

Innovation of Democracy Reform Model under the Sovereign Governance of Four Balancing Powers in Thailand

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Abstract

Before the Siamese revolution in 1932, the Supreme Council of State was established by H.M. King Prajadhipok (RAMA VII) in 1925 as holistic policy and legislative advisory council of all State affairs in order to well prepare carefully a peaceful transformation from the regime of absolute monarchy into constitutional monarchy. This Siamese monarch heritage of *Dharmaraja governance* has inspired and enlightened the researcher to study in searching for the renaissance of the Supreme Council of State as a new model of democracy reform innovation based upon the *sovereign governance* of balancing four pillars of State powers. Among many countries around the world, Thailand had long been faced with tremendous problems of representative democracy in the application of the British model of Westminster parliamentary system since 1932. As there are today at least four principal models of representative democracy: British parliamentary system, American presidential system, French semi-presidential system, and German applied parliamentary system. The purpose of this research therefore is to find out an innovation of the fifth model called “*Dhrammacracy semi-parliamentary system*”, in which the separation of sovereign powers shall be based on balancing four State powers pillars: *sovereign governance of the Supreme Council of State*, legislative power of the Parliament, executive power of the Government, and judicial power of the Courts. This research applied thus a qualitative research methodology by documentary research and case study research methods for data collection and data analysis leading to the conclusion and recommendations of the research. The results of this research found that the innovation of democracy reform model of “*Dhrammacracy semi-parliamentary system*” shall be applied not only in Thailand, but also in any countries that faced with tremendous problems of majoritarian dictatorship of Parliament after the adoption of British model of Westminster parliamentary system. This research paper is a part of research report entitled “*Thai Democracy Reform under the Framework of Draft Dhrammacracy Constitution*”, with the supporting fund of Research Institute of Rangsit University in Thailand.

Keywords: Innovation Democracy Reform Model Sovereign Governance Four Balancing State Powers

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Introduction

The Supreme Council of State was established by His Majesty King Prajadhipok of Siam (Rama VII) on 28 November 1925 as an advisory and legislative council that existed from 1925 to 1932. The Eton and Sandhurst educated Siamese monarch wished to create a council similar to a cabinet, where the most important government officials could meet to decide on all State affairs. The King Rama VII's heritage of *Dharmaraja governance* during the reign of absolute monarchy has inspired the author to study in researching for the renaissance of the Supreme Council of State as new model of democracy reform innovation based upon the *sovereign governance* of four balancing State powers. Among many countries around the world, Thailand had long been faced with tremendous problems of representative democracy in the application of the British model of Westminster parliamentary system since 1932.

Problems and Objectives of Reserch

1. Research Problems

The problem of parliamentary democracy under the King as Head of State in Thailand was originated from the fusion of powers under the parliamentary system between the legislative power of the parliament, the executive power of the government, and the judicial power of the courts, leading to the regime of parliamentary majoritarian dictatorship that could not truly check and balance among the three State powers. It is necessary therefore to reform the structure of State powers under the semi-parliamentary system based upon the separation of four powers, rather than Montesquieu's separation of three powers doctrine.

2. Research Objectives

This research aims to study the innovation of democracy reform model under the sovereign governance of four balancing State powers in Thailand by comparing four original models of democracy regimes: British Westminster parliamentary system, American presidential system, French semi-presidential system, and German applied parliamentary system, with the research hypothesis is that under the King as sovereign Head of State, the sovereign powers shall be truly separated into four sovereign powers: both the representatives exercising legislative power of the parliament and the prime minister as head of government shall be directly elected from the people, whereas the judicial power of the courts and sovereign power of the Supreme Council of State shall be independent. The last one shall exercise its fourth sovereign governance power as balancing power to supervise the check and balance of the said three powers.

