against the Bangkok 18, the eighteen students and activists who survived the massacre but were then being prosecuted for grave crimes including revolt, *lèse majesté*, and Communist activities they were accused of committing during the protests.¹⁴ Yet both amnesties extended beyond their stated goals to cover the massacre itself.

There are no direct references to the massacre or to the specific acts of violence that took place at Thammasat University, but examination of state documents related to the drafting and passage of the first amnesty, combined with a close reading of the much sparser record connected to the second amnesty, suggest that they were paramount in the minds of those behind the two laws. Here, absence reflects a sharp presence. Through careful use of language, the first amnesty prevented murderers and coup makers from being held to account. By granting forgiveness for crimes not committed, the second amnesty blamed the victims and survivors of the violence. Common to both amnesties was the assertion that their passage was good for the well-being of the country and the Thai people. The combination of the two amnesty laws first created and then consolidated impunity for the coup and the massacre that preceded it.

Writing less than a year after the massacre and coup, Benedict Anderson criticized observers who cited the frequency of coups in Thailand and viewed this one as normal or typical. Instead, the 6 October 1976 massacre and coup marked a historical turning point because it “was not a sudden intra-elite coup *de main*, but rather was the culmination of a two-year-long right-wing campaign of public intimidation, assault, and assassination best symbolized by the orchestrated mob violence of October 6 itself.”¹⁵ Not only was the violence public, but through the drafting, debate, and passage of the two amnesty laws, the evasion of responsibility for it became public as well. While the two amnesties constitute an exceptional instance of the elaborate, public, legal production of impunity, they also reflect one aspect of the general form of the relationship between the rulers and the ruled in Thailand. State perpetrators are routinely not held to account for violence committed against citizens, and at best, the injustice experienced by citizens is not multiplied when they dare to call for justice.¹⁶

This essay is a response to the production of impunity for the 6 October 1976 massacre. Simultaneously, and as a result of close attention to the specific, public, and legal proceedings involved, I also offer a series of reflections on first, the broader role of impunity in Thailand and second, the writing of histories of impunity. The archives of the state, at least those open to the public, rarely offer up a source in which violent actors state both their actions and their desire to obscure these actions in order to retain power and avoid responsibility. In Thailand, available state and other documentary sources must be read against the grain, which means with attention to absences, gaps, discordant statements, and unexpected revelations. In “The Prose of Counter-Insurgency,” when

¹⁴The Bangkok 18 included sixteen men and two women: Sutham Saengprathum, Anupong Phongsuwan, Apinan Buaphakdee, Surachart Bamrungsuk, Praphon Wongsiriphitak, Viroj Tangwanich, Mahin Tanboonpurn, Arom Phongpangan, Prayoon Akaraboworn, Sucheela Tanchainan, Attakarn Upathambhakul, Suchat Phatcharasorawut, Thongchai Winichakul, Kongsak Asapak, Somsak Jeanteerasakul, Orissa Airawanwat, Sa-ngiam Chaemduang, and Seri Sirinuphong.

¹⁵Anderson 1977, 13.

¹⁶The opposite of this, when calling for justice itself becomes a crime, is evident in the case of Suderueman Maleh, who filed a complaint of being tortured while in police and army custody in January 2004. Suderueman’s lawyer, Somchai Neelaphajit, was disappeared shortly after filing the complaint of torture. Due to evidentiary problems, the state officials in question were cleared of the complaint against them. But for several individuals, this was insufficient, and they filed criminal charges against Suderueman for allegedly giving false testimony to state officials about being tortured. On 10 August 2011, he was convicted and sentenced to two years in prison. He is currently appealing the sentence (Asian Human Rights Commission 2011).

Ranajit Guha outlines a strategy of reading colonial documents against the grain in India, he does so in order to discern dissident peasant voices and locate the evidence of dissidence and rebellion.¹⁷ This is what James Scott subsequently calls the “hidden transcript” present even in what seem to be accounts of total domination of marginalized subjects.¹⁸ What is needed in this case is instead a reading of state documents against the grain in order to identify a different kind of hidden transcript: indications of complicity and participation in violence, anxiety, and the evasion of responsibility by the state itself. Scott’s hidden transcript highlights the presence of resistance to oppression, which is sometimes actively hidden as part of the practice of domination and sometimes obscured in plain sight due to the failure of observers to apprehend its presence. As I have researched the history of impunity for state violence in Thailand since the end of the absolute monarchy in June 1932, of which this essay is one part, what I have been most surprised by is the latter. I expected to meet with the former, but instead have found that the evidence of violence and the failure to secure accountability for it can often be found in publicly available documents.

The evidence available about the political and legal processes leading to the promulgation of the two amnesty laws is uneven and ambiguous. The first amnesty was debated and redrafted by the law drafting committee at the Office of the Juridical Council, known in Thai as the Krisdika. Established prior to the end of the absolute monarchy, the Krisdika comprises legal scholars and practitioners and advises other bodies of the Thai state on legal matters, offers commentary on draft laws prepared by various ministries, and drafts laws itself. In 2007, the Krisdika files from its inception up until 1979 were transferred to the National Archives in Bangkok. Since then, the forty-three page file about the first amnesty law, which includes the initial and revised drafts of the law as well as the minutes of meeting about the revision, can be read by anyone with access to the archives.¹⁹ In addition, the minutes of the debate in the NARA are available in their entirety. In contrast, although the second amnesty law falls within the temporal limits of the Krisdika documents sent to the National Archives, there is no corresponding file for it, indicating either that the Krisdika was not consulted, the Krisdika was consulted and the minutes were not recorded, or the Krisdika was consulted, minutes were taken, and they were removed from the collection of files sent to the National Archives. Additionally, while the law was debated in the NLA, the deliberations were secret, so there is no official record available. Instead, the story of the debate and passage of the law must be culled from newspaper records. While the record of the debate in the NLA was made secret, individual members were not bound by a gag order. What the partial, fragmented, uneven nature of the evidence means is that similar to John Roosa’s analysis of the September 30th Movement in Indonesia, certainty is neither possible nor the goal.²⁰ What is instead possible is to cast doubt on what is currently known and to elucidate what is not known about the 6 October 1976 massacre and coup and the methods by which those responsible have not been held to account.

What makes writing a history of impunity different from writing a history of state violence, and lends an added urgency to the question of sources, is the concern with redress of violence made

¹⁷Guha 1983.

¹⁸Scott 1990.

¹⁹Thai citizens can obtain a National Archives user card by presenting their ID card and filling out an application. Foreign readers can obtain a three-week pass by presenting their passport and stating the nature of their research; for long-term access, they must file a formal request with the National Research Council of Thailand.

²⁰See Roosa 2006. The September 30th Movement was a group of soldiers allegedly behind the murder of six generals in Indonesia in 1965. These murders became the pretext by which General Suharto came to power and launched a reign of terror against the PKI. The premise of *Pretext to Mass Murder* is that the identities and actual motivations of the September 30th Movement have consistently been obscured, and therefore the understanding of what came later has as well.

explicit by a focus on impunity. The call to accountability for state violence that redressing impunity necessitates is inherently a demand for access to the facts and knowledge of the violence. This is reflected in the principles to combat impunity, developed by the UN Commission on Human Rights, which comprise the right to know, the right to justice, and the right to reparations and the guarantee of nonrecurrence.²¹ While developed for human rights practitioners, they also highlight what is at stake in investigating and writing a history of impunity.²² The contradictory position of the available information about the two amnesty laws – for example, the public accessibility of the Krisdika file about the first amnesty affirms the right to know and yet the ambiguity of the information contained within it cannot aid in concretely moving toward either the right to justice or the right to reparation – makes it a rich point of departure for considering a series of political, legal, and analytic questions about accountability, evidence, amnesty, and the persistent challenges of securing justice after state violence. In particular, first, what are the legal mechanics through which violent actors escape accountability? Second, what are the legal and political functions of amnesty when no crime has been committed? Third and finally, might accountability for past violence still be possible, and if so under what conditions? In the remainder of this essay, I trace the drafting and passage of each amnesty law in turn in order to examine these questions, and in so doing, also offer one explanation of how impunity was produced for the 6 October 1976 massacre (Figure 1).

