

The Lao Constitution of 1947/1949: Creating a Nation-State

MARTIN STUART-FOX

INTRODUCTION

PRIOR TO THE first Lao Constitution (drafted in 1947, ultimately promulgated in 1949), Laos as constituted within its present boundaries did not exist as a unitary and integrated political entity. As a French possession, Laos comprised two separate components: the protectorate of the Kingdom of Luang Prabang in the north, where French officials advised the royal administration, and provinces in the centre and south directly administered from the French colonial capital of Vientiane. In practice, France controlled the entire territory, but under quite different legal mandates. This anomalous situation was only resolved in the aftermath of the Second World War when French jurisdiction was re-imposed following the Japanese surrender. The solution, contrived by the French, but subsequently endorsed by the Lao people, was embodied in the 1947–1949 Constitution. In a very real sense, therefore, this first Constitution created the modern nation-state of Laos.

I. THE HISTORICAL CONTEXT

The Lao Kingdom of Lan Xang was founded in the mid-fourteenth century with Xiang Dong Xiang Thong (now Luang Prabang) as its royal capital. In 1560, for reasons both strategic and administrative, the capital was moved to Viang Chan, the City of Sandalwood, or as the French later called it: Vientiane. By this time, Lao settlers had spread over most of the basin of the middle Mekong, and Lan Xang was a powerful player in the politics of mainland Southeast Asia, its geographic frontiers defined by the watersheds of the basin to the east with Vietnam and to the west with Siam. Its apogee came in the seventeenth century,

when the first European missionaries and merchants arrived, leaving awed accounts of the kingdom's power and wealth.¹

What shifted the balance of advantage in mainland Southeast Asia was maritime trade, with both China and Europe, from which Lan Xang, as a landlocked kingdom, was excluded. But the nail in the coffin of Lao decline was provided by the bitter succession dispute that followed the death of King Surinavongsa. The outcome by 1713 was the division of Lan Xang into three separate kingdoms centred on Luang Prabang in the north, Viang Chan in the centre, and Champasak in the south. Within a century each had been forced to acknowledge Siamese suzerainty. Lao kings paid tribute to Bangkok, in return for which they were allowed to administer their respective territories.

The nadir of Lao fortunes came in 1827 when Chao Anuvong, the last king of Viang Chan, attempted to throw off the Siamese yoke and re-establish Lao independence. He was supported by his son, whom Bangkok had recently appointed King of Champasak, but not by the King of Luang Prabang. The Siamese response was immediate and brutal. The Lao armies were defeated and Viang Chan destroyed. Tens of thousands of Lao families were forcibly resettled in what is now northeast Thailand.² In Luang Prabang the royal line continued; in Champasak a new king was appointed, loyal to Bangkok; but in both kingdoms real power lay with two Siamese 'commissioners'. Meanwhile Viang Chan ceased to exist as a political entity, its territory disaggregated into small 'fiefdoms' (*meuang*) paying tribute to either Bangkok or Hue, or like Luang Prabang, to both.

This was the situation when the French arrived towards the end of the nineteenth century. France made little secret of its interest in Lao territories east of the Mekong, which it sought to acquire in order to 'round out' its Indochinese empire. In 1887, under an agreement with Bangkok, the first French consul was appointed to Luang Prabang. Six years later, as French gunboats blockaded Bangkok, the Siamese were persuaded to surrender jurisdiction over all territories east of the Mekong to France.³

By this time the French were well aware that the Kingdom of Lan Xang had once included all the basin of the middle Mekong, including almost the entire Khorat Plateau (now northeast Thailand), which imperialists in Saigon and Paris argued strenuously France should proceed to annex. In the event, however, treaties between France and Siam in 1904 and 1907 added only two territories west of the Mekong,⁴ comprising the province of Xainyaburi in the north and a small

¹ Martin Stuart-Fox, *The Lao Kingdom of Lan Xang: Rise and Decline* (Bangkok: White Lotus Press, 1998).

² Mayoury and Pheuiphaph Ngaosyvathn, *Paths to Conflagration: Fifty Years of Diplomacy and Warfare in Laos, Thailand and Vietnam, 1778–1828* (Ithaca: Cornell University Press, 1998).

³ Martin Stuart-Fox, *A History of Laos* (Cambridge: Cambridge University Press, 1997).

⁴ L de Reinach, *Recueil des traités conclus par la France en Extrême-Orient* (E Laroux, 1902–1907, Tome 2).

area in the south taking in the former royal capital of Champasak. Had the imperialist lobby been successful, the boundaries of the Lao state would today have been very different. But with storm clouds of war gathering in Europe, Paris lost interest in expanding its remote protectorate of Laos.

II. FRENCH LAOS

The French Indochinese empire consisted of a federation of five 'countries' (*pays*) – the colony of Cochinchina and the protectorates of Annam and Tonkin together comprising Vietnam, plus the protectorates of Cambodia, and Laos – all presided over by a Governor-General resident in Hanoi. Laos was the last *pays* to be included, when in 1899 the decision was taken to establish Vientiane as the French administrative capital and to appoint a *Résident Supérieur*. Laos was divided into eleven provinces, each governed by a French *Résident*, plus the protectorate of Luang Prabang, where a French Commissioner advised the King.

