

6. LECTURES ON ADMINISTRATIVE LAW (1932)

PRELIMINARY MATTERS

1. WHAT ADMINISTRATIVE LAW IS

It is difficult to interpret the phrase "administrative law" with exactness and certainty. However, the title of this course is comprised of two words, "law" and "administrative". So as a guide at this preliminary stage, it should first be understood what these two words mean.

The word "law" can be interpreted in two ways.

First, in a narrow sense, the word law means the commands or orders laid down as laws for people to follow by the person who holds the supreme power in the realm (which depends on what is laid down by the constitution or the customs for ruling the country; for example, in Siam it is the king).

Second, in a broad sense, the word "law" means the principles which people must follow, which they may be forced to follow, and for which, if they refuse, they may be charged with a civil, criminal, or administrative offence. Thus law may be commands or orders which the person with the supreme power in the realm lays down, such as ministerial decrees; or rules enforced by officials; or other principles of conduct, such as customs and general legal principles, which may not be written down but which have the same result when they are infringed.

The Civil and Commercial Code of 1923 has followed the first interpretation, that is, law must be written law. But this code is no longer in force because a new version has come out to replace it. In the new version, there is no direct interpretation of the word, but clause 4 tends towards a broad meaning which is different from textual law. The law which we study here must have the broad meaning since the written law on administration is inadequate, and we must refer also to custom, comparative law, and general legal principles.

The word "administration" or "government" (*kan pokkhrong*) is under-

stood differently by different people. Sometimes it means the business of the Interior Ministry. Sometimes it has a broad meaning as the collective supreme powers of the country.

The dictionary of the Education Ministry interprets the word somewhat neutrally as: protecting, taking care of, looking after, controlling.

This protecting, taking care of, looking after, and controlling may take place among private individuals, or in the family where parents govern children and husband governs wife, or in the protection and care of people who are incapacitated or appear to be. These examples of government are part of civil law which is outside the law we shall study.

When many human beings associate together as a country, they need to protect, take care of, look after, control. The course we shall study here will focus on the administration of human beings who have associated together as a country. The protecting, taking care of, looking after, and controlling which are the elements of this course may be considered a branch of the supreme power in the country.

This supreme power in the country can be divided into three:

1. the power to make laws or the legislative power;
2. the power of enforcing laws or the executive or administrative power;
3. the power to adjudicate laws or the judicial power.

That is, when human beings associate together as a country and agree to have laws to control behaviour, there must be some people with the power to write those laws, to enforce them, to take care that people act in accordance with them, and to adjudicate effectively on problems which arise with the law or its enforcement.

According to French legal theory, the legislative power and the judicial power should be separate from the executive power or administrative power, because if they are combined it may lead to injustice. In other words, those adjudicating are adjudicating on laws which they themselves legislated.

The administration under study here comes within the executive or administrative branch, that is, the power to enforce laws or to adjudicate on laws. Therefore, administrative law may be briefly defined as the principles and rules concerned with the regulations and practices of officials in the executive or administrative branch, and concerned with relations between private individuals and officialdom.

There is another consideration. Administrative law is different from the constitution of the realm. The constitution is a law which lays down rules concerning all the supreme powers in the realm and the general practice of those powers. In other words, constitutional law lays down the general principles of the supreme powers in the country, while administrative law

codifies the regulations and procedures of the executive or administrative powers in detail, and deals with the use of these powers. However, both these laws are branches of public law. Hence in certain matters, they cannot be completely separated (on the division of law into departments, see the teaching text on jurisprudence).

2. WHY ADMINISTRATIVE LAW IS A SEPARATE BRANCH OF LAW

Administrative law is not a separate branch of law in all countries. This is because the significance of administrative law varies among the legal theories of different peoples.

We may divide the major legal theories into four groups as follows:

1. FRENCH LEGAL THEORY
2. GERMAN LEGAL THEORY
3. ANGLO-SAXON LEGAL THEORY
4. JAPANESE LEGAL THEORY

1. FRENCH LEGAL THEORY. This theory wishes to make a definite separation between administrative law and judicial power. As major principles, this theory upholds that a. in any matter concerning government administration, ordinary law cannot apply; that is, the law used must be a special law, because in government there are special principles different from those of ordinary law; b. judicial courts do not have power to adjudicate cases on government administration; that is, such cases must be decided according to the practice of government in order to maintain the independence of governmental power.