The First Amnesty

On the morning of 23 November 1976, seven of Thailand's brightest legal minds, who included one external guest, from the Department of the Judge Advocate General (*krom phrathammanun*) in the Ministry of Defense, gathered for an urgent meeting of the law drafting committee at the Krisdika.²³ For two hours, the seven men at the Krisdika meeting vigorously discussed the 6 October 1976 coup, the differences between an amnesty and a pardon, and the various needs an amnesty should meet.

The 6 October 1976 coup was the eighth coup since the end of the absolute monarchy in 1932. Every previous coup had been followed by either an article in the relevant post-coup Constitution or a stand-alone amnesty law formally legalizing the illegal actions of the coup makers.²⁴ In this case, the final article of the 1976 Constitution, promulgated on 22 October 1976, addressed the coup. Article 29 stipulated that

All of the actions, announcements, or orders of the head of the National Administrative Reform Council (NARC) that were carried out, announced, or ordered before the date that this Constitution came into force, all that was related to the administrative reform of the country, irrespective of

²¹Orentlicher 2005.

²²In his account of impunity for torture by US state security forces, Alfred McCoy argues that the writing of history may play a role in the struggle against impunity:

In such circumstances, history can serve as an antidote to the public forgetting that is prime requisite for such impunity. By reconstructing this past and recovering its patterns, history allows the public to discover a larger design, seeing torture as an ineffective instrument for national security, impunity as the means for its persistence, and, on occasion, the past as prologue to prevention. (McCoy 2012, 218–219)

²³The Department of the Judge Advocate General in the Ministry of the Defense oversees all aspects of the military's judicial process, including the military court system. Those present at the meeting of the Krisdika included: Serm Winichaikul (chair of the committee), Phoj Pusapakjom (member of the committee), Luang Wichai Nitinat (member of the committee), Art Wisutyothaphiban (member of the committee), Nam Phunwathu (member of the committee), Sompop Notrakit (member of the committee and secretary-general of the Krisdika), as well as the guest, Major General Sawat Oorungroj. Also present were two members of the secretarial staff, Maitri Tanthemsap (secretary) and Sathit Sulkusaworn (chief assistant secretary).

²⁴A list of these laws is compiled in Charnvit 2556 [2013].

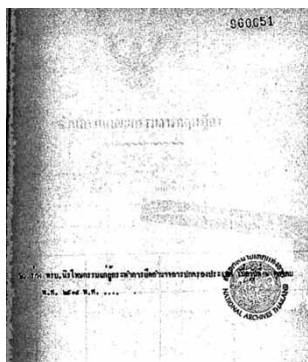


Figure 1. Archival file, Collection of the Office of the Juridical Council, “Draft Amnesty for Those Who Seized the Government Power of the Country on 6 October 2519 B.E. Act B. E ...” (Credit: National Archives, Bangkok)

their manner or form and irrespective of their legislative, administrative, or judicial force, including the actions of those in compliance with the announcements or orders, shall be considered lawful.

Given this seemingly comprehensive measure, why was a separate law necessary? A separate law was necessary because while the coup itself was not remarkable and a few words could be changed in a previous law and then pressed into service to protect those behind it, the massacre that took place several hours before the coup made it unprecedented. The proximity of the two events raised particular legal and political problems, and as became clear during the deliberations on the firm amnesty bill, the law needed to account for this proximity while also concealing its significance.

The violence against the students on the morning of 6 October 1976 was incited by language and ideology that cast them as neither Thai nor human. In the rhetoric of the rightists, eliminating them was necessary to preserve the nation, religion, and monarchy. But inside the meeting room at the Krisdika, a far less glib story unfolded. When the law drafting committee met to discuss the amnesty for the coup, they did so in a building an approximately five minute walk from the location of the massacre. The Krisdika complex consists of a series of buildings between the Chao Phraya River and Phra Athit Road, which meets the back gates of Thammasat University next to the Faculties of Economics and Political Science. For the majority of those involved in drafting the new Constitution, the presence of the final article legitimating the coup was sufficient. But for a vocal minority, there was a strong concern that Article 29 was insufficiently comprehensive.

In response to a request from the prime minister’s office, the secretary of the law drafting committee sent out an urgent call for a meeting on 22 November 1976. The prime minister’s office had drafted a law in response to concerns about the constitutional provision and wanted feedback on it. The committee met the next day (23 November) and sent a revised draft back to the prime minister’s office the following day (24 November).²⁵ The text of the revised draft was the one that became law a month later, on 24 December 1976, when the “Amnesty for Those Who Seized Government Power on 6 October 1976” was promulgated.

The amnesty law was short – only four articles. The crucial article was Article 3. The draft version read:

All of the actions, announcements, or orders of the head of the National Administrative Reform Council (NARC), or the actions, announcements, or orders of the NARC that were carried out, announced, or ordered before the day this law goes into force, including related to the administrative form of the nation by the aforementioned individuals, irrespective of their manner or form and irrespective of their legislative, administrative, or judicial force, these actions, announcements, and orders, including the actions of those following the announcements or orders, irrespective of whether they were carried out by someone in the position of a principal figure, a supporter, a person acting for another, or a person who was used, are actions, announcements and orders that are lawful. No individual can be prosecuted for them.²⁶

²⁵NA (2) So.Kho.Ko. 1/Book 996, 54, 87.

²⁶Ibid., 56.

The revised, final version read:

The entirety of actions taken due to the seizure of the government power of the country on 6 October 1976 and the actions of individuals connected with those aforementioned actions were undertaken with the intention of fostering the security of the kingdom, the crown, and public peace. The entirety of actions of the National Administrative Reform Council (NARC) or the head of the NARC or those who were appointed by the NARC or the head of the NARC, or those who were ordered by someone appointed by the NARC or the head of the NARC that were carried out for the reasons noted above including punishment and the bureaucratic administration of the country, all of the aforementioned actions, irrespective of their legislative, administrative, or judicial validity, irrespective of whether they were carried out by someone in the position of a principal figure, a supporter, a person acting for another, or a person who was used, and irrespective of whether or not they were carried out on the aforementioned day or before or after that day, if the actions were unlawful, the person is absolved from wrongdoing and all responsibility.²⁷

The changes in the two drafts are subtle, but significant. The most visible among these changes is in the final sentence. Both versions stipulated that the actions covered by the amnesty would be considered lawful, but the initial draft then mandated that no one could be prosecuted for any actions covered by the amnesty, while the final draft went further to absolve anyone involved in actions covered by the amnesty from any wrongdoing and all responsibility. There were five coup amnesty bills promulgated prior to this law and each one included provisions to make the actions covered by it lawful. In the most recent amnesty prior to this one, which was for the 1971 coup that Thanom Kittikachorn launched against himself in order to consolidate his power, this was expanded to include absolution from wrongdoing and all responsibility.²⁸ Prosecution was not mentioned in any of the earlier laws, which suggests that explicit concern with it may have arisen with this coup and the events surrounding it, including the massacre.