A single French administration did little to overcome Lao regionalism. While all Lao acknowledged a common heritage in Lan Xang, the two centuries that had elapsed since its demise had fostered strong regional loyalties, especially in the south. The acquisition of the town of Champasak and surrounding territory by France in 1904 left much of the former kingdom in Siamese hands, though the king elected to become a French subject. Rather than create another royal enclave, however, the French allowed Chao Nhousy to retain the title of 'prince' and named him Governor of the province of Champasak – a move that did nothing to diminish his royal status in the eyes of his erstwhile subjects.⁵

The anomalous dual legal status of Laos was never resolved by the French. The 'special protectorate' status of Luang Prabang was confirmed in 1917 but the kingdom remained under threat of direct administration. In 1930 the French Legislative Council moved to rescind the protectorate, reduce Luang Prabang to a province, and directly administer the whole of Laos. So strenuous were the objections of King Sisavangvong, however, that the following year the decision was rescinded.⁶ But regaining his kingdom did little to enhance his standing or influence elsewhere in the country: during the period of French colonisation the Luang Prabang monarchy never provided a symbol of Lao unity.

Within a decade the situation in Indochina had radically changed. France was not just at war, it was left defeated and diminished. French authorities in Indochina declared loyalty to the Vichy regime, and signed a modus vivendi with Japan. This did not, however, prevent Thailand from taking advantage of French

⁵P Lintingre, 'Permanence d'une structure monarchique en Asie: le royaume de Champassak' (1972) 216 *Outre-Mers: Revue d'histoire* 411–431.

⁶F Iché, *Le Statut Politique et International du Laos Français: sa condition juridique dans le communauté du droit des gens* (Rousseau, 1935).

weakness to launch an irredentist border war to recover former territories in both Laos and Cambodia previously ceded to France. Under the terms of the Treaty of Tokyo brokered by Japan, Laos lost all territories west of the Mekong.⁷

The loss was felt particularly in Luang Prabang, as the royal teak forests of Xainyaburi reverted to Thai control. In compensation, France extended the kingdom to include all of northern Laos down almost to Vientiane, while formalising its separate status as a French protectorate. But the damage had been done. The aura of France as the invincible protector of Laos from its powerful and avaricious neighbours had been shattered. Nationalist sentiments, rare in Laos before 1940, began to be openly discussed.

III. THE AFTERMATH OF WAR

On 9 March 1945 Japanese forces throughout Indochina, fearing that the French administration was about to switch allegiance from Vichy to General de Gaulle's Free French, carried out a coordinated *coup de force*. French forces were disarmed and French nationals interned. Resistance was limited, and easily suppressed. Only in Laos were some French troops able to withdraw to jungle hideouts, where they were supplied by loyal Lao supporters. This allowed the French to retain residual influence, even though under Japanese duress, in Luang Prabang King Sisavangvong issued a formal declaration of Lao independence.

In the power vacuum created by the Japanese interregnum, various Lao nationalist groups began to form, modelled on anti-Japanese resistance movements in either Vietnam or Thailand. With the sudden Japanese surrender on 15 August 1945, these coalesced to form the Lao Issara, or Free Lao. Its leader was Prince Phetsarath Rattanavongsa, hereditary *uparat* ('deputy king') of Luang Prabang, formerly the highest-ranking Lao official in the French administration, and since 1941, Chief Minister of the Royal government of Luang Prabang.

In the month that followed events moved quickly. In Luang Prabang, the King welcomed back the French in the person of Colonel Hans Imfeld, Commissioner *ad interim*, and abrogated his declaration of independence. In Champasak Prince Boun Oum, son of Chao Nhouy, also reiterated his allegiance to France. In the central Mekong towns, Free Lao forces backed by local Vietnamese seized power; while in Vientiane Prince Phetharath not only reaffirmed Lao independence, but also proclaimed the unification of Luang Prabang and the southern provinces, thus creating for the first time a single Lao political entity.⁸

As the French gathered their forces in the south, Phetsarath sought royal approval for his actions. On French advice, the King responded by relieving

⁷ *Conventions et Traités entre la France et le Siam relatifs au Laos (1983–1947)*, (1988) 16–17 *Péninsule* 115–138.

⁸ For a more detailed narrative of these events, see Stuart-Fox, *A History of Laos* (n 3).

Phetsarath of his official position and titles. The Lao Issara thereupon appointed a provisional National Assembly, which first named a government of eight ministers, led by the Governor of Vientiane, Khammao Vilai, then deposed the King and proclaimed a provisional Constitution.⁹ Though Phetsarath held no official position in the Lao Issara government, his was the guiding hand.

Dialogue over differences between the Lao Issara government in Vientiane, the court in Luang Prabang, and French authorities represented by Colonel Imfeld, dragged on into 1946. By the end of January, however, it was clear that France, intent on re-establishing its Indochinese empire, had no intention of negotiating the independence of Laos with the Lao Issara. In March French forces pushed north from Pakse. Savannakhet was abandoned, but Free Lao forces made a brief stand in Thakhek. Within two days it was all over, and the French resumed their advance. In response, almost the entire Lao Issara government and administration crossed the Mekong to exile in Thailand. On 24 April French troops marched into Vientiane.¹⁰

IV. UNIFYING THE KINGDOM

The primary goal for the French in regaining control of the Lao capital and central provinces was to reconstruct French Indochina, both territorially and administratively. The former was achieved in November 1946 at the Washington Conference, when Thailand was obliged to hand back those parts of Laos and Cambodia it had acquired in 1941. The latter took the form of a new Indochinese Federation to be included within the French Union, as the French colonial empire reconstituted by General de Gaulle was henceforth known.