2. GERMAN LEGAL THEORY. Administrative law in Germany is developed from the legal theory of *Rechstaat*. The duty of the state is not simply to control and command us like a policeman. The state must act according to laws, which impose principles which the government must follow. These principles give rise to administrative law which is classified as a branch of public law.

3. ANGLO-SAXON LEGAL THEORY. Dicey stated there is no theory of administrative law in Britain. But Goodenough in Columbia University, New York, stated in a book on comparative government that it is not that there is no principle of administrative law, but only that writers of legal texts have not treated it separately.

That may be so. In England there is no administrative court similar to those which under French law decide cases related to government administration.

4. JAPANESE LEGAL THEORY. According to the exposition on the principles of Japanese administrative law by Professor Ota, Japanese administrative law follows the principles of German law.

The major differences between the various theories described above are over the separation of powers, the limitation of administrative power, and the adjudication of cases on administrative issues. The special principles of government, such as the administrative rules concerning the relations between government power and private individuals, exist in all countries, even in Siam in the same way as other countries. We shall see in future study that there are many enactments which lay down the rules of government power, for example with respect to the power to establish various ministries and offices. Also there are laws which regulate the practices of the administration with respect to policing for maintaining peace and order, with respect to activities for the welfare of the people, or with respect to strengthening the economy. In addition, there are also enactments about administrative cases, for instance about appeals against various orders by officials of the legal administrative department. All these matters are not civil, commercial, or other private law. So they must be organized as another branch of law.

3. THE VARIOUS PRINCIPLES OF ADMINISTRATIVE LAW

Administrative law arises because every country has government and so must have this branch of law.

Administrative law may be in the form of written law or unwritten, for instance custom, comparative law, and general legal principles.

Written law is in very widespread use, and we will have a chance to study this in later sections. As for custom, we may refer to it sometimes, but it is difficult to describe completely because it is not written down. As for comparative law, there should be some opportunity to deal with some parts. You should look at the teaching text on jurisprudence.

The other principle of law which we must invoke in the absence of legislative enactments, custom, and comparative law, is general legal principles. These general legal principles refer to the principles of behaviour towards one another which must be followed by human beings who associate together in groups or countries. But the question of how human beings should

behave towards one another in order to associate for common happiness depends on the science of social relations as a tool of analysis. This science has many branches, for instance social science, economics, ethics, religion, public administration, law, and so on. These disciplines should be required for the study of government administration, in the same way that they are necessary for the study of law in general.

Among the general legal principles which are embedded in various disciplines, there is one type which must be understood at the preliminary stage, because it is the most necessary in studying administrative law. That is the principle concerning human rights.

Human beings are born with rights and duties. In order to exist and join together in associations, these rights and duties arise from the ordinary condition of humanity. They can be classified into three:

1. *seriphap (liberté)*
2. *samaphap (égalité)*
3. *phraradoraphap (fraternité)* or helping one another as brothers.

But it must be understood here that these rights and duties are not absolute because they arise from the state of nature (*saphap tham*).

Thus they may be limited by enactments or by the customs of the place and time. These limitations vary across time and across countries. They cannot all be the same. They are dependent on the needs of the country and of the time.

Liberty

Liberty means the rights of people to do anything without compulsion, as long as it does not inconvenience or infringe upon other people.

We may classify liberties as follows:

1. liberty of person
2. liberty of dwelling
3. liberty in making a living
4. liberty of property
5. liberty of religion
6. liberty of association
7. liberty in expression of opinions
8. liberty of education
9. liberty in appealing against hardship

1. Liberty of person. A person should have freedom in one's person to do anything with respect to one's person. There are three important results of liberty of person:

i. A person must be free (*thai*); in Siam at present there are no slaves (*that*) (see the Slavery Act of 1905).

ii. A person cannot be arrested at the will of an official. Arrest must proceed according to the forms and conditions laid down by law (see the teaching text on criminal procedure).

iii. Penalties imposed on those who have committed a crime must follow rules according to the law. The court cannot choose to impose a penalty at will (see criminal law, clause 12). Punishments such as whipping and various tortures no longer exist.