In the letter introducing the revisions, the Krisdika noted that they changed the draft in order to

make the individuals who seized the government power of the country on 6 October 1976 entirely absolved of wrongdoing and responsibility, instead of a measure prohibiting prosecution as in the original draft. This is in order to bring it in line with the principles of amnesty so that it will be legislation that expunges the illegal actions that individuals committed on, before, or after 6 October 1976, in order to have the result that they never committed wrongdoing, not only that they cannot be prosecuted in court.²⁹

In other words, they wanted a law that would not only mechanically prevent prosecution, but one that would also, at least legally, and perhaps politically and historically, justify the coup and the events surrounding it.

The discussion of accountability at the Krisdika emerged along three broad questions on which many amnesties, not only this one, tend to turn: (1) Who was covered? (2) What period of time was covered? and (3) What were the legal changes engendered by the amnesty?

²⁷“Amnesty for Those Who Seized the Government Power of the Country on 6 October 1976 Act,” *Ratchakitchanubeksa*, 24 December 2519 [1976], Book 93, Part 156, 44.

²⁸For the amnesty for the 1947 coup, please see *Ratchakitchanubeksa*, 23 December 2490 [1947], Book 64, Part 62, 741–744; for the amnesty for the coup that reinstated the use of the 1932 Constitution in 1951, please see *Ratchakitchanubeksa*, 31 December 2494 [1951], Book 84, Part 80, 25–28; for the amnesty for the 1957 coup, please see *Ratchakitchanubeksa*, 26 September 2500 [1957], Book 74, Part 81, 1–3; for the amnesty for the 1958 coup, please see *Ratchakitchanubeksa*, 4 April 2502 [1959], Book 76, Part 41, 1–4; for the amnesty for the 1971 coup, please see *Ratchakitchanubeksa*, 26 December 2515 [1972], Book 79, Part 198, 234–237.

²⁹NA (2) So.Kho.Ko. 1/Book 996, 87.

Who was covered? This was a primary concern raised by Serm Winichaikul, the chair of the committee, at the beginning of the meeting. He noted that as regards Article 29 of the Constitution, “They are probably afraid that the provision in the Constitution is not clear enough or broad enough to protect them.”³⁰ Who *they* or *them* included was not made clear, although who was not to be included was very clear. Sompop Notrakit, a committee member and also the secretary-general of the Krisdika, acknowledged that there were two groups involved on 6 October: “The incident on that day had two groups: 1. The group of students that also demonstrated in order to reform [change] the government; 2. The National Administrative Reform Council.”³¹ Casting the students as individuals bent on changing the government set them up as criminals in need of punishment, rather than individuals who deserved redress for violence they experienced at the hands of state and para-state actors and their fellow citizens. Major General Sawat Oorungroj, the external representative from the Ministry of Defense, was very clear in his request to the Krisdika. After the revised draft was read aloud, he commented, “The revised draft is very good. Our objective is that we want a law promulgated that will protect individuals from [the rank of] private on up.”³² The chair concurred, noting, “This draft is universal. It shields everyone.”³³ When another person present (name unspecified in the minutes) raised the concern that perhaps it was too broad, the representative from the Ministry of Defense reiterated his concern that privates who were following orders needed to be covered as well. No further changes were made.

No direct mention is made of the need to protect any state official who carried out or was otherwise involved in the beating, rape, lynching, and murder of students on that day. However, the combination of the mention of the students being involved in the incident and the need to protect soldiers from the rank of private up suggests that this was a concern. While the secretary-general may have wanted to ensure that the students then behind bars would not be amnestied, the more immediate issue that remained unspoken were the legal and moral consequences of the dead students. Similarly, although it is not elaborated, the urgency of writing the amnesty in such a way that *privates* were covered suggests that this amnesty was not only for the seizure of government power. Why would privates need to be protected in the case of a coup, one at least tacitly supported by the king no less? They needed to be protected because the amnesty was intended to cover the perpetrators of both what it seemed to be on the surface – the seizure of government power on the evening of 6 October 1976 – and also the violence at Thammasat University that preceded it that morning. It is a consequence of the amnesty and the concomitant foreclosure of any investigation, let alone prosecution or remedy for the victims and survivors, that the precise roles of privates, as well as higher-ranked soldiers and police, Border Patrol Police, Village Scouts (royalist-militarist scouts), other state and para-state actors, and ordinary citizens are unknown.

What period is covered? A further indication of the expansive intention of the law is suggested by the discussion about what period of time the amnesty covered. Early in the meeting, the secretary commented that the draft did “not include ‘preparation’ that was carried out before power was seized.”³⁴ He noted that in the amnesty for the coup carried out by the Thanom Kittikhachorn government against itself in 1971, the amnesty mentioned the actions before and after the seizure of power.³⁵ The secretary-general later noted that

³⁰Ibid., 63.

³¹Ibid., 67.

³²NA (2) So.Kho.Ko. 1/Book 996, 68.

³³Ibid., 71.

³⁴Ibid., 63.

³⁵*Ratchakitchanubeksa*, 26 December 2515 [1972], Book 89, Part 198, 234–237.

Time is at first an issue of “before the reform” and after is “after the reform.” Before the reform there was no official name, so then use “individuals.” After the reform, it was then called the “National Administrative Reform Council.”³⁶

He again raised the issue of preparation, commenting that

The provision in the Constitution does not include “preparation.” When this part is left out, it is not total. Before 6 p.m. on 6 October 1976, it was not yet called the “National Administrative Reform Council.” The Constitution therefore does not shield the preparation to reform the nation’s administration.³⁷

Then the secretary-general suggested even broader word phrasing: “Let me propose it to be ‘...that was carried out due to the seizure of power ...’ that is broader and includes ‘preparation’ also.”³⁸

On the one hand, there is nothing unusual about the discussion of ensuring that preparation for the coup was covered. A coup does not arise out of thin air. Alliances must be forged and plans must be made. What makes it notable is that in combination with the concern that privates be covered, and the comment that the incident at hand involved both the students and the NARC, here, preparation could include the dispersal of protests at Thammasat University before 6 p.m., when the NARC was established. The massacre on the morning of 6 October is not mentioned in the text of the law, but it does not need to be. The temporality of the law and its breadth mean that it covered that morning’s events.

What legal changes did the amnesty engender? In a recent volume comparing amnesties globally, Francesca Lessa and Leigh Payne defined amnesties as “legal measures adopted by states that have the effect of prospectively barring criminal prosecution against certain individuals accused of committing human rights violations.”³⁹ While this is what Article 29 of the Constitution accomplished, those in the meeting room at the Krisdika wanted to go further. At the beginning of the meeting, the chair summarized the initial draft and commented:

Right. The principle of amnesty is that wrongdoing has occurred, but it has been exculpated. It does not legalize those actions. The draft as written is that the things that were done were “right,” but the people who did them still engaged in “wrongdoing.” They have not been absolved yet.⁴⁰

In doing so, they drew on the well-established role of amnesty laws in Thailand to perform what David Streckfuss argues is a process of ritual purification. He explains the repeated passage of amnesty laws is a process that gathers salience and legitimacy within a Thai Theravada Buddhist framework. In this process the political order is resettled through sacrifice, violence, and the production of virtue. Streckfuss describes how coups and amnesty laws function politically, and his use of the past tense in his general description also suggests how they serve as the writing of a particular form of history:

The political order was reset. A new order was established by men of virtue (with guns). Their virtue allowed them to seize power not for themselves, but for the whole social and political order. However, they had to ritually purge themselves of the necessary violence by declaring an amnesty.⁴¹

³⁶NA (2) So.Kho.Ko. 1/Book 996, 67.

³⁷Ibid., 68.

³⁸Ibid., 72.

³⁹Lessa and Payne 2012, 4.