To include Laos in the Indochinese Federation, however, ran counter to the nationalist appeal of the Lao Issara, which rested on the twin foundations of unification and independence. The French had no intention of facilitating Lao independence, though they did realise they would have to go some way towards meeting the expectations of the Francophile elite for a greater say over internal affairs. Unification, by contrast, was something the French could endorse to undercut the revolutionary appeal of the Lao Issara; and the obvious way to achieve it was for the King of Luang Prabang to become King of Laos. But before they could engineer this they had first to solve the 'southern problem'.¹¹

⁹ This provisional Lao Issara constitution combined French and Thai elements, but had no legal standing as it never received royal assent.

¹⁰ In the intervening month, the provisional National Assembly reinstated King Sisavangvong as constitutional monarch of all Laos, in return for royal recognition of the legitimacy of the Lao Issara government in the absence of France, and of its Constitution as an interim measure, a compromise that freed the Lao Issara from the taint of treason.

¹¹ Outlined at the time by Charles-Henri Duparc in 'Le problème politique laotien' (1947) *5 Politique Étrangère* 529–556.

At the heart of the problem was the different treatment of the kings of Luang Prabang and Champasak. Chao Nhousy had not only been King of Champasak: he was also the last direct descendant of the rulers of Viang Chan. His son, Prince Boun Oum, thus had as much right to be proclaimed King of Laos as did the King of Luang Prabang, and perhaps greater support insofar as he represented the more populous centre and south of the country.

What shifted the balance in favour of Luang Prabang was the fact that in southern Laos the Japanese surrendered to British forces, who quickly handed control over to the French; while in the north, French influence was contained by a Nationalist Chinese army of occupation that favoured Lao independence. Moreover, even the Lao Issara government had sought legitimacy by proclaiming allegiance to King Sisavangvong. And finally Prince Phetsarath, the de facto leader of the Lao Issara, was a cousin of the King. So despite the King's fidelity to France, the royal family of Luang Prabang became a symbol for those seeking greater Lao independence.

But while there was widespread support in the north for the King of Luang Prabang to become the King of Laos, the south was more ambivalent. If the matter were treated as a *fait accompli*, the French feared they might lose support in the south. Some form of plebiscite would be necessary to test 'the will of the people'. In the meantime, the newly appointed French Commissioner, M Jean de Raymond, obtained the cooperation of Prince Boun Oum, who in return for the position of Inspector-General of the Kingdom for life, and third in royal status after the King and Crown Prince, agreed to renounce any claim to the throne. A secret protocol to this effect was duly drawn up and signed.

V. THE MODUS VIVENDI OF 1946

The first step in the constitutional process to establish the Kingdom of Laos was to convene a joint Franco-Lao Commission with the task of setting out interim Lao rights and responsibilities within the new Indochinese Federation. This met on 8 July 1946, jointly chaired by Crown Prince Savang Vatthana representing the King and by Commissioner de Raymond for France.

When the Commission's deliberations were published on 27 August in the form of a *modus vivendi*,¹² it was immediately clear that French interests had prevailed, and that the future Kingdom of Laos would remain firmly under French control. For while the preamble reiterated the status of Laos as a unified kingdom, presided over by a constitutional monarch, and with the right to form a government, elect a parliament, and determine its own constitution and electoral law, the body of the text carried a different message.

¹² See 'Text of the Agreement between France and Laos arranging a provisional Modus Vivendi – Vientiane, 27th August 1947' (1947) 149 *British and Foreign State Papers* 615–622 (in French).

The *Résident Supérieur* was renamed Commissioner of the French Republic in Laos,¹³ while the *résident* of each province was replaced by an advisory ‘counsellor’. But these were little more than cosmetic name changes; the powers exercised by France remained virtually unchanged. Core provisions laid out the division of services between French and Lao, and the relationship between French advisors and Lao officials. But the French had the final say.

In fact under the modus vivendi, the French Commissioner enjoyed greater power than the King. He was responsible for the maintenance of public order with command not just of French forces stationed in Laos, but also, if necessary, of the newly created Lao National Guard. He was also in charge of all federal services, and appointed all French officials working in Laos. While officially the King’s chief advisor, he could demand an audience at any time and could veto any Lao legislation. Likewise at all levels of the administration, in provinces and ministries, Lao officials were required to seek the advice of their French ‘counsellors’ before making any expenditure or taking any decision.

As for the division of services, only ‘Lao justice’, prisons and police, primary education, health, small-scale public works, agriculture, sport and the arts were placed under Lao authority (in consultation with French advisors). Finance, customs and immigration, defence and foreign relations, higher education, postal services and communications, and large-scale public works all remained federal matters, and so under French control. No wonder the agreement was denounced by the Lao Issara government-in-exile in Bangkok.

VI. THE PROVISIONAL GOVERNMENT AND CONSTITUENT ASSEMBLY

The next step towards unification and a degree of independence came with the appointment of a Provisional government, whose primary task was to decide on procedures for the election of a Constituent Assembly to draw up a Constitution for the kingdom. To head the provisional government, the King turned to Prince Souvannarath, a younger half-brother of Prince Phetsarath. Souvannarath had been a minister in the former Royal government of Luang Prabang, as had several other members named. Two new portfolios were created, covering national economy and national education, both of which also went to members of aristocratic families from Luang Prabang. Not one appointment went to a southerner.