2. Liberty of dwelling. A person should have freedom in the building which is one's dwelling. If anyone enters to intrude, it may be an offence. The criminal law has provisions to control such intrusion. Officials who enter to inspect people and buildings must proceed in accordance with the forms and conditions laid down by law. Otherwise the officials themselves may be wrong in a criminal sense.

3. Liberty in making a living. A person has the right to choose how to make a living. That is, one may choose to make something, to sell in some way, or any kind of occupation. But this liberty has limitations for the benefit of humankind as a whole. For instance:

i. Some occupations are forbidden such as the making of obscene materials, see the Act on the Suppression of the Manufacture, Distribution, and Sale of Obscene Materials of 1928, clauses 3–4.

ii. Those following certain kinds of occupation must have adequate qualifications and must be licensed by government, for instance barristers (see the Act on the Legal Profession of 1914) and doctors (see the Act on the Medical Profession of 1923, amended 1929).

iii. Certain kinds of occupations must proceed within conditions as laid down or must receive concessions, such as railways, irrigation, banks, savings banks, credit foncier, highways, and so on (see the Act on the Control of Trade which Affects the Safety and Well-being of the General Public of 1928, and the Act on Highways under Concessions of 1930).

iv. Some occupations are under government monopoly, for instance the sale of liquor.

4. Liberty of property. A person has the right to use, make profit from, sell, or transfer one's property at will. But this liberty should have limitations for the benefit of other people. See the Civil and Commercial Code, book 4, concerning the domain of ownership rights and the exercise of rights. Because a person has liberty of property, forcing someone to relinquish

ownership rights in property can be done only when there is a public benefit. Even then forced purchase can be carried out only when there is a royal decree, such as the decrees on making roads, railways, irrigation works, or other public services.

5. Liberty of religion. A person may choose to observe a religion or none at all. This principle has been adopted in Siam for a long time. It can be seen that Siam has accepted the status of religions other than Buddhism. For instance there is an act concerning the status of the Roman Catholic church in Siam, which has been promulgated and amended since 1909.

In France at the time of Louis XIV the freedom of people to adhere to Protestantism was taken away. The unfortunate consequence was that those adhering to this religion migrated to other countries which resulted in France losing many important people.

6. Liberty of association. A person is not born to be alone. A person is born to associate together with other people. Therefore a person has liberty of association with other people.

This association in Siam has limitations. Thus we should divide the study of human association into two points.

i. Temporary association for conversation and the expression of opinions, not the establishment of an organization. For instance, ten law students arrange to meet at a certain location on 1 July of this year to discuss legal problems. Associating like this does not amount to an organization. Therefore man should have the liberty to do this, except when the purpose of the association is against the criminal law on robbery and secret societies (*angyi*) (clauses 177–182) or is a basis for fomenting public disorder (clauses 183–184).

ii. Associating to establish an organization. See the Civil and Commercial Code (1274–1297). This means an association with any objective which will be on a continuous basis. Here liberty is limited by legal enactment, that is organizations must be registered, otherwise it is an offence under the criminal law clause 367 (see my teaching text from 1927–29 on the Civil and Commercial Code, book 3, clauses 1012–1297).

7. Liberty in expression of opinions. A person has liberty in one's person, hence a person should have liberty to use one's brain to express one's opinions for public benefit. But this liberty is limited by the criminal law clauses 103–104. In addition, the expression of opinion through books and documents is limited by the Books and Documents Act of 1927.

8. Liberty of education. A person has liberty to choose to study any discipline according to preference, and cannot be forced to study this discipline or not to study that discipline. But this liberty is confined to the choice of study. It does not mean the liberty not to study at all. Education is something of importance for the benefit of a person himself or herself. Hence there is the Elementary Education Act of 1921 to force Thai citizens to study.

People have liberty in the provision of education, but must act within the conditions laid down in the Public Schools Act of 1917.

9. Liberty in appealing against wrongs. When a person is unjustly mistreated by other people, or by officials of any department, that person should have the liberty to appeal against the wrong in order to undo the injustice. This appeal against wrong may be through a case in the courts of justice using the law, or by appeal to someone with high authority, or by appeal to the king (see part 4 of the commentary on administrative cases).

In some countries such as France, there is an administrative court which has the power to decide on administrative cases. In these countries, when people have suffered damage at the hands of an official or department, they have the right to sue. There is only the question whether such cases come under the authority of the courts of justice or the administrative court. Government departments cannot simply deny and refuse to be defendants.