Reserch Methodology

The study is a documentary qualitative research by collecting data of Thai Constitutions and foreign constitutional documents of 5 countries: United Kingdom, United States, France, Germany, and Taiwan; 27 textbooks, thesis and research reports, academic and review articles, from the libraries of Constitutional Court and King Prachadhipok Institute, as well as in-depth interviews of 15 keys informants of constitutional experts. All collected data were studied by content analysis, legal analysis, and comparative analysis with data triangulation techniques.

Reserch Findings

1. The Roles of King Prachadhipok's Supreme Council of State during the Regime of Absolute Monarchy

After only two day of King Prajadhipok's accession to the throne, the Supreme Council of State* was established on Saturday 28 November 1925, composing of 5 members of the Chakri Dynasty's princes who had held ministerial positions during the reigns of King Rama V and Rama VI (King Prajadhipok's father and elder brother) (Chanchai Rattanavibul, 2005: 161). The Councilors were Prince Bhanurangsi Savangwongse (Prince Banubandhu Vongsevoradej), Prince Paripatra Sukhumbhand (Prince of Nakorn Sawan), Prince Narisara Nuvadtivongs, Prince Damrong Rajanubhab, Prince Kitiyakara Voralaksana (Prince of Chanthaburi).

Their integrity and competence were most highly trusted by the King and truly respected by the people that could help King Prajadhipok accomplishing the success of administration in the first period (Chaianant Samutvanich, 1976: 84). Despite the Supreme Council had released the absolute powers exercised by the King at the beginning, the civil servants and the people felt that the exercise of their powers was excessive and more influential over the King (Chongkhachan Suwanmanee, 2011: 1). However, the King did not think that the Supreme Council had exercised their powers over the King, but just only his advisors of State affairs.

During its existence the Supreme Council took many initiatives. For example, in 1929 the Council decided to cut public spending on the government including civil servant's pay and

defense spending, an action which was one of the main justifications the Khana Ratsadon (the People's Party) gave for the Siamese Revolution of 1932. In addition, the Supreme Council filled many civil service and military positions with their own relatives, replacing many commoners appointed under King Vajiravudh (Rama VI), which also created discontent in the country. (Sombat Dhamrongtanyawongse, 2006). After the Great Depression Crisis of 1930, the Council increased taxes on the populace to try to stem the economic downturn the country faced after the British Empire, Siam's largest trading partner, abandoned the gold standard.

The most important action by the Supreme Council was then the rejection of King Prajadhipok's draft Constitution for the Kingdom of Siam in the early 1932, on the 150th anniversary of the House of Chakri and the foundation of Bangkok (Sonthi Taechanand, 2002). The constitution would have given the people their first parliament, with a popularly elected lower house and an expanded Supreme Council as an upper house (Chaowana Traimas, 2003: 393-416). A few months later the Khana Ratsadon staged a coup d'état that ended the absolutist monarchy and replaced it with a constitutional monarchy. The constitution in which they promulgated abrogated the many powers of the monarch and dissolved the Supreme Council (Chaianant Samutvanich, 1976); it exiled the influential Prince Paripatra Sukhumbhand for life.

The Supreme Council of State had played 3 utmost holistic roles as: 1) Monarch's supreme council of all State affairs that exercised indepen-

* The Supreme Council of State was not the only organ of government at the time. The King also had a Privy Council and a Council of Secretaries. However, the Supreme Council was regarded as the most important. Prince Paripatra was the most dominant member of the Supreme Council, since he was then heir to the throne and Minister of the Interior.

dent power, 2) joint duty performance with other State organs cordially or individually, 3) each individual member's performance was assured its independent status (Chanchai Rattanavibul, 2005: 83-168). This model of the Supreme Council shall be therefore applied as innovation of the Supreme Council of State in the present constitutional monarchy of democratic regime in order to reform the sovereign State powers that shall be separated into four powers: legislative power of the parliament, executive power of the government, judicial power of the courts, and sovereign governance power of the Supreme Council of State, which shall be composed of 8 constitutional organs that control and supervise the absolute separation of powers among the first three powers. By this way, the Supreme Council shall act as independent power balancing and reviewing the first three powers not to abuse of power in their power exercise of duty performance in compliance with the rule of law under the constitution. (See details in point 4.4)