⁴⁰NA (2) So.Kho.Ko. 1/Book 996, 65. The representative from the Department of Defense was very clear about what he and his colleagues wanted from the amnesty: “Our objective is that we want [to] ‘be not guilty.’” (NA (2) So.Kho.Ko. 1/Book 996, 69).

⁴¹Streckfuss 2011, 122.

While this process acquires a particular meaning within a Theravada Buddhist context that prizes a continual process of purification and the cultivation of virtue, the result is also an explicitly secular one: avoidance of criminal prosecution. The repeated string of amnesty laws and the foreclosure of even the possibility of prosecution for criminal acts therefore serve as a form of incentive for would-be coup makers.⁴²

An exchange between the chair and the secretary-general clarified the difference between the measure in the interim Constitution and amnesty as they intended to use it:

Chair: We wrote to make the law correspond with the Constitution that prescribes “these are lawful actions . . .” but does not prescribe that those who carried out these actions are “right [lawful].” We will therefore issue a law that will purge wrongdoing and acquit in line with the principle of amnesty. This principle is that there was wrongdoing, but acquittal is granted.

Secretary-General: The Constitution only expressed that the actions were “lawful” but an amnesty will acquit and absolve the people. They will be completely innocent, the result being that they committed no wrongdoing.⁴³

Quietly, the chair and the secretary-general confirmed that wrongdoing was committed on 6 October. The context of the wrongdoing was not specified, but were they writing an amnesty to apply to the coup only, their careful attention to detail would not have been necessary. The goal seems to have been to go beyond preventing prosecution, and to inscribe, at least legally, the actions and actors on 6 October as correct and completely free of wrongdoing.

Yet it is what may seem like a marginal comment about amnesty during the meeting that is most thought provoking and unsettling. The preamble to the final version of the law reads:

Whereas the National Administrative Reform Council seized the government power of the nation and dissolved the Constitution on 6 October 1976, they did so with the purpose of resolving a situation that was a danger to the nation, the institution of the monarchy, and the people and to set a form of administration that was appropriate to the country’s situation, the economic foundation and the sentiment of the people in order to create well-being for the Thai people and progress for the nation.⁴⁴

The monarchy is only one of the three key institutions mentioned, but throughout the discussion of the two amnesties, the valorization and emphasis on the protection of the monarchy was key. The protection of the monarchy was the stated impetus for the massacre and citing it was part of how the amnesty was justified.

The question of the collective was raised, almost parenthetically, during the meeting at which the draft law was revised. The secretary-general noted:

This amnesty must only protect issues of the collective. This is in particular issues that are about the collective seizure of power. It cannot shield the carrying out of actions that were done for personal reasons, actions done out of rage, killing people for personal reasons on the day of the seizure of power, etc.⁴⁵

The secretary-general’s comments here are strange. First, which collective did he mean? The amnesty and the very actions that necessitated it reflect the narrowness of any possible conception

⁴²Somchai 2550 [2007], 192.

⁴³NA (2) So.Kho.Ko. 1/Book 996, 74–75.

⁴⁴“Amnesty for Those Who Seized the Government Power of the Country on 6 October 1976 Act,” *Ratchakitchanubeksa*, 24 December 2519 [1976], Book 93, Part 156, 43.

⁴⁵NA (2) So.Kho.Ko. 1/Book 996, 65.

of the Thai people. Second, *personal* acts of hatred-fueled killings could not be covered by the amnesty. Through the lens of the Krisdika, perhaps the *political* acts of rage of brutality that characterized the massacre could be interpreted as violence in the service of the collective. What they failed to recognize, and which is even apparent to those who did not witness the 6 October 1976 massacre and have only seen photographs, is that all of the killings were also personal.

Were this a leisurely, academic discussion about the legal principle of amnesty – such internal discussions on various topics were and are frequently held at the Krisdika – then perhaps the secretary’s comments would be inconsequential. But this was anything but a theoretical discussion. This was an urgent, two-hour meeting called one day prior to discuss a draft amnesty law that had to be revised and returned to the Cabinet within a day. A month later, the revised draft became law. Despite the stated intention of the secretary, all of the actions on 6 October 1976, even those that were personal, hateful, and contra to the common good, were included within the amnesty law. The minutes provide the evidence to suggest, if not confirm, that this was the actual intention of the law (Figure 2).

Five days after the Krisdika sent the revised draft law back to the Cabinet, Lieutenant General Sawai Duangmanee submitted it to the NARA, an assembly of 340 members appointed after the coup. Lieutenant General Sawai was a member who was a former prosecutor in the Bangkok Military Court and a former head of the Department of the Judge Advocate General in the Ministry of Defense. Rather than clarifying the purpose or precise parameters of the amnesty law, the expedited debate of it in the NARA on 17 December 1976 only deepened its ambiguity.⁴⁶ Those present voiced no opposition to the bill, only a range of different reasons for support. Unlike the discussion at the Krisdika, no mention was made of the students or of Thammasat University. This acute absence and the broader ambiguity of the amnesty’s objects were further underscored by the individual nature of the appeals made by the members who spoke in favor of its passage.

Lieutenant General Sawai began by arguing that Article 29 of the Constitution left many loopholes and therefore “it was appropriate for the assembly to provide protection for those who acted in the interests of the nation and the Thai people.”⁴⁷ Then, he identified those who might be affected by the loopholes, describing their situation as follows: “The head of the Reform Council did not invite them. The Reform Council did not invite them to help. They saw their friends go, and so they went.”⁴⁸ His choice of words here is significant: *their friends?* They, whoever they were, state officials or civilians, saw their friends go *where?* To Thammasat University to repress the students there? To Government House to take over rule? To Thammasat and then Government House? Then, Lieutenant General Sawai offered concrete categories of actors who might not be covered. He mentions the drivers who drove their bosses to the Reform Council. Although they would not be seen as guilty following basic logic, they were guilty in terms of law “because it [driving] was support that made the seizure of power succeed.”⁴⁹ This is one of the least ambiguous moments in the debate. Persons he was concerned about can be placed in time and space: drivers of the generals who comprised the NARC. When he continues, however, the ambiguity

⁴⁶Ambiguity is rarely accidental. In the case of state violence, the use of ambiguity can be one aspect of a particular strategy of concealment that protects perpetrators, makes redress difficult, and causes further suffering for victims and survivors. For analysis of ambiguity in relation to disappearance in Thailand, please see Pratubjit Neelaphajit et al. 2556 [2013].

⁴⁷NARA 2519 [1976], 109–110.

⁴⁸Ibid., 110.

⁴⁹Ibid., 111.

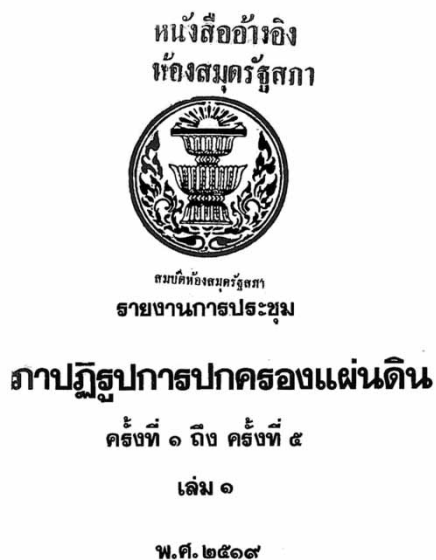


Figure 2. Report of the NARA, Meeting 1–5, 1976. (Source: NARA records, Parliamentary Library, Bangkok)

returns. Lieutenant General Sawai pleaded, “In addition, I ask you to please examine the Reform Council, the vendors who sold things, sold food, the clerks, the radio, television, and telegram people. The water, electricity, the various tents that all went to support.”⁵⁰ These people were not protected by the Constitution, yet “They went out of duty. They went to help out of goodwill for the Reform Council.”⁵¹

Although there was no precedent for it in Thailand, it is possible to understand the legal reasoning by which the drivers of members of a junta who launched a coup might be prosecuted for their role in it, and therefore, one could conclude that Lieutenant General Sawai is discussing amnesty for the precise action of the coup. But this does not hold with his next set of categories, particularly food vendors. Under what legal conditions could a food vendor be prosecuted for her or his role in a coup? Does he mean, for example, that had Admiral Sangad Chaloryu, the head of the NARC, eaten chicken rice on the morning of the coup, the vendor who made and sold it to him could be found guilty because she supported the actions of seizing power by sustaining Admiral Sangad? Or might Lieutenant General Sawai mean those who sold the goods and snacks that sustained the rightist mobs outside Thammasat?