So as Nhousy Abhay, scion of a prominent aristocratic southern family pointedly asked: ‘What therefore of the promises of equality [between regions] and the [principle of] appointment of ministers and high officials on the sole basis of merit, to the exclusion of all considerations of origin or birth?’¹⁴ The real

¹³ Commissioner de Raymond was responsible in turn to the French High Commissioner for Indochina in Saigon, which had replaced Hanoi as the capital of the Indochinese Federation.

¹⁴ Quoted in Duparc, 546.

surprise, however, was not that the King had appointed only northerners, but that the French had allowed this imbalance in the first government purporting to represent the whole of Laos.

On 15 December 1946 elections were held for a 44-member Constituent Assembly on the basis of male suffrage (excluding Buddhist monks, members of the royal family, and the military). The level of education required to stand for election ensured that successful candidates were for the most part members of leading families or senior civil servants. Candidates from the south were required to declare their support for the unification of Laos under the auspices of the Luang Prabang monarchy, on the assurance that this was what Prince Boun Oum (then overseas) and their French masters had agreed upon.

The purpose of the Constituent Assembly was first to ratify the unification of Laos, and then to draft a Constitution. Its inaugural session was held in Vientiane on 15 March 1947, and was addressed by members of the government, most of them royal princes. The outcome was never in doubt. The Assembly unanimously agreed that King Sisavangvong should become King of Laos, and appointed a Commission of its members to draw up a Constitution for the new kingdom.

The members of the Commission were guided at all times by French advisors.¹⁵ In fact the text was first written in French, and then translated into Lao. Unsurprisingly, the outcome of its deliberations was a Constitution embodying similar democratic values and institutions to those enshrined in the Constitution establishing the French Fourth Republic the previous year. The text was accepted by the King, and promulgated by royal decree on 11 May 1947.¹⁶

This was not, however, the end of the process. While it was quite acceptable for a Lao Buddhist King to bestow a form of governance on his subjects, for the French, constituent power derived not from a monarch, but from the people. So as per the terms of the Constitution, elections on the basis of universal suffrage were held on 24 August for 35 deputies to a new National Assembly. All candidates ran as independents, not under the banner of any political group. In its inaugural session, the Assembly's first task was to ratify the King's nomination of Prince Souvannarath as Prime Minister along with his cabinet, which thereupon took office as the first Royal Lao government.¹⁷

¹⁵ The senior French adviser to the Constituent Assembly who guided the drafting of the Constitution between 15 March and 10 May 1947 was Pierre Marie Louis Lebel de Girard de Chateauvieux. Philippe Preschez, 'Le Laos depuis 1941: État des travaux' (1966) 16 *Revue française de science politique* 588. See also <http://anom.archivesnationales.culture.gouv.fr/ark:/61561/hj998wrx-wre.num=20.geogname=Ban+Na+Phao+%28Laos%29.geogname=Cammon+%28Laos%29.geogname=Thakhek+%28Laos%29.geogname=Laos.form=complex>.

¹⁶ An English translation of the text is provided in Amos J Peaslee, *Constitutions of Nations*, 2 ed, vol II (The Hague: Martinus Nijhoff, 1956) 564–569. Not all English translations in this article are taken from Peaslee: some are by the author from the original French (see n 17).

¹⁷ In his speech, the king committed Laos to membership of the French Union, implicitly conceding continued French control over the country's external affairs and defence. Geoffrey C Gunn, *Political Struggles in Laos (1930–1954)* (Bangkok: Editions Duang Kamol, 1988) 177–178.

The second task of the National Assembly was to nominate three members of the nine-member King's Council, to join the six appointed by the King. The task of the King's Council, as set out in the 1947 Constitution, was to act as a house of review to examine laws passed by the National Assembly, and to advise the King on their purpose and implications. The first task of the appointed Council, however, was to combine with the elected National Assembly to form a Constitutional Congress, which met intermittently between 16 August 1948 and 30 April 1949 to deliberate upon and very slightly modify the 1947 text.¹⁸ Formal adoption of the new text by the Constitutional Congress at its final sitting certified the Constitution as the expression of the will of the Lao people, and it was as such that it was definitively promulgated by the King on 14 September 1949.¹⁹

VII. THE 1947–1949 CONSTITUTION

Because promulgation of the Constitution in 1949 marked the completion of the process of drafting and popularly ratifying the Constitution, and because the two texts are all but identical, the first Lao Constitution is best referred to not as the 1947 Constitution, but as the 1947–1949 Constitution. The text consists of a preamble and 44 articles divided into seven sections dealing with general principles, the role of the King, the Council of Ministers (government), the National Assembly, the King's Council, the administrative and financial organisation of the kingdom, and final matters (on constitutional amendment and interpretation).

Even a cursory reading of the text reveals that its guiding principles and values were those of French democracy: it contains little that derived from traditional Lao forms of governance and legitimisation.²⁰ The debt to France is particularly evident in the preamble and the general principles enshrined in the opening section. Though the powers of the King were considerable, he was a constitutional monarch, for national sovereignty resided in 'the Lao people' (Article 3): the King exercised sovereignty only in accordance with the provisions of the Constitution. Admittedly the King did have the power to dissolve the National Assembly, but new elections had to be held within 90 days (Article 33). And while the King's Council acted as a house of review, its objections could be overridden by a vote of two thirds of the popularly elected National Assembly (Article 30).

¹⁸ The only differences occur in Arts 25 and 31. Art 25 changed the starting date for the annual three-month session of the National Assembly from February to October; while in Art 31 on the powers assigned to the Secretariat of the National Assembly to act on its behalf when the Assembly was not in session, an unnecessary reference to Art 13 was omitted.