2. The Dhrammacracy Principles of Four Balancing State Powers in the Semi-Parliamentary System

Apart from the reformation of King Prajadhipok's Supreme Council of State as innovative sovereign governance model, the Dhrammacracy principles of Buddhadasa Bhikkhu (พุทธทาสภิกขุ) shall be applied for controlling and supervising the exercise of four balancing state powers: sovereign governance power of the Supreme Council of State, legislative power of the parliament, executive power of the government, judicial power of the courts. The Dhrammacracy principles were based on the Buddhist Dharma in which Lord Buddha established three basic categories of sovereignty: *Attadhipateyya* is the supremacy of self and self-dependence; *Lokadhipateyya* is the

supremacy of the world or public opinion; *Dhamadhipateyya* is the supremacy of the Dharma, the law of truth and righteousness, rule of the Dharma, rule of the true law (Phra Brahmaganabhorn, P.A. Payutto, 2010: 107). Dhrammacracy upholds therefore the supremacy of the rule of law and righteousness upon the exercise of four balancing state powers under the semi-parliamentary system. Buddhadasa Bhikkhu concluded that Dharma and politics cannot be separated, if separated the politics shall immediately destroyed the world (Buddhadasa Bhikkhu, 2006), and linked the Dhrammacracy with social democracy based on three principles: principle of common public interests and interdependence, principle of self-control and generosity, and principle of common respect and kindness.

3. Comparative Analysis of Original Models of Democracy Regimes

There are nowadays at least four original models of representative democracy regimes in the world: parliamentary system of the United Kingdom, presidential system of the United States, semi-presidential of France, and applied parliamentary system of Germany, that each country around the world shall applied appropriately within its different political and social contexts (Chaowana Traimas, 2003: 393-414). In 1912, Dr. Sun Yat Sen, father of Chinese revolution, established the Republic of China as the first democracy in Asia for more than hundred years. He had created an innovative democracy model of semi-presidential system under the five powers constitution (Economist Intelligence Unit, 2013). Taiwan had applied his democracy heritage and celebrated the 102th anniversary of five powers constitution last year.

The comparative analysis of four original models of democracy regimes are as follows:

(1) *Parliamentary System* of the United Kingdom applied check and balance mechanism with the fusion of powers between legislative and executive under the supremacy of parliament;

(2) *Presidential System* of the United States applied check and balance mechanism with the separation of powers between legislative and executive under the supremacy of constitution;

(3) *Semi-Presidential System* of France applied check and balance mechanism with the separation of powers between legislative and executive under the supremacy of constitution;

(4) *Applied Parliamentary System* of Germany applied check and balance mechanism with the fusion of powers between legislative and executive under the supremacy of constitution.

Apart from the above four original models, the five powers constitution of the Republic of China (Taiwan) has established an innovation of the democracy regime model. Under the Republic of China's Constitution on 25 December 1947 inspired by Sun Yat Sen's doctrine of democratic governance, the structure of supreme state powers was separated into five powers (yuans): legislative yuan, executive yuan, judicial yuan, examination yuan, and control yuan (Pridi Kasemsap, 1987: 164-167). Professor Dr. Borwonsak Uwanno, Secretary General of King Prajadhipok Institute, analyzed the separation of five powers structure under the Taiwanese constitution that "...all five powers in this constitution are independent authority of governance. If we applied the five powers constitution that each power shall be exercised independently in itself: the executive power exercised by the President, the legislative power by the Parliament, the judicial power by the Courts, and power of corruption suppression in the bureaucracy and examination power of civil servant recruitment were belonged to

independent control yuan and examination yuan..." (Borwonsak Uwanno, 1995: 59)

Taiwan today was governed therefore under the structure of five powers separation, not the separation of three powers according to Montesquieu theory. The President as Head of State was directly elected by the people, shared power of executive yuan with the Prime Minister who headed the executive yuan council (council of ministers). All executive organizations and subordinate departments were under the Prime Minister. The legislative yuan (Parliament) and the control yuan had their powers to check and control the administration of the executive yuan and the Prime Minister. The President as Head of State had the power to appoint and impeach high ranking officials of the executive yuan, judicial yuan, examination yuan and control yuan, as well as mediator of inter-yuans conflicts of powers and special power in case of emergency situation because he was the President of National Security Council.