Then Lieutenant General Sawai turned to his own role and possible culpability. He narrated his involvement:

I myself received an invitation to offer my legal opinion. I went to assist for many days. But the invitation I received, I was not invited by the head of the National Administrative Reform Council and I was not invited by the National Administrative Reform Council or someone under the commission of the National Administrative Reform Council. I am not sure if I would be exculpated or not. I am not 100

⁵⁰Ibid., 110–111.

⁵¹Ibid., 111.

percent sure about myself. That all those who went to explain different laws, many laws that we examined together in meeting, for example, the Communist law, the gun law. We gave assistance about many laws. There were representatives from many different departments and ministries. There were police, administrators, officials from the Krisdika. There were officials from many ministries, fifty-sixty at one meeting. Do you think that these people were ordered by the head of the NARC or the NARC?⁵²

Since they were not, they would not be protected by the Constitution. Lieutenant General Sawai noted that planning had gone on for many months and then asked, “Why are we not going to protect them when they gave assistance in an undertaking that was in the interest of the country?”⁵³ I have quoted at length from Lieutenant General Sawai’s comments here because the content of his rhetorical plea for support for the amnesty raises questions about precisely what he wanted the amnesty to cover and also the nature of the massacre and coup. Although he referenced planning of many months, he did not say when or where the meeting (or meetings) was (were) held, or who invited him. Even if the amnesty was only meant to extend to the coup, and my attempt to discern a further meaning is a folly, his comments here would suggest that the coup was therefore not only a military affair, but a broad undertaking involving a range of jurists and other civil servants. If Lieutenant General Sawai’s comment about the meeting of fifty-sixty persons was about the coup, then it would suggest that the NARC’s seizure of power was the result not of an intra-army contest, but a carefully planned, broad-based toppling of the elected government of Prime Minister Seni Pramoj from the inside out. However, his mentions of “Communist law” and “gun law” suggest that this was not a meeting about the coup, but instead one about what kind of repressive measures, for example, would be legal and possible under the Anti-Communist Activities Act, and what kinds of exemptions of investigation it might make possible.⁵⁴ The ambiguity of Lieutenant General Sawai’s comments means that both of these assessments can only be speculative.

He concluded his introduction of the law by appealing to the assembly’s compassion and asking them to pass the amnesty and “we might consider it as a New Year gift for all of them”⁵⁵ so that the “honorable people” [*phu mi kiat*] and their families would not face suffering and hardship in the future. What a gift! Was Lieutenant General Sawai joking? Or did he always exaggerate when he addressed the assembly? A blanket protection from prosecution for crimes of which one might face the death penalty is a gift of a far different order than a fruit basket for the New Year. Combined with Lieutenant General Sawai’s reference to preventing families (including his own) from suffering, this statement reflects an inability to think of those killed at Thammasat or the Bangkok 18 as human. Similar to the clear centrality of the monarchy throughout the drafting and passage of the two amnesties, the idea of human operative in Thailand was already narrow, and the amnesties, and the actions which made them possible, further cemented this. Their suffering and that of their families did not register in this discussion. The floor was then opened for debate.

No opposition to the draft bill was voiced. A statement from one of the few female representatives stands out both for her admission of involvement and her simultaneous ambiguity about

⁵²Ibid.

⁵³Ibid.

⁵⁴The series of three Anti-Communist Activities Acts passed in 1952, 1969, and 1979 provided extensive powers of arbitrary detention, denial of habeas corpus, initiate proceedings in military tribunals, and forgo the usual postmortem investigations in cases of death in custody in areas declared to be Communist-controlled areas.

⁵⁵NARA 2519 [1976], 114.

the nature of this involvement. Mrs. Chongkol Srikanchana began by noting that the possibility of the death penalty made her feel agitated. She then explained:

the incident passed on 6 October, but I have wondered for around two months already if there was someone who was going to amnesty those who participated in the work that time. I am an ordinary citizen-housewife that went to join and dance wildly with them. The reason is not as important, that was trespassing to make the Government House [government of Prime Minister Seni Pramoj] fall down. Something like that.⁵⁶

In her comments in the debate at the NARA, Mrs. Chongkol does not explain what she means by “dance wildly” (*ten yeng yeng*), but in an interview fifteen years later, her account of that day indicates that she and other self-identified housewives were demanding to meet with the prime minister to call for his resignation and after he did not respond to their demand, they went to storm Government House.⁵⁷ Upon arrival, they discovered that a coup had already taken place.⁵⁸ She said “when I learned about the laws, many of my friends expressed concern.”⁵⁹ Similar to Lieutenant General Sawai’s perplexing reference to the food vendors, the combination of Mrs. Chongkol’s admission of excess in “dancing wildly,” her agitation over the possible death penalty, and her friends’ concern suggest that she may not be referring to the seizure of power by the NARC on the evening of 6 October, but perhaps also the violence that preceded it. Under what conditions could someone who cheered on a military junta as they fomented a military coup face the death penalty? She concludes by beseeching the NARA to pass the amnesty:

Therefore, I beg you, honorable representatives and respected chair, the reason for the proposal of this draft amnesty law, I ask you to offer your fullest support but just now I see that of all of you, no one opposes it because you likely see the necessity to give the people [amnesty] and everyone that joined in those actions for the loyalty to the monarchy and for the nation.⁶⁰

For Mrs. Chongkol, a claim of loyalty was sufficient for exoneration of grave crimes, including her own.

The first reading of the law passed with a vote of 302 persons in favor and no votes against. During the second reading, the only discussion was about the possible removal of the word “due to” (*nuang nai*) from Article 3.⁶¹ Lieutenant General Sawai argued that it would be better to keep it in so that the broadest possible protection would be offered. By a vote of 281 to 3, the proposition stayed.⁶² The final, third reading of the draft was brief. The first amnesty passed with no votes against it.⁶³

⁵⁶Ibid., 115.

⁵⁷Despite her self-identification as an “ordinary housewife,” Mrs. Chongkol was neither. She was politically active and had been appointed as a Senator in 1976 prior to the massacre and coup and also played an active role in various organizations whose primary purposes was to arm and train citizens as part of counterinsurgent defense of the nation–religion–king.

⁵⁸See various accounts reprinted in her cremation volume (Phayap 2533 [1990]). Her account, however, raises other questions. Her description of 6 October 1976 and her active role in the defense of the nation and monarchy are worthy of further investigation.

⁵⁹NARA 2519 [1976], 115.

⁶⁰Ibid.

⁶¹Ibid., 122.

⁶²Ibid., 124.

⁶³Ibid., 131.