¹⁹ The French text is available online at <http://mjp.univ-perp.fr/constit/la1949.htm>.

²⁰ See Martin Stuart-Fox, 'Marxism and Theravada Buddhism: The Legitimation of Political Authority in Laos' (1983) 56 *Pacific Affairs* 428–454.

French influence is evident too in the balance achieved between democratic principles and royal prerogatives. In framing the Constitution French advisors were well aware of the need to counter the continuing nationalist appeal of the Lao Issara government-in-exile in Bangkok, whose members included some of the most respected names in Laos. Because of his previous position as Inspector of Political and Administrative Affairs, the most senior Lao civil servant, Prince Phetsarath, de facto leader of the Lao Issara, was better known through most of the country than was King Sisavangvong. Indeed, Phetsarath was widely believed among the peasantry to possess semi-divine powers.

The Constitution had thus to go some way towards meeting moderate nationalist demands, but in a way that transferred only limited powers to the hands of a Francophile political elite educated to believe that Laos was too weak to ward off powerful neighbours without continuing French protection. Other considerations were the debt the French owed the King, and Crown Prince Savangvatthana, for their loyalty during the difficult years of 1945 and 1946; and the need for a respected head of state. Both could be covered by reinforcing the status of the Luang Prabang monarchy and making it the focus of national unity – thereby also ensuring a conduit for continuing French influence.

Constitutional unification not only resolved the legal anomaly of the dual protectorate, it also met one of the two key demands of the Lao Issara, so opening the way for moderate members in exile in Thailand to begin indirect communication with French authorities to sound out possibilities for amnesty in order to return to take part in the political process. In the meantime, a trickle of Lao Issara supporters who had fled the French invasion began returning to Laos.

Such political considerations gained importance after 19 December 1946 when war broke out in Vietnam between the communist Vietminh led by Ho Chi Minh and French forces of occupation. The Vietminh served as a magnet for extreme nationalists and the French were desperate to prevent fighting spilling over into Laos and Cambodia. In both countries, therefore, they set out to reinforce traditional monarchical institutions, while at the same time instituting democratic frameworks which would both allow moderate nationalists to pursue their ultimate goal of independence through political means, and permit them at the same time to manage some of their country's internal affairs.²¹

For France, full independence for Laos was out of the question since this would undermine the Indochinese Federation Paris was intent on creating. So even though the preamble of the constitution declared that Laos was 'an independent state', it also confirmed that it was a member of the French Union.

²¹ Though as the French High Commissioner reminded Lao deputies in his address at the end of the first session of the National Assembly on 25 March 1948, legislative and executive powers should not be conflated. Arthur Dommen, *Conflict in Laos: The Politics of Neutralization* (New York: Praeger, 1964) 34.

There was no reference in the Constitution to the Indochinese Federation, but as everyone was aware who had read the terms of the Franco-Lao modus vivendi, inclusion within the Federation constituted a continuing restriction on Lao independence.

Unification, by contrast, could be delivered immediately and in full. It was proclaimed in both the first paragraph of the preamble, and in Article 1 of the Constitution itself, which declared Laos to be a 'unitary, indivisible and democratic Kingdom'. The preamble went on to affirm the loyalty of the Lao people both to the monarchy in the person of King Sisavangvong, and to democratic principles of government. An oblique reference to Lao history made no mention of the Kingdom of Lan Xang or its previous extent. The Constitution established Laos as a nation-state within the boundaries established by French conquest and diplomacy.

VIII. KEY PROVISIONS OF THE 1947–1949 CONSTITUTION

The core of the Preamble to the Constitution consisted of a set of fundamental rights and duties to be enjoyed and accepted by all Lao citizens. Rights included equality before the law, individual liberty, and the freedoms of conscience, communication, assembly and association – none of which reflected traditional Lao Buddhist concepts. Duties included service to the country, respect for conscience, social solidarity, fulfilment of family obligations, application to work and education, personal probity, and observance of the law. None of these individual rights and duties was further mentioned in specific articles of the Constitution.

The proclamation of Lao unification is enshrined in Article 1 of the Constitution proper, which declares that Laos is 'a unitary, indivisible and democratic Kingdom', in which sovereignty, 'emanates from the Lao people', and is exercised on their behalf by the King in accordance with the constitution (Article 3).

The remainder of the first title (section) sets out 'general principles' pertaining to citizenship, suffrage, religion, language, and the flag as a national emblem. Even though not more than 60 per cent of the Lao population at the time were Buddhist (most minorities being animists of one kind or another), Buddhism was designated 'the state religion' (Article 7), with the King, who was required to be a 'fervent Buddhist' (Article 8), as its 'high protector', both of which conform to Lao tradition. Lao was named the official language, but French was also given official status (Article 6).

Vientiane was designated the national capital. This was the obvious choice, as the city had been the administrative capital of French Laos. The problem was that the King, who had such a central constitutional role to play in the Lao political process, refused to leave Luang Prabang. The consequent separation between Vientiane as the political and administrative capital and Luang Prabang

as the royal capital not only complicated Lao politics, but even significantly altered their course at crucial times.²²

The second title spelled out the role of the King as supreme head of state. Article 8 declared the King's person to be 'sacred and inviolable', a provision reflecting the Lao Buddhist conception of kingship. The succession was a matter for the King and the royal family to decide (Article 9), not involving either the King's Council or the National Assembly. The King's Council was, however, responsible for the appointment of a Regent in the event of royal incapacity, physical or mental (Article 10).