4. Democracy Reform Mechanism under the Four Sovereign Powers

The Dhrammacracy is a democratic regime established by the legal state under the moral rule of law that upholds the principle of righteousness. In the Dhrammacracy society, the State shall adopt a semi-parliamentary system under the supremacy of the constitution that serves as social contract to regulate the separation of powers into four State powers: sovereign governance, legislative power, executive power, and judicial power. The Supreme Council of State shall be therefore established to exercise the fourth sovereign power as sovereign governance through its independent constitutional organs in order to check and balance the legislative power of the parliament, the executive power of the government, and the

judicial power of the courts.

The democracy in Thailand now has to be reformed its structure of State powers under the Dhrammacracy semi-parliamentary system. The State sovereignty belongs to Thai people. The King as Head of State shall exercise sovereignty through the separation of four powers: through the sovereign governance of the Supreme Council of State, the legislative power of the Parliament, the executive power of the Government and the judicial power of the Courts.

(1) *The State sovereignty* belongs to the Thai people emanated from three basic national institutions: nation, religion and monarchy. The

nation is the origin of Democracy by the people governance; all religion in Thailand is the origin of Dhrammacracy; and the King is the origin of monarchy who reigns, not governs, by royal governance under the constitution as Dharmaraja under *the rule of Dhosapit Rajadhamma*. His Majesty King Bhumibol Adulyadej (Rama IX) declared on his royal coronation ceremony that “I will rule the land *righteously* for the benefit and happiness of the Siamese people” that shall be considered as a recognition and commitment of the King as Head of State to the moral rule of law under the Dhrammacracy governance.