The Second Amnesty

While Lieutenant General Sawai was occupied with ensuring that the first amnesty was passed so he, and many unnamed and unidentified others, would not face prosecution for unspecified crimes, the Bangkok 18 were already living behind bars. Under orders issued by the NARC shortly after they took power, they were to be tried in a military court, rather than the Criminal Court, which made them ineligible for bail. They waited eleven months before the formal proceedings against them began in the Bangkok Military Court on 5 September 1977. Each was charged with a different combination of alleged crimes, including Communist activities, violating national security, insulting the heir-apparent, assembling to use force and weapons to create chaos, trespassing, resisting officials who were conducting their duty, and possessing unlicensed and illegal weapons, bullets, and bomb-making materials. The possible sentences each person faced if convicted varied, but for some included possible life in prison or the death penalty. But the prosecution only had the chance to call eleven of their eighty-three witnesses to the stand before the case was halted due to the passage of the second amnesty, the “Amnesty for Those Who Committed Wrongdoing in the Demonstrations at Thammasat University between 4 and 6 October 1976.” On 16 September 1978, the case against the Bangkok 18 ended and they were released.

Significant political changes inside and beyond Thailand occurred in the twenty-one months separating the two amnesty laws. Right-wing jurist Thanin Kraivichien, who had been appointed prime minister by the NARC, was ousted in a military coup on 11 November 1977 led against him by General Kriangsak Chamanan. In comparison to Thanin, who envisioned a twelve-year process to return to democracy, General Kriangsak began to relax the strictures the NARC and then Thanin had put into place.⁶⁴ Internationally, the human rights movement began to exert wider influence and specific pressure on Thailand. Even the US government, one of Thailand’s most important allies in counterinsurgency over the previous twenty years, began to pay attention to human rights.⁶⁵ Excessive repression in the name of counterinsurgency, at least publicly, began to be untenable.

General Kriangsak personally pushed through the second amnesty, calling it a “surprise” (using the English-language word “surprise”) for the young people he considered to be his “children, grandchildren” (*luk lan*). But was the amnesty actually, or primarily, for the Bangkok 18? In

⁶⁴The change from the harsh constriction of freedom under Thanin, evidenced by the NARC’s orders and censorship, can be seen in the setting around the trial of the Bangkok 18 described by one editorialist as “One side was a cheering section that provided support for the students who were the defendants. The other side was the opposition, who were against providing an amnesty and wanted the defendants to receive a proper punishment”; *Daily Time*, 19 January 2521 [1978], 4. This kind of public demonstration would not have been possible in the immediate aftermath of 6 October while Thanin was in office.

⁶⁵Similar to anti-Communist campaigns in many other countries, what Thailand and its close ally, the United States, understood as counterinsurgency is what others, myself included, would instead identify as a series of murderous and repressive assaults on the people, Communist and otherwise. In late 1976 and 1977, Thai domestic human rights activists (primarily those with the Coordinating Group on Religion in Society and the Union for Civil Liberty) and international activists were engaged in grassroots and state-level advocacy. After Jimmy Carter was elected in the 1976 US presidential election, US state concerns with human rights increased. In June 1977, the US House Committee on Foreign Affairs held hearings on human rights in Thailand. Then, in August 1977, Ramsey Clark, the former head of the US Department of Justice, and Wen-Hsieng Huang from Amnesty International in London visited Thailand to assess the situation of political prisoners and human rights broadly. When they left, they were dissatisfied with the limited access they were granted and wrote a letter of complaint to the Ministry of Foreign Affairs requesting additional information. There was a flurry of correspondence between the Krisdika and the Ministry of Foreign Affairs about how to best respond to their requests. See NA (2) So.Kho.Ko. 1/Book 1167 to read this correspondence.



Photo 2. Bangkok, Thailand, 18 February 2008: A Thai protester points at the 6 October 1976 photograph of the military and right-wing groups violently crushing leftist student demonstrators at Thammasart University during a protest outside parliament. Haunted by his past, Thailand's Prime Minister Samak Sundaravej has sparked an unprecedented debate on his alleged role in a massacre of student protesters three decades ago. Defying photographic evidence and witnesses' accounts of the carnage of 6 October 1976, Samak said during an interview with CNN that "one unlucky guy" was killed that day. (Credit: AP Photo)

an April 2013 interview, Vasant Panich, who was one of their lawyers, recalled the case and suggested otherwise. Vasant said:

This case did not end with the charges being dismissed. Once testifying began, the 6 October amnesty law was passed and it ended everything. They claimed to forgive the students, but in actuality, they forgave themselves because a lot of students were killed. Everything ended due to the amnesty.⁶⁶

When the case was dropped, the prosecution had only presented 10 percent of its evidence; the rest of the prosecution's evidence and all of the defense's evidence remained. Had the defense witnesses, including the Bangkok 18 themselves, given testimony, the prosecution, and the repressive parts of the state behind it, may have had a great deal to fear. The actual events of the morning of 6 October – and perhaps what came before and what was planned to come after – would have been revealed. The first amnesty – and the broad protections that were so carefully crafted into it – may have become untenable if evidence of the perpetrators and planning for the massacre had been revealed. Better to foreclose this possibility.

The nature of the evidence available about the drafting and passage of the second amnesty makes it difficult to ascertain whether it was the compassionate gesture of Kriangsak, the auto-amnesty described by Vasant, or a combination of the two. Unlike the first amnesty, there is no file in the Krisdika records about the second amnesty.⁶⁷ The draft bill was debated and passed by the NLA, an assembly of 360 members appointed by the National Policy Council with the

⁶⁶Prachatai 2556 [2013].

⁶⁷This could mean that either the Krisdika was not consulted or the meeting minutes were not sent to the National Archives.

king's approval after General Kriangsak entered office.⁶⁸ Yet unlike the records of the debate in the NARA for the first amnesty, the record of the debate was not made public.⁶⁹ However, the arc of the second amnesty bill, including the excitement preceding it, Kriangsak's role, and even the debate in the NLA (there was no gag rule that prevented individual members from speaking to the press), was reported in the newspapers.

General Kriangsak claimed that he was considering an amnesty from the very first day he entered office.⁷⁰ In February 1978, he spoke publicly about an amnesty, noting, "If the court judges and releases the eighteen people, we can hold that each is innocent. But if the court decides to punish the eighteen people, the Government will be ready to pass an amnesty that day."⁷¹ Over the next six months, the fate of the Bangkok 18 was a matter of public concern. Passage of an amnesty by the NLA was one of the three options that could result in their release; the withdrawal of charges by the prosecutor or the use of Article 27, the measure of the 1977 Constitution that allowed the prime minister executive power in exceptional cases, were the other two. In September 1978, the head of the Department of the Judge Advocate General, Lieutenant General Saming Tailanka, said that the use of Article 27 would be a subversion of the court's authority.⁷² An amnesty was acceptable in his book and he noted that precedent existed in 1957 when all of those who were being held on political charges were amnestied.⁷³

After a Cabinet meeting on 12 September 1978, General Kriangsak was laughing and in a good mood when he told a reporter from *Matichon* newspaper, "What I am thinking of is justice. On this matter, wait. I will surprise you. For now, not yet."⁷⁴ He made the amnesty personal, commenting, "I believe that those in jail are my children, my grandchildren," and also accepting individual responsibility.⁷⁵ He added, "I decided this matter myself. The king was not involved in any way. The king was not involved in this matter at all."⁷⁶ Why did General Kriangsak make explicit that the amnesty was his idea? Was it because, as he was accused of doing, he was using this as a strategy to campaign for a possible future run for elected office? Or was it because the monarchy was not in favor of the amnesty? Initially, General Kriangsak had said that alleged violations of Article 112, the measure in the criminal code that stipulates penalties for *lèse majesté*, would not be covered by any amnesty, but this

⁶⁸Zimmerman 1978, 110.