The King was commander-in-chief of the army, conferred all promotions, civil and military, and could commute sentences. He nominated the Prime Minister (referred to in the Constitution as the president of the Council of Ministers), who in turn nominated members of his government and presented them to the National Assembly. Once they had obtained the confidence of the Assembly, ministers were appointed by the King, who was empowered to preside over their deliberations.

The selection of ministers followed the French model, rather than the American (where secretaries [ministers] of government departments cannot at the same time be members of Congress) or the British system (where they must be elected members of Parliament). In Laos, ministers could be deputies elected to the National Assembly, or drawn from outside of it (Article 20). Either way, ministers were responsible to the Assembly, which could force the resignation of the entire government by carrying a vote of no confidence by a two-thirds majority (Article 22).

The popularly-elected National Assembly acted as the constitutional restraint on monarchical power. Deputies were elected by universal suffrage and served four-year terms. During their time in office they were immune to arrest and prosecution, unless indicted by two-thirds of members, or in the case of *flagrante delicto*. All were immune to prosecution or investigation for any opinion expressed or vote cast in the Assembly, an immunity also extended to printing and disseminating whatever was said (Article 35).

The Assembly was normally to meet for three months a year, each session being convoked, opened and closed by the King. At other times its affairs were handled by a 'permanent secretariat' (Article 31) elected at the beginning of each annual session. The Assembly was responsible for legislating the 'organic laws' of the Kingdom, passing the budget, granting amnesty and agreeing to the ratification of treaties (Article 28).

Under the terms of the 1947–1949 Constitution, the National Assembly functioned as a unicameral legislature: there was no provision for an elected upper house or senate. Instead legislation was reviewed by the King's Council, the one institution of government demonstrating continuity with traditional

²² Eg, in 1960 Captain Kong Le was able to carry out a successful coup d'état in Vientiane largely because almost the entire government was in Luang Prabang consulting with the King.

royal advisory bodies, from the Royal Council (*Senam Luang*) comprising the King's closest counsellors (ministers, generals, and on occasions, senior abbots) going back at least to the early sixteenth century,²³ to the Supreme Administrative Council (*Hosanam Luang*) of the Kingdom of Luang Prabang, consisting of three senior princes and three members of the nobility, each with specific administrative responsibilities.²⁴

Under the 1947–1949 Constitution, the Council acted as an upper house of review, tasked with examining all bills and proposals submitted and advising the King on whether they should be passed into law. Proposals for new legislations could originate from the King, or from the Council itself, but had to be referred to the National Assembly to become law. Members of the King's Council enjoyed the same rights, prerogatives and remuneration as deputies to the National Assembly (Article 37).

In exceptional circumstance not further defined in the Constitution, the King's Council could sit as a High Court (Article 38). The judicial system is not detailed in the Constitution. There is no mention in the Constitution of a High or Constitutional Court to which questionable legislation might be submitted for a ruling on its validity.²⁵ Instead establishing the judicial system was left to the National Assembly, which was also responsible for interpreting the Constitution itself. All that the Constitution required regarding the legal system was that the establishing legislation should 'guarantee the independence of the judicial power in relation to the legislative and executive powers' (Article 42), which provided only relatively weak constitutional support for the separation of powers.

The Constitution enshrined the administrative division of the Kingdom into an unspecified number of provinces,²⁶ each administered by a *chao khoueng* or governor 'assisted by a provincial council elected on a territorial basis' (Article 40). Each province was responsible for its own 'autonomous' budget covering revenue and expenditure, the operation of which would be fixed by law [enacted by the National Assembly] (Article 41).

The inclusion in the Constitution of provisions for local government exercising a degree of autonomy is significant, especially in comparison to the almost cursory treatment of the judiciary. Clearly this was an attempt to address the concerns of southern provinces that unification of the country could serve as a cover for domination of the south by the north. Two centuries of regional separatism still cast a long shadow.

²³ Martin Stuart-Fox, *The Lao Kingdom of Lan Xang* (n 1), at 64 & 73. On occasions the *Senam Luang* administered the kingdom during an interregnum, while deciding to whom to offer the throne.

²⁴ Stuart-Fox, *A History of Laos* (n 3), at 30–31.

²⁵ The final say over interpretation of the Constitution was left to the National Assembly (Art 44). No required majority was specified, which left the Assembly, or a subsequent one, to pronounce on the implications of its own, or previous, legislation.

²⁶ There were in fact 12 provinces, later increased to 16 through dividing four of them.

The final title of the Constitution set out the procedure for revision, a request for which could come from the King, the King's Council, or an absolute majority of deputies. The Council and the Assembly then combined to form a Congress, which required a two-thirds majority to carry an amendment. No amendment would be permitted, however, that challenged the nature of the state as a unitary kingdom, the 'representative character of the regime', or the principle of the liberty and equality of all citizens (Article 43).

In summary, from the viewpoint of constitutional law, the 1947 Lao Constitution was a minimalist document, drafted in some haste with the political goal of unifying the separate indirectly administered territories of Luang Prabang and the directly administered central and southern provinces to form a single kingdom. At the same time it was designed to reward those Lao who had remained loyal to France, particularly the royal family of Luang Prabang, while neutralising regionalist sentiment in the south (through the secret protocol agreed to by Prince Boun Oum). A second goal was to undercut the nationalist appeal of the Lao Issara government-in-exile in Bangkok.