Equality

When a person has liberty as described, that person may use that liberty the same as other people. Equality here means equality before the law, that is, equality in rights and duties. It does not mean equality in material things. For instance, it does not mean that people must have equal amounts of money, which is a genuine misunderstanding. There is no theory which makes such a claim, except by supposition.

Equality before the law may be equality both in rights and in duties or burdens.

i. A person has the right to be covered by the same laws as others, with the exception of special persons such as royalty, the army, or navy who have special laws.

ii. A person has the right to call on the same courts to adjudicate, with the exception of special persons who come under the palace courts, army court, or naval court.

iii. A person has the same right to enter government service when that person has the qualifications laid down by law; see the Civilian Bureaucracy Act of 1928 and Judiciary Act of 1928.

Equality in duties and burdens. Examples of equality in duties and burdens are:

i. The duty to pay tax. On this matter we should recall Rama VI who issued a letter to the minister of the capital of which this is a copy:

No 3/49

15 April 1913

To Chaophraya Yommarat

In past collection of tax on land and shops, the king's treasury has never paid tax to the officials of the revenue department. Now I examine matters and find that all of my property which is private is equivalent to the property of an ordinary person. But why do I have advantage over people in general, which seems not fitting? They collect from other people. But my property is treated differently. When it comes to the time for officials to collect tax, any ordinary person in general who has property as land or shops must pay the tax to the officials according to the amount of property he has. Beyond my official position, I hold that I am an ordinary person. The property which I have is considerable. If the government shares some of the benefit which I have from this property in total, I am totally happy to contribute to the support of the nation and country in the same way as a commoner. Therefore henceforth, Chaophraya Yommarat should collect the tax on land and shops which are counted as my private property in the same way as they are collected from other people in general.

Sayamin

Subsequently in the present reign, an announcement about financial difficulties appeared on 2 June 1932 in the Royal Gazette, volume 49, page 152, with the following passage: "even the king has surrendered his own money which was previously used for personal expenditure, in order to assist the realm in large measure, and has agreed to collection of tax on his property at the same rate as all of the people".

ii. A person has the same duty to enter government service. See the Military Conscription Act of 1917, clause 4, which states that all males who are Thai under the Nationality Act of 1913, clause 3, have the duty to enter military service.

Fraternity

A person is born to be in society as stated. People must help one another. In a country, if one person must suffer wrong, other people must also suffer wrong, either directly or indirectly, either in a small or large measure.

Therefore, having only liberty and equality is not enough for uniting together. People must help one another directly, or they must help by carrying out their duty to the central state which in turn redistributes those contributions to private individuals. Thus mutual assistance as referred to here can be divided up for study as:

- i. the duty of private individuals to the state;
- ii. the duty of the state to private individuals.

The duty of private individuals to the state

The duties of private individuals to the state must be studied with reference to the doctrine practised by each country. For Siam we can see that the important duties of private individuals to the state include:

- i. Private individuals have the duty to respect the family because the family is the foundation of associating together as a country.
- ii. Private individuals have the duty to respect the law, otherwise there will be no freedom, liberty, and equality.
- iii. Private individuals have the duty to make a living which is a way of sharing the burden of bringing about the progress of the country. Idleness and vagrancy may be charged under the criminal law, clause 30, and by the Act to Reform Vagrants of 1909, clause 1.
- iv. Private individuals have the duty to pay taxes (see under equality above).
- v. Private individuals have the duty to enter military service (see under equality above)

The duty of the state to private individuals

Study of the duty of the state to private individuals touches on the important question of what kind of duties the state has to private individuals in return for what the state takes from private individuals. On this matter, experts on politics are not in agreement. There are many theories which we may classify into two views.

According to the first view, the state has the duty to perform only those actions which are necessary to protect and maintain peace and order, for instance, maintaining peace and order within the realm, protecting the realm, and looking after state property. As for economic affairs, development activities, or increasing the well-being of the people, these should be left to free private enterprise case by case. Therefore according to this view, the duty of the state is limited. Any state which upholds this theory has been given the title of a police state (*Etat-Gendarme*).