⁶⁹The NLA met about the amnesty law on 15 September 1978, on the request of the Cabinet. On 11 October 1978, after its passage, there was a closed meeting at the NLA about whether or not to make the minutes of that discussion public or secret. A committee of ten people examined this question; of the ten, eight held military title. The decision of their deliberations was to keep the minutes secret. This is the only record of the deliberations of the meeting, and beyond the day, time, and individuals present, there are no further details available. According to a librarian at the Parliament, there are no further records available about the second meeting, the one about what to do with the records from the first meeting, because as the decision to keep it closed was made from the beginning, minutes were not recorded. As for the first meeting, she could only tell me that there were no records I could access. Whether this means they exist or were destroyed is unknown.

⁷⁰*Thai Rat*, 15 September 2521 [1978], 12.

⁷¹*Sayam Rat*, 16 February 2521 [1978], 1.

⁷²"The use of Article 27 with this case would not be good. It would be a subversion of the authority of the court. We should use the legal authority would be better." *ibid*.

⁷³*Ban Muang*, 15 September 2521 [1978], 2.

⁷⁴*Matichon*, 13 September 2521 [1978], 12.

⁷⁵*Sayam Rat*, 13 September 2521 [1978], 1. General Kriangsak's use of kinship terms here references the actions of Field Marshal Sarit Thanarat, who explicitly case himself as the father of the Thai nation during his dictatorship (20 October 1958–8 December 1963). See Thak 1979.

⁷⁶*Siang Puangchon*, 15 September 2521 [1978], 16.

exemption fell away over time. Prasit Narongdetch, minister of communications, commented on this matter as follows:

This is a sensitive matter. Please don't bring our highly revered institution into it at all. The government should dare to accept responsibility for its actions. However, I ask you to trust that we would never do anything that would irritate the feet of their majesties.⁷⁷

The matter of the monarchy remained sensitive when the draft second amnesty entered the NLA two days later.

Like the first amnesty in December 1976, the second amnesty was given an expedited review and all three readings were carried out on 15 December 1978. Usually only 100 out of the total 360 members attended meetings, but approximately 260 were present for this one, which was described as "lively" (*kheuk khak*)⁷⁸ and "a meeting with record attendance" (*prachum kan khapkhang pen prawatisat*).⁷⁹ General Kriangsak himself introduced the bill in the first reading.

The second amnesty began with a preface explaining that the government had examined the situation carefully and the case had gone on long enough and would continue for an even greater period. The law notes, "if the case proceeded until completion, it would cause the defendants to sacrifice even more of their educational and professional future."⁸⁰ The law explains that the reason the wrongdoing took place was because the protestors' youth caused them to fail to truly understand the situation. As the government had a desire to build unity within the nation, it was therefore appropriate to forgive them for their actions (*hai aphai kankratham*). This would create the opportunity for those who had committed wrongdoing, including those who were being prosecuted and those who had fled, to act correctly and to act in the interest of the nation. While the preamble to the first amnesty explained that those who carried out the coup and events that preceded it did so to save the nation and foment progress, this one instead explained that the students acted out of ignorance and they were being given a chance to participate in progress. To be clear, this was the very "progress" put in motion by the coup and the massacre that preceded it.

In terms of the key questions of who was covered, what time period was covered, and what legal changes were engendered by the amnesty, Article 3 was again the important measure:

All actions by whomever, which took place or were related to the demonstrations inside Thammasat University between 4 and 6 October, whether they were committed inside or outside the university, and whether the actions were taken by a principal figure, a supporter, a person acting for another, or a person who was used. If the actions were unlawful, the person is absolved from wrongdoing and all responsibility.⁸¹

In the initial draft, the location was specified as "or in other locations" (*reu sathanthi eun dai*), but in the final version it was changed to "or outside the university" (*reu nok mahawithayalai*).⁸² In other words, anything and everything that took place during those three days at the university or elsewhere was covered. The amnesty came with a caveat, however. Article 5 mandated that, "The amnesty following this law does not provide rights for those amnestied to complain or demand

⁷⁷ *Matichon*, 15 September 2521 [1978], 5.

⁷⁸ *Sayam Rat*, 15 September 2521 [1978], 12.

⁷⁹ *Ban Muang*, 16 September 2521 [1978], 16.

⁸⁰ *Ratchakitchanubeksa*, 16 September 2521, Book 95, Part 97, 1.

⁸¹ *Ibid.*, 2.

⁸² *Matichon*, 16 September 2521 [1978], 12.

any rights or benefits.”⁸³ To be clear, then, this means both that the students who were pardoned could not claim compensation for wrongful arrest, but also, this perhaps also meant that they could not then accuse state officials of committing violent crimes at Thammasat University.⁸⁴ Article 5 complemented the preface, which began with the students’ lack of understanding and youth. Together, these functioned as a denial of their agency that legally, politically, and epistemologically consolidated the power of those behind the massacre, coup, and amnesties.

The first reading of the second amnesty passed 208 to 1. The slight change to the wording noted above was made in the second reading and it passed with only one vote against. In the third reading, the second amnesty became law with a vote of 180 to 1.⁸⁵ The sole opposition vote was from Mr. Sa-nga Wongbangchud. Mr. Sa-nga opposed the amnesty bill for a variety of reasons, including concern about the alleged acts of *lèse majesté* committed by the students and a belief that there were more pressing matters, such as economic difficulties, to attend to before passing the amnesty.⁸⁶ He commented:

Allowing the eighteen people to come out is not the right way to help the country. This is a matter related to the institution of the monarchy. If we hold to the principle of compassion, 10,000 other people in prison all ought to be amnestied and released.⁸⁷

General Kriangsak’s response to this criticism was that the social and political costs of not passing the amnesty were too high. Once the amnesty had been passed, he would turn his attention to livelihood problems.⁸⁸

Although Sa-nga was the only member who voiced opposition, the numbers of those who voted indicate that a large number chose to express their opposition by not voting. One of these members was Khunying Wimon Chiamcharoen, outspoken rightist and prolific writer also known by her pen name, Tomayanti. She raised her hand and said that she felt slighted by the second amnesty because she had consistently sacrificed to protect the three institutions of the nation, religion, and king. On 6 October, 100,000 citizens went out to oppose the students and therefore she believed that the case against the students should be carried through to its completion in the court. She walked out and did not participate in the voting.⁸⁹ There was also a curious silence from an important category of members: the retired and active military who accounted for 200 out of the 360 slots.⁹⁰

Applause greeted passage of the bill in the assembly. As he got into his car after the vote, General Kriangsak said, “Today I am very relieved and most content.”⁹¹ General Kriangsak flew to the king’s palace in Narathiwat at 8 p.m. on 15 September.⁹² Newspapers did not say

⁸³ *Ratchakitchanubeksa*, 16 September 2521, Book 95, Part 97, 3.

⁸⁴ I include the caveat of “perhaps” on the matter of whether those released as a result of the amnesty would be legally prevented from doing so because no case of this form has ever been brought to a Thai court, and so the actual strictures of the provision in practice are unknown.

⁸⁵ *Ban Muang*, 16 September 2521 [1978], 16.

⁸⁶ *Ibid.*

⁸⁷ *Thai Rat*, 16 September 2521 [1978], 16.

⁸⁸ *Athit*, 16 September 2521 [1978], 12.

⁸⁹ *Ibid.*

⁹⁰ *Matichon*, 16 September 2521, 12. For example, General Sitthi Chirot, member of the NLA and the Army chief-of-staff, refused to make a substantive comment to any newspaper. He said that it was a matter of the assembly, and he would follow the voice of the majority in the assembly (*Siang Puangchon*, 15 September 2521 [1978], 16).