National unity was achieved through the institutions specified in the Constitution – a monarchy with nationwide jurisdiction, a national legislature, and uniform local government. The political process of popular endorsement that followed royal promulgation of the 1947 text transformed the Constitution into a document whose constituent power derived not from the Luang Prabang monarchy but from the Lao people as a whole, north and south.

The Constitution achieved what it set out to do. By the time it was promulgated a second time in 1949 the widening war in Indochina was driving increasing ideological polarisation. The Lao Issara government-in-exile in Bangkok split between moderate and extremist factions. Most moderates recognised that the Constitution provided a framework within which to work towards independence by political means, and so were prepared to return to Laos.²⁷ By doing so, they accepted the Constitution as the legal foundation for the Kingdom of Laos as a modern, democratic nation-state.

IX. FROM THE 1947 TO THE 1949 CONSTITUTION

What intervened, between the drafting of the 1947 Constitution and promulgation of the 1949 Constitution on 14 September of that year, was the signing on 19 July 1949 of a General Convention between France and Laos regarding the independence of Laos.²⁸ It was actually the greater independence promised

²⁷ The notable exception was Prince Phetsarath, who refused to return until all his privileges and titles (including that of *uparat*) were restored by the King, which he was not prepared to do until 1957.

²⁸ This was based on an exchange of letters between King Sisavangvong and French president Vincent Auriol pursuant upon the promulgation of the 1947 Constitution. The French text is included in (1949) 155 *British and Foreign State Papers* 405–411.

by this document, rather than the Constitution *per se*, that convinced wavering moderate nationalists that further progress was possible through political means.

Under the terms of this Convention, France recognised the independence of Laos, while Laos re-affirmed its membership of the French Union and committed itself to its defence. Two circumstances were significant in the lead-up to this Convention. The first was the unification in May 1949 of Cochinchina, Annam and Tonkin to create the unified state of Vietnam within the French Union, along with the replacement of the Indochinese Federation by the much looser Associated States of Indochina (associated only through common membership of the French Union); the second was the military success of communist forces in China, their impending arrival on the northern borders of Vietnam and Laos, and the consequences this was likely to have for the war in Indochina.

The Convention set out the commitments entered into by both parties. France would defend the frontiers of the kingdom from invasion, assist Laos in establishing diplomatic relations with other states, support any Lao application for membership of the United Nations, and provide financial and technical aid. In return, as an Associated State, Laos agreed to permit French Union troops to be stationed on Lao territory, step up military recruitment, and allow French nationals and nationals of neighbouring Member States of the French Union (that is, Vietnam and Cambodia) the same rights as Lao citizens with respect to the administration of justice, freedom of movement, and commercial activity – a benefit to be enjoyed reciprocally by Lao nationals in those countries.

At the same time Laos agreed to be part of an internal monetary and customs union with Vietnam and Cambodia, and to join them in further negotiations with France over such matters as communications, immigration and trade.²⁹ But while these commitments limited Lao freedom of action, they did not detract from the fact that the Convention marked a clear step forward towards the goal of independence.

Or at least so concluded the moderate members of the Lao Issara in Bangkok. Since the November 1947 coup that returned the military to power in Thailand, Thai support for Lao nationalism had waned. Forays into Laos by Issara insurgents were discouraged. In March 1949 division within the Lao Issara came to a head over Prince Souphanouvong's refusal to curtail military activity and unauthorised financial expenditure. As a result, the moderate faction expelled Souphanouvong, so precipitating the revolutionary wing of the organisation into the arms of the Vietminh.

The 1947 Constitution needed no amendments to take account of the General Convention, for the preamble already declared Laos to be an independent state and member of the French Union. Changes in relationships between

²⁹ Concluded with the signature of the Pau Convention between France, Vietnam Laos and Cambodia in December 1950.

the states of Indochina had no place in an amended Lao Constitution. What the Franco-Lao General Convention signalled was the willingness of France to grant Laos an additional degree of independence. In October the moderates, led by Khammao, Katay Don Sasorith and Souvanna Phouma, accepted a negotiated amnesty and returned to Laos.³⁰ Their goal of full independence through political means was achieved four years later on 22 October 1953 with the signing in Paris of a 'Treaty of Friendship and Association between France and Laos'.³¹

The 1947–1949 Constitution continued to provide the constitutional and legal basis of the Kingdom of Laos over the following years. It was amended to take account of political agreements to establish the First and Second Coalition governments and promulgated afresh on 11 May 1957 and 30 July 1961. Discussion of provisions required to accommodate the formation of the Third Coalition were cut short by the communist Pathet Lao seizure of power in 1975. The Constitution was finally abrogated on 3 December 1975 by a vote of the National Congress of People's Representatives convened to inaugurate the Lao People's Democratic Republic.³²

X. CONCLUSION: THE SIGNIFICANCE OF THE 1947–1949 CONSTITUTION

Constitutions are drafted and promulgated within the context of historical and political circumstances, and none were more pressing than those surrounding the drafting and promulgation of the 1947–1949 Lao Constitution. Those circumstances included the defeat of France in the Second World War, the outbreak of the First Indochina War between French forces and the Vietminh, which threatened to spill over into Laos, victories of communist forces in China, and the beginning of the Cold War.

Political circumstances included Lao nationalist demands to unify the Kingdom of Luang Prabang and the directly administered provinces to form a single entity, as first proclaimed by the Lao Issara; the need to counter the nationalist appeal of the Lao Issara government-in-exile in Bangkok; and French determination both to limit real transfer of power, and to make sure that any powers that were transferred would be exercised by the loyal Francophile elite.