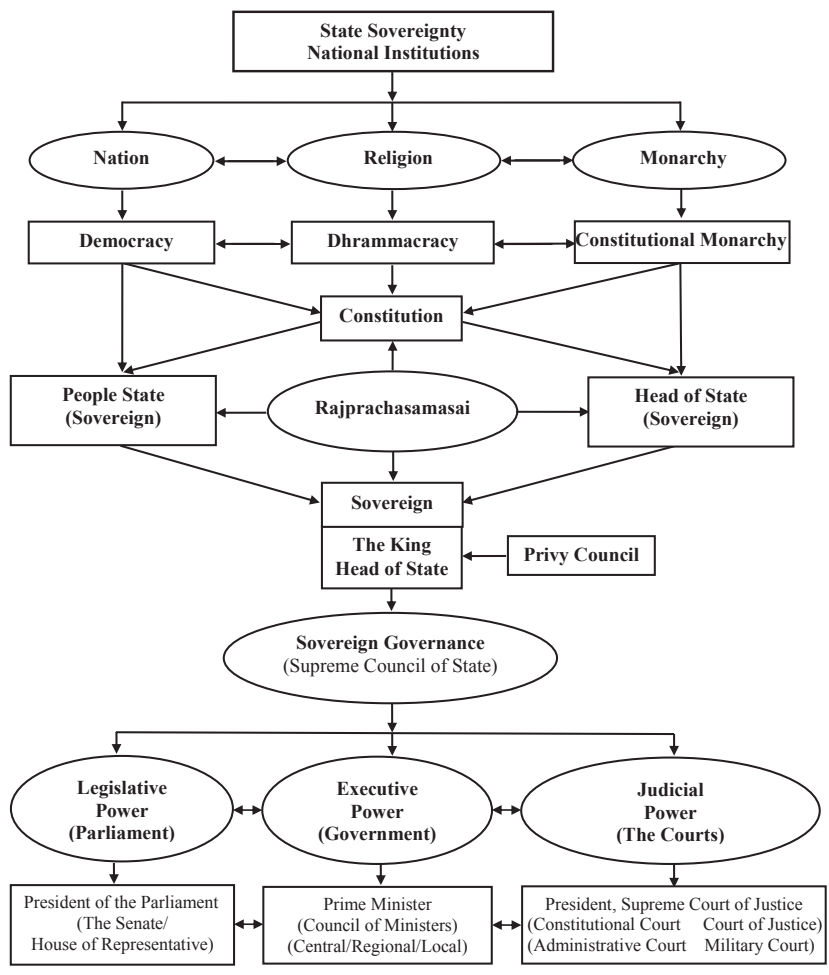


Figure 1 Mechanism of Democracy Reform under the Framework of Four State Powers

(2) *The King* is the Head of State, who is a sovereign, enthroned in the position of revered worship and shall not be violated according to the principle of State immunity. The State sovereignty that originally belongs to the King transcendently handed down to the Thai people by the principle of *rajprachasamasai* (the King and the people interdependent governance of the State affairs) (Pramoj Nakornthap, 2010).

(3) *Political Institutions* are State organs that exercise the four sovereign powers under and on behalf of the King and Thai people: sovereign governance, legislative power, executive power, and judicial power. The King as Head of State shall exercise sovereign governance power through the Supreme Council of State; legislative power through the Parliament; executive power through the Government and the Prime Minister as Head of Government, judicial power to the Courts. All State powers shall be exercised by the four political institutions, as well as all constitutional organs and State agencies. The performance of their respective State organs duties shall be in compliance with the rule of law and the constitution, as shown in above *Figure 1*.

From *Figure 1* the political institution shall exercise four sovereign powers as follows:

(1) *The Supreme Council of State* is the holistic policy of all State affairs and highest national institution, having sovereign governance power to check and balance the exercising of legislative, executive, and judicial powers of the parliament, government, and courts respectively in order to protect the rule of law, democracy, and human rights. With the Royal Command countersigned by President of the Privy Council, the King shall appoint 45 members of the Supreme Council of State deriving from 23 representatives of the Parliament, the Government, the Courts

and all independent constitutional organs in the central administration; and from the 22 representatives of the regional and local administration, as well as President of the Supreme Council of State elected by absolute majority of its attendant members as *Head of Sovereign Governance*. The President of the Supreme Council shall resign from his existing position before appointing by the Royal Command. (See details of the Supreme Council of State in point 6)

(2) *The Parliament* is the highest legislative institution consisting of the Senate and the House of Representatives. With the Royal Command countersigned by President of the Supreme Council of State, the King appoints the President of the Parliament elected by absolute majority of its attendant members in the two houses as *Head of Legislative Power*. Both President of the Senate and House of Representative shall be Vice-Presidents of the Parliament. The Parliament is empowered to enact all legislation and to check and balance the exercising of executive power of the Government and the Prime Minister. All of its members shall not be appointed in the Government and other States organs. At least 1/10 of its parliamentary members shall submit a non-confident motion of general debate against the Prime Minister and the Council of Ministers.

(a) *The Senate* is composed of 250 members of national representation to be directly elected by the people. In the 1st round, 750 candidates shall be directly elected by five groups of public and private associations registered by the Election Commission. In the 2nd round, 750 candidates shall be directly elected at the national constituency by one man one vote of the people. The vote ranking of 1-250 candidates shall be elected as members of the Senate. All the candidates of the Senate election shall not be the members of any political

parties.

(b) *The House of Representatives* are composed of 450 members of citizen representation to be directly elected by the people. The candidate shall or shall not be a member of any political parties. The general election shall run in the provincial constituency by one man one vote of the people. The candidate who gets absolute majority votes shall win in the 1st round. The 2nd round shall be run for the candidate who did not get absolute majority votes in the 1st round.

(3) *The Government* shall be composed of the Prime Minister and Council of Ministers.