According to the second view, besides the duties cited under the first

view, the state also has the duty to assist the people to have well-being in economic matters and social affairs. The government must intervene in certain aspects of the economy, or must own and manage them itself. Leaving things to private free enterprise may give rise to conflict, with the final result that whoever has the most power of property will triumph over the poor. People have called states which uphold this theory as welfare states (*Etat-Providence*).

I believe that every day now it can be said that in almost every country, the state has entered into some role in the economy. Whether that role is large or small depends on the preference of that country. Even in Siam it can be seen that there are factories or some types of business which the government runs itself or where it has intervened. Therefore the duty of the state to the private individual should be divided under two types as follows.

- i. Duties which the state must perform as necessity to protect and maintain peace and order.
- ii. Duties which the state must perform to help improve the status, existence, and well-being of the people.

Duties under point i which the state must perform as necessity to protect and maintain peace and order include for example: a. maintaining peace and order within the realm; b. protecting the realm; c. looking after state property.

Duties under point ii which the state must perform to help improve the status, existence, and well-being of the people, can be divided under two major branches.

a. In the economy. Government must help intervene in activities related to the economy, for example: i. Manufacture, meaning the manufacture of articles, or can be called the manufacture of goods, which is related to industry, including the provision or improvement of various things which are factors of manufacture such as labour, land, and capital. ii. Exchange, which means the movement or circulation of economic goods, for instance, transport and trade. iii. Distribution, which means determining the division of economic goods such as fixing salaries or wages between employer and worker, or dividing property ownership in the country, as for example in the royal decree of 1930 on the division of land to people in amphoe Bang Bo and Bang Phli of Samut Prakan province and Bang Pakong of Chachoengsao province. iv. Consumption, which means the usage of economic goods which have been manufactured, whether food or non-food, and saving which is related to economizing on goods.

b. In social matters. In truth social matters may be part of the economy, but some problems concerning man and society should be raised here. Examples of such matters are: i. public health; ii. assistance for the destitute

and incapable; iii. providing employment for citizens; iv. forecasting, such as for pensions for the old and disabled; v. providing for citizens to receive education.

The consequences of infringement of human rights

The human rights cited above are held to be important principles which various officials and offices must respect. Infringement may have the following consequences: i. legal consequences; ii. administrative consequences; iii. moral consequences.

i. Legal consequences. Some human rights are protected by legislation. Those who infringe may be charged, for instance in the matter of liberties of person and dwelling as cited above.

ii. Administrative consequences. Anyone who infringes human rights, if the infringement has not come within the scope of a case in the courts of justice, the person whose rights have been infringed may appeal to the government, as stated above concerning the liberty to appeal against wrongs. If the infringer is an official, there may be an administrative charge such as the charge of indiscipline as stated in the Civilian Administration Act of 1928.

iii. Moral consequences. Any infringement of human rights which is not against the law and which is not known to the administration, still has a moral implication. That is, the infringement may make the person dissatisfied, and if that feeling grows, there may be bad consequences. Alternatively, the person who committed the infringement may become ashamed because what he did was against human rights.

PLAN OF STUDY OF ADMINISTRATIVE LAW

Part 1. Rules of administration

Part 2. Administrative work

Part 3. Country's finances

Part 4. Administrative cases

PART 1. RULES OF ADMINISTRATION

Section 1. General matters

I have stated already in the preliminary remarks that people who associate together as a country must have a government. Before we can study the rules of administration, we should understand first general matters related to the conditions under which people associate together as a country.

1: Country, realm, state (*State-Etat*). When people associate together as a country and have a government to administer them, it is held in international law that this association has the status of a juristic person. This means the association has rights and duties in the same way as an ordinary person, for instance, rights to property, rights to enter into agreements with other countries under the name of the country, and duties to respect international agreements or customs (see my commentary on international law on individual cases, at the law school in 1929–30).

There are several words used for a juristic person of this sort, for instance: country, realm, state. But we still cannot be definite on which word is more correct for the Thai case. Moreover, the thinking about allowing the group of people who have associated together like this to be a juristic person, has only just arisen not long ago.

The words country, realm, and state mean something different from a group of people who have the same extraction (*chua sai*), speak the same language, and have the same customs. In French this is called *nation*, which if a translation into Thai is wanted for the time being, it is the word *chat*. This group of people who have the same extraction may not be a juristic person in international law. For instance, in a state which has many nations together, each nation cannot be a juristic person under international law. For instance before the Great War, Austria-Hungary was combined as one state. The Austrian nation and Hungarian nation still existed but were not counted as juristic persons in international law. In a state which has only one nation of people, the difference between state and nation can hardly arise. For such a state composed of people of one nation, we can say equally that the state is a juristic person or that the nation is a juristic person. But the problem becomes complex when one state combines people of several nations.