Unification was complicated by two things: lack of widespread support elsewhere in the country for the Luang Prabang monarchy; and equal hereditary claim of Prince Boun Oum na Champasak's to become King of Laos. The former was managed by sending King Sisavangvong on a tour of the south; the latter through a secret protocol.

³⁰ These events are covered in some detail in Stuart-Fox, *A History of Laos* (n 3), at 70–74.

³¹ A 'Military Convention' signed at the same time committed France to the continued defence of Laos. Both texts were published in (1953) 160 *British and Foreign State Papers* 658–666.

³² Stuart-Fox, *A History of Laos* (n 3), at 168–172.

The Constitution was drafted in order to establish Laos as a constitutional monarchy, whose independence was circumscribed through membership, along with Cambodia and a unified Vietnam, of France's Indochinese Federation (and later as an Associated State of the French Union). Equal emphasis was placed therefore on the King and the National Assembly as the two key institutions. Both symbolised the unity of the new state: the King as constitutional head of state of a unified country; the National Assembly as representing all Lao citizens. Both were reinforced through the process of popular endorsement that took place between when the Constitution was promulgated by royal decree in 1947 and when it was legislated by the popularly elected National Assembly in 1949.

The 1947–1949 Constitution was remarkably successful in achieving what it set out to do, which was to create a unified constitutional monarchy. It was a minimalist document in that it did not detail individual rights and freedoms, or institute an independent judiciary, or define legal guarantees for a free-market economy. Yet the values it enshrined informed the institutions it created, including the legal basis for rule of law, the exercise of individual rights and freedoms, and the functioning of an open economy. The 1947–1949 Constitution endured until the Kingdom of Laos was replaced by the Lao People's Democratic Republic, during which time it was amended, but never revoked. Not until the change of regime in 1975 was the 1947–1949 Constitution finally abrogated: not until 1991 did a new one take its place.³³

A radical disjuncture occurred in 1975 between the Kingdom of Laos and the Marxist Lao People's Democratic Republic. When eventually after 16 years a new Constitution was eventually promulgated, the regime had already embarked on free-market reform (under the slogan *chintanakan mai* or 'new thinking')³⁴ and the Soviet Union was on the point of dissolution. It was not surprising, therefore, that the 1991 Lao Constitution differed from the earlier Constitutions of the Socialist Republic of Vietnam and the People's Republic of Kampuchea (Cambodia), which were both modelled on the Soviet Constitution.³⁵

Though the 1991 Lao Constitution owed very little to its predecessor – and any influence would certainly have been denied by its authors – there do exist a couple of intriguing similarities. One is the name 'National Assembly', which was only adopted in the third draft of the 1991 Constitution: in drafts one and two it had still been called the Supreme People's Assembly.³⁶

³³ The text of the 1991 Constitution of the LPDR is available at <http://confinder.richmond.edu/admin/docs/laos.pdf>.

³⁴ Norihiko Yamada, 'Legitimation of the Lao People's Revolutionary Party: Socialism, *Chintanakan Mai* (New Thinking) and Reform' (2018) *Journal of Contemporary Asia*, published online: DOI: 10.1080/00472336.2018.1439081.

³⁵ See Martin Stuart-Fox, 'The Constitution of the Lao People's Democratic Republic' 1991) 17(1) *Review of Socialist Law* 299–317.

³⁶ *Ibid.*, at 311.

A second possible influence is that in both Constitutions the National Assembly can determine the fate of a government through a vote of no confidence, an unusual provision for a Marxist State that was retained in both the 2003 and the 2015 amended Constitutions.³⁷ In the 1947–1948 Constitution such a vote could only be taken when the Prime Minister first presented his cabinet to the Assembly, and required a two-thirds majority to be carried (Article 22). In the current Constitution of the LPDR, the Assembly has the right to pass a vote of no confidence in the Government, or a member of it, if a quarter of its members call for such a vote to be brought on. The President may then request the National Assembly to reconsider, but if an absolute majority supports a second no confidence vote, then the government or member of it must resign (Article 75). Thus in fact the circumstances, timing and majorities required for a not confidence vote all differ between the 1947–1948 Constitution and subsequent LPDR Constitutions, which undermines any likelihood of direct influence.³⁸

The provisions of the 1947–1949 Constitution no longer reverberate in modern Laos, though they still do among the Lao diaspora. During its existence from 1949 to 1975, the 1947–1949 Constitution demonstrated its resilience through incorporating the changes necessary to accommodate the first two coalition governments formed as a result of international negotiations and internal agreement between opposing political forces. It created a democratic system of government in the face of the challenging circumstances of war and revolution. The liberal democratic principles at its core have not survived in the single-party state that Laos has become; but as the founding document of the Kingdom of Laos, and thus of the Lao nation-state, it served the country well.

³⁷ The 1991 Constitution of the LPDR was amended in 2003, and again in 2015. The 2003 Constitution added a new chapter dealing with National Defence and Security, strengthened commitment to a market economy by promoting foreign investment in the economy, education, health and tourism, and protecting foreign capital, assets and intellectual property. The 2015 Constitution added new chapters covering the State Audit Authority and the Electoral Commission, strengthened the powers of the President and made provision for representative administrative assemblies at the province, city and village levels.

³⁸ The difference between the majorities required is less significant than might appear, since the LPDR always was, and remains, a single-party state, a fact that makes Art 75 of the current Constitution of little more than academic interest, since it is hardly likely to be acted upon by elected representatives of the ruling Lao People's Revolutionary Party to remove a government endorsed by their own Party.