(a) *The Prime Ministers*. With the Royal Command countersigned by the President of the Supreme Council of States, the King appoints the Prime Ministers as *Head of Government*, who shall be directly elected at the national constituency by one man one vote of the people. The candidate who gets absolute majority votes shall win in the 1st round. In case of no winner in the 1st round, the first two high-ranking candidates shall be run in the 2nd round in order to get absolute majority vote winner. All candidates for the Prime Minister Election shall not be the members of any political parties. The mandate of the Prime Minister shall be four years with only two terms consecutively. The Prime Minister shall have the power to dissolve the Parliament.

(b) *The Council of Ministers* is composed of the Prime Minister and other 35 ministers who shall be selected by the Prime Minister and shall not be members of the Parliament and any political parties, the Courts, or any independent constitutional organs and others State organs. With the Royal Command countersigned by the Prime Minister, the King appoints all Council of Minister members. The Council of Ministers shall perform with collective responsibility in the administration

of State affairs and shall be voted by non-confident motion of the Parliament.

(4) *The Courts* shall be composed of the Supreme Court of Justice, the High Court of Justice, the Constitutional Court, the Administrative Court, and the Military Court. With the Royal Command countersigned by President of the Supreme Council of State, the King appoints the President of the Supreme Court of Justice, who was elected by absolute majority of general assembly of all five courts members as *Head of Judicial Power* and his mandate shall be four years with only two terms consecutively.

4. The Supreme Council of State under the Four Sovereign Powers

(1) *The Formation of the Supreme Council of State* is the most vital innovation of democracy reform model under the four sovereign powers. The Supreme Council shall exercise its sovereign governance power to act as guardian of rule of law, democracy regime, and human rights as guaranteed by the constitution. By this way, the Supreme Council shall have sovereign governance power to check and balance the exercising of Parliament's legislative power, Government's executive power, and Courts' judicial power, in their duty performance under the rule of law, not to violate the rights and liberties of the people as guaranteed by the constitution.

(2) *The Structure and Composition of the Supreme Council of State*. With the Royal Command countersigned by President of the Privy Council, the King appoints 45 members of the Supreme Council of State deriving from two groups of representation: (1) 23 supreme counselors shall be represented the central administration by 5 members of the Parliament (President of the Parliament, President/Vice President of Senate & House of Representative, Head of Opposition

Party); 5 members of the Government (Prime Minister and 4 Deputy Prime Ministers), 5 members of the Courts (Presidents: Supreme Court of Justice, High Court, Constitutional Court, Administrative Court and Military Court), and 8 members of independent constitutional organs (Presidents of National Security Council, National Economic and Social Council, Election Commission, National Human Rights Commission, Ombudsman, National Counter Corruption Commission, State Audit Commission, and National Public Functionaries Commission. (2) 22 supreme counselors shall be

represented the regional and local administration by 7 Regional Administration Inspectors, and 15 Governors of Provincial Municipality.

(3) *The Power of the Supreme Council of State* shall be derived from the sovereign governance to check and balance the legislative, executive, judicial powers that composes of 4 *general authorities*: election authority, selection authority, examination authority, supervision authority; 2 *special authorities*: balancer authority and mediator authority, as shown in *Figure 2*.