The various states in this world have several types, and may be divided for study under several headings.

1: Simple state and complex state

1. Simple state (*Etat simple*) means a state in which the supreme authority both internal and external is combined in one place without division. Examples are Siam, Japan, France.

2. Complex state (*Etat composé*) means a combination of several states where the supreme authority is divided up in some way. We should remark that such complex states may have many types.

a. The head of [several] countries or states is the same person. This means each state has its own supreme authority both internal and external with no subordination of one state to the other, but there is one supreme head of state, for instance, a king. An example is Belgium and

the Congo between 1885 and 1895 when King Leopold II was king of Belgium and of the Congo also, with the Congo not being a dependency of Belgium (but currently the Congo is a dependency of Belgium).

b. External authority combined and internal authority separate. An example is Norway and Sweden before they separated as independent.

c. States which have allied together and entrusted external authority to the alliance between the countries to be exercised in the name of the various countries, but each state is still fully independent (*Confédération des Etats*). An example is Germany before it was established as an empire.

States of this sort are similar to states known as "federated states" but are different in that each state still claims to have external authority but has entrusted it to the central alliance, which is not a central government exercising power on their behalf.

d. Federated states (*Etat fédéral*). Many states which have combined to establish a central government to hold and exercise on their behalf external authority, for instance over foreign affairs, and some internal authority, for instance over military, postal, and so on. As for internal authority, each state has full authority. Current examples are the United States of America and the German Federation.

States with and without full independence

To study states with and without full independence, we may divide states into two types, namely: 1. states with full independence; 2. states without full independence.

1. States with full independence. States of this type are states which can exercise authority both internal and external without heeding the command of another state. For instance, in Asia there are Japan, Siam, China, Persia, and Turkey. There may still be some deference (*kreng chai*) between countries, but when it is not openly apparent that a state must heed the command of another state, then that state can be considered to have full independence.

2. States without full independence. States which do not have full independence may be of many situations, for example:

a. Protectorate. Such a state is still a juristic person but authority both internal and external for the most part falls to the state which is the protector, for instance Cambodia which is under the protection of France.

In addition it should be noted that the state which falls under a protectorate is different from a territory which is a direct colony of any one country. The protectorate still has the status as a juristic person, but a territory which is a direct colony has lost that status.

b. States which have to send tribute to another state. There were many such states in Asia in old times, and currently there are still some in Europe such as Andorra which is between Spain and France and which has to pay tribute to France.

c. States whose external authority has fallen under another state, where some external authority is still managed independently, and where there is full internal authority. This refers to states which are called *dominions* within the British Empire. Examples of these states are Canada, South Africa, Australia, and New Zealand. It can be seen that these states may exercise external authority in some ways, such as by being members of the League of Nations.

d. States which are mandated territories of the League of Nations. States which formerly were subject to Germany or Turkey were placed by the Allies under the League of Nations after the Great War, and the League entrusted the management to certain countries on its behalf. The mandate of the League of Nations has three types (see my exposition in *Nangsu bot bandit* [Graduate text], volume 6, part 4, November 1930).

Apart from those above, there may be other examples of states without full independence which should be studied in detail in the international law on state affairs.

Section 2. State

It is understood that people associating together as a country have the status as a juristic person. But a juristic person in itself is not in a position to do anything. There must be persons or groups of people to manage. These persons or groups are called government. Like an association which is a juristic person, a country must have a committee to manage the association (see the Civil and Commercial Code, clauses 1274–1297).

The classification of governments into various types must be carried out in accordance with the meaning of government itself. This in turn depends on whether government is studied in a broad or narrow sense, or according to the meaning in economics.