⁹¹ *Matichon*, 16 September 2521 [1978], 12.

⁹² *Baan Muang*, 16 September 2521 [1978], 12.

anything about the king or queen's opinion on this matter, but the monarchy's assent can be assumed.⁹³ General Kriangsak had flown to Narathiwat because the amnesty bill, like all other Thai laws, needed the signature of the king to go into force.

The next day, the bill became law and the Bangkok 18 were released. Only three days later, the Ministry of Foreign Affairs reported that the image of the country abroad had been improved.⁹⁴ Not even a week later, the US government issued a statement saying the amnesty was an important step toward reconciliation.⁹⁵ Domestically, General Kriangsak faced some criticism and rightist groups accused him of being a Communist.⁹⁶ This criticism did not have concrete effect on his term as prime minister, however. He remained in office until he retired and handed over power to General Prem Tinsulanond in March 1980. Both amnesties remain in force up to the present.

Toward Undoing Impunity

In an editorial published one day before the second amnesty was debated and passed by the NLA, Kriangsak's notion of the amnesty as a surprise was sharply critiqued. The author observed:

The people of the world were already astonished that many different institutions and sides aroused the most brutal slaughter of students and citizens in [Thai] history. The arrest and prosecution of the survivors multiplied this surprise twofold. If the Kriangsak government is going to blot out this shock or expiate the sins of the perpetrators of 6 October, this is supposed to please, rather than surprise everyone like he has said.⁹⁷

The fifth article of the second amnesty, which prohibited the released students from filing charges against those who imprisoned them or attacked and killed their fellow citizens on the morning of 6 October, reflected what can accurately be called the status quo of impunity for state violence. The legal prohibition against calling for justice was reinforced by the experience of the Bangkok 18. Their experience was witnessed by the entire nation: the massacre, the prosecutions, and the amnesties were public events. What citizens learned is that a group of people can be engaged in a legal protest against encroaching dictatorship when an angry, fear-driven mob of state and para-state actors can carry out a massacre against them. Then, the surviving victims of this massacre can be detained for nearly a year, charged with grave crimes, and then be tried in a military court. Next, when it becomes domestically and internationally untenable to continue prosecuting the survivors for crimes that they did not commit and the real perpetrators begin to feel uneasy about their status, they can be released. But this release is conditional. The amnesty implies that the survivors were guilty and in need of forgiveness and their release depends on their acceptance of the status quo of impunity for state violence.

The "hidden transcripts" of the two amnesties for the 6 October 1976 massacre and coup reveal the careful, calculated legal moves taken to protect those who were behind it. Despite the rhetoric in the streets and on the radio about the need to protect the nation, the coup and the massacre that preceded it unsettled some inside the state – perhaps because they were aware of the extra-legal status of the massacre, perhaps because they worried about their own culpability and perhaps because they were aware that the violations in need of amnesty were

⁹³Like his colleague the minister of communication, Kriangsak discouraged discussion of the involvement of the monarchy, noting, "Don't mention it at all. Don't involve him. Let it be a government matter." *Matichon*, 15 September 2521 [1978], 12.

⁹⁴*Sayam Rat*, 19 September 2521 [1978], 1.

⁹⁵*Athit*, 22 September 2521 [1978], 2.

⁹⁶*Sayam Rat*, 27 September 2521 [1978], 12; *Siang Puangchon*, 27 September 2521 [1978], 12.

⁹⁷*Athit*, 14 September 2521 [1978], 3.



Photo 3. Memorial sculpture commemorating the 6 October 1976 massacre at Thammasat University, Bangkok, Thailand. (Credit: Xiengyod, May 2009. Commons.Wikimedia.org)

not only those of the criminal code but of the more basic code of being human. The Krisdika file and NARA debate record about the first amnesty and the newspaper reportage about the second amnesty do not offer judicially viable evidence of the evasion of state responsibility for violence. Instead, they offer enough details and ideas to offer an account of how impunity for the massacre was produced through the passage of two amnesty laws which did not mention it.⁹⁸ What I have done in this essay is to reconstruct the legal maneuvers by which the perpetrators of the massacre and coup forgave themselves, blamed the survivors, and in so doing, evaded accountability. In my account, I have been purposefully circumspect. Given the partial nature of the information available, certain conclusions can only be gestured toward and a series of questions remain.

What John Roosa notes in *Pretext to Mass Murder* is that rather than confidently identifying the figure(s) definitively behind the September 30th Movement, he aims to “bring us a bit further through the labyrinth, mark some dead ends, and point to the most promising paths for further research.”⁹⁹ In the case of the 6 October 1976 massacre and coup, much is still not known and cannot be known as long as the impunity holds. But there are three questions that the available evidence about the two amnesties suggests, and that are significant in this particular instance as well as in a broader frame of understanding the role of impunity in state formation. First, what kinds of internal state discussions happened following the massacre? Did officials inside the Krisdika, Department of the Judge Advocate General, and other departments and ministries

⁹⁸In his essay, “Who Was Who in 6 October?” which is a chapter in his book, *Prawattisat thi pheung sand* (Recently Constructed History), Somsak Jeamteerasakul uses a similar strategy of reading memoirs, letters, and newspaper and other accounts to ascertain who planned and gave order to use violence on the morning of 6 October 1976. See Somsak 2544 [2001], 161–207. Somsak also builds on this chapter and the questions raised about the precise series of events, orders, and state actors involved in a close reading of the report of the Cabinet meeting on the morning of 6 October 1976. See Somsak Jeamteerasakul 2546 [2003].

⁹⁹Roosa 2006, 20.

discuss the violence at Thammasat University? Second, when and how was the link between the violence at Thammasat University, the coup, and the possibility of an amnesty law made? What kind of collusion among different agencies, institutions, and individuals took place? What kinds of background legal reasoning took place prior to the coup, such as the meeting mentioned by Lieutenant General Sawai when he spoke in support of the first amnesty in the NARA? Third, were there any critics of the massacre inside the state? Were any of the legal experts at the Krisdika uncomfortable with their roles as the protectors of murderers?

Given how much remains unknown about the planning and involvement of different actors and agencies in the 6 October 1976 massacre, it may seem premature to raise the undoing of impunity, which means securing accountability. Yet, as the principles to combat impunity suggest, securing knowledge and securing accountability about past violence are necessarily linked. Without facts and clear evidence about violence, impunity cannot be challenged. Similarly, impunity provides protection against questions being asked and sufficient information found about state violence. To date, neither the first nor the second amnesty has faced legal challenge. The seven men who met at the Krisdika in November 1976 had remarkable foresight. Nearly two decades before the emergence of the “justice cascade,” the name given by Kathryn Sikkink to the rapidly expanding call for individual criminal responsibility for grave human rights violations – they acted to foreclose any possibility of accountability.¹⁰⁰ But who is to say that this will last forever? As events in the Southern Cone and Central America over the last decade have illustrated, amnesties, even those put into place by murderous military juntas, do not necessarily last forever.¹⁰¹ While it is difficult to imagine the Thai judiciary taking action to do so in early 2015, after yet another coup and another dictatorship, conditions for justice may improve under a future regime.

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¹⁰⁰Sikkink 2011.

¹⁰¹For example, following the end of the civil war between government forces and the FMLN in El Salvador in 1992, an amnesty law was passed that provided blanket protection for human rights violations committed during the years of the conflict. In 2013, the Constitutional Court decided to hear a challenge to the constitutionality of the amnesty, and a decision is currently being awaited. If the law is overturned, it could lead to prosecutions and the court-ordered opening of state records related to the violence during that period. See Washington Office on Latin America 2013.

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