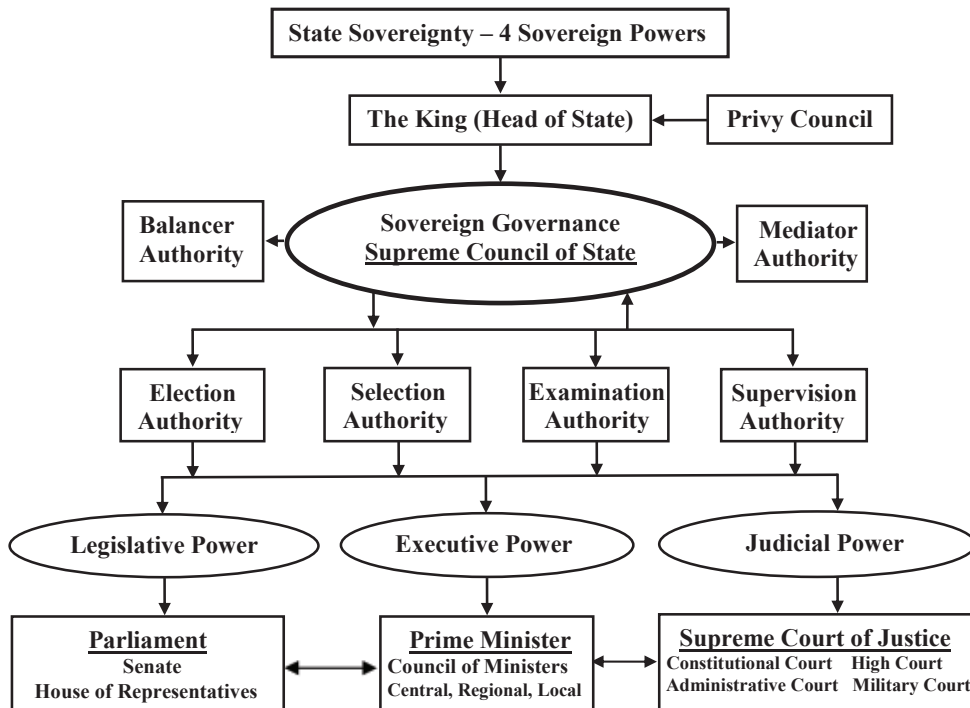


Figure 2 Structure of Power and Authorities of the Supreme Council of State

From the Figure 2, the Supreme Council of State shall exercise its sovereign governance power through 8 independent constitutional organs: election authority for organizing all general and local elections and referendum through the Election Commission; selection authority for recruiting members of 8 independent constitutional organs, through the National Public Functionaries Commission; examination authority for recruiting all public servants and other State officers through the National Public Functionaries Commission; supervision authority for the protection of human rights through the National Human Rights Commission; for the protection of rights and liberties of the people through the Ombudsman; for the prevention and suppression of corruption through the National Counter Corruption Commission and the State Audit Commission; for balancer authority through all independent constitutional organs; and for mediator authority through the National Security Council and the National Economic and Social Council and other constitutional organs concerned. The Supreme Council of State shall thus play important roles and functions in the protection of the rule of law, democracy regime, and human rights, as well as rights and liberties of the people.

Conclusion and Recommendations

From the above analysis of the results of research, the researcher concluded that the establishment of the Supreme Council of State shall be an innovation of the mechanism of State powers structure of democracy reform in Thailand under the *draft Dhrammacracy Constitution* in the near future. The mechanism of four sovereign powers of State shall commence a new peaceful revolution for new democracy in Thailand after

facing with successive political turmoil and constitutional crisis from the Black May Crisis in 1992 until two failures of political reform by the coup d'état of 2006 and 2014. According to the spirit of His Majesty King Prajadhipok (Rama VII) and Professor Dr. Pridi Panomyong, a civilian fraction leader of *Khana Rasadon* (Peoples' Party) and Senior Statesman, the 1932 Siamese Revolution which changed the system of government in Siam from an absolute monarchy to a constitutional monarchy shall establish new regime of complete democracy. However, Thailand had never achieved to implement a true democracy according to the spirit of King Prachadhipok - Pridi Panomyong more than 80 years. The researcher recommends therefore that the innovation of the Supreme Council of State mechanism under the draft Dhrammacracy Constitution shall change Thai political system from an existing parliamentary majoritarian dictatorship to an absolute democracy under constitutional monarchy or the democratic regime of government with the King as Head of State. To this end, we can hope that Thailand shall establish and put an end of struggle for dictatorship power of fake democracy in order to build the *Dhrammacracy society* for the protection of the rule of law, human rights, and absolute true democracy in Thai political system.

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