1. *Government in the broad sense.* In a broad sense, government is persons or groups who have been entrusted to wield all three forms of the supreme power of the country, that is, legislative, executive, judicial. In this broad meaning, we may divide governments into four types:

i. governments where the people wield the supreme power directly themselves;

ii. governments where the people wield the supreme power through representatives who cannot be removed until the end of their term of appointment;

iii. governments where the people wield the supreme power through representatives which the people can remove at will;

iv. governments where the king has full power to wield the supreme power of the state.

i. Governments where the people wield the supreme power directly themselves. This form of administration may exist in small countries with few citizens. But in large countries, the people cannot conveniently wield authority themselves in all forms. Nevertheless, in the Roman era at the time Rome was newly built, the number of citizens was still small. The people wielded the supreme authority directly but only in legislation. That is, they gathered to pass resolutions on laws to be enacted. As for other forms of supreme authority such as enforcing the law or the executive power, and adjudicating on law, which are day-to-day matters, they had to be entrusted to people or groups which had been elected, and which acted as representatives. If the people had done everything directly, they would have had no time for making a living. But legislation is not something which has to be done every day. Hence the people are able to wield that supreme power directly.

Currently in Switzerland, some legislation has to be approved by the people, such as any amendment to the constitution. For other laws, if just thirty thousand people or eight cantons make a petition, the law must be submitted to the people to take a vote.

In the German empire, the president has the power to submit a law to the people to take a vote.

But Switzerland and Germany should be seen as a combination of the first type and the second type which is described next.

ii. Governments where the people wield the supreme power through representatives who cannot be removed until the end of their term of appointment. In this form of administration, representatives are appointed to wield power and these representatives hold the post for a term which is fixed. The people cannot remove them. This method is very widespread in the world such as in Britain, France, and Japan.

iii. Governments where the people wield the supreme power through representatives which the people can remove at will. In this form of administration, people appoint representatives to wield power on their behalf, but in certain instances the people may withdraw that power, for instance, by proroguing the Assembly by a resolution of the people in Switzerland, or removing representatives in the USA. In this type of administration, the people have not entrusted power to the

representatives absolutely. In the German empire currently, some laws have to be approved by a vote of the people. For instance the president has the power to submit a law which has been passed by the National Assembly but not yet promulgated to the people for vote (see the constitution of the German empire, clause 73).

iv. Governments where the king has full power to wield the supreme power of the state. An example of administration by this method is the administration of Siam, which will be studied further in future.

2. *Government in the narrow sense.* When referred to in the narrow sense, government means the persons or groups who have been entrusted to wield the supreme authority in the executive form, sometimes together with the judicial power also, but not the power to legislate laws. Therefore to classify governments into types according to the narrow sense used here, we have to look at what sort of person is the head of state holding the executive power. If it is any person other than a king, then it is called a republican government.

1. Monarchic government. According to this theory, the role of head of state with executive power falls to one person who is called the monarch or king, and this power is passed down by inheritance to members of the royal family in the same dynasty.

Monarchic government can be divided into five types.

i. Monarchic government with unlimited power, as is called in common language, government in which the king is above the law. In this type of government the king has power to do anything without limitation, such as in the government of Siam.

ii. Monarchic government with limited power, in which the king has no powers in ruling the realm except the power to preside over ceremonies, the power to affix his signature on various legal enactments, and the power to allow his name to be cited in various matters where the king does not wield power himself. The true executive power resides with the cabinet of ministers, such as in Britain. Because the king cannot do anything himself, there is an English saying that the king can do no wrong which can be expressed in another way as, when the king cannot do anything, he cannot do anything wrong.

iii. Monarchic government with specific limitations on the power of the king, but with the chief minister having almost full power in executive matters, except having to consult the national assembly in

some cases. An example is the administration in Italy at present (see the Italian law dated 24 December 1925 concerning the duties and privileges of the head of government who is the chief minister and secretary of state).

iv. Monarchic government in which the king has power together with the chief minister who is from the military. An example is the government of Spain at the time of General De Rivera. The chief minister had the power to propose decrees to the king which immediately had the effect of law once they had received the royal approval (see the royal decree of the king of Spain dated 15 September 1923). But this system has already come to an end.

v. Monarchic government in which the king has power to act on his own, must consult the council of ministers on some affairs, but has no need to consult a parliament. Royal decrees must have the signature of the chief minister, the justice minister, and the minister with the duty of implementation. This is a safeguard on the king's use of power. An example is the administration of Yugoslavia by the law dated 9 January 1929, but this system has already been revoked.

(Teaching ends here. From here onwards see the lectures of Phra Sarasatpraphan who will teach in my place.)